



# POLK COUNTY COMMISSIONERS COURT

July 22, 2008

10:00 A.M.

2008-074

Polk County Courthouse, 3<sup>rd</sup> floor

Livingston, Texas

## NOTICE

Is hereby given that a regular meeting of the Polk County Commissioners Court will be held on the date stated above, at which time the following subjects will be discussed;

### Agenda Topics

1. **CALL TO ORDER.**

- Invocation
- Pledges of Allegiance

2. **PUBLIC COMMENTS.**

This item is included on the Agenda to allow public comments on topics that may or may not appear on this agenda. In accordance with law, this Court cannot discuss, deliberate or take action on any item or topic not listed on this agenda. Public comments requesting or requiring action or deliberation may be scheduled on a future agenda. Each public comment will be limited to a maximum of five (5) minutes, unless a member of the Court requests additional time for the presenter. Any handout materials must be reproduced and furnished by the presenter.

3. **INFORMATIONAL REPORTS.**

This item is included on the Agenda to receive announcements from the Court members and/or other Elected Officials and Department Heads of Polk County.

- Receive update from Lou Liles regarding Child Welfare Board (CPS).

4. **CONSENT AGENDA** (The items listed within the Consent Agenda are deemed to be of a routine nature and are not scheduled for individual consideration by the Commissioners Court. However, any member of the Court retains the option to remove any one or more items from the Consent Agenda and to have the item/s individually considered).

- A. APPROVE MINUTES OF PREVIOUS MEETING/S: July 8, 2008 (Regular Session) & July 8, 2008 (Special Session) & Corrected minutes from June 24<sup>th</sup> (Regular Session) correcting Item 5 (F).
- B. CONSIDER APPROVAL OF BUDGET REVISIONS, AS PRESENTED BY THE COUNTY AUDITOR.
- C. CONSIDER APPROVAL OF BUDGET AMENDMENTS, AS SUBMITTED AND REVIEWED BY COURT APPOINTED COMMITTEE.
- D. CONSIDER APPROVAL OF SCHEDULE OF BILLS.
- E. CONSIDER APPROVAL OF PERSONNEL ACTION FORMS.
- F. CONSIDER APPROVAL OF REVISED RESOLUTION EXPRESSING INTENT TO REIMBURSE EXPENDITURES TO BE INCURRED BY POLK COUNTY, TEXAS. (REIMBURSEMENT RESOLUTION)
- G. APPROVE FINAL CAPITAL LISTING FOR PURCHASES TO BE INCLUDED ON REIMBURSEMENT RESOLUTION RELATED TO FY2008 ISSUANCE OF TAX NOTES.
- H. CONSIDER APPROVAL OF ADDENDUM TO AMENDED AND RESTATED FACILITY OPERATION AND MANAGEMENT SERVICES AGREEMENT BETWEEN POLK COUNTY, TEXAS AND COMMUNITY EDUCATION CENTERS (FORMERLY CIVIGENICS) TEXAS, INC. RELATING TO THE IAH SECURE ADULT DETENTION FACILITY.
- I. CONSIDER APPROVAL TO RENEW INTERLOCAL AGREEMENT WITH LIMESTONE COUNTY FOR THE HOUSING OF CERTAIN POLK COUNTY INMATES UNDER SAME TERMS AND CONDITIONS FOR A ONE-YEAR TERM.
- J. CONSIDER APPROVAL TO RENEW AGREEMENT WITH SAM HOUSTON ELECTRIC COOPERATIVE FOR RADIO TOWER SPACE FOR COUNTY COMMUNICATION EQUIPMENT.
- K. CONSIDER APPROVAL OF RENEWAL LEASE AGREEMENT TO PROVIDE OFFICE SPACE TO DEEP EAST TEXAS COUNCIL OF GOVERNMENTS "STAR" PROGRAM.
- L. CONSIDER APPROVAL TO RETAIN CURRENT ROAD AND BRIDGE FEE AND CURRENT CHILD SAFETY FEE FOR CALENDAR YEAR 2009 AND TO SUBMIT APPROPRIATE NOTIFICATION TO TXDOT.
- M. CONSIDER APPROVAL OF CONTRACT WITH OFFICE OF RURAL COMMUNITY AFFAIRS FOR TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM AWARD "CONTRACT NO. 728340-SEWER FACILITY IMPROVEMENT IN SHELTER COVE SUBDIVISION".
- N. CONSIDER APPROVAL OF SAND, CLAY AND GRAVEL LEASE WITH RMS TEXAS TIMBERLANDS FOR AREA LOCATED IN MARIA LINDSAY ABSTRACT-397, PCT. 4.
- O. CONSIDER RESOLUTION AUTHORIZING COUNTY JUDGE TO NEGOTIATE AND EXECUTE CONTRACTS WITH DEPARTMENT OF AGING AND DISABILITY SERVICES FOR POLK COUNTY AGING SERVICES HOME DELIVERED MEAL PROGRAM.

- P. CONSIDER ORDERS ACCEPTING CERTAIN ROADS LOCATED IN LAKE LIVINGSTON ESTATES, SECTIONS 4 AND 5, SUBDIVISION INTO THE COUNTY ROAD MAINTENANCE SYSTEM, AS RECOMMENDED BY PCT. 2 COMMISSIONER AND AS DEDICATED ON ORIGINAL PLAT/S PREVIOUSLY APPROVED BY THE COURT.
- Q. CONSIDER APPROVAL OF ORDER DESIGNATING SURPLUS PROPERTY TO BE DISPOSED OF BY PUBLIC AUCTION.
- R. CONSIDER APPROVAL TO RENEW BI-ANNUAL AGREEMENT WITH SOUTHEAST TEXAS FOOD BANK FOR SERVICES TO POLK COUNTY AGING SERVICES.
- S. CONSIDER COUNTY CLERK'S REQUEST TO APPOINT ELECTION JUDGES AND ALTERNATES.
5. APPROVE DISTRICT CLERK'S CAPITAL PROJECT IN AN AMOUNT NOT TO EXCEED \$10,000.00 FOR ACS IMAGING OF OLDER RECORD BOOKS WITH PROJECT AMOUNT PAID FROM GENERAL FUND BALANCE AND REIMBURSED BY ISSUANCE OF LEGALLY AUTHORIZED DEBT AT FISCAL YEAR END.
6. CONSIDER ANY/ALL NECESSARY ACTION REGARDING BID#2008-19; "PURCHASE OF APPROXIMATELY 14,000 CUBIC YARDS OF QUALITY IRON ORE, GRAVEL MATERIAL OR ROCK DELIVERED TO JOB SITE AT BIG THICKET LAKE ESTATES", INCLUDING METHOD OF FUNDING.
7. CONSIDER ANY/ALL NECESSARY ACTION RELATING TO REGULATION OF VEHICLE/PEDESTRIAN TRAFFIC ON ROCKY CREEK BRIDGE, PCT. 2.
8. CONSIDER ANY/ALL NECESSARY ACTION RESERVING CERTAIN TAX FORECLOSURE LOTS IN BIG THICKET LAKE ESTATES FOR THE PURPOSE OF PROVIDING FILL MATERIAL RELATED TO BTLE ROAD IMPROVEMENTS.

**Recess**

**EXECUTIVE SESSION**; As authorized by the Texas Open Meetings Act, as amended; Government Code §§ 551.072 .

- Deliberations about Real Property.

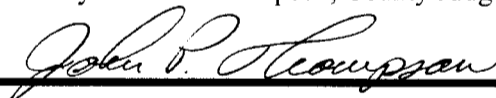
**Reconvene**

9. CONSIDER ANY/ALL NECESSARY ACTION REGARDING JAIL EXPANSION INCLUDING APPROVAL OF RESOLUTIONS TO PROCEED WITH CERTAIN CONDEMNATIONS.
10. CONSIDER APPROVAL OF AGREEMENT FOR LEGAL SERVICES IN THE ACQUISITION OF PROPERTY RELATED TO COUNTY JAIL EXPANSION.
11. CONSIDER APPROVAL OF CONTRACT FOR ARCHITECTURAL SERVICES FOR JAIL EXPANSION PROJECT.

**ADJOURN**

By: John P. Thompson, County Judge

Posted: Thursday, July 17, 2008



I do hereby certify that the above Notice of Meeting of the Polk County Commissioners Court is a true and correct copy of said Notice and that I posted a true and correct copy of said Notice in the Polk County Courthouse at a place readily accessible to the general public during normal business hours on Thursday, July 17, 2008 and that said Notice remained so posted continuously for at least 72 hours preceding the scheduled time of said Meeting. This notice has also been posted on the official website of Polk County, Texas ([www.co.polk.tx.us](http://www.co.polk.tx.us)).

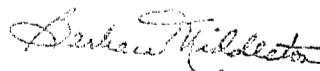
BARBARA MIDDLETON, COUNTY CLERK

BY:

Schelana Walker (Deputy)

FILED FOR RECORD

2008 JUL 17 PM 4:01



POLK COUNTY CLERK

COUNTY OF POLK §

DATE: JULY 22, 2008  
REGULAR MEETING

James J. "Buddy" Purvis - Absent  
Barbara Middleton - Absent  
Ray Stelly - Absent

**COMMISSIONERS COURT  
AGENDA POSTING #2008 - 074**

BE IT REMEMBERED ON THIS THE 22ND DAY OF JULY, 2008  
THE HONORABLE COMMISSIONERS COURT MET IN "REGULAR" CALLED  
MEETING WITH THE FOLLOWING OFFICERS AND MEMBERS PRESENT, TO WIT;

HONORABLE JOHN P. THOMPSON, COUNTY JUDGE, PRESIDING.  
BOB WILLIS - COMMISSIONER PCT #1, RONNIE VINCENT - COMMISSIONER PCT #2,  
C.T. "TOMMY" OVERSTREET- COMMISSIONER PCT #4, SCHELANA WALKER-CHIEF DEPUTY  
CLERK AND MARGIE AINSWORTH-ASSISTANT COUNTY AUDITOR, THE FOLLOWING AGENDA  
ITEMS, ORDERS AND DECREES WERE DULY MADE, CONSIDERED & PASSED.

1. WELCOME & CALLED TO ORDER BY JUDGE JOHN P. THOMPSON AT 10:00 A.M.
  - INVOCATION GIVEN BY BYRON LYONS.
  - PLEDGES TO THE U.S. AND TEXAS FLAGS WERE LED BY JOE ROEDER.
2. PUBLIC COMMENTS:
  - A. JIM JOHNSON OF PRECINCT 1 INVITED EVERYONE TO THE CASA FISH FRY AND SILENT AUCTION AT 6 P.M. ON JULY 31ST AT CENTRAL BAPTIST FAMILY LIFE CENTER.
3. INFORMATIONAL REPORTS:
  - A. TOMMY OVERSTREET INFORMED COURT THAT THE EQUIPMENT AT HIS PRECINCT BELONGS TO ALABAMA FORESTRY SERVICE AND NOTED THEY ARE ON STANDBY TO RELIEVE OUR DEPARTMENTS.
  - B. KENNETH HAMBRICK UPDATED COURT OF TROPICAL DEPRESSION DOLLY AND DROUGHT CONDITIONS.
  - C. JUDGE THOMPSON REPORTED THAT THE ANIMAL SHELTER WILL BE LOCATED IN PCT 2 NEXT TO COLLECTION SITE AND THAT LOU LILES ISN'T PRESENT TO GIVE WELFARE BOARD UPDATE.

CONSENT AGENDA

4. MOTIONED BY RONNIE VINCENT, SECONDED BY BOB WILLIS, TO DISCUSS ITEM H INDIVIDUALLY, ITEM G REVISED TO INCLUDE ROAD SIGNAGE AND APPROVE CONSENT AGENDA AS FOLLOWS:
  - A. APPROVE MINUTES OF PREVIOUS MEETINGS: JULY 8, 2008 (REGULAR & SPECIAL SESSIONS) AND CORRECTED MINUTES FROM JUNE 24TH (REGULAR SESSION), CORRECTING ITEM 5 (F), TO RECORD VARIANCES GRANTED FOR PLATTING OF THE MEADOWS, SECTION 1.
  - B. APPROVE BUDGET REVISIONS #2008-17, AS PRESENTED BY THE COUNTY AUDITOR. (SEE ATTACHED)
  - C. APPROVE BUDGET AMENDMENTS #2008-17(a), AS SUBMITTED AND REVIEWED BY COURT APPOINTED COMMITTEE. (SEE ATTACHED)

## D. APPROVE SCHEDULE OF BILLS INCLUDING ADDENDUM.

DATE	AMOUNT	CHECK #
7-03-08	58,000.00	ACH 266
7-03-08	7,627.13	ACH 267
7-03-08	2,186.00	99337-99448 VOID 99445 & SENT BY ACH QTRLY
7-03-08	2,268.00	99449-99565 VOID 99562 & SENT BY ACH QTRLY
7-03-08	43,046.41	212062-212092
7-08-08	18,783.31	212093-212095
7-08-08	7,700.00	212096
7-08-08	23,353.28	212097-212123
7-09-08	319,768.35	ACH 268
7-09-08	80.00	212124
7-10-08	2,859.50	ACH 269
7-10-08	42,818.10	ACH 270
7-10-08	10,014.04	ACH 271
7-10-08	29,375.15	ACH 272
7-10-08	253,398.92	ACH 273
7-10-08	2,579.31	ACH 274
7-10-08	2,946.80	212125-212131
7-11-08	1,259,417.11	ACH 275
7-15-08	2,506.00	99566-99663 VOID 99660, SENT BY ACH
7-15-08	1,076.00	99664-99750 VOID 99747, SENT BY ACH
7-15-08	34,499.94	212132-212155
7-15-08	420,387.11	212156-212339
7-15-08	10,782.84	212340-212352
7-22-08	ADDENDUM TO APPEAR ON FUTURE SCHEDULE	\$84,562.25
<b>TOTAL</b>	<b>1,734,195.11</b>	

- E. APPROVE PERSONNEL ACTION FORMS. (SEE ATTACHED)
- F. APPROVAL OF REVISED RESOLUTION EXPRESSING INTENT TO REIMBURSE EXPENDITURES TO BE INCURRED BY POLK COUNTY, TEXAS (REIMBURSEMENT RESOLUTION). (SEE ATTACHED)
- G. APPROVE FINAL CAPITAL LISTING FOR PURCHASES TO BE INCLUDED ON REIMBURSEMENT RESOLUTION RELATED TO FY2008 ISSUANCE OF TAX NOTES. (SEE ATTACHED)
- I. APPROVAL TO RENEW INTERLOCAL AGREEMENT WITH LIMESTONE COUNTY FOR THE HOUSING OF INMATES UNDER SAME TERMS AND CONDITIONS FOR A ONE-YEAR TERM.
- J. APPROVAL TO RENEW AGREEMENT WITH SAM HOUSTON ELECTRIC COOPERATIVE FOR RADIO TOWER SPACE FOR COUNTY COMMUNICATION EQUIPMENT.
- K. APPROVAL OF RENEWAL LEASE AGREEMENT TO PROVIDE OFFICE SPACE TO DEEP EAST TEXAS COUNCIL OF GOVERNMENTS "STAR" PROGRAM.
- L. APPROVAL TO RETAIN CURRENT ROAD AND BRIDGE FEE AND CURRENT CHILD SAFETY FEE FOR CALENDAR YEAR 2009 AND TO SUBMIT APPROPRIATE NOTIFICATION TO TXDOT.
- M. APPROVE CONTRACT WITH OFFICE OF RURAL COMMUNITY AFFAIRS FOR TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM AWARD "CONTRACT NO. 728340-SEWER FACILITY IMPROVEMENT IN SHELTER COVE SUBDIVISION". (SEE ATTACHED)
- N. APPROVAL OF SAND, CLAY AND GRAVEL LEASE WITH RMS TEXAS TIMBERLANDS FOR AREA LOCATED IN MARIA LINDSAY ABSTRACT-397, PCT.4. (SEE ATTACHED)

- O. RESOLUTION AUTHORIZING COUNTY JUDGE TO NEGOTIATE AND EXECUTE CONTRACTS WITH DEPARTMENT OF AGING AND DISABILITY SERVICES FOR POLK COUNTY AGING SERVICES HOME DELIVERED MEAL PROGRAM. (SEE ATTACHED)
- P. APPROVAL TO ACCEPT, SOUTH CIRCLE DR., PRESCOTT, SWALLOW ST., SWITCHER ST., OAK RIDGE LANE AND EGRETT ST., LOCATED IN LAKE LIVINGSTON ESTATES SUBDIVISION, SECTIONS 4 & 5, INTO THE COUNTY ROAD MAINTENANCE SYSTEM, AS RECOMMENDED BY PCT. 2 COMMISSIONER AND AS DEDICATED ON ORIGINAL PLATS PREVIOUSLY APPROVED BY THE COURT, AND RECEIVE COMMISSIONER VINCENT AFFIDAVITS. (SEE ATTACHED)
- Q. APPROVE ORDER DESIGNATING SURPLUS PROPERTY TO BE DISPOSED OF BY PUBLIC AUCTION. (SEE ATTACHED)
- R. APPROVAL TO RENEW BI-ANNUAL AGREEMENT WITH SOUTHEAST TEXAS FOOD BANK FOR SERVICES TO POLK COUNTY AGING SERVICES.
- S. ACCEPT AND APPROVE COUNTY CLERK'S REQUEST TO APPOINT ELECTION JUDGES AND ALTERNATES. (SEE ATTACHED)
4. H. MOTIONED BY TOMMY OVERSTREET, SECONDED BY RONNIE VINCENT, TO APPROVE ADDENDUM TO AMENDED AND RESTATED FACILITY OPERATION AND MANAGEMENT SERVICES AGREEMENT BETWEEN POLK COUNTY TEXAS AND COMMUNITY EDUCATION CENTERS (FORMERLY CIVIGENICS) TEXAS, INC. AND AUTHORIZE COUNTY JUDGE TO SIGN CERTIFICATES.  
ALL VOTING YES. (SEE ATTACHED)
5. MOTIONED BY BOB WILLIS, SECONDED BY TOMMY OVERSTREET, TO APPROVE DISTRICT CLERK'S CAPITAL PROJECT IN AN AMOUNT NOT TO EXCEED \$10,000.00 FOR ACS IMAGING OF OLDER RECORD BOOKS WITH PROJECT AMOUNT PAID FROM GENERAL FUND BALANCE AND REIMBURSED BY ISSUANCE OF LEGALLY AUTHORIZED DEBT AT FISCAL YEAR END AND TO INCLUDE THE SAME ON THE CAPITAL LISTING PRESENTED THIS DATE.  
ALL VOTING YES.
6. MOTIONED BY TOMMY OVERSTREET, SECONDED BY BOB WILLIS, TO AWARD BID #2009-19 "PURCHASE OF APPROXIMATELY 14,000 CUBIC YARDS OF QUALITY IRON ORE, GRAVEL MATERIAL OR ROCK DELIVERED TO JOB SITE AT BIG THICKET LAKE ESTATES" TO COLBY CONSTRUCTION CLEVELAND IN THE AMOUNT OF \$287,000 AND METHOD OF FUNDING TO BE DETERMINED IN AUGUST MEETING.  
ALL VOTING YES.
7. MOTIONED BY RONNIE VINCENT, SECONDED BY BOB WILLIS, TO TABLE "CONSIDER ANY/ALL NECESSARY ACTION RELATING TO REGULATION OF VEHICLE/PEDESTRIAN TRAFFIC ON ROCKY CREEK BRIDGE, PCT. 2".  
ALL VOTING YES.
8. MOTIONED BY TOMMY OVERSTREET, SECONDED BY RONNIE VINCENT, TO RESERVE CERTAIN TAX FORECLOSURE LOTS IN BIG THICKET LAKE ESTATES BEING SECTION 6, LOT 73, 74, 75 & 76; SECTION 8, LOT 83, 84 & 85; SECTION 9, LOT 131, 132, 133 & 134; SECTION 16, LOT 253, 254, 255 & 256; FOR THE PURPOSE OF PROVIDING FILL MATERIAL RELATED TO BIG THICKET LAKE ESTATES ROAD IMPROVEMENTS.  
ALL VOTING YES.

