



# AIA® Document B101® – 2017

## Standard Form of Agreement Between Owner and Architect

**AGREEMENT** made as of the Twenty-eighth day of May in the year Two Thousand Twenty-Four  
*(In words, indicate day, month and year.)*

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

Hidalgo County  
100 E Cano Street  
Edinburg, TX 78539

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

Milnet Architectural Services, PLLC  
608 S. 12<sup>th</sup> ST.  
McAllen TX 78501  
(956) 688-5656

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

Architectural Services for Hidalgo County Remote Operation Centers

The Owner and Architect agree as follows.

After the building scan, programming, building diagrams, Probable cost of work estimate and project schedule deliverables are approved, the Architect will proceed with the design, construction documents services, and the Subsequent bidding and construction administration services as described in Article 3.

**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.

Init.

**User Notes:**

(1129923115)

**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.)*

To be determined as a Supplemental Services of the project. Supplement Services as defined in Article 4 of this which the program will be developed.

**§ 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.)*

**§ 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.)*

Contractor's Bid TBD

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

**Init.**

AIA Document B101 – 2017. Copyright © 1974, 1978, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 09:44:21 ET on 05/24/2024 under Order No.2114330852 which expires on 06/19/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

**User Notes:**

(1129923115)

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

§ 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.)*

N/A

§ 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.)*

Ricardo Saldana  
Emergency Management Coordinator  
Hidalgo County  
123 W. Mahl  
Edinburg, Texas 78539  
956-318-2615  
ricardo.saldana@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.)*

Ignacio Amezcua [Purchasing Director] 2802 S. Bus. Hwy 281 Edinburg, Texas 78539

Init.

AIA Document B101 – 2017. Copyright © 1974, 1978, 1987, 1997, 2007 and 2017. All rights reserved. “The American Institute of Architects,” “American Institute of Architects,” “AIA,” the AIA Logo, and “AIA Contract Documents” are trademarks of The American Institute of Architects. This document was produced at 09:44:21 ET on 05/24/2024 under Order No.2114330852 which expires on 06/19/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1129923115)

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

.1 Geotechnical Engineer:

.2 Civil Engineer:

.3 Other, if any:  
*(List any other consultants and contractors retained by the Owner.)*

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.)*

Rodolfo R. Molina, AIA  
President  
Milnet Architectural Services, PLLC  
608 S. 12<sup>th</sup> ST  
McAllen, TX 78501  
rudym@milnet-archservices.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:

.2 Mechanical Engineer:

Init.

/

.3 Electrical Engineer:

.4 Plumbing Engineer

§ 1.1.11.2 Consultants retained under Supplemental Services:

TBD

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

TBD

§ 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.

Init.

AIA Document B101 – 2017. Copyright © 1974, 1978, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 09:44:21 ET on 05/24/2024 under Order No.2114330852 which expires on 06/19/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1129923115)

§ 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 competent architects practicing under the same or similar circumstances and professional license and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent architect. (Referred to herein as the "Standard of Care").

§ 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 act in accordance with the Standard of Care.

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. For 2.5.1 through 2.5.3, 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 Dollars (\$ 1,000,000.00) for each occurrence and Two Million Dollars (\$ 2,000,000.00) in the aggregate for bodily injury and property damage. Policy shall include (1) an endorsement naming the County,

§ 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 Dollars (\$ 1,000,000.00) each accident, One Million Dollars (\$ 1,000,000.00 ) each employee, and One Million Dollars (\$ 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 Dollars (\$ 1,000,000.00 ) per claim and Two Million Dollars (\$ 2,000,000.00 ) 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:

- § 3.1.4.1 Schedule Development and Monitoring;
- § 3.1.4.2 Programming (in coordination with Owner);
- § 3.1.4.3 (intentionally omitted);
- § 3.1.4.4 (intentionally omitted);
- § 3.1.4.5 On-Site Project Representation;
- § 3.1.4.6 Record Drawings (in coordination with Construction Manager);
- § 3.1.4.7 Structure Not Part of Contract
- § 3.1.4.8 Mechanical, Electrical and Plumbing Design are Not Part of Contract

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents 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 Construction Manager, any subcontractors and other parties as may need such data to perform their duties or responsibilities with respect to the Project.

Init.

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

§ 3.2 [Deleted]

§ 3.2.1 [Deleted]

§ 3.2.2 [Deleted]

§ 3.2.3 [Deleted]

§ 3.2.4 [Deleted]

§ 3.2.5 [Deleted]

§ 3.2.5.1 [Deleted]

§ 3.2.5.2 [Deleted]

§ 3.2.6 [Deleted]

§ 3.2.7 [Deleted]

§ 3.3 [Deleted]

§ 3.3.1 [Deleted]

§ 3.3.2 [Deleted]

§ 3.3.3 [Deleted]

#### § 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, to the extent required by the Standard of Care, 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 it observes 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 observed by Architect 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, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. 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 design services to assist with the resolution of major defects or deficiencies in the Contractor's work deemed non-conforming to the Contract Documents. It is understood that the Contractor is responsible for remediating its non-conforming work and the Architect shall only provide reasonable design services to Owner to facilitate the remediation. Any additional design work or site visits in connection with the remediation shall be an Additional Service.

### § 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

Init.

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, Construction Manager 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, Construction Manager or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the 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.

Init.

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 due to the fault of Architect shall be included in the compensation under Article 11.1 and at no additional cost to the Owner.

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

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

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

### **§ 3.6.6 Project Completion**

**§ 3.6.6.1** The Architect shall:

- .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 site visit of the Project during the eleventh (11<sup>th</sup>) 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 visit and shall be responsible for reporting the status correction of said deficiencies within thirty (30) working days of the site visit.

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

**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.)*

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

Init.

<b>Supplemental Services</b>	<b>Responsibility</b> <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.25 Fast-track design services	Not Provided
§ 4.1.1.26 Multiple bid packages	Not Provided
§ 4.1.1.27 Historic preservation	Not Provided
§ 4.1.1.28 Furniture, furnishings, and equipment design	Owner
§ 4.1.1.29 Other services provided by specialty Consultants	Not Provided
§ 4.1.1.30 Other Supplemental Services	Not Provided

**§ 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.)*

TBD

§ 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.)*

TBD

§ 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;

Init.

- .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 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.

§ 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 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Two (2) visits to the site by the Architect during construction
- .3 Two (2) 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 Two (2) inspections for any portion of the Work to determine final completion.

