

CONTRACT FOR ARCHITECTURAL SERVICES

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

The on-call architectural services required by this Contract are to be rendered for any Owner authorized project ("Project"), which Owner refers to Architect, as further described under RFQ Number 20-033 and Architect's responses provided, all fully incorporated into this Contract by this reference.

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

GENERAL SCOPE OF WORK. Owner will request architectural services on demand for various renovation projects and building improvements and interior design. Consistent with this Contract, Architect will provide these services in response to Owner's specific and individual task (Project) assignments. Depending on the nature and complexity of each Project, it may be performed using County trades personnel or be bid to contractor(s). Architect will provide architectural services per the RFQ 20-033 scope of work. Generally, this scope of work includes services on interior and exterior improvements, site planning, space improvements, code compliance, construction design, plans, as-builts, phasing, permitting, inspection, progress review, and work acceptance; bid assessment and recommendation; contractor performance and billing review.

TERM. The term of this Contract is three years from full execution and shall automatically renew for two one year terms unless either party gives written notice of non-renewal ninety days prior to the renewal date. Notwithstanding the expiration of the contract term, Architect shall continue to provide Services with respect to any Project that is not completed prior to the expiration of the contract term, until such Project is fully completed.

This Contract includes the following documents, which are all fully incorporated by this reference:

- (1) the Request for Qualifications, **Exhibit A**;
- (2) Architect's Response to the Request for Qualifications, **Exhibit B**;
- (3) Architect's letter proposal dated _____, 201_, **Exhibit C**;
- (4) Architect's fee schedule, **Exhibit D**;
- (5) Pre-Selected Sub-Consultant's fee schedules, **Exhibit E**;
- (6) Insurance, **Exhibit F**;
- (7) all Design Documents hereafter prepared by Architect and approved by Owner (County) under this Contract; and

(8) Any Design Changes specified by Owner in writing.

1.

ARCHITECT REPRESENTATIONS AND WARRANTIES

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

(A) Architect is professionally qualified to act as the architect for each Project assumed under this Contract and is licensed to practice architecture by appropriate entities having jurisdiction over the Architect and each Project.

(B) Architect shall perform its services consistent with all rules applicable to their professional practice and licensure, and the professional skill and care ordinarily provided by architects practicing in the same or similar locality under same or similar circumstances. Architect shall perform its services as expeditiously as is consistent with the professional skill, standard of care, and orderly progress of each Project.

(C) Architect shall maintain all necessary licenses, permits or other authorizations necessary to act as architect for each Project until the Architect's duties under this Contract have been fully satisfied.

(D) Architect has become or will be familiar with each Project site and the local conditions under which each Project is to be designed, constructed, and operated.

(E) Architect shall prepare all documents and things required by this Contract including, but not limited to, all contract plans and specifications, in such a manner that these shall be accurate, coordinated and adequate for construction and shall be in compliance with all applicable law, code, and regulation.

(F) Architect assumes full responsibility to Owner for the improper acts and omissions of Architect, its employees, consultants or others employed or retained by the Architect in connection with each Project.

2.

INITIAL SCOPING, ASSESSMENT, REPORT AND PROPOSED FEE

Owner shall contact Architect on an on-call basis with any proposed Project and its scope of work. Prior to the preparation of the Preliminary Design for any Project as required by Paragraph 3 below, Architect shall first consult in detail with Owner and shall carefully assess any information provided by the Owner concerning Owner's purposes, concepts, desires and requirements for that Project (the "Owner's Criteria"), including but not limited to, any design, construction, scheduling, budgetary or operational Project needs, restrictions or requirements. Following such assessment, Architect shall prepare and submit to Owner a written report

detailing Architect's understanding of the Owner's Criteria and identifying any design, construction, scheduling, budgetary, operational, or other problems or recommendations, including environmentally responsible approaches, for that Project consistent with the Owner's Criteria. The Architect's written report shall also include, as appropriate, proposed solutions addressing each identified problem, budgetary construction cost, and a proposed flat fee or hourly not-to-exceed amount for performance of all architectural services required for completion of the Project. not-to-exceed design budget.

