

AGREEMENT BETWEEN COUNTY AND PGAL, INC.

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.

THIS AGREEMENT is made on the _____ day of _____, 2023,

Between the **COUNTY:** BRAZOS COUNTY, TEXAS
c/o Brazos County Commissioners' Court
Attention: County Judge
200 South Texas Ave., Ste. 332
Bryan, Texas 77803

and the **PGAL, INC. (ARCHITECT):** 3131 Briarpark Dr., Suite 200
Houston, TX 77042

for the following **PROJECT:**

Brazos County to contract with an architectural firm to complete the design for a new Medical Examiner facility. This is to include design, construction, utilities, FF&E, and other necessary costs.

The COUNTY and (Architect) agree as set forth below.

ARTICLE I
ARCHITECT RESPONSIBILITY

1.1 ARCHITECT'S SERVICE

- 1.1.1 The ARCHITECT'S services consist of those services performed by the ARCHITECT, ARCHITECT'S employees and the ARCHITECT'S consultants as enumerated in Articles 2 and 3 of this Agreement.
- 1.1.2 The ARCHITECT'S services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. The ARCHITECT shall submit for the COUNTY'S approval, a schedule for the performance of the ARCHITECT'S services which may be adjusted as the Project proceeds and shall include allowances for periods of time required for the COUNTY'S review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the COUNTY shall not, except for reasonable cause, be exceeded by the ARCHITECT or the COUNTY.

ARTICLE II
SCOPE OF ARCHITECT'S BASIC SERVICES

2.1 DEFINITION

- 2.1.1 The ARCHITECT'S Basic Services consist of those described in attached Exhibit "A", Scope of Services and Fee Proposal.

ARTICLE III
ADDITIONAL SERVICES

3.1 GENERAL

- 3.1.1 It is expressly understood and agreed that ARCHITECT shall not furnish any of the additional services without the prior written authorization of the COUNTY or the COUNTY'S designee. The COUNTY shall have no obligation to pay for such additional services, which have been performed without the prior written authorization of the COUNTY as herein above provided.
- 3.1.2.1 Services which could possibly be required, but at the time of this Agreement were yet to be determined and which are not included in the Basic Services or Additional Services as identified and described in EXHIBIT A shall be considered Contingent Additional Services. A list of possible Contingent Additional Services that could be needed as the Project proceeds is included at the end of Exhibit A.
- 3.1.2.2 It is expressly understood and agreed that the ARCHITECT shall not furnish any of the Contingent Additional Services without the prior written authorization of the COUNTY or the COUNTY'S designee. The COUNTY shall have no obligation to pay for such Contingent Additional Services, which have been performed without the prior written authorization of the COUNTY as herein above provided.

ARTICLE IV
COUNTY'S RESPONSIBILITY

- 4.1 The COUNTY shall provide full information regarding requirements for the Project, including a program, which shall set forth the COUNTY's objective, schedules, constraints, and criteria.
- 4.2 The COUNTY shall establish and update an overall budget for the Project, including the Construction Cost, the COUNTY'S other costs and reasonable contingencies related to all of these costs.
- 4.3 The COUNTY shall designate a representative authorized to act on the COUNTY'S behalf with respect to the Project. The COUNTY, or such authorized representative, shall render decisions in a timely manner pertaining to documents submitted by the ARCHITECT in order to avoid unreasonable delay in the orderly and sequential progress of the ARCHITECT'S service.
- 4.4 The COUNTY shall give prompt written notice to the ARCHITECT if the COUNTY becomes aware of any fault or defect in the Project or non-conformance with the contract documents. Any delay by the COUNTY in providing said notice shall not constitute a waiver, a bar or act to estop the COUNTY from exercising any of its rights under this contract.
- 4.5 Examine all studies, reports, sketches, drawings, specifications, proposals, and other documents presented by the ARCHITECT, obtain advice of an attorney, insurance counselor, and other consultants as the COUNTY deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the ARCHITECT.

