

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**AGREEMENT FOR PROFESSIONAL ARCHITECTURAL & ENGINEERING SERVICES
SOQ 16-045**

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and AUTOARCH Architects, LLC (hereinafter "Consultant"), a company authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, County desires that Consultant provide professional architectural and engineering services for the addition, renovation and restoration to the Missouri City Gymnasium (hereinafter "Services") pursuant to SOQ 16-045; and

WHEREAS, Consultant represents that it is qualified and desires to perform such services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

Section 1. Scope of Services

Consultant shall render Services to County as defined in the Proposal for Architectural & Engineering Services dated February 2, 2017, (attached hereto as Exhibit A).

Section 2. Personnel

2.1 Consultant represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Consultant shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Scope of Services when and as required and without delays.

2.2 All employees of Consultant shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Consultant who, in the opinion of County, is incompetent or by his conduct becomes detrimental to the project shall, upon request of County, immediately be removed from association with the project.

Section 3. Compensation and Payment

3.1 Consultant's fees shall be calculated at the rates set forth in the attached Exhibit A. The Maximum Compensation for the performance of Services within the Proposal described in Exhibit A is one hundred twenty-one thousand dollars and no/100 (\$121,000.00), which includes a fixed fee for reimbursable expenses. In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without written amendment executed by the parties. The Maximum Compensation shall be allocated as follows and also described in Exhibit A:

3.1.1	Design Phase	–	\$95,000.00
3.1.2	Construction Administration	–	\$21,000.00
3.1.3	Reimbursable Expenses	–	\$5,000.00

3.2 All performance of the Scope of Services by Consultant including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County.

3.3 County will pay Consultant based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Consultant shall submit to County staff designated by Facilities & Planning Director, one (1) electronic (pdf) or one (1) original invoice showing the amounts due for services performed in a form acceptable to County. County shall review such invoices and approve them within thirty (30) calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. County shall pay each such approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed.

Section 4. Limit of Appropriation

4.1 Consultant clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of one hundred twenty-one thousand dollars and no/100 (\$121,000.00), specifically allocated to fully discharge any and all liabilities County may incur.

4.2 Consultant does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Consultant may become entitled to and the total maximum sum that County may become liable to pay to Consultant shall not under any conditions, circumstances, or interpretations thereof exceed one hundred twenty-one thousand dollars and no/100 (\$121,000.00).

Section 5. Time of Performance

The time for performance of the Scope of Services by Consultant shall begin with receipt of the Notice to Proceed from County and end no later than twenty-four (24) months

thereafter. Consultant shall complete the tasks described in the Scope of Services within this time or within such additional time as may be extended by the County.

Section 6. Modifications and Waivers

6.1 The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.

6.2 No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.

6.3 The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

Section 7. Termination

7.1 Termination for Convenience – County may terminate this Agreement at any time upon thirty (30) days written notice.

7.2 Termination for Default

7.2.1 County may terminate the whole or any part of this Agreement for cause in the following circumstances:

7.2.1.1 If Consultant fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the County in writing;

7.2.1.2 If Consultant materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.

7.2.2 If, after termination, it is determined for any reason whatsoever that Consultant was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with Section 7.1 above.

7.3 Upon termination of this Agreement, County shall compensate Consultant in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. Consultant's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 3 above.

7.4 If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Consultant.

Section 8. Ownership and Reuse of Documents

All documents, data, reports, research, graphic presentation materials, etc., developed by Consultant as a part of its work under this Agreement, shall become the property of County upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 3 for work performed. Consultant shall promptly furnish all such data and material to County on request. If the County modifies and/or uses the documents for any reason other than their intended use, without Consultant's authorization, the Consultant shall be released from any liability as a result of such action.

Section 9. Inspection of Books and Records

Consultant will permit County, or any duly authorized agent of County, to inspect and examine the books and records of Consultant for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect survives the termination of this Agreement for a period of four years.

Section 10. Insurance

10.1 Prior to commencement of the Services, Consultant shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Consultant shall provide certified copies of insurance endorsements and/or policies if requested by County. Consultant shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Consultant shall obtain such insurance written on an Occurrence form (or a Claims Made form for Professional Liability Insurance) from such companies having Best's rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

10.1.1 Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

10.1.2 Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.

10.1.3 Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.

10.1.4 Professional Liability insurance may be on a Claims Made form with limits not less than \$1,000,000.

10.2 County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability. All Liability policies including Workers' Compensation written on behalf of Consultant, excluding Professional Liability, shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

10.3 If required coverage is written on a claims-made basis, Consultant warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

Section 11. Indemnity

CONSULTANT SHALL INDEMNIFY COUNTY AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONSULTANT, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONSULTANT OR ANY OF CONSULTANT'S AGENTS, SERVANTS OR EMPLOYEES.