Architect shall submit two hard copies and an electronic file of the report phase items upon completion of this phase.

3.

PRELIMINARY CONSTRUCTION DESIGN PHASE AND PRICE ESTIMATE

Architect and Owner will review the written report required by Paragraph 2 above and may agree upon any proposed solutions to identified problems resulting from the Owner's Criteria. Upon Owner acceptance of Initial Scoping phase, Owner shall issue Notice to Proceed (NTP) to release Architect to proceed to Preliminary Construction Design Phase (a 30 calendar day period). Within thirty (30) calendar days after Owner's NTP, the Architect shall draft and submit to Owner a Preliminary Construction Design (PCD or 30% Construction Documents) for that Project. The Preliminary Construction Design shall be consistent with the Owner's Criteria, as modified if modified, and shall include the following:

- (A) Preliminary Construction Documents (30% CDs) that depict, as appropriate, each of the basic aspects of the Project including, but not necessarily limited to, the size, location, design concept, equipment/units, demolition, dimensions, etc. of each structure;
- (B) Preliminary package shall provide enough information to depict adequate information that allows Owner to visualize proposed changes;
- (C) Architect's written preliminary specifications, together with preliminary plans, if and as necessary or useful to the Owner, of the electrical, mechanical, structural and, if relevant, other systems to be incorporated in the Project;
- (D) A written description of the equipment and material options to be specified for that Project and the location of same, which options shall be evaluated by Owner or its designee for existing systems compatibility, availability and reliability and overall Owner acceptance; and
- (E) Any other documents or things necessary or appropriate to describe and depict the Preliminary Construction Design and the conformity of same with Owner's Criteria (as and if modified as set forth above) for that Project.

Architect shall provide 4 hard copies (2 full size & 2 half size drawings) and an electronic copy (pdf and autocad versions) of deliverables upon completion of this phase.

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

4.

PREFINAL PHASE: DESIGN FOR CONSTRUCTION DOCUMENTS

Architect and Owner will review the Preliminary Construction Design required by Paragraph 3 above and incorporate any changes or alterations authorized or directed by Owner with respect to the Preliminary Construction Design or with respect to Owner's Criteria, as modified if modified. Upon Owner acceptance of Preliminary phase, Owner shall issue Notice to Proceed (NTP) to release Architect to proceed to Pre-final Construction Design phase (a 45 calendar day period). Within forty five (45) calendar days of receiving Owner's NTP, Architect shall draft and submit to Owner the Pre-final Construction Design Documents for that Project.

The Pre-final Construction Design Documents shall include, but shall not necessarily be limited to, plans and specifications that describe with layouts, systems, elements, details, components, materials, equipment, and other information necessary for construction. The Pre-final Construction Design Documents shall be accurate, coordinated, in all respects adequate for construction, and in compliance with all applicable law, code, and regulation. Products, equipment and materials specified for use in that Project shall be readily available unless written authorization to the contrary is given by Owner. In preparing the Pre-final Construction Design Documents and as determined applicable by Architect and Owner, Architect may retain experienced, qualified consultant(s), including geotechnical engineers, to evaluate any technical considerations within their expertise relating to the design and construction of that Project. To the extent applicable, Architect shall be responsible for designing the Project in accordance with the analyses and recommendations of its consultant(s).

(A) Pre-final Construction Design Documents (100% CDs) shall depict, as appropriate, each of the basic aspects of the Project including, but not necessarily limited to, the layout, size, location, design concept, equipment/units, demolition, dimensions, etc. of each structure.

(B) Pre-final package shall provide or depict enough adequate information that allows Owner to visualize proposed changes.

(C) Pre-final package shall include any revisions that incorporate Owner's previous comments.

(D) Pre-final package shall include final probable construction cost estimate. This estimate may only be adjusted by Architect as necessary to conform to Project changes, all as may be authorized by Owner.

Architect shall provide 4 hard copies (2 full size & 2 half size drawings) and an electronic copy (pdf and autocad versions) of deliverables upon completion of this phase.

5.