RECESS: 10:20 A.M.

CONVENED INTO EXECUTIVE SESSION: 10:23 A.M.

**EXECUTIVE SESSION**; AS AUTHORIZED BY THE TEXAS OPEN MEETINGS ACT, AS AMENDED;  
GOVERNMENT CODE §551.072

- DELIBERATIONS ABOUT REAL PROPERTY.

EXECUTIVE SESSION ENDED: 10:47 A.M.

RECONVENED REGULAR SESSION: 10:48 A.M.

- 9. MOTIONED BY TOMMY OVERSTREET, SECONDED BY RONNIE VINCENT, TO APPROVE RESOLUTIONS TO PROCEED WITH CERTAIN CONDEMNATIONS FOR TRACT 1, 5, 6 & 8 REGARDING THE JAIL EXPANSION. (SEE ATTACHED)  
ALL VOTING YES.
- 10. MOTIONED BY TOMMY OVERSTREET SECONDED BY BOB WILLIS, APPROVAL OF AGREEMENT WITH ERNEST L. MCCLENDON JR. FOR LEGAL SERVICES IN THE ACQUISITION OF PROPERTY RELATED TO COUNTY JAIL EXPANSION.  
ALL VOTING YES. (SEE ATTACHED)
- 11. MOTIONED BY RONNIE VINCENT, SECONDED BY TOMMY OVERSTREET, TO APPROVE CONTRACT WITH JOHNSON MCKIBBEN FOR ARCHITECTURAL SERVICES FOR JAIL EXPANSION PROJECT. (SEE ATTACHED)

ADJOURN:

MOTIONED BY TOMMY OVERSTREET, SECONDED BY RONNIE VINCENT, TO ADJOURN COURT THIS 22ND DAY OF JULY, 2008 AT 10:52 A.M.  
ALL VOTING YES.



JOHN P. THOMPSON, COUNTY JUDGE

ATTEST:   
 \_\_\_\_\_  
 SCHELANA WALKER, CHIEF DEPUTY CLERK

COPY

#2008-17

Revisions  
AMENDMENT CHANGES BY FUND

FUND DESCRIPTION	INCREASE/DECREASE
010 GENERAL FUND	.00
015 ROAD & BRIDGE ADM	.00

THE PRECEDING LIST OF AMENDMENTS WAS REVIEWED AND APPROVED  
 RAY STELLY *Ray Stelly*

COUNTY AUDITOR  
 JOHN P. THOMPSON  
 COUNTY JUDGE

#11(B)

07/17/2008 14:45:05 REPORT OF GENERAL LEDGER AMENDMENTS GEL122 PAGE 1

ACCOUNT NUMBER	ACCOUNT NAME	DATE	AMDMT NUMBER	OLD BUDGET AMOUNT	BUDGET AMOUNT	AMOUNT OF CHANGE	DESCRIPTION	CLK
2008 010-401-360	RETIRE HEALTH INS.	07/17/2008	2K8R17	21,250.00	21,250.00	6,500.00-	PER REVISION	SD
2008 010-401-400	ATTORNEY FEES/COMM	07/17/2008	2K8R17	36,000.00	26,000.00	10,000.00-	PER REVISION	SD
2008 010-401-460	INMATE PHONE CARDS	07/17/2008	2K8R17	40,000.00	25,000.00	15,000.00-	PER REVISION	SD
EXP. SUM. - COMM COURT				TOTAL AMENDMENTS 3	TOTAL CHANGES	31,500.00-		
2008 010-409-440	ELECTRICITY	07/17/2008	2K8R17	170,000.00	229,000.00	59,000.00	PER REVISION	SD
2008 010-409-441	GAS/HEAT	07/17/2008	2K8R17	20,000.00	37,500.00	17,500.00	PER REVISION	SD
2008 010-409-442	WATER	07/17/2008	2K8R17	37,500.00	24,000.00	13,500.00-	PER REVISION	SD
2008 010-409-572	OFFICE FURNISHINGS	07/17/2008	2K8R17	24,000.00	51,000.00	27,000.00	TO CORRECT PREVIOUS POST	SD
EXP. SUM. - GENERAL OPERATION				TOTAL AMENDMENTS 5	TOTAL CHANGES	76,500.00		
2008 010-465-417	CAPITAL TRIAL COST	07/17/2008	2K8R17	20,000.00	.00	20,000.00-	PER REVISION	SD
EXP. SUM. - JUDICIAL				TOTAL AMENDMENTS 1	TOTAL CHANGES	20,000.00-		
2008 010-475-400	SPECIAL PROSECUTIO	07/17/2008	2K8R17	25,000.00	.00	25,000.00-	PER REVISION	SD
EXPENSE SUMMARY - D. A.				TOTAL AMENDMENTS 1	TOTAL CHANGES	25,000.00-		
2008 010-553-315	OFFICE SUPPLIES	07/14/2008	2K8R17	822.00	1,747.11	925.11	TO PURCHASE NEW COMPUTER	SD
2008 010-553-427	TRAVEL/TRAINING	07/14/2008	2K8R17	1,500.00	574.89	925.11-	TO PURCHASE NEW COMPUTER	SD
EXP. SUM. - CONST. PCTS				TOTAL AMENDMENTS 2	TOTAL CHANGES	.00		
2008 010-560-105	SALARIES	07/14/2008	2K8R17	1,575,337.79	1,559,337.79	16,000.00-	MOVE TO FT SALARY	SD
2008 010-560-108	SALARIES PART-TIM	07/14/2008	2K8R17	33,546.46	49,546.46	16,000.00-	MOVED FROM SALARY	SD
EXPENSE SUMMARY - SHERIFF DEPT				TOTAL AMENDMENTS 2	TOTAL CHANGES	.00		
2008 015-624-100	PCT 4 BUDGET CARRY	07/14/2008	2K8R17	41,350.76	3,000.00	38,350.76-	PER T OVERSTREET REVISION	SD
2008 015-624-100	PCT 4 BUDGET CARRY	07/14/2008	2K8R17	3,000.00	.00	3,000.00-	PER T OVERSTREET REVISION	SD
2008 015-624-330	FUEL/OIL	07/14/2008	2K8R17	142,000.00	180,350.76	38,350.76	PER T OVERSTREET REVISION	SD
2008 015-624-337	MATERIAL/SUPPLIES	07/14/2008	2K8R17	6,575.00	9,575.00	3,000.00	PER T OVERSTREET REVISION	SD
EXP. SUM. - GENERAL OPERATION				TOTAL AMENDMENTS 4	TOTAL CHANGES	.00		



Polk County  
 by: Stephanie Dale  
 Assistant Auditor

Budget Amendment  
 2K8A17  
 FY08

# 2008-17(a.)

July 10, 2008

Fund Account	Account Name	Increase	Decrease	Comments	Budget	Budget
010-342-600 010-560-450	Insurance Claims Ins. Reimb Auto Repair	2,570.53 2,570.53		Ins Reimb Auto/Cow Ins Reimb Auto/Cow	-28,027.86 12,340.97	-30,598.39 14,911.50
010-342-600 010-560-450	Insurance Claims Ins. Reimb Auto Repair	588.13 588.13		Ins Reimb Struck Pole Ins Reimb Struck Pole	-30,598.39 14,911.50	-31,186.52 15,499.63
010-342-600 010-551-330	Insurance Claims Furnished Transportation	1,299.44 1,299.44		Supplemental claim constable pct 1 Supplemental claim constable pct 1	-31,186.52 10,286.50	-32,485.96 11,585.94
015-369-200 015-620-622	Culvert/Mat Reimbursement Perm. Road	25,210.32 25,210.32		Creekside Prop mat reimb Creekside Prop mat reimb	-34,793.60 50,000.00	-60,003.92 75,210.32
010-342-404	Election Expense reimb	225.00		City of Oralaska reimb	-14,418.25	-14,643.25

#4 (D.)

SCHEDULE OF BILLS BY FUND

FUND DESCRIPTION	DISBURSEMENTS
092 AVAILABLE SCHOOL FUND ACCT	58,000.00
	-----
TOTAL OF ALL FUNDS	58,000.00

*ACH 266*

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

RAY STELLY

*Ray Stelly*

COUNTY AUDITOR

JOHN P. THOMPSON

*John P. Thompson*

COUNTY JUDGE

\_\_\_\_\_

SCHEDULE OF BILLS BY FUND

FUND	DESCRIPTION	DISBURSEMENTS
010	GENERAL FUND	7,627.13
	TOTAL OF ALL FUNDS	7,627.13

*ACH 267*

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

*Asst*

RAY STELLY

COUNTY AUDITOR

*George A. Ringholz*

JOHN P. THOMPSON

*John P. Thompson*

COUNTY JUDGE

SCHEDULE OF BILLS BY FUND

FUND DESCRIPTION

DISBURSEMENTS

010 GENERAL FUND

2,268.00

TOTAL OF ALL FUNDS

2,268.00

*2186.00*

*Void checks: 99445  
and send by ACH Stelly.*

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

*Asst*

RAY STELLY

COUNTY AUDITOR

*Raymond A. Warner*  
*John P. Thompson*

JOHN P. THOMPSON

COUNTY JUDGE

~~COPY~~

SCHEDULE OF BILLS BY FUND

FUND DESCRIPTION	DISBURSEMENTS
010 GENERAL FUND	2,316.00
TOTAL OF ALL FUNDS	<u>2,316.00</u>

VOID DEC 99 562  
AND Sen Jy ACR 6/24/01

2,268.00

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

*Asst*

RAY STELLY

COUNTY AUDITOR

*Margaret C. Simpson*

JOHN P. THOMPSON

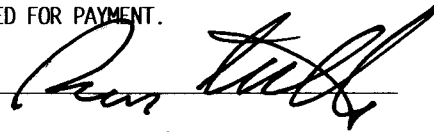
*John P. Thompson*

COUNTY JUDGE

FUND	DESCRIPTION	DISBURSEMENTS
010	GENERAL FUND	40,204.06
013	JP JUSTICE COURT TECHNOLOGY	69.95
015	ROAD & BRIDGE ADM	2,354.57
027	SECURITY	171.74
040	LAW LIBRARY FUND	50.50
051	AGING	111.44
090	DRUG FORFEITURE FUND	84.15
TOTAL OF ALL FUNDS		43,046.41

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

RAY STELLY



COUNTY AUDITOR

JOHN P. THOMPSON



COUNTY JUDGE

FUND DESCRIPTION	DISBURSEMENTS
010 GENERAL FUND	15,250.00
015 ROAD & BRIDGE ADM	568.31
020 CONSTRUCTION FUND	2,920.00
	-----
TOTAL OF ALL FUNDS	18,738.31

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

RAY STELLY

*Asst*

COUNTY AUDITOR

*Chargie N. Levinson*

JOHN P. THOMPSON

*John P. Thompson*

COUNTY JUDGE

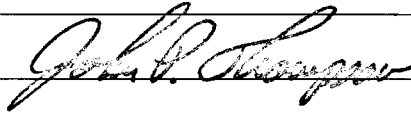
FUND DESCRIPTION	DISBURSEMENTS
010 GENERAL FUND	7,700.00
	-----
TOTAL OF ALL FUNDS	7,700.00

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

RAY STELLY

  
\_\_\_\_\_

COUNTY AUDITOR

  
\_\_\_\_\_

JOHN P. THOMPSON

COUNTY JUDGE

\_\_\_\_\_



FUND DESCRIPTION	DISBURSEMENTS
010 GENERAL FUND	23,353.28
	-----
TOTAL OF ALL FUNDS	23,353.28

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

*Asst*

RAY STELLY

COUNTY AUDITOR

*Angie N. Cuisinot*

JOHN P. THOMPSON

*John P. Thompson*

COUNTY JUDGE

SCHEDULE OF BILLS BY FUND

*ACH 268*

FUND DESCRIPTION	DISBURSEMENTS
010 GENERAL FUND	319,768.35
	-----
TOTAL OF ALL FUNDS	319,768.35

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

RAY STELLY  
 Asst. COUNTY AUDITOR *Alphonse Dece*  
 JOHN P. THOMPSON *John P. Thompson*  
 COUNTY JUDGE \_\_\_\_\_

FUND DESCRIPTION	DISBURSEMENTS
010 GENERAL FUND	80.00
TOTAL OF ALL FUNDS	80.00

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

RAY STELLY  
Asst. COUNTY AUDITOR  
JOHN P. THOMPSON  
COUNTY JUDGE

Alphonse Dele  
John P. Thompson

SCHEDULE OF BILLS BY FUND

ACH 269

FUND	DESCRIPTION	DISBURSEMENTS
101	ADULT SUPERVISION	2,080.37
185	CCAP - JUVENILE PROBATION	779.13
	TOTAL OF ALL FUNDS	2,859.50

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

RAY STELLY  
 COUNTY AUDITOR *[Signature]*  
 JOHN P. THOMPSON *[Signature]*  
 COUNTY JUDGE \_\_\_\_\_

ACH 270

FUND	DESCRIPTION	DISBURSEMENTS
010	GENERAL FUND	29,157.90
015	ROAD & BRIDGE ADM	6,501.82
027	SECURITY	181.96
051	AGING	608.58
101	ADULT SUPERVISION	4,306.20
185	CCAP - JUVENILE PROBATION	2,061.64
TOTAL OF ALL FUNDS		42,818.10

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

RAY STELLY  
*Asst* COUNTY AUDITOR Margie N. Clingman  
 JOHN P. THOMPSON John P. Thompson  
 COUNTY JUDGE \_\_\_\_\_

SCHEDULE OF BILLS BY FUND

FUND DESCRIPTION	DISBURSEMENTS
010 GENERAL FUND	6,819.26
015 ROAD & BRIDGE ADM	1,520.66
027 SECURITY	42.56
051 AGING	142.32
101 ADULT SUPERVISION	1,007.08
185 CCAP - JUVENILE PROBATION	482.16
-----	
TOTAL OF ALL FUNDS	10,014.04

*ACH 271*

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

*AST* RAY STELLY  
COUNTY AUDITOR *Margie McInerney*  
JOHN P. THOMPSON *John P. Thompson*  
COUNTY JUDGE \_\_\_\_\_

ACIT 272

FUND	DESCRIPTION	DISBURSEMENTS
010	GENERAL FUND	20,488.41
015	ROAD & BRIDGE ADM	4,024.63
027	SECURITY	133.02
051	AGING	203.22
101	ADULT SUPERVISION	2,983.46
185	CCAP - JUVENILE PROBATION	1,542.41
TOTAL OF ALL FUNDS		29,375.15

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

*Asst*  
RAY STELLY  
COUNTY AUDITOR  
JOHN P. THOMPSON  
COUNTY JUDGE

*Rargie N. Lindquist*  
*John P. Thompson*

SCHEDULE OF BILLS BY FUND

*ACH 273*

FUND	DESCRIPTION	DISBURSEMENTS
010	GENERAL FUND	173,339.44
015	ROAD & BRIDGE ADM	39,109.39
027	SECURITY	1,058.89
051	AGING	3,981.15
101	ADULT SUPERVISION	24,257.87
185	CCAP - JUVENILE PROBATION	11,652.18
TOTAL OF ALL FUNDS		253,398.92

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

RAY STELLY  
*Ray Stelly*  
 COUNTY AUDITOR

\_\_\_\_\_  
*Chargie N. King*  
 JOHN P. THOMPSON  
 COUNTY JUDGE



*ACH 274*

FUND DESCRIPTION	DISBURSEMENTS
010 GENERAL FUND	2,387.01
015 ROAD & BRIDGE ADM	192.30
	-----
TOTAL OF ALL FUNDS	2,579.31

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

RAY STELLY  
 COUNTY AUDITOR *[Signature]*  
 JOHN P. THOMPSON *[Signature]*  
 COUNTY JUDGE \_\_\_\_\_

FUND DESCRIPTION	DISBURSEMENTS
010 GENERAL FUND	2,144.30
015 ROAD & BRIDGE ADM	720.00
027 SECURITY	60.00
185 CCAP - JUVENILE PROBATION	22.50
-----	
TOTAL OF ALL FUNDS	2,946.80

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

RAY STELLY

*ASB*

COUNTY AUDITOR

*Charlie N. Ciognato*

JOHN P. THOMPSON

*John P. Thompson*

COUNTY JUDGE

*ACH 275*

FUND DESCRIPTION	DISBURSEMENTS
010 GENERAL FUND	1,259,417.11
	-----
TOTAL OF ALL FUNDS	1,259,417.11

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

*Asst*

RAY STELLY

COUNTY AUDITOR

*Margie Robinson*  
*John P. Thompson*

JOHN P. THOMPSON

COUNTY JUDGE

SCHEDULE OF BILLS BY FUND

FUND DESCRIPTION	DISBURSEMENTS
010 GENERAL FUND	2506.00 2,610.00
TOTAL OF ALL FUNDS	----- 2,610.00

*2506.00*  
*Voided 99660*  
*Sund by ACH*

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

ASST COUNTY AUDITOR *Ray Stelly*  
 COUNTY AUDITOR *Rargie N. Anagnost*  
 JOHN P. THOMPSON *John P. Thompson*  
 COUNTY JUDGE \_\_\_\_\_

FUND DESCRIPTION

DISBURSEMENTS

010 GENERAL FUND

1076.00

~~1.134.00~~

TOTAL OF ALL FUNDS

1.134.00

*Voided 99747  
Sent by Acct.*

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

*Asst*

RAY STELLY

COUNTY AUDITOR

*Margie Naiswatz*

JOHN P. THOMPSON

*John P. Thompson*

COUNTY JUDGE

\_\_\_\_\_

SCHEDULE OF BILLS BY FUND


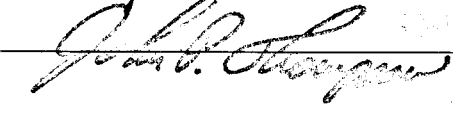
FUND DESCRIPTION	DISBURSEMENTS
010 GENERAL FUND	33,230.90
015 ROAD & BRIDGE ADM	647.38
051 AGING	507.66
093 CO CLERK RECORDS MGMT FUND	114.00
-----	
TOTAL OF ALL FUNDS	34,499.94

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

Asst  
RAY STELLY  
COUNTY AUDITOR  
MARGIE H. CINCINNATI  
JOHN P. THOMPSON  
COUNTY JUDGE

FUND	DESCRIPTION	DISBURSEMENTS
010	GENERAL FUND	167,207.81
015	ROAD & BRIDGE ADM	115,552.52
019	JUDICIAL CENTER CONSTRUCTION F	94,408.77
020	CONSTRUCTION FUND	12,240.60
027	SECURITY	96.00
051	AGING	4,407.32
056	SHERIFF-COMMISSARY FUNDS	695.30
061	DEBT SERVICE FUND	21,200.00
088	JUDICIARY FUND	2,093.25
094	COUNTY RECORDS MGMT FUND	2,485.54
TOTAL OF ALL FUNDS		420,387.11

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

*Asst.*  
RAY STELLY  
COUNTY AUDITOR   
JOHN P. THOMPSON  
COUNTY JUDGE 

SCHEDULE OF BILLS BY FUND

FUND DESCRIPTION	DISBURSEMENTS
010 GENERAL FUND	10,782.84
TOTAL OF ALL FUNDS	10,782.84

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

*Asst*  
RAY STELLY  
COUNTY AUDITOR *Raymond A. ...*  
JOHN P. THOMPSON *John P. Thompson*  
COUNTY JUDGE



#470

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ADDENDUM  
SCHEDULE OF BILLS  
JULY 22, 2008

COPY

COMPANY NAME	DESCRIPTION	DEPARTMENT	LINE ITEM	AMOUNT
U.S. DEPARTMENT OF AGRICULTURE	ROAD & BRIDGE WATER SHED PROGRAM	ROAD & BRIDGE?	Fund Balance (Pct 4 Cap.exp)	\$ 84,562.25

*John P. Longenecker*

**COPY #4(E)**

July 9, 2008 - July 22, 2008

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NO.	EMPLOYEE	DEPT	JOB DESCRIPTION	TYPE OF EMPLOYMENT	GROUP STEP & WAGE	ACTION TAKEN
(1)	JASON D. THOMAS	SHERIFF	1037 DEPUTY SHERIFF (PATROL)	REGULAR FULL-TIME	20/02 \$32,307.39	RESIGNATION EFFECTIVE 07/21/2008
(2)	DEBORAH BISHOP LOWERS	JAIL	1055 CORRECTIONS OFFICER	LABOR POOL	14/(01) \$11.32/HR	RECLASSIFY TO REG FT, #1055, CORRECTIONS OFFICER, 14/01, \$23,544.98 EFFECTIVE 07/23/2008
(3)	QUINTIN TOLAR	R & B PCT #1	108 HEAVY EQUIPMENT OPERATOR	REGULAR FULL-TIME	16/05 \$28,601.04	NEW HIRE EFFECTIVE 7/23/2008
(4)	JAYME INGRAM	DISTRICT CLERK	106 COURT CLERK	REGULAR FULL-TIME	14/04 \$25,323.17	RESIGNATION EFFECTIVE 08/01/2008
(5)						
(6)						
(7)						
(8)						
(9)						
(10)						
(11)						
(12)						
(13)						
(14)						
(15)						
(16)						
(17)						
(18)						
(19)						
(20)						
(21)						

**BOB WILLIS**  
COMMISSIONER  
POLK COUNTY PRECINCT ONE  
P.O. BOX 740 GOODRICH, TX 77335  
PHONE: (936) 365-2222  
FAX: (936) 365-4237

July 16, 2008

Polk County Commissioner's Court

To All Concerned,

I am in the process of hiring Quintin Tolar as a heavy-equipment operator and due to his many years of experience as a heavy equipment operator I would wish to classify him as a 16/5 heavy equipment operator with the beginning salary of 28601.04.

