



AIA[®] Document B101[™] – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the 18th day of August in the year 2022
(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
956-318-2626

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

Rike Ogden Figueroa Alex Architects
1007 Walnut Ave.
McAllen, Texas 78501
956-686-7771

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

Improvements of Various Parks for Hidalgo County Pct. 3
742 N. Breyfogle
Mission, Texas 78574
956-585-4509

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

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

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	SUPPLEMENTAL AND 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

ARTICLE 1 INITIAL INFORMATION

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

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

Improvements on Various Parks within Precinct 3

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

Various Location throughout Mission, Texas 78541

Project Description: Improve the following Parks located in Mission, Texas (Abram Park and Pavilion, Los Ebanos Pavilion, Los Ebanos Park, Katarina Park, Veterans Pavilion) See Exhibit "A"

§ 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.)

\$ 1,717,094.78 (See Exhibit "B")

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

Init.

/

- .1 Design phase milestone dates, if any:
To be determined at a later date by mutual written agreement
- .2 Construction commencement date:
To be determined at a later date by mutual written agreement
- .3 Substantial Completion date or dates:
To be determined at a later date by mutual written agreement
- .4 Other milestone dates:
To be determined at a later date by mutual written agreement

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

Competitive Bid

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

Not Applicable

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™–2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204–2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204–2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:
(List name, address, and other contact information.)

Jorge Arcuate
Hidalgo County Pct. 3
742 N. Breyfogle
Mission, Texas 78574
956-585-4509
Jorge.arcaute@co.hidalgo.tx.us

§ 1.1.8 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 contact information.)

To be determined at a later date

§ 1.1.9 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

- .1 Geotechnical Engineer:

Unknown at time of execution

.2 Civil Engineer:

Unknown at time of execution

.3 Other, if any:

(List any other consultants and contractors retained by the Owner.)

Unknown at time of execution

The information in this Section 1.1.9 is for informational purposes only, and may be changed at the Owner's discretion.

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

Cesar Alejandro Roque
Rike Odgen Figueroa Allex Architects
1007 Walnut Ave.
McAllen, Texas 78501
956-686-7771
cesarr@rofainc.com

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:
(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

Unknown at time of execution

.2 Mechanical Engineer:

Unknown at time of execution

.3 Electrical Engineer:

Unknown at time of execution

Init.

§ 1.1.11.2 Consultants retained under Supplemental Services:

Not Applicable

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

See Exhibit "A" as applicable

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial 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 the provisions of this Agreement.

§ 1.3 Architect shall advise Owner prior to execution of this Agreement if the Instruments of Service or any other information or documentation shall be or may be transmitted or used in digital form as described herein at the commencement of or during the term of this Agreement resulting in the necessity for the AIA documents referenced in sections 1.3 and 1.3.1. The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data. If applicable, Architect shall complete and provide to Owner for execution any necessary documents referenced in sections 1.3 and 1.3.1 prior to commencing any Work under this Agreement.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees. This provision shall not apply to the Owner if Architect failed to advise and/or provide applicable documents to Owner as provided in section 1.3.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

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

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

§ 2.4.1 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 herein.

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. For 2.5.1 through 2.5.5, to the extent applicable, policy shall include (1) an endorsement naming the County, its officers, employees and

Init.

elected/appointed officials as additional insured and (2) an endorsement to waive subrogation in favor of Owner, its officers and employees, for bodily injury, death, property damage or any other loss.

§ 2.5.1 Commercial General Liability with policy limits of not less than One Million (\$ 1,000,000.00) for each occurrence and Two Million (\$ 2,000,000.00) in the aggregate for bodily injury and property damage. ,

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million (\$ 1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than One Million (\$ 1,000,000.00) each accident, One Million (\$ 1,000,000.00) each employee, and One Million (\$ 1,000,000.00) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than One Million (\$ 1,000,000.00) per claim and One Million (\$ 1,000,000.00) in the aggregate. Policy shall include (1) an endorsement to provide thirty (30) days prior written notice to Owner in the event of cancellation and (2) coverage shall be continuous for not less than 24 months following completion of the contract and acceptance by the County. Coverage and renewals shall have the same retroactive date as the original policy.

§ 2.5.7 **Additional Insured Obligations.** The Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5. The current certificates of insurance are attached hereto 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 this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, 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 and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner 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 for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The

schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 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 Contractor);
- § 3.1.6.7 Structural Design; and
- § 3.1.6.8 Electrical and Plumbing Design

The Architect shall not engage in any activity or course of conduct which is detrimental to the Owner's best interest.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Contractor and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.7 Architect's Responsibilities.

§ 3.1.7.1 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.

§ 3.1.7.2 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 Contractor, the Contractor is responsible for distribution of information to his subcontractors to perform their duties or responsibilities with respect to the Project.

§ 3.1.7.3 The Architect shall assist the Owner and Contractor in preparing any Project schedules or timelines and in monitoring the progress of Owner, Contractor, Architect, 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.

§ 3.2 Schematic Design Phase Services

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

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, 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.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner approved by the Owner in writing regarding the requirements of the Project.

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

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. 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 representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, 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 more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider 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 program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 Design Development Phase Services

§ 3.3.1 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, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents 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 other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in detail, their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 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. 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 and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor 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.

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

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the

Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner 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 contracts for construction.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

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

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:

- .1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 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 Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall

not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor'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 Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 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 4.2.3, 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 promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in 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 the 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 Contractor, Subcontractors, 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 Contractor. 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 Contractor.. 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 Contractor 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 Contractor 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 during inspections.

§ 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 Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor 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 Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) 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 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 suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor 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 Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. 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, Contractor or separate contractors, while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor'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, Contractor 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 Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or 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 Contractor 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 and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy 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 the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order 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 Contractor 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 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 Contractor, 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 Contractor.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, 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 Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, 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 Contractor: (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 Contractor 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 advise and consult with the Owner.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental 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. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1 Programming	Has been provided by Owner
§ 4.1.1.2 Multiple preliminary designs	Architect
§ 4.1.1.3 Measured drawings	N/A
§ 4.1.1.4 Existing facilities surveys	N/A
§ 4.1.1.5 Site evaluation and planning	N/A
§ 4.1.1.6 Building Information Model management responsibilities	N/A
§ 4.1.1.7 Development of Building Information Models for post construction use	N/A
§ 4.1.1.8 Civil engineering	N/A
§ 4.1.1.9 Landscape design	N/A
§ 4.1.1.10 Architectural interior design	N/A
§ 4.1.1.11 Value analysis	N/A
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	N/A
§ 4.1.1.13 On-site project representation	N/A
§ 4.1.1.14 Conformed documents for construction	N/A
§ 4.1.1.15 As-designed record drawings	N/A
§ 4.1.1.16 As-constructed record drawings	By Architect
§ 4.1.1.17 Post-occupancy evaluation	N/A
§ 4.1.1.18 Facility support services	N/A
§ 4.1.1.19 Tenant-related services	N/A
§ 4.1.1.20 Architect's coordination of the Owner's consultants	N/A
§ 4.1.1.21 Telecommunications/data design	N/A

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.22 Security evaluation and planning	N/A
§ 4.1.1.23 Commissioning	N/A
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	N/A
§ 4.1.1.25 Fast-track design services	N/A
§ 4.1.1.26 Multiple bid packages	By Architect
§ 4.1.1.27 Historic preservation	N/A
§ 4.1.1.28 Furniture, furnishings, and equipment design	N/A
§ 4.1.1.29 Other services provided by specialty Consultants	N/A
§ 4.1.1.30 Other Supplemental Services	N/A

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

See Exhibit ____ if applicable

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

1. Texas Accessibility Standards registration, plan review and inspection: Nothing in this Agreement is intended to and County does not hereby waive, release or relinquish any right or assert any of the defenses County enjoys by virtue of the state or federal constitution, laws, rules or regulations, and any sovereign, official or qualified immunity available to County as to any claim or action or any person, entity, or individual against County.

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services 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 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 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 Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b)

- contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner 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;
 - .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
 - .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
 - .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
 - .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
 - .9 Evaluation of the qualifications of entities providing bids or proposals;
 - .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
 - .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.2.2

(Paragraphs deleted)

-[Deleted]

§ 4.2.3

(Paragraphs deleted)

-[Deleted]

§ 4.2.4 Except for services required under Section 3.6.6.5, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within Twelve (12) 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.

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, 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.

§ 5.2 The Owner shall establish 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 update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. 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 Project's scope and quality.

§ 5.3 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.

§ 5.4 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 other 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.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include 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.

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement.

§ 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 as the responsibility of the Architect 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 and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work 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 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 include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 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 Contractor, including the General Conditions of the Contract for Construction.

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

§ 5.15 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.

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 contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or 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 Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

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.

§ 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 (including all additional services, which shall be compensated for per approved fees schedules attached hereto as Exhibit "____") during construction and shall 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 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 under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. 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 Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, 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.

§ 7.3.1 -[Deleted]

§ 7.4 -[Deleted]

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

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

§ 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 A201–2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 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 this 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 claim. 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.)

☐ -[Deleted]

☒ Litigation in a court of competent jurisdiction

☐ Other: *(Specify)*

If the Owner and Architect do not select a method of binding dispute resolution, 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.

§ 8.3 -[Deleted]

§ 8.3.1 -[Deleted]

§ 8.3.1.1 -[Deleted]

§ 8.3.2 -[Deleted]

§ 8.3.3 -[Deleted]

§ 8.3.4 -[Deleted]

§ 8.3.4.1 -[Deleted]

§ 8.3.4.2 -[Deleted]

§ 8.3.4.3 -[Deleted]

(Paragraph deleted)

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

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 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 Owner shall pay the Architect 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 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination and Reimbursable Expenses incurred.

§ 9.7
(Paragraphs deleted)
-[Deleted]

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 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.

§ 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, including any payments due to the Architect by the Owner prior to the assignment.

§ 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.

§ 10.6 To the extent by Texas law, the Architect should 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. However, should the Architect become aware of hazardous materials or toxic substances, the Architect shall notify the Owner and provide the Owner with the appropriate direction to remove the materials and mitigate any potential exposures.

§ 10.7 The Architect shall have the right, subject to obtaining Owner's prior written consent, to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall coordinate with Owner to 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 and prior to use, Architect shall obtain from Owner written confirmation that that specific information it intends to use is not considered by Owner to be confidential or proprietary. Architect may not use any information not so confirmed by Owner. The Owner may at its discretion provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information, when required by law, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

ARTICLE 11 COMPENSATION

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

.1 Stipulated Sum
(Insert amount)

.2 Percentage Basis
(Insert percentage value)

() % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

.3 Other
(Describe the method of compensation)

Eight percent (8%) of actual construction cost or Eight percent (8%) of \$ 1,717,094.78, whichever is higher

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, 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.)

Compensation will be based on the contract rate schedule included as part of Exhibit "D"

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

Compensation will be based on the contract rate schedule included as part of Exhibit "D"

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent (10 %), or as follows:
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

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

Schematic Design Phase	Fifteen	percent (	15	%)
Design Development Phase	Twenty	percent (	20	%)
Construction Documents Phase	Forty	percent (	40	%)
Procurement Phase	Five	percent (	5	%)
Construction Phase	Twenty	percent (	20	%)
Total Basic Compensation	one hundred	percent (	100	%)

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis 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. 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 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 provided by Architect Exhibit "B"

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, 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 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and 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 of Instruments of Service;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 ;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective, if applicable; and,
- .12 Other similar Project-related expenditures with prior written approval from Owner.

- .13 Owner shall receive an original and electronic copy of the set of Instruments of Service, drawings, specifications and related materials at no cost. Owner shall pay for additional sets as required for Bidding and Construction purposes.
- .14 Owner shall pay the required fees for the review of the Construction Documents by the Texas Department of Licensing and Regulations for compliance with Texas Accessibility Standards (TAS).

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants.

§ 11.9 [Deleted]

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 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.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of Not applicable (\$) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

§ 11.10.2 Progress Payments

§ 11.10.2.1 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
(Paragraphs deleted)

invoice in accordance with the Texas Government Code Ch. 2251 (Texas Prompt Payment Act). Interest rate applicable to late payments shall be at the rate established under the Texas Government Code Ch. 2251 (Texas Prompt Payment Act).

§ 11.10.2.2 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.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and 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:

(Include other terms and conditions applicable to this Agreement.)

§ 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 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 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.

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

§ 12.3 In the event of a conflict between the provisions of this Article 12, and other provisions in this AIA B101-2017, 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 the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect (as such agreement is modified by the Owner)
- .2 If applicable as per Architect's advisement, AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this agreement.)

N/A

- .3 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

[N/A] AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this agreement.)

N/A

[X] Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

- .4 Other documents:
(List other documents, if any, forming part of the Agreement.)

-Initial Procurement Qualifications
-Proposal (Includes Scope of Work and Rate Schedule)
-Insurance Certificates

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

Init.

OWNER (Signature)

Richard F. Cortez County Judge
(Printed name and title)

APPROVED AS TO FORM

Office of the Criminal District Attorney,
Ricardo Rodriguez, Jr.

_____, ADA

ARCHITECT (Signature)

Luis Figueroa Principal
(Printed name, title, and license number, if required)

ATTEST

Arturo Guajardo, Jr., County Clerk

Init.

/

Additions and Deletions Report for

AIA[®] Document B101[™] – 2017

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 10:08:53 ET on 08/08/2022.

PAGE 1

AGREEMENT made as of the 18th day of August in the year 2022

...

County of Hidalgo
100 East Cano, 2nd Floor
Edinburg, Texas 78539
956-318-2626

...

Rike Ogden Figueroa Alex Architects
1007 Walnut Ave.
McAllen, Texas 78501
956-686-7771

...

Improvements of Various Parks for Hidalgo County Pct. 3
742 N. Breyfogle
Mission, Texas 78574
956-585-4509

PAGE 2

Improvements on Various Parks within Precinct 3

...

Various Location throughout Mission, Texas 78541

Project Description: Improve the following Parks located in Mission, Texas (Abram Park and Pavilion, Los Ebanos Pavilion, Los Ebanos Park, Katarina Park, Veterans Pavilion) See Exhibit "A"

...

\$ 1,717,094.78 (See Exhibit "B")

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

PAGE 3

To be determined at a later date by mutual written agreement

...

To be determined at a later date by mutual written agreement

...

To be determined at a later date by mutual written agreement

...

To be determined at a later date by mutual written agreement

...

Competitive Bid

...

Not Applicable

...

Jorge Arcuate
Hidalgo County Pct. 3
742 N. Breyfogle
Mission, Texas 78574
956-585-4509
Jorge.arcaute@co.hidalgo.tx.us

...

To be determined at a later date
PAGE 4

Unknown at time of execution

...

Unknown at time of execution

...

Unknown at time of execution

The information in this Section 1.1.9 is for informational purposes only, and may be changed at the Owner's discretion.

...

Cesar Alejandro Roque
Rike Odgen Figueroa Allex Architects
1007 Walnut Ave.
McAllen, Texas 78501
956-686-7771
cesarr@rofainc.com

...

Unknown at time of execution

...

Unknown at time of execution

...

Unknown at time of execution

PAGE 5

Not Applicable

...

See Exhibit "A" as applicable

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall ~~appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.~~ negotiate adjustments in schedule, compensation and Changes in the Work in accordance with the provisions of this Agreement.

§ 1.3 Architect shall advise Owner prior to execution of this Agreement if the Instruments of Service or any other information or documentation shall be or may be transmitted or used in digital form as described herein at the commencement of or during the term of this Agreement resulting in the necessity for the AIA documents referenced in sections 1.3 and 1.3.1. The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data. If applicable, Architect shall complete and provide to Owner for execution any necessary documents referenced in sections 1.3 and 1.3.1 prior to commencing any Work under this Agreement.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees. This provision shall not apply to the Owner if Architect failed to advise and/or provide applicable documents to Owner as provided in section 1.3.

...

§ 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.~~

...

§ 2.4 ~~Except with the Owner's knowledge and consent, the~~ 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.

§ 2.4.1 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 herein.

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9. For 2.5.1 through 2.5.5, to the extent applicable, policy shall include (1) an endorsement naming the County, its officers, employees and elected/appointed officials as additional insured and (2) an endorsement to waive subrogation in favor of Owner, its officers and employees, for bodily injury, death, property damage or any other loss.

§ 2.5.1 Commercial General Liability with policy limits of not less than One Million (\$ 1,000,000.00) for each occurrence and Two Million (\$ 2,000,000.00) in the aggregate for bodily injury and property damage. 1

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million (\$ 1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

PAGE 6

§ 2.5.5 Employers' Liability with policy limits not less than One Million (\$ 1,000,000.00) each accident, One Million (\$ 1,000,000.00) each employee, and One Million (\$ 1,000,000.00) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than One Million (\$ 1,000,000.00) per claim and One Million (\$ 1,000,000.00) in the aggregate. Policy shall include (1) an endorsement to provide thirty (30) days prior written notice to Owner in the event of cancellation and (2) coverage shall be continuous for not less than 24 months following completion of the contract and acceptance by the County. Coverage and renewals shall have the same retroactive date as the original policy.

§ 2.5.7 Additional Insured Obligations. To the fullest extent permitted by law, the The Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. insured. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5. The current certificates of insurance are attached hereto and the Architect shall provide updated certificates as the same expire.

PAGE 7

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval. 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 Contractor);
- § 3.1.6.7 Structural Design; and
- § 3.1.6.8 Electrical and Plumbing Design

The Architect shall not engage in any activity or course of conduct which is detrimental to the Owner's best interest.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the ~~Construction Documents~~ Contractor and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

...

§ 3.1.7 Architect's Responsibilities.

§ 3.1.7.1 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.

§ 3.1.7.2 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 Contractor, the Contractor is responsible for distribution of information to his subcontractors to perform their duties or responsibilities with respect to the Project.

§ 3.1.7.3 The Architect shall assist the Owner and Contractor in preparing any Project schedules or timelines and in monitoring the progress of Owner, Contractor, Architect, 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.

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

...

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner approved by the Owner in writing regarding the requirements of the Project.