FINAL CONSTRUCTION DOCUMENTS

Architect and Owner will review the Pre-final package required by Paragraph 4 above and incorporate any changes or alterations authorized or directed by Owner with respect to the Pre-final design or with respect to Owner's Criteria, as modified if modified. Upon Owner acceptance of Pre-final phase, Owner shall issue Notice to Proceed (NTP) to release Architect to proceed to Final Construction Design Phase (a 21 calendar day period). Within twenty one (21) calendar days of receiving Owner's NTP, Architect shall draft and submit to Owner the Final Construction Documents for that Project.

Final Construction Documents shall include, but shall not necessarily be limited to, plans and specifications that describe with specificity all systems, elements, details, components, materials, equipment, and other information necessary for construction. The Final Construction Documents shall be accurate, coordinated, in all respects adequate for construction, and in compliance with all applicable law, code, and regulation. Products, equipment and materials specified for use in that Project shall be readily available unless written authorization to the contrary is given by Owner. In preparing the Final Construction Documents and as determined applicable by Architect and Owner, Architect may retain experienced, qualified consultant(s), including geotechnical engineers, to evaluate any technical considerations within their expertise relating to the design and construction of that Project. To the extent applicable, Architect shall be responsible for designing the Project in accordance with the analyses and recommendations of its consultant(s).

(A) Final Construction Documents (Bid Documents) shall depict, as appropriate, each of the basic aspects of the Project including, but not necessarily limited to, the layout, size, location, design concept, equipment/units, demolition, dimensions, etc. of each structure.

(B) Final package shall provide or depict enough adequate information to allow Owner to visualize proposed changes.

(C) Final package shall include any revisions that incorporate Owner's previous comments.

(D) Final Package shall include final probable construction cost estimate. If bid prices exceed Architect's probable cost of construction by ten percent (10%) or more, Architect shall be responsible to redesign Project to bring it within Owner's budget at no additional cost to or compensation from Owner.

Architect shall provide 4 hard copies (2 full size & 2 half size drawings) and an electronic copy (pdf and autocad versions) of deliverables upon completion of this phase.

6.

DUTIES, OBLIGATIONS AND RESPONSIBILITIES

DURING CONSTRUCTION

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

(A) In addition to its duties, obligations and responsibilities set forth in this Paragraph 6, Architect shall have and perform those duties, obligations and responsibilities set forth in any applicable contract between Owner and a contractor. Architect hereby acknowledges it will review and study a true and correct copy of any such construction contract and same is incorporated in this Contract by reference.

(B) Architect shall, as contemplated in this contract or in a construction contract, but not otherwise, act on behalf and be the agent of the Owner throughout construction of a Project. Instructions, directions, and other appropriate communications from the Owner to the contractor shall be given to the contractor by the Architect.

(C) Upon receipt, Architect shall carefully review and examine the contractor's schedule of values, together with any supporting documentation or data that Owner or Architect may require from the contractor. The purpose of such review and examination shall be to protect Owner from an unbalanced schedule of values that allocates greater value to certain elements of the Project work than is indicated by such supporting documentation or data, or than is reasonable under the circumstances. If the schedule of values is not appropriate, or if the supporting documentation or data is inadequate, and unless the Owner directs the Architect to the contrary in writing, the schedule of values shall be returned to the contractor for revision or supporting documentation or data. After making such examination, if the schedule of values is found to be appropriate as submitted, or if necessary, as revised, the Architect shall sign off on the schedule of values thereby indicating its informed belief that the schedule of values constitutes a reasonable, balanced basis for payment of the contract price to the contractor. The Architect shall not sign off on such schedule of values in the absence of such belief unless directed to do so, in writing, by the Owner.

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

(E) Architect shall initially approve periodic and final payments owed to the contractor predicated upon inspections of the work as required in Subparagraph (D) above and evaluations of the contractor's rate of progress in light of the remaining contract time and shall

issue to Owner approval of payment in such amounts. By issuing an approval of payment to Owner, Architect reliably informs the Owner that Architect has made the inspection of the work required by Subparagraph (D) above, and the work for which payment is approved has reached the quantities or percentages of completion shown, or both, the quality of the work meets or exceeds the requirements of Owner and/or the construction contract, and Owner should make payment to the contractor of the amount approved.