Section 12. Confidential and Proprietary Information

12.1 Consultant acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Consultant or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Consultant shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Consultant) publicly known or is contained in a publicly available document; (b) is rightfully in Consultant's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Consultant who can be shown to have had no access to the Confidential Information.

12.2 Consultant agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Consultant uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, unless disclosure is required by law or court order, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Consultant shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Consultant shall advise County immediately in the event Consultant learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Consultant will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Consultant against any such person. Consultant agrees that, except as directed by County, Consultant will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Consultant will promptly turn over to County all documents, papers, and other matter in Consultant's possession which embody Confidential Information; provided however, that Consultant may retain one (1) copy of all work produced which incorporates Confidential Information for internal record-keeping purposes, subject to the terms of this Agreement.

12.3 Consultant acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Consultant acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

12.4 Consultant in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

12.5 Consultant expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information

should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

Section 13. Independent Consultant

13.1 In the performance of work or services hereunder, Consultant shall be deemed an independent Consultant, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of Consultant or, where permitted, of its subcontractors.

13.2 Consultant and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

Section 14. Notices

14.1 Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

14.2 Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County: Fort Bend County Facilities Management & Planning
Attn: Director
301 Jackson Street
Richmond, Texas 77469

With a copy to: Fort Bend County
Attn: County Judge
401 Jackson Street
Richmond, Texas 77469

Consultant: AUTOARCH Architects, LLC
Attn: Lina Sabouni, AIA
6200 Savoy, Suite 100
Houston, Texas 77036

14.3 A Notice is effective only if the party giving or making the Notice has complied with subsections 14.1 and 14.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

14.3.1 If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

14.3.2 If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

Section 15. Compliance with Laws

Consultant shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Consultant shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

Section 16. Performance Representation

16.1 Consultant represents to County that Consultant has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Consultant will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the local professional standard of care.

16.2 Consultant will materially conform to all requirements and specifications contained in the attached Attachment A.

Section 17. Assignment

17.1 Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.

17.2 Neither party may delegate any performance under this Agreement.

17.3 Any purported assignment of rights or delegation of performance in violation of this Section is void.

Section 18. Applicable Law

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

Section 19. Successors and Assigns

County and Consultant bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

Section 20. Third Party Beneficiaries

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

Section 21. Severability

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

Section 22. Publicity

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. Under no circumstances whatsoever, shall Consultant release any material or information developed or received in the performance of the Services hereunder without the express written permission of County, except where required to do so by law.

Section 23. Captions

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

Section 24. Conflict

In the event there is a conflict between this Agreement and the attached exhibit, this Agreement controls.

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the date signed by the last party.

Fort Bend County

AUTOARCH Architects, LLC

Robert E. Hebert, County Judge

Authorized Agent – Signature

Date

LINA SABOUNI, AIA
Authorized Agent – Printed Name

ATTEST:

Principal
Title

Laura Richard, County Clerk

02.09.2017
Date

APPROVED:

James Knight, Facilities Management/Planning Director

APPROVED AS TO LEGAL FORM:

Marcus D. Spencer, First Assistant County Attorney

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$ 121,000.00 to accomplish and pay the obligation of Fort Bend County under this contract.

Robert Ed Sturdivant, County Auditor

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Agreement for Professional Architectural & Engineering Services

Missouri City Gymnasium – SOQ 16-045

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EXHIBIT A

February 02, 2017

Mr James Knight
Director of Facilities
Fort Bend County
401 Jackson St
Richmond, TX 77469

Dear Mr Knight,

Re: Scope of Architecture/ Engineering Services & Proposal
Missouri City Gym: Addition & Renovation/Restoration

POINTS OF INFORMATION

- A. FB County would like to maintain the significant architectural value of the Missouri City Gym and its historic value to the community. The desire is that the Gym will be restored to its original use and become a community amenity.
- B. FB County will approach Fort Bend Historical Commission to seek designation of the Gym as a Historic Building.
- C. FB County is in the process of evaluating the structural integrity of the Gym building and will address deficiencies discovered.
- D. FB County is in the process of evaluating the roof integrity of the Gym building and will address deficiencies discovered.
- E. FB County has obtained the asbestos survey from FBISD.