§ 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 six (6) 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 during construction and made known by the Contractor and will promptly furnish the Owner with one complete set of reproducible record prints. All such reproductions shall be property of the Owner who may use them without Architect's permission for any proper purpose related to the Project, including, but not limited to additions to or completion of the Project. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

**§ 7.3** 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.

*(Paragraph deleted)*

**§ 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.

Init.

AIA Document B101 – 2017. Copyright © 1974, 1978, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 09:44:21 ET on 05/24/2024 under Order No.2114330852 which expires on 06/19/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

**User Notes:**

(1129923115)

§ 8.1.3 The Architect and Owner waive 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

Init.

AIA Document B101 – 2017. Copyright © 1974, 1978, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 09:44:21 ET on 05/24/2024 under Order No.2114330852 which expires on 06/19/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1129923115)

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 without cause for more than 90 cumulative 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.

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

Init.

AIA Document B101 – 2017. Copyright © 1974, 1978, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 09:44:21 ET on 05/24/2024 under Order No.2114330852 which expires on 06/19/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1129923115)

§ 10.7 The Architect shall have the right, subject to obtaining Owner's prior written consent which shall not be unreasonably withheld, 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)*

Architect shall be paid 7% of the Contractor's final awarded bid amount

§ 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.)*

§ 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:

Init.

AIA Document B101 – 2017. Copyright © 1974, 1978, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 09:44:21 ET on 05/24/2024 under Order No.2114330852 which expires on 06/19/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1129923115)

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

Compensation will be based on the contract rate schedule included under 11.7

§ 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 percent ( %), 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	Ten	percent (	10	%)
Design Developments Phase	Twenty - Five	percent (	25	%)
Construction Documents Phase	Forty	percent (	40	%)
Procurement Phase	Five	percent (	5	%)
Construction Phase	Twenty	percent (	20	%)
<hr/>				
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  
(Row deleted)

Milnet Architectural Services, PLLC	
Principal Architect	\$200.00
Project Architect	\$150.00
Project Manager	\$125.00
Intern Architect I	\$100.00
Intern Architect II	\$90.00
Intern Architect III	\$85.00
Technician	\$80.00
Administrative Assistant	\$55.00

§ 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;

Init.

- .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 [Deleted]
- .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 [Deleted]
- .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 ( \$ ) 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 ( \$ ) 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.)*

Init.

AIA Document B101 – 2017. Copyright © 1974, 1978, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 09:44:21 ET on 05/24/2024 under Order No.2114330852 which expires on 06/19/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1129923115)

## § 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 contracted 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 under a contract with the architect 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

Init.

AIA Document B101 – 2017. Copyright © 1974, 1978, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 09:44:21 ET on 05/24/2024 under Order No.2114330852 which expires on 06/19/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(1129923115)

§ 12.2.1 Prior to the commencement of construction, Architect, to the extent required by the Standard of Care, shall certify in writing to Owner that the Drawings and Specifications and all drawings and applicable improvements are sufficient to build the Project and 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 [Deleted]

§ 12.2.3 [Deleted]

§ 12.2.4 [Deleted]

§ 12.2.5 [Deleted]

§ 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 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 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 [Deleted]

§ 12.2.8 [Deleted]

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

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

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

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

Init.

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

§ 12.3 In the event of a conflict between the provisions of this Article 12, and other provisions in this AIA 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.)*

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

AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:  
*(Insert the date of the E204-2017 incorporated into this agreement.)*

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 Fixed Fee Rate Schedule)
  - Insurance Certificates

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

**OWNER** *(Signature)*

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

**ARCHITECT** *(Signature)*

Rodolfo R. Molina, AIA President  
*(Printed name, title, and license number, if required)*

**APPROVED AS TO FORM**  
Office of the Hidalgo County  
Criminal District Attorney,  
Toribio "Terry" Palacios.

**ATTEST**

---

Michelle Lopez, Assistant District Attorney

---

Arturo Guajardo, Jr., County Clerk



Init.

/

AIA Document B101 – 2017. Copyright © 1974, 1978, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 09:44:21 ET on 05/24/2024 under Order No.2114330852 which expires on 06/19/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail [docinfo@aiacontracts.com](mailto:docinfo@aiacontracts.com).

**User Notes:**

(1129923115)

# **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 09:44:21 ET on 05/24/2024.

## **PAGE 1**

**AGREEMENT** made as of the Twenty-eighth day of May in the year Two Thousand Twenty-Four

...

Hidalgo County  
100 E Cano Street  
Edinburg, TX 78539

~~and~~ And the Architect:

...

Milnet Architectural Services, PLLC  
608 S. 12<sup>th</sup> ST.  
McAllen TX 78501  
(956) 688-5656

...

Architectural Services for Hidalgo County Remote Operation Centers

The Owner and Architect agree as follows.

After the building scan, programming, building diagrams,  
Probable cost of work estimate and project schedule deliverables are approved, the  
Architect will proceed with the design, construction documents services, and the  
Subsequent bidding and construction administration services as described in Article 3.

## **PAGE 2**

To be determined as a Supplemental Services of the project. Supplement Services as defined in Article 4 of this which  
the program will be developed.

...

Contractor's Bid TBD

**§ 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 determine at a later date by mutual written agreement

...

To be determine at a later date by mutual written agreement

...

To be determine at a later date by mutual written agreement

...

To be determine at a later date by mutual written agreement

...

N/A

...

Ricardo Saldana  
Emergency Management Coordinator  
Hidalgo County  
123 W. Mahl  
Edinburg, Texas 78539  
956-318-2615  
ricardo.saldana@co.hidalgo.tx.us

...

Ignacio Amezcua [Purchasing Director] 2802 S. Bus. Hwy 281 Edinburg, Texas 78539  
Oscar Villarreal [Director for Facilities Management] 3100 South Business Highway 281 Edinburg, Texas 78539

**PAGE 4**

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

...

Rodolfo R. Molina, AIA  
President  
Milnet Architectural Services, PLLC  
608 S. 12<sup>th</sup> ST  
McAllen, TX 78501  
rudym@milnet-archservices.com

**PAGE 5**

.4 Plumbing Engineer

TBD

...

TBD

**§ 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.

**PAGE 6**

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

...

**§ 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 act in accordance with the Standard of Care.

**§ 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 2.5.3, 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 (\$ —) for each occurrence and (\$ —) One Million Dollars (\$ 1,000,000.00) for each occurrence and Two Million Dollars (\$ 2,000,000.00) in the aggregate for bodily injury and property damage. Policy shall include (1) an endorsement naming the County,~~

§ 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.

...