Thank you for your consideration in this matter.

Sincerely,



Bob Willis  
Commissioner Polk County Pct. 1

#4(F)

**AMENDED RESOLUTION EXPRESSING INTENT TO REIMBURSE EXPENDITURES TO BE INCURRED BY POLK COUNTY, TEXAS**

**WHEREAS**, Polk County, Texas (the "Issuer") is a Texas County and a political subdivision of the State of Texas authorized to issue obligations to finance its activities pursuant to various Texas statutes, including anticipation notes pursuant to Chapter 1431, Texas Government Code, the interest on which is excludable from gross income for federal income tax purposes ("tax-exempt obligations") pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code");

**WHEREAS**, the Issuer has previously made a resolution to authorize the reimbursement of certain expenditures on September 11, 2007 which authorized the reimbursement of \$1,300,000 from its General Fund and \$1,300,000 from its Road and Bridge Fund and revised that Resolution on November 13, 2007 and April 8, 2008 to authorize additional projects and the reimbursement of \$2,000,000 from its General Fund, \$1,500,000 from its Road and Bridge Fund and \$16,000 from its Aging Fund; and

**WHEREAS**, the Issuer finds that an additional project should be included in the Description of Projects, such additional project being the acquisition of real property; and

**WHEREAS**, the Issuer finds that it will make, or has made not more than 60 days prior to the date of the original resolution, as amended, for the prior list of projects in the Description of Projects or as of the date hereof for the acquisition of real property, such items set forth on Exhibit "A" attached hereto; and

**WHEREAS**, the Issuer has concluded that it does not currently desire to issue tax-exempt obligations to finance the costs associated with the projects listed on Exhibit "A" attached hereto; and

**WHEREAS**, the Issuer desires to reimburse itself for the costs associated with the projects listed on Exhibit "A" attached hereto, which it funded from interfund transfers, from the proceeds of tax-exempt obligations to be issued subsequent to the date hereof; and,

**WHEREAS**, the Issuer reasonably expects to issue tax-exempt obligations to reimburse itself for the costs associated with the projects listed on Exhibit "A" attached hereto.

**NOW, THEREFORE, BE IT RESOLVED THAT:**

**Section 1.** The Issuer reasonably expects to reimburse itself for all costs that have been or will be paid subsequent to the date that is 60 days prior to the date of the original resolution, as amended, and 60 days prior to the date hereof for this Resolution

and that are to be paid in connection with the acquisition, construction and improvements to the projects listed on Exhibit "A" attached hereto from the proceeds of tax-exempt obligations to be issued subsequent to the date hereof.

**Section 2.** This Resolution is also made to evidence the intent of the Issuer to make such reimbursements under Treas. Reg. § 1.150-2 and Section 1201.042, Texas Government Code.

**Section 3. Incorporation of Recitals.** The findings and preambles set forth in this Resolution are hereby incorporated into this Resolution and made a part hereof for all purposes.

**Section 4.** The Issuer reasonably expects that the maximum principal amount of tax-exempt obligations issued to reimburse the Issuer for the costs associated with the projects listed on Exhibit "A" attached hereto will not exceed \$3,516,000.

**ADOPTED** this 22<sup>nd</sup> day of July, 2008, by the Polk County Commissioners Court.

\_\_\_\_\_  
County Judge  
Polk County, Texas

COPY

ATTEST:

\_\_\_\_\_  
County Clerk  
Polk County, Texas

[COMMISSIONERS COURT SEAL]

**EXHIBIT "A"**

**DESCRIPTION OF PROJECTS**

The construction and improvements of roads and bridges in the County.

The acquisition of road right-of-way.

The construction of improvements to county buildings.

The acquisition of road maintenance equipment.

The acquisition of vehicles.

The acquisition of computer equipment and software.

The scanning, organization and computer digital imaging of County Records,

The acquisition of real property;

Such financing to be in an amount not to exceed \$2,000,000 from the General Fund, \$1,500,000 from the Road and Bridge Fund and \$16,000 from the Aging Fund of Polk County, Texas.

#4(G.)

REIMBURSEMENT REAOLUTION  
CAPITAL OUTLAY PURCHASES  
JULY 22, 2008  
FY 2008

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COMPANY NAME	DESCRIPTION	DEPARTMENT	LINE ITEM	AMOUNT	COURT DATE
ACS GOV'T RECORDS	IMAGING SYSTEM	DIST. CLERK	010-450-573	\$ 10,000.00	
RMS INTERNATIONAL PAP.	ERNEST MONEY ROCK				
	PIT 50 ACRES	R&B#3	015-623-573	\$ 5,025.00	5/13/2008
B.L.CLARKE APPRAISAL	ROCK PIT APPRAISAL	R&B#3	015-623-573	\$ 500.00	5/13/2008
RMS INTERNATIONAL PAP.	50AC. ROCK PIT	R&B#3	015-623-573	\$ 44,201.59	5/13/2008
EMS SURVEYING	50AC. ROCK PIT	R&B#3	015-623-573	\$ 568.31	5/13/2008
FISH & STILL EQUIP. CO.	TRACTOR(NOT APPROVED	VED)	015-624-573	\$ (45,250.00)	NOT APP.
JASPER FORDLINCOLN MERC 08 F	08 FORD F550 (VFD)	FIRE DEPT.	010-543-695	\$ 4,880.57	7/10/2008
TELCOM SUPPLY INC	NEW TELEPHONE SYS./	GENERAL	010-409-573	\$ 3,621.26	3/11/2008
TRIPLE BLADE STILL	BOOM MOWER 50-20	R&B#2	015-622-573	\$ 29,383.00	3/11/2008
TRIPLE BLADE STILL	BOOM MOWER 50-20	R&B#4	015-624-573	\$ 29,383.00	3/11/2008
US DEPT. OF AGRICULTURE	WATERSHED PRO. 25%	R&B		\$ 84,562.25	7/10/2007
VERIZON WIRELESS	BROADBAND ACCES CARD	SHERIFF DEPT	010-503-573	\$ 1,939.64	10/9/2007
WESTTEX WELDING	TRUCK BODY VFD	FIRE DEPT.	010-695-573	\$ 6,670.43	1/12/2008
ROAD SIGNAGE MATERIALS	ROAD SIGN POST & MATL	R&B ADMIN.	015-610-573	\$ 9,726.49	3/25/2008
TOTAL				<u>\$ 185,211.54</u>	

ORIGINAL COPY

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#4(M)

STATE OF TEXAS ]

COUNTY OF TRAVIS ]

SECTION 1 PARTIES TO CONTRACT

This contract and agreement is made and entered into by and between the Office of Rural Community Affairs, an agency of the State of Texas, referred to as the "Office", and the County of Polk, referred to as the "Contractor". The parties have severally and collectively agreed and by the execution are bound to the mutual obligations and to the performance and accomplishment of the described tasks.

SECTION 2. CONTRACT PERIOD

This contract and agreement shall commence on June 22, 2008, and shall terminate on June 21, 2010, unless otherwise specifically provided by the terms of this contract.

SECTION 3. CONTRACTOR PERFORMANCE

The Contractor shall conduct, in a satisfactory manner as determined by the Office, a community development program, referred to as CDBG, in a non-entitlement area under Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. Sec. 5301 et seq.), referred to as the Act. The Contractor shall perform all activities in accordance with the terms of the Performance Statement, referred to as Exhibit A; the Budget, referred to as Exhibit B; the Project Implementation Schedule, referred to as Exhibit C; the Applicable Laws and Regulations, referred to as Exhibit D; the Certifications, referred to as Exhibit E; the assurances, certifications, and all other statements made by the Contractor in its application for the project funded under this contract; and with all other terms, provisions, and requirements set forth in this contract. The Contractor shall ensure that the persons to benefit from the activities described in Exhibit A, Performance Statement, of this contract are receiving the service or a benefit from the use of the new or improved facilities and activities for the contract obligations to be fulfilled and before submitting the Project Completion Report to this Office. If the persons to benefit from the activities described in Exhibit A are not receiving the service or a benefit, the Contractor is liable to repay to the Office any associated disallowed costs.

The Contractor shall adhere to the Project Implementation Schedule timelines for key project activities as shown in Exhibit C. The Office may require the Contractor to submit written justification for any contract activity that is not completed by the end of the month specified on the schedule in Exhibit C. These key activities include Procurement of Professional Services Completed, Plans and Specifications Completed/Submitted for Approval, Environmental Review Completed, Clearance of Special Conditions, Wage Rate Request/Decision/10-Day Call, Bid Advertisement/ Construction Contract Awarded, Construction - 50 percent of TxCDBG project complete, Construction - 50 percent of TxCDBG funds requested from the Office; Construction - 75 percent of TxCDBG project complete, Construction - 75 percent of TxCDBG funds requested from the Office, Construction - 90 percent of TxCDBG project complete, Construction - 90 percent of TxCDBG funds requested from the Office, Final Inspections Completed, and Close-out documents submitted to the Office.



A. Measure of Liability

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In consideration of full and satisfactory performance of the activities referred to in Section 3 of this contract, the Office shall be liable for actual and reasonable costs incurred by the Contractor during the contract period for performances rendered under this contract by the Contractor, subject to the limitations set forth in this Section 4.

1. It is expressly understood and agreed by the parties that the Office's obligations under this Section 4 are contingent upon the actual receipt of adequate state or federal funds to meet Office's liabilities under this contract. If adequate funds are not available to make payments under this contract, Office shall notify the Contractor in writing within a reasonable time after such fact is determined. Office shall terminate this contract and will not be liable for failure to make payments to the Contractor under this contract.
2. The Office shall not be liable to the Contractor for any costs incurred by the Contractor, or any portion thereof, which has been paid to the Contractor or is subject to payment to the Contractor, or has been reimbursed to the Contractor or is subject to reimbursement to the Contractor by any source other than the Office or the Contractor.
3. The Office shall not be liable to the Contractor for any costs incurred by the Contractor which are not allowable costs, as set forth in Section 6 (A) of this contract.
4. The Office shall not be liable to the Contractor for any costs incurred by the Contractor or for any performances rendered by the Contractor which are not strictly in accordance with the terms of this contract, including the terms of Exhibit A, Exhibit B, Exhibit C, Exhibit D, and Exhibit E of this contract.
5. The Office shall not be liable to the Contractor for any costs incurred by the Contractor in the performance of this contract which have not been billed to the Office by the Contractor within sixty (60) days following termination of this contract unless otherwise provided for in the Certificate of Expenditures referred to in Section 8 (C) of this contract.
6. The Office shall not be liable for costs incurred or performances rendered by the Contractor before commencement of this contract or after termination of this contract, unless the Contractor receives written approval from the Office and they are specifically identified in Exhibit A, Performance Statement and Exhibit B, Budget, of this contract.
7. The Office shall not be liable for costs incurred and reserved on the Certificate of Expenditures if such costs are not billed to the Office within ninety days after the contract's termination date. An exception will be made for the reserved funds for the final 5% administrative drawdown for programmatic closure. Audit funds reserved on the Certificate of Expenditures eligible for reimbursement under the provisions of Section 19 of this contract shall be billed to the Office within twelve months after the end of the Contractor's fiscal year that follows the termination date of this contract. The Office shall deobligate all reserved funds not requested under this subsection.

B. Excess Payments

The Contractor shall refund to the Office any sum of money which has been paid to the Contractor by the Office, which the Office determines has resulted in overpayment to the Contractor, or which the Office determines has not been spent by the Contractor strictly in accordance with the terms of this contract. Such refund shall be made by the Contractor to the Office within thirty (30) working days after such refund is requested by the Office.

C. Limit of Liability

Notwithstanding any other provision of this contract, the total of all payments and other obligations incurred by the Office under this contract shall not exceed the sum of Two Hundred Forty-four Thousand and No/100 Dollars (\$244,000).

SECTION 5. METHOD OF PAYMENT

A. The Contractor shall submit to the Office at its offices in Travis County, Texas, a properly completed Request for Payment form and State of Texas Purchase Voucher, as specified by the Office, as often as actually needed. The Office shall determine the reasonableness of each amount requested and shall not make disbursement of any such payment until the Office has reviewed and approved such Request.

B. The Contractor's requests for the advance of funds shall be limited to the minimum amounts needed for effective operation of programs under this contract, and shall be timed as closely as possible to be in accord with actual cash requirements. The Contractor shall establish procedures to minimize the time elapsing between the transfer of funds from the Office to the Contractor and shall ensure that such funds are disbursed as soon as administratively possible.

C. Notwithstanding the provisions of Section 5 (A) of this contract, it is expressly understood and agreed by the parties that payments under this contract are contingent upon the Contractor's full and satisfactory performance of its obligations under this contract.

D. It is expressly understood and agreed by the parties that any right or remedy provided for in this Section 5 or in any other provision of this contract shall not preclude the exercise of any other right or remedy under this contract or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

SECTION 6. UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND PROGRAM INCOME

A. Except as specifically modified by law or the provisions of this contract, the Contractor shall comply with the Regulations in Exhibit D and, for matters not addressed therein, with 24 C.F.R. Part 85, "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments" (referred to as the "Common Rule") as modified by the rules promulgated by the Office of the Governor under the Uniform Grant and Contract Management Act (TEX. GOV'T. CODE ANN. Chapter 783; referred to as "UGCMS."), in performing this contract. The allowability of costs incurred for performances rendered shall be determined in accordance with Office of Management and Budget (OMB) Circular A-87, as supplemented by UGCMS and this contract.

B. The Contractor shall comply with the requirements set forth in 24 C.F.R. Section 570.489(e) of the Regulations to account for program income related to activities financed in whole or in part with funds provided under this contract.

1. The Contractor shall maintain records of the receipt, accrual, and disposition of all program income in the same manner as required for all other funds under this contract, and the Contractor shall provide reports of program income to the Office with each form submitted by the Contractor in accordance with Section 5 of this contract, and at the termination of this contract.

2. Program income earned by the Contractor during the period of this contract shall be retained by the Contractor and utilized by the Contractor to fund performances specified in this contract, in the manner specified, prior to requesting additional funds from the Office.
3. At least sixty (60) days prior to the termination of this contract, the Contractor shall submit a plan to the Office for its approval which specifies the manner in which the Contractor proposes to use any unexpended program income earned under this contract to continue the performance specified in this contract in the manner specified. Any program income earned by the Contractor from this contract, prior to the establishment and approval of a Revolving Loan Fund plan by the Contractor must be returned to the Office. In the event the Office does not approve the plan submitted by the Contractor, the Contractor shall return such program income to the Office within thirty (30) working days after receipt of the Office's notification of disapproval.

#### SECTION 7. RETENTION AND ACCESSIBILITY OF RECORDS

- A. The Contractor shall maintain fiscal records and supporting documentation for all expenditures of funds made under this contract in a manner which conforms to OMB Circular A 87, 24 CFR Section 570.490 of the Regulations in Exhibit D, and this contract. Such records must include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the funds provided under this contract. The Contractor shall retain such records, and any supporting documentation, for the greater of four years from the day the Contractor submits its final audit report and all other pending matters are closed. If an expenditure or audit report has been waived, the retention period starts on the day the report would have been due or the period required by other applicable laws and regulations as described in the Regulations in Exhibit D.
- B. The Contractor shall give the United States Department of Housing and Urban Development, the Inspector General, the General Accounting Office, the Auditor of the State of Texas, an office or agency of the State of Texas, and the Office, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by the Contractor pertaining to this contract. Such rights to access shall continue as long as the records are retained by the Contractor. The Contractor agrees to maintain such records in an accessible location and to provide citizens reasonable access to such records consistent with the Texas Public Information Act.
- C. The Contractor shall include the substance of this Section 7 in all subcontracts.

#### SECTION 8. REPORTING REQUIREMENTS

- A. The Contractor shall submit to the Office such reports on the operation and performance of this contract as may be required by the Office including but not limited to the reports specified in this Section 8.
- B. The Contractor shall submit to the Office no later than the twentieth (20th) day of the month after the end of each calendar quarter of the contract period specified in Section 2, a Quarterly Progress Report of the progress, in narrative form, of all construction and nonconstruction activities by budget categories performed pursuant to Exhibit A, Performance Statement, and of the expenditures and obligations of funds by budget category made pursuant to Exhibit B, Budget, of this contract. The Quarterly Progress Report shall be in a format prescribed by the Office and shall include all such activities, expenditures, and obligations made or performed under this contract during the previous quarter.
- C. The Contractor shall submit a Certificate of Expenditures to the Office no later than sixty (60) days after the contract termination date or at the conclusion of all contract activities as determined by the Office. The Certificate of Expenditures shall be in a format prescribed by the Office and shall be accompanied by a final Project Completion Report of all activities performed under this contract.

