

3. **Time for Performance.** Time for performance of the Services under this Agreement shall begin with S&C's receipt of Notice to Proceed (the "Commencement Date") and shall end no later than Six (6) months from the Commencement Date. S&C shall complete such tasks described in the Scope of Services, within this time or within such additional time as may be extended by County.

4. **Compensation and Payment Terms.**
 - (a) S&C's fees for the Services shall be calculated at the rate(s) set forth in Exhibit "A" attached hereto. The Maximum Compensation to S&C for the Services performed under this Agreement is One Hundred Two Thousand Five Hundred and 00/100 Dollars (\$102,500.00). In no event shall the amount paid by County to S&C under this Agreement exceed said Maximum Compensation without an approved change order.
 - (b) S&C understands and agrees that the Maximum Compensation stated is an all-inclusive amount and no additional fee, cost or reimbursed expense shall be added whatsoever to the fees stated in the attached Exhibit "A."
 - (c) County will pay S&C based on the following procedures: Upon completion of the tasks identified in the Scope of Services, S&C shall submit to County staff person designated by the Facilities Management and Planning Director, one (1) electronic (pdf) copy of the invoice showing the amounts due for services performed in a form acceptable to County. County shall review such invoices and approve them within 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.
 - (d) Accrual and payment of interest on overdue payments shall be governed by Chapter 2251 of the Texas Government Code.
 - (e) S&C understands and agrees that County's obligation to make any payment(s) hereunder is dependent upon S&C's completion of the Services in a timely, good, and professional manner and in accordance with the performance representations made in Section 25 of this Agreement. Therefore, County reserves the right to withhold payment pending verification of satisfactory work performed.

5. **Limit of Appropriation.** S&C understands and agrees that the Maximum Compensation for the performance of the Services within the Scope of Services described in Section 2 above is One Hundred Two Thousand Five Hundred and 00/100 Dollars (\$102,500.00). In no event shall the amount paid by County under this Agreement exceed the Maximum Compensation without a County approved change order. S&C 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 Two Thousand Five Hundred and 00/100 Dollars (\$102,500.00) specifically allocated to fully discharge any and all liabilities County may incur under this Agreement. S&C does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total Maximum Compensation that S&C may become entitled to and the total maximum sum that County may become liable to pay to S&C under this Agreement shall not under any conditions, circumstances, or interpretations thereof exceed One Hundred Two Thousand Five Hundred and 00/100 Dollars (\$102,500.00).

6. **Non-appropriation.** S&C understands and agrees that in the event no funds or insufficient funds are appropriated by the County under this Agreement, County shall immediately notify S&C in writing of such occurrence and the Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were received or made without penalty, liability or expense to the County. In no event shall said termination of this Agreement or County's failure to appropriate said funds be deemed a breach or default of this Agreement or create a debt by County in any amount(s) in excess of those previously funded.
7. **Taxes.** S&C understands and agrees that County is a governmental entity and political subdivision of the state of Texas, and as such, is exempt from payment of any sales and use taxes. County shall furnish evidence of its tax-exempt status upon written request by S&C.
8. **Insurance.** Prior to commencement of the Services, S&C 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. S&C shall provide certified copies of insurance endorsements and/or policies if requested by County. S&C 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. S&C shall obtain such insurance written on an Occurrence form 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:
 - (a) Workers Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
 - (b) 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.

- (c) 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.
- (d) Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
- (e) Professional Liability insurance with limits not less than \$1,000,000.

County and members of the Fort Bend County Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability (if required). All Liability policies written on behalf of S&C shall contain a waiver of subrogation in favor of County.

If required coverage is written on a claims-made basis, S&C warrants that any retroactive date applicable to coverage under the policy precedes the Effective Date of this Agreement 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 the work under this Agreement is completed.

S&C shall not commence any portion of the work under this Agreement until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by County.

No cancellation of or changes to the certificates, or the policies, may be made without thirty (30) days prior, written notification to County.

Approval of the insurance by County shall not relieve or decrease the liability of the S&C.

9. **Indemnity. PURSUANT TO SECTION 271.904 OF THE TEXAS LOCAL GOVERNMENT CODE, S&C SHALL INDEMNIFY AND HOLD HARMLESS COUNTY, ITS OFFICIALS, OFFICERS, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, LIABILITY, AND COSTS, INCLUDING THE REIMBURSEMENT OF REASONABLE ATTORNEY FEES, ARISING OUT OF OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY S&C OR S&C'S AGENTS, EMPLOYEES, OR ANOTHER ENTITY OVER WHICH S&C EXERCISES CONTROL. IN ADDITION, S&C SHALL FURTHER PROCURE AND MAINTAIN LIABILITY INSURANCE WITH COVERAGE AS PROVIDED IN SECTION 8 OF THIS AGREEMENT.**

THE INDEMNITY PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT HOWEVER CAUSED, AND NO PAYMENT, PARTIAL PAYMENT, OR ISSUANCE OF CERTIFICATION OF COMPLETION OF THE SERVICES UNDER THIS AGREEMENT BY COUNTY, WHETHER IN WHOLE OR IN WHOLE OR IN PART, SHALL WAIVE OR RELEASE ANY OF THE PROVISIONS OF THIS SECTION.

10. **Public Information Act.** S&C expressly acknowledges and agrees that County is a public entity and as such, is subject to the provisions of the Texas Public Information Act under Chapter 552 of the Texas Government Code. In no event shall County be liable to S&C for release of information pursuant to Chapter 552 of the Texas Government Code or any other provision of law. Except to the extent required by law or as directed by the Texas Attorney General, County agrees to maintain the confidentiality of information provided by S&C expressly marked as proprietary or confidential. County shall not be liable to S&C for any disclosure of any proprietary or confidential information if such information is disclosed under Texas law or at the direction of the Texas Attorney General. S&C further acknowledges and agrees that the terms and conditions of this Agreement are not proprietary or confidential information.
11. **Compliance with Laws.** S&C shall comply with all federal, state, and local laws, statutes, ordinances, rules, regulations, and the 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. S&C, in providing all services hereunder, further agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.
12. **Independent Contractor.** In the performance of work or services hereunder, S&C shall be deemed an independent Contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of S&C. S&C 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.
13. **Use of Customer Name.** S&C may use County's name without County's prior written consent only in S&C's customer lists. Any other use of County's name by S&C must have the prior written consent of County.
14. **County/County Data.** Nothing in this Agreement shall be construed to waive the requirements of Section 205.009 of the Texas Local Government Code.
15. **Personnel.** S&C represents that it presently has, or is able to obtain adequate qualified personnel in its employment for the timely performance of the Services required under this Agreement and that S&C shall furnish and maintain, at its own expense, adequate

and sufficient personnel, in the opinion of County, to perform the Services when and as required and without delays.

All employees of S&C shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee or agent of S&C who, in County's opinion, is incompetent or by his conduct becomes detrimental to providing Services pursuant to this Agreement, shall, upon request of County, immediately be removed from association with the Services required under this Agreement.

When performing Services on-site at County's facilities, S&C shall comply with, and will require that all S&C's Personnel comply with, all applicable rules, regulations and known policies of County that are communicated to S&C in writing, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by County to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures.

16. **Confidential and Proprietary Information.** S&C 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 S&C 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 S&C 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 S&C) publicly known or is contained in a publicly available document; (b) is rightfully in S&C'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 S&C who can be shown to have had no access to the Confidential Information.

S&C agrees to hold Confidential Information in strict confidence, using at least the same degree of care that S&C 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, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. S&C 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, S&C shall advise County immediately in the event S&C 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 S&C will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or S&C against any such person. S&C agrees

that, except as directed by County, S&C 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, S&C will promptly turn over to County all documents, papers, and other matters in S&C's possession which embody Confidential Information.

S&C 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. S&C 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.

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

17. **Ownership and Reuse of Documents.** All work product and data produced or developed under this Agreement by S&C, including any documents, data, notes, reports, research, graphic presentation materials, and any other related material (collectively, "Materials"), shall at all times be the property of County. County, at all times, shall have a right of access to the Materials. S&C shall promptly furnish and deliver all such Materials to County on request. Notwithstanding the foregoing, S&C shall bear no liability or responsibility for Materials that have been modified post-delivery or used for a purpose other than that for which they were prepared under this Agreement.

18. **Inspection of Books and Records.** S&C shall permit County, or any duly authorized agent of County, to inspect and examine the books, records, information, and documentation (collectively, "Records") of S&C which relate to the Services provided under this Agreement for the purposes of making audits, examinations, excerpts, copies, and transcriptions. S&C shall maintain all such Records in a readily available state and location, reasonably accessible to County or their authorized representatives. County's right to inspect such books and records shall survive the termination of this Agreement for a period of four (4) years, or until any litigation concerning any of the Services has been satisfactorily resolved, whichever occurs later. **S&C SHALL NOT DESTROY OR DISCARD ANY RECORDS REASONABLY RELATED TO THIS AGREEMENT OR THE SERVICES, UNLESS THE TIME PERIOD FOR MAINTAINING THE SAME HAS EXPIRED.**

19. **Termination.**

- (a) Without Cause. County, in its sole discretion, and without prejudice to any other remedy to which it may be entitled to at law or in equity, may terminate this Agreement, in whole or in part, without cause, upon thirty (30) days prior written notice to S&C.