§ 2.5.5 Employers' Liability with policy limits not less than ~~(\$ ) each accident, (\$ ) each employee, and (\$ One Million Dollars (\$ 1,000,000.00) each accident, One Million Dollars (\$ 1,000,000.00 ) each employee, and One Million Dollars (\$ 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 Two Million Dollars (\$ 2,000,000.00) per claim and Two Million Dollars (\$ 2,000,000.00) 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:

- § 3.1.4.1 ~~Schedule Development and Monitoring;~~
- § 3.1.4.2 ~~Programming (in coordination with Owner);~~
- § 3.1.4.3 ~~(intentionally omitted);~~
- § 3.1.4.4 ~~(intentionally omitted);~~
- § 3.1.4.5 ~~On-Site Project Representation;~~
- § 3.1.4.6 ~~Record Drawings (in coordination with Construction Manager);~~
- § 3.1.4.7 ~~Structure Not Part of Contract~~
- § 3.1.4.8 ~~Mechanical, Electrical and Plumbing Design are Not Part of Contract~~

...

**§ 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 Construction Manager, any subcontractors and other parties as may need such data to perform their duties or responsibilities with respect to the Project.

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

**§ 3.2 Schematic Design Phase Services**~~[Deleted]~~

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

~~[Deleted]~~

§ 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.~~[Deleted]~~

§ 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 regarding the requirements of the Project.~~[Deleted]~~

§ 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.

~~[Deleted]~~

§ 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.~~[Deleted]~~

§ 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.

~~[Deleted]~~

§ 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.~~[Deleted]~~

§ 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.~~[Deleted]~~

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

**§ 3.3 Design Development Phase Services**~~[Deleted]~~

§ 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, their quality levels.~~[Deleted]~~

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

~~§ 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. **[Deleted]**~~

PAGE 8

~~§ 3.4.2 The Architect shall shall, to the extent required by the Standard of Care, 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 it observes 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 observed by Architect 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.

...

§ 3.6.2.6 The Architect shall be responsible for providing design services to assist with the resolution of major defects or deficiencies in the Contractor's work deemed non-conforming to the Contract Documents. It is understood that the Contractor is responsible for remediating its non-conforming work and the Architect shall only provide reasonable design services to Owner to facilitate the remediation. Any additional design work or site visits in connection with the remediation shall be an Additional Service.

~~§ 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 Certificates for Payment to Contractor~~

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, Construction Manager 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, Construction Manager or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the 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.

...

**§ 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~~ 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 due to the fault of Architect shall be included in the compensation under Article 11.1 and at no additional cost to the Owner.

**PAGE 12**

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

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

...

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

**§ 3.6.6.6** The Architect shall be responsible for a site visit of the Project during the eleventh (11<sup>th</sup>) 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 visit and shall be responsible for reporting the status correction of said deficiencies within thirty (30) working days of the site visit.

**§ 3.6.6.7 Warranty Phase-** The Architect shall report building deficiencies to the Owner and Construction Manager, if any, for a period of one (1) year from the date of Substantial Completion. Additionally, the Architect shall monitor the progress of the reported corrections and furnish the Owner with written notification of completed corrections. The one-year period shall be extended to portions of the Work first performed after Substantial Completion by the period

of time between Substantial Completion and the actual performance of the Work. The obligation under this Section 3.6.6.7 shall survive the acceptance of the Work under the Construction Contract for one (1) year after furnishing the Owner with written notification of completed corrections.

PAGE 13

§ 4.1.1.1	Programming	<u>Architect</u>
§ 4.1.1.2	Multiple preliminary designs	<u>Architect</u>
§ 4.1.1.3	Measured drawings	<u>Architect</u>
§ 4.1.1.4	Existing facilities surveys	<u>Architect</u>
§ 4.1.1.5	Site evaluation and planning	<u>Not Provided</u>
§ 4.1.1.6	Building Information Model management responsibilities	<u>Architect</u>
§ 4.1.1.7	Development of Building Information Models for post construction use	<u>Not Provided</u>
§ 4.1.1.8	Civil engineering	<u>To Provided by Owner</u>
§ 4.1.1.9	Landscape design	<u>Not Provided</u>
§ 4.1.1.10	Architectural interior design	<u>Architect</u>
§ 4.1.1.11	Value analysis	<u>Not Provided</u>
§ 4.1.1.12	Detailed cost estimating beyond that required in Section 6.3	<u>Architect</u>
§ 4.1.1.13	On-site project representation	<u>Owner</u>
§ 4.1.1.14	Conformed documents for construction	<u>Not Provided</u>
§ 4.1.1.15	As-designed record drawings	<u>Architect</u>
§ 4.1.1.16	As-constructed record drawings	<u>Architect/Contractor</u>
§ 4.1.1.17	Post-occupancy evaluation	<u>Not Provided</u>
§ 4.1.1.18	Facility support services	<u>Not Provided</u>
§ 4.1.1.19	Tenant-related services	<u>Not Provided</u>
§ 4.1.1.20	Architect's coordination of the Owner's consultants	<u>Architect</u>
§ 4.1.1.21	Telecommunications/data design	<u>Owner</u>
§ 4.1.1.22	Security evaluation and planning	<u>Not Provided</u>
§ 4.1.1.23	Commissioning	<u>Not Provided</u>
§ 4.1.1.24	Sustainable Project Services pursuant to Section 4.1.3	<u>Not Provided</u>
§ 4.1.1.25	Fast-track design services	<u>Not Provided</u>
§ 4.1.1.26	Multiple bid packages	<u>Not Provided</u>
§ 4.1.1.27	Historic preservation	<u>Not Provided</u>
§ 4.1.1.28	Furniture, furnishings, and equipment design	<u>Owner</u>
§ 4.1.1.29	Other services provided by specialty Consultants	<u>Not Provided</u>
§ 4.1.1.30	Other Supplemental Services	<u>Not Provided</u>

PAGE 14

TBD

...

TBD

PAGE 15

- .1 ~~(→)Two (2)~~ reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 ~~(→)Two (2)~~ visits to the site by the Architect during construction
- .3 ~~(→)Two (2)~~ 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 ~~(→)Two (2)~~ inspections for any portion of the Work to determine final completion.

§ 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 ~~(→)six (6)~~ 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 18**

§ 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 during construction and made known by the Contractor and will promptly furnish the Owner with one complete set of reproducible record prints. All such reproductions shall be property of the Owner who may use them without Architect's permission for any proper purpose related to the Project, including, but not limited to additions to or completion of the Project. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 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.~~

~~§ 7.3.1-[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]~~

...

~~§ 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.~~

~~PAGE 19~~

~~§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual-waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 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.~~

...

