

CONTRACT FOR ARCHITECTURAL SERVICES BETWEEN OWNER AND ARCHITECT

This CONTRACT FOR ARCHITECTURAL SERVICES BETWEEN OWNER AND ARCHITECT (the "Contract") is made and entered into by the County of El Paso, Texas (the "Owner") and SMS Architects, Inc. (the "Architect").

The architectural services required by this Contract are to be rendered for a construction project identified as RFQ Number 10-003 and responses thereto provided by the Architect, which are incorporated by reference herein.

For the purposes of this contract the services required are limited to the Remodel of the Pavilion Building only (the "Project"). If additional funding is secured by the Owner for the design of the new AGCA Building within two (2) years, the Parties may enter into a design services agreement pursuant to RFQ Number 10-003 for the completion of the project.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Owner and the Architect agree:

1.

REPRESENTATIONS AND WARRANTIES

By executing this Contract, the Architect makes the following express representations and warranties to the Owner:

- (A) The Architect is professionally qualified to act as the architect for the Project and is licensed to practice architecture by all public entities having jurisdiction over the Architect and the Project;
- (B) The Architect shall maintain all necessary licenses, permits or other authorizations necessary to act as architect for the Project until the Architect's duties hereunder have been fully satisfied;
- (C) The Architect has become familiar with the Project site and the local conditions under which the Project is to be designed, constructed, and operated;
- (D) The Architect shall prepare all documents and things required by this Contract including, but not limited to, all contract plans and specifications, in such a manner that they shall be accurate, coordinated and adequate for construction and shall be in conformity and comply with all applicable law, codes and regulations;
- (E) The Architect assumes full responsibility to the Owner for the improper acts and omissions of its consultants or others employed or retained by the Architect in connection with the Project.

2.

PRELIMINARY CONSULTATION, EXAMINATION AND REPORT

Prior to the preparation of the Preliminary Design as required by Paragraph 3 below, the Architect shall first consult in detail with the Owner, and shall carefully examine any information provided by the Owner concerning the Owner's purposes, concepts, desires and requirements (the "Owner's Criteria"), including but not limited to, any design, construction, scheduling, budgetary or operational Project needs, restrictions or requirements. Following such examination, the Architect shall prepare and submit to the Owner a written report detailing the Architect's understanding of the Owner's Criteria and identifying any design, construction, scheduling, budgetary, operational, or other problems or recommendations which may result from the Owner's Criteria. The written report of the Architect shall also include proposed solutions, if appropriate, addressing each of such identified problems.

3.

PRELIMINARY DESIGN AND PRICE ESTIMATE

After reviewing with the Owner the written report required by Paragraph 2 above, agreeing upon any proposed solutions to identified problems resulting from the Owner's Criteria, and in no event later than forty-five (45) days after the effective date of this Contract, the Architect shall draft and submit to the Owner a Preliminary Design for the Project. The Preliminary Design shall be consistent with the Owner's Criteria, as, and if, modified, and shall include the following:

- (A) Preliminary plans which depict as appropriate each of the basic aspects of the Project including, but not necessarily limited to, the size, location and dimensions of each structure;
- (B) Preliminary plans which depict each exterior view of each structure;
- (C) A floor plan for each room within the Project and the dimensions thereof;
- (D) Written preliminary specifications, together with preliminary plans, if and as necessary or useful to the Owner, of the architectural, electrical, mechanical, structural and, if relevant, other systems to be incorporated in the Project;
- (E) A written description of the equipment and materials to be specified for the Project and the location of same; and
- (F) Any other documents or things necessary or appropriate to describe and depict the Preliminary Design and the conformity of same with the Owner's Criteria (as, and if, modified as set forth above) for the Project.

Upon completion of the Preliminary Design, the Architect shall submit to the Owner in writing, its estimate of the Contractor's anticipated price for constructing the Project in accordance with the Preliminary Design.

4.