D. In addition to the limitations on liability otherwise specified in this contract, it is expressly understood and agreed by the parties that if the Contractor fails to submit to the Office in a timely and satisfactory manner any report required by this contract, the Office may, at its sole option and in its sole discretion, withhold any or all payments otherwise due or requested by the Contractor. If the Office withholds such payments, it shall notify the Contractor in writing of its decision and the reasons therefore. Payments withheld pursuant to this paragraph may be held by the Office until such time as the delinquent obligations for which funds are withheld are fulfilled by the Contractor.

E. The Contractor is required to immediately report to the Office any incident of criminal misapplication of Texas Community Development Block Grant (TxCDBG) funds associated with this contract.

#### SECTION 9. MONITORING

The Office reserves the right to perform periodic on-site monitoring of the Contractor's compliance with the terms and conditions of this contract, and of the adequacy and timeliness of the Contractor's performances under this contract. After each monitoring visit, the Office shall provide the Contractor with a written report of the monitor's findings. If the monitoring reports note deficiencies in the Contractor's performances under the terms of this contract, the monitoring report shall include requirements for the timely correction of such deficiencies by the Contractor. Failure by the Contractor to take action specified in the monitoring report may be cause for suspension or termination of this contract, as provided in Sections 17 and 18 of this contract.

#### SECTION 10. INDEPENDENT CONTRACTOR

It is expressly understood and agreed by the parties that the Office is contracting with the Contractor as an Independent Contractor, and that the Contractor, as such, agrees to the extent allowed by law to hold the Office harmless and to indemnify the Office from and against any and all claims, demands, and causes of action of every kind and character which may be asserted by any third party occurring or in any way incident to, arising out of, or in connection with the services to be performed by the Contractor under this contract.

#### SECTION 11. SUBCONTRACTS

A. Except for subcontracts to which the federal labor standards requirements apply, the Contractor may subcontract for performances described in this contract without obtaining the Office's prior written approval. The Contractor shall only subcontract for performances described in this contract to which the federal labor standards requirements apply after the Contractor has submitted a Subcontractor Eligibility form, as specified by the Office, for each such proposed subcontract, and the Contractor has obtained the Office's prior written approval, based on the information submitted, of the Contractor's intent to enter into such proposed subcontract. The Contractor, in subcontracting for any performances described in this contract, expressly understands that in entering into such subcontracts, the Office is in no way liable to the Contractor's subcontractor(s).

B. In no event shall any provision of this Section 11, specifically the requirement that the Contractor obtain the Office's prior written approval of a subcontractor's eligibility, be construed as relieving the Contractor of the responsibility for ensuring that the performances rendered under all subcontracts are rendered so as to comply with all of the terms of this contract, as if such performances rendered were rendered by the Contractor. The Office's approval under Section 11 does not constitute adoption, ratification, or acceptance of the Contractor's or subcontractor's performance. The Office maintains the right to insist upon the Contractor's full compliance with the terms of this contract, and by the act of approval under Section 11, the Office does not waive any right of action which may exist or which may subsequently accrue to the Office under this contract.

C. The Contractor shall comply with 24 CFR Section 85.36, this contract and all applicable federal, state and local laws, regulations, and ordinances for making procurements under this contract.

D. The Contractor shall maintain a retainage in the amount of five percent (5%) of each construction or rehabilitation subcontract entered into by the Contractor until the Office determines that the Federal labor standards requirements applicable to each such subcontract have been satisfied.

## SECTION 12. CONFLICT OF INTEREST

A. The Contractor shall ensure that no employee, officer, or agent of the Contractor shall participate in the selection, or in the award or administration of a subcontract supported by funds provided if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: 1) The employee, officer, or agent; 2) any member of his or her immediate family; 3) his or her partner; or, 4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract. The Contractor shall comply with Chapter 171, Texas Local Government Code and 24 C.F.R. 570.489(h) of the federal regulations.

B. In all cases not governed by Subsection (A) of this Section, no persons specified in subsection (C) of this Section who exercise or have exercised any functions or responsibilities with respect to the activities assisted under this contract or any other CDBG contract or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest or benefit from the activity, or have any interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties during their tenure or for one year thereafter.

C. The conflict of interest provisions of Subsection (B) apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the Contractor or of a subcontractor of the Contractor.

D. The Contractor shall include the substance of this section in all subcontracts.

## SECTION 13. NONDISCRIMINATION, RELIGIOUS ACTIVITY, AND FAITH-BASED ORGANIZATIONS

A. The Contractor shall ensure that no person shall on the ground of race, color, national origin, religion, sex, age, or handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under or be denied access to any program or activity funded in whole or in part with funds made available under this contract.

B. Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in this program and activities funded under this contract. The Contractor receiving funds under this contract shall not discriminate against an organization on the basis of the organizations' religious character or affiliation. None of the performances rendered by the Contractor under this contract shall involve, nor shall any portion of the funds received by the Contractor under this contract, be used to engage in inherently religious activities. Funds made available under this contract may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. Funds made available under this contract may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities. Where a structure is used for both eligible and inherently religious activities, funds made available under this contract may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to funds provided under this contract. The Contractor shall comply with the regulations promulgated by the U.S. Department of Housing and Urban Development on faith-based activities at 24 CFR Sec. 570.200(j).

A. The Contractor assures and guarantees that the Contractor possesses the legal authority to enter into this contract, receive funds authorized by this contract, and to perform the services the Contractor has obligated itself to perform.

B. The person or persons signing and executing this contract on behalf of the Contractor, or representing themselves as signing and executing this contract on behalf of the Contractor, do hereby warrant and guarantee that he, she or they have been duly authorized by the Contractor to execute this contract on behalf of the Contractor and to validly and legally bind the Contractor to all terms, performances, and provisions set forth.

C. The Office shall have the right to suspend or terminate this contract if there is a dispute as to the legal authority of either the Contractor or the person signing this contract to enter into this contract or to render performances. The Contractor is liable to the Office for any money it has received from the Office for performance of the provisions of this contract, if the Office has suspended or terminated this contract for reasons enumerated in this Section 14.

## SECTION 15.

LITIGATION AND CLAIMS

The Contractor shall give the Office immediate notice in writing of 1) any action, including any proceeding before an administrative agency, filed against the Contractor arising out the performance of any subcontract; and 2) any claim against the Contractor, the cost and expense of which the Contractor may be entitled to be reimbursed by the Office. Except as otherwise directed by the Office, the Contractor shall furnish immediately to the Office copies of all pertinent papers received by the Contractor with respect to such action or claim. The Contractor shall provide a notice to the Office within 30 days upon filing under any bankruptcy or financial insolvency provision of law.

## SECTION 16.

CHANGES AND AMENDMENTS

A. Except as specifically provided otherwise in this contract, any alterations, additions, or deletions to the terms of this contract shall be by amendment in writing and executed by both parties to this contract.

B. It is understood and agreed by the parties that performances under this contract must be rendered in accordance with the Act, the Regulations of the Office, assurances and certifications made to the Office by the Contractor, and the assurances and certifications made to the United States Department of Housing and Urban Development by the State of Texas with regard to the operation of the TxCDBG Program. Based on these considerations, and in order to ensure the legal and effective performance of this contract by both parties, it is agreed by the parties that the performances under this contract are amended by the provisions of the TxCDBG Project Implementation Manual and any amendments thereto and may further be amended in the following manner: The Office may from time to time during the period of performance of this contract issue policy directives which serve to establish, interpret, or clarify performance requirements under this contract. Such policy directives shall be promulgated by the Director of the TxCDBG in the form of TxCDBG issuances, shall have the effect of qualifying the terms of this contract and shall be binding upon the Contractor, as if written herein, provided however that the policy directives and any amendments to the TxCDBG Project Implementation Manual shall not alter the terms of this contract so as to release the Office of any obligation specified in Section 4 of this contract to reimburse costs incurred by the Contractor prior to the effective date of the amendments or policy directives.

C. Any alterations, additions, or deletions to the terms of this contract which are required by changes in Federal or State law or regulations are automatically incorporated into this contract without written amendment, and shall become effective on the date designated by such law or regulation.

D. Notwithstanding Subsection A of this Section 16, the Contractor may make transfers of funds between or among budget categories of Exhibit B, Budget, without requiring an amendment to this contract, or otherwise requiring the Office's prior written approval provided that:

1. The cumulative dollar amount of all transfers among direct budget categories is equal to or less than ten percent (10%) of the total amount of this contract as specified in Section 4 (C);
2. The transfer will not change the scope or objective of the projects funded under this contract; and
3. The Contractor submits a budget revision report to the Office, on a form specified by the Office, simultaneously with the submission of the Contractor's first request for payment following any such transfers made in accordance with this Subsection D.

SECTION 17. SUSPENSION

Notwithstanding the provisions of TEX. GOV'T. CODE ANN. Chapter 2251, in the event the Contractor fails to comply with any term of this contract, the Office may, upon written notification to the Contractor, suspend this contract in whole or in part and withhold further payments to the Contractor, and prohibit the Contractor from incurring additional obligations of funds under this contract.

SECTION 18. TERMINATION

A. The Office shall have the right to terminate this contract, in whole or in part, at any time before the date of completion specified in Section 2 of this contract whenever the Office determines that the Contractor has failed to comply with any term of this contract. The Office shall notify the Contractor in writing prior to the thirtieth (30th) day preceding the date of termination of such determination; the reasons for such termination; the effective date of such termination; and in the case of partial termination, the portion of the contract to be terminated.

B. Either of the parties to this contract shall have the right to terminate this contract, in whole or in part, when both parties agree that the continuation of the activities funded under this contract would not produce beneficial results commensurate with the further expenditure of funds; provided that both parties agree, in writing, upon the termination conditions, including the effective date of such termination; and in the case of partial termination, the portion of the contract to be terminated.

C. Upon termination or receipt of notice to terminate, whichever occurs first, the Contractor shall cancel, withdraw, or otherwise terminate any outstanding orders or subcontracts related to the performance of this contract or the part of this contract to be terminated, and shall cease to incur costs thereunder. The Office shall not be liable to the Contractor or to the Contractor's creditors for costs incurred after termination of this contract.

D. Notwithstanding any exercise by the Office of its right of suspension under Section 17 of this contract, or of early termination pursuant to this Section 18, the Contractor shall not be relieved of any liability to the Office for damages due to the Office by virtue of any breach of this contract by the Contractor. The Office may withhold payments to the Contractor until such time as the exact amount of damages due to the Office from the Contractor is agreed upon or is otherwise determined.

SECTION 19. AUDIT

A. The Contractor shall arrange for the performance of an annual financial and compliance audit of funds received and performances rendered under this contract, subject to the following conditions and limitations:

1. (a) Audit Required-Federal Awards. Contractors expending \$500,000 or more in Federal financial assistance for any fiscal year, beginning with fiscal years ending January 31, 2004 and after, shall have a single audit conducted in accordance with the Single Audit Act Amendments of 1996, 31 U.S.C. 7501, and OMB Circular No. A-133 - Revised as of June 27, 2003, "Audits of States, Local Governments, and Non-Profit Organizations." Alternatively, Office may require a program specific audit for certain situations and when the Single Audit Act does not apply. For purposes of this Section 19, "Federal financial assistance" means assistance that non-Federal entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other assistance, but does not include amounts received as reimbursement for services rendered to individuals as described in OMB Circular A-133 §\_\_205 (h) and §\_\_205 (i). The term includes awards of Federal financial assistance received directly from Federal agencies, or indirectly through other units of State and local government.

(b) Audit Required-State Financial Assistance. Contractors that expended \$500,000 or more in total State Financial Assistance for any fiscal year, beginning with fiscal years ending January 31, 2004 and after, shall have a single or program specific audit conducted for that year in accordance with provisions of the State of Texas Single Audit Circular and the Uniform Grant Management Standards (UGMS) as adopted June 2004. For purposes of this Section 19, "State Financial Assistance" (or cost reimbursement contract) means assistance that non-state entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, and other assistance, but does not include amounts received as an reimbursement for services rendered to individuals as described in sec. \_\_.205 (f). "State Financial Assistance" (or cost reimbursement contract) is received directly from state awarding agencies or indirectly from pass-through entities under a federal block grant. State financial assistance also does not include federal awards as defined by OMB Circular A-133.

2. Audit Expenses. Notwithstanding Section 4, the Contractor shall utilize funds budgeted under this contract to pay for that portion of the cost of such audit services properly allocable to the activities funded by the Office under this contract, provided however that the Office shall not make payment for the cost of such audit services until the Office has received a satisfactory audit report and invoice, as determined by the Office, from the Contractor; the invoice submitted for reimbursement should clearly show the percentage of cost relative to the total single audit cost of the audit services. Therefore, when submitting a request for audit fees reimbursement, the Contractor shall submit an invoice that clearly shows the total cost of the audit and the corresponding prorated charge per funding source. In addition, when applicable, an explanation shall be submitted with the reimbursement request supporting why the percentage of audit fee charges exceeds the percentage amount of TxCDBG funds expended of the total funds expended by the Contractor.

3. The Contractor shall submit one (1) copy of the report of such audit to the Office within thirty (30) days after the completion of the audit, but no later than nine (9) months after the end of the Contractor's audit period (i.e., after the Contractor's fiscal year end). The Contractor shall ensure that the audit report is made available for public inspection within thirty (30) days after completion of the audit. Audits performed under Subsection A of this Section 19 are subject to review and resolution by the Office or its authorized representative. The Contractor shall ensure the Audit Report submitted include either in the report or as part of the cover letter, auditor and contractor contact information, including contact person, mailing address, telephone, fax number and e-mail address. The Contractor shall ensure the Audit Report submitted also includes the submission of the CPA Management Letter if a Management Letter was issued to the Contractor by its CPA firm. Failure by the Contractor to submit a completed single audit package as described in the audit requirements by the required due date could affect funding for all existing contracts, eligibility to apply under the TxCDBG Program, and the issuance of new contracts for funding awards.



4. Notwithstanding the requirements after paragraphs "A-1 through 3" of this Section 19, the Contractor shall submit within 60 days after its fiscal year end an Audit Certification Form (ACF) or a similar statement. The ACF or statement will include information indicating if the Contractor has or has not met the \$500,000 expenditure threshold that will require a Single Audit Report in accordance with the Uniform Grant Management Standards, Subpart C-Post Award Requirements, Section 26 Audit, item (d). If the Contractor did not exceed the threshold, the Contractor shall include with the ACF or statement, a list of all open Office contracts providing financial assistance and the corresponding activity. Failure by the Contractor to submit an ACF or a similar statement or failure to submit a completed single audit package as described in the audit requirements by the required due date could affect funding for all existing contracts, eligibility to apply under the TxCDBG Program, and the issuance of new contracts for funding awards.

5. Pursuant to the Texas Administrative Code §5.167(c), "Chapter 2105, Texas Government Code, requires that all subrecipients of federal block grants be included under the provisions of the Uniform Grant and Contract Management Standards." The Uniform Grant and Contract Management Standards (UGMS) (D) sec. 400 requires "Recipients who are required to have a single audit and receive state or federal awards for more than one state agency shall have a state single audit coordinating agency. The governor's office shall designate a state single audit coordinating agency based upon the state awarding agency that provides the predominant amount of direct funding to a recipient and other factors, as appropriate, to ensure equitable and manageable workloads." Further, it is the Contractor's responsibility to make this request to the governor's office pursuant to the Texas Administrative Code §5.167(c)(2), "To have a state single audit coordinating agency designated a recipient must submit a written request to the Governor's Budget and Planning Office, P.O. Box 12428, Austin, Texas 78711. This request must list the state agencies providing financial assistance with the grant amounts for the year to be audited and indicate that the governing body has authorized the initiation of the single audit."

B. Notwithstanding Subsection A of this Section 19, the Office reserves the right to conduct an annual financial and compliance review of funds received and performances rendered under this contract. The Contractor agrees to permit the Office or its authorized representative to audit the Contractor's records and to obtain any documents, materials, or information necessary to facilitate such review.

C. The Contractor understands and agrees that it shall be liable to the Office for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this contract. The Contractor further understands and agrees that reimbursement to the Office of such disallowed costs shall be paid by the Contractor from funds which were not provided or otherwise made available to the Contractor under this contract.

D. The Contractor shall take such action to facilitate the performance of such audit or audits conducted pursuant to this Section 19 as the Office may require of the Contractor. Contractor shall establish written standard operating procedures and internal controls to include the timely procurement of a CPA firm to start and complete the year end single audit report if applicable, in order to comply with contractual and regulatory requirements. The Office shall not release any funds for any costs incurred by the Contractor under this contract until the Office has received a copy of any audit report required by this Section 19.

E. The Contractor shall procure audit services through an open, competitive process at least once every four years. The auditor shall retain working papers and reports for a minimum of three years after the date of issuance of the auditor's report to the auditee. Audit working papers shall be made available upon request to the Office at the completion of the audit, as a part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this part. Access to working papers includes the right to obtain copies of working papers, as is reasonable and necessary.

F. Contractor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards.

SECTION 20. ENVIRONMENTAL CLEARANCE REQUIREMENTS

A. The Contractor understands and agrees that by the execution of this contract the Contractor shall assume the responsibilities for environmental review, decision making, and other action which would otherwise apply to the Office under Section 5304(f) of the Act, in accordance with and to the extent specified in 24 CFR Part 58. In accordance with Section 58.77(b) of such regulations, the Contractor further understands and agrees that the Contractor shall handle inquiries and complaints from persons and agencies seeking redress in relation to environmental reviews covered by approved certifications.

B. Funds provided under this contract may be obligated and expended before the actions specified in this Section occur only for the following eligible activities:

1. The payment of reasonable planning and administrative costs related to the project;
2. Environmental studies, including environmental clearance activities required by this Section; and
3. The payment or reimbursement of reasonable project engineering and design costs incurred for this project.

C. The Contractor shall prepare a written Environmental Assessment of its activities in accordance with 24 C.F.R. Part 58, Subpart E, and the TxCDBG Project Implementation Manual. The Contractor must then follow the steps specified in this subsection to ensure compliance with the National Environmental Policy Act (NEPA). When the Environmental Assessment is completed, the Contractor must follow one of the following two (2) procedures. The first is a Finding of Significant Impact, in which the Request for Release of Funds for the project is an action which may significantly affect the quality of the human environment. If this is the case, the Contractor must then prepare an Environmental Impact Statement in accordance with Subpart F or Subpart G of 24 C.F.R. Part 58. The second and more common procedure must be followed for all projects not requiring an Environmental Impact Statement. The Contractor in this instance must publish, in the manner prescribed in 24 C.F.R. Sections 58.43 and 58.45, a combined legal notice in a single publication: A Finding of No Significant Impact (FONSI), and a Notice of Intent to Request Release of Funds (NOI/RROF). In the first part of this notice, the Contractor certifies that, as a result of the Environmental Assessment, the project is not an action which may or will significantly affect the quality of the human environment. The Contractor shall then provide the public with at least fifteen (15) calendar days to comment on this combined notice following its publication date, unless exceptional circumstances exist as specified in 24 C.F.R. Section 58.46. If no unresolved problems occur, the Contractor must then concurrently submit to the Office the following documents:

1. Request for Release of Funds and Certification (form HUD 7015.15);
2. Statutory Checklist (Covering 24 CFR Part 58.5) and HUD Compliance Documentation Checklist (Covering 24 CFR Part 58.6);
3. Published FONSI and NOI/RROF; and

4. Publisher's Affidavit (only needed if sending a photocopy of the publication and not an original full page of the newspaper with publication title and date.)