- (b) With Cause. County, in its sole discretion, and without prejudice to any other remedy to which it may be entitled to at law or in equity, may terminate this Agreement, in whole or in part, with cause, for any of the following reasons, each of which shall constitute a material breach and “Default” of the Agreement:
 - (1) S&C fails to perform any portion of the Scope of Services under Section 2 above within the timeframe(s) provided.
 - (2) S&C fails to comply with County’s documentation and reporting requirements, terms and requirements of this Agreement, or applicable federal, state, or local laws and regulations.
 - (3) Non-performance and suspension of the Agreement that exceeds thirty (30) calendar days due to Force Majeure.
 - (4) S&C fails to perform any obligation under this Agreement or as required by law, ordinance, or regulation and such failure creates an imminent threat to the public health and/or safety.
 - (5) S&C otherwise substantially 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.
 - (6) County shall notify S&C in writing of the alleged Default in reasonable detail (“Notice”). Upon receipt of said Notice, S&C shall have opportunity to cure such Default within the time specified in the Notice by County. If S&C fails to cure such Default within such time, and to the reasonable satisfaction of County, then County may elect to terminate this Agreement for cause.
 - (7) If, after termination of the Agreement by County for cause, it is determined for any reason whatsoever that S&C was not in Default, or that the Default was excusable, the rights and obligations of the Parties hereunder shall be the same as if the termination had been issued by County without cause in accordance with this Agreement.

- (c) Upon termination of this Agreement for any reason, S&C shall cease all work and activity for the Services by the date specified by County and shall not incur any new obligations or perform any additional services for the work performed hereunder beyond the specified date. County shall compensate S&C in accordance with Section 4, above, for such work provided by S&C under this Agreement prior to its termination and which has not been previously presented for payment by S&C to County.
 - (d) 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 S&C.
- 20. **Force Majeure.** In the event either Party is rendered unable, wholly or in part, by Force Majeure to carry out any of its obligations under this Agreement, then, within a reasonable time after the occurrence of such event, but no later than ten (10) calendar days after, the Party whose obligations are so affected (the “Affected Party”) thereby shall notify the other in writing stating the nature of the event and the anticipated duration. The Affected Party’s obligations under this Agreement shall be suspended during the continuance of any delay or inability caused by the event, but for no longer period. The Affected Party shall further endeavor to remove or overcome such delay or inability as soon as is reasonably possible.

For purposes of this Agreement, Force Majeure includes, but is not limited to: acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States of America or the State of Texas or any civil or military authority other than a Party to this Agreement, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, severe storms, floods, washouts, drought, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, and any other incapacities of any Party, similar to those enumerated, which are not within the control of the Party claiming such inability, which such Party could not have avoided by the reasonable exercise of due diligence and care.
- 21. **Assignment.** S&C may not assign this Agreement to another party without the prior written consent of County. S&C
- 22. **Successors and Assigns Bound.** County and S&C each bind themselves and their successors and assigns to the other Party and to the successors and assigns of such other Party, with respect to all covenants of this Agreement.

23. **Publicity.** Contact with citizens of Fort Bend County, media outlets, or other governmental agencies shall be the sole responsibility of County. Under no circumstances, whatsoever, shall S&C release any material or information developed or received during the performance of Services hereunder unless S&C obtains the express written approval of County or is required to do so by law.
24. **Notice.** Any and all notices required or permitted under this Agreement shall be in writing and shall be mailed by certified mail, return receipt requested, or personally delivered to the following addresses:

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

And

Fort Bend County, Texas
Attn: County Judge
401 Jackson Street, 1st Floor
Richmond, Texas 77469

If to S&C: SMITH & COMPANY ARCHITECTS, INC.
Attn: Terry D. Smith, AIA, President
12603 Southwest Fwy, Suite 415
Houston, Texas 77040

Within five (5) business days of the Effective Date of this Agreement, each Party to this Agreement shall designate in writing to the other Party one person and one alternate person to be that Party's designated spokesperson for communications between the Parties.

25. **Standard of Care.** Pursuant to Section 271.904 of the Texas Local Government Code, S&C represents to County that S&C has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession ("Professionals") practicing in the greater Houston metropolitan area. S&C shall provide the Services to County with the same professional skill and care ordinarily provided by such Professionals under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent Professional.

26. **Travel Policy.** Mutually approved travel and mileage expenses incurred in the performance of the Services hereunder will be reimbursed to S&C only to the extent that those costs do not exceed Fort Bend County travel reimbursement allowances. A copy of County's Travel Policy with those reimbursement limits shall be provided to S&C upon request.
27. **Arbitration, Litigation Waiver, and Attorney Fees.** County does not agree to submit disputes arising out of this Agreement to binding arbitration nor does County agree to pay any and/or all attorney fees incurred by S&C in any way associated with this Agreement. Therefore, any references in S&C's Proposal to binding arbitration, waiver of a right to litigate a dispute, or payment of attorney fees are hereby deleted.
28. **No Waiver of Jury Trial.** County does not agree that all disputes (including any claims or counterclaims) arising from or related to this Agreement shall be resolved without a jury. Therefore, any references in S&C's Proposal to County's waiver of jury trial are hereby deleted.
29. **Limitation of Liability and Waiver of Damages.** County does not agree to limit S&C's liability for any damages, however caused, nor does County agree to waive any special or consequential damages for claims, disputes, or other matters in question which may arise out of or relating to this Agreement. Therefore, any references in S&C's Proposal to County regarding limitations of liability and waiver of consequential damages are hereby deleted.
30. **Non-Solicitation.** S&C understands and agrees that County, under the County Purchasing Act and other provisions of federal, state, and local laws, has the right and duty to solicit and/or competitively bid out for various goods and services. Therefore, any reference in S&C's Proposal to County's solicitation of employment, services, or payment of any salaries or other damages for the same are hereby deleted.
31. **Limitations.** Limitations for the right to bring an action, regardless of form, shall be governed by the applicable laws of the State of Texas, and any provisions to the contrary in S&C's Proposal are hereby deleted.
32. **Indemnification by County. S&C UNDERSTANDS AND AGREES THAT UNDER THE TEXAS CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, COUNTY CANNOT ENTER INTO AN AGREEMENT WHEREBY COUNTY AGREES TO INDEMNIFY OR HOLD HARMLESS ANOTHER PARTY. THEREFORE, ANY AND ALL REFERENCES IN S&C'S PROPOSAL TO COUNTY DEFENDING, INDEMNIFYING, OR HOLDING OR SAVING HARMLESS S&C OR ANY OTHER PARTY, FOR ANY REASON WHATSOEVER, ARE HEREBY DELETED.**

33. **Entire Agreement and Modification.** This Agreement constitutes the entire Agreement between the Parties and supersedes all previous agreements, written or oral, pertaining to the subject matter of this Agreement. Any amendment to this Agreement must be in writing and signed by each Party to come into full force and effect. **IT IS ACKNOWLEDGED BY S&C THAT NO OFFICER, AGENT, EMPLOYEE, OR REPRESENTATIVE OF COUNTY HAS ANY AUTHORITY TO CHANGE THE TERMS OF THIS AGREEMENT OR ANY ATTACHED EXHIBITS HERETO UNLESS EXPRESSLY AUTHORIZED BY THE FORT BEND COUNTY COMMISSIONERS COURT.**
34. **Conflict.** In the event there is a conflict among the terms of this document entitled “Agreement for Professional Architectural Services” and the terms of S&C’s Proposal or any other exhibit attached hereto, the terms of this document shall prevail with regard to the conflict.
35. **Understanding Fair Construction.** By execution of this Agreement, the Parties acknowledge that they have read and understood each provision, term, and obligation contained herein. This Agreement, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting Party than the non-drafting Party.
36. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
37. **No Waiver of Immunity.** Neither the execution of this Agreement nor any other conduct of either Party relating to this Agreement shall be considered a waiver or surrender by County of its governmental powers or immunity under the Texas Constitution or the laws of the state of Texas.
38. **Applicable Law and Venue.** This Agreement shall be construed according to the laws of the state of Texas. Venue for any claim arising out of or relating to the subject matter of this Agreement shall lie in a court of competent jurisdiction of Fort Bend County, Texas.
39. **Certain State Law Requirements for Contracts** The contents of this Section are required by Texas law and are included by County regardless of content For purposes of Sections 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, S&C hereby verifies that S&C and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:
- (a) Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, is not identified on a list

prepared and maintained by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.

- (b) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, S&C does not boycott Israel and is authorized to agree in such contracts not to boycott Israel during the term of such contracts. "Boycott Israel" has the meaning provided in § 808.001 of the Texas Government Code.
- (c) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, S&C does not boycott energy companies and is authorized to agree in such contracts not to boycott energy companies during the term of such contracts. "Boycott energy company" has the meaning provided in § 809.001 of the Texas Government Code.
- (d) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, S&C does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and is authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts. "Discriminate against a firearm entity or firearm trade association" has the meaning provided in § 2274.001(3) of the Texas Government Code. "Firearm entity" and "firearm trade association" have the meanings provided in § 2274.001(6) and (7) of the Texas Government Code.

- 40. **Human Trafficking.** BY ACCEPTANCE OF THIS AGREEMENT, S&C ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.
- 41. **Captions.** The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of the Agreement.
- 42. **Electronic and Digital Signatures.** The Parties to this Agreement agree that any electronic and/or digital signatures of the Parties included in this Agreement are intended to authenticate this writing and shall have the same force and effect as the use of manual signatures.
- 43. **Certification.** By his or her signature below, each signatory individual certifies that he or she is the properly authorized person or officer of the applicable Party hereto and has the requisite authority necessary to execute this Agreement on behalf of such Party, and each Party hereby certifies to the other that it has obtained the appropriate approvals or authorizations from its governing body as required by law.

