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PRIVILEGED COMMUNICATION

TO: Mr. Leroy Medford, Webb County Commissioners Court Administrator
Mr. Adelaido "Lalo" Uribe, Executive Administrator for Webb County

FROM: Juan J. Cruz and Lisa M. Paul
Attorneys at Law

DATE: December 3, 2025 (*updated on 01/12/2026*)

SUBJECT: Request by Architect for Compensation for Unauthorized Additional Services
Performed Regarding the Webb County Southern Health Facility Agreement for
Architect Services and Related Issues

I. Issue:

The Webb County Commissioners Court has requested a legal opinion regarding proposed Contract Amendment #2 with Redline Architecture, LLC ("Architect") which would authorize the architect to perform construction administration services, including site observations, progress reviews, and project coordination meetings, between December 2024 through February 2026.

At issue is whether the County is legally obligated to pay for construction administration services *already performed* by the Architect when those services were performed without authorization by the Webb County Commissioners Court ("County") as required by the Architect's Agreement ("Agreement") and Texas law.

II. Short Answer:

The County is not legally obligated to pay for the unauthorized services performed by the Architect. The Agreement between the County and the Architect expressly prohibits payment for services performed without prior approval by the Webb County Commissioners Court. However, the County *may choose to compensate the Architect for the unauthorized services*, but ***only if the Commissioners' Court takes formal action to ratify such services.*** An analysis of the legal issues regarding proposed Contract Amendment No. 2 is provided below. This memo also provides several options for addressing the Architect's performance of unauthorized services and October 13, 2025 proposal.

III. **Background:**

On February 3, 2023, the County and the Architect executed an Agreement for architecture services in connection with the Webb County Southern Public Health Center Project. The Architect was compensated for Basic Services based on a stipulated sum in the amount of \$195,559.00.¹ The Architect's Basic Services sets forth limits for site visits, inspections of the project work, including "two (2) visits to the site by the Architect during construction ... not to exceed *nine (9) months of construction*."² Construction Phase Services exceeding the limits set forth in the Agreement are considered Additional Services.³ The Agreement requires the Architect to notify the County when the construction phase services are reached.⁴ In this case, the 9 months of construction administration services was reached at the end of November 2024.⁵

The Agreement also requires the Architect to notify the County "with reasonable promptness and explain the facts" *when recognizing the need to perform Additional Services*.⁶ The Agreement also requires the parties to execute a written agreement ***prior to performing any Additional Services***.⁷

The Agreement between the Architect and the County addresses the responsibilities of each party and provides the following regarding the Owner's Responsibilities:

Owner's Commissioners Court is the only representative of Owner, a political subdivision of the State, having the power to enter into or amend a contract, to approve changes in the scope of Work, to approve and execute a Change Order or Construction Directive modifying the Contract Sum, agree to an extension of the dates of Substantial Completion or Final Completion, or approve changes in the Architect's compensation. Owner's Commissioners Court may designate one or more representatives with authority to sign documents after Commissioners' Court approval and/or to advise and consult with Architect for day-to-day operations under the agreement.⁸

The Owner's designated representative for **day-to-day operations is the County Engineer**.

On July 28, 2025, the Architect and County executed a contract amendment ("Contract Amendment No. 1") for Additional Services, including design services, modification to the building and "building extras" in connection with an award for additional funding that would add approximately 600 square feet to the Building Project. Contract Amendment No. 1 provided additional compensation to the Architect in the amount of \$49,967.00 for the Additional services.

¹ The Agreement also included fees for Supplemental Services that included consultant's fees, architectural programming, landscape architecture, furniture, fixtures, and equipment (FFE) and Fast Track Services.

² Id at §4.2.3.

³ Id.

⁴ Id.

⁵ See Exhibit A to Architect's Proposal Dated October 13, 2025.

⁶ Id at §4.2

⁷ Id at §11.3.

⁸ Agreement at §5.3 (emphasis added). See Agreement at §11.2.

On October 13, 2025, the Architect submitted “Amendment Request- Supplement Service No. 1-Extended Construction Administration” noting that the “current Construction Administration allowance does not include services or site visits beyond November 2024.” The Architect further notes that continued administration, documentation, and coordination are required to maintain compliance with the construction contract, review payment applications, and support the County through final completion of the Project. The Architect’s proposal requests **\$34,440.00 in additional compensation**, including extended construction administration services that occurred beginning in December 2024.