Upon receipt of such documents, the Office must allow a fifteen (15) calendar day comment period to expire before it can formally release any project funds which are subject to the environmental review regulations. The Contractor must comply with all other applicable environmental requirements as specified in Exhibit D of this contract. The Contractor shall document its compliance with such other requirements in its environmental review file. The environmental review file and source documentation must be maintained as part of the environmental review record.

## SECTION 21. CITIZEN PARTICIPATION REQUIREMENTS

- A. The Contractor shall provide for and encourage citizen participation, particularly by low and moderate income persons who reside in slum or blighted areas and areas in which the funds provided under this contract are used, in accordance with Section 570.486 of the Regulations and this contract;
- B. The Contractor shall hold a public hearing concerning any activities proposed to be added, deleted, or substantially changed, as determined by the Office, from the activities specified in Exhibit A, Performance Statement, of this contract;
- C. Prior to the termination of this contract, the Contractor shall hold a public hearing to review its performance under this contract;
- D. For each public hearing scheduled and conducted by the Contractor under this section, the Contractor shall comply with the following requirements:
  1. Notice of each hearing shall be published in the non-legal section of a newspaper having general circulation in the Contractor's jurisdiction at least seventy-two (72) hours prior to each scheduled hearing. The published notice shall include the date, time, and location of each hearing and the topics to be considered at each hearing. The published notice shall be printed in both English and Spanish, if appropriate. The Office shall accept articles published in such newspapers which satisfy the content and timing requirements of this subsection. In addition, the Contractor shall prominently post such notices in public buildings and distributed to interested community groups.
  2. If any substantial changes are being requested concerning the activities included in this contract, the public hearings shall be held after 5 p.m. on a weekday or on a Saturday or Sunday. The hearings must be conducted at a location convenient to potential or actual beneficiaries, with accommodation for the handicapped.
  3. When a significant number of non-English speaking residents can reasonably be expected to participate in a public hearing, the Contractor shall provide an interpreter to accommodate the needs of the non-English speaking residents.
- E. Notwithstanding the provisions of Section 7 of this contract, the Contractor shall retain documentation of the public hearing notices, a list of the attendees at each hearing, and minutes of each hearing held in accordance with this section for a period of three (3) years after the termination of this contract. The Contractor shall make such records available to the public in accordance with TEX. GOVT. CODE ANN. Chapter 552.
- F. Complaint Procedures. The Contractor shall maintain written citizen complaint procedures that provide a timely written response to complaints and grievances. Such procedures shall comply with the Office's requirements. The Contractor shall ensure that its citizens are aware of the location and hours at which they may obtain a copy of the written procedures and the address and phone number for submitting complaints.

SECTION 22. SPECIAL CONDITIONS

A. The Office shall not release any funds for any costs incurred by the Contractor under this contract until the Office has received a copy of the Contractor's previous fiscal year audit report or certification from the Contractor that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of and accounting for funds provided under this contract. The Office shall specify the content and form of such certification.

B. The Office shall not be liable to the Contractor for any costs incurred by the Contractor under this contract until the Office receives a properly completed Depository/Authorized Signators Form, as specified by the Office, from the Contractor.

C. The Contractor shall not advertise or solicit bids for construction or rehabilitation of a project assisted with funds provided under this contract until the Contractor has received the applicable prevailing wage rates from the Office.

D. In accordance with Section 18 of this contract, this contract shall terminate six (6) months after the commencement date specified in Section 2 unless activities specified in Section 20 or listed under Section 22 funded under this contract have begun by such date.

E. Public buildings, facilities, centers, constructed with Office of Rural Community Affairs (ORCA) Community Development Block Grant (CDBG) assistance shall have permanent signage placed in a prominent visible public area with the wording provided below. The formatting of such signage will be at local discretion to best fit the architectural design of the facility constructed but should be legible from at least three feet distance.

Other construction projects, e.g., water transmission lines, sewer collection lines, drainage, roadways, housing rehabilitation, etc. utilizing ORCA CDBG funding shall have temporary signage erected in a prominent location at the construction project site or along a major thoroughfare within the locality as directed by the owner.

Project Sign Wording:

"This project is funded by the Office of Rural Community Affairs of the State of Texas, to strengthen and enhance the quality of life in smaller and rural communities with funds allocated by the United States Department of Housing and Urban Development through the Community Development Block Grant Program."

F. Prior to the Office's release of funds for the construction of the sewer system improvements described in Exhibit A, Performance Statement, of this contract, the Contractor shall provide certification to the Office from the Texas Commission on Environmental Quality that plans, specifications, and related documents for its sewer system improvements have been prepared by a registered professional engineer and that the review of such plans, specifications, and related documents meet the applicable Texas Commission on Environmental Quality review requirements described in Title 30 of the Texas Administrative Code, Chapter 317 (30 TAC 317.1 et seq.).

G. PROJECT MAPPING/DESIGN INFORMATION AND COPYRIGHT

1. The Contractor shall receive and maintain a copy of the final project record drawing(s) engineering schematic(s), as constructed using funds under this contract. These maps shall be provided in digital format containing the source map data (original vector data) and the graphic data in files on machine readable media, such as compact disc (CD), which are compatible with computer systems owned or readily available to the Contractor. The digital copy provided shall

not include a digital representation of the engineer's seal but the accompanying documentation from the engineer shall include a signed statement of when the map was authorized, that the digital map is a true representation of the original sealed document, and that a printed version with the seal has been provided to the Contractor. In addition, complete documentation as to the content and layout of the data files and the name of the software package(s) used to generate the data and maps shall be received and maintained by Contractor in written form. The Contractor shall provide the Office upon request a copy of all the electronic files and other data received, including the original vector data, and all documentation in electronic format, on a CD or other media in a file format determined by the Office. If requested by the Office, the Contractor shall ensure that the CD copy of all the electronic files and other data provided to the Office are properly identified. Specifically, the CD label shall show the Contractor's name, the Office's assigned contract number, the contents of CD, the preparer's name, and the name of the software package(s) used to generate the maps on the CD.

2. Where activities supported by this contract produce copyrightable material, the Contractor shall not assert any rights at common law or in equity or establish any claim to statutory copyright in such material without the Office's prior written approval. The Office reserves a royalty-free, nonexclusive, and irrevocable license to copy, produce, publish, and use such material, and to authorize others to do so.

3. Provisions appropriate to effectuate the purposes of this subsection must be in all employment contracts, consultant contracts, including engineering consultant contracts, and other contracts or agreements in which funds received by the Contractor under this contract are involved.

#### SECTION 23. DEBARMENT

A. By signing this contract, the Contractor certifies that it will not award any funds provided under this contract to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 24 CFR Part 24. The Contractor shall receive the certification provided by the Office from each proposed subcontractor under this contract and its principals.

B. By signing this contract, the Contractor certifies that it is not debarred, suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 24 CFR Part 24. Further, the Contractor is required to immediately report to the Office if it is debarred, suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 24 CFR Part 24.

#### SECTION 24. POLITICAL AID AND LEGISLATIVE INFLUENCE PROHIBITED

A. None of the funds provided under this contract shall be used for influencing the outcome of any election, or the passage or defeat of any legislative measure. This prohibition shall not be construed to prevent any official or employee of the Contractor from furnishing to any member of its governing body upon request, or to any other local or state official or employee or to any citizen information in the hands of the employee or official not considered under law to be confidential information. Any action taken against an employee or official for supplying such information shall subject the person initiating the action to immediate dismissal from employment.

B. No funds provided under this contract may be used directly or indirectly to hire employees or in any other way fund or support candidates for the legislative, executive, or judicial branches of government of the Contractor, the State of Texas, or the government of the United States.

A. All oral and written agreements between the parties to this contract relating to the subject matter of this contract that were made prior to the execution of this contract have been reduced to writing and are contained in this contract.

B. The attachments enumerated and denominated below are hereby made a part of this contract, and constitute promised performances by the Contractor in accordance with Section 3 of this contract:

- 1. Exhibit A, Performance Statement, 1 Page
- 2. Exhibit B, Budget, 2 Pages
- 3. Exhibit C, Project Implementation Schedule, 1 Page
- 4. Exhibit D, Applicable Laws and Regulations, 3 Pages
- 5. Exhibit E, Certifications, 2 Pages

SECTION 26.


VENUE

For purposes of litigation pursuant to this contract, venue shall lie in Travis County, Texas.

WITNESS OUR HANDS EFFECTIVE June 22, 2008.

  
 \_\_\_\_\_  
 John P. Thompson, County Judge  
 County of Polk

Approved and accepted on behalf of the Office of Rural Community Affairs.

  
 \_\_\_\_\_  
 Charles S. (Charlie) Stone, Executive Director  
 Office of Rural Community Affairs

This contract is not effective unless signed by the Executive Director of the Office of Rural Community Affairs or by the Executive Director's authorized designee.

*approved by  
 Commission Court  
 7.22.2008*

## PERFORMANCE STATEMENT

## County of Polk

Contractor shall carry out the following activities in the target area identified in its 2007/2008 Community Development Fund/Community Development Supplemental Fund application. The persons to benefit from the activities described in this Performance Statement must be receiving service or a benefit from the use of the new or improved facilities and activities for the contract obligations to be fulfilled. The Contractor shall ensure that the amount of funds expended for each activity described does not exceed the amount specified for such activity in Exhibit B, Budget.

Sewer Facilities

Contractor shall assist the Memorial Point Utility District in addressing excessive inflow and infiltration problems at the Shelter Cove neighborhood. Contractor shall install approximately four thousand linear feet (4,000 l.f.) of six-inch (6") and eight-inch (8") sewer line, fifty linear feet (50 l.f.) of fourteen-inch (14") steel casing by boring, tie-in to the existing lift station, service connections, fourteen (14) manholes, two hundred fifty square yards (250 s.y.) of pavement repair, and clearing and grubbing. Construction shall take place in the following locations:

<u>STREET</u>	<u>FROM</u>	<u>TO</u>
Little John Drive	Lift Station 3 to FM 3277	sewer easement for Coventry Drive
sewer easement between FM 3277 and East Sherwood Drive	Little John Drive	Summit Drive
Summit Drive	FM 3277	sewer easement between East Sherwood Drive and West Sherwood Drive

These activities shall benefit two hundred sixty-four (264) persons, of which two hundred twenty-seven (227) or eighty-six percent (86%) are of low to moderate income.

Engineering

Contractor shall ensure that the amount of the Office funds expended for all eligible project-related engineering services, including preliminary and final design plans and specifications, all interim and final inspections, and all special services does not exceed the amount specified for engineering in Exhibit B, Budget.

Administration

Contractor shall ensure that the amount of the Office funds expended for all eligible project-related administration activities, including the required annual program compliance and fiscal audit does not exceed the amount specified for administration in Exhibit B, Budget.

## EXHIBIT B

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CONTRACT NO. 728340

## BUDGET

## County of Polk

<u>LINE</u>	<u>CATEGORIES</u>	<u>CONTRACT FUNDS</u>	<u>OTHER FUNDS</u>	<u>TOTAL</u>
1a.	Water Facilities	\$	\$	\$
1b.	Sewer Facilities	\$ 192,450	\$ -0-	\$ 192,450
2.	Solid Waste Disposal Facilities	\$	\$	\$
3.	Other Public Utilities	\$	\$	\$
4.	Street Improvements	\$	\$	\$
5.	Flood and Drainage Facilities	\$	\$	\$
6.	Neighborhood Facilities/ Community Centers	\$	\$	\$
7.	Senior Centers	\$	\$	\$
8.	Centers for the Handicapped/ Sheltered Workshops	\$	\$	\$
9.	Parks, Playgrounds, and Other Recreational Facilities	\$	\$	\$
10.	Fire Protections Facilities and Equipment	\$	\$	\$
11.	Parking Facilities	\$	\$	\$
12.	Pedestrian Malls and Walkways	\$	\$	\$
13.	Specially Authorized Assistance to Privately Owned Utilities	\$	\$	\$
14.	Specially Authorized Public Facilities and Improvements	\$	\$	\$
15.	Public Services (LIMITED TO 15% OF REQUEST)	\$	\$	\$
16.	Interim Assistance	\$	\$	\$



<u>LINE</u>	<u>CATEGORIES</u>	<u>CONTRACT FUNDS</u>	<u>OTHER FUNDS</u>	<u>TOTAL</u>
17.	Rehabilitation of Private Properties (Housing)	\$	\$	\$
17a.	Rehabilitation of Private Properties (Water Service)	\$	\$	\$
17b.	Rehabilitation of Private Properties (Sewer Service)	\$	\$	\$
18.	Rehabilitation of Public Residential Structures	\$	\$	\$
19.	Public Housing Modernization	\$	\$	\$
20.	Clearance Demolition Activities	\$	\$	\$
21.	Historic Preservation	\$	\$	\$
22.	Removal of Architectural Barriers	\$	\$	\$
23.	Code Enforcement	\$	\$	\$
24.	Acquisition	\$	\$	\$
25.	Relocation Payments & Assistance	\$	\$	\$
26.	Economic Development Loan	\$	\$	\$
27.	Economic Devel. Interest Subsidy	\$	\$	\$
28.	Economic Devel. Loan Guarantee	\$	\$	\$
29.	Special Activities by Local Devel Corporations, Etc.	\$	\$	\$
30.	Engineering/Architectural Serv. (Total for all construction accounts)	\$ 21,700	\$ 13,300 <sup>1</sup>	\$ 35,000
31.	Planning & Urban Env. Design (NOT TO EXCEED 16%)	\$	\$	\$
32.	General Administration	\$ 29,850	\$ -0-	\$ 29,850
TOTALS		\$ 244,000	\$ 13,300	\$ 257,300

<sup>1</sup> Memorial Point Utility District of Polk County (cash contribution)

EXHIBIT C  
PROJECT IMPLEMENTATION SCHEDULE

CONTRACT NUMBER 728340

County of Polk

Activity	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Completed by Last Day of Month:																								
Procurement of Professional Services Completed			X																					
Plans and Specifications Completed				X																				
Plans and Specifications Submitted for Approval					X																			
Environmental Review Completed						X																		
Clearance of Special Conditions								X																
Wage Rate Request/Decision/10-Day Call								X																
Bid Advertisement / Construction Contract Awarded									X															
Construction - 50% TxCDBG project complete													X											
Construction - 50% TxCDBG funds requested from Office														X										
Construction - 75% TxCDBG project complete															X									
Construction - 75% TxCDBG funds requested from Office																X								
Construction - 90% TxCDBG project complete																	X							
Construction - 90% TxCDBG funds requested from Office																		X						
Final Inspections Completed																			X					
General Administration																							X	
Close-out documents submitted to Office																							X	

CONTRACT START DATE CONTRACT ENDING DATE

June 22, 2008 June 21, 2010

## THE APPLICABLE LAWS AND REGULATIONS

The Contractor shall comply with the Act and Regulations specified in Section 3 of this contract and with the OMB Circular and federal regulations specified in Section 6 of this contract; Cash Management Improvement Act regulations (31 C.F.R. Part 205); and with all other federal, state, and local laws and regulations applicable to the activities and performances rendered by the Contractor under this contract including but not limited to the laws, and the regulations promulgated thereunder specified in Section I through VII of this Exhibit D.

I. CIVIL RIGHTS

Title VI of the Civil Rights Act of 1964, (42 U.S.C. Section 2000d et seq.); 24 C.F.R. Part I, "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development - Effectuation of Title VI of the Civil Rights Act of 1964";

Title VIII of the Civil Rights Act of 1968, "The Fair Housing Act of 1968" (42 U.S.C. Sec 3601 et seq.); as amended;

Executive Order 11063, as amended by Executive Order 12259, and 24 C. F.R. Part 107, "Nondiscrimination and Equal Opportunity in Housing under Executive Order 11063". The failure or refusal of the Contractor to comply with the requirements of Executive Order 11063 or 24 C.F.R. Part 107 shall be a proper basis for the imposition of sanctions specified in 24 C.F.R. 107.60;

The Age Discrimination Act of 1975 (42 U.S.C. Sec. 6101 et seq.);

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794.) and "Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development", 24 C.F.R. Part 8. By signing this contract, the Contractor understands and agrees that the activities funded shall be operated in accordance with 24 C.F.R. Part 8; and the Architectural Barriers Act of 1968 (42 U.S.C. Sec. 4151 et seq.), including the use of a telecommunications device for deaf persons (TDDs) or equally effective communication system.

II. LABOR STANDARDS

The Davis-Bacon Act, as amended (40 U.S.C. Secs. 276a - 276a-5);

The Contract Work Hours & Safety Standards Act (40 U.S.C. 327 et seq.);

The Copeland "Anti-Kickback" Act (18 U.S.C. Sec. 874).

III. EMPLOYMENT OPPORTUNITIES

Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. Sec.1701u).

IV. LEAD-BASED PAINT

Section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. Sec. 4831(b)) and the procedures established by the Office thereunder.

Environmental Review Procedures for Recipients assuming HUD Environmental Responsibilities, 24 CFR Part 58, as amended.

In accordance with the provisions of law cited in §58.1(b), the responsible entity must assume the environmental responsibilities for projects under programs cited in §58.1(b), and in doing so must comply with the provisions of the National Environmental Policy Act of 1969, as amended and the Council on Environmental Quality regulations contained in 40 CFR parts 1500 through 1508. This includes responsibility for compliance with the applicable provisions and requirements of the Federal laws and authorities specified in §58.5 [below]. The responsible entity must certify that it has complied with the requirements that would apply to HUD under these laws and authorities and must consider the criteria, standards, policies and regulations of these laws and authorities.

(a) Historic Properties

- (1) The National Historic Preservation Act of 1966 as amended (16 U.S.C. 470 *et seq.*), particularly sections 106 and 110 (16 U.S.C. 470 and 470h-2), except as provided in §58.17 for Section 17 projects.
- (2) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921), 3 CFR 1971-1975 Comp., p. 559, particularly section 2(c).
- (3) Federal historic preservation regulations as follows:
  - (i) 36 CFR part 800 with respect to HUD programs other than Urban Development Action Grants (UDAG) and
  - (ii) 36 CFR part 801 with respect to UDAG.
- (4) The Reservoir Salvage Act of 1960 as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 *et seq.*), particularly section 3 (16 U.S.C. 469a-1).

(b) Floodplain management and wetland protection

- (1) Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 CFR, 1977 Comp., p. 117, as interpreted in HUD regulations at 24 CFR part 55, particularly section 2(a) of the order (For an explanation of the relationship between the decision-making process in 24 CFR part 55 and this part, see §55.10 of this subtitle A.)
- (2) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 CFR, 1977 Comp., p. 121 particularly sections 2 and 5.

(c) Coastal Zone Management

- (1) The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*), as amended, particularly sections 307(c) and (d) (16 U.S.C. 1456(c) and (d)).

(d) Sole source aquifers

- (1) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) *et seq.*, and 21 U.S.C. 349) as amended; particularly section 1424(e)(42 U.S.C. 300h-3(e)).
- (2) Sole Source Aquifers (Environmental Protection Agency-40 CFR part 149.)

(e) Endangered species

- (1) The Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) as amended, particularly section 7 (16 U.S.C. 1536)

(f) Wild and scenic rivers

- (1) The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*) as amended, particularly sections 7(b) and (c) (16 U.S.C. 1278(b) and (c)).

(g) Air quality

- (1) The Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended, particularly sections 176(c) and (d) (42 U.S.C. 7506(c) and (d)).
- (2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency-40 CFR parts 6, 51, and 93).

