

RESOLUTION NO. 14-268

A RESOLUTION AUTHORIZING THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION TO ENTER INTO A PROFESSIONAL SERVICE CONTRACT WITH VINCENT P. HAUSER ARCHITECT IN AN AMOUNT NOT TO EXCEED \$20,000.00 FOR PREPARING AND SUBMITTING PRELIMINARY STATE OF TEXAS HISTORIC TAX CREDIT APPLICATION.

WHEREAS, it is deemed in the best interest of the citizens of Port Arthur for an architect to prepare and submit a preliminary State of Texas Historic Tax Credit application for the 501 Procter building; and

WHEREAS, the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC") wants to engage Vincent P. Hauser Architect to prepare submission of the THC to list 501 Procter building on the National Register of Historic Places and provide an application to the Texas Historical Commission in support of future applications for State of Texas Historic Tax Credit; and

WHEREAS, Vincent P. Hauser Architect estimates a proposed fee of \$14,000-\$17,000 plus reimbursable expenses of \$3,000 set forth in the Agreement attached hereto as **Exhibit "A"**; and

WHEREAS, at the regular Board meeting on June 2, 2014, the PAEDC Board of Directors voted to enter into the Agreement with Vincent P. Hauser Architect for a cost not to exceed \$20,000.00.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR, TEXAS:

Section 1. That the facts and opinions in the preamble are true and correct.

Section 2. That the City Council authorizes the PAEDC to enter into a professional service contract with Vincent P. Hauser Architect to prepare and submit preliminary State of Texas Historic Tax Credit application for the 501 Procter building.

Section 3. That the City Council authorizes the payment of the estimated amount of \$20,000.00, which includes the reimbursable expenses as specified in **Exhibit "A"**.

Section 4. That a copy of the caption of this Resolution be spread upon the Minutes of the City Council.

READ, ADOPTED AND APPROVED on this 10th day of June A.D., 2014, at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote:

AYES:

Mayor Prince; Mayor Pro Tem Freeman
Councilmembers Scott, Segler, Mosley, Lewis,
Williamson and Frank

NOES: None

Deloris Prince
Deloris "Bobbie" Prince, Mayor

ATTEST:

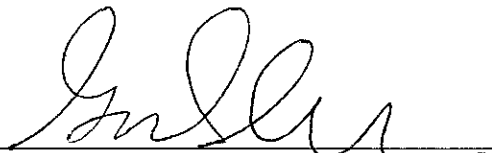
Sherri Ballard
Sherri Ballard, City Secretary

APPROVED:



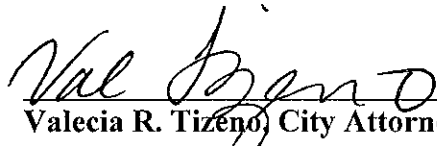
Floyd Batiste, PAEDC CEO

APPROVED AS TO FORM:



Guy N. Goodson, PAEDC Attorney

APPROVED AS TO FORM:



Valecia R. Tizeno, City Attorney

Exhibit “A”

VINCENT P. HAUSER
ARCHITECT
1412 Collier Street Suite C AUSTIN, TEXAS 78704
tel 512-452-3041

May 15, 2014

d r a f t

Mr. Floyd Batiste
Chief Executive Officer
Port Arthur Economic Development Corporation
4173 39th St ofc: 409-963-0579
Port Arthur, TX 77642 fax: 409-963-0683

Re: Proposal for Professional Services for Port Arthur Savings Building
Texas Historical Commission and State Historic Tax Credits

Dear Mr. Batiste:

I am pleased to present this proposal ("Proposal") to the Port Arthur Economic Development Corporation (PAEDC) ("Client") for professional services for an initial feasibility and design services for renovations to the former Port Arthur Savings Building located at Procter Street and Austin Avenue in Downtown Port Arthur, Texas (the "Project"). This Proposal includes General Terms and Conditions which are attached to, and incorporated into this Proposal. The Proposal and the General Terms and Conditions are referred to as the "Agreement" and those documents refer to me as the "Architect."