(F) Architect shall promptly provide appropriate interpretations as necessary and collaborate well with Owner's representatives and consultants for the proper execution of the work.

(G) Architect shall reject in writing any work of the contractor that is defective or not in compliance with the construction contract unless directed by the Owner, in writing, not to do so.

(H) Architect shall require inspection or re-inspection and testing or retesting of the work in accordance with the provisions of the construction contract whenever appropriate.

(I) Architect shall receive, promptly examine, study, and approve, or otherwise respond to, the contractor's shop drawings and other submittals. Approval by the Architect of the contractor's submittal shall constitute Architect's representation to Owner that such submittal is in conformance with Owner's requirements and/or the construction contract.

(J) Architect shall receive, promptly examine, and advise Owner concerning requests for change orders from the contractor. Upon request by Owner, Architect shall draft change orders, whether initiated by Owner or by contractor and approved by Owner, in accordance with Owner's requirements and/or the construction contract.

(K) Based upon inspections of a Project, Architect shall certify in writing to Owner the fact that, and the date upon which, the contractor has achieved substantial completion of a Project and the date upon which the contractor has achieved final completion of a Project.

(L) Architect shall transmit to Owner all manuals, operating instructions, as-built plans, warranties, guarantees and other documents and things required by the Project or under a construction contract and submitted by the contractor.

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

(N) Architect shall review any as-built drawings furnished by the contractor or required by Owner and shall certify to Owner that such drawings are adequate and complete. Architect shall provide Owner as built record documents (in pdf, autocad, and hard copy formats).

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

7.

INDEMNITY

ONLY TO THE EXTENT ALLOWED BY APPLICABLE LAW INCLUDING TEX. GOV'T CODE SECTION 2254.0031, ARCHITECT SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS OWNER FROM AND AGAINST ANY BREACH OR DEFAULT UNDER THIS CONTRACT, ANY LIABILITY, CLAIM, ACTION, INJURY, DEATH, LOSS, DAMAGE, COST, FINE, EXPENSE, AND/OR PENALTY ARISING OR RESULTING FROM, AND TO THE EXTENT ATTRIBUTABLE TO OR CAUSED BY, THE ERROR, OMISSION, OR NEGLIGENCE OF ARCHITECT, ITS EMPLOYEES, CONSULTANTS, AND/OR CONTRACTORS, ON ANY PROJECT SERVICED OR WORKED UNDER THIS CONTRACT.

The Architect shall defend OWNER to the extent caused by negligent act, error or omission of the Architect or anyone for whom the Architect is legally responsible, through mutual counsel chosen by the Owner and the Architect's professional insurance carrier and the Architect shall bear all costs, fees and expenses of such defense, including but not limited to, REASONABLE attorneys' fees and expenses, court costs, and expert witness fees and expenses.

8.

SCHEDULE

Time is of the essence in the performance of any Project under this Contract. Within fifteen (15) calendar days of accepting a Project proposed by Owner, or a change or adjustment thereto, Architect shall provide Owner with a proposed schedule for performance by Architect of that Project, change or adjustment. Such schedule, if approved by Owner, shall constitute the schedule for performance of Architect's duties for that Project, change or adjustment.

9.

PERSONNEL

Architect shall assign only qualified personnel, including consultants and contractors, to perform any service or work on any Project under this Contract. At execution of this Contract, Architect anticipates the individual categories of personnel listed on **Exhibits D and E** will perform work or service on any given Project.

Individuals named in such Exhibits who are actively employed or retained by the Architect shall perform the functions indicated next to their name; otherwise their replacement or Architect's designee shall assume such function.

10.