(h) Farmland protection

- (1) Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 *et seq.*) particularly sections 1540(b) and 1541 (7 U.S.C. 4201(b) and 4202).
- (2) Farmland Protection Policy (Department of Agriculture-7 CFR part 658).

(i) HUD environmental standards

- (1) Applicable criteria and standards specified in HUD environmental regulations (24 CFR part 51) other than the runway clear zone and clear zone notification requirement in 24 CFR 51.303(a)(3).
- (2) HUD Notice 79-33; Policy Guidance to Address the Problems Posed by Toxic Chemicals and Radioactive Materials, September 10, 1979. All properties that are being proposed for use must be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property. The environmental review of non-residential property, (or multi-family housing with five or more dwelling units, including leasing) must include the evaluation of previous uses of the site or other evidence of contamination on or near the site, to ensure that the occupants of proposed sites are not adversely affected by any hazards. Particular attention must be given to any proposed site on or in the general proximity of such areas as dumps, landfills, industrial sites, or other locations that contain, or may have contained, hazardous wastes. The Contractor shall use current techniques by qualified professionals to undertake investigations determined necessary.

(j) Environmental justice

- (1) Executive Order 12898 of February 11, 1994 --- Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, (59 FR 7629), 3 CFR, 1994 Comp. p. 859.

(k) Other requirements - See 24 CFR Part 58.6.

VI. ACQUISITION/RELOCATION

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Sec. 4601 *et seq.*), 24 C.F.R. Part 42, and 24 C.F.R. Section 570.606.

VII. FAITH-BASED ACTIVITIES

Executive Order 13279 of December 12, 2002 - Equal Protection of the Laws for Faith-Based and Community Organizations, (67 FR 77141).

## EXHIBIT E

## CERTIFICATIONS

WITH RESPECT TO THE EXPENDITURE OF FUNDS PROVIDED UNDER THIS CONTRACT BY THE County of Polk, THAT;

- (1) IT WILL MINIMIZE DISPLACEMENT OF PERSONS AS A RESULT OF ACTIVITIES ASSISTED WITH SUCH FUNDS;
- (2) THE PROGRAM WILL BE CONDUCTED AND ADMINISTERED IN CONFORMITY WITH THE CIVIL RIGHTS ACT OF 1964 (42 U.S.C. SEC. 2000a et seq.) AND THE FAIR HOUSING ACT (42 U.S.C. SEC 3901 et seq.), AND THAT IT WILL AFFIRMATIVELY FURTHER FAIR HOUSING, AS SPECIFIED BY THE OFFICE;
- (3) IT WILL PROVIDE FOR OPPORTUNITIES FOR CITIZEN PARTICIPATION, HEARINGS AND ACCESS TO INFORMATION WITH RESPECT TO ITS COMMUNITY DEVELOPMENT PROGRAMS, AS SPECIFIED BY THE OFFICE;
- (4) IT WILL NOT ATTEMPT TO RECOVER ANY CAPITAL COSTS OF PUBLIC IMPROVEMENTS ASSISTED IN WHOLE OR IN PART WITH SUCH FUNDS BY ASSESSING ANY AMOUNT AGAINST PROPERTIES OWNED AND OCCUPIED BY PERSONS OF LOW AND MODERATE INCOME, INCLUDING ANY FEE CHARGED OR ASSESSMENT MADE AS A CONDITION OF OBTAINING ACCESS TO SUCH PUBLIC IMPROVEMENTS UNLESS (A) SUCH FUNDS ARE USED TO PAY THE PROPORTION OF SUCH FEE OR ASSESSMENT THAT RELATED TO THE CAPITAL COSTS OF SUCH PUBLIC IMPROVEMENTS THAT ARE FINANCED FROM REVENUE SOURCES OTHER THAN SUCH FUNDS; OR (B) FOR PURPOSES OF ASSESSING ANY AMOUNT AGAINST PROPERTIES OWNED AND OCCUPIED BY PERSONS OF MODERATE INCOME, THE CONTRACTOR CERTIFIES THAT IT LACKS SUFFICIENT FUNDS UNDER THIS CONTRACT TO COMPLY WITH THE REQUIREMENTS OF CLAUSE (A).
- (5) IN THE EVENT THAT DISPLACEMENT OF RESIDENTIAL DWELLINGS WILL OCCUR IN CONNECTION WITH A PROJECT ASSISTED WITH TCDP FUNDS, IT WILL FOLLOW A RESIDENTIAL ANTIDISPLACEMENT AND RELOCATION ASSISTANCE PLAN, AS SPECIFIED BY THE OFFICE.
- (6) IT SHALL ADOPT AND ENFORCE A POLICY PROHIBITING THE USE OF EXCESSIVE FORCE BY LAW ENFORCEMENT AGENCIES WITHIN ITS JURISDICTION AGAINST ANY INDIVIDUAL ENGAGED IN NONVIOLENT CIVIL RIGHTS DEMONSTRATIONS AND A POLICY OF ENFORCING APPLICABLE STATE AND LOCAL LAWS AGAINST PHYSICALLY BARRING ENTRANCE TO OR EXIT FROM A FACILITY OR LOCATION WHICH IS THE SUBJECT OF SUCH NONVIOLENT CIVIL RIGHTS DEMONSTRATION WITHIN ITS JURISDICTION.

CERTIFICATION REGARDING LOBBYING FOR  
CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTSCounty of Polk

CERTIFIES, TO THE BEST OF ITS KNOWLEDGE AND BELIEF, THAT:

(1) NO FEDERAL APPROPRIATED FUNDS HAVE BEEN PAID OR WILL BE PAID, BY OR ON BEHALF OF THE UNDERSIGNED, TO ANY PERSON FOR INFLUENCING OR ATTEMPTING TO INFLUENCE AN OFFICER OR EMPLOYEE OF AN AGENCY, A MEMBER OF CONGRESS, AN OFFICER OR EMPLOYEE OF CONGRESS, OR AN EMPLOYEE OF A MEMBER OF CONGRESS IN CONNECTION WITH THE AWARDING OF ANY FEDERAL CONTRACT, THE MAKING OF ANY FEDERAL GRANT, THE MAKING OF ANY FEDERAL LOAN, THE ENTERING INTO OF ANY COOPERATIVE AGREEMENT, AND THE EXTENSION, CONTINUATION, RENEWAL, AMENDMENT, OR MODIFICATION OF ANY FEDERAL CONTRACT, GRANT, LOAN, OR COOPERATIVE AGREEMENT.

(2) IF ANY FUNDS OTHER THAN FEDERAL APPROPRIATED FUNDS HAVE BEEN PAID OR WILL BE PAID TO ANY PERSON FOR INFLUENCING OR ATTEMPTING TO INFLUENCE AN OFFICER OR EMPLOYEE OF ANY AGENCY, A MEMBER OF CONGRESS, AN OFFICER OR EMPLOYEE OF CONGRESS, OR AN EMPLOYEE OF A MEMBER OF CONGRESS IN CONNECTION WITH THIS FEDERAL CONTRACT, GRANT, LOAN, OR COOPERATIVE AGREEMENT, THE UNDERSIGNED SHALL COMPLETE AND SUBMIT STANDARD FORM - LLL, "DISCLOSURE FORM TO REPORT LOBBYING", IN ACCORDANCE WITH ITS INSTRUCTIONS.

(3) THE UNDERSIGNED SHALL REQUIRE THAT THE LANGUAGE OF THIS CERTIFICATION BE INCLUDED IN THE AWARD DOCUMENTS FOR ALL SUBAWARDS AT ALL TIERS (INCLUDING SUBCONTRACTS, SUBGRANTS, AND CONTRACTS UNDER GRANTS, LOANS, AND COOPERATIVE AGREEMENTS) AND THAT ALL SUBRECIPIENTS SHALL CERTIFY AND DISCLOSE ACCORDINGLY.

THIS CERTIFICATION IS A MATERIAL REPRESENTATION OF FACT WHICH RELIANCE WAS PLACED WHEN THIS TRANSACTION WAS MADE OR ENTERED INTO. SUBMISSION OF THIS CERTIFICATION IS A PREREQUISITE FOR MAKING OR ENTERING INTO THIS TRANSACTION IMPOSED BY SECTION 1352, TITLE 31, U.S. CODE. ANY PERSON WHO FAILS TO FILE THE REQUIRED CERTIFICATION SHALL BE SUBJECT TO A CIVIL PENALTY OF NOT LESS THAN \$10,000 AND NOT MORE THAN \$100,000 FOR EACH SUCH FAILURE.

#4(N.)

COPY

SAND, CLAY, AND GRAVEL LEASE

VOL. 54 PAGE 953

THIS SAND, CLAY, AND GRAVEL LEASE (this "Agreement"), is made effective June 1, 2008 (the "Effective Date"), between RMS TEXAS TIMBERLANDS I LP, whose Federal Tax ID Number is 83-0465482 and whose business address is P.O. Box 359, Livingston, Texas 77351 ("Grantor"), and POLK COUNTY PCT. 4, whose business address is Polk County PCT. 4, c/o County Judge, 101 West Church Street, Suite 300, Livingston, Texas 77351 (the "Operator").

WITNESSETH:

That Grantor, in consideration of the premises and the covenants herein-below described, and other good and valuable consideration the receipt and adequacy of which is hereby acknowledged does hereby let, lease and demise unto the Operator for the sole purpose of mining, loading, and otherwise handling sand, gravel, clay and other similar materials, from an existing pit containing five acres, more or less, the approximate location of which is shown marked on the Exhibit "A" attached hereto and made a part hereof, being situated in Polk County, Texas (the "Leased Premises"). As used in this Agreement the term "sand, gravel, clay and other similar materials" shall mean the sand/soil material, excluding the topsoil overburden, occurring on the Leased Premises that is suitable for use as road surface and base fill material on county roads. (the "Products").

1. Term of the Agreement. Subject to the provisions herein, the "Term" of this Agreement shall be for one year from the Effective Date.
2. Royalty Payments. Operator agrees to pay to Grantor as a "Royalty" an amount equal to \$1.50 per cubic yard for the first 5,000 cubic yards of Products removed from the Leased Premises. Operator shall pay Grantor \$5.00 per cubic yard for the amount of Products over 5,000 cubic yards removed from the Leased Premises under the terms of this Agreement. All Royalty shall be paid on the basis of monthly settlements, supported by detailed daily records, which shall be maintained by Operator and sent to Grantor with each settlement. Grantor shall receive all such rental payments no later than the 10th day of the following calendar month at the address specified below.
3. Determination of Quantity of Products Mined. Operator agrees to use reasonable, proper and accurate methods, for determining the quantity of Products transported from the Leased Premises by Operator. Operator shall also comply with all further reasonable rules and regulations that Grantor may prescribe from time to time for the calculation and payment of Royalty.
4. Preservation of Records. Operator shall keep and preserve for not less than one year past the termination of this Agreement accurate books of account ("Records"), showing the quantity of Products mined and removed by Operator from the Leased Premises.
5. Access to the Records and the Right to Obtain Information from Transporters. Grantor and its agents shall have access at all reasonable business hours to the Records of Operator to conduct an audit. Operator hereby grants to Grantor, or its agents, the right to obtain from any railroad, towing, trucking or other common carrier (collectively "Transporter") on which Products mined under this Agreement shall be shipped, information as to the quantity of Products mined under this Agreement and shipped through the Transporter at the time, or times, as Grantor may desire the information, and this provision shall constitute full authority without any further express authority to the Transporter to give the information to Grantor, its agents, or assigns.
6. Lien on property of Operator. All Royalty or other payments required to be made in this Agreement shall be and always remain and constitute, until paid to Grantor, a lien upon all property of Operator which shall be brought upon the Leased Premises, and upon the leasehold estate hereby created, but only insofar as such a lien is granted to landlords by the law of the State of Texas.
7. Grantor's Right to Remove Products From the Leased Premises. Grantor reserves the right to remove Products for its own use from the Leased Premises during the Term of this Agreement and the parties



hereto agree to mutually cooperate each with the other should their operations be conducted simultaneously.

8. Limitation of Rights Granted. The rights and privileges granted by this Agreement are limited to the rights and privileges Grantor possesses and has lawful right to grant, and this Agreement shall not be construed as granting or attempting to grant to Operator any rights and privileges other or more than those that are vested in Grantor. Nothing contained herein shall otherwise affect or impair Grantor's rights as owner of the Leased Premises and any property of Grantor's adjacent thereto. No act shall be committed either by Operator or the agents, representatives, contractors or assigns of Operator, that may be detrimental or hazardous to Grantor's use of its property.
9. No Representations. Grantor disclaims all representations and warranties, whether express, implied, or statutory, concerning the Leased Premises. Operator acknowledges and agrees that the Leased Premises are accepted in an "as is" and "where is" condition with all faults. Operator acknowledges that: it is accepting this Agreement based on Operator's own investigation of the Leased Premises, including its subsurface rights and conditions; that Grantor, its agents, consultants, employees, and other persons acting for Grantor have not made any representations or warranties of any kind about any matter relating to the condition, value, fitness, or use of the Leased Premises for the intended purpose; and that it has not relied, directly or indirectly, upon any such representations or warranties.
10. Third Party Rights. Nothing herein shall be construed as a conveyance of any part of the ownership of the Leased Premises or the mineral rights underlying the Leased Premises or the hunting, fishing or other recreational rights thereon. The rights granted in this Agreement are subject to all liens, rights of way, oil, gas and mineral leases, timber deeds, hunting leases and other grants or rights of any kind or nature whatsoever affecting the Leased Premises. Operator covenants with Grantor that in Operator's operations under this Agreement it will not knowingly violate any of the terms, provisions and conditions of any such agreements under which Grantor owns the Leased Premises and will not knowingly violate the rights of any third persons not parties to this Agreement, whether those rights are documented or apparent from an examination of the Leased Premises.
11. Exceptions and Reservations. Grantor excepts and reserves all water, forest products, and other substances not specifically conveyed under this Agreement for all purposes together with full and free rights of ingress and egress as may be necessary or convenient in the proper development thereof or of other lands.
12. Reservation of Rights of Use. Grantor expressly reserves the right of use of the Leased Premises for purposes which are not inconsistent with the privileges granted herein.
13. Due Regard for Grantor's Interest. Operator shall always act in good faith, competently, and with due regard for Grantor's interest while pursuing its own. Operator shall conduct itself as would other members of the industry (national standard) in similar circumstances and make decisions with due regard to the interests of Grantor and the long term business relationship between Grantor and Operator, as well as Operator's own interest. Operator shall employ modern techniques and equipment that is properly maintained according to national standards in the exercise of the rights granted it under this Agreement.
14. Grantor's Inspection of the Mine. Grantor, shall have the right after reasonable notice to Operator to enter Operator's mines on the Leased Premises and the mines of Operator on other lands operated in conjunction with the Leased Premises from time to time in order to inspect, examine, survey or measure the mining operations of Operator, or any part thereof, as well as mined out areas. Grantor shall be able to freely use the means of access to the mining operations of Operator without hindrance or molestation by Operator and without being required by Operator to sign or execute any release, indemnity or similar document.

15. Abstracts of Title and Title Opinions. If Operator obtains or has in its possession any title opinions or abstracts of title that bear on all or any part of the Leased Premises (the "Documents"), Operator, as additional consideration for Grantor granting this Agreement, shall deliver to Grantor a copy of the Documents. The Documents shall be delivered to Grantor within 30 days of the Effective Date hereof or within 30 days from the date the Documents first become available to Operator (whichever date is earlier).
16. Operator's Release of Claim Against Grantor. As used in this paragraph the term "Grantor" shall include, collectively and individually, Resource Management Service, LLC, RMS Texas Timberlands I LP, and their respective officers, directors, shareholders, members, managers, partners, representatives, employees, lien holders, agents, consultants and successors and assigns. It is understood and agreed by and between Grantor and Operator that as a further consideration for Grantor executing this Agreement Operator does hereby release and discharge Grantor, from all liability, claim or demand which Operator may have or claim to have, now or hereafter, against Grantor by reason of any damage to any property of whatever kind or nature which may be now or hereinafter placed in, on, or about the Leased Premises resulting from, arising out of, or in any manner associated with: any operation of Grantor in the management of its properties; any actions of Grantor's existing or future lessees, including its hunting club lessees; or the actions of any other party not a party to this Agreement. All such property of whatever kind or nature which may be now or hereinafter placed in, on, or about the Leased Premises shall be at the sole risk of Operator, and Grantor shall not be liable to Operator for any damage or loss to: such property or for any injury taking place on the Leased Premises. Notwithstanding anything herein to the contrary the provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.
17. Operator's Use of the Surface of the Leased Premises or Adjacent Lands. Operator shall have the right to use so much of the surface of the Leased Premises as is reasonably necessary for the operations permitted under this Agreement subject to the following terms and conditions:
  - 17.1. Grantor's Use of the Leased Premises. It is specifically understood and agreed that the rights granted under this Agreement shall not interfere with or inconvenience Grantor or its affiliates in the growth, production, cutting and transportation of timber and wood from the balance of its lands not specifically included in the Leased Premises, whether such land is now owned or hereafter acquired. The rights specifically reserved unto Grantor are reserved not only for the use of Grantor, its successors and assigns, but also for the use and benefit of all other persons or entities with whom Grantor may conduct business and from whom Grantor may purchase, or to whom Grantor may sell, timber and wood. Such uses, however, shall not unreasonably interfere with or prevent the use of the Leased Premises by Operator for the purpose contemplated by this Agreement.
  - 17.2. Grantor's Reservation of Forest Products. Operator recognizes, that Grantor owns the Leased Premises for the purpose, among other things, of growing, cutting, removing and processing timber and forest products and Operator assumes the risk of the use of the Leased Premises. Grantor reserves the right to the forest products on the Leased Premises and shall have the right to salvage for its account all or so much of the forest products from the Leased Premises as it desires within 60 days of the Effective Date and thereafter until such forest products are removed by Operator. Forest products not salvaged by Grantor may be removed by Operator, provided they are cut and stacked in such a way to prevent hazards from fire and insect infestation to forest products on the Leased Premises and on adjacent lands, stipulated by, or acceptable to Grantor. Grantor shall have a continuing right to cultivate, grow and remove any remaining forest products located on the Leased Premises.
  - 17.3. Timber Damage and Precautionary Actions. Operator agrees and covenants to pay Grantor, at the then market value, for any of Grantor's timber lying off the Leased Premises destroyed or damaged from acts or omissions of Operator, its employees, agents, or contractors. All

stumps, brush, limbs or other debris of any kind which Operator desires to clear from the Leased Premises shall be placed, piled, and burned or otherwise disposed of in such manner that there will be no increased fire, insect or disease hazards to the timber of Grantor on or near the Leased Premises or defacement of the timber or other property of Grantor. No stumps, brush, limbs or other debris shall be burned, piled or placed on property of Grantor lying outside the Leased Premises. Operator shall not cut or injure any tree or nail or otherwise permanently fasten any flag, streamer, sign, wire, or other object to any tree located off the Leased Premises without the written permission of Grantor. If Operator causes damage to any tree off the Leased Premises it shall, within twenty-four (24) hours from the time of such damage, spray all damaged portions of such trees with an insecticide approved by Grantor.