- 4.6 The proposed language of certificates or certifications requested of the ARCHITECT or the ARCHITECT'S consultants shall be submitted to the ARCHITECT for review and approval at least fourteen (14) days prior to execution. The COUNTY shall not request certifications that would require knowledge or services beyond the scope of this Agreement.
- 4.7 The COUNTY shall also provide those specific items identified in the attached Exhibit A incorporated by reference hereto – ITEMS TO BE PROVIDED BY THE COUNTY TO THE ARCHITECT.

ARTICLE V **PROJECT COST**

5.1 DEFINITION

- 5.1.1 The Project Cost shall be the total cost or estimated cost to the COUNTY of all elements of the Project designed or specified by the ARCHITECT.
- 5.1.2 The Project Cost shall include the cost at current market rates of labor and materials furnished by the COUNTY and equipment designed, specified, selected, or specially provided by the ARCHITECT, plus a reasonable allowance for the Contractor's overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the work during construction.
- 5.1.3 Project Cost does not include the compensation of the ARCHITECT and the ARCHITECT'S consultants, financing, or other costs which are the responsibility of the COUNTY.
- 5.1.4 ARCHITECT can include reimbursable expenses, but it must comply with the COUNTY'S Vendor Travel Policy.

5.2 RESPONSIBILITY FOR PROJECT COSTS

- 5.2.1 Evaluations of the COUNTY'S Project budget, preliminary estimates of Project Cost and detailed estimates of Project Cost, if any, prepared by the ARCHITECT, represent the ARCHITECT'S best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the ARCHITECT nor the COUNTY has control over the cost of labor, materials, or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the ARCHITECT cannot and does not warrant or represent that bid or negotiated prices will not vary from the COUNTY'S Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the ARCHITECT.

ARTICLE VI **USE OF (ARCHITECT)'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS**

- 6.1 The COUNTY shall be the absolute and unqualified owner of all drawings, preliminary layouts, record drawings, sketches, and other documents prepared pursuant to this Agreement by the ARCHITECT with the same force and effect as if the COUNTY prepared same. Copies of complete or partially completed mylar reproducible, preliminary layouts, record drawings, sketches, and other documents prepared pursuant to this Agreement shall be delivered to the COUNTY when and if this Agreement is terminated or upon completion of this Agreement, whichever occurs first. The ARCHITECT may retain one set of reproducible copies of the documents and these

copies shall be for the ARCHITECT'S sole use in preparation of studies or reports for the COUNTY. The ARCHITECT is expressly prohibited from selling, licensing, or otherwise marketing or donating these documents, or using the documents in preparation of other work for any other client, without the prior express written permission of the COUNTY.

- 6.2 All documents including reports, drawings, and specifications prepared by the ARCHITECT pursuant to this Agreement are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse by the COUNTY or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by the ARCHITECT for the specific purposes intended will be at the COUNTY'S sole risk and without liability or legal exposure to the ARCHITECT. Any such verification or adaptation will entitle the ARCHITECT to further compensation at rates to be agreed upon by the COUNTY and the ARCHITECT.
- 6.3 Submission or distribution of documents 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 ARCHITECT'S reserved rights.

ARTICLE VII **TERMINATION, SUSPENSION OR ABANDONMENT**

- 7.1 This Agreement may be terminated by either party upon not less than fourteen (14) days written notice should the other party fail to substantially perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.
- 7.2 If the COUNTY suspends the Project for more than thirty (30) consecutive days, the ARCHITECT shall be compensated for services performed prior to notice of such suspension.
- 7.3 This Agreement may be terminated by the COUNTY upon not less than fourteen (14) days written notice to the ARCHITECT in the event that the Project is permanently abandoned. If the COUNTY abandons the Project for more than ninety (90) consecutive days, the ARCHITECT may terminate this Agreement by giving written notice.
- 7.4 If the COUNTY fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, the ARCHITECT may, after giving seven (7) days written notice to the COUNTY, suspend services under this Agreement.
- 7.5 Failure of the COUNTY to make payments to the ARCHITECT in accordance with this Agreement shall be considered substantial nonperformance and cause for termination.
- 7.6 If the COUNTY fails to make payment when due to the ARCHITECT for services and expenses, the ARCHITECT may, upon seven (7) days written notice to the COUNTY, suspend performance of services under this Agreement. Unless the ARCHITECT receives payment in full within seven (7) days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the ARCHITECT shall have no liability to the COUNTY for delay or damage caused by the COUNTY because of suspension of services.