PAYMENTS

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

- (A) For each Project referred by Owner to Architect, fair and reasonable compensation and the payment schedule shall be established on either a flat fee basis or an hourly not-to-exceed basis as agreed upon by the parties.
- (B) Flat Fee Basis. For projects to be performed on a flat fee basis, the total proposed compensation and schedule for payments shall be set forth in the Architect's report as set forth in paragraph 2. The Owner may accept the proposed compensation and schedule for payments or may propose another amount or schedule and the parties shall negotiate. Once the Parties have negotiated a fair and reasonable amount for compensation and a payment schedule, that agreement shall be documented in writing which shall control the compensation and payment schedule for that Project.
- (C) Hourly Not-To-Exceed Basis. For projects to be performed on an hourly Not-To-Exceed basis, the Not-To-Exceed amount and schedule for payments shall be set forth in the Architect's report as set forth in paragraph 2. The Owner may accept the proposed Not-To-Exceed amount and schedule for payments or may propose another amount or schedule and the parties shall negotiate. Once the Parties have negotiated a fair and reasonable Not-To-Exceed amount for compensation and a payment schedule, that agreement shall be documented in writing which shall control the compensation and payment schedule for that Project. For satisfactory performance of the duties, obligations, responsibilities, and services required herein and authorized by Owner, Architect and its personnel shall be paid pursuant to the hourly fees listed on **Exhibit D**. Hourly rates for Architect's consultants and contractors are listed on **Exhibit E**. These Exhibits are attached hereto and fully incorporated by this reference.

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

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

(E) As a condition precedent for any payment due under this Paragraph 10, and as agreed in writing by Owner, Architect shall submit invoices to Owner, upon completion of task, requesting payment for services properly rendered and expenses due under this Contract. Architect's invoice shall describe with reasonable particularity each service rendered, the date thereof, the time expended, percentage completion as applicable, and the person(s) rendering such service. Architect's invoice shall be accompanied by such documentation or data as the Owner may require in support of expenses for which payment is sought. As applicable, the invoice shall reflect any allocations and state the percentage of completion as to each such

allocation. Each invoice shall bear the signature of the Architect, which signature shall constitute Architect's representation to Owner that the services indicated in the invoice have reached the level stated, have been properly and timely performed as required in this Contract, the expenses included in the invoice have been reasonably incurred in accordance with this Contract, all obligations of the Architect covered by prior invoices have been paid in full or as shown, and the amount requested is currently due and owing, there being no reason known to the Architect that payment of any portion should be withheld. Submission of the Architect's invoice for final payment shall further constitute Architect's representation to Owner that, upon receipt by Owner of the amount invoiced, all obligations of the Architect to others, including its contractors or consultants, incurred in connection with that Project, will be paid in full.

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

(F) For satisfactory service and work, Owner shall make payment to Architect of all sums properly invoiced under the provisions of this Paragraph 10 within thirty (30) days of the Owner's receipt and approval of the invoice.

11.

PROJECT RECORDS

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

12.

DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE OWNER

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

(A) Owner shall provide Architect with the Owner's Criteria.

(B) Owner will designate an employee as project manager on each Project to serve as Owner's principal point of contact throughout the course of that Project, to oversee the orderly progression and delivery of work and services, ensure compliance with Project requirements, provide interpretations as necessary or applicable to assist progress of the work, facilitate communication and coordination among consultants, contractors, and agents, and address any issues that may arise.

(C) Owner shall review any documents provided by or through the Architect requiring the Owner's decision, and shall make any required decisions.

(D) As may be mandated by law or called for by a construction contract, Owner shall, at its own expense, provide for all required testing, inspections (except for those inspections expressly required of the Architect herein), filings, studies, or reports.

(E) In the event Owner learns of any failure by contractor to comply with the construction contract, or any errors, omissions or inconsistencies in the work product of Architect, and in the further event the Architect does not have notice of same, Owner shall inform the Architect.

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

(G) Owner shall perform its duties set forth in this Paragraph 12 in a timely manner.

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

(I) Owner is a tax exempt political subdivision of the State of Texas that will not be liable for any taxes from which it is exempt. Nothing in this Contract modifies or waives any sovereign immunity, defense, lien or indemnity prohibition, or limit of liability enjoyed by Owner, its elected officials, or employees at common law or under other Texas law. A condition precedent for funding to pay services referenced in this Contract is annual appropriations by Owner's governing body. Owner is subject to the Open Meetings Act and Public Information Act, Chapters 551 and 552 respectively, Texas Government Code, which may require disclosure of information despite confidentiality or other provisions to the contrary. As concerns any payment, late payment and interest, the Texas Prompt Payment Act, Government Code, Sec. 2251.001 et seq., applies to Owner and this Contract. Texas Local Government Code Section 262.007 applies to any claim for breach of this Contract.

