

PROFESSIONAL SERVICES CONTRACT

STATE OF TEXAS

COUNTY OF NUECES

THIS CONTRACT FOR PROFESSIONAL SERVICES is made by and between the County of Nueces, hereinafter called "County" and Pruitt Consulting, Inc. hereinafter called "Independent Licensed Architect (ILA)" for the purpose of contracting for Accessibility Assessment services.

WITNESSETH

WHEREAS, the services to be provided herein can only be performed by or under the direction of an the independent licensed architect, which includes providing expert opinion;

WHEREAS, the County entered into a Settlement Agreement with the United States Department of Justice requiring the procurement of the services of an Independent Licensed Architect (ILA);

WHEREAS, the Department of Justice has approved Pruitt Consulting, Inc. for purposes of fulfilling those ILA services as set out in the Settlement Agreement;

WHEREAS, the County desires to contract for Accessibility Assessment services described as follows:

ILA is to provide appropriate knowledge, skills, supervision, labor, equipment, materials, and all other items necessary to perform the services as specified in Attachment B herein attached concerning compliance with ADA 2010 Standards for Accessible Design as required under County's 2015 Settlement Agreement with the United States Department of Justice, herein "Settlement Agreement."

NOW, THEREFORE, the County and the ILA, in consideration of the mutual covenants and agreements herein contained, do hereby mutually agree as follows:

AGREEMENT

ARTICLE 1

SCOPE OF SERVICES TO BE PROVIDED BY COUNTY

The County will furnish items and perform those services for fulfillment of the contract as identified in Attachment A – Services To Be Provided By The County, attached hereto and made a part thereof this contract.

ARTICLE 2
SCOPE OF SERVICES TO BE PROVIDED BY ILA

The ILA shall perform those Accessibility Assessment services for the fulfillment of the contract as identified in Attachment B – Services To Be Provided By The ILA, attached hereto and made a part thereof this contract. Services will include, but not be limited to, all necessary administrative and other ILA and consultants time required to perform the work and develop and prepare necessary reports and certifications as required by the Settlement Agreement.

ARTICLE 3
CONTRACT PERIOD

Execution of this contract, establishes the authorization in writing by the County to proceed. This contract shall terminate at the close of business on March 31, 2018, unless extended by supplement agreement duly executed by the ILA and the County prior to the date of termination, as provided in Article 10 – Supplemental Agreements, or otherwise terminated, as provided in Article 19 – Termination. Any work performed or cost incurred after the date of termination shall be ineligible for reimbursement.

ARTICLE 4
COMPENSATION AND METHOD OF PAYMENT

The maximum amount payable under this contract is \$ 200,000.00 plus expenses, unless modified as provided in Article 10 – Supplemental Agreements. Parties agree that the maximum amount payable as set out herein to complete Scope of Work as set out in Attachment B is an estimate only and may need to be adjusted through a Supplemental Agreement. ILA may suspend work after notification to the County pending approval of a Supplemental Agreement for purposes of adjusting the maximum amount payable. Supplement Agreements are considered Additional Work under Article 8.

All payments will be made in accordance with the hourly rates and other fees established in Attachment C – Fee Schedule. In addition, the ILA will be provide a retainer/mobilization fee of \$20,000.00 within 15 business days of execution of contract which will be applied to the final invoice at conclusion of the work and any amount remaining will be refunded to County.

The ILA shall prepare and submit to the County, no more frequently than once per month, an invoice and a report indicating the building/facilities surveyed during the billing period. The invoice and progress report shall contain sufficient detail such that the billing can be reviewed for compliance with both the work scope and fee schedule.

The County reserves the right to withhold payment pending verification of work. Submittal of final and completed reports as applicable to the United States and/or the County for the facilities surveyed during the invoice period shall be evidence of verification. Payment shall be due and payable upon receipt of invoice and becomes past

due after 30 days. Any discrepancies shall be brought to the attention of the ILA within 14 calendar days of receipt of invoice. The ILA may withhold services due to undisputed past due invoices and shall not be considered in breach of contract.

The County assumes no liability for work performed or costs incurred prior to the date of this contract, during periods when work is suspended, or subsequent to the contract completion date.

ARTICLE 5 WORK AUTHORIZATIONS

The final execution of this contract by all parties establishes the complete work authorization.

The ILA shall submit to the County the deliverables as specified in Attachment B as applicable during the course of the work. The ILA shall promptly notify the County of any event which will affect completion of the work.