7.7 In the event of termination that is not the fault of the ARCHITECT, the ARCHITECT shall be compensated for services performed prior to termination, together with Reimbursable Expenses, if any, then due.

7.8 TERMINATION BY THE OWNER FOR CAUSE

7.8.1 The Owner may terminate the Contract if the ARCHITECT:

7.8.1.1 persistently or repeatedly refuses or fails to adhere to the schedule approved by Brazos County;

7.8.1.2 fails to make prompt payment to Subcontractors in accordance with the respective agreement between the ARCHITECT and the Subcontractors;

7.8.1.3 persistently disregards laws, ordinances, or rules, regulations, or orders of a public authority having jurisdiction; or;

7.8.1.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

7.8.2 When any of the above reasons exist and the Owner believes that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the ARCHITECT seven (7) days written notice, terminate employment of the ARCHITECT and may, subject to any prior rights of the surety:

7.8.2.1 take possession of any and all drawings, notes, plans, specifications, or other documents produced for this contract by the ARCHITECT;

7.8.2.2 accept assignment of subcontracts pursuant to this contract; and

7.8.2.3 finish the Work by whatever reasonable method the Owner may deem expedient.

7.8.3 When the Owner terminates the Contract for one of these reasons stated, the ARCHITECT shall not be entitled to receive further payment until the Work is finished.

7.8.4 If the unpaid balance of the Contract Sum exceeds cost of finishing the Work, including compensation for the Engineer's services and expenses made necessary thereby, such excess shall be paid to the ARCHITECT. If such costs exceed the unpaid balance, the ARCHITECT shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

7.9 SUSPENSION BY OWNER FOR CONVENIENCE

7.9.1 The Owner may, without cause, order the ARCHITECT in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the Owner may determine.

7.9.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption as described in this contract. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

7.9.2.1 that performance is, was, or would have been so suspended, delayed, or interrupted by another cause for which the ARCHITECT is responsible; or

7.9.2.2 that an equitable adjustment is made or denied under another provision of the Contract.

7.10 TERMINATION BY THE OWNER FOR CONVENIENCE

7.10.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

7.10.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the ARCHITECT shall:

7.10.2.1 cease operations as directed by the Owner in the notice;

7.10.2.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

- 7.10.2.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders, and enter into no further subcontracts and purchase orders.
- 7.10.3 In case of such termination for the Owner's convenience, the ARCHITECT shall be entitled to receive payment for Work executed and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE VIII
MISCELLANEOUS PROVISIONS