PROJECT DESCRIPTION

Vincent P. Hauser will be the Architect for the purpose of preparing and submitting preliminary State of Texas Historic Tax Credit applications to the Texas Historical Commission (THC) for the Port Arthur Savings Building.

SCOPE OF SERVICES

The scope of Basic Services for the Architect is as follows:

1. Prepare submissions to the THC for individual listing on the National Register of Historic Places.
 - A. Prepare a submission to the THC for Determination of Eligibility to the National Register and respond to requests for additional information by the THC.
 - B. Prepare a draft National Register nomination for the THC to review, including supporting documentation as requested by the THC.
 - C. Revise the draft THC nomination as needed and submit to the Port Arthur EDC and the City of Port Arthur Historical Commission as part of the Commission's review and of the Port Arthur Savings Building application for local historic designation.
2. Provide preliminary submissions to the THC in support of a future application for State of Texas Historic Tax Credits.
 - A. Preliminary submission will include drawings and support documentation formatted to use the existing National Park Service (NPS) Part 2 Application.
 - B. Amend Part 2 documentation as requested by the THC during construction.
 - C. Prepare the anticipated NPS Part 3 Request for Certification for completed work as the expected format for the description of completed work, in support of the eventual State tax credit application.
3. The Architect will provide an electronic copy of submissions to the Client.

Scope of Work for the Client is as follows:

1. Client shall provide Architect with information and documents relating to the applications as requested.
2. Client shall respond in a timely manner to requests by the Architect for direction, including any Board or City Council direction and approvals required.
3. Provide Architect with FEMA flood maps of the site, utility information, ESA and other related information as available.

DELIVERY of SERVICE

The Architect's services will be performed as expeditiously as is consistent with professional practice. Architect and Client will jointly develop a reasonable schedule for preparation of the Documents (as that term is defined in the General Terms and Conditions). This schedule shall allow an appropriate amount of time for each phase of Architect's services. Architect, however, shall not have any liability in the event of any deviations from the schedule.

It is anticipated that the work will require 30 days to complete after execution of the Agreement.

REIMBURSABLE EXPENSES

Reimbursable expenses are excluded from the Professional Fees. Reprographics (excluding internal plots and printing), courier services, travel beyond the scheduled meetings and other normal out-of-pocket costs directly associated with Architect's services are considered reimbursable expenses. Reimbursable expenses will be billed at 1.10 times their cost.

PROFESSIONAL FEES

For the Architect's services noted above for the period described, I propose a reimbursable fee estimated to be \$14,000 - \$17,000 plus reimbursable expenses. The fee is exclusive of reasonable reimbursable expenses such as travel and client-requested printing costs. Including 5 travel days, I estimate reimbursable expenses to be approximately \$3,000. Invoices for professional services and reimbursable expenses shall be billed at the end of each month, based on services completed, and shall be paid in accordance with the General Terms and Conditions. Final payment is due 10 days after submission of final invoice.

ADDITIONAL SERVICES

Any services beyond Basic Services outlined above shall be considered Additional Services and subject to additional compensation. Additional Services include, but are not limited to significant changes to the general scope of work, changes to previously approved concepts or designs, changes in applicable codes, laws or regulations subsequent to the Client's approval of the preliminary designs and estimates, travel outside the City of Austin, professional renderings, and other consultants. Additional Services will be billed at the rate of \$125 per hour or as per approved proposal requested by the Client. Approval in writing of Additional Services will be required.

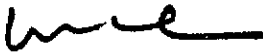
ADDITIONAL PROVISIONS

1. The Client acknowledges that the State of Texas has no official application or review process for the State Tax Credit program as of the date of this Agreement, and is not allowed to review any projects officially until 2015. This work is to be performed in cooperation with the THC and is to be considered informal. The Architect reserves the right to revise the scope of work as reasonably required to respond to the THC review process, and will keep the Client informed during the course of the work.
2. The Architect will coordinate with other work being performed as a consultant to Haddon + Cowan on the renovation of 501 Procter to take advantage of any efficiencies to be achieved.