DESIGN FOR CONSTRUCTION

Upon written direction from the Owner, after reviewing with the Owner the Preliminary Design required by Paragraph 3 above, and after incorporating any changes or alterations authorized or directed by the Owner with respect to the Preliminary Design or with respect to the Owner's Criteria, as, and if, modified, and in no event later than sixty (60) days after the effective date of this Contract, the Architect shall draft and submit to the Owner the Design for Construction. The Design for Construction shall include, but shall not necessarily be limited to, plans and specifications which describe with specificity all systems, elements, details, components, materials, equipment, and other information necessary for construction. The Design for Construction shall be accurate, coordinated and in all respects adequate for construction and shall be in conformity, and comply, with all applicable law, codes and regulations. Products, equipment and materials specified for use shall be readily available unless written authorization to the contrary is given by the Owner. In preparing the Design for Construction, the Architect shall retain an experienced, qualified geotechnical consultant to evaluate all geotechnical considerations relating to the design and construction of the Project. The Architect shall be responsible for designing the Project in accordance with the analyses and recommendations of its geotechnical consultant.

5.

FINAL PRICE ESTIMATE

Contemporaneously with the submission of the Design for Construction, the Architect shall submit to the Owner in writing its final estimate of the contractor's anticipated price for constructing the Project. Once submitted, the final anticipated price estimate shall not be increased or decreased by the Architect unless the Design for Construction is changed upon authorization by the Owner. In such event the final anticipated price estimate shall be adjusted by the Architect to reflect any increase or decrease in anticipated price resulting from the change in Design for Construction.

6.

EXCEEDING AN ESTABLISHED "MAXIMUM PRICE"

Prior to directing the Architect to proceed with preparation of the Design for Construction, the Owner may establish and communicate to the Architect a maximum amount for payment to the contractor as the Contract Price for constructing the Project (the "Maximum Price"). In the event the Architect's final

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anticipated price estimate as required by Paragraph 5 exceeds the Maximum Price, or in the event the lowest bid or negotiated proposal from a qualified contractor exceeds the Maximum Price, the Owner may require the Architect, at no cost to the Owner, to consult with the Owner and to revise the Design for Construction so as to obtain a bid or proposal at or below the Maximum Price. Absent clear and convincing evidence of gross negligence of the Architect in making its final anticipated price estimate or in designing the Project without regard to the Maximum Price, providing such revisions shall fulfill the Architect's liability to the Owner in connection with the Maximum Price.

7.

DUTIES, OBLIGATIONS AND RESPONSIBILITIES DURING CONSTRUCTION

During construction of the Project, and at all times relevant thereto, the Architect shall have and perform the following duties, obligations, and responsibilities:

(A) In addition to its duties, obligations and responsibilities set forth in the following subparagraphs of this Paragraph 7, the Architect shall have and perform those duties, obligations and responsibilities set forth in the NCLC Fixed Price Construction Contract Between Owner and Contractor ("the Construction Contract"), 1994 edition. The Architect hereby acknowledges that it has received, reviewed and studied a true and correct unexecuted copy of the Construction Contract and same is herein incorporated by reference;

(B) The Architect shall, as contemplated herein and in the Construction Contract, but not otherwise, act on behalf, and be the agent, of the Owner throughout the bidding to include but not limited to preparation of the bid documents, preparation of addenda, assistance during the bidding process, and attendance at one (1) pre-bid meeting, as well as the construction of the Project. Instructions, directions, and other appropriate communications from the Owner to the Contractor shall be given to the Contractor by the Architect;

(C) Upon receipt, the Architect shall carefully review and examine the Contractor's Schedule of Values, together with any supporting documentation or data which the Owner or the Architect may require from the Contractor. The purpose of such review and examination shall be to protect the Owner from an unbalanced Schedule of Values which allocates greater value to certain elements of the Work than is indicated by such supporting documentation or data, or than is reasonable under the circumstances. If the Schedule of Values is not found to be appropriate, or if the supporting documentation or data is deemed to be inadequate, and unless the Owner directs the Architect to the contrary in writing, the Schedule of Values shall be returned to the Contractor for revision or supporting documentation or data. After making such examination, if the Schedule of Values is found to be appropriate as submitted, or if necessary, as revised, the Architect shall sign the Schedule of Values thereby indicating its informed belief that the Schedule of Values constitutes

a reasonable, balanced basis for payment of the Contract Price to the Contractor. The Architect shall not sign such Schedule of Values in the absence of such belief unless directed to do so, in writing, by the Owner;

(D) The Architect shall carefully inspect the work of the Contractor whenever and wherever necessary, and shall, at a minimum, inspect work at the Project site no less frequently than every other week. The purpose of such inspections shall be to determine the quality and quantity of the work in comparison with the requirements of the Construction Contract. In making such inspections, the Architect shall protect the Owner from continuing deficient or defective work, from continuing unexcused delays in the schedule and from overpayment to the Contractor. Following each inspection the Architect shall submit a written report of such inspection, together with any appropriate comments or recommendations, to the Owner;