- 8.1 Unless otherwise provided, this Agreement shall be governed by the law of the principal place of business of the COUNTY. Venue for any dispute or disagreement regarding the terms of this Agreement shall be in Brazos County, Texas.
- 8.2 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitation shall commence to run not later than either the date of Construction Substantial Completion, or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion of Construction.
- 8.3 The COUNTY and the ARCHITECT, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representative of such other party with respect to all covenants of this Agreement. Neither the COUNTY nor the ARCHITECT shall assign this Agreement without the express written consent of the other party.
- 8.4 This Agreement represents the entire integrated agreement between the COUNTY 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 the COUNTY and the ARCHITECT.
- 8.5 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 COUNTY or the ARCHITECT.
- 8.7 The ARCHITECT shall have the right to include representations of the design of the Project, including photographs, among the ARCHITECT'S promotional professional materials. The ARCHITECT'S materials shall not include the COUNTY'S confidential or proprietary information, if the COUNTY has previously advised the ARCHITECT in writing of the specific information considered by the COUNTY to be confidential or proprietary.
- 8.8 COMPLIANCE AND STANDARDS. The ARCHITECT agrees to perform the work hereunder in accordance with generally accepted standards applicable thereto and shall use that degree of care and skill commensurate with the ARCHITECT profession to comply with all applicable state, federal and local laws, ordinances, rules, and regulations relating to the work to be performed hereunder and the ARCHITECT'S performance.
- 8.9 INDEMNIFICATION: ARCHITECT shall save and hold harmless the COUNTY from and against any and all claims and liability due to activities of the ARCHITECT, its agents or employees, performed under this Agreement and which result from any

negligent act, error, or omission of the ARCHITECT, or of any person employed by the ARCHITECT. The ARCHITECT shall also save harmless the COUNTY from and against any and all expenses, including attorney's fees which might be incurred by the COUNTY in litigation, or otherwise, resisting said claims or liabilities which might be imposed on the COUNTY as the result of such activities by the ARCHITECT, its agents or employees.

- 8.10 LIQUIDATED DAMAGES: It is acknowledged that the ARCHITECT's failure to achieve substantial completion of the Work within the Contract Time provided by the Contract Documents will cause the COUNTY to incur substantial economic damages and losses of types and in amounts which are impossible to compute and ascertain with certainty as a basis for recovery by the COUNTY of actual damages, and that liquidated damages represent a fair, reasonable and appropriate estimate thereof. Accordingly, in lieu of actual damages for such delay, the ARCHITECT agrees that liquidated damages may be assessed and recovered by the COUNTY as against ARCHITECT and its Surety, in the event of delayed completion and without the COUNTY being required to present any evidence of the amount or character of actual damages sustained by reason thereof; therefore ARCHITECT shall be liable to the COUNTY for payment of liquidated damages in the amount of one-hundred dollars (\$100.00) for each day that final completion of the plans and specifications is delayed beyond the Contract Time as adjusted for time extensions provided by the Contract Documents. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty, and ARCHITECT shall pay them to COUNTY without limiting COUNTY's right to terminate this agreement for default as provided elsewhere herein.

ARTICLE IX **PAYMENTS TO THE (ARCHITECT)**

9.1 PAYMENTS ON ACCOUNT OF BASIC SERVICES

- 9.1.1 Upon approval by the COUNTY, or the COUNTY'S designee, payment for Basic Services shall be made monthly and shall be in proportion to services performed that month within each phase of service.

9.2 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

- 9.2.1 Upon approval by the COUNTY or the COUNTY'S designee of the ARCHITECT'S statement of services rendered, or expenses incurred, payment on account of the ARCHITECT'S Additional Services and for Reimbursable Expenses shall be made monthly.

9.3 PAYMENTS WITHHELD

- 9.3.1 No deductions shall be made from the ARCHITECT'S compensation on account of penalty, liquidated damages or other sums withheld from payments to Contractors, or on account of the cost of changes in the work other than those for which the ARCHITECT has been found to be liable.

9.4 ARCHITECT'S ACCOUNTING RECORDS

- 9.4.1 Records of Reimbursable Expenses pertaining to Additional Services and services performed on an hourly basis shall be available to the COUNTY or the COUNTY'S authorized representative at mutually convenient times.

9.5 LIMIT OF APROPRIATION

9.5.1 Prior to the execution of this Agreement, the ARCHITECT has been advised by the COUNTY and the ARCHITECT fully understand and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the total maximum compensation that ARCHITECT may become entitled to hereunder, and the total maximum sum that the COUNTY shall become liable to pay to the ARCHITECT hereunder, shall not, under any conditions, circumstances or interpretations hereof, exceed the sum certified as available by the County Auditor in the Auditor's Certificate attached hereto.