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.

PAGE 20

~~§ 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. 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 without cause for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.~~

...

§ 9.6 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

...

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

§ 10.7 The Architect shall have the right-right, subject to obtaining Owner's prior written consent which shall not be unreasonably withheld, 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 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.

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.

...

Architect shall be paid 7% of the Contractor's final awarded bid amount

**PAGE 22**

Compensation will be based on the contract rate schedule included under 11.7

...

Schematic Design Phase	<u>Ten</u>	percent (	<u>10</u>	%)
Design Development Phase	<u>Twenty - Five</u>	percent (	<u>25</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>	%)
<hr/>				
Total Basic Compensation	<del>one</del> <u>One</u>	hundred percent (	<u>100</u>	%)

...

...

See hourly rates provided by Architect

<b>Employee or Category</b>	<b>Rate (\$0.00)</b>
<u>Milnet Architectural Services, PLLC</u>	
<u>Principal Architect</u>	<u>\$200.00</u>
<u>Project Architect</u>	<u>\$150.00</u>
<u>Project Manager</u>	<u>\$125.00</u>
<u>Intern Architect I</u>	<u>\$100.00</u>
<u>Intern Architect II</u>	<u>\$90.00</u>
<u>Intern Architect III</u>	<u>\$85.00</u>
<u>Technician</u>	<u>\$80.00</u>
<u>Administrative Assistant</u>	<u>\$55.00</u>

...

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

**PAGE 23**

.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;~~ ~~[Deleted]~~

...

.10 ~~Site office expenses;~~ ~~[Deleted]~~

.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]**

...

§ 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).

PAGE 24

### **§ 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 contracted 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 under a contract with the architect 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 Prior to the commencement of construction, Architect, to the extent required by the Standard of Care, shall certify in writing to Owner that the Drawings and Specifications and all drawings and applicable improvements are sufficient to build the Project and 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 [Deleted]

§ 12.2.3 [Deleted]

§ 12.2.4 [Deleted]

§ 12.2.5 [Deleted]

§ 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 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 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 [Deleted]

§ 12.2.8 [Deleted]

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

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

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

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

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

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

PAGE 26

- .1 AIA Document B101™–2017, Standard Form Agreement ~~Between Owner and Architect~~ 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:

...

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

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

...

Hon. Richard F. Cortez County Judge

Rodolfo R. Molina, AIA President

...

**APPROVED AS TO FORM**

**ATTEST**

Office of the Hidalgo County  
Criminal District Attorney,  
Toribio "Terry" Palacios.

XXXXX, Assistant District Attorney

Arturo Guajardo, Jr., County Clerk



# Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 09:44:21 ET on 05/24/2024 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, 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 MAY 28<sup>TH</sup>, 2024**

**Agenda Item No. 95295**

**Executive Office:** \_\_\_\_\_

**VENDOR:**  
Milnet Architectural Services, PLLC

**COUNTY:**  
COUNTY OF HIDALGO

\_\_\_\_\_  
Rodolfo R. Molina

\_\_\_\_\_  
Hon. Richard F. Cortez, County Judge

**APPROVED AS TO FORM**  
Office of the Criminal District Attorney,  
Toribio "Terry" Palacios

**ATTEST:**

\_\_\_\_\_  
Michelle Lopez, Assistant District Attorney

\_\_\_\_\_  
Arturo Guajardo, Jr., County Clerk

**ATTACHMENTS:**  
(If Applicable)

**SUPPLEMENTAL SIGNATURES:**  
(If Applicable)



## **EXHIBIT A**

---

# **REQUIREMENTS/COUNTY'S REQUEST FOR QUALIFICATIONS**



**HIDALGO COUNTY  
PROCUREMENT PACKET**

**REQUEST FOR QUALIFICATION**

**RFQ No.: 24-0002-02-23-10**

**PROFESSIONAL SERVICES POOLS -  
ARCHITECTURAL SERVICES**

**Acceptance Due Date: February 23, 2024 at 3:00 pm**

Ignacio Amezcua MBA, CTCM, CTCD  
Hidalgo County Purchasing Director

**Project Contact Information:**

**Victor Borrego**, Contract Specialist III  
(956) 318-2629 Ext: 4877  
victor.borrego@co.hidalgo.tx.us

Hidalgo County  
REQUEST FOR QUALIFICATION  
Professional Services Pools - Architectural Services

**TABLE OF CONTENTS**

I. INVITATION LETTER.....

II. SUBMISSION DETAILS .....

III. PROCUREMENT OVERVIEW .....

IV. LEGAL NOTICE .....

V. EVALUATION PROCEDURE .....

VI. ELECTRONIC FIRM SUBMISSION DOCUMENTS .....

Attachments:

- A - Requirements - Specifications
- B - Areas of Specialization - Architectural Services
- C - Insurance Requirements (Professional Services)
- D - COI Questionnaire
- E - Vendor Acknowledgment and HUB Declaration
- F - Certification Regarding Debarment
- G - Title VI Appendices
- H - 2 CFR 200
- I - FHWA 1273
- J - Proposer's Affidavit
- K - Reference Form

# 1. INVITATION LETTER

## 1.1. Summary

RELEASE DATE: Saturday, February 10, 2024

**RE: HIDALGO COUNTY - REQUEST FOR QUALIFICATIONS**

**RFQ NO.:24-0002-02-23-10** –Professional Services Pools - Architectural Services

Dear Prospect Offeror:

Hidalgo County Purchasing Department welcomes and appreciates your interest and participation. For your review and consideration, enclosed 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. All times referenced in this procurement packet are Central Standard Time – CST.

If assistance is required, please do not hesitate to call the Purchasing Department at (956) 318-2626.