(E) The Architect shall initially approve periodic and final payments owed to the Contractor under the Construction Contract predicated upon inspections of the work as required in Subparagraph (D) hereinabove and evaluations of the Contractor's rate of progress in light of the remaining Contract Time and shall issue to the Owner Approvals of Payment in such amounts. By issuing an Approval of Payment to the Owner, the Architect reliably informs the Owner that the Architect has made the inspection of the work required by Subparagraph (D) above, and that the work for which payment is approved has reached the quantities or percentages of completion shown, or both, that the quality of the Contractor's work meets or exceeds the requirements of the Construction Contract, and that under the terms and conditions of the Construction Contract, the Owner is obligated to make payment to the Contractor of the amount approved;

(F) The Architect shall promptly provide appropriate interpretations as necessary for the proper execution of the work;

(G) The Architect shall reject in writing any work of the Contractor which is not in compliance with the Construction Contract unless directed by the Owner, in writing, not to do so;

(H) The Architect shall require inspection or reinspection and testing or retesting of the work in accordance with the provisions of the Construction Contract whenever appropriate;

(I) The Architect shall receive and promptly examine, study, and approve, or otherwise respond to, the Contractor's shop drawings and other submittals. Approval by the Architect of the Contractor's submittal shall constitute the Architect's representation to the Owner that such submittal is in conformance with the Construction Contract;

(J) The Architect shall receive and promptly examine and advise the Owner concerning requests for change orders from the Contractor. Upon request by the Owner, the Architect shall draft Change Orders, whether initiated by the Owner, or

by the Contractor and approved by the Owner, in accordance with the Construction Contract;

(K) Based upon inspections of the Project, the Architect shall certify in writing to the Owner the fact that, and the date upon which, the Contractor has achieved Substantial Completion of the Project and the date upon which the Contractor has achieved Final Completion of the Project;

(L) The Architect shall transmit to the Owner all manuals, operating instructions, as-built plans, warranties, guarantees and other documents and things required by the Construction Contract and submitted by the Contractor;

(M) The Architect shall testify in any judicial proceeding concerning the design and construction of the Project when requested in writing by the Owner, and the Architect shall make available to the Owner any personnel or consultants employed or retained by the Architect for the purpose of reviewing, studying, analyzing or investigating any claims, contentions, allegations, or legal actions relating to, or arising out of, the design or construction of the Project;

(N) The Architect shall review any as-built drawings furnished by the Contractor and shall certify to the Owner that same are adequate and complete; and

(O) The Architect shall, without additional compensation, promptly correct any errors, omissions, deficiencies, or conflicts in the work product of the Architect or its consultants, or both.

8.

INDEMNITY

The Architect shall indemnify and hold harmless the Owner from and against all liability, claims, loss, costs and expense arising out of, or resulting from, the services of the Architect. In the event the Owner is alleged to be liable on account of alleged acts or omissions, or both, of the Architect, the Architect shall defend such allegations through counsel chosen by the Owner and the Architect shall bear all costs, fees and expenses of such defense, including but not limited to, all attorneys' fees and expenses, court costs, and expert witness fees and expenses.

9.

SCHEDULE

Time is of the essence in the performance of this Contract. Within fifteen (15) days of the execution hereof, the Architect shall provide the Owner with a proposed schedule for performance by the Architect hereunder. Such schedule, if approved by the Owner, shall constitute the schedule for performance of its duties hereunder by the Architect.

10.

PERSONNEL

The Architect shall assign only qualified personnel to perform any service concerning the Project. At the time of execution of this Contract, the parties anticipate that the following named individuals will perform those functions indicated:

NAME	FUNCTION
James K. Suerken, RA	Architect-of-Record
Ronald L. Hutter, RA	Project Architect
Bradley Roe, PE	Civil Engineer
Pedro P. Herrera, PE	Structural Engineer
John Leflohic, PE	Electrical Engineer
Thomas Wagner, PE	Mechanical Engineer
Scott Biggs	Cost Estimator

So long as the individuals named above remain actively employed or retained by the Architect, they shall perform the functions indicated next to their names.

11.