ARTICLE X
BASIS OF COMPENSATION

The COUNTY shall compensate the ARCHITECT from funds obtained through current revenue of Brazos County as follows:

10.1 BASIC COMPENSATION

10.1.1 For Basic Services, as described in Article 2, Basic Compensation shall be computed as follows (In accordance with the attached Exhibit A incorporated by reference hereto, SCHEDULE OF FEES.):

10.2 COMPENSATION FOR ADDITIONAL SERVICES

10.2.1 For Additional Services of the ARCHITECT, as described in Article 3, compensation shall be computed as follows (In accordance with the attached Exhibit A incorporated by reference hereto, SCHEDULE OF FEES.):

10.3 COMPENSATION FOR CONTINGENT ADDITIONAL SERVICES

10.3.1 For Contingent Additional Services of the ARCHITECT, as described in Article 3, compensation shall be computed as follows: (In accordance with the attached Exhibit A incorporated by reference hereto, SCHEDULE OF FEES.):

10.3.2 Payments shall be made by the COUNTY in accordance with Texas Government Code Chapter 2251. The COUNTY shall pay the ARCHITECT'S invoice as approved by the COUNTY's designee within thirty (30) days after the COUNTY'S designee's approval of the same, provided that the approval or payment of any such invoice shall not be considered to be evidence of performance by the(ARCHITECT to the point indicated by such invoice or of receipt or acceptance by the COUNTY of the work covered by such invoice.

ARTICLE XI
OTHER CONDITIONS OR SERVICES

11.1 INSURANCE

11.1.1 The ARCHITECT shall file with the COUNTY a Certificate of Errors and Omissions Insurance having minimum limits of One Million and No/100 Dollars (\$1,000,000.00) for each occurrence and annual One Million and No/100 Dollars (\$1,000,000.00) aggregate. Such Errors and Omissions Insurance shall have a deductible not in excess of Two Hundred Thousand and No/100 Dollars (\$200,000.00) self-insured. Such Certificate shall bear the endorsement "Not to be canceled without thirty (30) days prior notice to BRAZOS COUNTY, TEXAS." The (ARCHITECT) shall maintain the Errors and Omissions Insurance at all times this Agreement is in effect and for a period of five (5)

years after completion of the Project. Failure to maintain the required insurance shall be deemed to be a material breach of this Agreement.

- 11.1.2 The ARCHITECT shall also provide Worker's Compensation, automobile and comprehensive general liability policies. The ARCHITECT shall deliver the insurance certificates to the COUNTY. The coverage provided herein shall contain an endorsement providing thirty (30) days notice to the COUNTY prior to any cancellation of coverage. Said coverage shall be written by an insurer acceptable to the COUNTY and shall be in a form acceptable to the COUNTY. If the ARCHITECT has canceled or allowed to lapse any of these insurance policies then the COUNTY may pay for such insurance and may hold the amount of such payment out of the ARCHITECT's fees or be otherwise reimbursed. Failure to maintain the required insurance shall be deemed to be a material breach of this Agreement.

11.2 PERIODS OF SERVICE

- 11.2.1.1 The ARCHITECT shall begin work immediately upon receipt of the Notice-to-Proceed in writing by the COUNTY or the COUNTY's designee. The project will proceed according to the schedule shown in Exhibit A. The schedule makes certain assumptions regarding review processes and other activities that are beyond the control of the ARCHITECT.
- 11.2.1.2 Working days shall be defined as standard workdays between Monday and Friday, exclusive of holidays.
- 11.2.3 This schedule assumes an orderly progression of the ARCHITECT'S services. Delays beyond the control of the ARCHITECT may be cause for extension of this period of service, in which case the ARCHITECT shall submit in writing to the COUNTY its request for such extensions a minimum of thirty (30) calendar days prior to the end of the affected service period.
- 11.2.2 If the COUNTY has requested significant modifications or changes in the general scope, extent or character of the Project, the time or performance of the ARCHITECT'S services shall be adjusted equitably.