PAGE 8

§ 3.3.1 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, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents 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 other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, detail, their quality levels.

...

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

PAGE 10

§ 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 4.2.3, 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 promptly report to the Owner (1) known deviations from the

Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in 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 the 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 Contractor, Subcontractors, 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 Contractor, ~~shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith.~~ Contractor.. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

...

§ 3.6.2.6 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 during inspections.

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

PAGE 11

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. 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, Contractor or separate contractors, while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor'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, Contractor 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 Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or 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 Section 4.2, 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 the requests for information.

PAGE 12

§ 3.6.5.1 The Architect may order 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 Section 4.2, 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 Contractor 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 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 Contractor, 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 Contractor.

PAGE 13

§ 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 advise and consult with the Owner.

...

<u>§ 4.1.1.1</u>	Programming	<u>Has been provided by Owner</u>
<u>§ 4.1.1.2</u>	Multiple preliminary designs	<u>Architect</u>
<u>§ 4.1.1.3</u>	Measured drawings	<u>N/A</u>
<u>§ 4.1.1.4</u>	Existing facilities surveys	<u>N/A</u>
<u>§ 4.1.1.5</u>	Site evaluation and planning	<u>N/A</u>
<u>§ 4.1.1.6</u>	Building Information Model management responsibilities	<u>N/A</u>
<u>§ 4.1.1.7</u>	Development of Building Information Models for post construction use	<u>N/A</u>

§ 4.1.1.8	Civil engineering	N/A
§ 4.1.1.9	Landscape design	N/A
§ 4.1.1.10	Architectural interior design	N/A
§ 4.1.1.11	Value analysis	N/A
§ 4.1.1.12	Detailed cost estimating beyond that required in Section 6.3	N/A
§ 4.1.1.13	On-site project representation	N/A
§ 4.1.1.14	Conformed documents for construction	N/A
§ 4.1.1.15	As-designed record drawings	N/A
§ 4.1.1.16	As-constructed record drawings	By Architect
§ 4.1.1.17	Post-occupancy evaluation	N/A
§ 4.1.1.18	Facility support services	N/A
§ 4.1.1.19	Tenant-related services	N/A
§ 4.1.1.20	Architect's coordination of the Owner's consultants	N/A
§ 4.1.1.21	Telecommunications/data design	N/A
§ 4.1.1.22	Security evaluation and planning	N/A
§ 4.1.1.23	Commissioning	N/A
§ 4.1.1.24	Sustainable Project Services pursuant to Section 4.1.3	N/A
§ 4.1.1.25	Fast-track design services	N/A
§ 4.1.1.26	Multiple bid packages	By Architect
§ 4.1.1.27	Historic preservation	N/A
§ 4.1.1.28	Furniture, furnishings, and equipment design	N/A
§ 4.1.1.29	Other services provided by specialty Consultants	N/A
§ 4.1.1.30	Other Supplemental Services	N/A

PAGE 14

See Exhibit _____ if applicable

...

1. Texas Accessibility Standards registration, plan review and inspection: Nothing in this Agreement is intended to and County does not hereby waive, release or relinquish any right or assert any of the defenses County enjoys by virtue of the state or federal constitution, laws, rules or regulations, and any sovereign, official or qualified immunity available to County as to any claim or action or any person, entity, or individual against County.

PAGE 15

§ 4.2.2 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, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

- .1 — Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 — Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 — Preparing Change Orders and Construction Change Directives that require evaluation of Contractor'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; or,~~
~~.5 — Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom. [Deleted]~~

§ 4.2.3 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 Contractor~~
~~.2 — () visits to the site by the Architect 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. [Deleted]~~

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, 3.6.6.5, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within Twelve (12) 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.

PAGE 16

§ 5.11 The Owner shall provide prompt written notice to the Architect 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.

PAGE 17

§ 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.

§ 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 (including all additional services, which shall be compensated for per approved fees schedules attached hereto as Exhibit "____") during construction and shall 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 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 under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. 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

Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, 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.

§ 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.~~[Deleted]

§ 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.~~[Deleted]

PAGE 18

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

...

§ 8.1.3 ~~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 this Agreement.~~mediation. A request for mediation shall be made in writing, delivered to the other party to this 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.

claim. However, nothing in this Agreement shall be construed as requiring mandatory mediation of claims, disputes or other matters in questions between the parties.

PAGE 19

☐ Arbitration pursuant to Section 8.3 of this Agreement-~~[Deleted]~~

☒ Litigation in a court of competent jurisdiction

...

§ 8.3 Arbitration-~~[Deleted]~~

§ 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 this 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.

~~[-Deleted]~~

§ 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.

~~[-Deleted]~~

§ 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.

~~[-Deleted]~~

§ 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.

~~[-Deleted]~~

§ 8.3.4 Consolidation or Joinder-~~[Deleted]~~

§ 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).

~~[-Deleted]~~

§ 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.

~~[-Deleted]~~

§ 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.-~~[Deleted]~~

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

...

§ 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.

PAGE 20

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, ~~Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements, termination and Reimbursable Expenses incurred.~~

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 — Termination Fee:

.2 — Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

-[Deleted]

...

§ 9.9 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 9.7.7.~~

...

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, ~~excluding that jurisdiction's choice of law rules. 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 A201-2017, General Conditions of the Contract for ~~Construction. Construction as modified by the Owner.~~

...

§ 10.6 ~~Unless otherwise required in this Agreement, the Architect shall~~ To the extent by Texas law, the Architect should 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. However, should the Architect become aware of hazardous materials or toxic substances, the Architect shall notify the Owner and provide the Owner with the appropriate direction to remove the materials and mitigate any potential exposures.

§ 10.7 The Architect shall have the ~~right-right~~, subject to obtaining Owner's prior written consent, to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall coordinate with Owner to 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 and prior to use, Architect shall obtain from Owner written confirmation that that specific information it intends to use is not considered by Owner to be confidential or proprietary. The Owner shall Architect may not use any information so confirmed by Owner. The Owner may at its discretion provide professional credit

for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

PAGE 21

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" ~~information after 7 days' notice to the other party, when required by law, arbitrator's order, information, when required by law, , or court order,~~ including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

...

Eight percent (8%) of actual construction cost or Eight percent (8%) of \$ 1,717,094.78, whichever is higher

...

Compensation will be based on the contract rate schedule included as part of Exhibit "D"

...

Compensation will be based on the contract rate schedule included as part of Exhibit "D"

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent (10 %), or as follows:

PAGE 22

Schematic Design Phase	<u>Fifteen</u>	percent (	<u>15</u>	%)
Design Development Phase	<u>Twenty</u>	percent (	<u>20</u>	%)
Construction Documents Phase	<u>Forty</u>	percent (	<u>40</u>	%)
Procurement Phase	<u>Five</u>	percent (	<u>5</u>	%)
Construction Phase	<u>Twenty</u>	percent (	<u>20</u>	%)

...

See hourly rates provided by Architect Exhibit "B"

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, and standard form ~~documents;~~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;~~delivery of Instruments of Service;

...

- .10** ~~Site office expenses;~~

- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; Objective, if applicable; and,
- .12 Other similar Project-related expenditures; expenditures with prior written approval from Owner.
- .13 Owner shall receive an original and electronic copy of the set of Instruments of Service, drawings, specifications and related materials at no cost. Owner shall pay for additional sets as required for Bidding and Construction purposes.
- .14 Owner shall pay the required fees for the review of the Construction Documents by the Texas Department of Licensing and Regulations for compliance with Texas Accessibility Standards (TAS).

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

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)[Deleted]

PAGE 23

§ 11.10.1.1 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.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of Not applicable (\$) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

...

§ 11.10.2.1 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 (—) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

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

—%—invoice in accordance with the Texas Government Code Ch. 2251 (Texas Prompt Payment Act). Interest rate applicable to late payments shall be at the rate established under the Texas Government Code Ch. 2251 (Texas Prompt Payment Act).

...

§ 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 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 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.

Monthly Anticipated Adverse Weather Calendar Days												
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
<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>

§ 12.3 In the event of a conflict between the provisions of this Article 12, and other provisions in this AIA B101-2017, the provisions of Article 12 shall control.

PAGE 26

- .1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect (as such agreement is modified by the Owner)
- .2 If applicable as per Architect's advisement, AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

...

N/A

...

[N/A] AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:

...

N/A

[X] Other Exhibits incorporated into this Agreement:

...

(List other documents, if any, forming part of the Agreement.)

- Initial Procurement Qualifications
- Proposal (Includes Scope of Work and Rate Schedule)
- Insurance Certificates

PAGE 27

Richard F. Cortez County Judge

Luis Figueroa Principal

...

APPROVED AS TO FORM

ATTEST

Office of the Criminal District Attorney,
Ricardo Rodriguez, Jr.

, ADA

Arturo Guajardo, Jr., County Clerk

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Elena Gomez, 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 10:08:53 ET on 08/08/2022 under Order No. 2114330852 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ – 2017, Standard Form of Agreement Between Owner and Architect, 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)

EXECUTED as of the day and year first written above.

APPROVED BY COMMISSIONERS' COURT ON August 18, 2022.

Agenda Item No. 86918

Executive Office: _____

ARCHITECT:
ROFA Architects

COUNTY:
COUNTY OF HIDALGO

Name, Luis Figueroa, Principal

Hon. Richard F. Cortez, County Judge

APPROVED AS TO FORM
Office of the Criminal District Attorney,
Ricardo Rodriguez, Jr.

ATTEST:

Amanda Diane Austin, Assistant District Attorney

Arturo Guajardo, Jr., County Clerk

ATTACHMENTS:

Exhibit A- RFQ

Exhibit B- Proposal (Includes Scope of Work and Rate Schedule)

Exhibit C- Insurances Certificates

SUPPLEMENTAL SIGNATURES:



Exhibit A

Requirements/County's
Request for Qualifications

HIDALGO COUNTY PROCUREMENT PACKET

**Request for Qualifications
RFQ No: 2021-0788-02-23-ABV**

“PROFESSIONAL ARCHITECTURAL SERVICES POOL”

**Acceptance Due Date:
Wednesday, February 23, 2022 at 2:00pm**

Eduardo Belmarez, MBA, CPM, Purchasing Director
Hidalgo County Purchasing Department

Project Contact Information:

Alexandra B. Vela, Contract Specialist II
(956) 318-2626 Ext. 4865
alexandra.vela@co.hidalgo.tx.us



2802 S. Bus. Hwy 281
Edinburg, Texas 78539
Phone: (956) 318-2626
Fax: (956) 318-2629
www.co.hidalgo.tx.us/purchasing

January 31, 2022

Company Name

Authorized Representative

Address

City

State, Zip Code

HIDALGO COUNTY
REQUEST FOR QUALIFICATIONS: RFQ NO.: 2021-0788-02-23-ABV
Professional Architectural Services Annual Pool

Dear Prospect Vendor:

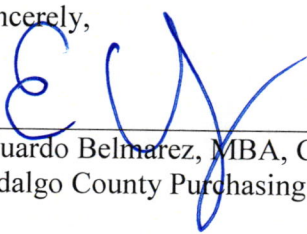
Hidalgo County Purchasing Department welcomes and appreciates your participation in this project.

Enclosed please find the procurement packet for the aforementioned project. Modifications and new requirements have been added and implemented. Please ensure to carefully read and review all instructions, requirements and specifications.

The items listed on the Table of Contents shall be found in this procurement packet that is attached herewith. Should you find that any of the listed items are not attached in their entirety, please contact the Contract Specialist listed on the cover page to advice of the missing documentation, and it will be emailed to you.

If any further assistance is required, please do not hesitate to call the Purchasing Department.

Sincerely,



Eduardo Belmarez, MBA, CPM
Hidalgo County Purchasing Agent

TABLE OF CONTENTS

This procurement packet includes the components marked below. If the item is not checked, it is not applicable to this solicitation. Offerors are asked to review the documentation to be sure that all applicable parts are included. If any portion of the documentation is missing, notify the Purchasing Department immediately. Offeror should be thoroughly familiar with all of the following items applicable to this procurement packet before submitting a response.

<u>X</u>	Procurement Overview.....	4
<u>X</u>	Legal Notice.....	9
<u>X</u>	Appendices:	
<u>X</u>	A Requirements/Specifications.....	24
<u>X</u>	B Evaluation Procedure and Areas of Specialization.....	28
<u>X</u>	C Insurance Requirements.....	33
<u>X</u>	D Conflict of Interest Questionnaire (CIQ).....	39
<u>X</u>	E Vendor Enrollment Solution and HUB Declaration.....	42
<u>X</u>	F Certification Regarding Debarment.....	45
<u>X</u>	G Title VI Appendices “A” through “E”.....	47
<u>X</u>	H Required Contract Clauses for Contracts Under Federal Award.....	53
<u>X</u>	I FHWA 1273.....	68
<u>X</u>	J Respondent’s Affidavit.....	81
	K Draft Agreement.....	
<u>X</u>	L Deficiencies and Deviations Form.....	83
<u>X</u>	M Reference Form.....	85
<u>X</u>	N Shipping Label.....	88



PROCUREMENT OVERVIEW

PROCUREMENT OVERVIEW

THE RESPONDENT IS RESPONSIBLE FOR READING AND UNDERSTANDING ALL DOCUMENTS, FORMS, SPECIFICATIONS, AND INSTRUCTIONS WITHIN THIS ENTIRE DOCUMENT. Follow all instructions; you are responsible for obtaining any information needed in order to respond to this RFQ. Further, the Respondent is responsible for providing any and all relevant information necessary to establish qualifications of the Firm. Failure to do so will be at the Respondent's risk, and may result in rejection of the qualification as non-conforming.

General Requirements apply to all advertised solicitations; however, these may be superseded, whole or in part, by OTHER DATA CONTAINED HEREIN. Review the Table of Contents. Be sure your proposal package is complete.

INTRODUCTION

Hidalgo County (hereinafter referred to as “**COUNTY**”) is seeking qualified firms interested in providing comprehensive professional services as part of our 2022 Professional Services Pools. Qualified Respondents may then be engaged from the pool to provide professional services on an “As Needed Basis” or on a “Project-Specific Basis”. Sealed qualifications will be received for “**Hidalgo County** (including all funding sources, programs, and entities) “**Professional Architectural Services Pool**”, in accordance with the requirements attached hereto as **Appendix “A”**. Inclusion into the specified Pool is based on qualifications and other factors as herein set forth. The qualifications should address all requirements. Respondent may suggest substitutions of features which they feel would be in the best interest of COUNTY; however, a strong rationale must be presented for any deviation from the requirements. COUNTY reserves the right to reject the deviation and its effect on the overall qualification.

Hidalgo County is requiring all submitted qualifications are to remain firm for a minimum of ninety (90) days after the RFQ opening.

AWARD

Hidalgo County anticipates accepting all qualified firms to our Pool. No award can be made until approved by Hidalgo County Commissioners Court. This RFQ does not obligate Hidalgo County to the eventual purchase of any product and/or service described, implied or which may be proposed. Progress toward this end is solely at the discretion of Hidalgo County, and may be terminated at any time prior to execution of an agreement.

TERM OF POOL

The term of this pool shall be for a period of one (1) year, commencing on March 26, 2022 and end on March 25, 2023. The information provided in this Request for Qualification (hereinafter referred to as “RFQ”) is only to be used for the purpose of preparing a submission for the above referenced pool.

GENERAL REQUIREMENTS

One (1) original and two (2) USBs in original PDF format. Further instructions listed below under **VENDOR INSTRUCTIONS**. For convenience, the Offeror may utilize the Shipping Label provided in **Appendix “N”**.

SUBMISSION DEADLINE AND BID OPENING

All submissions must be received on or before Wednesday, February 23, 2022 at 2:00pm. **Any submission received after this deadline will not be accepted and will be returned to sender.**

BID OPENING STREAMING

Due to the ongoing pandemic, and in order to abide with social distancing protocols and/or any applicable order(s), the Hidalgo County Purchasing Department is limiting the number of participants allowed in our office during bid openings to authorized personnel only; however, this is a public bid opening and it can be accessed via a live stream or by calling in the day of the event.

Live stream:

<https://hidalgocounty.zoom.us/j/86900060589?pwd=OWNpTk9Lay9nSjZRNhVkdVd1UT09>

Meeting ID: 869 0006 0589

Passcode: 5 0 5 1 8 5

Dial by your location: +1 346 248 7799 US (Houston)

To find your local number: <https://hidalgocounty.zoom.us/j/kcEzSIJvRI>

Join by SIP: 86900060589@zoomcrc.com

HAND DELIVERED BIDS

Hidalgo County requires submitters, when hand delivering bids, to make sure that it is stamped with date and time by the Hidalgo County Purchasing staff.

ELECTRONIC TRANSMISSION OF SUBMISSION

Hidalgo County Purchasing Department will not accept telegraphic or electronically transmitted submissions.

DELIVER TO:

US Postal Mail Address:

Eduardo Belmarez, MBA,CPM,
Purchasing Director
ATTN: Alexandra B. Vela
Hidalgo County Purchasing Department
Administration Building
2812 S. Business Hwy 281
Edinburg, Texas 78539

Physical Address:

Eduardo Belmarez, MBA,CPM,
Purchasing Director
ATTN: Alexandra B. Vela
Hidalgo County Purchasing Department
Administration Building
2802 S. Business Hwy. 281
Edinburg, Texas 78539

SIGNING OF SUBMISSION

In order to be considered, all submittals **must** be signed by an authorized representative of the firm. **Please sign the original in [blue](#) ink and ensure the USB is clearly labeled.**

QUESTIONS AND ANSWERS

Questions must be submitted via email to alexandra.vela@co.hidalgo.tx.us by **Monday, February 14, 2022 at 5:00 P.M.** Responses to submitted questions will be emailed to all participants who obtained their procurement packet directly from Hidalgo County Purchasing Department by **Wednesday, February 16, 2022**. Telephone inquiries will not be accepted.

RESTRICTIVE OR AMBIGUOUS REQUIREMENTS

It is the responsibility of the submitter to review the procurement packet and to notify the Hidalgo County Purchasing Department if the requirements are formulated in a manner that would unnecessarily restrict competition, or clarification on any requirements that are ambiguous. Any such protest or question regarding the requirements or bidders procedures must be received in writing via email by the deadline stated for Questions and Answers.