Sincerely,

Ignacio Amezcua, MBA, CTCM, CTCD

Hidalgo County Purchasing Director

## 1.2. Contact Information

### **Project Contact:**

#### **Hector Garcia**

Division Manager II - Construction

2802 S. Business Highway 281

Edinburg, TX 78539

Email: [hector.garcia1@co.hidalgo.tx.us](mailto:hector.garcia1@co.hidalgo.tx.us)

Phone:  [\(956\) 318-2626](tel:(956)318-2626) Ext: 4857

### **Procurement Contact:**

#### **Victor Borrego**

Contract Specialist III

2812 S. Bus Hwy 281

Edinburg, TX 78539

Email: [victor.borrego@co.hidalgo.tx.us](mailto:victor.borrego@co.hidalgo.tx.us)

Phone:  [\(956\) 318-2629](tel:(956)318-2629) Ext: 4877

### **Department:**

Hidalgo County

## 1.3. Timeline

<b>Release Project Date</b>	February 10, 2024
-----------------------------	-------------------

<p><b>Question Submission Deadline</b></p>	<p>February 13, 2024, 5:00pm</p>
<p><b>Question Response Deadline</b></p>	<p>February 15, 2024, 5:00pm</p>
<p><b>Qualification Submission Deadline</b></p>	<p>February 23, 2024, 3:00pm          (All times referenced in this procurement packet are Central Standard Time –CST)</p> <p>The proposal opening is open to the public. Proposal opening participants may attend the proposal opening in person at the Hidalgo County Purchasing Department (or designated location) or via a live stream (link below) or by calling in on the day of the event. Please be advised, public attendance at any in-person Proposal opening may be limited due to capacity and will be on a first-come-first-serve basis.</p> <p>Live stream:  <a href="https://hidalgocounty.zoom.us/j/96464676754?pwd=K1hiY3YxN0xPem5pd2xZazYzWHF4UT09">https://hidalgocounty.zoom.us/j/96464676754?pwd=K1hiY3YxN0xPem5pd2xZazYzWHF4UT09</a></p> <p>Meeting ID: 964 6467 6754</p> <p>Passcode: 545411</p> <p>Dial by your location: +1 346 248 7799 US (Houston)</p> <p>To find your local number:  <a href="https://hidalgocounty.zoom.us/u/abObUBYixl">https://hidalgocounty.zoom.us/u/abObUBYixl</a></p> <p>Join by SIP: <a href="mailto:96464676754@zoomcrc.com">96464676754@zoomcrc.com</a></p>

## 2. SUBMISSION DETAILS

### 2.1. SUBMISSION OPTIONS & REQUIREMENTS

Respondents have two (2) options for submitting a response. Respondents shall submit their response using one (1) of the following methods (**DO NOT** duplicate submittals by submitting both an electronic and hard copy response. Respondents shall select one only (1) method to respond):

- A. Submit responses electronically via the PORTAL: <https://procurement.opengov.com/portal/co-hidalgo-tx> on or before Friday, February 23, 2024, at 3:00 pm. **OR;**
- B. Submit one (1) hard copy and two (2) USBs in original PDF format via personal hand-delivery or delivery service on or Friday, February 23, 2024, at 3:00 pm.

Any Proposal received after this deadline will not be accepted and will be returned unopened to the sender.

### 2.2. HAND DELIVERED SUBMISSION

When hand delivering the packet, Proposer should make sure that the package is stamped with the date and time received by the Hidalgo County Purchasing staff.

#### **DELIVER TO:**

##### US Postal Mail Address:

- Ignacio Amezcua, MBA, CTCM, CTCD, Purchasing Director
- ATTN: Victor Borrego
- Hidalgo County Purchasing Department
- Administration Building
- 2812 S. Business Hwy 281
- Edinburg, Texas 78539

##### Physical Address:

- Ignacio Amezcua, MBA, CTCM, CTCD, Purchasing Director
- ATTN: Victor Borrego
- Hidalgo County Purchasing Department
- Administration Building
- 2802 S. Business Hwy. 281
- Edinburg, Texas 78539

#### **FIRM 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 one-sided on 8 ½” by 11” paper.
- One (1) hard copy, marked “ORIGINAL” and two (2) USBs in PDF format. The original document must be submitted with a Cover Page containing the information listed in the Submission Outline/Checklist, under the Submission Cover Page.
- 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 firm’s name and the RFQ number. Responses that are not identified with the RFQ number on the outside, will be at risk of rejection.

### **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 within this solicitation. **For the hand delivery option, the solicitation packet can be found under the [#ATTACHMENTS](#) section:**

- A. Table of Contents
- B. Required Confirmations/Documents
  1. Legal Notice Declaration - **(Confirmation)**
  2. Areas of Specialization - **(Document)**
  3. Insurance Requirements
    - a. Proof of Insurance - **(Document)**
    - b. Insurance Requirement Acknowledgement - **(Confirmation)**
    - c. Project Requirements Acknowledgement - **(Confirmation)**
  4. Conflict of Interest Questionnaire
    - a. CIQ Form - Copy of County Clerk File with fee receipt (when applicable) - **(Document)**
  5. Vendor Acknowledgment and HUB Declaration
    - a. Vendor Acknowledgment - **(Confirmation)**
    - b. HUB Declaration - **(Document)**
  6. Certification Regarding Debarment
    - a. Signed Certification - **(Document)**
    - b. SAM.gov Registration Acknowledgement - **(Document)**

- c. Form 1295 - **(Document)**
- 7. Title VI Appendices
  - a. Title VI Appendices [A -E] - **(Confirmation)**
- 8. Required Contract Clauses For Contracts Under Federal Award
  - a. Byrd Anti-Lobbying Contract Clause - **(Document)**
  - b. 2 CFR 200 Certification - **(Document)**
- 9. FHWA 1273
  - a. FHWA 1273 - **(Confirmation)**
- 10. Proposer's Affidavit
  - a. Proposer's Affidavit - **(Document)**
- 11. References - **(Document)**
- 12. Addenda (when applicable; see Addenda under Legal Notice)
- 13. Company/Firm Response
  - a. Cover Sheet
    - i. Company Name, Company Address, Company Phone Number
    - ii. Project Name: Professional Services Pools - Architectural Services
    - iii. Procurement Number: 24-0002-02-23-10
    - iv. Opening Date: Friday, February 23, 2024
    - v. Opening Time: 3:00 pm
  - b. Section I: Understanding of The Project
  - c. Section II: Firm Information
    - i. Firm History
    - ii. Personnel and Staffing
    - iii. Proof of Licenses and Certifications
  - d. Section III: Firm Experience and Qualifications
    - i. Competency
    - ii. Experience and Recent Projects
    - iii. References
  - e. Section IV: Scope of Services

- i. List of Services
  - ii. Narrative
- f. Section V: Miscellaneous

**(Confirmation) = A confirmation is required for this section.**

**(Document) = A document submission is required for this section.**

### 2.3. ELECTRONIC SUBMISSION

Hidalgo County Purchasing Department will only accept electronic responses that are submitted via the PORTAL: <https://procurement.opengov.com/portal/co-hidalgo-tx>. The COUNTY will NOT accept telegraphic, emailed, nor responses submitted via facsimile.

\*When submitting a response electronically, the firm will be required to complete all the sections found in this solicitation in order for the submission to be valid.