{Execution Page Follows}

IN WITNESS WHEREOF, and intending to be legally bound, County and S&C hereto have executed this Agreement to be effective on the date signed by the last Party hereto.

FORT BEND COUNTY, TEXAS

KP George, County Judge

Date

ATTEST:

Laura Richard, County Clerk

SMITH & COMPANY ARCHITECTS, INC.



Authorized Agent – Signature

Terry D. Smith
Authorized Agent- Printed Name

Principal

Title

7/2/2024

Date

APPROVED:



James Knight, Director
Facilities Management and Planning

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$_____ are available to pay the obligation of Fort Bend County, Texas within the foregoing Agreement.

Robert Ed Sturdivant, County Auditor

EXHIBIT A

(S&C's Proposal Follows Behind)

May 15th, 2024

Commissioner McCoy
Fort Bend County Precinct 4
Office: 281.243.4800
1517 Eugene Heimann Circle, Suite #300
Richmond, TX 77469

**RE: Proposal for Pre-Design Building Assessment and Programming Services
Proposed Rehab of the Cole Theater**

Dear Commissioner McCoy:

The office of **Smith & Company Architects Inc. (S&C)** appreciates the opportunity to provide this proposal for professional consulting services to **Fort Bend County** for the above referenced project. By selecting the S&C team, Fort Bend County will benefit from working with a firm that upholds the principles of quality service.

PROJECT UNDERSTANDING

Fort Bend County plans to rehabilitate the existing Cole Theater at 903 3rd Street, Rosenberg, TX 77471. Prior to making upgrades to the existing buildings, Fort Bend County is in need of an existing facilities assessment and program to confirm project scope and budget for improvements.

The architectural program will result in a systematic evaluation of the interrelated values; goals, facts, and needs for the new facility. The program document will be a comprehensive document that verbally explains the county's ultimate vision for the theater. It will also outline the required estimates of costs required for the renovated facility. While this document will assist the project team and the county in defining scope and budget, it will not include an exhaustive effort to diagrammatically depict future designs of the theater. It is expected that all space layouts and designs will be provided in a future contract once assessment services are completed and scope and budget are defined, S&C will submit a separate proposal for professional architectural and engineering services, if requested.

PROPOSED PROJECT TEAM

We will be working with some of the areas most qualified specialty consultants on this project. Below is a list of the firms that will be assisting us.

- DBR – MEP Assessment
- Walker Consultants – Structural Assessment & Building Envelope Assessment
- WJHW – Theater Consulting
- Halford Busby – Construction Estimating

SCOPE OF WORK

The Smith & Company team will provide the following services:

1. **Existing Documentation Coordination & Data Gathering**
 - a. Coordinate owner supplied documentation such as existing drawings, historical information / documentation, hazmat reports, etc.
2. **Existing Building Documentation in Revit**
 - a. As there are no record drawings of the existing theater, we will document all existing facilities in Revit and or AutoCAD. This includes architectural elements within the bounding walls of the theater and does not include site plans, MEP systems, or detailed structural systems.
3. **Theater Feasibility Study & Programming**
 - a. Outline relevant design considerations for space planning, acoustics, and theatre technical systems.
 - b. Analyze future parking needs for staff and visitors, as well as special events.
 - c. Establish and document space needs and adjacency relationships including future distribution of the planned program (gross square feet and assignable square feet).
 - d. Program potential furniture and equipment conceptually as it relates to the interior space requirements.
4. **MEP Assessment**
 - a. Comprehensive assessment of existing HVAC, electrical, and plumbing systems. See attached proposal and scope of services by DBR Engineers.
5. **Envelope & Structural Assessment**
 - a. Comprehensive building envelope assessment. See attached proposal and scope of services by Walker Consultants.
6. **Life Safety and Building Code Assessment**
 - a. Building code and ADA (TAS 2012) analysis of the building. Code and ADA analysis will be limited until a full program is developed for the building's future use.
7. **Cost & Scheduling Coordination**
 - a. Prepare preliminary schedules that encompass all phases of work from programming through occupancy
 - b. Prepare preliminary cost estimates for required building improvements, infrastructure, site improvements, and future requirements including soft costs.
8. **Project Management**
 - a. Two meetings to present recommendations to Fort Bend county. Incorporate comments and revisions as required.

- b. Provide overall management and coordination of the project including preparation of a final submittal document.

COMPENSATION

Smith & Company Architects will provide consulting services based on our current understanding of the project for a lump sum amount of **\$97,500 (Ninety-Seven Thousand Five Hundred Dollars)**. Anticipated services will be performed and billed monthly based on percentage of task completed as outlined below.

Owner Supplied Documentation Coordination	\$3,500
Existing Building Documentation in Revit	\$9,000
Feasibility Study & Programming	\$20,000
Building Condition Assessment	\$50,000
Final Submission Development (Code Assessment / Project Schedule / Project Estimate)	\$15,000

Reimbursable Expenses are in addition to the fees stated above and include expenses incurred by S&C, and our consultants, directly related to the Project. Reimbursable expenses include:

1. Testing related expenses
2. Reproductions, plots, postage, handling and delivery services

Reimbursable expenses are not anticipated to exceed \$5,000.

ADDITIONAL SERVICES

S&C shall be entitled to an appropriate adjustment in schedule and/or compensation for any of the following requested services:

1. Preparation of design documents related to the restoration of the existing building, including the remediation of existing environmental hazards.
2. Environmental Studies or Test (to be provided by Ft. Bend County)
3. Extensive detailed investigation of building systems including electrical, life safety, or security systems
4. Assessment of unforeseen or hidden conditions. No deconstructive removal of existing building elements is Included.
5. Any services outside the physical buildings including the building site.

PROJECT SCHEDULE

Our proposal is conditioned on the assumption that these services will have the highest priority and that we will have frequent and scheduled access to key decision-makers and administrative personnel. We also assume that Ft. Bend County will assist us in scheduling access to the building.

Given the parameters stated above, Smith & Company Architects is prepared to deliver the above services in a timely fashion. A project schedule will be coordinated with Ft. Bend County.

We are excited regarding the opportunity to work with Ft. Bend County on this project. S&C looks forward to the commencement and successful completion of this project. Please contact me should you have any questions or comments regarding this proposal.

Sincerely,

A handwritten signature in black ink, appearing to be 'Terry D. Smith', written over a horizontal line.

Terry D. Smith, AIA
President

APPROVED AND ACCEPTED

BY: _____

DATE: _____



February 14, 2024

Terry Smith AIA NOMA NCARB
Principal in Charge
Smith & Company Architects
720 North Post Oak Rd., Ste. 124
Houston, TX 77024

VIA EMAIL: tsmith@sc-arch.com

Subject: **Cole Theatre Renovation Project – Pre-Design Services
Proposal for Specialty Design and Consulting Services**

Dear Terry:

Thank you for requesting this proposal for specialty design and consulting services. Wrightson, Johnson, Haddon and Williams, Inc. is pleased to have the opportunity to work with you on this project. This proposal represents our current understanding of the project. If you feel we have misunderstood the requirements or scope of work, we would be pleased to revise this proposal upon request.

Our proposal includes specialty pre-design and consulting services for the anticipated Cole Theatre Renovation Project as described below. These services are hereinafter known as the "Base Services." It is prepared and offered by Wrightson, Johnson, Haddon & Williams, Inc. hereinafter known as "WJHW", to Smith & Company Architects, hereinafter known as "Architect". Our proposal is intended to form the basis of an agreement between Architect and WJHW for the services and fees as described.

PROJECT UNDERSTANDING

WJHW understands that a feasibility study is in process for an anticipated renovation project as follows:

- The facility is a landmarked former film venue seating roughly 600 people; original construction dates to 1919.
- Restoration shall allow the facility to re-open for similar use in addition to other anticipated live-event programming.
- All aspects of the facility are likely included in scope including auditorium and stage, along with public and backstage adjacencies.

SCOPE OF SERVICES

PRE-DESIGN & PROGRAMMATIC VERIFICATION

WJHW will:

- Visit the facility, one time, to verify existing conditions and document those relative to the assumed new/future theatrical and assembly occupancy uses.
- Meet with the Owner and Architect to develop an understanding of the design requirements which are unique to this project.
- Provide concept sketches for the Architect to develop and incorporate in their documentation package.

- Develop a written report/narrative outlining relevant design considerations for space planning, acoustics, and theatre technical systems. We will provide (1) draft and (1) final version if the written report/narrative document.
- Calculate pre-design Opinions of Probable Cost (OPCs) to be included in the report for the associated technical systems' scope described below.

SCOPE OF EFFORTS

WJHW will provide consultative recommendations and design outlines based on the program articulated by the Owner and Architect as noted above. As part of WJHW's scope of services, we will address the disciplines outlined below.

THEATRE CONSULTING

We will:

- Verify and assist in development of the overall Auditorium space planning scheme relative to anticipated seating layouts and audience sightlines in conjunction with the Architect.
- Provide recommendations concerning the design of the venue as it relates to performance and operational requirements.
- Review and recommend front-of-house traffic patterns, box office requirements, public restrooms, and other audience amenities.
- Develop programmatic space recommendations including coordination sketches as needed to communicate: stage layout and configuration, control areas, overhead lighting coves or catwalks, loading and technical access pathways, and performer/technical support adjacencies.