The Architect’s October 2025 proposal also includes a 4% Cost of Living Adjustment (COLA) “to reflect current professional service cost trends.” The COLA was applied to the Construction Administration monthly rate and resulted in an extra cost of \$1,120. The October 2025 proposal also includes a “*professional continuation adjustment cost for elapsed time/administrative burden during delays*” in the amount of \$2,500.00.⁹

Description of Services and Basis of Compensation		
Description	Basis	Amount
Extended Construction Administration (Dec 2024 – Jan 2026)	14 months × \$2,000 / month = \$28,000 + 4 % COLA increase = \$2,000 × 1.04 = \$2,080 × 14 months	\$29,120
Less CA Overlap Included in CO #7 Basic Fee	1 month (December 2025) × \$2,080	(\$2,080)
Subtotal – Net Extended CA Services		\$27,040
Additional Site Visits (Dec 2024 – Jan 2026)	14 visits × \$350 / visit	\$4,900
Professional Continuation Adjustment (not interest)	Fee for elapsed time / administrative burden maintained during delays	\$2,500
Total Supplemental Request		\$34,440

The Architect’s October 2025 Proposal also included “Exhibit A – Hours Expended Report (August 2023-October 2025)” and provides a detailed log reflecting dates of project meetings and site visits and related construction administration services that began in March 2024.

IV. Analysis of Agreement and Constitutional Barriers to Retroactive Payment to Architect

The Texas Constitution prohibits a county from grant extra compensation “after service has been rendered, or a contract has been entered into and performed in whole or in part.”¹⁰ This means that a county may not pay additional funds for contractual performance already required by an existing contract.¹¹ However, this constitutional provision does not prohibit a county from

⁹ The Architect’s original proposal included with the Agreement and dated 2/23/2023. Our office was not provided a copy of the proposal dated 2/23/2023 which was made a part of the Agreement (See Agreement at §2/23/2023). The Agreement does not provide the Architect to charge a fee for a “professional continuation adjustment” or a cost-of-living adjustment. However, the Agreement does permit the Architect to charge for “reimbursable expenses” including expenses of overtime work requiring higher than regular rates. See Agreement at §11.8.1.6.

¹⁰ Tex. Constitution, Art. III, section 53.

¹¹ Tex. Att’y. Gen. No. KP-0315 at p.2 (2020).

modifying a contract, provided that any additional payments are made in return for new consideration.¹²

The Agreement explicitly states that the Commissioners Court is the **only representative** of the Owner with the power to enter into or amend a contract, to ***approve changes in the Architect's scope of work or approve changes in the Architect's compensation***¹³ Moreover, the Agreement requires the Architect to notify the County with *reasonable promptness* "upon recognizing the need to perform Additional Services," including a material significant change in the Project, including the size, budget, or Owner's schedule.¹⁴ Since the construction administration services expired in November 2024, the Architect was required to notify the "Owner" prior to performing any Additional Services, including site visits and participating in project meetings.

In July of 2025, the Parties recognized the need for Additional Services related to the 600 square feet addition, however, the Additional Services related to Construction Administration were not included in Contract Amendment No. 1 even though the initial Construction Administration Services had already been exceeded at the time Contract Amendment No. 1 was approved.

The County Economic Development Department provided email correspondence between the Architect and County personnel regarding *additional quality control visits* that were requested by J. Carlos Flores, the former County Engineer and outside the terms of the Agreement.¹⁵ Although the former County Engineer as a designated representative of the County may have requested the Additional Services, the Agreement explicitly states the County Engineer's scope of authority was to "*advise and consult with the Architect for day-to-day operations.*" The Additional Services could only have been authorized by the Commissioners Court pursuant to a written amendment to the Agreement. The County Engineer was not authorized to amend the agreement, approve changes in the Architect's compensation or to approve changes in the Architect's scope of work. The Architect breached the Agreement by continuing additional construction administration services from December 2024 through the present without an approved contract amendment.