Signatures below and signatures on the Terms and Conditions authorize Vincent P. Hauser Architect to proceed with the Scope of Work outlined above.

I appreciate the opportunity to provide architectural services on the Project. If there are any questions regarding the Proposal or the General Terms and Conditions of this Agreement, please let me know. Please sign 2 originals of the Proposal and Terms and Conditions and return one executed original of each to me. Any verbal or written authorization by Client to proceed with any services, whether Basic or Additional, under this Agreement shall include all of the terms of this Agreement.

Sincerely,



Vincent P. Hauser, AIA
Vincent P. Hauser, Architect

Floyd Batiste
PAEDC

date:

date:

Texas Board of Architectural Examiners has jurisdiction over complaints regarding professional practices of persons registered as Architects in Texas.

Texas Board of Architectural Examiners
Hobby Building
333 Guadalupe St, Suite 2-350
Austin, Texas 78711
Ph# 512-305-9000

VINCENT P. HAUSER
PROFESSIONAL SERVICES AGREEMENT
PART II—TERMS AND CONDITIONS

This Professional Services Agreement is made and entered into between Port Arthur Economic Development Corporation ("Client") and Vincent P. Hauser ("Architect") 1412 Collier St Suite C, Austin, Texas 78704. This Agreement consists of two parts: Part I Proposal - Scope of Services and Compensation; and Part II - Terms and Conditions.

ARTICLE 1: PROFESSIONAL SERVICES

1.1 Services. In connection with the property described in the Proposal ("Property"), Architect shall render the professional services ("Services") for the project described in the Proposal ("Project") as outlined in the Proposal and any Amendments.

1.2 Agreement. The Professional Services Agreement includes the Proposal, Amendments to the Proposal, and these Terms and Conditions (collectively, the "Agreement").

ARTICLE 2: PROPOSALS

2.1 Scope. The Proposal(s) shall identify the specific scope of Services to be performed by Architect and those subconsultants specifically identified as having a direct contractual relationship with Architect ("Subconsultants") in the Proposal. The Proposal shall also identify the amount and type of compensation for the Services. Any services not specifically identified in the Proposal are excluded unless added as additional services with additional compensation to Architect.

2.2 Acceptance of Agreement. Client shall authorize and Architect shall commence work upon Architect's receipt of the properly executed and signed Proposal(s), as may be amended from time to time. If the Agreement is not executed by Client within thirty (30) days of the date tendered, it shall become invalid unless: (1) Architect extends the time in writing; or (2) at the sole option of Architect, Architect accepts Client's oral authorization to proceed with the services, in which event the terms of the oral authorization shall include all the terms of this Agreement. Architect's performance of the services, including Additional Services, under the oral authorization shall be in reliance on the inclusion of all the terms of this Agreement.

ARTICLE 3: CHANGES

3.1 Changes. The Architect and Client may at any time, by written amendment, make changes within the general scope of individual Proposal(s) or relating to services to be performed. If such changes cause an increase or decrease in the Architect's cost of, or time required for, performance of any services under individual Proposals, an equitable adjustment shall be made and reflected in a properly executed Amendment.

3.2 Regulatory Changes. In the event that there are modifications or additions to regulatory requirements relating to the services to be performed under this Agreement after the date of execution of this Agreement, the increased or decreased cost of performance of the services provided for in this Agreement and subsequent Proposals shall be reflected in an appropriate Proposal Amendment.

ARTICLE 4: THE TERM

4.1 Term. Architect shall be retained by Client as of the date Client executes the attached Proposal until the Services have been fully performed or until the Architect's Services are terminated under provisions of the Agreement. Architect will pursue

completion of Services in accordance with the timely completion specified in the Proposal and any amendments thereto. Architect shall not be liable or responsible for any delays caused by circumstances beyond Architect's control.