ARTICLE 6 PROGRESS

The ILA shall, from time to time during the progress of the work, confer with the County and the Department of Justice (herein "DOJ") as necessary. The ILA shall prepare and present such information as may be pertinent and necessary, or as may be requested by the County. Upon request by the County, the ILA shall be available to the Commissioners Court.

At the request of the County or the ILA, conferences shall be held at the ILA's office, the County's office, or at other locations designated by the County. These conferences shall also include an evaluation of the ILA's services and work when requested by the County.

The ILA shall promptly advise the County in writing of events which have a significant impact upon the progress of work, including:

- (1) problems, delays, or adverse conditions which will materially affect the ability to attain contract objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods; this disclosure will be accompanied by a statement of the action taken, or contemplated, and any County assistance needed to resolve the situation; and
- (2) favorable developments or events which would enable meeting the work schedule goals sooner than anticipated.

ARTICLE 7 SUSPENSION

The County may suspend the work, but not terminate the contract, by giving written notice a minimum of fourteen (14) calendar days prior to the date of suspension. The fourteen (14) day notice may be waived if approved in writing by both parties.

The work will be reinstated and resumed in full force and effect within one (1) calendar days of receipt of written notice from the County to resume the work. The one (1) day notice may be waived if approved in writing by both parties.

If the County suspends the work, the contract period, as determined in Article 3 – Contract Period, is not affected and the contract will terminate on the date specified unless the contract is amended as provided in Article 10 – Supplemental Agreements.

Any costs or expenses incurred by the ILA due to the suspension of work where the suspension was not attributed to any fault of the ILA will be paid by the County. Costs or expenses may include any fees incurred for the cancellation and subsequent rearrangement of travel costs such as airfare and hotel expenses including, but not limited to, administrative costs.

ARTICLE 8 ADDITIONAL WORK

The complete scope of work for the ILA is provided in the Settlement Agreement between Nueces County and the United States Department of Justice; DJ#204-74-348, "Settlement Agreement". If the ILA determines that any work it has been directed to perform is beyond the scope of the Settlement Agreement and constitutes extra work, it shall promptly notify the County in writing. In the event the County determines that such work constitutes extra work, the County shall so advise the ILA and a supplemental agreement may be executed, as provided in Article 10 – Supplemental Agreements.

After the initial contract amount is met, the ILA shall not perform any additional work or incur any additional costs prior to the execution, by both parties, of a supplemental agreement including completion of the Settlement Agreement requirements. The ILA will notify the County when 95% of the contract amount is met. The County shall not be responsible for actions by the ILA or any costs incurred by the ILA relating to additional work not directly associated with the performance of the work authorized in this contract or as amended.

**ARTICLE 9
CHANGES IN WORK
[Deleted]**

**ARTICLE 10
SUPPLEMENTAL AGREEMENTS**

The terms of this contract may be modified by supplemental agreement if the County determines that there has been a significant change in the scope, complexity, or character of the service to be performed, or the duration and time required for completion of the work. Additional compensation, if appropriate, shall be identified as provided in Article 4 – Compensation and Method of Payment.

Any supplement agreement must be executed by both parties within the contract period specified in Article 3 – Contract Period.

No claim for extra work done or materials furnished shall be made by the ILA until full execution of the supplemental agreement and authorization to proceed is issued by the County.

**ARTICLE 11
PUBLIC INFORMATION ACT**

All data, and other documents created or collected under the terms of this contract are the exclusive property of the County and shall be furnished to the County upon request. All documents prepared by the ILA and all documents furnished to the ILA by the County shall be delivered to the County upon completion or termination of this contract. The ILA, at its own expense, may retain copies of such documents or any other data which it has furnished the County under this contract. Release of information will be in accordance with the Texas Public Information Act.

**ARTICLE 12
PERSONNEL, EQUIPMENT AND MATERIAL**

The ILA shall furnish and maintain, at its own expense, office space for the performance of all services, and adequate and sufficient personnel and equipment to perform the services as required. All employees of the ILA shall have such knowledge and experience as will enable them to perform the duties assigned to them.

The County may instruct the ILA to remove any subcontractor or employee from association with the work authorized in this contract if, in the sole opinion of the County, the work of the employee does not comply with the terms of this contract or if the conduct of the employee is detrimental to the work. ILA, its employees or subcontractors, shall be subject to County's customary security procedures. Any costs associated with the security procedures will be borne by the County. In addition, the ILA, its employees or

subcontractors will be subject to Nueces County Sheriff's Department jail rules and security procedures. The Nueces County Sheriff's Department reserves the right to restrict entry to their premises. The ILA shall not be held liable or in breach of contract where the county or any entity denies access to a facility the ILA is required to assess.