- 17.4. Operator's Rights of Ingress and Egress. Operator shall have the right of ingress and egress over adjacent lands of Grantor, provided, in exercising its right of ingress and egress in mining, hauling or transporting the Products, it shall use as a route or routes roads acceptable to Grantor. Grantor and their employees, agents, contractors, and assigns shall have the right in common with Operator to use any such roads in such manner as not to interfere unreasonably with Operator's operations. Operator may construct a new road on Grantor's property with the prior written consent of Grantor, provided, any roads constructed by Operator on Grantor's land (except those lost in reclamation) shall, at Grantor's option, become the property of Grantor or be reclaimed and restored as nearly as possible to their original condition upon cessation of mining operations by Operator at its sole expense.
- 17.5. Damage to Grantor's Roads and other Property of Grantor. Operator agrees to repair all damage which may arise to bridges, buildings, fences, machinery, roads or other property of Grantor caused, directly or indirectly, by Operator, its contractors, employees, or agents. Any property of Grantor damaged by Operator, whether directly or indirectly, shall be restored to substantially its former condition at the sole cost of Operator. If Operator cannot replace or restore the damaged property to substantially its former condition it shall pay Operator the fair market value of such damaged or destroyed property.
- 17.6. Maintenance of the Leased Premises by Operator. Operator shall maintain the Leased Premises in good repair, keeping it, always, in a safe and clean condition. Operator shall not permit its employees, consultants, agents, or contractors to deposit or scatter any type of waste, broken equipment, used cans or containers, or other debris or leave any packaging materials, oil cans, drink cans, food wrappers, equipment parts, or other debris of any kind on the Leased Premises or any land owned or controlled by Grantor.
- 17.7. No Hunting and Fishing. Operator shall not use the Leased Premises for any purpose other than to conduct operations authorized under the terms of this Agreement. It shall not permit its employees, consultants, agents, or contractors to hunt, fish, or camp on any of Grantor's lands.
- 17.8. Fires. Without the written permission of Grantor, Operator shall not permit its employees, consultants, agents, or contractors to set or use any open fire on the Leased Premises or adjoining land and it shall notify Grantor's local representative immediately if any open fire is observed on the Leased Premises or on adjoining lands. If any fires, explosions or other hazards are reasonably associated with Operator's operations on any lands of Grantor, or of any landowner adjacent to Grantor, caused as a direct or indirect result of Operator's operations hereunder, Operator shall reimburse Grantor and such adjoining landowner for any costs and expenses reasonably incurred in the fighting thereof and in the consequential cleanup of and reparation from any fires, explosions or other hazards caused directly or indirectly by Operator's acts or omissions, whether through Operator's own negligence or otherwise.

18. Operator's Compliance with Laws. Operator shall comply with all laws and ordinances and with the rules and regulations of any codes of Federal, State or local authority applicable to the condition, protection or use of the Leased Premises, including the Endangered Species Act of 1973, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response Compensation and Liability Act, Clean Water Act and the Clean Air Act. Operator also agrees that its construction upon and use of the Leased Premises shall comply with the applicable state's guidelines for Best Management Practices commonly used in the forestry industry, and including, without limitation, the provisions thereof dealing with soil erosion and water quality.
19. Permits and Licenses. Operator shall have the full responsibility of obtaining all required federal, state and local consents, approvals, permits or licenses and shall fully comply with all of the laws, rules, regulations and requirements of any federal, state or local government, authority, agency, commission or regulatory body insofar as the same may apply to Operator's operations hereunder, and particularly as such laws, rules, regulations and requirements may relate to protection of the environment, water and air.
20. Insurance Requirements. As used in this paragraph, the term "Grantor" shall include, collectively and individually, Resource Management Service, LLC, RMS Texas Timberlands I LP, and their officers, directors, employees, agents, consultants and successors and assigns. Operator shall obtain and keep in full force and effect throughout the term of this Agreement adequate insurance, including broad form blanket contractual liability coverage and a waiver of subrogation by the insurance company to claims against Grantor including the following coverage:
- 20.1.1. Worker's Compensation. Worker's compensation insurance covering all employees engaged in operations on the Leased Premises in compliance with the laws and meeting the requirements of the state in which such lands are located and Employee's Liability Insurance of not less than Five Hundred Thousand Dollars (\$500,000.00) for injuries to or death of any one employee and Five Hundred Thousand Dollars (\$500,000.00) for injuries to or death of more than one employee resulting from any one accident;
- 20.1.2. General Public Liability and Property Damage. General Public Liability and Property Damage in connection with all operations conducted hereunder, with bodily injury and death limit of not less than Six Million Dollars (\$6,000,000.00) for injuries to or death of any one person resulting from any one accident, not less than Six Million Dollars (\$6,000,000.00) for injuries to or death of more than one person resulting from any one accident, and Six Million Dollars (\$6,000,000.00) aggregate. Provided further, that such property damage insurance shall not exclude liability for loss of or damage to property on or above the surface of the earth arising from operations carried out pursuant to this Agreement;
- 20.1.3. Automobile Public Liability and Property Damage. Automobile Public Liability and Property Damage Insurance in connection with all operations conducted hereunder (including coverage on owned and non-owned automotive equipment) with bodily injury or death limit of not less than One Million Dollars (\$1,000,000.00) for injuries to or death of any one person resulting from any one accident, and not less than One Million Dollars (\$1,000,000.00) for injuries to or death of more than one person resulting from any one accident, and property damage limit of not less than Three Hundred Thousand Dollars (\$300,000.00) per accident; and
- 20.1.4. Umbrella Coverage. Umbrella Coverage Insurance in the amount of at least Two Million Dollars (\$2,000,000.00).

- 20.1.5. Subcontractors. Any subcontractors must also meet the same insurance requirements except with respect to the coverages required under subsection 20.3.2., the limits must be at a minimum of \$2,000,000 (for each occurrence and in the aggregate) for each such subcontractor rather than the limits stated above; and Operator is responsible to ensure that these requirements are met.
- 20.2. Certificates of Insurance. Operator shall, before commencement of any operations on the Leased Premises, and annually thereafter during the term of this Agreement, furnish Grantor with valid insurance certificates that name Resource Management Service, LLC and RMS Texas Timberlands I LP as additional insureds and evidence the above described coverage. The certificates of insurance shall be issued by an insurance carrier having an A.M. Best's Rating of at least "A" minus and of financial size category of "X" or in a form satisfactory to Grantor. The insurance certificate shall provide that the limits thereunder shall not be changed nor the insurance described therein modified or canceled until thirty (30) days after prior written notice of such change of limits, modification or cancellation has been provided to Grantor. The insurance certificates shall be originals issued by Operator's insurance carrier or agent and shall not be a copy of a previously issued certificate. If the insurance policies maintained by Operator under Subparagraphs 20.3.2 and 20.3.3, above, provide for single limit coverage, the minimum coverage shall be Six Million Dollars (\$6,000,000.00). This provision shall not in any way limit the obligation of Operator to defend, indemnify and hold Grantor harmless, as such obligation of Operator shall both include and extend beyond the limits of the above described insurance policies and survive termination of this Agreement. In the event Operator fails to provide such insurance coverage or evidence thereof, Grantor shall have the right to terminate this grant of easement by filing a Notice of such termination in the land records.
21. Payment of Taxes. Operator shall pay all taxes, levies or assessments that may be legally assessed, imposed or levied by any governmental authority upon or with respect to: this Agreement or the leasehold estate hereby created; all improvements and other property placed upon the Leased Premises by Operator pursuant to this Agreement; or the exercise of any right or privilege in connection with Operator's operations under this Agreement, when the same become due. If any such taxes are paid by Grantor, Operator shall repay to Grantor the amount thereof upon demand. Operator shall not be responsible for any taxes attributable to any improvements, works, or other property placed on the Leased Premises by Grantor, its predecessors in title, or any party other than Operator. If Operator shall pay any such taxes for the protection of its interests under this Agreement, Grantor shall reimburse Operator upon demand, or Operator may at its option deduct the payment from any payment thereafter becoming due from Operator to Grantor under this Agreement.
22. Defaults and Remedies.
- 22.1. Definition of Default. Operator shall be in "Default" if it shall at any time fail to meet its pecuniary obligations under this Agreement and the failure continues for 10 days, or longer or shall fail to perform or be guilty of a breach of any one or more of any of the other terms, conditions, covenants, stipulations, and agreements of this Agreement relating to matters other than the payment of money and shall fail within 30 days after written notice of the breach shall have been given by Grantor to Operator, to cure the breach, if cure is possible within the 30 day period, or if not to start to cure and thereafter diligently pursue cure of any breach.
- 22.2. Late Charge for Delinquent Payment. If Operator shall at any time fail to pay as and when due any of the sums of money required to be paid under the terms of this Agreement it shall pay Grantor a "Late Charge" equal to 20% of the total amount due along with the amount owed.
- 22.3. Forfeiture. If Operator is in Default, Grantor shall have the right to terminate this Agreement and to enter the Leased Premises and hold and possess the same, and all the property of the

Operator thereon, free and acquit from any claims of Operator thereto. Grantor shall have the right to reclaim the Leased Premises and remove any property of Operator at Grantor's direction, but Operator's sole expense.

- 22.4. No Waiver. A waiver by Grantor of any Default under this Agreement shall not prevent the right of Grantor to forfeit this Agreement for any other cause, or for the same cause continuing or occurring at any other time. The receipt by Grantor from Operator of payments after the occurrence of any Default, or the continued recognition by Grantor of Operator as its tenant after the occurrence of any Default shall not be deemed a waiver of Grantor's right of forfeiture, so long as the cause of forfeiture continues to exist. Receipt and acceptance by Grantor of any amounts tendered by Operator shall not constitute an Agreement by Grantor that the amounts are the proper amounts due or a waiver of Grantor's claims for greater amounts. All payments by Operator to Grantor shall apply on the items longest past due, and the receipt of any such payment shall not be a waiver either of the right of distress or the right of forfeiture or any other remedy available to Grantor regarding items which remain undischarged after crediting the payments.
23. Removal of Improvements and Equipment. On or before the end of the Term of this Agreement, Operator shall remove from the Leased Premises all machinery, equipment and other personal property that has been placed upon the Leased Premises by Operator unless the period is extended by written consent of Grantor. Any personal property not so removed shall, at Grantor's option, be and become the property of Grantor or be removed from the Leased Premises at the direction of Grantor, but at the sole expense of Operator.
24. Reclamation of the Leased Premises. Upon the completion of its mining operations hereunder or upon the termination of this Agreement by either party, whichever occurs sooner, Operator agrees to scarify, smooth up, and grade all pit areas on the Leased Premises so that the slope of each such pit area will have three to one ratio (3:1) or less. Further, Operator agrees to provide a drainage outlet for all such pit areas and evenly redistribute the topsoil overburden.
25. Data to be Supply to Grantor. Upon termination of this Agreement for any cause, Operator shall furnish to Grantor all factual data it obtained during the course of operations on the Leased Premises, including but not limited to, logs, core analysis, maps, drill-hole locations, depths and all other similar or related information.
26. Release of this Agreement. After termination of this Agreement for any reason, Operator shall within thirty (30) days after written demand by Grantor furnish Grantor with a recordable act evidencing the termination of this Agreement. If Operator fails to furnish the required act within thirty (30) days of receipt of the demand, Operator shall be liable to Grantor for all damages resulting therefrom and for reasonable court costs and attorneys' fees incurred to secure cancellation of this Agreement of record, regardless of whether a suit is filed.
27. Assignments. This Agreement may not be assigned in whole or in part by Operator without the prior written consent of Grantor. If there is any such assignment, Operator will in no way be released from any of its pecuniary obligations under this Agreement or the performance of any of the other obligations or conditions herein contained. If Operator, or any subsequent assignee of Operator, assigns an undivided interest in this Agreement to two or more parties, Grantor may require such assignees to designate one party to receive Notices required by this Agreement.
28. Notices and Payments. Each notice, payment, communication, advice, and demand (collectively each "Notice") shall be in writing. Notice may be given by hand delivery, overnight courier, and United States mail. All Notices shall be properly addressed or otherwise directed to the recipient, with all postage and other charges being paid by the Party giving Notice. If Notice is given by United States Mail, Return Receipt Requested, that Notice shall be deemed to be effective at noon, local time at the

address to which the Notice was directed, on the second day (exclusive of Saturday, Sunday, and postal holidays) after the Notice was deposited in the United States Mail postage prepaid. Otherwise, Notice shall be effective when received by the Party being notified. The present address of Grantor and Operator for purposes of Notice and payments is:

If to Grantor: Mr. Jeff Waits  
RMS Texas Timberlands I LP  
P.O. Box 359  
Livingston, TX 77351  
  
Phone: (936) 967-5921

If to Operator: Polk County Pct. 4  
c/o County Judge  
101 West Church Street, Suite 300  
Livingston, Texas 77351

Any party to this Agreement may change its address to another address within the continental United States by giving ten days' written Notice to the other Party(s).

29. Prior Agreements. This Agreement constitutes the sole and entire existing Agreement between Grantor and Operator and expresses all the obligations of and the restrictions imposed upon Grantor and Operator. All prior Agreements and commitments, whether oral or written, between the parties are either superseded by specific paragraphs of this Agreement or, without such coverage, specifically withdrawn.
30. Headings. The use of headings in this Agreement is solely for the convenience of indexing the various paragraphs and shall in no event limit or define or otherwise affect any provision in this Agreement.
31. Amendments. This Agreement is subject to amendment, alteration or addition only by mutual Agreement in writing between the parties.
32. Construction. In construing this Agreement: no consideration shall be given to the captions of the articles, sections, subsections, or clauses, which are inserted for convenience in locating the provisions of this Agreement and not as an aid in its construction; no consideration shall be given to the fact or presumption that one party had a greater or lesser hand in drafting this Agreement; examples shall not be construed to limit, expressly or by implication, the matter they illustrate; the word "includes" and its derivatives mean "includes, but is not limited to" and corresponding derivative expressions; a defined term has its defined meaning throughout this Agreement, regardless of whether it appears before or after the place in this Agreement where it is defined; the plural shall be deemed to include the singular, and vice versa; each gender shall be deemed to include the other genders; and each exhibit, attachment, and schedule (if any) to this Agreement is a part of this Agreement, but if there is any conflict or inconsistency between the main body of this Agreement and any exhibit, attachment, or schedule, the provisions of the main body of this Agreement shall prevail.
33. Unenforceable Provisions. If any provision of this Agreement is deemed illegal, against public policy, or unenforceable, said provision shall not affect the validity and enforceability of the remainder of this Agreement, but such unenforceable provision shall be deleted, and the remaining terms and provisions of this Agreement shall be interpreted in a manner which most closely causes the apparent intentions of the parties as evidenced by this Agreement.
34. Applicable Law and Jurisdiction. This Agreement shall be construed and enforced under the laws of the state where the Leased Premises is located. Any claim or controversy arising out of, or relating to, this Agreement or the breach or interpretation thereof, shall be submitted to a panel of mediators

composed of three disinterested persons, of whom Grantor and Operator shall each appoint one and the two mediators so appointed shall appoint the third, the award of any two of whom shall be final if accepted in writing by the parties, whether or not accepted shall be a condition precedent to the institution of any legal proceedings hereunder. If a party fails to appoint a mediator within fifteen (15) days after the occurrence of the event giving rise to need for the mediator, or the two mediators shall fail to appoint the third mediator within twenty-five (25) days of the occurrence of the event giving rise to their appointment, then a party may apply to a court of competent jurisdiction to make the appointment.

TO HAVE AND TO HOLD the aforesaid rights, privileges, and Agreement unto Operator, its successors and assigns, subject to the conditions, limitations and restrictions contained herein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

WITNESSES

RMS TEXAS TIMBERLANDS I LP

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
ITS:

WITNESSES

POLK COUNTY PCT. 4

Jan Handley  
\_\_\_\_\_

By: John P. Thompson  
John P. Thompson  
County Judge

Jan Handley  
\_\_\_\_\_

By: Tommy Overstreet  
Tommy Overstreet  
Commissioner Pct. 4.



ACKNOWLEDGMENTS

STATE OF TEXAS §  
COUNTY OF \_\_\_\_\_ §

This day personally appeared before me, the undersigned authority in and for the foregoing jurisdiction, \_\_\_\_\_ who acknowledged to me that he is the \_\_\_\_\_ of RMS TEXAS TIMBERLANDS I LP, and that he executed and delivered the foregoing instrument as of the Effective Date as the act and deed of said company, being duly authorized so to do.

Given under my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2008.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

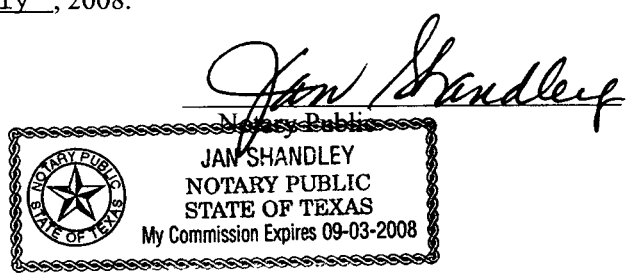
STATE OF TEXAS §  
COUNTY OF POLK §

This day personally appeared before me, the undersigned authority in and for the foregoing jurisdiction, JOHN P. THOMPSON who acknowledged to me that he is the COUNTY JUDGE of POLK COUNTY PCT. 4, and that he executed and delivered the foregoing instrument as of the Effective Date, as the act and deed of said county, being duly authorized so to do.

Given under my hand and seal this 22 day of July, 2008.

My Commission Expires: \_\_\_\_\_

09-03-2008



STATE OF TEXAS §  
COUNTY OF POLK §

This day personally appeared before me, the undersigned authority in and for the foregoing jurisdiction, TOMMY OVERSTREET who acknowledged to me that he is the COMMISSIONER of POLK COUNTY PCT. 4, and that he executed and delivered the foregoing instrument as of the Effective Date, as the act and deed of said county, being duly authorized so to do.

Given under my hand and seal this 22 day of July, 2008.