In addition to the prohibition against unauthorized services outlined in the Agreement, there are constitutional barriers to the County's approval of retroactive payments to the Architect. Article III, Section 53 of the Texas Constitution prohibits the County from granting "any extra compensation, fee or allowance to a public officer, agent, servant, or contractor, after service has been rendered, or a contract has been entered into and performed in whole or in part." The Texas Constitution also prohibits the County from making gratuitous grants of public funds. County payments must be made for a public purpose and supported by adequate consideration.¹⁶

Compensating the Architect for construction administration services without prior authorization could violate constitutional prohibitions on gifts of public funds unless there is new consideration and the ***County ratifies the acceptance of the unauthorized services*** by finding that the Architect's construction administration services were necessary

¹² Tex. Att'y Gen. Op. No. GA-0204 (2004).

¹³ Agreement at §5.3

¹⁴ Id at §4.2.1.1.

¹⁵ See email dated January 26, 2024 between Silvia Martinez and J. Carlos Flores and email dated August 27, 2025 from Telissa Molano to Lupita T. Ramos providing the additional quality control visits were requested by former County Engineer, J. Carlos Flores, around 1/29/2024.

¹⁶ Tex. Const. art. III, §52.

and beneficial to the public and would have been properly payable had prior approval and authorization been obtained.

In this case, when the Commissioners Court approved the design services for the additional 600-square-foot expansion, the Architect had already performed approximately seven months of construction administration services at the direction of the former County Engineer, J. Carlos Flores, despite those services not being authorized under the existing Agreement. The fact that Commissioners Court had authority to approve additional design and related architectural services demonstrates that the County possessed the authority to authorize the related construction administration services and additional compensation.

Although the former County Engineer lacked authority to direct or accept these additional construction administration services, the Commissioners Court may remedy this defect through a ratification of the services already performed by the Architect. Adoption of a resolution by the Commissioners Court documenting that the unauthorized construction administration services were necessary to the expanded Project scope and provided value to the public would remedy the defect and authorize payment without running afoul of constitutional restrictions on gifts of public funds.

In a 2020 opinion, the Texas Attorney General concluded that payment for previously performed services is permissible when the underlying contract is properly amended, provided that the additional compensation is supported by *new consideration*.¹⁷ Specifically, the Attorney General Opinion concluded:

Article III, section 53 of the Texas Constitution prohibits a county or municipal authority from granting extra compensation “after service has been rendered, or a contract has been entered into, and performed in whole or in part.”

*A county’s payment of an amount owed under a contract for services required by that contract is not prohibited extra compensation. **Though some services may have already been provided under an original contract, if an amended contract is supported by new consideration, payment of an invoice submitted thereunder would comply with article III, section 53 provided the new consideration is sufficient.** A change in the scope of work to require additional services in exchange for an additional payment likely constitutes adequate consideration in support of the amendment, but that is a question for the commissioners court in the first instance.*

Based on this Texas Attorney General opinion, so long as there is new consideration, Webb County may ratify the amendment to the contract and authorize payment for the architect’s previously performed services without violating the constitutional prohibitions against retroactive consideration.

In this case, the architect performed additional site visits and construction administration services that were outside the original scope of Redline’s contract with Webb County. Those “additional services” were accepted by the County and benefitted the County. The architect was not contractually obligated to perform such services under the existing agreement. Such

¹⁷ Texas Att’y Gen. Op. No. KP-0315, at 2-3 (2020).

additional services qualifies as “new consideration” and payment is permissible if authorized by official action of the Commissioners Court.

There is no legal requirement that the architect submit a formal legal claim or file a lawsuit in order for the Commissioners Court to authorize payment. Submission of an invoice for the additional services constitutes a sufficient request for payment.

Neither Texas Attorney General Opinion KP-0315 nor Texas procurement law conditions payment of a valid contract amendment on the prior filing of a claim or lawsuit.