**ARTICLE 13
SUBCONTRACTING**

The ILA may subcontract a portion of the work under this contract as it relates to ADA survey services and administrative work as set out in Attachment C.

**ARTICLE 14
EVALUATION OF WORK
[Deleted]**

**ARTICLE 15
SUBMISSION OF REPORTS**

Reports by the ILA shall be submitted to the County and the County will forward to the DOJ as applicable.

**ARTICLE 16
SUBMISSION OF PLANS AND SPECIFICATIONS
[Deleted]**

**ARTICLE 17
COMPUTER DOCUMENTS AND INFORMATION EXCHANGE**

All reports provided by the ILA shall be delivered to the County in PDF format.

**ARTICLE 18
VIOLATION OF CONTRACT TERMS / BREACH OF CONTRACT**

Violation of the contract terms or breach of contract by the ILA shall be grounds for termination of the contract. This agreement shall not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

**ARTICLE 19
TERMINATION**

This contract shall terminate at the close of business on March 31, 2018, unless extended as provided in Article 10 – Supplemental Agreements.

This contract may be terminated before the stated termination date by any of the following conditions:

1. By mutual agreement and consent, in writing, of both parties;
2. By the County, by (30) calendar day notice in writing to the ILA as a consequence of failure by the ILA to perform the services set forth herein in a satisfactory manner;
3. By either party, upon the failure of the other party to fulfill its obligations as set forth herein;
4. By the County, for reasons of its own and not subject to the mutual consent of the ILA upon not less than thirty (30) calendar days written notice to the ILA;
and
5. By written notice from the County upon satisfactory completion of all services and obligations described herein: and
6. By the ILA, for reasons of its own and not subject to the mutual consent of the County upon not less than thirty (30) calendar days written notice to the County.

Should the County or ILA terminate this contract as herein provided, no fees other than fees due and payable at the time of termination shall thereafter be paid to the ILA.

If the ILA defaults in the performance of this contract or if the County terminates this contract for fault on the part of the ILA, the County will pay actual costs incurred by the ILA in performing the work to the date of default.

The termination of this contract and payment of an amount in settlement as prescribed above shall extinguish all rights, duties, and obligations of the County and the ILA under this contract except the obligations set forth in Articles 11, 20, 22, and 24 of this contract.

**ARTICLE 20
COMPLIANCE WITH LAWS**

The ILA shall comply with all applicable Federal, State, and local laws, statutes, codes,

ordinances, rules, and regulations, of this contract, including, without limitation, worker's compensation laws, minimum salary and wage statutes and regulations, and licensing laws and regulations. When required, the ILA shall furnish the County with satisfactory proof of its compliance.

**ARTICLE 21
INDEMNIFICATION**

(DELETED)

**ARTICLE 22
ILA'S RESPONSIBILITY**

The ILA shall be responsible for the accuracy of its work and shall promptly make necessary revisions or corrections resulting from its errors, omissions, or negligent acts without compensation. The ILA will not be relieved of the responsibility for subsequent correction of any such errors or omissions or for clarification of any ambiguities.

**ARTICLE 23
[Deleted]**

**ARTICLE 24
RETENTION, AVAILABILITY OF RECORDS AND AUDIT REQUIREMENTS**

The ILA shall maintain all books, documents, papers, accounting records, and other evidence pertaining to cost incurred and shall make such materials available at its office during the contract period and for four (4) years from the date of final payment under this contract or until pending litigation has been completely and fully resolved, whichever occurs last. The County or any of its duly authorized representatives shall have access during normal business hours to any and all books, documents, papers, and records of the ILA which are directly pertinent to this contract for the purpose of making audits, examinations, excerpts, transcriptions, and for checking the amount of work performed by the ILA.

**ARTICLE 25
INSURANCE**

The ILA shall obtain and maintain insurance in the limits of liability for each of the types of insurance coverage identified as follows:

1. Should the ILA retain employees during the course of this agreement, the ILA will provide Workers' Compensation, in the amount of the statutory obligations imposed under the Texas Workers' Compensation Law ("Statutory Texas").