### 3. 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 solicitation. Further, the Respondent is responsible for providing any and all relevant information necessary to submit a response. Failure to do so will be at the Respondent's risk and may result in rejection of the response 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.

#### 3.1. INTRODUCTION

Hidalgo County (hereinafter referred to as "COUNTY") is seeking qualified firms interested in providing comprehensive professional services as part of our 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 Services Pools - Architectural Services, in accordance with the requirements attached hereto as "**Requirements/Specifications**". 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.

#### 3.2. Pre-Bid Meeting

If there will be a Pre-Bid meeting the information will be included in Section 1 – Invitation Letter/Timeline.

#### 3.3. 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.

#### 3.4. TERM OF POOL

The term of this pool shall be for a period of five (5) years commencing on the date approved by the Commissioners Court or as designated. 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.

### 3.5. SUBMISSION OPTIONS & REQUIREMENTS

Respondents have two (2) options for submitting a response and shall select only one (1) method to respond. Please see Section 2 – Submission Details above for submission options, procedures, and requirements. Any Proposal received after the provided deadline will not be accepted and will be returned unopened to the sender.

### 3.6. PROPOSAL OPENING STREAMING

Please find the proposal opening information included in Section 1 – Invitation Letter

### 3.7. HAND DELIVERED SUBMISSION

If Respondent chooses to hand deliver its submission, whether personally or via delivery service, it must follow the procedures and requirements set for in Section 2 – Submission Details above.

### 3.8. ELECTRONIC SUBMISSION

If Respondent chooses to submit its response electronically, it must follow the procedures and requirements set for in Section 2 – Submission Details above.

### 3.9. SIGNING OF SUBMISSION

In order to be considered, all submittals **must** be signed by an authorized representative of the firm. **For hardcopy submissions, please sign the original in blue ink and ensure the copy is clearly labeled. For electronic submissions, please ensure all appropriate certifications are marked.**

### 3.10. QUESTIONS AND ANSWERS

Questions must be submitted via the PORTAL'S Question and Answer Tab (Q&A) no later than Tuesday, February 13, 2024, at 5:00 pm. Responses to properly submitted questions will be published in the PORTAL and emailed to all planholders who are listed as a Follower in the PORTAL. Telephone inquiries will not be accepted.

### 3.11. RESTRICTIVE OR AMBIGUOUS REQUIREMENTS

It is the responsibility of the Proposer 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 request clarification of any requirements that are ambiguous. Any such protest or question regarding the requirements or proposal procedures must be received in writing via the PORTAL'S Q&A Tab by the deadline stated for Questions and Answers.

### 3.12. 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 Proposer 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.

### 3.13. WAIVING OF INFORMALITIES

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

### 3.14. 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.

## 4. 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. The Hidalgo County Purchasing Department webpage may be found at <https://www.hidalgocounty.us/143/Purchasing-Department>.

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.

### 4.1. 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.

### 4.2. 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.

### 4.3. 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 Acknowledgment"** 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.

### 4.4. 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 Following the solicitation in the PORTAL, and are listed as a “Follower” (planholder) in the PORTAL.

#### 4.5. 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.

#### 4.6. AWARD

Hidalgo County reserves the right to award this contract on the basis determined on the Procurement Overview, and when applicable, listed on "**Company/Firm Response**", 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.

#### 4.7. 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:

**4.7.1 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.

**4.7.2 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.

**4.7.3 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**". Responses submitted without the required bond or cashier's checks may be deemed unresponsive, thus disqualified from participation.

**4.7.4 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.

**4.7.5 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.

**4.7.6 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](http://www.sam.gov) with their response.

**4.7.7 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.

**4.7.8 Disclosure of Conflict of Interest.**

**4.7.8.1 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.

**4.7.8.2 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](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.

**4.7.8.3 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. "**Proposer's Affidavit**" must be included in the response.

**4.7.8.4 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.

**4.7.8.5 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, must be filed with the Hidalgo County Clerk, located inside the Hidalgo County Courthouse no later than the seventh business day after the date the person becomes aware of facts that require the statement to be filed. Hidalgo County Clerk contact information may be found at <https://www.hidalgocounty.us/161/County-Clerks-Office>. **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.

**4.7.8.6 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 "2 C.F.R. § 200".

**4.7.9. 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.

**4.7.10 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.

**4.7.11 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, [ignacio.amezcua@co.hidalgo.tx.us](mailto:ignacio.amezcua@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.

#### 4.8. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS (CONTINUED)

**4.8.1 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 "**HUB Declaration**".

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 sub-contractors 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.

**4.8.2 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.

**4.8.3 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).

**4.8.4 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.

**4.8.5 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. Offeror agrees to comply with Title VI as may be required. The Hidalgo County Title VI Nondiscrimination Plan may be found at <https://www.hidalgocounty.us/2071/Title-VINondiscrimination-Plan>.

## **4.9. CONTRACT OBLIGATION**

Before a contract becomes binding on Hidalgo County or the Offeror, it must be awarded by the Hidalgo County Commissioners Court, signed by the Hidalgo County Judge, funds for it must be certified by the

Hidalgo County Auditor, and an official Hidalgo County Purchase Order must be issued for it by the Hidalgo County Purchasing Department. 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.

#### 4.10. 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.

#### 4.11. 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.

#### 4.12. 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.

#### 4.13. COUNTY APPROVED HOLIDAYS

The Offeror is advised that official County business will not be conducted on approved County holidays. The link of approved holidays can be found on: <https://www.hidalgocounty.us/115/County-Holidays>.

#### 4.14. 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.

#### 4.15. 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.

**4.15.1 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.

**4.15.2 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 "**2 C.F.R. § 200**". It is the County's intention to comply with FEMA requirements; therefore, any conflict in terms should be resolved as such.

#### 4.16. 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.

#### 4.17. 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.

#### 4.18. 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.

#### 4.19. 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.**

#### 4.20. 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.

#### 4.21. 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 "**Insurance Requirements**"). Prior to award, Hidalgo County must be listed as a Certificate Holder to the policies.

#### 4.22. 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.

#### 4.23. 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 respondents "**Submission**". 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.

#### 4.24. 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.

#### 4.25. 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.

#### 4.26. MINIMUM STANDARDS FOR RESPONSIBLE PROSPECTIVE RESPONDENTS

With their submitted response, the Offeror must affirmatively demonstrate their responsibility as listed on "**Requirements/Specifications**". A prospective respondent, by submitting a response, represents to County that it meets the requirements listed. Respondent is required to advise the County of any change to information provided in its submitted response.