V. Webb County’s Options for Addressing Architect’s Supplemental Service Request

Option 1:

1. Commissioners Court takes action to **ratify the Architect’s past unauthorized services** and **amend the contract** to provide for continued construction administration services through February 2026.
2. Such ratification requires the **adoption of a resolution** whereby the Commissioners’ Court makes findings that the previously performed construction administration services were (i) necessary, (ii) beneficial to the public, and (c) services the Commissioners Court would have approved if timely requested by the Architect. The Resolution would also ratify the acceptance of the unauthorized services and approve payment for the past services.
3. Commissioners Court takes action to approve Contract Amendment No. 2 incorporating the past construction administration services performed and ratified as well as authorizing and setting compensation for the prospective construction administration services through February 2026.

Exercising Option 1 remedies the issues related to the unauthorized services, provides for continuity of construction administration services and complies with the requirements set forth in the Texas Constitution.

Option 2:

1. Commissioners Court declines to ratify any past unauthorized services upon a finding that that retractive payment is impermissible because the Commissioners Court never authorized the Additional Services.
2. Commissioners Court rejects all retroactive compensation requested by the Architect.
3. Commissioners Court authorizes and amends the Agreement *prospectively* to include construction administration services following approval by the Commissioners Court through February 2026 at a negotiated rate.

Proceeding with Option 2 presents some risks to the County. The Architect may perceive the decision to be punitive and unfair given that the former County Engineer directed the additional construction administration services and the Architect proceeded with such services in good faith to prevent delays to the Project. The Architect may also choose to withdraw from the Project or suspend construction administration services until the County provides the requested compensation. If the Architect withdraws, the County will need to secure another Architect

which could delay the Project and may delay review of pay applications submitted by the Contractor which could create additional delays and issues for the County.

The Architect is not likely to prevail in a claim against the County for the unauthorized construction administration services. Webb County is a governmental entity protected by the doctrine of sovereign or governmental immunity, which means the County can't be sued unless the County consents to suit or there is a statutory waiver of the County's immunity.¹⁸ Although the Texas legislature has provided a *limited waiver of immunity* for claims arising under a contract for engineering, architecture or construction services, such damages are limited to the **"balance due and owed by the county under the contract."**¹⁹ Thus, the damages available to the Architect in a claim against the County would be limited to the terms of the Agreement.

In this case, the Agreement expressly provides that the Commissioners Court is the only representative of the Owner with the power to amend a contract, approve a change in the Scope of Work, or approve changes in the Architect's compensation.²⁰ The Agreement also provides that Additional Services arising during the course of the Project must be agreed upon by the parties ***in writing prior to the Architect beginning performance of the Additional Services.***²¹ The Architect's construction administration services performed between December 2024 through the present **are not "due and owed" under the terms of the Agreement.**

Option 3:

1. Commissioners' Court proceeds with Option 1 but for a negotiated reduced amount.
2. The October 2025 proposal provides for a COLA and professional continuation adjustment in the amount of \$2,500.00. These fees do not appear to have been agreed upon by the County prior to the Architect's performance of construction administration services performed between December 2024 to date.

Proceeding with Option 1 provides the least operational risk to County. The Project proceeds without delay.

Proceeding with Option 2 may delay the Project if the Architect decides to withdraw from the Project. Even if the Architect did not withdraw from the Project, proceeding with Option 2 would likely damage the relationship between the County and the Architect for the remaining portion of the Project.

Proceeding with Option 3 provides the opportunity for the parties to negotiate the Architect's fees that were not included in the Architect's original Proposal or the Agreement. The County never approved providing a COLA for construction administration services nor did the County ever have the opportunity to negotiate such a fee prior to the Architect performing the unauthorized CA services. Given that the Architect proceeded with construction administration services without the requisite authorization, negotiating the COLA and professional adjustment fees may be a reasonable compromise to resolve the matter and allow the parties to complete the Project without delay.

¹⁸ Tex. Civ. Prac. & Rem. Code §101.001(3)(B); Harris County v. Gerhart, 115 Tex. 449, 283 S.W. 139, 140 (1926).

¹⁹ Tex. Loc. Gov't Code §262.007.

²⁰ Agreement at §5.3.

²¹ Id at §11.3.

We recommend that the County proceed with Option 1 or 3. Proceeding with Option 2 may impair the relationship between the County and the Architect and delay completion of the Project if the Architect decides to withdraw and terminate its Agreement with the County.

Please let us know if you have any questions or concerns. ***JJC/LMP***.