2. Commercial General Liability, endorsed with the County as an additional insured and endorsed with a waiver of subrogation in favor of Nueces County, in limits of liability not less than one million dollars (\$1,000,000) combined single limit each occurrence and in the aggregate for bodily injury and property damage.
3. Texas Business Automobile Policy, endorsed with the County as an additional insured and endorsed with a waiver of subrogation in favor of Nueces County, in limits of liability not less than two hundred fifty thousand dollars (\$250,000) each person for bodily injury, five hundred thousand dollars (\$500,000) each occurrence for bodily injury, and one hundred thousand dollars (\$100,000) each occurrence for property damage.
4. Professional Liability in limits of one million dollars (\$1,000,000) each occurrence and in the aggregate.

The work shall not be commenced by ILA until after the policy, or policies evidencing the insurance coverage herein required, or certificates of such insurance, providing that the insurer shall give County thirty (30) days written notice prior to cancellation, material revision or intention not to renew, have been submitted to the County. In the event the Insurer refuses to provide the County with notice as detailed, the ILA agrees to provide notice in writing immediately, and shall suspend all work until insurance is restored and proof, in a form acceptable to the County, is provided.

The ILA, at his/her expense, shall purchase and maintain in force at all times during the term of this Contract the insurance with limits not less than indicated above. The ILA will be considered in breach of contract should the ILA fail to maintain the required insurance coverage during the contract period of this contract. The termination of this contract resulting from failure to maintain the required insurance will be carried out in accordance with Article 19- Termination.

ARTICLE 26 SUCCESSORS AND ASSIGNS

The ILA and the County do hereby bind themselves, their successors, executors, administrators, and assigns to each other party of this agreement and to the successors, executors, administrators, and assigns of such other party in respect to all covenants of this contract.

The ILA shall not assign, or transfer its interest in this contract without the prior written consent of the County.

ARTICLE 27 SEVERABILITY

In the event any one or more of the provisions contained in this contract, for any reason, shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and; this contract shall be construed as if such invalid, illegal, or unenforceable provision had

never been contained herein.

**ARTICLE 28
CONTRIBUTIONS**

It is expressly understood by the County and the ILA, that from the award date of the contract to one year after termination or expiration of contract term, it is prohibited for any county official or employee thereof, to receive gifts described by Section 5.02 of the County Personnel or Civil Service Rules, and/or campaign or political contributions regardless of amount from the ILA or principal owners of said ILA firm. County Official is defined as those individuals described as county and precinct officers in Subchapter B of Chapter 152 of the Local Government Code. The ILA is furthermore prohibited from making political campaign or personal contributions to candidates for county and precinct office from the date of award of contract to one year after termination or expiration of contract term. It is also prohibited for the ILA to contribute to employee associations or for the benefit of groups of employees.

**ARTICLE 29
NOTICES**

All notices to either party by the other, required under this contract, shall be personally delivered or mailed to such party at the following respective address:

COUNTY

**Nueces County Judge
901 Leopard, Rm. 303
Corpus Christi, Texas 78401**

ILA

**Pruitt Consulting, Inc.
8553 N. Beach St., # 284
Fort Worth, Texas 76244**

**ARTICLE 30
SIGNATORY WARRANTY**

The undersigned signatory for the ILA hereby represents and warrants that the signatory is an officer of the organization for which he or she has executed this contract on behalf of the firm.

IN WITNESS WHEREOF, the County and the ILA have executed these presents in duplicate.

COUNTY OF NUECES

By: _____
County Judge

Date: _____

ILA: Carroll Lee Pruitt

By: _____

Title: President/CEO

Date: _____

ATTEST:

County Clerk
List of Attachments

Attachment A – Services To Be Provided By The County
Attachment B – Services To Be Provided By The ILA including:
 Referenced Attachments: E, F, G, I, J, K, L, M & N
Attachment C – Fee Schedule

ATTACHMENT "A"
Services to be Provided by County

The following shall be provided by the County to assist in the survey and certification of County facilities.

1. Provide copies of available plans in PDF format of County facilities referenced in the Settlement Agreement.
2. Provide reasonable access to all County facilities. County shall appoint one or more County employees to ensure all facilities are open and accessible to ILA and their sub-consultants on the expected day of the survey.
3. Provide a conference or meeting room within county as needed where ILA may meet with its sub-consultants and work on reports as necessary.
4. The County shall be reasonably available to the ILA as needed to complete the work.
5. Provide a list of all polling locations, voter registration facilities and shelters utilized by the County. This list will include the name of the facility, address, telephone number and contact information.
6. Provide a list of all County facilities not inspected by the United States. This list will include the name of the facility, address, telephone number and contact information.
7. The County shall notify and seek cooperation of all polling, voter registration facilities, and shelters utilized by the County in providing access to same by ILA and/or its sub-consultants.
8. Provide a badge identifying ILA and its sub-consultants as an ADA Surveyor for the County.
9. Notification of building managers and/or staff as applicable of the inspections and purpose of the ILA site inspection.
10. The County will not hold the ILA liable for any delay in the performance of this Contract, nor for any other breach, loss or damage arising from forces not under the control of the ILA such as locations of facilities which have not been disclosed to the ILA, incidents of nature, fire, theft, or war, or any other reason that could not have been reasonably avoided.