ARTICLE 5: DUTIES

5.1 Access. Client will provide Architect with access to the Property or to any other site as required by Architect for performance of the Services.

5.2 Client-furnished Data. Client shall provide all criteria and full information as to Client's requirements for the Project, designate a person to act with authority on Client's behalf in respect to all aspects of the Project, examine and respond promptly to Architect's submissions, and give prompt written notice to Architect whenever he observes or otherwise becomes aware of any defect in the work.

Client shall also do the following and pay all costs incident thereto: Furnish to Architect core borings, probings and subsurface exploration, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment and similar data; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; architectural or other engineering design documents, and any other information previously made available to the Client, which may be required by Architect, all of which Architect may rely upon in performing its Services.

Client shall provide such legal, accounting, independent cost estimating and insurance counseling services as may be required for the Project, any auditing service required in respect of contractor(s)' applications for payment, and any inspection services to determine if contractor(s) are performing the work.

5.3 Other Information. Architect will rely upon commonly used sources of data, including database searches and agency contacts. Architect does not warrant the accuracy of the information obtained from those sources and has not been requested to independently verify such information.

5.4 Ownership of Documents. All designs, drawings, specifications, documents, and other work products of the Architect (collectively, the "Documents"), whether in hard copy or electronic form, are instruments of service for the services and are owned by the Architect regardless of whether or not services are completed. Reuse, change or alteration of the Documents by the Client or by others acting through or on behalf of the Client is not permitted without the written consent of Architect. The Architect grants to Client a nonexclusive license to reproduce the Documents solely for the purpose of constructing and maintaining the Project. Any termination of the Agreement prior to final completion of construction of the Project shall terminate this license. Upon such termination, and unless otherwise agreed by Architect in writing, the Client (and any third party who received copies of the Documents from Client) shall refrain from making further reproductions of the Documents and shall return to the Architect within seven days of termination all originals and reproductions in

the Client's possession, custody and control. ANY REUSE, CHANGE OR ALTERATION BY THE CLIENT OR THIRD PARTIES IS AT THEIR OWN RISK AND CLIENT AGREES TO HOLD HARMLESS AND INDEMNIFY THE ARCHITECT, ITS OFFICERS, PARTNERS, EMPLOYEES, AND SUBCONTRACTORS FROM ALL CLAIMS, DAMAGES, LOSSES, EXPENSES AND COSTS (INCLUDING ATTORNEYS' FEES), INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR ARCHITECT'S ALLEGED NEGLIGENCE, ARISING OUT OF OR RELATED TO SUCH AUTHORIZED OR UNAUTHORIZED REUSE, CHANGE OR ALTERATION.

5.5. **Reporting Obligations.** Client has responsibility for complying with all legal reporting obligations. Nothing in the Agreement precludes Architect from providing any notices or reports that it may be required by law to give to governmental entities.

5.6 **Laboratory Services.** In performing services, Architect may request that Client provide independent testing laboratory services. Architect will rely on the accuracy of the testing laboratory services. Architect will not, and Client shall not rely upon Architect to, check the quality or accuracy of the testing laboratory's services.

5.7. **Changed Conditions.** The Client and Architect acknowledge the possibility of occurrences or discoveries that were not originally contemplated by or known to the Architect. Should Client or Architect call for contract renegotiation, they shall identify the changed conditions necessitating renegotiation and the Architect and the Client shall promptly and in good faith enter into renegotiation of this Agreement. If the terms cannot be agreed to, the parties agree that either party has the right to terminate the Agreement.

5.8 **Site Visit.** All conclusions, opinions and recommendations relating to site issues will be based upon site conditions at the Property as they existed at the time of Architect's site visit, if any. Any report should not be relied upon to represent conditions at a later date. This paragraph does not obligate Architect to visit the site.

5.9 **Opinions of Cost.** Should Architect provide any cost opinions, it is understood that those opinions are based on the experience and judgment of Architect and are merely opinions. Architect does not warrant that actual costs will not vary from those opinions because, among other things, Architect has no control over market conditions.