THEATRICAL SYSTEMS

For the following anticipated systems, we will:

SOUND, AV & INTERCOMMUNICATION SYSTEMS

- Describe sound, AV, and backstage intercommunications systems as part of the project.
- Coordinate locations of equipment and controls for the systems with the Architect in regard to available space and operational requirements.
- Provide feedback on infrastructure, power, and HVAC requirements for each of the sub-systems listed in this section.
- Communicate requirements for the integration of the required system components into the architectural design with respect to the interior design.

PERFORMANCE LIGHTING AND CONTROLS SYSTEMS DESIGN

- Describe an entertainment lighting and control system for the performance space for likely installed equipment along with infrastructure for use with third-party rental systems.
- Communicate requirements for integration of permanently installed architectural lighting and associated emergency egress and pathway lighting.
- Communicate load (power and heat) requirements for the associated MEP infrastructure.

PERFORMANCE RIGGING SYSTEMS, DRAPERY, AND STAGE EQUIPMENT DESIGN

- Describe the likely design of overhead stage rigging, curtains, and related equipment.
 - Work with the Structural Engineer and Architect to verify all associated structure and for
-

access and service of the system(s).

ACOUSTICS AND NOISE CONTROL

ARCHITECTURAL ACOUSTICS

We will:

- Set acoustical criteria based on user needs and expectations for room acoustics, speech intelligibility, and other programmatic requirements.
- Evaluate room geometry and assist in the determination of the likely quantity, type and location of acoustical finishes and shaping within the venue.

ARCHITECTURAL NOISE CONTROL (SOUND ISOLATION)

- Identify the sensitive areas where good sound isolation is required.
- Set Sound Transmission Class (STC) criteria for sound transmission in and out of the spaces, horizontally and vertically, as appropriate.
- Review the adjacent spaces for which potential sound isolation conflicts might occur and make architectural recommendations to help control the transfer of objectionable sound between these areas.
- Provide recommendations for the design, specification and construction of partitions, doors, windows, and other sound isolating elements to meet the stated requirements.

MECHANICAL SYSTEM NOISE AND VIBRATION CONTROL

- Assign HVAC noise criterion (NC) values to the indoor, noise sensitive spaces to meet Owner expectations and industry standards for acceptable background noise levels from mechanical equipment, for use by the Mechanical Engineer in their design efforts.
- Communicate vibration control recommendations for mechanical and electrical equipment.

(Excluded from this proposal are any efforts on vibration analysis on the fundamental building structure, vibration due to occupancy activities, external sources (e.g. transportation), nor will we review the expected fundamental structural response to vibration regarding appropriateness for various forms of occupancy or other uses.)

ACOUSTICAL DELIVERABLES

- WJHW will provide verbal and written recommendations, as appropriate, with detail drawings in sketch form (and manufacturer's cut sheets if appropriate/required) for use by the design team. These recommendations shall include likely acoustical treatments, partition design, and remediation of noise transmission from exterior and between sensitive spaces.
- We will communicate preliminary mechanical systems performance requirements including NC target values and relevant siting of equipment.

SCHEDULE

WJHW has the staff and technical resources available to provide consulting and design services upon approval of this proposal. We anticipate we can complete the documentation described above within 4-weeks following the initial site-visit and meetings.

DESIGN AND CONSULTING FEES

We propose to perform the design efforts described in this proposal for the fixed fee shown below. This fee indicates a level of professional service which is consistent with our past work on similarly sized facilities.

WJHW’s fees assume that all services shall be accepted as part of this proposal. WJHW reserves the right to renegotiate our fee estimates should the project’s final program, design direction and scope differ from what is outlined within this proposal.

Discipline	Fees
Pre-Design Services	\$8,500

PROJECT TRIPS

WJHW does not limit design team meetings in the Houston area. However, in addition to the single site visit described above, we anticipate participating in video or phone conferences for most coordination meetings associated with the project as we do not foresee our in-person attendance will be required at all meetings. We request that we only be asked to participate in person at those meetings when our scope of efforts is being discussed or our technical expertise is required.

EXCLUSIONS

Any services not specifically described in our scope of services as basic services are specifically excluded from the services that WJHW will provide on this assignment.

The following services are not a part of our base services but can be addressed in an addendum to this proposal if and when deemed necessary:

- Full design services and documentation as are anticipated in a future full SD-CA effort.
- Redesign or rework of the submitted report beyond the draft and final version deliverables described above.
- Design of video production (e.g. cameras, processing, switching) or broadcast cabling systems.
- Design of structured cabling or security systems.

OTHER PROJECT PROVISIONS

STANDARD OF CARE

WJHW will endeavor to perform our services in accordance with generally accepted standards of practice in effect at the time of performance. WJHW owes no fiduciary responsibility to any party involved in this agreement.

PROFESSIONAL SEAL

There is typically no seal for our documents and WJHW will not be producing documents for bidding or permit; therefore, any documents produced will not be sealed by WJHW.

RE-DESIGN

WJHW will perform programming, analysis and design work one time. If we are requested to provide re-design or re-work of our documentation after our final documents are issued due to something beyond our control (change in overall project budget, changes based on Owner’s request, etc.,) we would be pleased to comply on an additional services basis, either hourly or for a negotiated fee.

These services and fees are based on our best assessment of the needs of the project. If our understanding of the scope requires modification, please let us know; we will work with you on a changed scope of services and fee structure.

Thank you for the opportunity to be of service. Please let me know if you have any questions or need further information.

Best Regards,
WRIGHTSON, JOHNSON, HADDON & WILLIAMS,
INC.



Fritz Schwentker, ASTC
Principal

c.c. WJHW Marketing

ACCEPTED:

By

Title

Date



1201 Elm Street, Suite 4256
Dallas, Texas 75270
469.917.5968

February 16, 2024

Terry Smith
Principal in Charge
Smith & Company Architects
720 North Post Oak Rd. Suite 124
Houston, TX 77024

Re: *Proposal for Building Envelope Assessment Consulting Services
Cole Theatre
930 3rd Street
Rosenberg, TX 77471
Walker Project No. 25-003017.00 Proposal 1 of 2*

Dear Terry:

Walker Consultants (Walker) is pleased to submit for your review the proposal to perform a building envelope assessment on Cole theatre located in Historic Downtown Rosenberg, TX. This proposal provides our Project Understanding, Scope of Services, Schedule, Professional Fee, and Conditions of Agreement.

Project Understanding

The historic art deco structure, Cole theatre, located at 930 3rd Street was built circa 1883. It measures approximately 120 feet in the east-west direction by 40 feet in the north-south direction. The structural system consists of a brick mass wall covered with precast panels and an interior wood framing.

Mr. Terry Smith with Smith & Company Architects requested that Walker Consultants provide this proposal to perform consulting services related to the building envelope condition assessment of the historic Cole theatre to identify distressed conditions present on the exterior building envelope.

Scope of Services

To achieve the project objectives, Walker proposes the following scope of services:

Phase 1 – Building Envelope Condition Assessment and Reporting

The purpose of this assessment is to observe the condition of the readily accessible exterior building envelope (unit masonry, windows, sealants, roofs, etc.). Observed visible distressed conditions will be documented in Walker's report and will inform our conceptual repair recommendations. Our recommended scope of services consists of the following:

Task 1 – Review and Interviews

1. Review available original drawings, submittals, and previous consultant's report to familiarize with the design intent of exterior envelope conditions and details. We will also use copies of the elevation drawings and roof plan to document our findings.
2. Interview the building manager and maintenance staff and review available maintenance records to obtain information regarding water leakage through the exterior wall and roof, other building envelope issues, and prior exterior wall and roofing repair and maintenance work.

Task 2 – Field Investigations

1. Perform a limited visual assessment of the readily accessible building envelope conditions from roof levels, exterior ground level, and building interior for the building envelope components (masonry cladding, windows, roof systems, etc.). For budgeting purposes, one (1) day of limited visual assessment is included in the proposed fee.

Task 3 – Analysis and Report

1. Evaluate the data obtained from Tasks 1 and 2 to determine likely causes of observed distress and to develop the appropriate conceptual repair recommendations. The data will also determine potential further investigation or testing needed if our limited visual observation cannot expose certain conditions.
2. Develop opinions on probable repair costs.
3. Provide a written report of our findings, recommendations, and opinions of probable cost. The report will include a photo log of representative significant conditions found during the assessment.

Following the Phase I Condition Assessment, we will be glad to provide a separate proposal for the following additional services (Phases 2 and 3) to implement any recommended conceptual repairs, if required, once the type and scope of those repairs are known.

The described services will be performed under the direction of Brian Glover, RRO, REWO, CIT, who is a Registered Roof Observer and a Registered Exterior Wall Observer with IIBEC, Inc., along with Ravi Mullapudi, PhD, PE, RRC, REWC, RWC, RBEC who is a licensed professional engineer in the State of Texas and will serve as Walker's project managers for these professional services. Resumes for these staff members have been enclosed.

Phase 2 – Construction Documents (Future Scope of Work)

Phase 2 services consist of finalizing the scope of the repair work and preparing plans, details, specifications, and phasing to implement the repairs. The plans, details, and specifications will allow you to obtain proper competitive bidding for the repairs from qualified restoration contractors.