13.

APPLICABLE LAW AND VENUE

This Contract is governed by the laws of the State of Texas, its choice of law or conflicts of law principles notwithstanding. Venue in any dispute arising out of this Contract shall be a court of appropriate jurisdiction in El Paso County, Texas.

14.

**OWNERSHIP OF DESIGN
AND CONSTRUCTION DOCUMENTS**

The design and construction documents shall become and be the sole property of the Owner. Architect may maintain copies of the documents for its records and for its future professional endeavors. Neither the design nor construction documents are intended for use on other projects other than Owner Projects under this Contract. Reuse of any portion or all of these documents without the written approval of the Owner and Architect shall be at the sole risk of the one reusing such documents.

15.

SUCCESSORS AND ASSIGNS

Architect shall not assign its rights under this Contract, excepting its right to payment, nor shall it delegate any of its duties under this Contract without the written consent of the Owner. Subject to the provisions of the immediately preceding sentence, each party to this Contract binds itself, its successors, assigns and legal representatives to the other and to the successors, assigns and legal representatives of such other party.

16.

NO THIRD PARTY BENEFICIARIES

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

17.

INSURANCE

At its own expense, Architect shall procure and maintain, for the Contract term and a period of 10 years after final completion of any Project, the insurance listed below in the indicated amounts. All such policies of insurance shall be written by insurance underwriters authorized to do business in the State of Texas. Except for professional liability and workers' compensation, these policies shall name Owner, El Paso County, as an additional insured. Architect shall furnish to the County Risk Manager a certificate from each insurer showing insurance to be in effect as required. This certificate shall provide that written notice of cancellation or any material change in said policy shall be delivered by the insurer to the County Risk Manager at least thirty (30) days in advance of such cancellation or change.

In addition, Architect shall require its contractors and consultants maintain professional liability and general liability insurance as appropriate for the work and services provided.

General Liability

\$1,000,000 – each occurrence

\$1,000,000 – annual aggregate per project
\$1,000,000- personal and advertising injury
\$1,000,000 – products/completed operations – aggregate
\$500,000 – fire legal damage liability
\$5,000 - premises medical expense
Waiver of subrogation

Automobile

\$1,000,000 – each occurrence
Waiver of subrogation

Professional Liability (Errors and Omissions)

\$1,000,000 - annual aggregate per project

Workers' Compensation

\$1,000,000 – Employers Liability – each accident
\$1,000,000 – Employers Liability – each employee
\$1,000,000 – Employers Liability – disease – policy limit
Statutory Limits
Waiver of Subrogation

18.

TERMINATION

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

(B) This Contract may be terminated by the Owner without cause upon ten (10) days written notice to the Architect. In the event of a termination without cause, the Owner shall pay the Architect for all services satisfactorily rendered through the termination date, plus any expenses incurred and unpaid which would otherwise be payable hereunder. Termination expenses, such as penalty, liquidated damages, or loss of business, income, or profit, anticipated or otherwise, will not be allowed. Architect shall promptly submit to the Owner its invoice for final payment, which invoice shall comply with the provisions of Paragraph 10.

19.

ENTIRE AGREEMENT

This Contract and its Exhibits constitute the entire agreement between the parties with reference to any Project and supersede any and all prior communications, discussions, negotiations, understandings, or agreements.

Executed by the authorized representative of each party as indicated below.

THE COUNTY OF EL PASO, TEXAS – OWNER

APPROVED AS TO FORM AND CONTENT:

_____ Date _____

Ricardo A. Samaniego
El Paso County Judge

APPROVED AS TO FORM AND CONTENT:

_____ Date _____

For County Public Works

APPROVED AS TO FORM:

_____ Date _____

Assistant County Attorney

ARCHITECT - MNK Architects, Inc. _____

APPROVED AS TO FORM AND CONTENT:

By: _____ Date _____

Name and Title: _____