SCOPE OF THE DESIGN WORK WILL INCLUDE:

- 1. Renovate and Restore the Missouri City Gym to its Original Condition and Operation while meeting the current life safety and building code requirements.
- 2. Bring the building up to TDLR requirements and resolve accessibility limitations outside and inside the building.
 - Provide an accessible Ramp/Plaza at the main entrance,
 - Provide accessible access to the Lobby and into the Basketball Court,
 - Provide an accessible RR,
 - Provide accessible seating at the Basketball Court
- 3. Exterior building work is to take into consideration the desire by Fort Bend County to preserve the Art Deco style of the building. Exterior work includes:
 - Exposing the blocked-in windows, repair or replace the frames and glazing,
 - Plaza/ Site Work at the Main Entrance (also see Item No. 4),
 - Exterior lighting,
 - A ~700 SF addition to mirror the wing currently on one side of the stage (see Item No. 8)
- 4. Redesign of the Main Entrance/ Lobby to include:
 - New Doors, frames and Hardware
 - New Ceiling, Lighting, Flooring
 - Upgraded Accessible Restrooms,

- Demolition of the Mechanical Room,
 - Warming Kitchen to serve concessions,
 - Extension of the Concession space into the former Mechanical Room,
 - Accessible access through the Lobby and into the Basketball Court/Gym space,
5. Rehab/ Renovate the main Gym space (Basketball Court and bleachers). Work in the main gym space is to include:
- Remove existing ceiling tile – original Gym ceiling to be exposed,
 - Rehab the existing bleachers, demo select bleachers to create accessible seating around the Basketball Court,
 - Rehab the Gym floor and restripe it,
 - Repair existing basketball goals,
 - Remove duct, project shall have new HVAC system with new ductwork (see Item No. 9).
 - New Light Fixtures and Emergency Exit Signs,
 - New paint
6. Rehab the stage, work to include:
- Providing accessibility to stage (if required),
 - Provide new lighting
7. Renovate and Restore the basement level to its original or similar functions (locker rooms, office space, and storage).
8. Design for a new roughly 700 SF addition at the back of the building to restore its original symmetric footprint. The new addition could be used for:
- Additional storage,
 - HVAC/mechanical space,
 - To facilitate access from the exterior to the stage,
 - To regain access to the basement level rooms
9. Re-design the mechanical system per current codes and remove all existing mechanical rooms to outside the building or the basement. Existing ductwork in Gym to be removed and incorporated into the trusses, this allows for a better view from the bleachers and a more efficient air distribution.

FEES AND TIME SCHEDULE FOR ARCHITECTURE/ ENGINEERING SERVICES:

Design Process-Time Schedule and Fees:

1- Discovery Phase	1 week=	\$5,000
2- Schematic Design:		
a- Focus group/ Explore option/ Confirm direction	1 week=	\$5,000
b- Develop design / Scope-to-Budget	1 week=	\$5,000
c- Two Presentations one is at end of the SD phase	1 week=	\$5,000
3- Design Development / Engineering	6 weeks=	\$30,000
4- FB County Review	1 week	
5- Construction Documents	8 weeks=	\$40,000
6- FB County Review	1 week	
7- Issue for permit	1 weeks-	\$5,000
<u>Total Design Phase</u>	20 weeks	Excluding Review Time
<u>Total Design Fee:</u>		\$ 95,000

AUTOARCH
ARCHITECTS

The Design fee includes all Architecture Design and Documentation, all MEP Engineering Design & Documentation, Civil Design & Limited Structure Support (at R.T.U.) documentation required to obtain the construction permit and then the Certificate of Occupancy.

Construction Administration Fee: \$ 1,500/month = \$21,000

Includes:

Bidding & negotiation/VE

Construction Period..... Up to 14 months

Estimated Construction T.B.D.

The Construction Administration services is a monthly/unit fee with one month minimum on as needed bases.

Our fee includes:

Structural Engineering, Civil Engineering, MEP Engineering, Cost Estimate, IT/AV.

Please note AUTOARCH is not Liabe for any work that is constructed without being observed by AUTOARCH
Fees that is not included in this proposal and should be by the Owner:

- 1- Site Survey of the site, Survey of any building system.
- 2- Existing Storm and Sewer investigation and survey.
- 3- TDLR review and Inspection
- 4- Soil Report if needed.
- 5- Architecture decorative lighting or extensive sound studies.
- 6- Printing for permitting and bidding, additional printing

\$ 5,000 Reimbursable items for printing at permitting, bidding, additional prints and presentation Boards.

Thank you again for your trust and looking forward to develop this meaningful and unique project in Fort Bend County. Please call with any questions or comments you may have.

Respectfully



Lina Sabouni, AIA
Principal in Charge

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