ATTACHMENT B
Services to be provided by ILA

ILA's scope of work is set out in Settlement Agreement which is herein referenced and incorporated as if set out word for word herein.

The following, which is intended to be inclusive of all ILA duties as set out in Settlement Agreement in addition to ancillary services, shall be provided by the ILA in the performance of the work.

All references to Attachments set out below shall be to those Attachments to the Settlement Agreement.

1. Any certifications made under this agreement shall be made in the form herein attached as Certification.
2. Certify whether any alterations, additions, or modifications undertaken by County through March of 2018 is compliant with 28 C.F.R. section 35.151(c) and the Appendix to 28 C.F.R. section 35.151(c).
3. Prepare reports with photographs identifying violation that was remediated and certify with Certification herein attached.
4. Timely notify County prior to any inspections so as to allow County sufficient time to notify the United States so they may attend inspection.
5. Survey all facilities listed in Attachment E by January 15, 2016 to determine if listed barriers have been removed.
6. Survey all polling places used by County not listed on Attachment E by July 15, 2015 using the survey instrument at Attachment F and identify barriers to access by people with disabilities in the parking, exterior route to entrance, entrance, interior route to voting area, and voting area. After County removes identified barrier confirm and certify such to County and United States.
7. By April 15, 2015 survey County voter registration locations for accessibility using survey form at Attachment F and report results to County and United States. Confirm and certify any remediation to United States.
8. By January 15, 2016 survey shelters listed on Attachment G to determine whether noted barriers have been removed. If barriers not removed by County, alternate shelters will be identified by County. Confirm and certify to County and United States using survey instrument at Attachment N whether they are accessible shelters.
9. Confirm and certify annually to County and United States that County has provided curb ramps or other sloped areas where required that are in compliance with the applicable architectural standard as set out in Settlement Agreement as it relates to streets, roads, highways, and street level pedestrian walkways.
10. By July 15, 2018 survey all County facilities for compliance with Title II of the ADA that United States did not survey. Provide certification to County and United States as necessary.
11. ILA will develop process and reporting format for work to be performed that is to be approved by the County and the United States.

12. ILA will be a neutral inspector for purposes of issuing certifications of compliance and will be reasonably available to the County and the United States to discuss findings in the reports, photographs, and certifications.
13. ILA will provide necessary administration to perform the responsibilities of the ILA.
14. ILA will manage the project by coordinating with subcontractors on inspection dates, providing travel arrangements and facilities to be inspected.

ATTACHMENT C
FEE SCHEDULE

ILA	\$250.00/Hr
ADA Survey Services – Primary Surveyors*	\$175.00 /Hr
ADA Survey Services – Secondary Surveyor*	\$125.00 / Hr
Administrative Assistant	\$60.00 per hour.

* As determined by ILA

Time for travel shall be invoiced at 75% of the standard hourly rate up to a maximum of \$1,200 per day, per person. Travel is only that travel to and from Nueces County and does not include travel necessary between facilities during surveys.

Expenses shall be reimbursed without mark up. Expenses include normal expenses associated with travel and reproduction costs of printed reports where requested. Travel expenses will be consistent with the following:

Air – coach, non-stop

Auto rental – mid size, including fuel

Hotel – “three star” or similar available lodging

Meals – reasonable services except fine dining and/or alcohol

ATTACHMENT O

Certification of ADA Compliance

I, [insert name], in my capacity as the Independent Licensed Architect retained by Nueces County, Texas (the "County") and approved by the United States pursuant to the Settlement Agreement executed by the parties in connection with DJ# 204-74-348, hereby CERTIFY to the best of my knowledge, information, and belief that the County's¹ property identified below is in compliance with the physical accessibility requirements of the Settlement Agreement and the 2010 Standards for Accessible Design as of the date shown below.

Description of Property at Issue:

Address of Property:

Date

Signature of Independent Licensed Architect

Attachment O to Settlement Agreement between the United States of America and Nueces County, Texas,
in DJ# 204-74-348