PAYMENTS

For its assumption and performance of the duties, obligations and responsibilities set forth herein, the Architect shall be paid as follows:

(A) The Architect shall be paid for those services required by this Contract the sum of Fifty-Nine Thousand, Nine Hundred Seventy Two and 50/100 Dollars (\$59,972.50), allocated in the following manner:

- | | | |
|-----|---|---------------|
| (1) | Preliminary Consultation, Examination and Report | \$ 8,658.00; |
| (2) | Preliminary Design and Price Estimate | \$ 19,220.00; |
| (3) | Design for Construction and Final Price Estimate | \$22,422.00; |
| (4) | Duties, Obligations and Responsibilities
During Construction | \$ 9672.50; |

(B) For the assumption and performance of any duties, obligations and responsibilities other than those services required by this Contract, provided same are first authorized in writing by the Owner, the Architect shall be paid as follows:

NAME & TITLE	HOURLY FEE
James K. Suerken, RA	\$106.00
Ronald L. Hutter, RA	\$80.00
Daniel Lopez, AIT	\$62.00
Jesia Suerken, Clerical	\$36.50

(C) In addition to the payments provided for hereinabove, the Architect shall be entitled to receive payment for reasonable expenses incurred by the Architect in connection with the Project. Such expenses, however, are limited to transportation, long-distance calls, actual cost of copying and postage or other reasonable mode of transmission of plans, specifications and other writings or things, and any and all other disbursements made by the Architect after first receiving written authorization therefore from the Owner;

(D) If the Architect's duties, obligations and responsibilities are materially changed through no fault of the Architect after execution of this Contract, compensation due to the Architect shall be equitably adjusted, either upward or downward;

(E) As a condition precedent for any payment due under this Paragraph 11, the Architect shall submit monthly, unless otherwise agreed in writing by the Owner, an invoice to the Owner requesting payment for services properly rendered and expenses due hereunder. The Architect's invoice shall describe with reasonable particularity each service rendered, the date thereof, the time expended if such services were rendered pursuant to Subparagraph (B) or (D) hereinabove, and the person(s) rendering such service. The Architect's invoice shall be accompanied by such documentation or data in support of expenses for which payment is sought as the Owner may require. If payment is requested for services rendered by the Architect pursuant to Subparagraph (A) hereinabove, the invoice shall additionally reflect the allocations as provided in said Subparagraph and shall state the percentage of completion as to each such allocation. Each invoice shall bear the signature of the Architect, which signature shall constitute the Architect's representation to the Owner that the services indicated in the invoice have reached the level stated, have been properly and timely performed as required herein, that the expenses included in the invoice have been reasonably incurred in accordance with this Contract, that all obligations of the Architect covered by prior invoices have been paid in full, and that the amount requested is currently due and owing, there being no reason known to the Architect that payment of any portion thereof should be withheld. Submission of the Architect's invoice for final payment shall further constitute the Architect's representation to the Owner that, upon receipt by the Owner of the amount invoiced, all obligations of the Architect to others, including its consultants, incurred in connection with the Project, will be paid in full;

(F) In the event that the Owner becomes credibly informed that any representations of the Architect as set forth in Subparagraph (E) are wholly or partially inaccurate, the Owner may withhold payment of sums then or in the future otherwise due to the Architect until the inaccuracy, and the cause thereof, is corrected to the Owner's reasonable satisfaction;

(G) The Owner shall make payment to the Architect of all sums properly invoiced under the provisions of this Paragraph 11 within thirty (30) days of the Owner's receipt of such invoice.

12.

PROJECT RECORDS

All records relating in any manner whatsoever to the Project, or any designated portion thereof, which are in the possession of the Architect or the Architect's consultants, shall be made available to the Owner for inspection and copying upon written request of the Owner. Additionally, said records shall be made available, upon request by the Owner, to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. Said records include, but are not limited to, all plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the Project, its design, and its construction. Said records expressly include those documents reflecting the time expended by the Architect and its personnel in performing the obligations of this Contract and the records of expenses incurred by the Architect in its performance under said Contract. The Architect shall maintain and protect these records for no less than four (4) years after final completion of the Project, or for any longer period of time as may be required by applicable law or good architectural practice.

13.

DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE OWNER

The Owner shall have and perform the following duties, obligations and responsibilities to the Architect:

- (A) The Owner shall provide the Architect with the Owner's Criteria;
- (B) The Owner shall review any Documents provided by or through the Architect requiring the Owner's decision, and shall make any required decisions;
- (C) The Owner shall, at its own expense, furnish a legal description and any necessary survey of the real property upon which the Project is situated;
- (D) As may be mandated by law or called for by the Construction Contract, the Owner shall, at its own expense, provide for all required testing, inspections (except for those inspections expressly required of the Architect herein), filings, studies or reports;
- (E) In the event the Owner learns of any failure to comply with the Construction Contract by the Contractor, or of any errors, omissions or inconsistencies in the work

product of the Architect, and in the further event that the Architect does not have notice of same, the Owner shall inform the Architect;

(F) The Owner shall afford the Architect access to the Project site and to the Work as may be reasonably necessary for the Architect to properly perform its services under this Contract;

(G) The Owner shall perform its duties set forth in this Paragraph 13 in a timely manner;

(H) Except for documents requiring the Owner's decision as set forth in Subparagraph 13(B) above, the Owner's review of any documents prepared by the Architect or its consultants shall be solely for the purpose of determining whether such documents are generally consistent with the Owner's Criteria, as, and if, modified. No review of such documents shall relieve the Architect of its responsibility for the accuracy, adequacy, fitness, suitability or coordination of its work product.

14.

APPLICABLE LAW

The law applicable to this Contract is hereby agreed to be the law of the State where the Project is situated.

15.

OWNERSHIP OF THE PRELIMINARY DESIGN AND THE DESIGN FOR CONSTRUCTION

The Preliminary Design and the Design for Construction shall become and be the sole property of the Owner. The Architect may maintain copies thereof for its records and for its future professional endeavors.

Neither the Preliminary Design nor the Design for Construction are intended by the Architect for use on other projects by the Owner or others. Any reuse by the Owner or by third parties without the written approval of the Architect, shall be at the sole risk of the Owner and the Owner shall indemnify and save harmless the Architect from any and all liability, costs, claims, damages, losses and expenses including attorneys' fees arising out of, or resulting from, such reuse; provided however, that this agreement to indemnify and save harmless shall not apply to any reuse of documents retained by, or through, the Contractor.

16.

SUCCESSORS AND ASSIGNS

The Architect shall not assign its rights hereunder, excepting its right to payment, nor shall it delegate any of its duties hereunder without the written consent

of the Owner. Subject to the provisions of the immediately preceding sentence, each party hereto binds itself, its successors, assigns and legal representatives to the other and to the successors, assigns and legal representatives of such other party.

17.

NO THIRD PARTY BENEFICIARIES

Nothing contained herein shall create any relationship, contractual or otherwise, with, or any rights in favor of, any third party.

18.

ERRORS AND OMISSIONS INSURANCE

The Architect shall maintain the following errors and omissions insurance at all times this Contract is in effect and for a period of ten years after final completion of the Project:

A Professional Liability (Errors and Omissions) Policy from an insurance carrier acceptable to the Owner and in a form acceptable to the Owner, with annual aggregate policy limits of \$1,000,000.00. The carrier shall endorse this policy to provide sixty (60) days notice to the Owner prior to cancellation or any change in coverage.

19.

OTHER INSURANCE

OMITTED

20.

TERMINATION

(A) Either party hereto may terminate this Contract upon giving seven (7) days' written notice to the other in the event that such other party substantially fails to perform its material obligations set forth herein;

(B) This Contract may be terminated by the Owner without cause upon seven (7) days' written notice to the Architect. In the event of such a termination without cause, the Owner shall pay the Architect for all services rendered prior to the termination, plus any expenses incurred and unpaid which would otherwise be payable hereunder. In such event, the Architect shall promptly submit to the Owner its invoice for final payment which invoice shall comply with the provisions of Paragraph 11.

ENTIRE AGREEMENT

This Contract constitutes the entire and exclusive agreement between the parties with reference to the Project and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements.

OWNER
THE COUNTY OF EL PASO

ARCHITECT
SMS ARCHITECTS INC.

By: _____
Anthony Cobos
El Paso County Judge
Date: _____

By: _____
James K. Suerken
President-SMS Architects, Inc.
Date: _____

APPROVED AS TO FORM:

ASSISTANT COUNTY ATTORNEY

ATTEST:

COUNTY CLERK