#### 4.27. 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.

#### 4.28. 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.

#### 4.29. 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.

#### 4.30. 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.

#### 4.31. 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 to this procurement packet and/or on the Purchase Order as a "Deliver To:" address.

#### 4.32. 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.

#### 4.33. PROCEDURES FOR VENDOR PROTEST

Any potential Offeror has the right to protest a solicitation packet or contract award. Details for these procedures can be found on our County website: <https://www.hidalgocounty.us/143/Purchasing-Department>. The Vendor also understands that an awarded contract may immediately become void if the County determines that a lack of compliance with applicable policies and/or statutes has occurred at any time, whether in the procurement process, or after award.

#### 4.34. PROCUREMENT PACKET FORM COMPLETION

When submitting procurement packet response, Respondents must follow the procedures and requirements provided within the procurement packet, including, but not limited to those found in the Invitation Letter, Submission Details and Procurement Overview. An authorized representative of the Offeror should complete all necessary response documentation. **Failure to complete required forms or provide required information and/or to follow procedures and/or requirements may be cause to reject the entire response.**

#### 4.35. PROCUREMENT PACKET SUBMISSION

**4.35.1** Offeror must submit all completed responses in accordance with the provisions, procedures and requirements provided within the procurement packet, including, but not limited to those found in the Invitation Letter, Submission Details and Procurement Overview by the date and time indicated therein. **Failure to follow packet submission requirements may be cause to reject the entire response. Late submissions will not be accepted for any reason.**

**4.35.2 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.

#### 4.36. 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 Acknowledgment**".

#### 4.37. 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 "**Company/Firm Response**". 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.

#### 4.38. 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.

#### 4.39. 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.

#### 4.40. REFERENCES

If applicable, unless otherwise indicated, 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. If Offeror has not had a project cancelled, then please indicate so.** 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**". 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.If Offeror has not had a project cancelled, then please indicate so.

#### 4.41. 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 procurement packet 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 according to the instructions contained within this procurement packet.

#### 4.42. 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.

#### 4.43. 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.

#### 4.44. 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.

#### 4.45. 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.

#### 4.46. TERM OF CONTRACTS

If the contract is intended to cover a specific time period, the term will be specified in the **Procurement Overview**. 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.

#### 4.47. 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.

#### 4.48. 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.

#### 4.49. 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.

#### 4.50. 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.

#### 4.51. 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.

#### 4.52. 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.

## **5. EVALUATION PROCEDURE**

**It is Hidalgo County's intent to comply with the requirements of Chapter 262 of the Texas Local Government Code and the Professional Services Procurement Act, Chapter 2254 of the Texas Government Code. It will select the most highly qualified provider of the professional service on the basis of demonstrated competence and qualifications and then attempt to negotiate with that provider a contract at a fair and reasonable price.**

### **POOL ACCEPTANCE**

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

### **AWARD PROTOCOL**

After inclusion into the respective professional service pool, a firm can be selected from the approved Pool for 1) an On-Call Agreement, or 2) a Project Specific Agreement; regardless of the option, once a project has been identified and it is determined that the services specific to this procurement packet 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 firm 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**".

- Professional qualifications and experience of the firm 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;
- Pricing;
- Experience with other clients of similar size to Hidalgo County and government entities;

- Firm'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 firm's proposal; and
- Overall quality of the firm's proposal.

Submission of a proposal implies the firm's acceptance of the evaluation criteria and the firm's recognition that subjective judgments must be made by the Evaluation Committee. Pricing will be taken into consideration AFTER evaluation as part of the process in compliance with Chapter 2254 of the Texas Government Code.

### **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 firms are cautioned not to make claims or statements it is not prepared to commit to contractually. Failure of the firm to meet such claims will result in a requirement that the firm provides resources necessary to meet submitted claims, without extending an additional cost to Hidalgo County.

Hidalgo County Purchasing Department may initiate discussions with selected firms; however, firms may not initiate discussions. Firms shall not contact any Hidalgo County personnel during the procurement process without the expressed permission from the Hidalgo County Purchasing Department. Hidalgo County Purchasing Department may disqualify any firm that 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 firm relating to this solicitation.

Selected firms 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 firm client sites may be conducted where the proposed solution can be demonstrated in a production environment. Proposals, firm presentations, and product/service evaluations may develop into negotiating sessions with the firm(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 the firm's representatives authorized to contractually obligate the firm with an offer. The negotiated contract includes a Best and Final Offer with the successful firm will be presented to Commissioners' Court for consideration and approval of the award of the contract. If the firm is unable to agree to contract terms and conditions, Hidalgo County reserves the right to cease negotiations with that firm and initiate negotiations with another firm.

## 6. ELECTRONIC FIRM SUBMISSION DOCUMENTS

\*Firms must complete this section if their submission will be electronic.

### 6.1. I confirm that I will be submitting my response electronically.\*

Please confirm and proceed with the electronic submission requirements.

Please confirm

\*Response required

### 6.2. LEGAL NOTICE DECLARATION\*

**TO:** Ignacio Amezcua, MBA, CTCM, CTCD, Purchasing Director

**ATTN:** Victor Borrego, Contract Specialist III

Hidalgo County Administration Building/Purchasing Department

2802 S. Business Hwy. 281

Edinburg, Texas 78539

**RE:** 24-0002-02-23-10 - Professional Services Pools - Architectural Services

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.

Please confirm

\*Response required

### 6.3. REQUIREMENTS/SPECIFICATIONS\*

Refer to "**Requirements/Specifications**" in the [#ATTACHMENTS](#) section. Confirm that you have read, understood, and agree with the "**Requirement/Specifications**".

Please confirm

\*Response required

### 6.4. AREAS OF SPECIALIZATION\*

Refer to "**Areas of Specialization**" in the [#ATTACHMENTS](#) section. Please download the fillable documents, complete, and upload.

\*Response required

### 6.5. PROOF OF INSURANCE\*

#### **Insurance Requirements**

#### **Professional Services**

#### **(i.e...Engineers, Architects, Appraisers & Surveyors)**

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 (below).**
- 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.

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

Please provide or upload your Certificate of Liability Insurance depending on your method of submission.

\*Response required

### 6.6. INSURANCE REQUIREMENT ACKNOWLEDGEMENT\*

I, an authorized representative for of my company, the company submitting this response, 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.

#### **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.

Please confirm

\*Response required

### 6.7. PROJECT REQUIREMENTS ACKNOWLEDGMENT\*

This is to certify that I, an authorized representative of my company, 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** (upload copies here) 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.

Please confirm

\*Response required

#### 6.8. CONFLICT OF INTEREST QUESTIONNAIRE\*

Please download the below documents, complete, and upload.