COST OF SUBMISSION

Hidalgo County will not be liable for any costs incurred by the vendor in preparing a response to this procurement packet. Each Offeror acknowledges it is submitting a response at their own risk and expense. Further, no reimbursement for such charges or expenses shall be passed onto Hidalgo County. Hidalgo County makes no guarantee that any products or services will be purchased as a result of this solicitation, and reserves the right to reject any and all submissions received. All responses and accompanying documentation will become the property of Hidalgo County. All responses are open to negotiation.

WAIVING OF INFORMALITIES

Hidalgo County reserves the right to waive minor informalities or technicalities when it is in the best interest of Hidalgo County.

NOTICE OF COMMUNICATION

All communications by a vendor to the county, its officials, and department heads regarding this procurement shall be done through the Hidalgo County Purchasing Department. No vendor, its' representative, agent, or employee shall engage in private communication with a member of the Hidalgo County Commissioners Court or county department heads regarding any procurement of goods or services by the County from the date that this procurement packet is released. No private communication regarding the purchase shall be permitted until the procurement process is complete and a purchase order is granted or a contract is entered into "Private Communication" means communication with any vendor outside of a posted meeting of the governing body, a regular meeting of a standing or appointed committee, or negotiation with a vendor which has been specifically authorized by the governing body.

VENDOR INSTRUCTIONS

Responses to this procurement packet shall be formatted and organized in the following order for consistency and easy screening:

- All submissions must be typed, single spaced, and printed single-sided on 8 ½" by 11" paper.
- One (1) original, **clearly marked "ORIGINAL"** and two (2) USBs in PDF format. Original document must be submitted in a three-ring, loose-leaf binder with a Cover Page containing the information listed in the Submission Outline/Checklist, under Submission Cover Page. One (1) USB containing the complete response in PDF, Word, and/or Excel format must be provided and placed in the ORIGINAL response. The PDF document must also be signed. A self-adhesive packet may be used to secure the USB. The USB must also be properly labeled.
- The complete response must be sealed in an appropriately sized envelope or box for delivery to the Hidalgo County Purchasing Department, per instructions in the Procurement Packet Submission paragraph of the Legal Notice section contained within this procurement packet.
- All documents must be labeled with the vendor's name and the RFQ number. Any response received by the Hidalgo County Purchasing Department that is not identified on the outside with the RFQ number will be at risk for rejection.
- Each section of the vendor's response should start on a new page. A tabbed divider page marked with the section number should be used to separate each section.
- Prepare a Table of Contents for the response being submitted and place it after the Submission Cover Sheet and before Section I. The Table of Contents must list Sections I-VII and the contents of each section as listed in **Appendix "A"**.
- The binder must be in the order listed in the Submission Outline/Checklist below.

REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK.

SUBMISSION OUTLINE/CHECKLIST

To assist in ensuring all submissions received are complete, it is recommended for the Offeror to use this Submission Outline as a Checklist prior to submitting a response. All Responses must be submitted in the following order with the guidelines provided in Vendor Instructions within this section of this solicitation:

_____ **Submission Cover Sheet** - Must include the following:

- Company Name, Company Address, Company Phone Number
- Project Name: Sealed Submission for 2022 Pools of Professional Services-Architectural Services
- Procurement Number: RFQ No. 21-0788-02-23-ABV
- Opening Date: Wednesday, February 23, 2022
- Opening Time: 2:00pm

_____ **Table of Contents**

_____ **Section I: Required Documents (signed and filled) and Executive Summary**

- _____ • **Executive Summary** - The summary should include:
 - Company name and address; name, title, email, telephone and fax number of person(s) to be contacted for clarifications or additional information regarding proposal;
 - Name, title, email, telephone and fax number of person(s) authorized to contractually obligate vendor's company with proposal and any future negotiations; and
 - Understanding of the Project
- _____ • **Legal Notice Acknowledgement**
- _____ • **Appendix "B" – Areas of Specialization**
- _____ • **Appendix "C" – Insurance Requirements**
 - Proof of Insurance
 - Insurance Requirement Acknowledgement
 - Project Requirements Acknowledgement
- _____ • **Appendix "D" – Conflict of Interest Questionnaire**
 - CIQ Form – Copy of County Clerk File with fee receipt (when applicable)
 - Form 1295
- _____ • **Appendix "E" – Vendor Forms**
 - Vendor Application
 - HUB Declaration
 - W-9
- _____ • **Appendix "F" – Certification Regarding Debarment**
 - Signed Certification
 - SAM.gov Registration Acknowledgement
- _____ • **Appendix "H" – Contracts Under Federal Award 2 – CFR 200**
 - Byrd Anti-Lobbying Contract Clause
 - 2 CFR 200 Certification
- _____ • **Appendix "J" – Respondent's Affidavit**
- _____ • **Addenda (when applicable; see Addenda under Legal Notice)**

_____ **Section II: Vendor Information**

_____ **Section III: Vendor Experience and Qualifications**

_____ **Section IV: Scope of Services and Narrative of Proposed Services**

_____ **Section V: Legal Documents**

_____ **Section VI: Miscellaneous**



LEGAL NOTICE

LEGAL NOTICE

These General Provisions are considered standard language for an Offeror (hereinafter referred to as “Offeror”, “Vendor”, “Respondent”, or “Contractor”) submitting a response for a Request for Bids, Proposals, Qualifications or other solicitation (hereinafter referred to as “Procurement Packet”) made by the County of Hidalgo (hereinafter referred to as “Hidalgo County” and “County” or any other governing body/agency for which the Hidalgo County Purchasing Department has been authorized to perform procurement services.

It is the Offeror’s sole responsibility to be in compliance of all federal, state, and local laws, requirements, rules, codes, ordinances, and regulations applicable to their proposed goods and/or services. In the event of any conflict between the terms and provisions of these requirements and the specifications, the specifications shall govern. In the event of any conflict of interpretation of any part of this overall procurement packet, Hidalgo County’s interpretation shall govern.

The following is a link to all adopted Hidalgo County policies (<https://www.hidalgocounty.us/805/County-Administrative-Policies>), which for all purposes, when applicable and whether specified explicitly or not, are incorporated by reference as part of this procurement packet and any resulting agreement.

1. **ACCEPTANCE OF SUBMISSION.** Receipt of the submission shall under no circumstance obligate Hidalgo County to accept the response, or make an award. The Offeror is responsible for obtaining any information needed in order to respond and for all costs of submitting its response. An Offeror’s submitted response is to remain firm for a minimum of ninety (90) days after opening. Hidalgo County is not responsible for any missing, lost, or late submissions.
2. **ACCESS TO RECORDS.** In special circumstances, Vendor may be required to allow duly authorized representatives of Hidalgo County, or the state and federal government access to contracts, books, documents, and records necessary to verify the nature and extent of the cost of services provided by Vendor. Vendor must keep records within Hidalgo County or note in their submission that records will be available within the boundaries of Hidalgo County to those representatives within one (1) business day of request by the County.
3. **ACCOUNT CREATION FOR PAYMENT.** Upon award and prior to execution of a contract, Offeror shall cooperate with and submit any required information to the Hidalgo County Auditor’s Office in order to establish an account with the County for payment, including information requested on Hidalgo County Vendor Enrollment Solution, **Appendix “E”** on this procurement packet. This information must be on file with the Hidalgo County Purchasing Department and the Hidalgo County Auditor’s Office. Failure to provide this information may result in a delay in payment and/or back-up withholding as required by the Internal Revenue Service.
4. **ADDENDA.** When specifications interpretations, amendments, corrections or changes are revised, the Hidalgo County Purchasing Department will issue an Addendum addressing the nature of the change. All released Addenda will be e-mailed to all point of contact(s) who are known to have received or requested a copy of the procurement packet directly from the Hidalgo County Purchasing Department. Offeror must **sign in blue ink and include it in the returned submission package.**
5. **ASSIGNMENT.** The successful Offeror shall not assign, sell, transfer, convey, or otherwise transfer its rights under any awarded contract, in whole or in part, without the prior written consent of County of Hidalgo County Commissioners Court (hereinafter referred to as “Commissioners Court”), or other applicable governing body.
6. **AWARD.** Hidalgo County reserves the right to award this contract on the basis determined on the Procurement Overview, and when applicable, listed on **Appendix “B”**, in accordance with the laws of the State of Texas, to waive any formality or irregularity, to make awards to more than one Offeror, and to reject any or all submissions received. After Hidalgo County Commissioners’ Court approves an award, and the awarded Contractor defaults in meeting the general requirements and/or specifications in complying with the contract agreement, Hidalgo County reserves the right to seek the services of the next lowest bidder(s) and/or qualified Offeror(s). In such event, Hidalgo County shall charge the Awarded Vendor the difference for any additional cost of such item. Hidalgo County reserves the right to add or delete items during the term of the contract under the same rates and conditions.

7. **COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS.** The County will search a database maintained by the Texas State Comptroller which contains relevant vendor information. A contract may not be entered into with an entity that is identified therein. Search results shall be incorporated for all purposes as part of any resulting agreement entered into by the parties. The Offeror shall follow all federal, state, and local laws, requirements, rules, codes, ordinances, regulations and Hidalgo County Policy & Procedures applicable to their proposed goods and/or services, including, but not limited to those addressed within this procurement packet, the resulting agreement and the following:

7.1 Attestation Terrorist Organizations - TEX. GOVT. CODE CH. 2252. Pursuant to the Texas Government Code, including but not limited to Chapter's 2252, 806 and 807, the Offeror warrants, represents, certifies and attests that, by submitting a response to this procurement packet and/or at the time of execution of this Contract, Agreement, or supplemental agreement thereafter, neither the Offeror, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same (i) engages in business with Iran, Sudan, or any foreign terrorist or (ii) is a company listed by the Texas Comptroller of Public Accounts.

7.2 Breach of Ethics. Contracts awarded hereunder shall be in compliance with Tex. Loc. Govt. Code Chapter 171: Regulation of Conflicts of Interest of Officers of Municipalities, Counties and Certain Other Local Governments.

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

It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for the County, or any person associated therewith, as an inducement for the award of a subcontract or order.

7.3 Bonds. If this procurement packet requires submission of bid bond or proposal guarantee, and performance and payment bonds, an explanation of these requirements will be detailed on the Projects Requirements Acknowledgement listed in **Appendix "C"**. Responses submitted without the required bond or cashier's checks may be deemed unresponsive, thus disqualified from participation.

7.4 Boycott Energy Companies Verification – TEX. GOVT. CODE 2274. In accordance with changes to the law from the 87th Legislature in 2021, a for-profit company, not including a sole proprietorship, with ten or more full-time employees, is required to verify in writing that it does not boycott energy companies, and it will not boycott energy companies during the term of the Contract, if it is a contract for goods or services that has a value of at least \$100,000 that is paid wholly or partly from public funds of the governmental body. Written verification may be provided by signing the Legal Notice Declarations page. Please provide a written notification if your company is unable to provide the written verification referenced above.

As per Tex. Gov't. Code §809.001(1), "Boycott energy company" means "without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by Paragraph (A)".

As per Ch. 2274(c), this verification requirement does not apply to the County if it determines that this requirement is inconsistent with the County's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

7.5 Boycott Israel Verification - TEX. GOVT. CODE 2270. In accordance with the Texas Government Code, including but not limited to Chapters 2270 and 808, a company, other than a sole proprietorship, with ten or more full time employees is required to certify in writing that it does not boycott Israel and will not boycott Israel during the term of the Contract, if the Contract has a value of \$100,000 or more.

7.6 Certification Regarding Debarment, Suspension Ineligibility, and Voluntary Exclusion. The Offeror warrants and represents by execution of an award from their response to this procurement packet that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any Federal programs, or state assistance, as described under Executive Order 12549, "Debarment and Suspension." The Offeror agrees to include this certification in all contracts between itself and any subcontractors in connection with the services performed under any subsequent Contract or Agreement arising from this award. The Offeror also acknowledges that it is their sole responsibility to immediately notify Hidalgo County, in writing, if they or a subcontractor is not in compliance with Executive Order 12549 during the term of this contract. Further, Offeror agrees to refund Hidalgo County for any payments made to the contractor while ineligible. Pursuant to federal regulation 45 CFR Part 76, the Offeror is required to furnish a certification or acknowledgement stating that they are free from suspension and debarment through registration on System for Award Management at www.sam.gov with their response.

7.7 Davis-Bacon Act/Hidalgo County Adopted Prevailing Wage Rate. When applicable, in accordance with Texas Government Code, Chapter 2258, as well as any other applicable laws, any Contractor or Subcontractor performing contracts in excess of \$2,000, for the construction, alteration, or repair (including painting and decorating) of public buildings or public works must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area as per the Davis Bacon Act or the rates adopted by Hidalgo County.

The Offeror warrants and represents that it will pay all its workers all monies earned by its employees including, but not limited to regular wages, any overtime compensation, or any additional payments pursuant to the Fair Labor Standards Act, 29 U.S.C. Section 207 9a(1), as amended; the Texas Pay Day Act; the Equal Pay Act; Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e, *et al.*, as amended; and/or any provisions of the Texas Labor Code Ann., as amended, without cost or expenses to the County.

Awarded Vendors, its officers, agents, and/or employees will not be entitled to any benefits of an employee or elected official of Hidalgo County, including, but not limited to, benefits associated with Hidalgo County's civil service system.

7.7 Disclosure of Conflict of Interest.

7.7.1 As an Offeror. Pursuant to Texas Local Government Code, Chapter 176, an Offeror must disclose an interest between the Offeror, the Offeror's employees and any Hidalgo County employees arising from relationships within the first degree of consanguinity or affinity. A financial interest arises if the County's elected official, department head, or employee, or a member of their family, received any gifts valued in excess of \$250 during the preceding twelve (12) month period, or employment of any County's elected official, department head, or employee, or the County official's family member.

The Offeror shall not use funds to directly or indirectly pay any person for influencing or attempting to influence any County employee or official in connection with the awarding of any contract or the extension, continuation, renewal, amendment or modification of any contract.

7.7.2 Certificate of Interested Parties (Form 1295). Hidalgo County cannot enter into a contract until Form 1295 is submitted, as Texas law, including, but not limited to Tex. Govt. Code

Ch. 2252, Title 1 Tex. Ethics Comm. Rules – Title 1, sec. 46 and the Tex. Admin. Code, requires all parties who enter into any contract with the County which must be approved by its governing body, to disclose all interested parties. Form 1295 must be completed in its entirety through the Texas Ethics Commission at the following website:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm prior to awarding the Contract. Failure to do so may result in delay of award, or deem your response unresponsive, thus disqualified from participation.

7.7.3 Collusion. The Offeror affirms that by responding to any solicitation made by Hidalgo County, it has not communicated directly or indirectly the response made to any competitor or any other person engaged in such line of business. Any or all responses may be rejected if the County believes that collusion exists among the Offerors, and/or the County believes prices provided by the Offerors are inappropriately unbalanced. Respondent's Affidavit (**Appendix "J"**) must be included in the response.

7.7.4 Consultants Excluded from Competition. An outside Consultant or Contractor is prohibited from submitting a response for goods or services requested on a Hidalgo County project of which the Consultant or Contractor was a designer or other previous contributor, assisted in developing or drafting specifications, requirements, statements of work, or requests for goods and/or services must be excluded from competing for such procurements. If such, a Consultant or Contractor submits a response, that response shall be prohibited, and disqualified on the basis of conflict of interest, no matter when the conflict is discovered by Hidalgo County.

7.7.5 Disclosure of Interested Parties (Form CIQ). Offeror must fully disclose the existence of any relationships as defined above in its response to this procurement packet. The Conflict of Interest Questionnaire (CIQ), attached hereto as **Appendix "D"**, must be filed with the Hidalgo County Clerk, located inside the Hidalgo County Courthouse, at 100 N. Closner, Edinburg, TX 78539 no later than the seventh business day after the date the person becomes aware of facts that require the statement to be filed. **Completion and submission of Form CIQ is the sole responsibility of the Offeror.** Additionally, the Offeror must immediately notify Hidalgo County if the information provided in its response changes at any time.

7.7.6 Disclosure to Report Lobbying. When applicable, pursuant to 31 U.S.C.A. §1352 (2003), if at any time during the contract term funding to Contractor exceeds \$100,000.00, Contractor shall file with the County the Federal Standard Form LLL titled "Disclosure Form to Report Lobbying" as detailed in **Appendix "H"**.

7.8 Discrimination Against Firearm Entities or Trade Associations Verification - Tex. Gov't. Code Ch. 2274. In accordance with changes to the law from the 87th Legislature in 2021, a for-profit company, not including a sole proprietorship, with ten or more full-time employees, is required to verify in writing that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of the Contract, if it is a contract for goods or services that has a value of at least \$100,000 that is paid wholly or partly from public funds of the governmental body. Written verification may be provided by signing the Legal Notice Declaration page. Please provide a written notification if your company is unable to provide the written verification referenced above.

As per Tex. Gov't. Code §2274.001(3), except as otherwise indicated, to "discriminate against a firearm entity or firearm trade association " means "with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association".

As per Ch. 2274, this verification requirement does not apply to the County if it contracts with a sole-source

provider, does not receive any bids from a company that is able to provide the required written verification above, or the contract is exempt from compliance under Tex. Gov't. Code sec. 2274.003 relating to the issuance, sale or delivery of notes.

7.9 Disqualification of Offeror. By submitting a response to this request, an Offeror offering to sell supplies, materials, services, or equipment to Hidalgo County certifies that the Offeror has not violated the antitrust laws of this state codified in Texas Business and Commerce Code §15.01, et seq., as amended, or the federal antitrust laws. If multiple submissions are made by an Offeror and after they are opened, the Offeror requests to withdraw one of the submissions is requested to be withdrawn, the result will be that all of the responses submitted by that Offeror will be withdrawn; however, nothing herein prohibits an Offeror from submitting multiple responses for different products or services.