11.3 STATEMENT OF CONFLICTS OF INTREST (IF ANY)

- 11.3.1 The ARCHITECT or key employees may have regarding these services, and a plan for mitigating the conflict(s). Note that Brazos County may in its sole discretion determine whether or not a conflict disqualifies a firm, and/or whether or not a conflict mitigation plan is acceptable.

11.4 SYSTEM FOR AWARD MANAGEMENT

- 11.4.1 ARCHITECT and its Principals shall not be debarred or suspended nor otherwise on the Excluded Partis List System (EPLS) as its principals are not listed (or not debarred) through the System for Award Management (www.SAM.gov).

11.5 EQUAL EMPLOYEMENT OPPORTUNITY (2 CFR 200 APPENDEX II (C) AND 41 CFR §60-1.4(b))

- 11.5.1 Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-4.1(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 2 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Oder 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41

CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

11.5.2 41 CFR 60-1.4 Equal opportunity clause.

11.5.2.1 (b) Federally assisted construction contracts. (1) Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

11.5.2.1.1 During the performance of this contract, the ARCHITECT agrees as follows:

11.5.2.1.1.1 The ARCHITECT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

11.5.2.1.1.2 The ARCHITECT will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

11.5.2.1.1.3 The ARCHITECT will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or other employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

11.5.2.1.1.4 The ARCHITECT will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

11.5.2.1.1.5 The ARCHITECT will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

11.5.2.1.1.6 The ARCHITECT will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for

purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- 11.5.2.1.1.7 In the event of the ARCHITECT's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 11.5.2.1.1.8 The ARCHITECT will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The ARCHITECT will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:
- 11.5.2.1.1.8.1 Provided, however, that in the event a ARCHITECT becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
- 11.5.2.1.1.8.2 The ARCHITECT further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: provided, that if the ARCHITECT so participating is a State or local government, the above equal opportunity clause is not applicable to any agency instrumentality or subdivision of such government which does not participate in work on or under the contract.
- 11.5.2.1.1.8.3 The ARCHITECT agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.
- 11.5.2.1.1.8.4 The ARCHITECT further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the ARCHITECT agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the ARCHITECT under the program with respect to which the failure or refund occurred until satisfactory assurance of

further compliance has been received from such (ARCHITECT); and refer to case to the Department of Justice for appropriate legal proceedings.

- 11.6 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. 3701-3708) (2 CFR 200 APPENDIX II (E))
 - 11.6.1 Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at the rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provided that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- 11.7 RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT (2 CFR 200 APPENDIX II (F))
 - 11.7.1 If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or recipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

- 11.8 CLEAN AIR ACT (42 U.S.C. 7401-7671Qq.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. 1251-1387), AS AMENDED (2 CFR 200 APPENDIX II (G))
 - 11.8.1 Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- 11.9 DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689) (2 CFR 200 APPENDIX II (H))
 - 11.9.1 A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusion in the System for Award Management (SAM), in accordance with the OMB guidelines a 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contain the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

- 11.10 BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. 1352) (2 CFR 200 APPENDIX II (I) AND 24 CFR §570.303)
- 11.10.1 ARCHITECT's that apply or bid for any award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- 11.11 SEE 2 CFR §200.323. (2 CFR 200 APPENDIX II (J))
- 11.12 SEE 2 CFR §200.316. (2 CFR 200 APPENDIX II (K))
- 11.13 SEE 2 CFR §200.322. (2 CFR 200 APPENDIX II (L))
- 11.14 The Federal awarding agency must establish conflict of interest policies for Federal awards. The non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy. (2 CFR 200.112)
- 11.15 The Federal awarding agency and the non-Federal entity should, whenever practicable, collect, transmit, and store Federal award-related information in open and machine-readable formats rather than in closed formats or on paper in accordance with applicable legislative requirements. A machine-readable format is a format in a standard computer language (not English text) that can be read automatically by a web browser or computer system. The Federal awarding agency or pass-through entity must always provide or accept paper versions of Federal award-related information to and from the non-Federal entity upon request. If paper copies are submitted, the Federal awarding agency or pass-through entity must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable. (2 CFR 200.336)
- 11.16 CONTRACTING WITH HUB, SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS. (2 CFR 200.321)
- 11.16.1 The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- 11.16.2 Affirmative steps must include:
- 11.16.2.1 Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- 11.16.2.2 Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