5.10 **Construction Observation.** If construction phase services are included in the Services, the Architect will periodically visit the Project during construction on the number of occasions indicated in the Proposal, or as Architect determines in Architect's sole opinion, to become generally familiar with the progress and quality of the contractors' work and to determine if the work is proceeding in general accordance with the Contract Documents. The Client has not retained the Architect to make detailed inspections or to provide exhaustive or continuous Project review and observation services. The Architect does not guarantee the performance of, and shall have no responsibility for, the acts or omissions of any contractor, subcontractor, supplier or any other entity furnishing materials or performing any work on the Project. Client acknowledges that Architect is not responsible for any failure of any contractor, subcontractor, supplier or any other entity furnishing materials or performing any work on the Project to construct the Project or manufacture materials in accordance with the Documents or any applicable legal requirements. Architect shall not be responsible for the means, methods, techniques,

sequences or procedures of construction selected by contractor(s) or the safety precautions and programs incident to the work of contractor(s).

5.11 **Permits.** Client is responsible for obtaining and complying with all required permits or other approvals of, and for giving any required notices to, all governmental and quasi-governmental authorities having jurisdiction over the Services or the Property. Client will provide to Architect copies of any such permits or any such notices, together with any other relevant information that will alert Architect to the requirements of such permits, approvals, or notifications.

ARTICLE 6: COMPENSATION OF SERVICES

6.1 **Compensation of Services.** Architect's compensation for services shall be set forth in individual Proposal(s).

6.2 **Compensation.** Client agrees to pay Architect for Services in accordance with the Agreement.

6.3 **Payments.** Architect will invoice Client monthly in accordance with the terms and conditions of the Proposal, and amendment(s) for Services and reimbursables. Client agrees to pay Architect the full amount of each such invoice within 30 days from Client's receipt of each invoice. In no event shall Architect's failure to bill monthly constitute default under the terms and conditions of this Agreement.

6.4 **Right to Stop Performance.** If Client does not pay any amount due to Architect within forty five (45) days after the invoice date, Architect may, upon three (3) additional days verbal or written notice to Client, stop performance of the Services until payment of the amount owed has been received.

6.5 **Interest.** Payments due and unpaid to Architect under the Agreement shall bear interest at the rate of six percent (6%) per annum, or lesser if required by law, calculated from thirty (30) days after the date of the invoice, if the payment is not made within forty five () days of the date of the invoice.

6.6 **Attorney's Fees.** In the event Architect's invoices for Services are given to any attorney for collection, or if suit is brought for collection, or if they are collected through probate, bankruptcy, or other judicial proceeding, then Client shall pay Architect all cost of collection, including the maximum attorney's fees allowed by law and court costs, in addition to other amounts due.

6.7 **Contractual Lien to Secure Payment.** Client grants to Architect a contractual lien in addition to all constitutional, statutory and equitable liens that may exist on the property described in the Agreement and all improvements thereon to secure payment for all debts owed, now or in the future, to Architect by Client including those arising as a result of Architect's services provided under this Agreement. Client grants Architect the authority and right to file a copy of this Agreement in the property records of the county or counties where the Project is located.

ARTICLE 7: TERMINATION OF SERVICES

7.1 **Termination.** This Agreement may be terminated, either by Client or by Architect, without cause, at any time prior to completion of Architect's services, upon seven (7) days written notice to the other at the address of record. Upon receipt of written notice from Client to discontinue work, the Architect shall discontinue work under this Agreement. Such termination shall release Architect from any further obligation to provide Services to

Client on this Agreement, but all obligations of Client shall continue. In the event Client terminates the Agreement based on Client's reasonable opinion the Architect has failed or refused to prosecute the work efficiently, promptly or with diligence, the Architect shall have at least ten (10) days, from the receipt of written notification by Client, to cure such failure to perform in accordance with the terms of this Agreement or Proposal(s).