7.10 Ethical Business Practices. Hidalgo County operates its business ethically and in compliance with the law. We ask that any Offeror, their representative, and/or employee doing business with Hidalgo County, who believes they have witnessed any suspected ethical violation or fraud immediately report the allegations to the Hidalgo County Purchasing Director, 2802 S. BUS HWY 281, Edinburg, TX 78539, (956) 318-2626, eduardo.belmarez@co.hidalgo.tx.us.

Hidalgo County Purchasing Department will conduct a prompt and thorough investigation. At the conclusion of the investigation, Hidalgo County Purchasing Department will refer any suspected criminal activity to the Hidalgo County District Attorney or other appropriate law enforcement agency. Any Offeror who reports suspected ethical violations or fraud can do so without fear of retaliation. Retaliating against any offeror for reporting suspected ethical violations or fraud is strictly prohibited.

7.11 Historically Underutilized Business/Disadvantaged Business Enterprises. The County is committed to ensuring that Historically Underutilized Businesses (HUB) and Disadvantaged Business Enterprises (DBE) such as small business enterprises (SBE), minority and women-owned business enterprises (MWBE) receive a fair and equal opportunity for participation in the County's procurement process. The County encourages the use of these enterprises both as prime and subcontractors as listed in **Appendix "E"**.

When federal funds are expended by the County, the County will take affirmative steps set forth in 2 CFR 200.321 to assure that small, minority, women-owned businesses and labor surplus area owned firms are used when possible. Pursuant to 2 CFR 321, the County requires that a prime contractor who uses subcontractors take affirmative steps set forth in 2 CFR 200.321, including:

- a. Placing qualified small and minority business and women's business enterprises on solicitation lists;
- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- f. Nothing in this section is to be construed to require the County to award a contract other than as required by law and Hidalgo County policies and procedures.

When procurement is related to road construction projects with the Texas Department of Transportation (TxDOT), all respondents must submit their HUB/DBE plans as part of their submission to be qualified to participate.

7.12 Independent Contractor. It is expressly agreed that this Contract and the performance by the parties hereunder does not create any agency relationship or master-servant relationship that the County has no supervision of the performance of the Services provided by Vendor, and that Vendor is an independent contractor under an award through this procurement packet.

7.13 Nondiscrimination. By submitting a response to this procurement packet, the Offeror certifies that it will conform to the provisions of the Federal Civil Rights Act of 1964, as amended and related state and federal law.

Offeror, during the performance of this contract, will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, age, disability or any other protected class under law (except as allowed in the case of bona fide occupational qualifications).

7.14 Texas Public Information Act. The Offeror understands and agrees that Hidalgo County is a governmental body for purposes of the Public Information Act, codified as Chapter 552 of the Texas Government Code and as such is required to release information in accordance with the Public Information Act (the "Act"). Hidalgo County must rely on advice, decisions and opinions of the Attorney General of the State of Texas relative to the disclosure of data or information. Submissions will be kept confidential in accordance with the Act and applicable law, and **submissions are subject to inclusion into the public record after award.** To the extent permitted by law, Offeror may request in writing non-disclosure of any information that it considers to be confidential, proprietary, and/or trade secret in its submission. Such data shall accompany the submission, be readily separable from the response, and shall be CLEARLY MARKED "CONFIDENTIAL, PROPRIETARY and/or TRADE SECRET". Hidalgo County will make reasonable efforts to provide Offeror notice in accordance with the Act in the event the County receives a request for information under the Act for information that the Offeror has marked as indicated above. E-mail addresses provided by Offeror to the County as part of its response to this procurement packet are not confidential. Additionally, Offeror provides its affirmative consent to the disclosure of its e-mail addresses, including from its employees, officers, and agents acting on its behalf, that are provided to Hidalgo County. This consent shall survive termination of this agreement and apply to any e-mail address provided in any form for any reason whether related to this procurement packet or otherwise.

7.15 Title VI Notice. The County of Hidalgo, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat.252, 42 U.S.C. §§2000d to 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit Bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award. Further, Title VI has been broadened by related statutes, regulations and executive orders as found in Appendices "A" through "E" as attached hereto as **Appendix "G"**. Offeror agrees to comply with Title VI as may be required.

8. **CONTRACT OBLIGATION.** Hidalgo County Commissioners Court must award the contract and the County Judge must sign the contract before it becomes binding on Hidalgo County or the Offeror. Elected officials, department heads, other County employees or representatives are NOT authorized to sign agreements for Hidalgo County, unless prior authorization is approved by the Hidalgo County Commissioners Court, or respective governing body. Binding agreements shall remain in effect until all products and/or services covered by this procurement packet have been satisfactorily delivered and accepted.
9. **CONTRACT RENEWALS.** Any extension or renewal of the agreement entered into by the parties are made at the County's sole discretion and under the same rates, terms and conditions as the initial agreement, or as amended.
10. **CONTRACT TRANSITION (Grace Period).** In the event services end by either contract expiration or termination, it shall be required that the successful respondent continue services if requested by the Hidalgo County Purchasing Department, until new services can be completely operational. The successful respondent acknowledges its responsibility to cooperate fully with the replacement vendor and Hidalgo County to ensure a smooth and timely transition to the replacement vendor. Such transitional period shall not extend more than sixty (60) days beyond the expiration/termination date of the contract, or any extension thereof. The successful respondent shall be reimbursed for services during the transitional period at the rate in effect when the transitional period clause is invoked by Hidalgo County. During any transition period, all other terms and conditions of the contract shall remain in full force and effect as originally written and subsequently amended.

- 11. COST OF GOODS AND SERVICES.** Discount payments will be considered when offered. If during the life of any contract, or response awarded, the successful respondent's net prices generally available to other customers for items awarded herein are reduced below the contracted price, it is understood and agreed that the benefits of such reduction shall be extended to Hidalgo County. Failure by the Vendor to notify the County of a decrease in costs for items and/or supplies for which the Vendor was granted a price adjustment, may result in immediate termination of this contract and the County shall not be obligated to pay the Vendor the difference between the contract price and the price adjustment.
- 12. COUNTY APPROVED HOLIDAYS.** There are fourteen (14) County approved holidays. The Offeror is advised that official County business will not be conducted on those dates. The link of approved holidays can be found on: <https://www.hidalgocounty.us/115/County-Holidays>.
- 13. EVALUATION.** Evaluation shall be used as a determinant as to which proposed items or services are the most efficient and/or most economical for the County, considering all factors which have a bearing on price and performance of the items in the user department's environment. All submissions, except for Requests for Bids, may be subject to evaluations and negotiations by the Hidalgo County Purchasing Department, or authorized Hidalgo County representative as approved by Hidalgo County Commissioners Court, with recommendation to the appropriate governing body. Compliance with all requirements, delivery and needs of the user department are considerations in evaluating the responses received. **Pricing is NOT the only criteria for making a recommendation.** A preliminary evaluation by Hidalgo County will be held and appropriate responses will be subjected to the negotiating process and a request for a Best and Final Offer. Upon completion of the negotiations, Hidalgo County will make an award. All responses that have been submitted shall be available and open for public record after the contract is awarded, except for trade secrets or confidential information contained in the responses and identified as such.

Hidalgo County reserves the right to refuse and reject any or all submissions and to waive any or all formalities or technicalities, or to the qualifications considered the best and most advantageous to Hidalgo County. Additionally, Hidalgo County reserves the right to separate and accept or eliminate any item(s) listed under this procurement packet that it deems necessary to accommodate budgetary or operational requirements.

- 14. FISCAL FUNDING.** Hidalgo County has the discretion to utilize grant funding or general funding, however, should grant funding be utilized "Grant Funding" rules will apply. The award of a contract hereunder will not be construed to create a debt of the County which is payable out of funds beyond the current fiscal year. Additionally, should funds not be appropriated by the applicable governing body to continue the lease or contract in their sole discretion, said lease or contract shall become null and void on the last day of the current appropriation of funds.

14.1 General Funding. A multi-year lease or lease/purchase arrangement, or any contract continuing as a result of an extension option, must include a fiscal funding out provision in the lease or contract. Funds for this procurement have been provided through the County budget for this fiscal year only. Hidalgo County, on an annual basis and at their discretion, has the right to reconsider a contract during the budget process for ensuing years if financial resources of Hidalgo County are insufficient to meet the liabilities of said contract. After expiration of the lease, leased equipment shall be removed by the Vendor from the user department without penalty of any kind or form to Hidalgo County. All charges and physical activity related to delivery, installation, removal and re-delivery shall be the responsibility of the Vendor.

14.2 Grant Funding. Any contract entered into by the County that is to be paid from grant funds shall be limited to payment from the grant funding, and the Offeror understands that the County has not set aside any County funds for the payment of obligations under a grant contract. If grant funding should become unavailable at any time for the continuation of services paid for by the grant, and further funding cannot be obtained for the contract, then the contract shall be null and void.

Additionally, County contracts subject to assistance from the Federal Emergency Management Agency (FEMA), require inclusion of the contract terms found in **Appendix "H"**. It is the County's intention to comply with FEMA requirements; therefore, any conflict in terms should be resolved as such.

- 15. FORCE MAJEURE.** If by reason of Force Majeure either Party shall be rendered unable, wholly or in part, to carry out its responsibility under this contract by any occurrence by reason of Force Majeure, then the Party unable to carry out its responsibility shall give the other Party notice and full particulars of such Force Majeure in writing within a reasonable time after the occurrence of the event, and such notice shall suspend the Party's responsibility for the continuance of the Force Majeure claimed, but for no longer period. Force Majeure means acts of God, floods, hurricanes, tropical storms, tornadoes, earthquakes, or other natural disasters, acts of a public enemy, acts of terrorism, sovereign conduct, riots, civil commotion, strikes or lockouts, and other causes that are not occasioned by either Party's conduct which by the exercise of due diligence the Party is unable to overcome and which substantially interferes with operations.
- 16. GOVERNING LAW.** This procurement packet is governed by the competitive bidding requirements of the County Purchasing Act, Texas Local Government Code, §262.021 *et seq.*, as amended. Offerors shall comply with all applicable federal, state and local laws and regulations. Offeror is further advised that these requirements shall be fully governed by the laws of the State of Texas and venue shall be performable in a federal or state court or competent jurisdiction in Hidalgo County, Texas. Hidalgo County may request and rely on advice, decisions and opinions of the Attorney General of Texas and the Hidalgo County District Attorney concerning any portion of these requirements. The County does not agree to binding arbitration and does not waive its right to a jury trial.
- 17. HIPAA COMPLIANCE.** When applicable, the Offeror agrees to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (codified at 45 C.F.R. Parts 160 and 164), as amended ("HIPAA"); privacy and security regulations promulgated by the United States Department of Health and Human Services ("DHHS"); Title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, as amended ("HITECH Act"); provisions regarding Confidentiality of Alcohol and Drug Abuse Patient Records (codified at 42 C.F.R. Part 2), as amended; and TEX. HEALTH & SAFETY CODE ANN. §§81.046, as amended, 181.001 *et seq.*, as amended, 241.151 *et seq.*, as amended, and 611.001 *et seq.*, as amended collectively referred to as "HIPAA", to the extent that the Offeror uses, discloses or has access to protected health information as defined by HIPAA. Offeror may be required to enter a Business Associate Agreement pursuant to HIPAA.
- 18. INDEMNIFICATION.** The successful Offeror, shall indemnify, defend, save, and hold Hidalgo County, all its elected officials, officers, agents and employees harmless from all suits, actions, or other claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person, persons, or property directly or indirectly from contractor's performance on account of any negligent act or fault of the successful Offeror, or of any agent, employee, subcontractor or supplier in the execution of, or performance under, any contract which may result from award or which arises from any event or casualty happening on or within County premises themselves or happening upon or in any halls, elevators, entrances, stairways or approaches of or to such County facilities. Successful Offeror shall pay any judgment with costs which may be obtained against the County growing out of such injury or damages, and shall, upon request, provide a defense to Hidalgo County by counsel reasonably acceptable to the County. The Successful Offeror indemnity hereunder shall include, but is not limited to, claims relating to patent, copyright or trademark infringement and the like, arising out of the goods and services provided by successful Offeror.
- 19. INSPECTIONS & TESTING.** Hidalgo County reserves the right to inspect any item(s) or service location for compliance with specifications and requirements and needs of the user department. If an Offeror cannot furnish a sample of a proposed item, where applicable, for review, or fails to satisfactorily show an ability to perform, the County can reject the response as inadequate.

The successful respondent shall warrant that all items/services shall conform to the specifications and/or all warranties provided under the Uniform Commercial Code and be free from all defects in material, workmanship and the like. Items supplied under a contract pursuant to this procurement packet shall be subject to the County's approval. Items found to be defective or not meeting specifications shall be replaced by the successful Offeror within two (2) business days at no expense to the County. Items that are not picked up within one (1) week after notification shall be deemed a donation to the County and may be used or disposed of at the County's discretion, without waiver of any other rights of the County as to the items' nonconformity.

- 20. INSURANCE.** Contractor shall procure and maintain, with respect to the subject matter of this procurement packet, appropriate insurance coverage including, as a minimum, public liability and property damage with adequate limits to cover contractor's liability as may arise directly or indirectly from work performed under terms of this procurement packet. Certification of such coverage must be provided to the County as part of this response. (See **Appendix "C": Insurance Requirements**). Prior to award, Hidalgo County must be listed as a Certificate Holder to the policies.
- 21. LEGAL DOCUMENTS.** Offeror should submit any agreement for products and/or services which may be required by their organization to enter into a contract with Hidalgo County. The awarded vendor will be required to execute an agreement with Hidalgo County which finalizes the terms and conditions set forth in their response, best and final offer, and any negotiations between the Offeror and Hidalgo County. The agreement is subject to review and amendment by the Hidalgo County District Attorney's Office.
- 22. MAINTENANCE.** Maintenance required for equipment proposed should be available in Hidalgo County by a manufacturer-authorized maintenance facility. Costs for this service shall be shown on **Appendix "B"**. If Hidalgo County opts to include maintenance, it shall be so stated in the purchase order and said cost will be included. Service will commence only upon expiration of applicable warranties and should be priced accordingly.
- 23. MARKET VOLATILITY AND UNIT PRICE ADJUSTMENTS.** When applicable, Hidalgo County recognizes that during periods of national crisis and unstable economic conditions, unforeseen price increase might affect costs for goods and services contracted on an annual basis. As such, upon written request of the Vendor to the County Purchasing Agent, the County may review evidence of prevailing industry-wide market conditions that may warrant an adjustment in bid prices contained in the contract. When applicable, the following procedure and conditions may be employed to mediate price volatility:
- A Vendor shall:
 - make its Market Volatility and Unit Price Adjustment request in writing to the County Purchasing Agent.
 - tie any price change clause to an industry-wide or otherwise nationally recognized index, or some other form of verifiable document. Such written request must be accompanied by a certified copy of the supplier's advisory or notification to the Vendor of the price changes.
 - put the Purchasing Agent on the mailing lists for such publications so that the Purchasing Agent can monitor said changes. Such membership shall be at no cost to the County.
 - notify the County at the time when the Vendor's costs for items, supplies, and or services reduce due to stabilization in the market at which time prices for items on this contract shall be reduced accordingly. Failure by the Vendor to notify the County of a decrease in costs for items and/or supplies for which the Vendor was granted a price adjustment, may result in immediate termination of this contract and the County shall not be obligated to pay the Vendor the difference between the contract price and the price adjustment.
 - Price adjustment reviews may only be requested by the Vendor on a quarterly basis; however, the County may at its own discretion, conduct temporary price adjustment reviews at any time.
 - The County Purchasing Agent retains the right to determine whether or not such proposed price changes are in the best interest of the County.
 - The County may only grant a price increase if the evidence presented is deemed reliable.
 - No price escalation will be authorized in excess of the amount of the increase referred to in the supplier's notice.
 - The total increase in contract price shall not exceed twenty-five percent (25%) of the original contract price during the contract term.
 - Should the County allow a price increase, the approved price change shall be honored for all orders received by the vendor or contractor after the effective date of such price change. Approved price changes are not applicable to orders already issued and in process at time of price change.
 - Price increases are only valid for the quarter in which they are requested and approved.
 - Prices shall return to the original contract price at the beginning of the following quarter unless a Vendor notifies the County in writing within ten (10) days of expiration of the quarter in which the price increase is in effect, that it desires to have the price increase continue or that the Vendor is requesting a different price increase for the following quarter. Such request must be supplemented

with sufficient justification to demonstrate that the price increase remains necessary. The County Purchasing Department shall have sole discretion whether to grant the price increase extension.

- The County Purchasing Agent and/or the County Auditor reserve the right to audit and/or examine any pertinent books, documents, papers, records or invoices relating directly to the contract transaction in question after reasonable notice and during normal business hours.
- The County too, shall have discretion to unilaterally reduce, eliminate or extend a price adjustment to the Vendor at any time upon written notice from the County to the Vendor demonstrating justification for such reduction, elimination or extension of the price adjustment.

24. MATERIAL SAFETY DATA SHEETS. Under the "Hazardous Communication Act", commonly known as the "Texas Right to Know Act", an Offeror must provide to the County with each delivery, safety data sheets which are applicable to hazardous substances defined in the Act. Failure of the Offeror to furnish the required documentation will be cause to reject any response applying thereto.

25. MINIMUM STANDARDS FOR RESPONSIBLE PROSPECTIVE RESPONDENTS. With their submitted response, the Offeror must affirmatively demonstrate their responsibility as listed on **Appendix "A"**. A prospective respondent, by submitting a response, represents to County that it meets the requirements listed.

26. NAME BRANDS. Specifications may reference name brands and model numbers. It is not the intent of Hidalgo County to restrict or preclude competition in any way, but to establish a desired quality level of merchandise or to meet a pre-established standard due to like existing items. Offerors may offer items of equal stature and the burden of proof of such stature rests with Offerors. Hidalgo County shall act as sole judge in determining equality and acceptability of products offered.

27. NEW MILLENNIUM COMPLIANCE. All products and/or services furnished as part of this contract must be compliant for the present year and forward. This applies to all computers including hardware and software as well as all other commodities with date sensitive embedded chips.