Phase 3 – Construction Administration (Future Scope of Work)

Phase 3 services consist of assisting the Owner in bidding and negotiations with qualified restoration contractors and site observation of the repair work for general conformance to the intent of the plans and specifications.

Limitations

As stated in the above scope of services, the assessment is based on visual observations of the existing conditions. Our observations may not discover or disclose latent conditions without performing more invasive testing. More detailed and invasive testing can be provided by Walker as an additional service upon written request from Client.

Americans with Disabilities Act

A review of the facility for Building Code compliance and compliance with the Americans with Disabilities Act (ADA) requirements is not part of the scope of work. However, it should be noted that whenever significant repair, rehabilitation, or restoration is undertaken in an existing structure, ADA design requirements may become applicable if there are currently unmet ADA requirements.

Schedule

We can schedule the field survey of the structure to begin within two weeks after we have received your authorization to proceed. Signing a copy of this letter proposal will serve as our notice to proceed with the proposed services. We anticipate it will take approximately 1 day on-site to perform the building envelope condition assessment. Following the field survey, we anticipate being able to submit the report within two weeks.

Professional Fee

We will perform the scope of services outlined in Phase 1 above for a lump sum fee of **Fifteen Thousand Five-Hundred Dollars (\$15,500)**, including reimbursable expenses. **This proposed fee amount is contingent upon acceptance of Walker's Structural Assessment proposal, as the two surveys will be performed during the same mobilization.** The Construction Documents services described in Phase 2 and Construction Administration services described in Phase 3 are a future scope of work and are not included in this fee. Our services will be billed in accordance with the attached General Conditions of Agreement. If you wish to negotiate different conditions, our lump sum fee would increase by Five Thousand Dollars (\$5,000).



Walker is dedicated to providing our clients with professional services that meet project requirements and deadlines. If you should have any additional questions, please do not hesitate to call or email us.

Sincerely,

WALKER CONSULTANTS

A handwritten signature in black ink, appearing to read "Brian Glover".

Brian Glover, RRO, REWO, CIT
Building Envelope Consultant II

Enclosures General Conditions of Agreement for Consulting Services

Authorization

Trusting that this meets with your approval, we ask that you sign in the space below to acknowledge your acceptance of the terms contained herein, and to confirm your authorization for us to proceed. Please return one signed original of this agreement for our records.

Smith & Company Architects

Authorized Signature _____

Printed Name _____

Title _____

Date _____

General Conditions of Agreement for Consulting Services

Services

Walker Consultants (“Walker”) will provide the Client professional services that are limited to the work described in the attached letter (the “services”). Any additional services requested will be provided at our standard hourly rates or for a mutually agreed lump sum fee. The services are provided solely in accordance with written information and documents supplied by the Client and are limited to and furnished solely for the specific use disclosed to us in writing by the Client. No third-party beneficiary is contemplated.

Payment for Services

Monthly Invoices

Walker will submit monthly invoices based on work completed plus reimbursable expenses. Reimbursable expenses will be billed at 1.15 times the cost of travel and living expenses, purchase or rental of specialized equipment, photographs and renderings, document reproduction, postage and delivery costs, communications charges, additional service consultants, and other project related expenses.

Payment is due upon receipt of invoice. If for any reason the Client does not pay Walker within thirty (30) days of date of invoice, Walker may, at its option, suspend or withhold services. The Client agrees to pay Walker a monthly late charge of one and one-half percent (1.5%) per month of any unpaid balance of the invoice.

Payment Method

Walker’s preferred method of payment is ACH. All payments should be made electronically to:

Truist Bank

ABA Routing Number **021052053**

Credit to the account of - Walker Consultants

Account Number **79592337**

Period of Service

In the event that no contract administration phase services are to be provided by Walker, services shall be completed the earlier of (1) the date when final documents are accepted by the Client or (2) thirty days after final documents are delivered to the Client. If contract administration phase services are provided by Walker, services shall be complete upon the earlier of (1) the time of approval by Walker of final payment to the contractor or (2) thirty (30) days after completion of the work designed by Walker.

Standard of Care

Walker will perform the services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality. Walker makes no warranty, express or implied, as to its professional services under this agreement.

Any estimates or projections provided by Walker will be premised in part upon assumptions provided by the Client. Walker will not independently investigate the accuracy of the assumptions. Because of the inherent uncertainty and probable variation of the assumptions, actual results will vary from estimated or projected results and such variations may be material. As such, Walker makes no warranty or representation, express or implied, as to the accuracy of the estimates or projections.

Limitation of Liability

To the maximum extent permitted by law, the Client agrees to limit Walker's liability for the Client's damages to the sum of \$10,000 or Walker's fee, whichever is greater. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.

Indemnification

Walker agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors, and employees (collectively, Client) against all damages or liabilities, to the extent caused by Walker's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom Walker is legally liable.

The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Walker, its officers, directors, employees, and subconsultants (collectively Walker) against all damages or liabilities, to the extent caused by the Client's negligent acts, errors, or omissions in connection with the Project as well as the acts, errors, or omissions of its contractors, subcontractors, or consultants or anyone for whom the Client is legally liable.

Neither the Client nor Walker shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence or for the negligence of others.

Ownership of Documents

Walker shall retain ownership of all reports, drawings, plans, specifications, electronic files, field data, notes, calculations, and other documents and instruments prepared by Walker as instruments of service. Walker shall retain all common law, statutory, and other reserved rights, including, without limitation, all copyrights thereto. Any use for modifications or extensions of this work, for new projects, or for completion of this project by others without Walker's written consent will be at the Client's sole risk.

Consequential Damages

The Client and Walker waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement.

Dispute Resolution

This Agreement shall be governed by the laws of the Commonwealth, District, or State of the office performing Walker's services. In addition to, and as a condition precedent to litigation, the Client and Walker shall 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. 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 parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the locality of the Walker office performing services under this Agreement.

Non-Solicitation Clause

The Client agrees that it will not directly or indirectly solicit for employment any Walker employee providing services on behalf of Client for a period of two years after the date of this agreement. Client agrees that a breach of this provision would have material and adverse impacts on Walker's business and Client therefore agrees to pay Walker an amount equal to two times the annual salary of any employee of Walker who accepts a position with Client within such two-year period, in addition to all other rights and remedies available to Walker.

Proprietary Information

The information contained in this proposal is confidential, privileged, and only for the Client and may not be shared, published, or redistributed without prior written permission from Walker Consultants.



1201 Elm Street, Suite 4256
Dallas, Texas 75270
469.917.5968

February 16, 2024

Terry Smith
Principal in Charge
Smith & Company Architects
720 North Post Oak Rd. Suite 124
Houston, TX 77024

Re: *Proposal for Structural Assessment Consulting Services
Cole Theatre
930 3rd Street
Rosenberg, TX 77471
Walker Project No. 25-003017.00 Proposal 2 of 2*

Dear Terry:

Walker Consultants (Walker) is pleased to submit for your review the proposal to perform a structural condition assessment on Cole theatre located in Historic Downtown Rosenberg, TX. This proposal provides our Project Understanding, Scope of Services, Schedule, Professional Fee, and Conditions of Agreement.

Project Understanding

The historic art deco structure, Cole theatre, located at 930 3rd Street was built circa 1883. It measures approximately 120 feet in the east-west direction by 40 feet in the north-south direction. The structural system consists of a brick mass wall covered with precast panels and an interior wood framing.

Mr. Terry Smith with Smith & Company Architects requested that Walker Consultants provide this proposal to perform consulting services related to the structural assessment of the historic Cole theatre to identify distressed conditions present on the exterior building envelope.

Scope of Services

To achieve the project objectives, Walker proposes the following scope of services:

Phase 1 – Structural Condition Assessment and Reporting

Task 1 – Review and Interviews

1. Review any available and relevant drawings for information pertaining to the structural systems of the theatre.

2. Interview individuals familiar with the properties to obtain a general understanding of the building and to identify any known structural concerns.

Task 2 – Field Investigations

1. Visually observe the building's readily accessible areas of the structure to perform a Structural Condition Assessment of Existing Building to the extent possible based on the limited information that is known about the as-built configuration of the structure and the limited portions of the structure that are readily accessible for visible observation. We assume that access to a portion of each level will be made available for visual observations and that this access will be coordinated by the Client.

Task 3 – Analysis and Report

1. Evaluate the data obtained from Tasks 1 and 2 to determine the current conditions and existing deficiencies of the visible structure.
2. Include our findings into a single condition assessment report, which will include:
 - a. Description of the building.
 - b. A description of the performance criteria considered.
 - c. Priority of repairs will be established, ranging from immediate repairs, recommended repairs, and enhancement repairs.
 - d. Description evaluation processes.
 - e. Discussion of findings, including observed areas of structural distress. Areas of distress will be categorized by severity to prioritize any repairs that need to take place.
 - f. Recommendations concerning the need for further investigations.
 - g. Conceptual repair recommendations for building structure.
 - h. Opinions of the probable repair costs based on our conceptual repair recommendations.
 - i. A photo log of representative significant conditions found during the condition assessment.
3. Attend one teleconference meeting with the building management team to discuss the report findings.

Following the Phase I Condition Assessment, we will be glad to provide a separate proposal for the following additional services (Phases 2 and 3) to implement any recommended conceptual repairs, if required, once the type and scope of those repairs are known.