- 11.16.2.3 Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - 11.16.2.4 Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - 11.16.2.5 Using the services and assistance as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - 11.16.2.6 Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (i) through (v) of this section.
- 11.17 Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three (3) years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entities must not impose any other record retaining requirements upon non-Federal entities. (2 CFR 200.334) They only exceptions are the following:
- 11.17.1 If any litigation, claim, or audit is started before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involved the records have been resolved and final action taken.
 - 11.17.2 When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.
 - 11.17.3 Records for real property and equipment acquired with Federal Funds must be retained for three (3) years after final disposition.
 - 11.17.4 When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the three-year retention requirements is not applicable to the non-Federal entity.
 - 11.17.5 Records for program income transactions after the period of performance. In some cases, recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.
 - 11.17.6 Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).
 - 11.17.6.1 If submitted for negotiation. If the proposal, plan or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the three-year retention period for its supporting records starts from the date of such submission.
 - 11.17.6.2 If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the three-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

- 11.18 CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION PROHIBITED (TEXAS GOVERNMENT CODE 2252.152)
- 11.18.1 A governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Section 806.051, 807.051, or 2252.153. The term “foreign terrorist organization” in this paragraph has the meaning assigned to such a term in Section 2252.151(2) of the Texas Government Code.
- 11.19 PROVISION REQUIRED IN CONTRACT (TEXAS GOVERNMENT CODE 2271)
- 11.19.1 In between a governmental entity and a company with then (10) or more full-time employees; and
- 11.19.2 Has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.
- 11.19.3 A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it:
- 11.19.3.1 Does not boycott Israel; and
- 11.19.3.2 Will not boycott Israel during the term of the contract
- 11.20 The contract award is contingent upon the receipt of ARP Act funds. If no such funds are awarded, the contract shall terminate.
- 11.21 Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. (42 U.S.C. 6201)
- 11.22 TITLE VI OF THE CIVIL RIGHTS ACT OF 1964
- 11.22.1 The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. §2000d et seq) as implemented by the Department of the Treasury’s Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with “Limited English Proficiency” in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury’s Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.
- 11.23 THE FAIR HOUSING ACT, TITLE VIII OF THE CIVIL RIGHTS ACT OF 1968 (42 U.S.C. § 3601 ET SEQ.)
- 11.23.1 Which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability.
- 11.24 AGE DISCRIMINATION ACT OF 1975
- 11.24.1 The ARCHITECT shall comply with the Age Discrimination Act of 1975 which provides that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

11.25 AMERICANS WITH DISABILITIES ACT

11.25.1 ARCHITECT shall not discriminate against a qualified individual with a disability and shall comply with the Americans with Disabilities Act, P.L. 101-336, 42 U.S.C. 12101 et seq. and any property promulgated rules and regulations related thereto.

11.26 CONFLICTS OF INTREST

11.26.1 GOVERNING BODY

11.26.1.1 No member of the governing body of the County and no other officer, employee, or agent of the County who exercises any functions or responsibilities in connection with administration, construction, engineering, or implementation of award between the Department of Treasury and the County, shall have any personal financial interest, direct or indirect, in the ARCHITECT or this Contract; and the ARCHITECT shall take appropriate steps to assure compliance.

11.26.2 OTHER LOCAL PUBLIC OFFICIALS

11.26.2.1 No other public official, who exercises any functions or responsibilities in connection with the planning and carrying out of administration, construction, engineering, or implementation of the ARPA award between the Department of Treasury and the County, shall have any personal financial interest, direct or indirect, in the ARCHITECT or this Contract; and the ARCHITECT shall take appropriate steps to assure compliance.

11.26.3 THE ARCHITECT AND EMPLOYEES

11.26.3.1 The ARCHITECT warrants and represents that it has no conflict of interest associated with the ARPA award between the Department of Treasury and the County of this Contract. The ARCHITECT further warrants and represents that it shall not acquire an interest, direct or indirect, in any geographic area that may benefit from the ARPA award between the Department of Treasury and the County or in any business, entity, organization, or person that may benefit from the award. The ARCHITECT further agrees that it will not employ an individual with a conflict of interest as described herein.

11.27 ACCESS TO RECORDS

11.27.1 The U.S. Department of Treasury, Inspectors General, the Comptroller General of the United States, and the Texas Division of Emergency Management and the County, or any of their authorized representatives, shall have access to any documents, papers, or other records of the ARCHITECT which are pertinent to the ARPA award, in order to make audits, examinations, excerpts, and transcripts and to closeout the County's ARPA contract with the Department of Treasury.

11.28 RETAINAGE OF RECORDS

11.28.1 Grantees or subgrantees must retain all required records for three (3) years after grantee or subgrantees make final payments and all other pending matters are closed.

11.29 TERMINATION FOR CAUSE

11.29.1 If the ARCHITECT fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the ARCHITECT violates any of the covenants, conditions, agreements, or stipulations of this Agreement, the County shall have the right to terminate this Agreement by giving written notice to the ARCHITECT of such termination and specifying the effective date thereof, which shall be at least fourteen (14) days before the effective date of such termination. In the even of termination for cause, all finished or unfinished documents, data, studies, surveys, drawings, maps, models,

photographs, and reports prepared by the ARCHITECT pursuant to this Agreement shall, at the option of the County, be turned over to the County and become the property of the County. In the event of termination for cause, the ARCHITECT shall be entitled to receive reasonable compensation for any necessary services actually and satisfactorily performed prior to the date of termination.

11.29.2 Notwithstanding the above, the ARCHITECT shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of contract by the ARCHITECT, and the County may set-off the damages incurred as a result of the ARCHITECT's breach of contract from any amounts that might otherwise owe the ARCHITECT.

11.30 TERMINATION FOR CONVENIENCE OF THE COUNTY

11.30.1 County may at any and for any reason terminate ARCHITECT's services and work at County's convenience upon providing written notice to the ARCHITECT specifying the extent of termination and the effective date. Upon receipt of such notice, ARCHITECT shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities, and supplies in connection with the performance of this Agreement.

11.31 INCREASING SEAT BELT USE IN THE UNITED STATES

11.31.1 Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its ARCHITECT to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented, or personally owned vehicles.

11.32 REDUCING TEXT MESSAGING WHILE DRIVING

11.32.1 Pursuant to Executive Order 13513, 74 RF 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and ARCHITECT to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

11.33 SECTION 504 OF THE REHABILITATION ACT OF 1973

11.33.1 As amended (29 U.S.C. §794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance.

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

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolution extending said authority have been duly passed and are now in force and effect.

BRAZOS COUNTY, TEXAS

PGAL, INC.

Duane Peters, County Judge

by:
Principal

Acting by and through the authority of
the Brazos County Commissioners Court

Attest:

County Clerk

Approved as to Form:

Assistant County Attorney

EXHIBIT “A”
ARCHITECT CONTRACT FOR MEDICAL EXAMINERS
OFFICE, FOLLOWING
REQUEST FOR QUALIFICATIONS CIP 23-562

SUBMITTED REQUEST FOR QUALIFICATIONS (RFP)
CIP 23-562 ARCHITECT FOR MEDICAL EXAMINERS OFFICE,
FOLLOWING