28. PAYMENT UNDER CONTRACT. If the contract is for \$50,000 or less, no money will be paid to the contractor until completion and acceptance of the work or the fulfillment of the purchase obligation to the County, and, if applicable, the receipt by County of satisfactory evidence that all subcontractors and material men have been paid.

29. PERFORMANCE ENFORCEMENT. Hidalgo County reserves the right to enforce performance of any contract, agreement, supplemental agreement, as amended, or participation in the professional services pool, in any manner prescribed by law or deemed to be in the best interest of the County. Hidalgo County reserves the right to terminate the contract awarded hereunder in any manner prescribed by law or deemed to be in the best interest of the County immediately in the event of breach or default by a successful respondent, including, but not limited to failure to maintain qualifications, meet schedules, pay any required fees or taxes, or otherwise failing to perform in accordance with the requirements of this procurement packet.

30. POST-AWARD DELIVERY INSTRUCTIONS. Title and Risk of Loss of goods shall not pass to Hidalgo County until Hidalgo County actually receives and takes possession of the goods at the point or points of delivery. Receiving times may vary with the user department. Generally, deliveries may be made between 8:30 a.m. and 4:00 p.m., Monday through Friday, except on County approved holidays. The Offeror is advised to consult the user department for instructions, and be given at least seventy-two (72) hours prior notice of delivery, if applicable, before delivery will be accepted. The place of delivery shall be identified in the Requirements/Specifications attached hereto as **Appendix "A"** of this procurement packet and/or on the Purchase Order as a "Deliver To:" address.

31. POST-AWARD INVOICES AND PAYMENTS. Offerors shall submit an original, itemized invoice on company letterhead with their company name and address, detailing the deliverable(s) of goods and/or services provided, the respective price, product code, item number, quantity, etc. per line item, the name of receiving/requesting department or elected office, the delivery address, the awarded vendor's contract number, and issued purchase order number. Any invoice, which cannot be verified by the contract price and/or is otherwise incorrect, will be returned to the Offeror for correction. Under term contracts, when multiple deliveries and/or services are required, the Offeror may invoice following each delivery and the County will pay on invoice. Contracts providing for a monthly charge will be billed and paid on a monthly basis only. All payments are

subject to compliance with the Texas Prompt Payment Act.

Deliverables or services will be considered complete only upon written acceptance by Hidalgo County. No charges may be billed to Hidalgo County unless such costs are explicitly included in the agreement or contract. For billing and payment questions please contact the Hidalgo County Auditor's Office, 2808 S. Business Hwy. 281, Edinburg, Texas 78539, (956) 318-2511.

32. PROCUREMENT PACKET FORM COMPLETION. Fill out and return to the Hidalgo County Purchasing Department one (1) complete response in an appropriately sized envelope or box. **PACKAGE MUST SHOW THE COMPANY NAME, RETURN ADDRESS, THE RFB, RFP, RFQ, etc., PROJECT DESCRIPTION, OPENING DATE AND TIME, AND BE MARKED "SEALED PROPOSAL".** For Offeror's convenience, the shipping label on **Appendix "N"** can be used on the submission packet. An authorized representative of the Offeror should sign the Submission Cover Sheet. The contract will be binding only when signed by Hidalgo County, funds are certified by the Hidalgo County Auditor, and an official Hidalgo County Purchase Order is issued by the Hidalgo County Purchasing Department.

33. PROCUREMENT PACKET SUBMISSION. Offeror must submit all completed responses to the Hidalgo County Purchasing Department reception desk at 2802 S. BUS. HWY 281, Edinburg, Texas 78539 by the date and time listed under the Submission Deadline and Bid Opening section of the Procurement Overview. **Late proposals will not be accepted for any reason.**

33.1 Supplemental Materials. Offerors are responsible for including all pertinent product data in the submitted response to this procurement packet. Literature, brochures, data sheets, specification information, completed forms requested as part of the procurement packet and any other facts which may affect the evaluation and subsequent contract award should be included. Materials such as legal documents and contractual agreements, which the Offeror wishes to include as a condition of the submission, must also be in the submitted response. Failure to include all necessary and proper supplemental materials may be cause to reject the entire response.

34. PROOF OF BUSINESS. Offeror must be in business under its current name and in its current form (e.g., proprietorship, Chapter S Corporation). Information to be included as part of the Vendor Application, **Appendix "E"**.

35. PURCHASE ORDER AND DELIVERY. The successful Offeror shall not deliver products or provide services without a Hidalgo County Purchase Order, signed by the Hidalgo County Purchasing Director, or an authorized agent of the Hidalgo County Purchasing Department. When applicable, the fastest, most reasonable delivery time shall be indicated by the Offeror in the proper place on **Appendix "B"**. Any special information concerning delivery should also be included, on a separate sheet, if necessary. All items shall be shipped **F.O.B. INSIDE DELIVERY** unless otherwise stated in the specifications. This shall be understood to include bringing merchandise to the appropriate room or place designated by the user department. Every tender or delivery of goods must fully comply with all provisions of these requirements and the specifications including time, delivery and quality. Nonconformance shall constitute a breach which must be rectified prior to expiration of the time for performance. Failure to rectify within the performance period will be considered cause to reject future deliveries and cancellation of the contract by Hidalgo County, without prejudice to other remedies provided by law. **Where delivery times are critical, Hidalgo County reserves the right to award accordingly.**

Goods and/or Services must not be provided and **invoices will not be paid** without a purchase order signed by the Hidalgo County Purchasing Director.

36. QUALIFICATIONS OF OFFEROR. Offeror's failure to qualify or maintain qualifications throughout the term of this agreement shall release Hidalgo County from all obligations to the Offeror with regard to the services. In such an event, Hidalgo County may elect to engage another qualified firm or reject all submissions and re-advertise.

37. RECYCLED MATERIALS. Hidalgo County encourages the use of products made of recycled materials and shall give preference in purchasing to products made of recycled materials if the products meet applicable

specifications as to quantity and quality. Hidalgo County will be the sole judge in determining product preference application.

38. REFERENCES. Offeror must provide a total of four (4) references in each response to a solicitation requested by Hidalgo County. **One of the four references listed should be of a project that was canceled.** Offeror may provide this in form of Reference Letters from other individual(s)/entities or local government entities for whom the Offeror has provided similar services in the past twenty-four (24) months as demonstration of their prior experience, or if Offeror prefers, may utilize the Reference Form **Appendix “M”**. Letters or reference sheet must include the following information:

- Organization/Client Name/Government Entity (Include population of any local governmental entity – some procurements may require a specific population).
- Name of Contact Person
- Contact Telephone, Address and Email
- Name of Project
- Scope of Work
- Contract Period
- Budget Project Amount; Actual Project Amount
- Expected project timeframe; actual project timeframe
- Include contact information for one (1) client that services have been canceled, and a description of why the project was canceled.

39. SCANNED OR RE-TYPED RESPONSE. If in its response, Offeror either electronically scans, re-types, or in some way reproduces the County's published procurement packet, then in the event of any conflict between the terms and provisions of the County's published procurement packet, or any portion thereof, and the terms and provisions of the response made by the Offeror, the County's proposal package **as published** shall control. Furthermore, if an alteration of any kind to the County's published procurement packet is only discovered after the contract is executed and is or is not being performed; the contract is subject to immediate cancellation.

Regardless of how an Offeror requested or received a copy of this procurement packet to prepare a response, **the response must be submitted in hard copy** according to the instructions contained within this procurement packet.

40. SEVERABILITY. If any section, subsection, paragraph, sentence, clause, phrase or word of these requirements or the specifications shall be held invalid, such holding shall not affect the remaining portions of these requirements and the specifications and it is hereby declared that such remaining portions would have been included in these requirements and the specifications as though the invalid portion had been omitted.

41. SILENCE OF SPECIFICATIONS. The apparent silence of specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only material and workmanship of the finest quality are to be used. All interpretations of specifications shall be made on the basis of this statement. The items furnished under this contract shall be new, unused of the latest product in production to commercial trade and shall be of the highest quality as to materials used and workmanship. Manufacturer furnishing these items shall be experienced in design and construction of such items and shall be an established supplier of the item proposed.

42. SUBCONTRACTING. Vendor may not subcontract services to another firm without prior written request detailing goods and/or services that are to be subcontracted, and approval of said written request by Hidalgo County Commissioners Court, or applicable governing body.

43. TAXES. Hidalgo County is exempt from all federal excise, state and local taxes unless, otherwise stated in this document. Hidalgo County claims exemption from all sales and/or use taxes under Texas Tax Code §151.309, as amended. Offerors are not to include tax in any cost figures (including in any supplemental project specific contracts applicable to pools). If it is determined that tax was included in the cost figure it will not be included in the tabulation of any supplemental project specific awards. Texas Limited Sales Tax Exemption Certificates

will be furnished upon written request to the Hidalgo County Purchasing Department, and signed by the Agent, or authorized Purchasing Department representative.

- 44. TERM OF CONTRACTS.** If the contract is intended to cover a specific time period, the term will be specified in **Appendix A: Requirements/Specifications**. Awarded contract will be in effect until (a) the term expires, or (b) participation is terminated by County with thirty (30) days written notice prior to cancellation with or without cause. Any supplemental project-specific contract award to a successful respondent will be in effect until (a) the contract expires, (b) delivery and acceptance of products, and/or performance of services ordered, or (c) terminated by the County with thirty (30) days written notice prior to cancellation with or without cause, unless otherwise stated in the executed agreement.
- 45. TERMINATION.** Hidalgo County reserves the right to terminate the contract for default if Offeror breaches any of the terms therein, including warranties of Offeror or if the Offeror becomes insolvent or commits acts of bankruptcy. Such right of termination is in addition to and not in lieu of any other remedies which Hidalgo County may have in law or equity. Default may be construed as, but not limited to, failure to deliver the proper goods and/or services within the proper amount of time, and/or to properly perform any and all services required to Hidalgo County's satisfaction and/or to meet all other obligations and requirements. Hidalgo County may terminate the contract without cause upon thirty (30) days written notice, unless otherwise stated in the executed agreement.
- 46. TERMINATION FOR HEALTH AND SAFETY VIOLATIONS.** Hidalgo County has the option to terminate this contract immediately without prior notice if Offeror fails to perform any of its obligations in this contract if the failure (a) created a potential threat to health or safety or (b) violated a law, ordinance, or regulation designed to protect health or safety.
- 47. USAGE REPORTS.** Hidalgo County reserves the right to request, and receive at no additional cost during the yearly contract period, a usage report detailing the services furnished to date under an agreement resulting from this procurement packet. The reports must be furnished no later than five (5) business days after written request and itemize all purchases to date by Hidalgo County department, description of each service purchased, quantity of each service purchased, per unit cost and total amount of all services purchased.
- 48. WAIVER OF SUBROGATION.** Offeror and Offeror's insurance carrier waive any and all rights whatsoever with regard to subrogation against Hidalgo County as an indirect party to any suit arising out of personal or property damages resulting from Offeror's performance under any award resulting from award from this procurement packet.
- 49. WARRANTIES.** Offerors shall furnish all data pertinent to warranties or guarantees which may apply to items in the response to this procurement packet. Offeror may not limit or exclude any implied warranties. Further, Offeror warrants that product sold to the County shall conform to the standards established by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event product does not conform to OSHA Standards, where applicable, Hidalgo County may return the product for correction or replacement at the Offeror's expense. If Offeror fails to make the appropriate correction within a reasonable time, Hidalgo County may correct at the Offeror's expense.
- 50. CIVIL WORKS, CONSTRUCTION & PUBLIC WORKS PROJECTS.** Provisions of Tex. Govt. Code Ch. 2269 as amended by HB 2581 of the 87th Texas Legislature applicable to Civil Works and Construction Projects are hereby incorporated. Provisions of Texas Local Govt. Code Ch. 271, subchapter B applicable to competitive bidding on certain public works projects are hereby incorporated.

REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK.

LEGAL NOTICE DECLARATION

TO: Eduardo Belmarez, MBA, CPM, Purchasing Director
ATTN: Alexandra Vela, Contract Specialist II
Hidalgo County Administration Building/Purchasing Department
2802 S. Business Hwy. 281
Edinburg, Texas 78539

RE: RFQ No. 21-0788-02-23-ABV Professional Architectural Service Pool

By providing a response to this solicitation, we acknowledge receipt of all of the pages of in this procurement packet. We understand that Hidalgo County reserves the right to reject any or all submissions, and further reserves the right to design the evaluation criteria to be used in selecting the lowest and best qualification.

We acknowledge that we have examined this procurement packet in its entirety, and are familiar with the conditions to be met. In accordance with the Specifications, and subject to all laws and regulations of the United States, State of Texas, and local laws, we propose and commit to furnish all labor, equipment, material, software, and services as set forth in the documents hereinbefore mentioned. We, the undersigned respondent, further agree, upon acceptance of its response to be a member of the Pools of Professional Services and further execute supplemental project-specific contracts with the County as needed. Any purchase order or contract resulting from this process shall be considered null and void if the successful respondent fails to comply with any federal, state or local laws.

We acknowledge that we are providing the required certifications, attestations, verifications and/or acknowledgments as referenced within this procurement packet. We further acknowledge that any and all specifications, provisions, and attachments of this response are incorporated into and made a part of any resulting agreement.

We agree that this response shall be good, and may not be withdrawn for a period of ninety (90) calendar days after the scheduled bid opening time and date for receiving the requested solicitation, as contained in the Specifications.

Lastly, we understand that any questions regarding compliance should be directed to our firm's legal counsel. We acknowledge that the individual authorized to bind the company is signing this Acknowledgement Form. By signing this Acknowledgement Form we understand we are providing written verification and certification of the aforementioned, and the County cannot execute a contract for goods or services without this declaration.

Respectfully submitted,

Firm: _____

Address: _____

Printed Name: _____

Title: _____

Signature: _____ Date: _____



APPENDIX A

REQUIREMENTS/SPECIFICATIONS

REQUIREMENTS/SCOPE OF SERVICES

The required contents and limitations for the preparation of the RFQ are described in this section. Failure to provide the requested information or adhere to any County limitations may result in disqualification of the submitted response.

Section I: UNDERSTANDING OF THE PROJECT (limited to 3 pages)

This section should demonstrate the respondent's understanding of the project needs, the work required, and any identify and local issues or concerns to demonstrate the firm's familiarity with the geographical area of County of Hidalgo.

Section II: VENDOR INFORMATION

- a. **Vendor History** - This section should include Vendor's history, the firm's background and identify the principal officers. It should include an organization chart, and a description of project team organization and names of team members. Additionally, it should state the firm's commitment and ability to commence services immediately after successfully negotiating a contract for services, and a statement regarding their Affirmative Action Program.
- b. **Personnel and Staffing** - This section should identify all members on the organizational chart, and a summary paragraph of the project work to be performed by each proposed staff member. Biographic summaries that highlight the experience relevant to the specific project responsibilities should be provided for all proposed personnel. A one (1) page biographic summary provided with history of architectural certification from the Texas Board of Architectural Examiners for each proposed staff member, and a one (1) page of a general list of projects with brief project summaries that respective proposed staff member was a part within the last 12 consecutive months, and identify their role in each project.

This section should also outline the firm's contingency plan for servicing the project in the event that one or more key personnel are not available for any reason during the period of performance.

- c. **Proof of Licenses and Certifications** - This section will contain copies of any and all current state certifications and licenses with applicable seals, and any other applicable licenses and certifications as required by the State of Texas.

Section III: VENDOR EXPERIENCE AND QUALIFICATIONS (limited to 10 pages)

- a. **Competency** - This section should demonstrate firm's competency and experience in, but not limited to the following areas: General Design and Construction, Federal, State, and County-funded construction projects, and projects located in this general region of the state.
- b. **Experience and Recent Projects** - This section should include a description of the firm's most recent and varied projects (other local government projects preferred), and identify the personnel that were key in each project. Identify key challenges, and the firm's solution to overcome such challenges. For each project, a client contact name and phone number should be included for reference purposes.
- c. **References** – This section should list four (4) references, other than past or present employees of Hidalgo County, who can verify your performance as a Vendor within the past 24 months. Performance includes, but not limited to, sales and/or services, delivery, invoicing, and other items as may be required for Hidalgo County to determine Respondent's ability to provide the intended goods and/or service of this procurement packet. Hidalgo County prefers references to be from

Government customers. The name, address and phone number of the person(s) listed should be the one most closely associated with your company's performance on that specific project. References must be able to verify the quality of service Respondent's company provide and that the Respondent has completed a project of similar size and scope of work in this solicitation. Inaccurate, obsolete or negative responses from the listed references could result in rejection of your response. **One of the four references listed should be of a project that was canceled with a description of why the project was canceled.** Failure to supply the required references may deem your response as non-responsive and will not be considered for award.

Respondent's involvement with reference checks is not permitted. Only Hidalgo County Purchasing Department or authorized designees will conduct reference checks. Any deviation to this may result in rejection of your response. You may use your own format, or use the Reference Form included as **Appendix "M"**.

Section IV: SCOPE OF SERVICES

- a. List of Services** - The architectural services contract will encompass all project-related architectural services to the County of Hidalgo including, but not limited to, the following:

- | | |
|--|---------------------------------------|
| • ADA Compliance | • Field Testing and Inspection |
| • Building Design | • Forensic Studies |
| • Code Analysis | • Interior Design |
| • Construction Contract Management | • Master Planning |
| • Cost Estimation | • Needs Assessment |
| • Design and Construction of Multi-Level Parking Structure | • Plans, Drawings, and Specifications |
| • Design for Alterations and Renovations | • Pre-Design Services |
| • Design for New Construction | • Space Planning |
| | • Space Programming |

- b. Narrative** - This section should include firm's philosophy, approach(s) and preferred methods for meeting requirements, deliverables, and the aforementioned services listed in the scope of services. Provide the greatest amount of meaning detail possible to describe the proposed products and/or services. Indicate if your firm can meet the scope of services, or if the Scope of Services can be met only under certain conditions or circumstances. If your firm is not able to meet the specification, briefly explain why, noting any concerns or issues Hidalgo County should be aware. Provide a timeline indicating deliverables, vendor responsibilities and resources needed from Hidalgo County. Merely reiterating the scope of services are strongly discouraged, as they do not provide insight into the firm's ability to meet the scope of services.