The described services will be performed under the direction of Brian Glover, RRO, REWO, CIT, who is a Registered Roof Observer with IIBEC, Inc. along with Ravi Mullapudi, PhD, PE, RRC, REWC, RWC, RBC who is a licensed professional engineer in the State of Texas and will serve as Walker's project managers for these professional services. Resumes for these staff members have been enclosed.

Phase 2 – Construction Documents (Future Scope of Work)

Phase 2 services consist of finalizing the scope of the repair work and preparing plans, details, specifications, and phasing to implement the repairs. The plans, details, and specifications will allow you to obtain proper competitive bidding for the repairs from qualified restoration contractors.

Phase 3 – Construction Administration (Future Scope of Work)

Phase 3 services consist of assisting the Owner in bidding and negotiations with qualified restoration contractors and site observation of the repair work for general conformance to the intent of the plans and specifications.

Limitations

As stated in the above scope of services, the assessment is based on visual observations and limited testing of the existing conditions. Our observations may not discover or disclose latent conditions without performing more invasive testing. More detailed and invasive testing can be provided by Walker as an additional service upon written request from Client.

Americans with Disabilities Act

A review of the facility for Building Code compliance and compliance with the Americans with Disabilities Act (ADA) requirements is not part of the scope of work. However, it should be noted that whenever significant repair, rehabilitation, or restoration is undertaken in an existing structure, ADA design requirements may become applicable if there are currently unmet ADA requirements.

Schedule

We can schedule the field survey of the structure to begin within two weeks after we have received your authorization to proceed. Signing a copy of this letter proposal will serve as our notice to proceed with the proposed services. We anticipate it will take approximately 1-2 days on-site to perform the building envelope condition assessment. Following the field survey, we anticipate being able to submit the report within two weeks.

Professional Fee

We will perform the scope of services outlined in Phase 1 above for a lump sum fee of **Fifteen Thousand Two-Hundred Five Hundred Dollars (\$15,500)**, including reimbursable expenses. **This proposed fee amount is contingent upon acceptance of Walker's Building Envelope Assessment proposal, as the two surveys will be performed during the same mobilization.** The Construction Documents services described in Phase 2 and Construction Administration services described in Phase 3 are a future scope of work and are not included in this fee. Our services will be billed in accordance with the attached General Conditions of Agreement. If you wish to negotiate different conditions, our lump sum fee would increase by Five Thousand Dollars (\$5,000).

Walker is dedicated to providing our clients with professional services that meet project requirements and deadlines. If you should have any additional questions, please do not hesitate to call or email us.



Sincerely,

WALKER CONSULTANTS

A handwritten signature in blue ink that reads "Brian Glover".

Brian Glover, RRO, REWO, CIT
Building Envelope Consultant II

Enclosures General Conditions of Agreement for Consulting Services

Authorization

Trusting that this meets with your approval, we ask that you sign in the space below to acknowledge your acceptance of the terms contained herein, and to confirm your authorization for us to proceed. Please return one signed original of this agreement for our records.

Smith & Company Architects

Authorized Signature _____

Printed Name _____

Title _____

Date _____

General Conditions of Agreement for Consulting Services

Services

Walker Consultants (“Walker”) will provide the Client professional services that are limited to the work described in the attached letter (the “services”). Any additional services requested will be provided at our standard hourly rates or for a mutually agreed lump sum fee. The services are provided solely in accordance with written information and documents supplied by the Client and are limited to and furnished solely for the specific use disclosed to us in writing by the Client. No third-party beneficiary is contemplated.

Payment for Services

Monthly Invoices

Walker will submit monthly invoices based on work completed plus reimbursable expenses. Reimbursable expenses will be billed at 1.15 times the cost of travel and living expenses, purchase or rental of specialized equipment, photographs and renderings, document reproduction, postage and delivery costs, communications charges, additional service consultants, and other project related expenses.

Payment is due upon receipt of invoice. If for any reason the Client does not pay Walker within thirty (30) days of date of invoice, Walker may, at its option, suspend or withhold services. The Client agrees to pay Walker a monthly late charge of one and one-half percent (1.5%) per month of any unpaid balance of the invoice.

Payment Method

Walker’s preferred method of payment is ACH. All payments should be made electronically to:

Truist Bank

ABA Routing Number **021052053**

Credit to the account of - Walker Consultants

Account Number **79592337**

Period of Service

In the event that no contract administration phase services are to be provided by Walker, services shall be completed the earlier of (1) the date when final documents are accepted by the Client or (2) thirty days after final documents are delivered to the Client. If contract administration phase services are provided by Walker, services shall be complete upon the earlier of (1) the time of approval by Walker of final payment to the contractor or (2) thirty (30) days after completion of the work designed by Walker.

Standard of Care

Walker will perform the services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality. Walker makes no warranty, express or implied, as to its professional services under this agreement.

Any estimates or projections provided by Walker will be premised in part upon assumptions provided by the Client. Walker will not independently investigate the accuracy of the assumptions. Because of the inherent uncertainty and probable variation of the assumptions, actual results will vary from estimated or projected results and such variations may be material. As such, Walker makes no warranty or representation, express or implied, as to the accuracy of the estimates or projections.

Limitation of Liability

To the maximum extent permitted by law, the Client agrees to limit Walker's liability for the Client's damages to the sum of \$10,000 or Walker's fee, whichever is greater. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.

Indemnification

Walker agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors, and employees (collectively, Client) against all damages or liabilities, to the extent caused by Walker's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom Walker is legally liable.

The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Walker, its officers, directors, employees, and subconsultants (collectively Walker) against all damages or liabilities, to the extent caused by the Client's negligent acts, errors, or omissions in connection with the Project as well as the acts, errors, or omissions of its contractors, subcontractors, or consultants or anyone for whom the Client is legally liable.

Neither the Client nor Walker shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence or for the negligence of others.

Ownership of Documents

Walker shall retain ownership of all reports, drawings, plans, specifications, electronic files, field data, notes, calculations, and other documents and instruments prepared by Walker as instruments of service. Walker shall retain all common law, statutory, and other reserved rights, including, without limitation, all copyrights thereto. Any use for modifications or extensions of this work, for new projects, or for completion of this project by others without Walker's written consent will be at the Client's sole risk.

Consequential Damages

The Client and Walker waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement.

Dispute Resolution

This Agreement shall be governed by the laws of the Commonwealth, District, or State of the office performing Walker's services. In addition to, and as a condition precedent to litigation, the Client and Walker shall 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. 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 parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the locality of the Walker office performing services under this Agreement.

Non-Solicitation Clause

The Client agrees that it will not directly or indirectly solicit for employment any Walker employee providing services on behalf of Client for a period of two years after the date of this agreement. Client agrees that a breach of this provision would have material and adverse impacts on Walker's business and Client therefore agrees to pay Walker an amount equal to two times the annual salary of any employee of Walker who accepts a position with Client within such two-year period, in addition to all other rights and remedies available to Walker.

Proprietary Information

The information contained in this proposal is confidential, privileged, and only for the Client and may not be shared, published, or redistributed without prior written permission from Walker Consultants.

February 21, 2024

Mr. Terry Smith, AIA NOMA NCRAB
Smith & Company Architects
720 North Post Oak Rd. Ste 124
Houston, TX 77024

**PROJECT: ROSENBERG'S COLE THEATER – FACILITY ASSESSEMENT
ROSENBERG, TEXAS**

Dear Mr. Smith:

DBR Engineering Consultants, Inc. is pleased to submit a fee proposal for Mechanical, Electrical, and Plumbing (MEP) Engineering Services on the above referenced project.

Our engineering fee, including expenses, shall be a lump sum of **Seven Thousand Five Hundred Dollars (\$7,500.00)**.

Our scope of work includes the following items:

1. Perform an on-site investigation of all visible Mechanical, Electrical, Plumbing aspects of an existing building.
2. Review available data, drawings and previously written reports.
3. Evaluate the "MEP" systems to determine the status of each major component including type, condition, age and life expectancy.
4. Provide written description of existing systems and major equipment components.
5. Document any discovered code violations.
6. Review and comment on the available plans and specifications.
7. Review building's available Service Request Logs and notations of any recurring or unusual items.
8. All work related to asbestos or asbestos abatement is not part of our scope or work.
9. Due to the fact that the project is existing and there are areas that will be inaccessible, our investigation is limited to viewing visible components in operation. We cannot guarantee the continued operation of any item of equipment or system. We do not perform any capacity tests or detailed investigation of individual items of equipment.

Our investigation is only intended to be a rough overview of the installation and maintenance of the systems as installed. No attempt will be made to determine the cause of any system malfunction.
10. We recommend the HVAC systems be energized at least 12 hours prior to the investigation. We will not energize any item of equipment or remove any panel covers or access doors because of liability problems.
11. We plan to perform the majority of the observations during regular working hours. We will need unrestricted access to all portions of the building, and a ladder at the site for inaccessible areas. Obviously, any area of the building that is restricted or inaccessible will not be investigated.
12. We have not included any engineering time for equipment life cycle analysis.

PROJECT AGREEMENT

1. If this project is delayed or abandoned for more than 90 days from date of proposal, it is our option to renegotiate or terminate this agreement.

All billing shall be done in accordance with our standard office billing procedure with invoices delivered to your office on or about the first day of each month. We will invoice you for percentage completed on the project, with payment due upon receipt of our invoice.

A 1.5% per month charge will be added to all unpaid invoices after 60 days.