Client waives any and all claims it has against Architect arising out of termination of this Agreement by Architect. Client waives any and all claims, causes of action, or damages that it has or may have against Architect for failure to perform further services under this or any other Agreement with Client.

7.2 Compensation in Event of Termination. Upon termination by either Client or Architect, Client shall pay Architect with respect to all contracted Services rendered and expenses incurred before termination an amount fixed by applying the Architect's standard hourly rates, in force at the time of termination, to all Services performed to date, in addition to termination settlement costs the Architect reasonably incurs relating to commitments which had become firm before the termination.

ARTICLE 8: RELATIONSHIP OF PARTIES

8.1 Independent Contractor. It is understood that the relationship of Architect to Client shall be that of an independent contractor. Neither Architect nor employees of Architect shall be deemed to be employees of Client.

ARTICLE 9: LIMITATIONS OF LIABILITY

9.1 Limitation of Liability. TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY OF ARCHITECT, ITS EMPLOYEES, OFFICERS, SUBCONSULTANTS AND SUBCONTRACTORS, TO CLIENT OR ANY PARTY CLAIMING BY, THROUGH OR UNDER CLIENT, FOR ANY AND ALL INJURIES, CLAIMS, LOSSES, EXPENSES, OR DAMAGES WHATSOEVER FROM ANY CAUSE OR CAUSES, INCLUDING, BUT NOT LIMITED TO, STRICT LIABILITY, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, OR ERRORS OR OMISSIONS SHALL NOT EXCEED THE ARCHITECT'S TOTAL FEE. NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES INCURRED DUE TO THE FAULT OF THE OTHER PARTY, REGARDLESS OF THE NATURE OF THIS FAULT OR WHETHER IT WAS COMMITTED BY THE CLIENT OR BY ARCHITECT, THEIR EMPLOYEES, AGENTS, SUBCONSULTANTS, OR SUBCONTRACTORS. CONSEQUENTIAL DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF USE AND LOSS OF PROFIT.

9.2 No Certification. Architect shall not be required to sign any documents, no matter by whom requested, that would result in Architect having to certify, guarantee, or warrant the existence of conditions whose existence Architect cannot ascertain. The Client also agrees not to make resolution of any dispute with Architect or payments of any amount due to Architect in any way contingent upon Architect's signing any such certification.

9.3 Asbestos or Hazardous Materials. It is acknowledged by both parties that Architect's scope of services does not include any services related to asbestos or hazardous or toxic materials. In the event Architect or any other party encounters asbestos or

hazardous or toxic materials at the Property, or should it become known in any way that such materials may be present at the Property or any adjacent areas that may affect the performance of Architect's Services, Architect may, at its option and without liability for consequential or other damages, suspend performance of Services on the Project until the Client retains appropriate specialist consultant(s) or contractor(s) to identify, abate, and/or remove the asbestos or hazardous or toxic materials and warrant that the Property is in full compliance with applicable laws and regulations.

9.4 Delays. Architect is not responsible for delays caused by factors beyond Architect's reasonable control, including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of the Client to furnish timely information or approve or disapprove of Architect's Services or work product promptly, or delays caused by faulty performance by the Client or by contractors of any level. When such delays beyond Architect's reasonable control occur, the Client agrees Architect is not responsible for damages, nor shall Architect be deemed to be in default of this Agreement. In the event such delay exceeds ninety (90) days, Architect shall be entitled to an extension of time equal to the delay and an equitable adjustment in compensation. In the event Architect is delayed by the Client and such delay exceeds thirty (30) days, Architect shall be entitled to an extension of time equal to the delay and an equitable adjustment in compensation.

9.5 Project Enhancement. If, due to Architect's error or omission, any required item or component of the Project is omitted from Architect's documents, Architect shall not be responsible for paying the cost to add such item or component to the extent that such item or component would have been otherwise necessary to the Project or otherwise adds value or betterment to the Project. In no event will Architect be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the Project.