Section V: LEGAL DOCUMENTS

If applicable, the Firm is to include any standard agreement(s) and/or contracts associated with their response.

Section VI: MISCELLANEOUS

State exemptions to any of the requirements in this procurement packet, if any. Any additional information the firm deems appropriate to the response may be included in this section.

Section VII: PRICING INFORMATION

PARTICIPATING FIRMS ARE NOT TO PROVIDE A FEE PROPOSAL WITH THIS SUBMITTAL. The fee will be negotiated in accordance with the Professional Services Procurement Act,

Tex. Govt. Code Ann. 2254.001, et seq. Once selected, the proposer is to provide a fee proposal based on the scope of work.

REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK.



Appendix B

EVALUATION PROCEDURE, AREAS OF SPECIALIZATION, and EVALUATION FORM

EVALUATION PROCEDURE

POOL ACCEPTANCE

It is Hidalgo County's intention that all responses that met the requirements listed within this procurement packet will be accepted in the respective annual pool.

AWARD PROTOCOL

A firm can be selected from the approved Pool for 1) an On-Call Agreement, or 2) Project Specific; regardless of the option, once a project has been identified and it is determined that Architectural Services are required, approval to seek engagement for Professional Services is requested from the Hidalgo County Commissioners Court. The following protocol and procedures are utilized:

1. Hidalgo County Commissioners Court, Elected Official, or User Department in need of the Professional Service will nominate, at the minimum, 3 firms. The firms selected must be able to complete the project requested, and if specializations are available, those specialized firms should be considered for nomination first.
2. Hidalgo County Commissioners' Court, Elected Official, or User Department will select the Evaluation Committee.
3. The Evaluation Committee will review, score and evaluate the Statement of Qualifications received in this response.
4. A Scoring Grid will be presented to Hidalgo County Commissioners Court for the purpose of Ranking and Approval for the Hidalgo County Purchasing Department to enter into negotiations with the number one (1) ranked firm.

EVALUATION CRITERIA

Award shall be made to the responsible vendor whose proposal is determined to be the best evaluated offer resulting from negotiations and taking into consideration all aspects of proposal impact items and the Evaluation Criteria as stated in **Appendix "B"**.

- Professional qualifications and experience of vendor and its staff with a minimum of predetermined number of years of relevant experience and demonstrated success in providing the services requested in this solicitation;
- Ability to commit resources and turnaround time for services requested;
- Experience with other clients of similar size to Hidalgo County and government entities;
- Vendor's professional reputation for integrity and compliance with state and federal law, including having the appropriate license to do business in Texas;
- Past performance history with Hidalgo County (if applicable);
- Experience based on references submitted with the vendor's proposal; and
- Overall quality of vendor's proposal.

Submission of a proposal implies the vendor's acceptance of the evaluation criteria and vendor's recognition that subjective judgments must be made by the Evaluation Committee.

EVALUATION PROCESS

All proposals will be examined by an Evaluation Committee consisting of various Hidalgo County personnel and Hidalgo County Purchasing on a 100-point system.

Proposals that do not conform to the instructions or which do not address all the services as specified may be eliminated from consideration; however, Hidalgo County reserves the right to accept such a proposal if it is determined to be in the best interest of Hidalgo County.

While Hidalgo County appreciates a brief, straightforward, concise reply, the proposer must fully understand that the evaluation is based on the information provided. Accuracy and completeness are essential. Omissions, ambiguous and equivocal statements may be construed against the proposer. The proposal response may be incorporated into any contract which results from this procurement packet, and vendors are cautioned not to make claims or statements it is not prepared to commit to contractually. Failure of the vendor to meet such claims will result in a requirement that the vendor provide resources necessary to meet submitted claims, without extending an additional cost to Hidalgo County.

Hidalgo County Purchasing Department may initiate discussions with selected vendors; however, vendors may not initiate discussions. Vendors shall not contact any Hidalgo County personnel during the procurement process without the express permission from the Hidalgo County Purchasing Department. Hidalgo County Purchasing Department may disqualify any vendor who has made site visits, contacted Hidalgo County personnel or distributed any literature without authorization from Hidalgo County Purchasing Department.

All correspondence relating to this procurement from the advertisement to the award shall be sent to Hidalgo County Purchasing Department. Hidalgo County Purchasing Department shall coordinate all presentations and/or meetings between Hidalgo County and the vendor relating to this solicitation.

Selected vendors may/will be expected to make a presentation/product demonstration to an evaluation committee. In addition to a presentation, visits by the Evaluation Committee to representative vendor client sites may be conducted where the proposed solution can be demonstrated in a production environment. Proposals, vendor presentations and product/service evaluations may develop into negotiating sessions with the vendor(s) as selected by the Evaluation Committee and approved by Hidalgo County Commissioners Court.

NEGOTIATION PROCESS

The Purchasing Department will commence negotiations with the Number One (1) ranked firm, as approved by Hidalgo County Commissioners Court by asking the selected firm to submit a Scope of Service, including their fees. Hidalgo County expects to conduct negotiations with vendor's representatives authorized to contractually obligate the vendor with an offer. The negotiated contract include a Best and Final Offer with the successful firm will be presented to Commissioners' Court for consideration and approval of award of contract. If vendor is unable to agree to contract terms and conditions, Hidalgo County reserves the right to terminate contract negotiations with that vendor and initiate negotiations with another vendor.

REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK.

AREAS OF SPECIALIZATION

RE: RFQ No. 2021-0788-02-23-ABV
Architectural Pool

Company Name: _____

Address: _____

City, State, Zip _____

Principal(s): _____	_____
_____ Name	_____ Title
_____ Name	_____ Title
_____ Name	_____ Title
_____ Name	_____ Title

Architect's Registration No.: _____

IDENTIFY AREAS OF SPECIALIZATION (Mark all that apply).

- _____ ADA Compliance
- _____ Building Design
- _____ Code Analysis
- _____ Construction Contract Management
- _____ Cost Estimation
- _____ Design and Construction of Multi-Level Parking Structures
- _____ Design for Alterations and Renovations
- _____ Design for New Construction
- _____ Field Testing and Inspections
- _____ Forensic Studies
- _____ Interior Design
- _____ Master Planning
- _____ Needs Assessment
- _____ Plans, Drawings, and Specifications
- _____ Pre-Design Services
- _____ Space Planning
- _____ Space Programming
- _____ Other (please specify, and separate listed specialties with a semicolon (;): _____

- _____ Sublet specialties to other firms (please specify, and separate listed specialties with a semicolon (;):

EVALUATION FORM

RE: RFQ No. 2021-0788-02-23-ABV
Professional Architectural Services

Evaluator: _____

Signature: _____

Date: _____

Project Name: _____ Department: _____

Evaluated Firm: _____

EVALUATION CRITERIA		POINTS	SCORE
1. RFQ RESPONSIVENESS (2 points)			
➤ Response is clear, concise, well-organized and followed the instructions listed in the Procurement Overview section of the procurement packet.		2	
Comments/Rationale for points:		Subtotal	
2. UNDERSTANDING THE PROJECT (22 points)			
➤ Firm demonstrates a thorough understanding of the project through their Scope of Services.		5	
➤ Firm addresses their understanding in a clear and concise narrative that outlines their knowledge in appropriate federal, state and local government regulations, codes, guidelines, professional standards, and other policies related to the specified project.		7	
➤ Firm identifies other successful projects of similar size and scope.		5	
➤ Firm has identified information to be gathered or obtained and proposed an approach to complete the Scope of Work.		5	
Comments/Rationale for points:		Subtotal	
3. FIRM'S QUALIFICATIONS (28 points)			
➤ Firm is registered and licensed to practice in the state of Texas, and has been verified through the Texas Board of Architectural Examiners.		5	
➤ Firm includes an organization chart, and a description of the proposed project team organization dedicated to this project, identifies key technical staff, their names and titles.		10	
➤ Firm provides proof of all licenses and certifications for each proposed staff member.		10	
➤ Firm identifies their Affirmative Action Program.		3	
Comments/Rationale for points:		Subtotal	
4 EXPERIENCE AND RECENT PROJECTS (27 points)			
➤ Firm includes biographic summaries/resumes for each proposed staff member that highlight their relevant experience specific to the project within the last 12 consecutive months, and their role in each project.		10	
➤ Firm identifies at least one (1) NAAB or NCARB Certified Architect with an educational background and/or strong experience in the scope of the project that is part of the proposed team dedicated to this project who has previously led or been a part of at least two (2) projects of similar size and scope.		10	
➤ Firm identifies two (2) different technical staff members with a minimum of five (5) and ten (10) years' experience.		7	
Comments/Rationale for points:		Subtotal	
5. LEADERSHIP AND ABILITY (21 points)			
➤ Firm identifies their commitment and ability to commence services immediately after successfully negotiating a contract for services.		3	
➤ Firm identifies proposed project composition, project leadership, and reporting responsibilities.		5	
➤ Firm has demonstrated competency and experience in the project specified.		3	
➤ Firm commits at least one Project Manager with experience in two (2) different areas of specialties, plus be 50% involved with the technical development of the project.		5	
➤ Firm commits at least one (1) Project Manager with experience in five (5) areas of specialties, plus be 85-100% involved with the technical development of the project.		5	
Comments/Rationale for points:		Subtotal	
GRAND TOTAL			



APPENDIX C

INSURANCE REQUIREMENTS

EXHIBIT C
Insurance Requirements
Professional Services
(i.e...Engineers, Architects, Appraisers & Surveyors)

The proposer awarded the contract shall furnish proof of insurance, which will also include any subcontractor that is subcontracted by the proposer in at least the following limits, to be in place prior to providing any services under this Contract and to continue at all times in force in effect during the term of this Contract:

1. Professional liability insurance policy with limits of at least One Million Dollars (\$1,000,000) per occurrence, or limited to claims made, include at least a five (5) year extended reporting period.
2. A Five Hundred Thousand Dollars (\$500,000.00) Comprehensive General Liability insurance policy providing additional coverage to all underlying liabilities of County.
3. Automobile liability insurance policy with limits of at least Three Hundred Thousand Dollars (\$300,000.00) per person and Five Hundred Thousand Dollars (\$500,000.00) per occurrence. Coverage should include injury to or death of persons and property damage claims with limits up to Five Hundred Thousand Dollars (\$500,000.00) arising out of the services provided to County hereunder.
4. Uninsured/Underinsured motorist coverage in an amount equal to the bodily injury limits set forth immediately above;
5. Workers compensation insurance in amounts established by Texas law, unless the Bidder is specifically exempted from the Texas Workers Compensation Act, Texas Labor Code Chapter 401, et. seq.

Bidder shall obtain and maintain any and all other insurances which may be necessary in providing the good/service applicable to this procurement or are otherwise required by law. Any and all insurance policies shall be in amounts prescribed by law or otherwise specified by the County, but in no event less than the minimum amounts prescribed by law.

Additional Insurance Requirements:

- a. Bidder shall furnish to County certificate(s) of insurance, and all renewals throughout the duration of the Project, issued by the insurer that such insurance is in full force and effect.
- b. Certificates of insurance shall be submitted to County for approval prior to any services being performed by Bidder.
- c. **Hidalgo County will only accept certificates of insurance on an Acord form (as attached hereto).**
- d. For each policy, except Workers' Compensation, Bidder shall name the County as an additional insured.
- e. Each policy of insurance required hereunder shall extend for a period equivalent to, or longer than the term of the Contract, and any insurer hereunder shall be required to give at least thirty

(30) days written notice to the County prior to the cancellation of any such coverage on the termination date, or otherwise.

- f. This Contract shall be automatically suspended upon the cancellation, or other termination, of any required policy of insurance hereunder, and such suspension shall continue until evidence of adequate replacement coverage is provided to County. If replacement coverage is not provided within thirty (30) days following suspension of the Contract, this Contract shall automatically terminate.
- g. All insurance policies will be endorsed to provide a waiver of subrogation in favor of the County.
- h. County reserves the right to review the insurance requirements of this section during the effective period of the contract and to require adjustment of insurance coverage and their limits when deemed necessary and prudent by County based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Bidder.
- i. Insurance policies shall be obtained at Bidder's sole expense. County does not maintain and will not obtain insurance of any type to protect Bidder against loss, damage or injury that may in any way result from Bidders performance of the services.
- j. In no event shall the County be liable for any loss, damage to or destruction of any property belonging to the Bidder.
- k. Bidder is responsible for ensuring all required insurance policies are valid for the duration of the contract.
- l. All insurance policies are to be issued by an insurance company authorized to do business in the State of Texas and acceptable to County.
- m. Bidder shall make any other insurance documentation available to County upon request.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL:	
	ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	NAIC #
INSURED	INSURER A:	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXPI (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY						EACH OCCURRENCE \$
	COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$
	CLAIMS-MADE						MED EXP (Any one person) \$
	OCUR						PERSONAL & ADV INJURY \$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$
	POLICY						PRODUCTS - COMP/OP AGG \$
	PROJECT						\$
	LOC						COMBINED SINGLE LIMIT (Ea accident) \$
	AUTOMOBILE LIABILITY						BODILY INJURY (Per person) \$
	ANY AUTO						BODILY INJURY (Per accident) \$
	ALL OWNED AUTOS						PROPERTY DAMAGE (Per accident) \$
	SCHEDULED AUTOS						\$
	NON-OWNED AUTOS						EACH OCCURRENCE \$
	UMBRELLA LIAB						AGGREGATE \$
	EXCESS LIAB						\$
	OCUR						WC STATUTORY LIMITS
	CLAIMS-MADE						OTH-ER
	DED						E.L. EACH ACCIDENT \$
	RETENTION \$						E.L. DISEASE - EA EMPLOYEE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						E.L. DISEASE - POLICY LIMIT \$
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						
	If yes, describe under DESCRIPTION OF OPERATIONS below						

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER

CANCELLATION

HIDALGO COUNTY ATTN: PURCHASING DEPARTMENT 2812 S. HIGHWAY BUS. 281 EDINBURG, TEXAS 78539	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

ACORD 25 (2010/05)

© 1988-2010 ACORD CORPORATION. All rights reserved.

The ACORD name and logo are registered marks of ACORD

INSURANCE REQUIREMENT ACKNOWLEDGEMENT

I, _____, authorized representative for _____,
Company/Vendor

hereby acknowledge receipt of the County's required insurance limits. Said requirements:

- will be acquired within 10 working days after notification from Purchasing Department of award of the project by the Hidalgo County Commissioners' Court;
- will acquire additional amount needed to meet the County's requirements within 10 working days after notification from Purchasing Department of award of the project by the Hidalgo County Commissioners' Court; currently carry the following:

Professional Liability (Errors & Omissions): \$ _____
Automobile Liability: \$ _____ General Liability: \$ _____

- have already been met, see attached copy of certificate of insurance.

Authorized Representative

Date

Notice to Bidder:

A certificate of insurance for the required insurance limits shall be provided to the Purchasing Department in order to qualify for award of the project and to execute a contract between your Company and the County.

Failure to provide Certificates of Insurance to the Purchasing Department's Contract Managers will cause the award of the project to be rescinded and then re-awarded to next qualified vendor. Certificates of Insurance will be monitored and verified on a **quarterly basis** to ensure coverage policy is in place. It is the Company's obligation to maintain the appropriate insurance coverage throughout the term of the contract.

THIS FORM MUST BE ACCOMPANY YOUR RESPONSE

PROJECT REQUIREMENTS ACKNOWLEDGMENT

This is to certify that I, _____, possess all of the **APPLICABLE**:

1. Licenses: _____

2. Bonds: _____

3. Certificates: _____

4. Permits: _____

5. Other: _____
necessary to carry out the required project. Furthermore, I am providing copies of the required documentation so that, if my company is awarded this project, I may be eligible to enter into a contract with Hidalgo County and proceed to complete the project in a timely manner.

*** Any licenses, bonds, certificates, permits, etc. which are required must be presented as part of the bid packet in order to expedite the bid evaluation process. Failure to provide said documentation will result in the disqualification of your bid or response.**

Authorized Signature

Date

Company

Address

City, State, Zip



Appendix D

CONFLICT OF INTEREST QUESTIONNAIRE (CIQ)

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

Signature of vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;
or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

- (2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.



Appendix E

VENDOR/BIDDER APPLICATION, HUB DECLARATION, and FORM W-9

VENDOR ENROLLMENT SOLUTION

The Vendor Registration Form has been automated and will only be accepted through online submission. The Vendor Registration Form can be found on the Hidalgo County website: <https://www.hidalgocounty.us>, Home > Departments > Purchasing > Potential Vendors, or by using the link: <https://www.hidalgocounty.us/2912/Potential-Vendors-ConsiderMe>.



Register ➡ Get Listed ➡ Be Considered

Upon submission, you will receive an automatic confirmation email response advising your form has been successfully submitted. All submissions are reviewed by the Purchasing Department in the order they are received. Upon review and verification, approved vendors will be placed on our Potential Vendors List. Any incomplete submissions will be rejected and returned to the vendor to correct.

If you have any questions regarding the Vendor Registration Form please call the Purchasing Department at (956) 318-2626 or email us at vendor.application@co.hidalgo.tx.us.

For new Vendors:

As part of your procurement packet response, a copy of the confirmation email received is required.

For Current Vendors:

If your Company is a current active Vendor doing business with Hidalgo County, please submit this page and provide your Vendor Number below:

Vendor No.: _____

REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK.

HISTORICALLY UNDERUTILIZED BUSINESS (HUB) DECLARATION

The primary objective of the Hidalgo County HUB Program is to ensure Historically Underutilized Businesses receive a fair and equal opportunity for participation in the County's procurement process. This fact holds true for Services (Professional & Non-Professional), Commodities, and Construction contracts and any subcontracts thereto. The program strongly encourages Prime Contractors to provide subcontracting opportunities to Certified Hub Contractors/Vendors. Our goal for HUB contractor/vendor participation, as well as HUB subcontractor participation is 30%. To be considered as a "Certified HUB Contractor/Vendor" the contractor/vendor must have been certified by, and hold a current and valid certification with any of the three agencies listed below.

Have you been Certified as a HUB or an MBE/WBE source?: ☐ Yes ☐ No

If yes, by whom?: ☐ Texas Building & Procurement Commission ☐ Other _____

Indicate Certification No(s): _____ or Are Certificate(s) Attached?: ☐ Yes ☐ No

LIST OF CERTIFIED HUB SUBCONTRACTORS (Attach additional pages if necessary)

What percentage of the Bid, RFP, or RFQ is to be subcontracted with Certified HUB sources?: _____%
(List HUB Subcontractor information below).

HUB Subcontractor Name: _____ HUB Status: _____
Certifying Agency (Check all applicable): ☐ Texas Building & Procurement Commission ☐ Other
Address: _____ City: _____ State: _____ Zip: _____
Contact Person: _____ Title: _____ Phone No.: () _____
Subcontract Amount: \$ _____ Description of Work to be Performed: _____

HUB Subcontractor Name: _____ HUB Status: _____
Certifying Agency (Check all applicable): ☐ Texas Building & Procurement Commission ☐ Other
Address: _____ City: _____ State: _____ Zip: _____
Contact Person: _____ Title: _____ Phone No.: () _____
Subcontract Amount: \$ _____ Description of Work to be Performed: _____

HUB Subcontractor Name: _____ HUB Status: _____
Certifying Agency (Check all applicable): ☐ Texas Building & Procurement Commission ☐ Other
Address: _____ City: _____ State: _____ Zip: _____
Contact Person: _____ Title: _____ Phone No.: () _____
Subcontract Amount: \$ _____ Description of Work to be Performed: _____



APPENDIX F

CERTIFICATION REGARDING DEBARMENT

Certification Regarding Debarment, Suspension and Ineligibility

As is required by the Federal Regulations Implementing Executive Order 12549, Debarment and Suspension, 45 CFR Part 76, Government-wide Debarment and Suspension, the applicant certifies, to the best of his or her knowledge and belief, that both it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency;
- b. Have not within a three-year period preceding this bid proposal and/or application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a government entity with commission of any of the offenses enumerated herein; and
- d. Have not within a three-year period preceding this bid proposal and/or application had one or more public transactions terminated for cause or default.

Signature: _____
Print Name: _____
Title: _____
Telephone Number: _____
Date: _____

If the bidder is unable to certify to all of the statements in this Certification, such bidder should attach an explanation to this proposal.



APPENDIX G

TITLE VI APPENDICES

APPENDIX A THE TITLE VI CONTRACTOR ASSURANCES

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor will comply with the Regulations relative to nondiscrimination in federally assisted programs of the United States Department of Transportation Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex, age, disability, income or Limited English Proficiency in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and Acts and the Regulations relative to Non-discrimination on the grounds of race, color, national origin, sex, age, or disability.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the federal funding agency (FHWA or FTA) to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Recipient or the Federal Funding Agency, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Non-compliance:** In the event of the contractor's non-compliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Funding Agency may determine to be appropriate, including, but not limited to:
 - a. withholding contract payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Funding Agency may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with, litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the **COUNTY OF HIDALGO** will accept title to the lands and maintain the project constructed thereon in accordance with (Name of Appropriate Legislative Authority), the Regulations for the Administration of (Naming of Appropriate Program), and the policies and procedures prescribed by the (Federal Highway Administration) of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the **COUNTY OF HIDALGO** all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto **COUNTY OF HIDALGO** and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the **COUNTY OF HIDALGO**, its successors and assigns.

The **COUNTY OF HIDALGO**, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and] * (2) that the **COUNTY OF HIDALGO** will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction]. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the **COUNTY OF HIDALGO** pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
 - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, **COUNTY OF HIDALGO** will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the **COUNTY OF HIDALGO** will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the **COUNTY OF HIDALGO** and its assigns. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.

APPENDIX D
CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER
THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by **COUNTY OF HIDALGO** pursuant to the provisions of Assurance 7(b)”

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above nondiscrimination covenants, **COUNTY OF HIDALGO** will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
- C. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, **COUNTY OF HIDALGO** will there upon revert to and vest in and become the absolute property of **COUNTY OF HIDALGO** and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX E

TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq.*).



Appendix H

REQUIRED CONTRACT CLAUSES FOR CONTRACTS UNDER FEDERAL AWARD

2 C.F.R. § 200.327 & 2 C.F.R. PART 200, APPENDIX II, REQUIRED CONTRACT CLAUSES FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

The United States Office of Management and Budget (OMB) issued in 2 C.F.R. 200: *Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards* (Uniform Guidance). Subpart D: Post Federal Award Requirements: 2 CFR §§200.317-200.327 of the Uniform Guidance contain provisions applicable to procurements made with federal grant funding. [Except as otherwise provided, updated Post Federal Award Requirements (i.e.: 2 CFR §§200.317-200.327) apply to declarations and awards issued on or after November 12, 2020].

As a non-Federal entity, the County of Hidalgo's ("County") contracts must contain the applicable contract clauses described in Appendix II to the Uniform Guidance (Contract Provisions for non-Federal Entity Contracts Under Federal Awards), which are set forth below. (2 C.F.R. §200.327). If applicable, the following clauses shall supersede any existing, similar clauses stated within the bid document, contract, and/or Terms and Conditions. *The term "Contractor" used herein refers to the proposer, bidder or other entity/individual responding to the applicable procurement packet.*

If applicable, the regulations in 2 CFR, Part 200 and Appendix II to the Uniform Guidance, as it may be amended from time to time, and the contract clauses below, are incorporated by reference as part of this procurement packet and any resulting agreement.

To procure goods and services using funds under a federal grant or contract, specific federal laws, regulations, and requirements may apply in addition to those under state law. The following provisions are required and apply when federal funds are expended by the County of Hidalgo for any contract resulting from this procurement process.

1. Remedies.

- a. **Applicability.** This requirement applies to all Federal grant and cooperative agreement programs.
- b. **Standard.** Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II, ¶ A.
- c. **Statement.** Pursuant to Federal Rule (A) above, when federal funds are expended by the County, the County reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party. Contractor shall comply with all applicable Federal, State of Texas, and local laws, rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the performance of the services, and any provision of equipment and material ("Applicable Law"). All transactions related to any of the Contract Documents shall be governed by the laws of the State of Texas, and trial of any action brought in connection with the bid or the Contract Documents shall be held exclusively in a state court in the County of Hidalgo, Texas.

2. Termination for Cause and Convenience.

- a. **Applicability.** This requirement applies to all Federal grant and cooperative agreement programs.
- b. **Standard.** All contracts in excess of \$10,000 shall address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement as follows. See 2 C.F.R. Part 200, Appendix II, ¶ B.
- c. **Statement.** *Termination.* County may terminate this Agreement for any reason upon ten (10) days written notice to the other party. County may terminate this Agreement immediately upon written notice if Contractor

breaches this Agreement. In the event of any termination, Contractor shall promptly deliver to the County any and all Work Materials prepared for the County prior to the effective date of such termination, all of which shall become County's sole property. After receipt of the Work Materials, County will pay Contractor for the services which the County determines were satisfactorily performed as of the effective date of the termination.

Excuses for Non-Performance. Either party shall be absolved from its obligations under this contract when and to the extent that performance is delayed or prevented (and in the County of Hidalgo's case when and to the extent that its need for the articles, materials or work to be supplied hereunder is reduced or eliminated) by reason of acts of God, fire explosion, war riots, strikes, labor disputes, or governmental laws, orders or regulations.

Default. If Contractor or Subcontractor shall breach any provision hereof or shall become insolvent, enter voluntary or involuntary bankruptcy or receivership proceedings or make an assignment to the benefit of creditors, County of Hidalgo shall have the right (without limiting any other rights or remedies which it may have hereunder or by operation of law) to terminate this contract by written notice to Contractor whereupon County shall be relieved of all further obligation hereunder except the obligation to pay the reasonable value of Contractor's prior performance (at not exceeding the contract rate), and Contractor shall be liable to County for all costs incurred by County in completing or procuring the completion of performance in excess of the contract price herein specified. The County's right to require strict performance of any obligation hereunder shall not be affected by any previous waiver, forbearance of course of dealing. Time is of the essence thereof.

3. **Equal Employment Opportunity.**

- a. **Applicability:** This requirement applies to all Federal grant and cooperative agreement programs.
- b. **Standard.** Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, ¶ C.
- c. **Key Definitions:**
 - (1) *Federally Assisted Construction Contract.* The regulation at 41 C.F.R. § 60-1.3 defines a "federally assisted construction contract" as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.
 - (2) *Construction Work.* The regulation at 41 C.F.R. § 60-1.3 defines "construction work" as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction
- d. **Statement:** Contractor will comply with the Nondiscrimination Civil Rights Act of 1964, as amended and all Federal regulations relative to nondiscrimination in Federally assisted programs. The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause:

“During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

4. **Davis Bacon Act and Copeland Anti-Kickback Act.**

- a. **Applicability of Davis-Bacon Act.** The Davis-Bacon Act only applies to the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. **It does not apply to other Federal grant and cooperative agreement programs, including the Public Assistance Program.**

- b. Standard. All prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)).

In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.

The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

In contracts subject to the Davis-Bacon Act, the contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti-Kickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA or applicable Federal entity. See 2 C.F.R. Part 200, Appendix II, ¶ D.

- c. Statement. The regulation at 29 C.F.R. § 5.5(a) does provide the required contract clause that applies to compliance with both the Davis-Bacon and Copeland Acts. However, as discussed in the previous subsection, the Davis-Bacon Act does not apply to Public Assistance recipients and subrecipients. In situations where the Davis-Bacon Act does not apply, neither does the Copeland “Anti-Kickback Act.” However, for purposes of grant programs where both clauses do apply, FEMA or applicable Federal entity requires the following contract clause:

“Compliance with the Copeland “Anti-Kickback” Act.

(1) *Contractor.* The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as Federal requirements may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) *Breach.* A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

5. **Contract Work Hours and Safety Standards Act.**

- a. Applicability: This requirement applies to all Federal grant and cooperative agreement programs.
- b. Standard. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5.

Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. See 2 C.F.R. Part 200, Appendix II, ¶ E.

The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

c. Statement.

“Compliance with the Contract Work Hours and Safety Standards Act.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The County of Hidalgo shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

6. Rights to Inventions Made Under a Contract or Agreement.

- a. Applicability: Stafford Act Disaster Grants. This requirement **does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance**

to Individuals and Households – Other Needs Assistance Grant Program, as FEMA or Federal awards under these programs do not meet the definition of “funding agreement.”

- b. Standard. If the FEMA or Federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FEMA or applicable awarding agency. See 2 C.F.R. Part 200, Appendix II, ¶ F.
- c. Key Definition: The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

7. **Clean Air Act and the Federal Water Pollution Control Act.**

- a. Applicability and Standard: Contracts of amounts in excess of \$150,000 must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, ¶ G.
- b. Statement: Included in contracts as provided in section “7a” above.
 - (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. and the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
 - (2) The contractor agrees to report each violation to the Federal awarding agency (e.g. Federal Emergency Management Agency-FEMA) and the Regional Office of the Environmental Protection Agency. Contractor understands and agrees that each violation reported to the County of Hidalgo will, in turn, be reported as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office.
 - (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the applicable Federal awarding agency (e.g. FEMA).

8. **Debarment and Suspension.**

- a. Applicability: This requirement applies to all Federal grant and cooperative agreement programs.
- b. Standard. Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security’s regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).

These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, ¶ H; and Chapter IV, ¶ 6.d and Appendix C, ¶ 2. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General

Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov. See 2 C.F.R. § 180.530; Chapter IV, ¶ 6.d and Appendix C, ¶ 2.

In general, an “excluded” party cannot receive a Federal grant award or a contract within the meaning of a “covered transaction,” to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a “covered transaction,” which is any nonprocurement transaction (unless excepted) at either a “primary” or “secondary” tier. Although “covered transactions” do not include contracts awarded by the Federal Government for purposes of the nonprocurement common rule and DHS’s implementing regulations, it does include some contracts awarded by recipients and subrecipient.

Specifically, a covered transaction includes the following contracts for goods or services:

- (1) The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.
- (2) The contract requires the approval of FEMA or applicable Federal entity, regardless of amount.
- (3) The contract is for Federally-required audit services.
- (4) A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or applicable Federal entity or is in excess of \$25,000.

- c. Statement. The following provides a debarment and suspension clause. It incorporates a method of verifying that contractors are not excluded or disqualified:

For maximum protection, provide a print or electronic document for every prime and subcontractor, from www.sam.gov in order to ensure that they are not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities.

This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state City serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

9. **Byrd Anti-Lobbying Amendment.**

- a. Applicability: This requirement applies to all Federal grant and cooperative agreement programs.
- b. Standard. Contractors that apply or bid for an award of \$100,000 or more must file the required certification. See 2 C.F.R. Part 200, Appendix II, ¶ I; 44 C.F.R. Part 18; Chapter IV, 6.c; Appendix C, ¶ 4. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or

organization for influencing or attempting to influence an officer or employee of any City, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. See Chapter IV, ¶ 6.c and Appendix C, ¶ 4.

- c. Statement. The following statement in bold provides a Byrd Anti-Lobbying contract clause:

(IF APPLICABLE, PLEASE FILL IN BLANKS AND SIGN)

“Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.”

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned Contractor, _____ certifies, to the best of his or her knowledge, that:

- 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.**
- 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.**
- 3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.**

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying

Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

10. Procurement of Recovered Materials.

- a. Applicability: This requirement applies to all Federal grant and cooperative agreement programs.
- b. Standard. A non-Federal entity that is a **state agency or agency of a political subdivision** of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, ¶ J; 2 C.F.R. § 200.323; *PDAT Supplement*, Chapter V, ¶ 7.

The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- c. Statement. The following provides the clause that a state agency or agency of a political subdivision of a state and its contractors can include in contracts meeting the above contract thresholds:

“(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—

- (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
 - (ii) Meeting contract performance requirements; or
 - (iii) At a reasonable price.
- (2) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

11. Prohibition on Contracting for Covered Telecommunications Equipment or Services – 2 CFR § 200.216 (FEMA Interim Policy #405-143-1 effective August 13, 2020).

- a. Applicability: This requirement applies to all Federal grant and cooperative agreement programs and/or as provided below, and is effective August 13, 2020.

- b. Standard. A non-Federal entity is prohibited against using federal funds to purchase telecommunications and video surveillance equipment and services (such as but not limited to mobile phones, land lines, internet, video surveillance, and cloud servers) from certain companies/entities in covered foreign countries for national security reasons. This regulation is being incorporated into federal grants and contracts received by the County through 2 CFR 200.216 and/or Federal Acquisition Regulations (FAR) clause 52.204-25; as well as guidance provided through Federal Emergency Management Agency (FEMA) Policy #405-143-1. See 2 C.F.R. Part 200, Appendix II, ¶ K

Currently, applicable federal provisions provide that Covered Foreign country means the People's Republic of China and covered telecommunications equipment or services means –

- i. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, (or any subsidiary or affiliate of such entities);
- ii. For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- iii. Telecommunications or video surveillance services provided by such entities or using such equipment; or
- iv. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

The definition of "Affiliate" can be found in FAR 2.101. Listing of subsidiaries and affiliates can be found in Supplement Number 4 to 15 CFR Part 744.

- c. Statement. Federal awards recipients and subrecipients, as well as their contractors and subcontractors, include the following required contract clause in applicable new, extended, or renewed contracts and subcontracts as per the provisions discussed above.

PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

- (a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services As used in this clause—
- (b) Prohibitions.
 - (1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
 - (2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
 - (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.
- (c) Exceptions.
 - (1) This clause does not prohibit contractors from providing—
 - a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
 - b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
 - (2) By necessary implication and regulation, the prohibitions also do not apply to:
 - a. Covered telecommunications equipment or services that:
 - i. Are not used as a substantial or essential component of any system; and
 - ii. Are not used as critical technology of any system.
 - b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.
- (d) Reporting requirement.
 - (1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
 - (2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:
 - (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

- (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.
- (e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

12. **Domestic Preferences for Procurements**

- a. **Applicability:** This requirement of this section must be included in all subawards including all contracts and purchase orders for work or products under Federal award applies to all contracts and purchase orders for work or products using federal funds.
- b. **Standard.** As appropriate, and to the extent consistent with law, Non Federal Entities should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products or materials produced in the United States. This includes, but is not limited to, iron, aluminum, steel, cement, and other manufactured products. See 2 C.F.R. Part 200.322 and 2 C.F.R. Part 200, Appendix II, ¶ L
- c. **Statement.** The following provides the required Domestic Preferences for Procurements contracts clause that is incorporated herein by reference.

“Domestic Preference for Procurements

As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

- *Produced in the United States* means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- *Manufactured products* mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.”

ADDITIONAL REQUIRED CONTRACT CLAUSES FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS WITH THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

Additional FEMA or applicable Federal Requirements. In addition to the requirements above, non-Federal entity contracts under Federal award subject to financial assistance from FEMA are required to contain the following additional contract clauses. The Uniform Guidance authorizes FEMA to require additional provisions for non-Federal entity contracts. FEMA, pursuant to this authority, requires or recommends the following:

These clauses are incorporated by reference as part of this procurement packet and any resulting agreement.

1. **Changes.**

- a. **Standard.** To be eligible for FEMA assistance under the non-Federal entity’s Federal grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. FEMA or applicable Federal entity recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method,

price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

- b. Statement. The following provides a contract clause regarding access to records:

“The contractor shall secure written authorization before proceeding with any additional work, whether requested by the County or required to complete the contract. The cost for any changes to the contract price, whether requested by the County or the Contractor will be approved only after submitting the contractor’s true costs for the work and related equipment costs and site expenses.”

2. **Access to Records.**

- a. Standard. All non-Federal entities must place into their contracts a provision that all contractors and their successors, transferees, assignees, and subcontractors acknowledge and agree to comply with applicable provisions governing Department and FEMA or applicable Federal entity access to records, accounts, documents, information, facilities, and staff. See DHS Standard Terms and Conditions, v 3.0, ¶ XXVI (2013).

- b. Statement. The following provides a contract clause regarding access to records:

“Access to Records. The following access to records requirements apply to this contract:

(1) The contractor agrees to provide the City of Concord, the FEMA or applicable Federal Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The contractor agrees to provide the FEMA or applicable Federal Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.”

3. **DHS Seal, Logo, and Flags.**

- a. Standard. All non-Federal entities must place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS City officials without specific FEMA or applicable Federal entity pre-approval. See DHS Standard Terms and Conditions, v3.0, ¶ XXV (2013).

- b. Statement. The following provides a contract clause regarding DHS Seal, Logo, and Flags:

“The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS City officials without specific FEMA or applicable Federal entity pre- approval.”

4. **Compliance with Federal Law, Regulations, and Executive Orders.**

- a. Standard. All non-Federal entities must place into their contracts an acknowledgement that FEMA or applicable Federal financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable Federal law, regulations, executive orders, and FEMA or applicable Federal policies, procedures, and directives.

- b. Statement. The following provides a contract clause regarding Compliance with Federal Law, Regulations and Executive Orders:

“This is an acknowledgement that Federal financial assistance will be used to fund the contract only. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA or applicable Federal policies, procedures, and directives.”

5. **No Obligation by Federal Government.**

a. **Standard.** The non-Federal entity must include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

b. **Statement.** The following provides a contract clause regarding no obligation by the Federal Government:

“The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

6. **Program Fraud and False or Fraudulent Statements or Related Acts.**

a. **Standard.** The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

b. **Statement.** The following provides a contract clause regarding Fraud and False or Fraudulent Related Acts:

“The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor’s actions pertaining to this contract.”

7. **FEMA Contract requirement regarding Prohibition on Contracting for Covered Telecommunications Equipment or Services – 2 CFR § 200.216 (FEMA Interim Policy #405-143-1 effective August 13, 2020).**

FEMA recipients and subrecipients and their contractors and subcontractors are required per 2 C.F.R. Part 200, Appendix II ¶ K to include a contract provision in all FEMA-funded contracts and subcontracts, including any purchase orders. To satisfy this requirement, the contract provision found in Number 11 above is incorporated by reference by the County of Hidalgo in all new, extended, or renewed contracts and subcontracts. Applicable County contractors and subcontractors shall also comply with the applicable law and requirements. (See Number 11 above).

8. **FEMA Contract requirement regarding Domestic Preferences for Procurements**

For purchases in support of FEMA declarations and awards issued on or after November 12, 2020, all FEMA recipients and subrecipients are required per 2 C.F.R. Part 200, Appendix II ¶ L to include in all contracts and purchase orders for work or products the contract provision included in number 12 above encouraging domestic preference for procurements.

Contractor agrees to comply with all federal, state and local laws, rules, regulations and ordinances, as applicable. It is further acknowledged that the Contractor read and understands all provisions, laws, acts, regulations, etc. as specifically noted above and certifies compliance with the same.

Vendor’s Name/Company Name: _____

Printed Name and Title of Authorized Representative: _____

Signature of Authorized Representative: _____

Date: _____



APPENDIX I

FHWA 1273

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.



APPENDIX J

PROPOSER'S AFFIDAVIT

**EXHIBIT J
PROPOSER'S AFFIDAVIT**

**PROPOSER'S AFFIDAVIT OF NON-COLLUSION, NON-CONFLICT OF INTEREST, AND
ANTI-LOBBYING**

STATE OF TEXAS
COUNTY OF HIDALGO

Affiant, _____, being first duly sworn, deposes that:

- (1) Affiant does hereby state neither the proposer nor any of the proposer's officers, partners, owners, agents, representatives, employees, or parties in interest, has in any way colluded, conspired, agreed, directly or indirectly with any person, firm, corporation, or another proposer, or potential proposer, to provide any money or other valuable consideration for assistance in procuring or attempting to procure a contract or fix the prices in the attached proposed or the proposal of any other proposer, and further states that no such money or another reward will be hereinafter paid.
- (2) Affiant further states they have neither recommended nor suggested to Hidalgo County or any of its officials or employees, any of the terms or provisions set forth in their Request for Proposal and subsequent agreement, except at a meeting open to all interested proposers, of which proper notice was given.
- (3) Affiant, further states their officers, employees, or agents have not, and will not attempt to lobby, directly or indirectly, the Hidalgo County Commissioner's Court between proposal submission date and award by the Hidalgo County Commissioner's Court.
- (4) Affiant further states no officer, or stockholder of the proposer is a member of the staff, or related to any employee of Hidalgo County except as noted herein below:

Signature/Title: _____

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

My commission expires: _____, 20____



APPENDIX L

DEFICIENCIES AND DEVIATIONS FORM

(This form must be signed)

1. **DEVIATION(S)** – Any deviations to the attached specifications shall be listed below, or on a separate sheet of paper, and attached to the bid response form identifying the section number, item number and a clearly defined explanation for the deviations.
2. It is the offeror's responsibility to submit a proposal that meets all mandatory specifications stated within. Because of the variations in manufacturer's construction, the offeror must compare their product bid with the required listed minimum specifications and identify any deviations.
3. Failure to properly identify deviations may render the offeror's proposal non-responsive and not capable of consideration for award.
4. Offeror should note that a descriptive brochure of the model bid may not be sufficient or acceptable as proper identification of deviations from the written specifications.

NO - Deviations:_____ YES - Deviations:_____

List any deviations your company is submitting below: (Use a separate page, if necessary)

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Company Name _____

Print Name of Authorized Company Official _____

Signature of Authorized Company Official



APPENDIX M

REFERENCE FORM

REFERENCE FORM

Respondent's involvement with reference checks is not permitted. Only Hidalgo County Purchasing Department or authorized designees will conduct reference checks. Any deviation to this may result in rejection of your response.

Reference One

Client's Name: _____

Type of Organization: _____

Address: _____

Contact Person: _____ Title: _____

Telephone: _____ E-Mail: _____

Project Information:

Name of Project: _____

Scope of Work: _____

Contract Period: From _____ to _____

Cost: Projected \$ _____ Actual \$ _____

Timeframe (include unit measure) Projected _____ Actual _____

Status as of _____ (circle one): complete in progress canceled.
Date

Reference Two

Client's Name: _____

Type of Organization: _____

Address: _____

Contact Person: _____ Title: _____

Telephone: _____ E-Mail: _____

Project Information:

Name of Project: _____

Scope of Work: _____

Contract Period: From _____ to _____

Cost: Projected \$ _____ Actual \$ _____

Timeframe (include unit measure) Projected _____ Actual _____

Status as of _____ (circle one): complete in progress canceled.
Date

Reference Three

Client's Name: _____
Type of Organization: _____
Address: _____

Contact Person: _____ Title: _____
Telephone: _____ E-Mail: _____

Project Information:

Name of Project: _____

Scope of Work: _____

Contract Period: From _____ to _____
Cost: Projected \$ _____ Actual \$ _____
Timeframe (include unit measure) Projected _____ Actual _____
Status as of _____ (circle one): complete in progress canceled.
Date

Reference Four

Client's Name: _____
Type of Organization: _____
Address: _____

Contact Person: _____ Title: _____
Telephone: _____ E-Mail: _____

Project Information:

Name of Project: _____

Scope of Work: _____

Contract Period: From _____ to _____
Cost: Projected \$ _____ Actual \$ _____
Timeframe (include unit measure) Projected _____ Actual _____
Status as of _____ (circle one): complete in progress canceled.
Date



APPENDIX N

SHIPPING LABEL

SHIPPING LABEL

Below is a sample of how the response in an appropriate sized box or envelop should be submitted. Using this shipping label is optional, but preferred. Please cut out along the dotted line below, and affix to the outside of your response package on the lower right hand size. Ensure your company name and address is listed on the top left hand corner.

COMPANY NAME
COMPANY ADDRESS
CITY, STATE ZIP



HIDALGO COUNTY

**Sealed Submission for 2022 Pools of Professional
Services**

RFQ No.: 21-0788-02-23-ABV

Architectural Services

OPENING DATE: Wednesday, February 23, 2022

OPENING TIME: 2:00 PM

TO: Eduardo Belmarez, MBA, CPA

ATTN: **Alexandra B. Vela**

Hidalgo County Administration Building

Purchasing Department

2802 S. BUS. HWY 281

Edinburg, TX 78539



Exhibit B

Scopes of Services to be
Provided by Vendor



PROPOSAL FOR VARIOUS COUNTY PARK UPGRADES

ABRAM PARK AND PAVILLION
LOS EBANOS PAVILLION
KATARINA PARK (SOUTH)

LOS EBANOS PARK
KATARINA PARK (NORTH)
VETERANS PAVILION

May 25, 2022





rike
ogden
figueroa
allex

May 25, 2022

Ms. Maria Elena Gomez
Contract Specialist II, Hidalgo County Purchasing Department
2802 S. Business Highway 281
Edinburg, TX 78539

Re: Updated Architectural / Engineering Proposal for
Hidalgo County Precinct 3
Upgrades to Various County Parks

Ms. Gomez,

We would like to thank you for setting up a meeting with Precinct 3 and reviewing the scope of work for the various parks.

Attached is a revised architectural/engineering proposal. Items that were removed from scope of work are indicated as strikethrough text.

We understand the scope of work, as described on attachments, with an estimated project budget of \$1,717,094.78, to consist of the following:

- Upgrades to Abram Park and Pavilion
- Upgrades to Los Ebanos Pavilion
- Upgrades to Los Ebanos Park
- Upgrades to Katarina Park (North)
- Upgrades to Katarina Park (South)
- Upgrades to Veterans Pavilion

No work will be performed on the following parks:

- Messinas Pavilion
- Anzalduas Park

The following cost/work is to be covered/performed by Precinct 3:

- Geotechnical Soil Testing
- Advertisement Costs
- Offsite Utilities (if required)
- Asbestos Abatement (if required)
- Construction Material Testing
- Civil engineering consulting*
- Surveying or Subdivision Plats

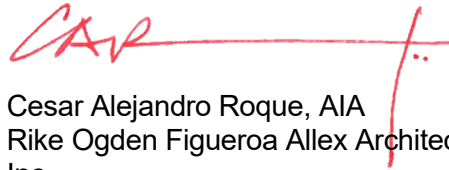
*At your preference, we can include civil engineering consulting at a fee of 8% of actual civil construction cost (determined by final project construction cost).

We propose a fee of 8% of actual project construction (included as soft costs in the estimated project budget above).

We estimate to perform design and construction documents **three months** after contractual agreement; an estimated time of **two months** for bidding and negotiations and an estimated time **six months** for construction.

We look forward to working with you. Please feel free to call me should you have any questions. We are readily available to assist you.

Respectfully,

A handwritten signature in red ink, appearing to read 'CAR', followed by a horizontal line and a vertical line intersecting at the end.

Cesar Alejandro Roque, AIA
Rike Ogden Figueroa Allex Architects,
Inc.

**Hidalgo County - Precinct 3
Upgrade to Various County Parks
Schematic Design Probable Cost**

Abram Park and Pavilion				
	sq. ft.	X	unit cost	Total
Scope of Work				
Update BBQ rental area				
Paint (To be an Alternate)	2,600	\$	6.00 \$	15,600.00
Roof upgrade	2,600	\$	12.00 \$	31,200.00
Demo/Clean asphalt area (To be an Alternate)	16,700	\$	1.00 \$	16,700.00
Update sitewalks (To be an Alternate)	500 l.f.	\$	15.00 \$	7,500.00
Update walking trails	9,000	\$	15.00 \$	135,000.00
Update picnic areas				
Picnic area 1	200	\$	50.00 \$	10,000.00
Picnic area 2	200	\$	50.00 \$	10,000.00
Picnic area 3	200	\$	50.00 \$	10,000.00
~~Picnic area 4 (No work)~~		\$	- \$	-
~~Picnic area 5 (No work)~~		\$	- \$	-
Update existing restrooms	400	\$	300.00 \$	120,000.00
Update parking and stripping (To be an Alternate)	11,800	\$	7.00 \$	82,600.00
~~Update score keeper box/concession~~	-	\$	- \$	-
New bleachers	Allowance	\$	10,000.00 \$	10,000.00
Sub-total Construction Cost			\$	448,600.00
Contingency Allowance			\$	13,458.00
Total Construction Probable Cost			\$	462,058.00
Los Ebanos Pavilion				
	sq. ft.	X	unit cost	Total
Scope of Work				
Site and Amenities				
Add covered picnic shelter	Allowance	\$	20,000.00 \$	20,000.00
Main Building				
Repaint interior and exterior	5,000	\$	7.50 \$	37,500.00
Restrooms				
Upgrade to code/ADA compliance	500	\$	200.00 \$	100,000.00
Paint/Repair	500	\$	10.00 \$	5,000.00
Sub-total Construction Cost			\$	162,500.00
Contingency Allowance			\$	4,875.00
Total Construction Probable Cost			\$	167,375.00

**Hidalgo County - Precinct 3
Upgrade to Various County Parks
Schematic Design Probable Cost**

Los Ebanos Park					
	sq. ft.	X	unit cost		Total
Scope of Work					
Site and Amenities					
Upgrade walking trail	7,800	l.f.	\$	6.00	\$ 46,800.00
Restrooms					
Update restrooms for ADA and security	400		\$	250.00	\$ 100,000.00
Add concession next to restrooms			\$	-	\$ -
~~Pavillion over basketball court (optional)~~			\$	-	\$ -
Sub-total Construction Cost					\$ 146,800.00
Contingency Allowance					\$ 4,404.00
Total Construction Probable Cost					\$ 151,204.00
Katarina Park (North)					
	sq. ft.	X	unit cost		Total
Scope of Work					
Site and Amenities					
Upgrade covered areas / Add benches					
Covered area 1	650		\$	16.00	\$ 10,400.00
~~Covered area 2~~			\$	-	\$ -
~~Covered area 3~~			\$	-	\$ -
Add basketball poles and board on slab	Allowance		\$	5,000.00	\$ 5,000.00
Pavilion over basketball court (optional)	5,000		\$	35.00	\$ 175,000.00
~~Update asphalt walking trail~~		l.f.	\$	-	\$ -
~~Re-seal asphalt parking/add stripping~~			\$	-	\$ -
Restrooms					
Add restrooms	1,000		\$	250.00	\$ 250,000.00
Sub-total Construction Cost					\$ 440,400.00
Contingency Allowance					\$ 13,212.00
Total Construction Probable Cost					\$ 453,612.00

**Hidalgo County - Precinct 3
Upgrade to Various County Parks
Schematic Design Probable Cost**

Katarina Park (South)					
	sq. ft.	X	unit cost		Total
Scope of Work					
Site and Amenities					
Paint covered areas					
	650	\$	8.00	\$	5,200.00
	650	\$	8.00	\$	5,200.00
Restrooms					
Update restrooms for ADA and security	600	\$	250.00	\$	150,000.00
Sub-total Construction Cost				\$	160,400.00
Contingency Allowance				\$	4,812.00
Total Construction Probable Cost				\$	165,212.00
Veterans Pavilion					
	sq. ft.	X	unit cost		Total
Scope of Work					
Site and Amenities					
None					
Main Building					
Paint interior and exterior of building	8,700	\$	7.50	\$	65,250.00
Upgrade restrooms to code/ADA	600	\$	80.00	\$	48,000.00
BBQ Building					
Paint interior and exterior of building	3,200	\$	7.50	\$	24,000.00
Sub-total Construction Cost				\$	137,250.00
Contingency Allowance				\$	4,117.50
Total Construction Probable Cost				\$	141,367.50
Messinas Pavilion					
	sq. ft.	X	unit cost		Total
Scope of Work					
No work.	0	\$	-	\$	-
				\$	-
Anzalduas Park					
	sq. ft.	X	unit cost		Total
Scope of Work					
No work.	0	\$	-	\$	-
				\$	-

Overall Project Costs

Abram Park and Pavillion	\$	462,058.00
Los Ebanos Pavillion	\$	167,375.00
Los Ebanos Park	\$	151,204.00
Katarina Park - North	\$	453,612.00
Katarina Park - South	\$	165,212.00
Veterans Park	\$	141,367.50
Messinas Pavillion	\$	-
Anzalduanas Park	\$	-

Project Total Construction Probable Cost	\$	1,540,828.50
---	-----------	---------------------

Soft Costs

A/E FEES	\$	123,266.28
ADA Review	\$	12,000.00
Civil Consultant (as reimbursement)	\$	36,000.00
Approximately Printing Costs	\$	5,000.00

Total Probable Soft Costs	\$	176,266.28
----------------------------------	-----------	-------------------

Total Probable Project Cost	\$	1,717,094.78
------------------------------------	-----------	---------------------

COSTS NOT INCLUDED:

Legal and land auditing
 Surveying or Subdivision Plat
 Geotechnical Soil Testing
 Advertisement Costs
 Offsite Utilities
 Asbestos Specifications & Monitoring
 Construction Material Testing

IMPORTANT NOTE: The Statement of Probable costs (Estimates) shown above are "Ball Park" figures and cannot be relied upon as statements of actual final costs. Actual costs can only be determined after bids for the construction work are received. Estimates do not account for COVID-19 related issues or price increases of materials, labor, logistics or long lead times of materials that may affect the overall cost and the time of completion of the project. Estimated square footage, cost/sf and A/E fees are subject to adjustment upon scope of changes approved by the Owner.

Hourly Rate Schedule:

1. Principals:\$200.00/Hr.
2. Architects, Engineers and Project Managers:.....\$180.00/Hr.
(other than principals)
3. Project Management/Construction Administration\$150.00/Hr.
4. Interns and Designers:.....\$125.00/Hr.
5. CADD - Computer Aided Design and Drafting:\$100.00/Hr.
6. Clerical:\$50.00/Hr.





Exhibit C

Insurance