- [COI\\_Questionnaire.pdf](#)

\*Response required

#### 6.9. VENDOR ACKNOWLEDGMENT\*

**Please read and acknowledge the required steps necessary to do business with Hidalgo County:**

##### **Step 1:**

**OpenGov** will now serve as the primary source for all Hidalgo County solicitation postings, electronic bidding, and contract management. Any reliance on other information or sources not directly downloaded from OpenGov may result in a submission that is not in compliance.

**Link can be found below:**

[-https://procurement.opengov.com/portal/co-hidalgo-tx](https://procurement.opengov.com/portal/co-hidalgo-tx)

##### **Step 2:**

**ConsiderMe (Vendor Enrollment Solution)** is an innovative tool that facilitates the needs of Hidalgo County to secure qualified vendors. Local, state, and national vendors can apply using the vendor registration form in the link below.

[-https://www.hidalgocounty.us/2912/Potential-Vendors-ConsiderMe](https://www.hidalgocounty.us/2912/Potential-Vendors-ConsiderMe)

\*The Vendor Registration Form does not guarantee a contract or agreement, however, it does guarantee your service or goods will be added to the list of potential vendors available to Hidalgo County.

Please confirm

\*Response required

#### 6.10. HUB DECLARATION\*

Please download the below documents, complete, and upload.

- [HUB\\_Declaration.pdf](#)

\*Response required

#### 6.11. CERTIFICATION REGARDING DEBARMENT\*

Please download the below documents, complete, and upload.

- [Certification\\_Regarding\\_Deb...](#)

\*Response required

**6.12. [SAM.GOV REGISTRATION\\*](#)**

Please enter your company's Legal Name and/or dba Name

\*Response required

**6.13. [FORM 1295\\*](#)**

Please provide a Form 1295.

- Reference Professional Services Pools - Architectural Services (24-0002) on section 3 of the form.
- Be sure to complete section 6 of the form, in order to be valid.

\*Response required

**6.14. [Title VI Appendices - \(Please confirm that you have read, understood and agree\)\\*](#)**

**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 Nondiscrimination 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 Nondiscrimination 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).

Please confirm

\*Response required

#### 6.15. REQUIRED CONTRACT CLAUSES FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS\*

Please download the below documents, complete, and upload.

- [2\\_CFR\\_200.pdf](#)

\*Response required

#### 6.16. FHWA 1273\*

Refer to "**FHWA 1273**" in the [#ATTACHMENTS](#) section. Confirm that you have read, understood and agree with "**FHWA 1273**."

Please confirm

\*Response required

6.17. [PROPOSER'S AFFIDAVIT OF NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING\\*](#)

Please download the below documents, complete, and upload.

- [Proposer's Affidavit.pdf](#)

\*Response required

6.18. [REFERENCE FORM\\*](#)

Please download the below documents, complete, and upload.

- [Reference\\_Form.pdf](#)

\*Response required

6.19. [COMPANY/FIRM RESPONSE\\*](#)

Please upload your response to this RFQ as requested in *Requirements/Specifications*

\*Response required



## **EXHIBIT B**

---

PROPOSAL  
(INCLUDES SCOPE  
OF WORK AND  
FIXED FEE RATES)



Milnet Architectural Services, PLLC  
608 S. 12th St.  
McAllen, Texas 78501

---

## PROPOSAL AGREEMENT

Hidalgo County Purchasing Dept.  
2802 S. Business Highway 281  
Edinburg, TX 78539

Attn: Hector Garcia  
Contract Specialist III

Milnet Architectural Services is pleased to offer its services to Hidalgo County for the two proposed Remote Operations Centers.

### **SCHEDULE A - SCOPE OF SERVICES**

The scope of work that the project entails is for full Architectural, Mechanical, Electrical, Plumbing (MEP), Civil and Structural design services for two, approximate 6,000 square foot multifunctional facilities to serve Hidalgo County.

### **SCHEDULE B – REIMBURSABLES**

Reimbursable amounts will carry a five (5%) percent markup and are as follows:

1. TDLR TAS plan review and registration
2. Printing of construction documents for bidding.

All in-house plots, faxes and communication are part of our base fee. Any other services required past this proposal agreement, will be charged at our hourly rate (refer to attached Exhibit "A").

Items provided by owner:

- Electronic Drawings and Backgrounds (if any).
- Existing Site Assessment and Utility locations
- AEP Easement Survey (if needed), Plat Survey (if required), and Topography Survey
- Soils Reports (at owner's expense).
- Materials testing (at owner's expense).



**SCHEDULE C - FEE**

As requested, we are providing you with the following design fee for the aforementioned project:

DESCRIPTION	COST
Fee for "Schedule A - Scope of Services"	7% of Construction Cost

Payment shall be due net thirty (30) days upon completion, according to the following schedule:

<u>Percentage of Total Contract Billing By Phase</u>	<u>Completion Point - Tentative Dates</u>
10%	Schematic Design Set for Review.
25%	Design Development Set for Review.
40%	Construction Documents for Bids.
05%	Bidding
20%	Construction Observation.

Owner requested plots are reimbursable at a rate of \$5.00 per plot. Liability shall be in accordance with the AIA Agreement.

If this Proposal Agreement is acceptable to Hidalgo County, we can then enter into an A.I.A. B101-2017 Contract agreement with these terms. Thank you again for the opportunity to be of service. Should you have any questions regarding this proposal, please contact our company at (956) 688-5656 or via email at: [rudym@milnet-archservices.com](mailto:rudym@milnet-archservices.com)

Sincerely,

Rodolfo R. Molina, A.I.A.  
 President  
 Milnet Architectural Services, PLLC

**Client Approval:**

\_\_\_\_\_ Date

\_\_\_\_\_ Signature

Note to Client: The Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337 or 333 Guadalupe, Suite 2-350, Austin, Texas 78701-3942, (512) 305-9000, has jurisdiction over individuals licensed under the Architect's Registration Law, Texas Civil Statutes, Articles 249a.



## EXHIBIT "A" – HOURLY BILLING RATE

Additional services required by the Client that may arise and are not outlined in the above-mentioned Proposal Agreement, shall be compensated on an hourly basis as follows:

### Hourly Rates

Principal Architect	\$200.00
Project Architect	\$150.00
Project Manager	\$125.00
Intern Architect I	\$100.00
Intern Architect II	\$ 90.00
Intern Architect III	\$ 85.00
Technician	\$ 80.00
Administrative Assistant	\$ 55.00



# **EXHIBIT C**

---

## **INSURANCE CERTIFICATES**