ARTICLE 10: MISCELLANEOUS

10.1 Entire Agreement. The Agreement contains the entire agreement between Architect and Client, and no oral statements or prior written matter shall be of any force or effect. The Agreement may be modified only by written document executed by both parties.

10.2 Modifications. No one has authority to make variations in, or additions to, the terms of this Agreement on behalf of Architect other than one of its officers, and then only in writing signed by him.

10.3 Governing Law. The Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

10.4 Venue. Venue of any action under the Agreement shall be in accordance with the laws of the State of Texas.

10.5 Severability. If any provision of the Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and the Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision is not a party hereof, and the remaining provisions shall remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision, there shall be added automatically as a part of the Agreement, a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

10.6 **Construction of Agreements.** The parties acknowledge that each party and, if it so chooses, its counsel have reviewed and revised the Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Agreement or any amendments or exhibits.

10.7 **Successor and Assigns; No Third Party Beneficiaries.** Client, for himself and partners, if any, and Architect, for itself, each binds himself or itself and its successors, executors, administrators and assigns to the other party to this Agreement and to partners, successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement. Neither Client nor Architect shall assign, sublet, or transfer his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than Client and Architect. Client and Architect agree that there are no third party beneficiaries to this Agreement. Client's representative signing below warrants that he or she has full authority to bind Client to this Agreement

Nothing in the Agreement restricts Architect's ability to hire subconsultants or others in connection with the Services. Notwithstanding anything to the contrary in this Agreement, Architect shall have no obligation to hire any subconsultants unless the services of subconsultants are specifically included in the Proposal. The Services and any reports or other documents prepared under this Agreement are for the sole benefit and sole use of Client and are not for the use of any other person. Only Client may rely upon the Agreement and the Services, unless the Architect gives Client prior and specific written approval.

10.8 **Dispute Resolution.** Any claim, dispute or other matter in question arising out of or related to the Agreement or the Services provided thereunder shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve all disputes by mediation. Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to the Agreement and with the American Arbitration Association. No arbitration arising out of or relating to the Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement. The foregoing agreement to arbitration shall be specifically enforceable in accordance with applicable law in any court having jurisdiction. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

10.9 **Mediation.** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to non-binding mediation as a condition precedent to the institution

of legal proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or other legal proceedings.

Each party agrees to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include similar mediation provisions in all agreements with their respective subcontractors, suppliers, and Subconsultants, thereby providing for mediation as the initial method for dispute resolution between the parties to all those agreements.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the county where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

10.10 **No Warranty or Fiduciary Responsibility.** Architect makes no warranty, either expressed or implied, as to Architect's findings, recommendations, Documents, or professional advice. Any warranties or guarantees contained in any purchase orders, contracts, certifications, requisitions, or notices to proceed issued by the Client are specifically objected to and excluded. Client recognizes that neither Architect nor any of Architect's Subconsultants or subcontractors owes any fiduciary responsibility or duty to Client.

10.11 **Corporate Liability.** Client understands and agrees that Architect is a business entity that has contracted to perform services, and any services provided by Architect's employees, agents or officers are not provided in their individual capacity. Client will not make any claim or demand against any of Architect's employees, agents or offices in their individual capacity.

10.12 **Survival of Provisions.** Termination of the Services for any reason whatsoever shall not affect (a) any right or obligation of any party that is accrued or vested prior to such termination, and any provision of the Agreement relating to any such right or obligation shall be deemed to survive the termination of the Services or (b) any continuing obligation, liability or responsibility of Architect and of Client which would otherwise survive termination of the Services.

10.13 **Regulation** The Texas Board of Architectural Examiners, 333 Guadalupe, Suite 2-350, Austin, Texas 78701-3945, telephone (512) 305-9000, has jurisdiction over complaints regarding the professional practices of persons registered as architects in Texas.

Architect:
Vincent P. Hauser

Title: Owner
Date:

Client: PAEDC
Floyd Batiste

Title:
Date:
Address: