



Document B101™ – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the 19th day of July in the year Two Thousand Seventeen

(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, address and other information)

City of Round Rock
221 East Main Street
Round Rock, Williamson and Travis Counties, Texas 78664

and the Architect:
(Name, address and other information)

HKS, Inc.
350 N. Saint Paul Street
Suite 100
Dallas, Texas 75201-4240

for the following Project:
(Name, location and detailed description)

Kalahari Resort
Round Rock, Texas

This is one of two agreements which, together, cover the Project. This Agreement covers the portion of the Project described on Exhibit A as "200,000 sq. ft. convention center.

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)

§ 1.2 The Owner's anticipated dates for commencement of construction, milestone dates and Substantial Completion of the Work are set forth below:

.1 Commencement of construction date:

Earthwork and site utilities to begin by November 1, 2017, with vertical construction to begin by May 1, 2018

.2 Milestone Dates: See Exhibit G.

.3 Substantial Completion date:

May 1, 2020

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

§ 1.4 Architect hereby represents, and certifies to Owner that Architect is financially solvent and possesses sufficient experience, licenses, authority, personnel and working capital to complete the services required hereunder; that Architect has visited the site for the Project and thoroughly familiarized itself with the local conditions under which the services required hereunder are to be performed; and that Architect correlated its observations of same with all of the requirements of this Agreement and shall correlate its observations of same with the Construction Contract Documents. Nothing in this section obligates the Architect to evaluate or formulate any conclusions regarding any unobservable characteristics of the site, including, but not limited to, subsurface conditions or the possible presence of concealed hazardous waste. The foregoing notwithstanding, THE ARCHITECT MAKES NO EXPRESS OR IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE, REGARDING THE ARCHITECT'S SERVICES, WHICH WARRANTIES ARE EXPRESSLY DISCLAIMED. The Architect shall act as an independent contractor at all times during the performance of its services, and no term of this Agreement, either expressed or implied, shall create an agency or fiduciary relationship.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect has special expertise with projects similar to the Project. The Architect shall perform its services consistent with the professional skill and care provided by architects experienced with projects similar to the Project under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. Any designs, drawings or specifications prepared or furnished by the Architect that contain errors, conflicts or omissions will be promptly corrected by the Architect at no additional cost to the Owner, provided, however, the foregoing shall not excuse such Architect failures. The Owner's approval, acceptance, use of or payment for all or any part of the Architect's services shall in no way alter the Architect's obligations or the Owner's rights hereunder.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project. Architect shall provide the following key personnel, who shall not be replaced without the Owner's consent, which consent shall not be unreasonably withheld:

Principal – Richard Johnston
Project Designers - Daron Andrus and Mary Alice Palmer
Project Architects – TBD, resumes will be presented to Owner prior to appointment.
Project Manager – Steve Valenta

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall procure, at no expense to Owner, the insurance coverage set forth on Exhibit B and shall maintain such coverages in full force and effect.

(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

- .1 General Liability
- .2 Automobile Liability
- .3 Workers' Compensation
- .4 Professional Liability
- .4.1 Umbrella (Occurrence Policy Form)
- .4.2 Contractor's Pollution Legal Liability

- .5 The Architect agrees to require the Architect's consultants to comply with the insurance provisions required of the Architect pursuant to this Agreement unless the Architect and the Owner mutually agree to modify these requirements for the Architect's consultants whose work is of relatively small scope and complexity. The Architect agrees that it will contractually obligate its consultants to advise the Architect promptly of any changes or lapses of the requisite insurance coverages and the Architect agrees to promptly advise the Owner of any such notices the Architect receives from its consultants. The Architect agrees that it will contractually obligate its consultants to indemnify and hold harmless the Owner to the same extent that the Architect is required to do so as provided in this Agreement. The Architect assumes all responsibility for monitoring the Architect's consultant contracts and insurance certificates for compliance with the insurance and other provisions of this Agreement until final completion of the Project. Annually, Architect shall provide a copy of all Consultants' certificates of insurance to Owner.
- .6 The Architect shall deliver to the Owner promptly after the execution of this Agreement a certificate of insurance evidencing the coverages required in this Section 2.5. In no event shall any failure of the Owner to receive or demand evidence of such coverages prior to the Architect commencing the services required herein be construed as a waiver by the Owner of the Architect's obligations hereunder. If the Owner has other insurance which is applicable to a loss arising out of the operations performed by the Architect, then such other insurance shall be on an excess or contingent basis. The insurance provisions of this Agreement shall not be construed as a limitation on the Architect's responsibilities and liabilities pursuant to the terms and conditions of this Agreement.

§ 2.6 The Architect hereby agrees to indemnify and hold Owner, its partners, members, owners, , affiliates, Tim Downey, and employees (together, the "Indemnitees") harmless from and against any and all losses, liabilities, expenses, fines and penalties, costs and expenses, including, but not limited to reasonable attorneys' fees and court costs, relating to the services performed by the Architect hereunder or by any subconsultant, by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. The Architect hereby agrees and acknowledges that the foregoing indemnification obligation shall extend to any and all losses, liabilities, expenses, fines and penalties, costs and expenses, including, but not limited to, reasonable attorneys' fees and court costs, relating to claims of infringement of patent rights, copyrights or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by the Owner in writing. Notwithstanding the foregoing, if the Architect has knowledge that the design, process or product of a particular manufacturer required by the Owner is an infringement of a patent right, copyright or other intellectual property right, the Architect shall be responsible for such loss unless such information is promptly furnished to the Owner in writing. Compliance by the Architect with the insurance requirements set forth in Section 2.5 shall not relieve the Architect of liability under this indemnity or any other provision set forth in this Agreement.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3, Section 4.1 and Exhibits A, C and D and include usual and customary project master planning, interior design, civil, FF&E, landscaping, lighting design and acoustical engineering, traffic design layout, structural, mechanical, and electrical engineering services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants, including the Neuman Group. A Waterpark Design Responsibility Matrix showing the responsibilities of Owner, Architect and the Neuman Group is attached as Exhibit C. The Architect shall be responsible for coordinating its drawings with the drawings prepared by the Neuman Group. The Neuman Group and the Architect shall prepare 3 dimensional digital models of their respective scopes using the latest version of Autodesk Revit and shall reference them together using a common insertion point. As part of the coordination process, the Neuman Group and the Architect shall visually inspect the model for conflicting geometry and correct the conflicts. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants to the extent that architects exercising reasonable care in similar circumstances would rely on such information. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information; however, the Architect shall

not be responsible for the accuracy, completeness, or timeliness of completion of such services or information. The Owner shall require its consultants to cooperate and coordinate their services with those services provided by the Architect. The Architect shall notify the Owner in writing if additional information or services are required from the Owner or the Owner's consultants.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect. With the Owner's approval, the Architect shall adjust the schedule, if necessary as the Project proceeds as a result of an event or events not the fault of the Architect, until the commencement of construction. In the event actions of the Architect cause the time limits established by the schedule to be exceeded, the Architect shall promptly deliver to the Owner a plan for bringing the Project back into schedule, provided, however, the foregoing shall not excuse Architect's failure.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall prepare documents for filing as required for the approval of governmental authorities having jurisdiction over the Project. The Owner shall bear all governmental fees associated with such filings.

§ 3.1.7 The Architect shall be fully responsible for coordinating all the Architect's Basic and Additional Services required under this Agreement regardless of whether performed by its own employees or by consultants hired by the Architect to perform a portion of its services. The Architect shall be responsible to the Owner for the services furnished to the Architect by the Architect's consultants to the same extent as if the Architect had furnished the service itself. The Architect also agrees to coordinate, and resolve any inconsistencies between its work and the work of its consultants. All of the Architect's contracts with its consultants shall be in writing, signed by both parties, and shall include: (i) the following provision: "The Owner is intended to be a third party beneficiary of this agreement."; (ii) an indemnification by the consultant for the benefit of Owner consistent with the indemnification herein, and (iii) insurance requirements consistent with the insurance requirements for Architect hereunder.

§ 3.1.8 The Architect's Basic Services shall also include the following:

- .1 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .2 Preparing design and documentation for alternate bid or proposal requests proposed by the Owner;
- .3 Preparation for, and attendance at, public presentations, meetings and hearings, including all necessary presentations and appearances before public authorities associated with the initial land use and building permit approval process;
- .4 Evaluating the qualifications of bidders or persons providing proposals;
- .5 Revisions of Instruments of Service in connection with Requests for Information ("RFIs");
- .6 Preparing Addenda and Construction Change Directives, including evaluation of Contractor's proposals and supporting data;
- .7 Preparing revisions of Instruments of Service to correct for errors or omissions caused by the Architect or its consultants; and
- .8 Evaluating changes or substitutions proposed by the Owner or Contractor not required as the result of an error or omission by the Architect or the Architect's consultants and making subsequent revisions to Instruments of Service resulting therefrom that individually do not require more than two hours of labor.

§ 3.1.9 Architect shall include an on-site representative for at least 18 of the most critical months of construction, which months shall be mutually agreed upon by Architect and Owner. In addition, Architect shall have a minimum average of 1.5 people assigned to the Project during construction. During construction, it is anticipated that there will be periods that Architect will have 3 or 4 individuals assigned to the Project, excluding the on-site representative. The number of people assigned to the Project by Architect will be determined by requirements and intensity of the Project. In addition to the above, Architect shall have interior design staff involved in the FF&E and finishes related to interior design services. For months that there is not an on-site representative, Architect will be on-site weekly and on intervals appropriate to meet the needs of the Project. In addition, Architect shall (a) review each Shop Drawing, Product Data item, sample and similar submittal required of the Contractor, (b) provide inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents and (c) provide required inspections for any portion of the Work to determine final completion. All services referred to in this Section shall be Basic Services.

§ 3.1.10 Architect shall utilize a cloud-based software program or setup a website for the Project for the purposes of sharing electronic information on a real-time basis. The Owner, and other parties as approved by the Owner, will have full access to this program/website. In addition to facilitating the sharing of construction documents and other pertinent Project information, this software and/or website must also be used to facilitate the submittal and bidding process throughout the life of the Project so that the Owner may have access to all submittals and bids on a real-time basis. Promptly after a written request by Owner, Architect shall provide Owner with written or electronic copies (at Owner's election) of its contracts with consultants related to this Agreement. Within 4 weeks after final completion of the Work, Architect shall provide Owner with five (5) electronic copies of final "as designed" record Drawings (both in pdf and CAD format), on CD-ROM or another electronic medium chosen by Owner. Architect shall provide the Basic Services in accordance with Exhibit D (as applicable).

3.1.11 Architect shall receive and promptly document, answer and log RFIs. Architect shall manage all paperwork that moves from the architect to and from the Contractor and consultants, keeping an up to date log of RFIs and all documentation that has transpired through the duration of the Project. Architect shall consult with Owner when RFIs may add additional cost to the Project before issuing a response.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan and preliminary building plans, sections and elevations; and study models, perspective sketches, and digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing. The Owner's approval of any of the Architect's Work under this Agreement shall not provide a basis for the Architect to claim the Owner permitted the Architect to deviate from the applicable standard of care.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that

is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.6 The Owner shall obtain a preliminary estimate of the Cost of Work from a third party to be selected by Owner ("Contractor") based on the then current area, volume or similar conceptual estimating techniques. Architect shall be entitled to assume the accuracy of Contractor's estimate of the Cost of Work. If the Contractor's estimate of the Cost of Work exceeds the Owner's budget, then Architect shall work with Owner and Contractor to make changes to the Project so that Contractor's estimate of the Cost of Work at the conclusion of the Schematic Design Phase is not more than Owner's budget. Any changes to the Schematic Design Drawings made in order to meet Owner's budget shall require the approval of Owner.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, interior design, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Owner shall obtain a preliminary estimate of the Cost of Work from Contractor based on the then current area, volume or similar conceptual estimating techniques. Architect shall be entitled to assume the accuracy of Contractor's estimate of the Cost of Work. If the Contractor's estimate of the Cost of Work exceeds the Owner's budget, then Architect shall work with Owner and Contractor to make changes to the Project so that Contractor's estimate of the Cost of Work at the conclusion of the Design Development Phase is not more than Owner's budget. Any changes to the Design Development Documents made in order to meet Owner's budget shall require the approval of Owner.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4. The Construction Documents shall be broken down into individual buildings as agreed by Owner and Architect. Subject to the standard of care set forth in Section 2.2, the Construction Documents shall be prepared in accordance with all applicable covenants and restrictions of record and all applicable laws, statutes, ordinances, codes, rules, and regulations and lawful orders of public authorities. By submitting the Construction Documents to the Owner, the Architect shall be deemed to have certified, subject to the standard of care set forth in Section 2.2 that the Construction Documents are in compliance with all applicable covenants and restrictions of record and all applicable laws, statutes, ordinances, codes, rules, and regulations and lawful orders of public authorities.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall develop and prepare bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; and if requested by Owner, assist the Owner in the preparation of (1) the form of agreement between the Owner and Contractor; and (2) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 Owner shall obtain a preliminary estimate of the Cost of Work from Contractor based on the then current area, volume or similar conceptual estimating techniques. Architect shall be entitled to assume the accuracy of Contractor's estimate of the Cost of Work. If the Contractor's estimate of the Cost of Work exceeds the Owner's budget, then subject to Section 6.7 the Architect shall work with Owner and Contractor to make changes to the Project so that Contractor's final estimate of the Cost of Work is not more than Owner's budget. Any changes to the Construction Documents made in order to meet Owner's budget shall require the approval of Owner.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval. Upon Owner's written direction or with Owner's written approval, Construction Documents may be prepared in multiple permitting packages and released in stages to permit the commencement of construction of portions of the Work prior to final completion of all Construction Documents.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors. Architect shall create multiple bid packages for the Project, as agreed by Owner and Architect. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 posting of an electronic version of Bidding Documents for distribution to prospective bidders using the program/website referred to in Section 3.1.10;
- .2 distributing the Bidding Documents to prospective bidders using the program/website referred to in Section 3.1.10 and maintaining a log of distribution;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by

- .1 procuring the electronic reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors; and

- .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in the City of Round Rock's agreement with Contractor, which may take the form of a modified version of AIA Document A201™–2007, General Conditions of the Contract for Construction or the City's Standard Form of Agreement between Owner and Contractor and General Conditions. In either case, the City of Round Rock will promptly provide the Architect with a copy of such agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates sixty (60) days after the date the Architect issues the final Certificate for Payment; provided, however, that the Architect's responsibility to provide Basic Services shall not terminate prior to the Contractor's completion of all punch list items.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 3.1.9, to become generally familiar with the progress and quality of the portion of the Work completed, to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Notwithstanding the foregoing, the Architect shall review the quality and quantity of the Work with the frequency of site visits as provided at Section 3.1.9 included as part of the Basic Services required herein and shall send written reports of such reviews to the Owner. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and make recommendation on matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and recommendations of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and recommendations, the Architect shall endeavor to secure faithful performance by both Owner

and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or recommendations rendered in good faith.

§ 3.6.2.5 Intentionally omitted.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made continuous on-site inspections to check the quality and quantity of the Work, (2) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, and (3) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness so as to cause no delay in the Work or in the activities of the Owner, the Contractor or separate contractors while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness so as to cause no delay in the Work or in the activities of the Owner, the Contractor or separate contractors. Under normal circumstances such review time may take up to five (5) days. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion of portions of the Work as designated by Owner; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected. Architect shall review the punch list log created by the Contractor in accordance with Section 9.8.4 of the AIA Document A201™-2007, General Conditions of the Contract for Construction as amended and modified by Owner and Contractor or the City's Standard Form Agreement between Owner and Contractor and General Conditions. The Architect shall inspect the Project for the purpose of reviewing the punch list prepared by the Contractor and reviewing the as constructed condition of the Project with the Contractor, while creating the Architect's own punch list log documenting deficiencies clearly noting each area or item requiring remedy. As the Contractor works to complete each such area or item, Architect shall continue to review the Work until it is completely fixed or repaired.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, schedule and conduct a meeting with the Owner to review the facility operations and performance. Failure to schedule such a meeting shall not relieve the Architect of the obligation to conduct the meeting.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. In addition, where indicated, the items below are Basic Services, notwithstanding their inclusion in this Article. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming	Architect	Basic Service
§ 4.1.2 Multiple preliminary designs	Architect	Basic Service
§ 4.1.3 Measured drawings	Not Provided	
§ 4.1.4 Existing facilities surveys	Not Provided	
§ 4.1.5 Site Evaluation and Planning (B203™–2007)	Architect	Basic Service
§ 4.1.6 Building Information Modeling (E202™–2008)	Architect	Basic Service
§ 4.1.7 Civil engineering	Architect and Owner	To be included in a future consultant agreement. See Exhibit E.
§ 4.1.8 Landscape design	Architect	Basic Service
§ 4.1.9 Architectural Interior Design (B252™–2007)	Architect	Basic Service
§ 4.1.10 Value Analysis (B204™–2007)	Architect	Basic Service
§ 4.1.11 Detailed cost estimating	Owner	To be performed by a third party selected by Owner
§ 4.1.12 On-site Project Representation (B207™–2008)	Architect	Basic Service
§ 4.1.13 Conformed construction documents	Architect	Additional Service
§ 4.1.14 As-Designed Record drawings	Architect	Basic Service
§ 4.1.15 As-Constructed Record drawings	Not Provided	If requested by Owner, Additional Service
§ 4.1.16 Post occupancy evaluation	Architect	Basic Service
§ 4.1.17 Facility Support Services (B210™–2007)	Not Provided	If requested by Owner, Additional Service
§ 4.1.18 Tenant-related services	Not Provided	If requested by Owner, Additional Service
§ 4.1.19 Coordination with Owner's consultants	Architect and Owner	Basic Service
§ 4.1.20 Telecommunications/data design	Owner	If requested by Owner, Additional Service
§ 4.1.21 Security Evaluation and Planning (B206™–2007)	Owner	If requested by Owner, Additional Service
§ 4.1.22 Commissioning (B211™–2007)	Not Provided	If requested by Owner, Additional Service
§ 4.1.23 Extensive environmentally responsible design	Not Provided	
§ 4.1.24 LEED® Certification (B214™–2012)	Not Provided	
§ 4.1.25 Fast-track design services	Architect	Basic Service
§ 4.1.26 Historic Preservation (B205™–2007)	Not Provided	
§ 4.1.27 Furniture, Furnishings, and Equipment Design (B253™–2007)	Architect	Basic Service

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule, provided, however, except as specifically provided at Section 4.3.2, the Architect shall not perform or be compensated for any Additional Services unless the Owner expressly authorizes the same in writing prior to the Architect commencing such Additional Services.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner in writing with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a material change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method (however, services by the Architect associated with typical and customary value engineering or otherwise revise the design to bring the Cost of the Work within the Owner's budget are not Additional Services unless accompanied by a significant change in scope;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations, or required by building code, fire, safety and other inspectors of the authority having jurisdiction after the authority has issued a building permit or otherwise approved Instruments of Service as conforming with legal requirements, unless such enactment or revision was known by Architect prior to the issuance of the building permit or other approval of the Instruments of Service ;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner (as required in this Agreement) or any other material failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing Addenda and Construction Change Directives, including evaluation of Contractor's proposals and supporting data, that require preparation or revision of Instruments of Service for changes that individually require more than two hours of labor;
- .6 Evaluating changes or substitutions proposed by the Owner or Contractor not required as the result of an error or omission by the Architect or the Architect's consultants and making subsequent revisions to Instruments of Service resulting therefrom that individually require more than two hours of labor;
- .7 Intentionally omitted;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Intentionally omitted;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Evaluating an extensive number of Claims as the Initial Decision Maker.

§ 4.3.2
(Paragraphs deleted)
Intentionally omitted

§ 4.3.3
(Paragraphs deleted)
Intentionally omitted. See Section 3.1.9 above.

§ 4.3.4 If the services covered by this Agreement have not been completed within forty-eight (48) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services as provided in Section 11.3 below.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 The Owner, in consultation with the Architect, shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner, with the assistance of the Architect, shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. Notwithstanding the foregoing, the Owner may communicate with, or issue instructions to, the Contractor directly, however the Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement.

The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.13 The Owner is required to review and sign-off on final Drawings and Specifications before such documents are used for bidding or construction purposes. The Owner agrees to complete the review and sign-off in a timely manner so as not to delay critical path work on the Project, and in all circumstances Architect shall timely deliver to Owner such documents such that Owner shall have no less than fifteen (15) working days after receipt of documents to review and sign-off. Notwithstanding anything to the contrary contained in this Agreement, the Owner's review and approval of any and all documents or other matters required herein shall be for the purpose of providing the Architect with information as to the Owner's objectives and goals with respect to the Project and not for the purpose of determining the accuracy and completeness of such documents, and in no way should any such review and approval alter the Architect's responsibilities hereunder and with respect to such documents.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit, to the extent previously approved by Owner. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, by the Architect, represent the Architect's judgment as a design professional having expertise with projects of a size, quality and type comparable to the Project. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any evaluation prepared or agreed to by the Architect.

§ 6.3 Intentionally deleted.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The foregoing notwithstanding, in the event the estimate of the Cost of the Work exceeds the Owner's budget due to (i) errors in pricing or estimating provided by or through the Contractor, Construction Manager, or Owner upon which the Architect relied during the preparation of the Construction Documents, or, (ii) changes in market conditions

affecting costs of labor or materials, the Architect will modify the Construction Documents to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase as an Additional Service, and compensation paid for such services as provided in Section 11.3. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors of their respective Instruments of Service, including the Drawings and Specifications, but the Owner shall be the owner of the Instruments of Service after payment in full for services provided through completion of the applicable Phase of design work and shall retain all common law, statutory and other reserved rights, including copyrights and the copyright of the design as embodied in the completed Project. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Owner.

§ 7.3 The Owner may authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction as amended and modified by Owner and Contractor or the City of Round Rock's Standard Form of Agreement and General Conditions. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 Intentionally omitted.

§ 8.2 MEDIATION

§ 8.2.1 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 to binding dispute resolution only if mutually agreed upon by Owner and Architect. 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, if applicable, or by binding dispute resolution.

§ 8.2.2 If the Owner and Architect mutually agree, Owner and Architect 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 the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation, if agreed to by Owner and Architect, shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place 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.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

☐ Arbitration pursuant to Section 8.3 of this Agreement

☒ Litigation in a court of competent jurisdiction

☐ Other *(Specify)*

§ 8.2.5 ATTORNEYS' FEES

If either Owner or Architect retains an attorney to enforce the terms of or obtain a declaration of rights under this Agreement or to collect any payment or other sum of money due under this Agreement, the prevailing party shall be entitled to recover from the other party its attorney's fees and costs (including the allocated cost of in-house legal services, calculated at market rates).

§ 8.3 ARBITRATION

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 CONSOLIDATION OR JOINDER

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. This is one of two agreements which, together, cover the Project. If either party has a right to terminate this Agreement, then it shall also have the right to terminate the other agreement regarding the Project. In the event this Agreement is terminated due to the fault of the Architect, the Architect shall only be compensated for services satisfactorily performed prior to termination together with Reimbursable Expenses then due; provided, however, the Owner shall have the right to offset against amounts due the Architect all damages incurred by the Owner as a result of the Architect's default under this Agreement. If the Owner terminates this Agreement for cause, and the termination is later found or agreed to have been improper then the termination will be construed as a termination for convenience pursuant to Section 9.5.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due.

§ 9.7 Intentionally omitted.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Capitalized definitional terms in this Agreement shall have the same meaning as those in AIA Document A201–2007, General Conditions of the Contract for Construction as amended and modified by Owner and Contractor or the City of Round Rock's Standard Form of Agreement and General Conditions.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement and except further that Owner may assign this Agreement to one or more of its affiliates.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 Subject to the Owner's prior review and written approval, which approval will not be unreasonably withheld, the Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information. The Owner may, in its sole discretion, provide professional credit for the Architect in the Owner's promotional materials, if any, for the Project.

§ 10.8 If the Architect receives information from the Owner that is "confidential" or "business proprietary," the Architect shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information. All information sent by (or on behalf of) Owner to Architect shall be presumed to be confidential.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

See Exhibits E and F

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

As agreed upon by Owner and Architect.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

As agreed upon by Owner and Architect.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect

§ 11.5 See Exhibits E and F.
(Table deleted)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category

Rate

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and are limited to the following reasonable expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Out-of-town transportation and subsistence in connection with the Project when authorized in advance in writing by the Owner;
- .2 Intentionally omitted;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, and reproductions;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Intentionally omitted;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures approved in advance in writing by Owner.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the actual expenses incurred by the Architect and the Architect's consultants directly related to the Project.

§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

(Paragraph deleted)
Intentionally omitted.

Init.

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 Intentionally omitted.

§ 11.10.2 Payments hereunder shall be made in accordance with Chapter 2251 of the Texas Government Code ("Prompt Payment Act"). Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed in the preceding month. Invoices must be submitted to Owner no later than the 5th day of the month for work completed in the previous month. If a properly submitted invoice is received as stated above, the Owner shall make payment within thirty (30) days from the date of the Architect's invoice, or not later than the time period required under the Texas Prompt Payment Act, whichever is later, subject to Section 11.10.2.1. Invoices received after the 5th day of a month will not be processed until the following month. The Architect shall present to the Owner each month a statement of Reimbursable Expenses incurred for the preceding month. Prior to receiving payment for services rendered hereunder, the Architect shall deliver to the Owner lien waivers from the Architect and the Architect's consultants that completely release the Project from all liens relating to the services for which payment is requested, which lien waivers shall be in such form as reasonably requested by the Owner. Non-disputed amounts unpaid sixty (60) days after the invoice date shall bear interest at the "rate in effect of September 1 of the fiscal year in which the payment becomes overdue," in accordance with Chapter 2251 of the Texas Government Code .

§ 11.10.2.1 Promptly upon receipt, the Owner shall review the Architect's invoice. If the Owner disputes in good faith all or any portion of any invoice, the Owner shall notify the Architect within ten (10) business days of receipt of the disputed invoice. Such notification shall clearly indicate that portion of the invoice which the Owner disputes or for which the Owner claims a setoff shall include a reasonably detailed explanation of the reasons for disputing such portion or for the setoff respectively. If requested by either the Owner or Architect, decision makers for each party shall meet and confer within seven (7) days of notice to attempt to resolve the dispute or reasons for setoff. Any invoice or portion of an invoice not disputed by the Owner in the manner and within the time period set forth above shall be paid as provided under Section 11.10.1 above; provided, that such payment shall not act as the Owner's waiver of any claims that may be asserted against the Architect for the performance of defective or deficient services. The Owner shall not be required to make payment to the Architect on account of any amount disputed in good faith by the Owner in the manner and within the time period set forth above until the matter in dispute has been resolved by the parties. If the resolution of the matter indicates that the Architect is entitled to be paid all or any portion of such disputed amount, then such amount to be paid to the Architect shall be due and payable within ten (10) days after resolution of the matter.

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times. The Architect shall preserve these records for a period of three (3) years after final payment. All hourly rates shall be deemed to include all direct personnel expenses related thereto.

§ 11.10.5 The Architect shall protect, defend, indemnify, and hold harmless the Owner from and against any claims, actions, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees) in the event that a claim or mechanic's or construction lien is asserted by one of the Architect's consultants for non-payment by the Architect to that consultant after the Owner has made payment to the Architect on account of that consultant's work.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

§ 12.1. The Architect warrants and represents to the Owner that:

(a) The Architect is authorized to do business in the State where the Project is located and is properly licensed by all necessary governmental and quasi- governmental authorities having jurisdiction over the Architect, the Work or the Project;

Init.

(b) The Architect's execution of this Agreement and performance of the Architect's Basic Services and all Additional Services are within the Architect's duly authorized powers; and

(c) The Architect possesses a high level of experience and expertise in projects of the size, complexity and nature of the Project.

§ 12.1.2 The invalidity or unenforceability of any provision of this Agreement shall not render invalid or unenforceable any other provision of this Agreement.

§ 12.1.3 Any and all amounts due the Owner from the Architect that are not paid within thirty (30) days after such amounts are due shall bear interest at the rate set forth in Section 11.10.2 above.

§ 12.1.4 This Agreement has been negotiated by Architect and Owner and, notwithstanding that this Agreement may have been drafted by the Architect or Owner, this Agreement shall not be construed against the party that drafted it.

§ 12.1.5 The Texas Board of Architectural Examiners, 333 Guadalupe, Suite 2-350, Austin, Texas 78701-3942, Phone: 512-305-9000, has jurisdiction over complaints regarding the professional practices of persons registered as architects in Texas.

12.1.6 The Owner and Architect acknowledge, and agree, that having a good working relationship with each other, and the Contractor, is an important, and essential, element of the Project and its success. In order to facilitate the maintenance of those relationships, the Owner and Architect agree to convene a meeting of principals, defined as the most senior project executive, at scheduled intervals, not to exceed six (6) weeks, for the duration of the Project. The purpose of the meetings will be to discuss Project status, review current and outstanding unresolved issues and decisions, meet with the Contractor's project executive if available, and generally address any issues that will contribute to the successful completion of the Project.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™–2007, Standard Form Agreement Between Owner and Architect, as amended and modified by Owner and Architect
- .2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:
- .3 Other documents:
(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

Exhibit A - Initial Information
Exhibit B - Insurance Requirements
Exhibit C - ~~Waterpark Design Responsibility Matrix~~ (Not used)
Exhibit D – Construction Contract Administration
Exhibit E - Compensation
Exhibit F - Draw Requirements
Exhibit G – Milestone Dates

This Agreement entered into as of the day and year first written above.

OWNER

City of Round Rock, Texas

By: _____

(Signature)

(Printed name and title)

ARCHITECT

HKS, INC.

By: _____

(Signature)

Richard D. Johnston, AIA - Principal

(Printed name and title)

Exhibit A

Initial Information – Convention Center

The Project is a new Convention Center to be located on a portion of 350 acres at the corner of Kenney Fort Blvd. and US HWY 79 (also known as Palm Valley Boulevard) in Round Rock Texas.

The scope of this agreement is for design and construction documents for Phase I construction of a Kalahari Convention Center. Design shall include items such as roads, infrastructure and utilities. The preliminary specifications for the Kalahari Convention Center includes approximately 200,000 Sq. Ft. with major space breakdown as follows:

- Grand Ballroom with approximately 42,000 Sq. Ft.
- Junior Ballroom with approximately 26,0000 Sq. Ft.
- Meeting Rooms and Boardrooms comprising approximately 24,000 Sq. Ft.
- Pre-function, Restrooms, Registration areas and other front-of-house circulation and support spaces.
- Receiving, loading, prep kitchen, storage and other back-of-house circulation and support spaces.
- Approximately 1,000 parking spaces.

Exhibit B

Insurance Requirements

All policies above must be provided through insurers with an A. M. Best rating of no less than A- and a financial size of VII or more. If other contract documents require more stringent financial security criteria, the more stringent requirements shall control.

Architects and Engineers shall procure and maintain at its expense policies of insurance of the types and in the minimum amounts as follows:

Commercial General Liability written on an ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage)

Each Occurrence	\$1,000,000
Personal Injury	\$1,000,000
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000

Architects and Engineers must agree to provide completed operations coverage under this policy during the construction phase and for the duration of the applicable statute of limitations and statute of repose after substantial completion of the project.

Policy must provide:

- Coverage for; premises and operations; products and completed operations; contractual liability of a type that provides coverage for the indemnification clause in this contract; personal and advertising injury liability; employees as insureds; independent contractors; explosion & collapse hazard; underground hazard.
- Policy General Aggregates must apply on a “per project” basis.
- If you are involved in rigging, Rigger’s Liability must be included for policy limits.
- Additional Insured status using forms CG 20 10 (07 04) for ongoing operations and CG 20 37 (07 04) for completed operations or their equivalent to apply for: City of Round Rock; KR Acquisitions, LLC and; KR CC, Inc.; Kalahari Management Co. LLC; and their respective subsidiaries, parents, affiliates, and the directors, officers, employees, successors and assigns of these entities, and their lender(s). Additional Insured status shall be provided during construction and for the duration of any applicable statute of limitations and statute of repose after substantial completion of the project. Coverage to apply on a primary and non-contributory basis.
- Waiver of Subrogation to the fullest extent allowable by law in favor of City of Round Rock; KR Acquisitions, LLC and; KR CC, Inc.; Kalahari Management Co. LLC; and their respective subsidiaries, parents, affiliates, and the directors, officers, employees, successors and assigns of these entities, and their lender(s).

Automobile Liability

Combined Single Limit	\$1,000,000
Including bodily injury/property damage arising out of the use of owned, non-owned and hired vehicles	

Policy must provide:

- Additional Insured status for: City of Round Rock; KR Acquisitions, LLC and; KR CC, Inc.; Kalahari Management Co. LLC; and their respective subsidiaries, parents, affiliates, and the directors, officers, employees, successors and assigns of these entities, and their lender(s).
- Waiver of Subrogation to the fullest extent allowable by law in favor of City of Round Rock; KR Acquisitions, LLC and; KR CC, Inc.; Kalahari Management Co. LLC; and their respective subsidiaries, parents, affiliates, and the directors, officers, employees, successors and assigns of these entities, and their lender(s).
- Where transportation of any hazardous materials or pollutants may be required, the automobile liability insurance required by this Section shall include or be endorsed to include an MCS 90 endorsement.

Workers Compensation/Employer Liability/Stop Gap

Each Accident	\$1,000,000
Disease Policy Limit	\$1,000,000
Disease – Each Employee	\$1,000,000

Limits can be achieved via a combination of primary and excess policies.

Policy must provide:

- Waiver of Subrogation to the fullest extent allowable by law in favor of City of Round Rock; KR Acquisitions, LLC and; KR CC, Inc.; Kalahari Management Co. LLC; and their respective subsidiaries, parents, affiliates, and the directors, officers, employees, successors and assigns of these entities, and their lender(s).
- All States Endorsement
- Stop Gap Liability – where applicable

Umbrella (Occurrence Policy Form) - Minimum limits of liability

Each Occurrence	\$15,000,000
Aggregate	\$15,000,000

Umbrella policy to schedule the following coverage:

General Liability,
Auto Liability,
Employer's Liability,
Stop Gap policies - where applicable.

Policy must provide:

- Additional Insured status must follow those Additional Insureds in the underlying General Liability and Automobile policy. Coverage to apply on a primary and non-contributory basis.
- Waiver of Subrogation must apply to the fullest extent allowable by law in favor of those identified in the underlying General Liability, Auto and Workers' Compensation policies.
- You must agree to provide completed operations coverage under this policy during the construction phase and for the duration of any applicable statute of limitations and statute of repose after substantial completion of the project.

Professional Liability - Required for anyone providing Professional Services - If the Architect or Engineer either directly or through a Sub will provide design or consulting services under the Contract, Professional Liability coverage is required.

Minimum limits of liability are:

Each Occurrence	\$10,000,000
Annual Aggregate	\$10,000,000

Policy must:

- Be maintained while actual work is being performed and for the duration of the applicable statute of limitations and statute of repose after substantial completion of the project.
- Insure all professional services (including those of your subs) performed on behalf of project owner.
- As respects any retroactive date or prior acts exclusion to which such coverage is subject, pre-date both the date upon which any services hereunder are commenced and the date of this Agreement.
- Waiver of Subrogation to the fullest extent allowable by law in favor of City of Round Rock; KR Acquisitions, LLC and; KR CC, Inc.; Kalahari Management Co. LLC; and their respective subsidiaries, parents, affiliates, and the directors, officers, employees, successors and assigns of these entities, and their lender(s).

Contractor's Pollution Legal Liability (If Applicable)

Required for anyone performing environmental testing, drilling or excavating

Each Accident	\$5,000,000
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Policy must provide:

- Additional Insured status must apply for City of Round Rock and; KR Acquisitions, LLC and; KR CC, Inc.; Kalahari Management Co. LLC; and their respective subsidiaries, parents, affiliates, and the directors, officers, employees, successors and assigns of these entities, and their lender(s). Coverage to apply on a primary and non-contributory basis.
- Be maintained while actual work is being performed and for the duration of the applicable statute of limitations and statute of repose after substantial completion of the project.

Policies where Additional Insured Status is required as a part of this Agreement shall extend the full limits of liability maintained by the Architect, Engineer or their subs, even if those limits of liability are in excess of those required by this Agreement.

All Subs shall obtain and maintain the same coverage as shown in this exhibit and, have the same or higher limits, with the exception of Professional Liability and Umbrella/Excess Liability Limits which are shown in the exhibit below titled: HKS' Consultant Insurance Requirements Exhibit. It is the responsibility of HKS to make certain their subs are aware of and in compliance with these requirements.

HKS' CONSULTANT INSURANCE REQUIREMENTS EXHIBIT

<u>Consultant/Discipline</u>	<u>PROFESSIONAL LIABILITY LIMITS</u>		<u>UMBRELLA/EXCESS LIABILITY LIMITS</u>	
	<u>Per Claim</u>	<u>Annual Aggregate</u>	<u>Per Occurrence</u>	<u>Aggregate</u>
Associate Architect	\$ 5,000,000	\$ 7,000,000	\$ 5,000,000	\$ 5,000,000
Associate Architect (skin)	\$ 10,000,000	\$ 10,000,000	\$ 5,000,000	\$ 5,000,000
Accessibility	\$ 2,000,000	\$ 2,000,000	\$ 5,000,000	\$ 5,000,000
Acoustical	\$ 2,000,000	\$ 2,000,000	\$ 5,000,000	\$ 5,000,000
Atrium Smoke Control	\$ 2,000,000	\$ 2,000,000	\$ 5,000,000	\$ 5,000,000
Audio Visual	\$ 2,000,000	\$ 2,000,000	\$ 5,000,000	\$ 5,000,000
Civil Engineering	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000
Code	\$ 2,000,000	\$ 2,000,000	\$ 5,000,000	\$ 5,000,000
Elevator/Vertical Transportation	\$ 1,000,000	\$ 2,000,000	\$ 5,000,000	\$ 5,000,000
Exterior Building Maintenance	\$ 1,000,000	\$ 2,000,000	\$ 5,000,000	\$ 5,000,000
Exterior Enclosing Wall	\$ 4,000,000	\$ 4,000,000	\$ 5,000,000	\$ 5,000,000
Food Service	\$ 2,000,000	\$ 4,000,000	\$ 5,000,000	\$ 5,000,000
Graphics	\$ 1,000,000	\$ 2,000,000	\$ 5,000,000	\$ 5,000,000
Hardware	\$ 1,000,000	\$ 2,000,000	\$ 5,000,000	\$ 5,000,000
Interior Design	\$ 2,000,000	\$ 4,000,000	\$ 5,000,000	\$ 5,000,000
Landscape Design	\$ 2,000,000	\$ 4,000,000	\$ 5,000,000	\$ 5,000,000
Laundry	\$ 1,000,000	\$ 2,000,000	\$ 5,000,000	\$ 5,000,000
Lighting Design	\$ 1,000,000	\$ 2,000,000	\$ 5,000,000	\$ 5,000,000
Materials Management	\$ 1,000,000	\$ 2,000,000	\$ 5,000,000	\$ 5,000,000
Mechanical/Electrical/Plumbing	\$ 10,000,000	\$ 10,000,000	\$ 5,000,000	\$ 5,000,000
Parking	\$ 1,000,000	\$ 2,000,000	\$ 5,000,000	\$ 5,000,000
Planning Consultant	\$ 1,000,000	\$ 2,000,000	\$ 5,000,000	\$ 5,000,000
Pool/Spa	\$ 2,000,000	\$ 4,000,000	\$ 5,000,000	\$ 5,000,000
Roofing/Waterproofing	\$ 4,000,000	\$ 4,000,000	\$ 5,000,000	\$ 5,000,000
Security	\$ 2,000,000	\$ 2,000,000	\$ 5,000,000	\$ 5,000,000
Structural Engineering	\$ 10,000,000	\$ 10,000,000	\$ 5,000,000	\$ 5,000,000
Sustainability	\$ 2,000,000	\$ 4,000,000	\$ 5,000,000	\$ 5,000,000
Telecommunications/IT	\$ 2,000,000	\$ 4,000,000	\$ 5,000,000	\$ 5,000,000

CERTIFICATES OF INSURANCE

You are required to submit to Owner a Certificate of Insurance prior to start of project work. **The Certificate must show detail of coverage required above (i.e., waivers, additional insureds, primary / non-contributory and, forms when specified, etc.).** Policies must include and, the Certificate must show a 30-day cancellation / non-renewal notice provision, except ten days for non-payment.

Architects and Engineers shall be responsible for securing Certificates of Insurance from all Subs. **The Certificate must show detail of coverage required above (i.e., waivers, additional insureds, primary / non-contributory and, forms when specified, etc.).** Policies must include and, the Certificate must show a 30-day cancellation / non-renewal notice provision, except ten days for non-payment. ***HKS shall deliver to the Owner a copy of such Certificates of Insurance for their subs prior to commencing the work. It is only with the Project Owner's written permission that policy limits may be lower than stated.***

The insurance requirements set forth in this Section are not intended and shall not be construed to modify, limit or reduce any of the Contractor's duties of indemnity under the Contract. If you or your sub fail to obtain or maintain the required insurance, Owner shall have the right to treat such a failure as a breach of the Contract and to exercise all appropriate rights and remedies, including contract termination.

BUILDER'S RISK COVERAGE

Owner shall provide:

Owner shall purchase and maintain, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of at least the initial Contract Sum, plus value of subsequent contract modifications and cost of materials supplied or installed by others, plus the value of the contents of the Project during construction for the entire Project at the site on a replacement cost basis, including costs to cover professional fees, without deductibles greater than \$50,000 per occurrence. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until the project has reached substantial completion or until no person or entity other than the Owner has an insurable interest in the property, whichever is later. This insurance shall include interests, if applicable, of the Owner, the General Contractor, Subcontractors and Sub-subcontractors in the Project. The Contractor, Subcontractors and sub-subcontractors shall be Additional Insureds under such policies.

The Owner shall pay any deductibles under the policy.

This property insurance shall cover portions of the Work stored off the site and also portions of the Work in Transit.

Partial occupancy or use shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise.

Loss of Use Insurance - The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused.

NOTE: **It is not the responsibility of the Owner to insure machinery, tools, and any equipment that will not become a permanent part of the project. Such items are not insured under the Builder's Risk Policy.**

Exhibit C
Waterpark Design Responsibility Matrix

[not used]

Exhibit D

Construction Contract Administration

Communication, documentation and critical procedures are all managed by our project team from day one through the project's ultimate conclusion. With our on-site, day-to-day construction contract administration process we proactively address issues as they arise, in an efficient and effective manner.

Construction contract administration is a vital part of our design services. We employ a cadre of skilled construction contract administration professionals to review work conformance and report work progress. During a project's construction phase, our teams are responsible for managing and coordinating HKS' services with the owner, construction manager and general contractor.

Project Start-Up

The key to effective management is planning and coordination. Construction phase activities and procedures are established at the preconstruction conference. The primary management tool for HKS construction contract administration is the HKS Project Procedures Manual. This document, tailored specifically for each project, addresses communication, document routing and processing, construction phase procedures and close-out requirements.

Project Construction

Scheduled meetings with action-item guided management, reporting and task execution are part of our construction phase services. Each issue is given a priority and assigned to a team member with a targeted completion date.

Our action-item based management system is an effective tool for controlling and achieving project goals and objectives. Unique issue identification, directed actions and specific completion dates allow for the systematic administration of tasks from project start-up through final completion. Aided by Newforma, a web base project information management software, our process effectively anticipates and manages communications, decisions and activities required for successful project delivery.

Site visits are conducted at specific intervals during construction. Each design discipline issues an observation report with every site visit. The reports, which include site photographs, address work conformance and progress. Issues that arise during observations are addressed in scheduled team meetings.

Pre-installation conferences are required for subcontractors and vendors in anticipation of installing appropriate building elements and systems. These contractor-supervised meetings are used to coordinate trades with adjacent work through drawing and detail reviews and to exchange information necessary for effective coordination.

Project Substantial Completion

Substantial completion is a key milestone in the construction process. It documents the contractual success of project completion for the contractor and the owner. To support this, HKS performs the substantial completion inspection and helps the owner coordinate governmental agency reviews

required to obtain a certificate of occupancy. Certificates of substantial completion with appropriate punch lists are issued for each designated portion of the project.

Project Close-Out

Project close-out is initiated well in advance of completion through the preparation and distribution of the HKS project close out checklist. The checklist includes all specified close-out items and activities required by the contract for project completion.

Follow-Up Review

If requested by the owner, HKS will visit the project prior to the end of the contractor's one-year warranty to assist the owner in documenting warranty issues.

Project Management Tools

In addition to the standard methods of communication (e-mail, telephone, electronic drawing transfers and regularly scheduled meetings), we use the following project management tools:

Design/Modeling Software

We have access to the latest versions of 15 design and modeling software applications titles, including: Autodesk Revit, 3DS Max and Navisworks, SketchUp, AutoCAD, ARCHengine, Inventor, Sketchbook Pro and Rhinoceros + Grasshopper.

Web-based Sharing

As a firm, we are linked by a dedicated high-speed T1 Wide Area Network (WAN). The internet, email, extranets and a secure file transfer site called Thru allows for the timely coordination and transfer of project information.

Project Information Management

HKS' web-based project information management software, Newforma, is used to track RFIs, electronic transmittals, change orders and submittals. Newforma also manages meeting minutes, action item logs, images, drawings, photography and other key project documentation.

We also are familiar with many other CAFM tools that our clients request, including eBuilder and ConstructWare.

Utilizing Skype for Business and Blue Jeans applications, our teams are able to connect from virtually anywhere. These programs provide individuals the ability to conference call, video chat, instant message and share screens with team members both inside and outside the HKS offices.

Report/Documentation Tools

- Tracking Logs
- Agenda Sheets
- Meeting Reports
- Action Items
- Space Diagrams

- Room Data Sheets
- Budget Allocation
- Sheets
- Schedule Metrics
- A-3 Analysis Summary
- Request for Change Logs
- Sketch Logs
- Submittal Logs
- Request for Information Logs
- Punch Lists

Exhibit E Compensation

AMOUNT OF COMPENSATION

	Architecture	Interior Design	MEP	Structural	Landscape	TOTAL
Master Planning	\$27,750	\$4,700	\$7,200	\$6,200	\$5,000	\$50,850
Schematic Design	\$254,750	\$42,600	\$64,850	\$56,000	\$28,100	\$446,300
Design Development	\$352,800	\$ 59,200	\$90,100	\$77,800	\$33,400	\$613,300
Construction Documents	\$493,900	\$ 82,900	\$126,100	\$108,900	\$55,700	\$867,500
Construction Administration	\$290,000	\$ 47,400	\$72,000	\$62,200	\$26,800	\$498,400
TOTAL	\$1,419,200	\$ 236,800	\$360,250	\$311,100	\$149,000	\$2,476,350

TIMING OF COMPENSATION

See Exhibit F

DESIGN REIMBURSABLE EXPENSES FOR CORE/SHELL/SITE

Not to exceed \$ 156,000

SECONDARY CONSULTANT ALLOWANCES

Civil Engineering	\$200,000
Food Service/Laundry	N/A – by Owner
Vertical Transportation	\$ 20,000
A/V, Tele/Data & Security	\$ 40,000
Acoustical	\$ 40,000
Hardware	\$ 15,000
Life-Safety/Accessibility	\$ 30,000
Lighting	\$ 55,000

Architect shall receive no additional or add-on fees for secondary consultants. For all potential secondary consultants, Architect shall prepare RFPs and receive Owner approval of such RFPs before they are sent to potential secondary consultants. In addition, Owner shall review and approve proposals received from all proposed secondary consultants before they are engaged by Architect.

EXHIBIT F

PROJECTED DRAW SCHEDULE - CONVENTION CENTER ONLY					KALAHARI RESORT - ROUND ROCK		
					HKS Project No. 20673.000		
		ARCH.	INTERIOR DESIGN	MECH/ELEC/PLU MBING	STRUCTURAL ENGINEERING	LANDSCAPE	TOTAL
FIRM -->		HKS	HKS	BLUM	BDD	SWA	
		\$1,419,200	\$236,800	\$360,250	\$311,100	\$149,000	\$2,476,350
2017	Concept	Apr	\$20,000	\$0	\$0	\$0	\$20,000
	Concept	May	\$7,750	\$4,700	\$7,200	\$6,200	\$30,850
	SD1	Jun	\$84,900	\$14,200	\$21,600	\$18,600	\$148,650
	SD2	Jul	\$84,900	\$14,200	\$21,600	\$18,600	\$148,650
	SD3	Aug	\$84,950	\$14,200	\$21,650	\$18,800	\$149,000
	DD1	Sept	\$88,200	\$14,800	\$22,525	\$19,450	\$153,325
	DD2	Oct	\$88,200	\$14,800	\$22,525	\$19,450	\$153,325
	DD3	Nov	\$88,200	\$14,800	\$22,525	\$19,450	\$153,325
2018	DD4	Dec	\$88,200	\$14,800	\$22,525	\$19,450	\$153,325
	CD1	Jan	\$70,500	\$11,800	\$18,000	\$15,550	\$123,800
	CD2	Feb	\$70,500	\$11,800	\$18,000	\$15,550	\$123,800
	CD3	Mar	\$70,500	\$11,800	\$18,000	\$15,550	\$123,800
	CD4	Apr	\$70,500	\$11,800	\$18,000	\$15,550	\$123,800
	CD5	May	\$70,500	\$11,800	\$18,000	\$15,550	\$123,800
	CD6	Jun	\$70,500	\$11,800	\$18,000	\$15,550	\$123,800
	CD7	Jul	\$70,900	\$12,100	\$18,100	\$15,600	\$124,700
A/E Design Fee		\$1,129,200	\$189,400	\$288,250	\$248,900	\$122,200	\$1,977,950

		ARCH.	INTERIOR DESIGN	MECH/ELEC/PLU MBING	STRUCTURAL ENGINEERING	LANDSCAPE	Month Total Including CD		
FIRM -->		HKS	HKS	BLUM	BDD	SWA			
2018	B/N	Jan	\$10,000	\$2,000	\$4,000	\$4,000	\$2,000	\$22,000	\$145,800
	CA1	Feb	\$9,300	\$0	\$2,250	\$1,940	\$0	\$13,490	\$137,290
	CA2	Mar	\$9,300	\$0	\$2,250	\$1,940	\$0	\$13,490	\$137,290
	CA3	Apr	\$9,300	\$0	\$2,250	\$1,940	\$0	\$13,490	\$137,290
	CA4	May	\$9,300	\$0	\$2,250	\$1,940	\$0	\$13,490	\$137,290
	CA5	Jun	\$9,300	\$0	\$2,250	\$1,940	\$0	\$13,490	\$137,290
	CA6	Jul	\$9,300	\$0	\$2,250	\$1,940	\$0	\$13,490	\$138,190
	CA7	Aug	\$9,300	\$0	\$2,250	\$1,940	\$0	\$13,490	
	CA8	Sep	\$9,300	\$0	\$2,250	\$1,940	\$0	\$13,490	
	CA9	Oct	\$9,300	\$0	\$2,250	\$1,940	\$0	\$13,490	
	CA10	Nov	\$9,300	\$0	\$2,250	\$1,940	\$0	\$13,490	
2019	CA11	Dec	\$9,300	\$0	\$2,250	\$1,940	\$0	\$13,490	
	CA12	Jan	\$9,300	\$0	\$2,250	\$1,940	\$0	\$13,490	
	CA13	Feb	\$9,300	\$0	\$2,250	\$1,940	\$0	\$13,490	
	CA14	Mar	\$9,300	\$1,000	\$2,250	\$1,940	\$2,000	\$16,490	
	CA15	Apr	\$9,300	\$1,000	\$2,250	\$1,940	\$0	\$14,490	
	CA16	May	\$9,300	\$1,000	\$2,250	\$1,940	\$0	\$14,490	
	CA17	Jun	\$9,300	\$2,000	\$2,250	\$1,940	\$0	\$15,490	
	CA18	Jul	\$9,300	\$2,000	\$2,250	\$1,940	\$0	\$15,490	
	CA19	Aug	\$9,300	\$2,000	\$2,250	\$1,940	\$1,000	\$16,490	
	CA20	Sep	\$9,300	\$2,000	\$2,250	\$1,940	\$1,000	\$16,490	
2020	CA21	Oct	\$9,300	\$3,000	\$2,250	\$1,940	\$2,000	\$18,490	
	CA22	Nov	\$9,300	\$3,000	\$2,250	\$1,940	\$2,000	\$18,490	
	CA23	Dec	\$9,300	\$3,000	\$2,250	\$1,940	\$2,000	\$18,490	
	CA24	Jan	\$9,300	\$3,000	\$2,250	\$1,940	\$2,000	\$18,490	
	CA25	Feb	\$9,300	\$3,000	\$2,250	\$1,940	\$2,000	\$18,490	
	CA26	Mar	\$9,300	\$3,000	\$2,250	\$1,940	\$2,000	\$18,490	
	CA27	Apr	\$9,300	\$3,000	\$2,250	\$1,940	\$2,000	\$18,490	
	CA28	May	\$9,300	\$4,000	\$2,250	\$1,940	\$2,000	\$19,490	
	CA29	Jun	\$9,300	\$4,000	\$2,250	\$1,940	\$2,400	\$19,890	
	CA30	Jul	\$10,300	\$5,400	\$2,750	\$1,940	\$2,400	\$22,790	
A/E Construction Admin. Fee		\$290,000	\$47,400	\$72,000	\$62,200	\$26,800	\$498,400		

Total	\$1,419,200	\$236,800	\$360,250	\$311,100	\$149,000	\$2,476,350
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Exhibit G

Kalahari Round Round Rock Project Schedule - Fast Track Option

Revised March 24 2017