2. Should the construction of this project be abandoned or delayed, we will invoice you for the percentage of Engineering completed at that time. The invoices will be due and payable as stated above.
3. The hourly billing rates shall be as follows:

Partner	\$300.00/hour	Quality Control	\$175.00/hour
Principal	\$270.00/hour	Commissioning Agent	\$160.00/hour
Practice Area Leader	\$240.00/hour	Assistant Project Manager	\$160.00/hour
Design Director	\$220.00/hour	Engineer in Training II	\$160.00/hour
Director	\$220.00/hour	Construction Administrator	\$150.00/hour
Senior Project Manager	\$220.00/hour	Designer II	\$150.00/hour
Senior Commissioning Agent	\$205.00/hour	Engineer in Training I	\$140.00/hour
Senior Commissioning Engineer	\$200.00/hour	Sustainability Professional	\$140.00/hour
Design Leader	\$190.00/hour	Designer I	\$130.00/hour
Project Manager	\$190.00/hour	Designer Trainee	\$130.00/hour
Senior Engineer	\$190.00/hour	BIM Modeler	\$105.00/hour
Engineer	\$180.00/hour	Business Administrative Assistant	\$100.00/hour
Senior Designer	\$180.00/hour	Construction Clerk I & II	\$100.00/hour
Senior Construction Administrator	\$180.00/hour		

ACCEPTANCE

If this proposal meets your approval, please indicate your acceptance by providing your signature in the space provided below and returning this signed original to our office. We will proceed with the work upon receipt of the executed proposal.

Accepted by Client:

By (signature):

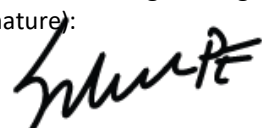
Print Name:

Title:

Date:

Accepted for DBR Engineering Consultants, Inc.:

By (signature):



Print Name: Erik M. MacDonald

Title: Partner

Date: February 21, 2024

When accepted by Client this proposal for Engineering Services and its attachments shall become a binding contract between the parties and shall make it subject to the Scope of Services and Terms and Conditions, which are incorporated by this reference. DBR is authorized to begin performance upon its receipt of a copy of this Contract signed by Client. If DBR proceeds at the direction of Client and Contract is not signed, or altered within ten (10) business days, then it is agreed that terms of Contract are accepted by Client.



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EXECUTION

Any agreement that these terms and conditions are incorporated into, including the exhibits and schedules made a part thereof, constitutes the entire agreement ("Agreement") between DBR and CLIENT, and supersedes and controls over all prior written or oral understandings. Except as set forth in the paragraph titled "Changes" in these terms and conditions, this Agreement may be amended, supplemented or modified only by a written instrument duly executed by the parties.

CHANGES

Subject to DBR's rights to change these terms and conditions, the parties agree that no change or modification to this Agreement, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made part of this Agreement. Adjustments in the period of services and in compensation shall be in accordance with applicable paragraphs and sections of this Agreement. Any proposed fees by DBR are estimates to perform the services required to complete the project as DBR understands it to be defined. For those projects involving conceptual or process development services, activities often are not fully definable in the initial planning. In any event, as the project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope. DBR will inform CLIENT of such situations so that changes in scope and adjustments to time of performance and compensation can be made as required. If such change, additional services, or suspension of services result in an increase or decrease in the cost of or time required for the performance of the services, an equitable adjustment shall be made and the Agreement modified accordingly.

CONTROLLING AGREEMENT

These terms and conditions shall take precedence over any inconsistent or contradictory provisions contained in any agreement, proposal, contract, purchase order, requisition, notice-to-proceed, or like document.

INVOICES

DBR will submit invoices monthly or more frequently as appropriate for services rendered and CLIENT will make prompt payments upon receipt of DBR's invoices. Labor expense will be charged in accordance with proposed rates and terms. Material and sub-consultant expenses will be marked up 10% to cover administrative and insurance costs.

When CLIENT is the Architect, CLIENT shall make payment immediately (within 7 days) after receiving payment from owner.

CLIENT shall make prompt payment to DBR when DBR is prime consultant.

DBR will retain receipts for reimbursable expenses in general accordance with the Internal Revenue Service rules pertaining to the support of expenditures for income tax purposes. Receipts will be available for inspection by CLIENT's auditors upon request.

If CLIENT disputes any items in DBR's invoices for any reason, including the lack of supporting documentation, CLIENT may temporarily delete the disputed item and pay the remaining amount of the invoice. CLIENT will promptly notify DBR of the dispute and request clarification and/or correction. After any dispute has been settled, DBR will include the disputed item on a subsequent, regularly scheduled invoice, or on a special invoice for the disputed item only.

CLIENT recognizes that late payment of invoices results in extra expenses for DBR. DBR retains the right to assess CLIENT interest at the rate of one percent (1%) per month, but not to exceed the maximum rate allowed by law, on invoices which are not paid within forty-five (45) days from the date of the invoice. In the event undisputed portions of DBR's invoices are not paid when due, DBR also reserves the right, after seven (7) days prior written notice, to suspend the performance of its services under this Agreement until all past due amounts have been paid in full.

STANDARD OF CARE

The standard of care for all professional engineering, consulting and related services performed or furnished by DBR under this Agreement will be the care and skill ordinarily used by members of DBR's profession practicing under the same or similar circumstances at the same time and in the same locality. DBR makes no warranties, expressed or implied, under this Agreement or otherwise, in conjunction with DBR's services.

OPINIONS OF PROBABLE COST (COST ESTIMATES)

We are not professional cost estimators. We will provide our opinion on costs but shall not be held liable for our cost estimates. If the project is redesigned due to budget, DBR shall be compensated for the additional man-hours in meetings and re-designing. Any opinions or estimates of probable project cost or probable construction cost provided by DBR are made based upon information available to DBR and DBR's experience and qualifications. Such estimates or opinions represent DBR's judgment as an experienced and qualified professional engineer. However, since DBR has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' means and methods of determining prices, or over competitive bidding or market conditions, DBR does not guarantee that proposals, bids or actual project or construction cost will not vary from any opinions of probable cost prepared by DBR.

CONSTRUCTION PROCEDURES

DBR's observation or monitoring portions of the work performed under construction contracts shall not relieve the contractor from its responsibility for performing the work in accordance with applicable contract documents. DBR shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions contained with the work and shall not manage, supervise, control or have charge of construction. Further, DBR shall not be responsible for the acts or omissions of the contractor or other parties on the project.



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CONTROLLING LAW

This Agreement is to be governed by the laws of the State of Texas.

CERTIFICATE OF MERIT

The CLIENT or any entity relying on this agreement shall make no claim for professional negligence, either directly or by way of a cross complaint against any employee of DBR unless the CLIENT has first provided this company with a written certification executed by an independent consultant currently practicing in the same discipline as the work performed and licensed in the state which work was performed. This certification shall: a) contain the name and license number of the certifier; b) specify the acts or omissions that the certifier contends are not in conformance with the standard of care for the engineer performing professional services under similar circumstances; and c) state in detail the basis for the certifier's opinion that such acts or omissions do not conform to the standard of care. This certificate shall be provided to this office not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any arbitration or judicial proceeding. This Certificate of Merit clause will take precedence over any existing state law in force at the time of the claim or demand for arbitration. Any breach of these terms is subject to civil action by DBR against the CLIENT.

SERVICES AND INFORMATION

CLIENT will provide all criteria and information pertaining to CLIENT's requirements for the project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations. CLIENT will also provide copies of any CLIENT-furnished Standard Details, Standard Specifications, or Standard Bidding Documents which are to be incorporated into the project.

CLIENT will furnish the services of other consultants that include reports and appropriate professional recommendations when such services are deemed necessary by DBR. The CLIENT agrees to bear full responsibility for the technical accuracy and content of CLIENT-furnished documents and services.

In performing professional engineering and related services hereunder, it is understood by CLIENT that DBR is not engaged in rendering any type of legal, insurance or accounting services, opinions or advice. Further, it is the CLIENT's sole responsibility to obtain the advices of an attorney, insurance counselor or accountant to protect the CLIENT's legal and financial interests. To that end, the CLIENT agrees that CLIENT or the CLIENT's representative will examine all studies, reports, sketches, drawings, specifications, proposals and other documents, opinions or advice prepared or provided by DBR, and will obtain the advice of an attorney, insurance counselor or other consultant as the CLIENT deems necessary to protect the CLIENT's interests before CLIENT takes action or forebears to take action based upon or relying upon the services provided by DBR.

SUCCESSORS AND ASSIGNS

CLIENT and DBR, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the covenants of this Agreement. Neither CLIENT nor DBR will assign, sublet or transfer any interest in this Agreement without the written consent of the other.

TERMINATION OF AGREEMENT

CLIENT or DBR may terminate the Agreement, in whole or in part, by giving seven (7) days written notice, if the other party substantially fails to fulfill its obligations under the Agreement through no fault of the terminating party. Where the method of payment is "lump sum", or cost reimbursement, the final invoice will include all services and expenses associated with the project up to the effective date of termination. An equitable adjustment shall also be made to provide for termination settlement costs DBR incurs as a result of commitments that had become firm before termination, and for reasonable profit for services performed.

Termination of this Agreement does not prevent any later dispute from being covered under the terms of this Agreement. DBR does not waive any rights under this Agreement if DBR chooses to terminate this Agreement.

HAZARDOUS MATERIALS

CLIENT represents to DBR that, to the best of its knowledge, no hazardous materials are present at the project site. However, in the event hazardous materials are known to be present, CLIENT represents that to the best of its knowledge it has disclosed to DBR the existence of all such hazardous materials, including but not limited to asbestos, PCB's, petroleum, hazardous waste, or radioactive material located at or near the project site, including type, quantity and location of such hazardous materials. In the event DBR or any other party encounters undisclosed hazardous materials, DBR shall have the obligation to notify CLIENT and, to the extent required by law or regulation, the appropriate government officials, and DBR may, at its option and without liability for consequential or any other damages to CLIENT, suspend performance of services on that portion of the project affected by hazardous materials until CLIENT: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the hazardous materials; and (ii) warrants that the project site is in full compliance with all applicable laws and regulations. CLIENT acknowledges that DBR is performing professional services for CLIENT and that DBR is not and shall not be required to become and "arranger," "operator," "generator," or "transporter" of hazardous materials, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the project site in connection with DBR's services under this Agreement. If DBR's services hereunder cannot be performed because of the existence of hazardous materials, DBR shall be entitled to terminate this Agreement for cause on 30 days' written notice. To the fullest extent permitted by law, CLIENT shall indemnify and hold harmless DBR, its officers, directors, partners, employees, and sub consultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, CLIENTs, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from hazardous



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materials, provided that (i) any such cost, loss or damage is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate CLIENT to indemnify any individual or entity from and against the consequences of that individual's or entity's sole negligence or willful misconduct.

LIMITATION OF LIABILITY

DBR's total liability to CLIENT for any loss or damage, including but not limited to special and consequential damages arising out of or in conjunction with the performance of services or any other cause, including DBR's professional negligent acts, errors, or omissions, shall not exceed the lesser of \$50,000 or the total compensation received by DBR under this Agreement, except as otherwise provided under this Agreement. CLIENT hereby releases and holds harmless DBR from any liability above such amount.

VALUE ENGINEERING AND SUBSTITUTIONS

For any modifications required for substitutions and / or value engineering, DBR shall be compensated according to DBR's additional services under this Agreement. Value Engineering or substitutions for all document revisions must be submitted in a timely manner as to not cause project delay. If CLIENT accepts a change not recommended by DBR in writing, the CLIENT agrees to indemnify, defend, and hold DBR harmless from all claims damage, liability, or cost which arise in connection with, or as a result of, the incorporation of such changes accepted by CLIENT.

BETTERMENT

For documents produced by DBR that have any component or required item left out of the construction documents in error, DBR's liability shall be limited to the cost difference between (i) the cost of adding the item at the time of discovery of the omission; and (ii) the cost of the item had the item been included in the construction documents. In NO case shall DBR be responsible for the expense of the betterment, upgrade or enhancement of the project. DBR shall revise as necessary all documents requiring modification due to error or missing components.

LEED CERTIFICATION

DBR will make a reasonable effort to achieve LEED certification where specified but cannot guarantee LEED Certification or actual performance of the building systems. LEED certification requires input and effort from client, contractor, architect and other sub-consultants that are not parties of this contract and over whom DBR has no control.

ENERGY MODELING

The estimate of cost and energy savings represents DBR's professional opinion. DBR does not guarantee the actual cost or savings as too many factors outside of DBR's control can modify the predicted cost and savings.

DISTRIBUTION OF DOCUMENTS

DBR makes no representation as to the compatibility of any

CAD / Revit files with any hardware or software.

Since the information set forth on the CAD / Revit files can be modified unintentionally or otherwise, DBR reserves the right to remove all indicia of its ownership and / or involvement from each electronic display.

All information on the CAD / Revit files are considered instruments of service of DBR and shall not be used for other projects, or completion of this project by others. CAD / Revit files shall remain the property of DBR and in no case shall the transfer of these files be considered a transfer or a sale.

DBR makes no representation regarding the accuracy, completeness or permanence of CAD / Revit files, nor for their merchantability or fitness for a particular purpose. Addenda information or revisions made after the date indicated on the CAD / Revit files may not have been incorporated. In the event of a conflict between DBR's sealed contract drawings and CAD / Revit files, the sealed contract drawings shall govern. It is the Contractor / Proposer's responsibility to determine if any conflicts exist. The CAD / Revit files shall not be considered to be Contract Documents as defined by any project general conditions.

The use of CAD / Revit files prepared by DBR shall not in any way obviate the Contractor / Proposer's responsibility for the proper checking and coordination of dimensions, details, and quantities of materials as required to facilitate complete and accurate fabrication and erection.

INDEMNITY

DBR shall indemnify and hold the CLIENT and the CLIENT's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of DBR, its employees and its consultants in the performance of professional services under this Agreement.

CLIENT shall indemnify and hold DBR and the DBR's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the CLIENT, its employees and its consultants in the performance of professional services under this Agreement, or any other agreement.

DBR shall not be responsible for the acts or omissions of the CLIENT, CLIENT's other consultants, any contractor, subcontractor, their agents or employees, or other persons performing work on any project covered by this Agreement.

NO THIRD-PARTY BENEFICIARY

Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against DBR.

SEVERABILITY

If any provision of this Agreement is held invalid or unenforceable, the remaining provisions shall be valid and

binding upon the parties. One or more waivers by either party of any provision, term of condition shall not be construed by the other party as a waiver of any subsequent breach of the same provision, term or condition.

DISPUTE RESOLUTION

Any entity, including any non-party relying on this agreement, claiming any claim, dispute, or other matter which arises out of or relates to this Agreement, shall provide 30-days' written notice as a condition precedent.

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. If the parties fail to resolve the claim, dispute or matter in question through mediation, the method of binding dispute resolution shall be the following:

The parties agree to enter into the following arbitration agreement below with the intention for this agreement to be a broad form agreement designed to encompass all possible disputes:

- (1) Rules. The arbitration shall be conducted in accordance with the following arbitration rules (as then in effect) (the "Rules"): Rules of the American Arbitration Association in accordance with its Construction Industry Arbitration Rules.
- (2) Number of Arbitrators. The arbitration shall be conducted by three arbitrators unless all parties to the dispute agree to a sole arbitrator within (30) days after filing of the arbitration. For greater certainty, for purposes of this section titled "Dispute Resolution", the filing of the arbitration means the date on which the claimant's request for arbitration is received by the other parties to the dispute.
- (3) Method of Appoint for Sole Arbitrator. If the arbitration is to be conducted by a sole arbitrator, then the arbitrator will be jointly selected by the parties to the dispute. If the parties to the dispute fail to agree on the arbitrator within thirty (30) days after the filing of the arbitration, then AAA shall appoint the arbitrator.
- (4) Method of Appointment for Two Parties. If the arbitration is to be conducted by three arbitrators and there are only two parties to the dispute then each party to the dispute shall appoint one arbitrator within thirty (30) days of the filing of the arbitration, and the two arbitrators so appointed shall select the presiding arbitrator within thirty (30) days after the latter of the two arbitrators has been appointed by the parties to the dispute. If a party to the dispute fails to appoint its party-appointed arbitrator or if the two party-appointed arbitrators cannot reach an agreement on the presiding arbitrator within the applicable time, then AAA shall appoint the remainder of the three arbitrators not yet appointed.
- (5) Method of Appointment for More than Two Parties. If the arbitration is to be conducted by three arbitrators and there are more than two parties to the dispute then within thirty (30) days of the filing of the arbitration, all claimants shall jointly appoint one arbitrator and all respondents shall jointly appoint one arbitrator, and the two arbitrators so appointed shall select the presiding arbitrator within thirty (30) days after the latter of the two arbitrators has been appointed by the parties to the dispute. If either all claimants or all respondents fail to make a joint appointment of an arbitrator or if the party-appointed arbitrators cannot reach an agreement on the presiding arbitrator within the applicable time, then AAA shall appoint the remainder of the three arbitrators not yet appointed.
- (6) Consolidation. If the parties initiate multiple arbitration proceedings, the subject matters of which are related by common questions of law or fact and which could result in conflicting awards or obligations, then all such proceedings may be consolidated into a single arbitral proceeding.
- (7) Place of Arbitration. The place of arbitration shall be Houston, Texas.
- (8) Entry of Judgment. The award of the arbitral tribunal shall be final and binding. Judgment on the award of the arbitral tribunal may be entered and enforced by any court of competent jurisdiction.
- (9) Qualifications and Conduct of the Arbitrators. All arbitrators shall be and remain at all times wholly impartial, and, once appointed, no arbitrator shall have any *ex parte* communications with any of the parties to the dispute concerning the arbitration or the underlying dispute other than communications directly concerning the selection of the presiding arbitrator, where applicable.
- (10) Costs and Attorneys' Fees. The arbitral tribunal is authorized to award costs and attorneys' fees and to allocate them between the parties to the dispute. The costs of the arbitration proceedings, including attorneys' fees, shall be borne in the manner determined by the arbitral tribunal.
- (11) Interest. The award shall include interest, as determined by the arbitral award, from the date of any default or other breach of this Agreement until the arbitral award is paid in full.
- (12) Exemplary Damages. The parties waive their rights to claim or recover, and the arbitral tribunal shall not award, any punitive, consequential, multiple, or other exemplary damages (whether statutory or common law).
- (13) Non-Appearance. The arbitration shall proceed in the absence of a party who, after due notice, fails to answer or appear. An award shall not be made solely on the default of a party, but the arbitrator(s) shall require the party who is present to submit such evidence as the arbitrator(s) may determine is reasonably required to make an award.