My Commission Expires: \_\_\_\_\_

09-03-2008

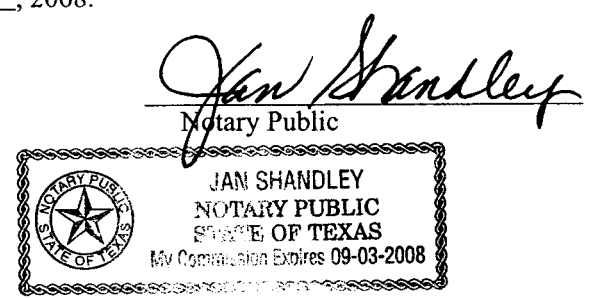
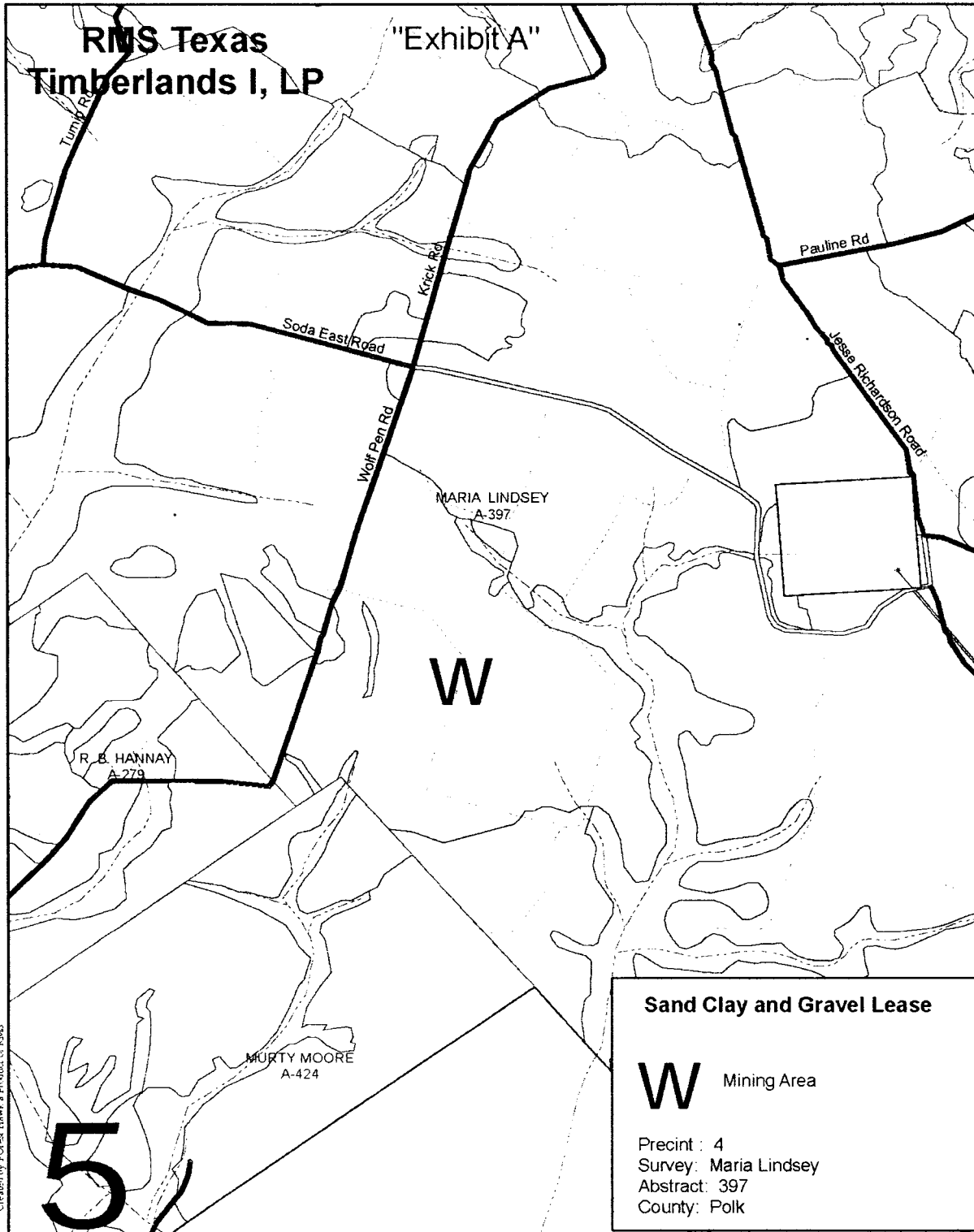
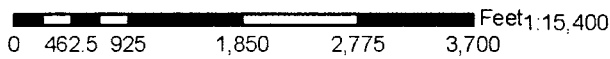


EXHIBIT "A"  
ATTACHED TO AND MADE A PART OF SAND, CLAY, AND GRAVEL LEASE BETWEEN  
RMS TEXAS TIMBERLANDS I LP AND POLK COUNTY PCT. 4



Created by Forest Hawk, a Product of RMS



This map is not warranted for completeness or accuracy



#460.)

VOL. 54 PAGE 964



COPY

BE IT RESOLVED, that the Commissioners Court of Polk County convened in a regularly called session on the 22<sup>nd</sup> day of July 2008, in the Commissioners Courtroom of the Polk County Courthouse in Livingston, Texas with the following Members present and representing a quorum; John P. Thompson, County Judge; Robert C. "Bob" Willis, Commissioner, Pct.1; Ronnie Vincent, Commissioner, Pct.2; Charles T. "Tommy" Overstreet, Commissioner, Pct.4; Absent: James J. "Buddy" Purvis, Commissioner, Pct. 3

WHEREAS, with a quorum of the Court present; and

WHEREAS, it was duly moved and seconded that the following resolution be adopted:

NOW, THEREFORE, BE IT RESOLVED, that the Polk County Commissioners Court do hereby authorize John P. Thompson, County Judge to negotiate, on terms and conditions that he may deem advisable, a contract or contracts with the Texas Department of Aging and Disability Services, and to execute the contract or contracts on behalf of Polk County, Texas, and further do hereby give him the power and authority to do all things necessary to implement, maintain, amend, renew or request closure of the contract.

Passed and Approved this 22<sup>nd</sup> day of July, 2008.

*John P. Thompson*

**John P. Thompson**  
County Judge, Polk County, Texas

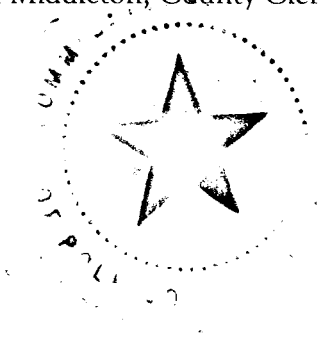
Attest:

*Barbara Middleton*

Barbara Middleton, County Clerk

July 24, 2008

Date



IN THE COMMISSIONERS COURT OF  
POLK COUNTY, TEXAS

ACCEPTANCE FOR PUBLIC MAINTENANCE  
CERTAIN ROADS SET ASIDE IN FINAL  
PLAT OF THE Lake Livingston Estates Sec. 5 SUBDIVISION  
OF POLK COUNTY, TEXAS

#4(P.)

BE IT REMEMBERED, that on the 23 day of April, 1973, the Commissioners Court of Polk County, Texas did approve and file of record in the Minutes of the Polk County Commissioners Court the final plat of Lake Livingston Est. Sec. 5 subdivision, approval of said Final Plat appearing of record in Vol. 20, Page 140 of the Minutes of the Commissioners Court of Polk County, Texas and

WHEREAS, a copy of said Final Plat of the Lake Livingston Est. Sec. 5 Subdivision was also filed of record in Vol. 5, Page 45, of the Deed Records of Polk County, Texas, and

WHEREAS, said Final Plat, as publicly recorded, contained a dedication of roads and streets within said Subdivision to the Public for purposes of ingress and egress into, upon and within said Subdivision, and

WHEREAS, the Commissioners Court of Polk County, Texas, in the exercise of discretion vested upon said Commissioners Court by Chapter 81 of the Texas Local Government Code, and Chapter 251 of the Texas Transportation Code, finds that the public interest would be served by the extension of public maintenance by Polk County, Texas to the following specifically named roads within the Lake Livingston Est. Sec. 5 Subdivision:

1. South Circle Drive (road name), beginning at a point of intersection with Blue Finn St. (Existing Road), and extending 2267.6 feet to the SW (direction), to a (a point of intersection with Lake Livingston Blvd. (Existing Road) or a point of terminus.
2. (Repeat for each road to be accepted for maintenance.)

WHEREAS, it would be in the best interest of the citizens of Polk County to accept the dedication of the right-of-way described in the Final Plat of the Lake Livingston Est. Sec. 5 Subdivision, and

WHEREAS, the inclusion of the roads identified above into the Polk County transportation system would increase the convenience to the public, insure better transportation within the county, and generally contribute to the economic and social benefit of Polk County, Texas, and

WHEREAS, by way of this acceptance of said dedication, the public would acquire a public

interest by dedication in said road and right-of-way as of the 6 day of April, 1973, and Polk County, Texas would hereafter maintain such road or Street within the Lake Livingston Est. Sec 5 Subdivision, until such time as the continued maintenance of said road should be formally discontinued by this Court.

THEREFORE, Be It Resolved, that the undersigned members of the Commissioners Court of Polk County, Texas, acting pursuant to authority vested in said court, do hereby accept the above and foregoing Dedication of a Public Interest in the above and foregoing road(s) or streets within, upon, and across the Lake Livingston Est. Sec 5 Subdivision, said right-of-way being of such widths and dimensions as are set forth in the Final Plat of said Subdivision as filed of record as heretofore described, and that such Acceptance of Dedication is made on behalf of and as the act and deed of Polk County, Texas.

IT IS FURTHER Resolved and Ordered that the original Dedication, and this Resolution and Order of Acceptance of said Dedication, be filed in both the Minutes of the Commissioners Court of Polk County, Texas, as well as the Deed Records of Polk County, Texas, and that such filing shall serve as public evidence of the said dedication and acceptance by way of this Order.

IT IS FURTHER Resolved and Ordered that a map of the road described in this Order be prepared and inserted into the Polk County Road Map, as filed of record in the Minutes of the Commissioners Court of Polk County, Texas.

DATE: 7.22.08

APPROVED: *John P. Slavetto*  
County Judge

As Commissioner of Precinct No. 2, Polk County, Texas, I verify that I have inspected the road/s described within the Order and that said road/s have been constructed to and currently meet the minimum standards set out within the Polk County Subdivision Regulations, with the following exceptions which have been duly authorized by variance granted by the Commissioners Court of Polk County, Texas;

\_\_\_\_\_  
\_\_\_\_\_

Date of variance: \_\_\_\_\_  
*[Signature]*  
Commissioner, Pct. 2

ATTEST:  
*Barbara Middleton*  
County Clerk, Polk County, Texas



IN THE COMMISSIONERS COURT OF  
POLK COUNTY, TEXAS

ACCEPTANCE FOR PUBLIC MAINTENANCE  
CERTAIN ROADS SET ASIDE IN FINAL  
PLAT OF THE LAKE LIVINGSTON ESTATES 5 SUBDIVISION  
OF POLK COUNTY, TEXAS

BE IT REMEMBERED, that on the 23 day of April, 1973 the Commissioners Court of Polk County, Texas did approve and file of record in the Minutes of the Polk County Commissioners Court the final plat of LAKE LIVINGSTON ESTATES 5 subdivision, approval of said Final Plat appearing of record in Vol. 20, Page 140 of the Minutes of the Commissioners Court of Polk County, Texas and

WHEREAS, a copy of said Final Plat of the LAKE LIVINGSTON ESTATES 5 Subdivision was also filed of record in Vol. 5, Page 43, of the Deed Records of Polk County, Texas, and

WHEREAS, said Final Plat, as publicly recorded, contained a dedication of roads and streets within said Subdivision to the Public for purposes of ingress and egress into, upon and within said Subdivision, and

WHEREAS, the Commissioners Court of Polk County, Texas, in the exercise of discretion vested upon said Commissioners Court by Chapter 81 of the Texas Local Government Code, and Chapter 251 of the Texas Transportation Code, finds that the public interest would be served by the extension of public maintenance by Polk County, Texas to the following specifically named roads within the LAKE LIVINGSTON ESTATES 5 Subdivision:

1. PRESCOTT (road name), beginning at a point of intersection with LAKE LIVINGSTON BLVD (Existing Road), and extending 837.6 feet to the WEST (direction), to a (a point of intersection with DEAD END (Existing Road) or a point of terminus.
2. (Repeat for each road to be accepted for maintenance.)

WHEREAS, it would be in the best interest of the citizens of Polk County to accept the dedication of the right-of-way described in the Final Plat of the LAKE LIVINGSTON ESTATES 5 Subdivision, and

WHEREAS, the inclusion of the roads identified above into the Polk County transportation system would increase the convenience to the public, insure better transportation within the county, and generally contribute to the economic and social benefit of Polk County, Texas, and

WHEREAS, by way of this acceptance of said dedication, the public would acquire a public

interest by dedication in said road and right-of-way as of the 6<sup>th</sup> day of April 1973, and Polk County, Texas would hereafter maintain such road or Street within the LAKE LIVINGSTON ESTATES 5 Subdivision, until such time as the continued maintenance of said road should be formally discontinued by this Court.

THEREFORE, Be It Resolved, that the undersigned members of the Commissioners Court of Polk County, Texas, acting pursuant to authority vested in said court, do hereby accept the above and foregoing Dedication of a Public Interest in the above and foregoing road(s) or streets within, upon, and across the LAKE LIVINGSTON ESTATES 5 Subdivision, said right-of-way being of such widths and dimensions as are set forth in the Final Plat of said Subdivision as filed of record as heretofore described, and that such Acceptance of Dedication is made on behalf of and as the act and deed of Polk County, Texas.

IT IS FURTHER Resolved and Ordered that the original Dedication, and this Resolution and Order of Acceptance of said Dedication, be filed in both the Minutes of the Commissioners Court of Polk County, Texas, as well as the Deed Records of Polk County, Texas, and that such filing shall serve as public evidence of the said dedication and acceptance by way of this Order.

IT IS FURTHER Resolved and Ordered that a map of the road described in this Order be prepared and inserted into the Polk County Road Map, as filed of record in the Minutes of the Commissioners Court of Polk County, Texas.

DATE: 7.22.08

APPROVED: John P. Thompson  
County Judge

As Commissioner of Precinct No. 2, Polk County, Texas, I verify that I have inspected the road/s described within the Order and that said road/s have been constructed to and currently meet the minimum standards set out within the Polk County Subdivision Regulations, with the following exceptions which have been duly authorized by variance granted by the Commissioners Court of Polk County, Texas;

\_\_\_\_\_  
\_\_\_\_\_

Date of variance: \_\_\_\_\_

Ronnie [Signature]  
Commissioner, Pct. 2



ATTEST:  
Barbara M. [Signature]  
County Clerk, Polk County, Texas

IN THE COMMISSIONERS COURT OF  
POLK COUNTY, TEXAS

ACCEPTANCE FOR PUBLIC MAINTENANCE  
CERTAIN ROADS SET ASIDE IN FINAL  
PLAT OF THE LAKE LIVINGSTON ESTATES 4 SUBDIVISION  
OF POLK COUNTY, TEXAS

BE IT REMEMBERED, that on the 22<sup>nd</sup> day of JUNE, 1970, the Commissioners Court of Polk County, Texas did approve and file of record in the Minutes of the Polk County Commissioners Court the final plat of LAKE LIVINGSTON ESTATES 4 subdivision, approval of said Final Plat appearing of record in Vol. 19, Page 287 of the Minutes of the Commissioners Court of Polk County, Texas and

WHEREAS, a copy of said Final Plat of the LAKE LIVINGSTON ESTATES 4 Subdivision was also filed of record in Vol. 4, Page 1, of the Deed Records of Polk County, Texas, and

WHEREAS, said Final Plat, as publicly recorded, contained a dedication of roads and streets within said Subdivision to the Public for purposes of ingress and egress into, upon and within said Subdivision, and

WHEREAS, the Commissioners Court of Polk County, Texas, in the exercise of discretion vested upon said Commissioners Court by Chapter 81 of the Texas Local Government Code, and Chapter 251 of the Texas Transportation Code, finds that the public interest would be served by the extension of public maintenance by Polk County, Texas to the following specifically named roads within the LAKE LIVINGSTON ESTATES 4 Subdivision:

1. Swallow ST. (road name), beginning at a point of intersection with Hammerbill ST (Existing Road), and extending 508.6 feet to the N.W. (direction), to a (a point of intersection with oak Ridge LN (Existing Road) or a point of terminus.
2. (Repeat for each road to be accepted for maintenance.)

WHEREAS, it would be in the best interest of the citizens of Polk County to accept the dedication of the right-of-way described in the Final Plat of the LAKE LIVINGSTON ESTATES 4 Subdivision, and

WHEREAS, the inclusion of the roads identified above into the Polk County transportation system would increase the convenience to the public, insure better transportation within the county, and generally contribute to the economic and social benefit of Polk County, Texas, and

WHEREAS, by way of this acceptance of said dedication, the public would acquire a public



interest by dedication in said road and right-of-way as of the 22<sup>nd</sup> day of JUNE, 1970, and Polk County, Texas would hereafter maintain such road or Street within the LAKE LIVINGSTON ESTATES Subdivision, until such time as the continued maintenance of said road should be formally discontinued by this Court.

THEREFORE, Be It Resolved, that the undersigned members of the Commissioners Court of Polk County, Texas, acting pursuant to authority vested in said court, do hereby accept the above and foregoing Dedication of a Public Interest in the above and foregoing road(s) or streets within, upon, and across the LAKE LIVINGSTON ESTATES Subdivision, said right-of-way being of such widths and dimensions as are set forth in the Final Plat of said Subdivision as filed of record as heretofore described, and that such Acceptance of Dedication is made on behalf of and as the act and deed of Polk County, Texas.

IT IS FURTHER Resolved and Ordered that the original Dedication, and this Resolution and Order of Acceptance of said Dedication, be filed in both the Minutes of the Commissioners Court of Polk County, Texas, as well as the Deed Records of Polk County, Texas, and that such filing shall serve as public evidence of the said dedication and acceptance by way of this Order.

IT IS FURTHER Resolved and Ordered that a map of the road described in this Order be prepared and inserted into the Polk County Road Map, as filed of record in the Minutes of the Commissioners Court of Polk County, Texas.

DATE: 7.22.08

APPROVED: *John P. Thompson*  
County Judge

As Commissioner of Precinct No. 2, Polk County, Texas, I verify that I have inspected the road/s described within the Order and that said road/s have been constructed to and currently meet the minimum standards set out within the Polk County Subdivision Regulations, with the following exceptions which have been duly authorized by variance granted by the Commissioners Court of Polk County, Texas;

\_\_\_\_\_  
\_\_\_\_\_  
Date of variance: \_\_\_\_\_

*Roni Turner*  
Commissioner, Pct. 2

ATTEST: *Barbara Middleton*  
County Clerk, Polk County, Texas



IN THE COMMISSIONERS COURT OF  
POLK COUNTY, TEXAS

ACCEPTANCE FOR PUBLIC MAINTENANCE  
CERTAIN ROADS SET ASIDE IN FINAL  
PLAT OF THE LAKE LIVINGSTON ESTATES SEC 4 SUBDIVISION  
OF POLK COUNTY, TEXAS

BE IT REMEMBERED, that on the 22 day of JUNE, 1970, the Commissioners Court of Polk County, Texas did approve and file of record in the Minutes of the Polk County Commissioners Court the final plat of LAKE LIVINGSTON ESTATE SEC 4 subdivision, approval of said Final Plat appearing of record in Vol. 19, Page 287 of the Minutes of the Commissioners Court of Polk County, Texas and

WHEREAS, a copy of said Final Plat of the LAKE LIVINGSTON ESTATES SEC 4 Subdivision was also filed of record in Vol. 4, Page 1, of the Deed Records of Polk County, Texas, and

WHEREAS, said Final Plat, as publicly recorded, contained a dedication of roads and streets within said Subdivision to the Public for purposes of ingress and egress into, upon and within said Subdivision, and

WHEREAS, the Commissioners Court of Polk County, Texas, in the exercise of discretion vested upon said Commissioners Court by Chapter 81 of the Texas Local Government Code, and Chapter 251 of the Texas Transportation Code, finds that the public interest would be served by the extension of public maintenance by Polk County, Texas to the following specifically named roads within the LAKE LIVINGSTON ESTATES SEC 4 Subdivision:

1. SWITCHER ST. (road name), beginning at a point of intersection with Hammerbill St. (Existing Road), and extending 452.0 feet to the N.W. (direction), to a (a point of intersection with Oak Ridge Ln. (Existing Road) or a point of terminus.
2. (Repeat for each road to be accepted for maintenance.)

WHEREAS, it would be in the best interest of the citizens of Polk County to accept the dedication of the right-of-way described in the Final Plat of the LAKE LIVINGSTON ESTATES SEC 4 Subdivision, and

WHEREAS, the inclusion of the roads identified above into the Polk County transportation system would increase the convenience to the public, insure better transportation within the county, and generally contribute to the economic and social benefit of Polk County, Texas, and

WHEREAS, by way of this acceptance of said dedication, the public would acquire a public

interest by dedication in said road and right-of-way as of the 22<sup>ND</sup> day of JUNE 1970, and Polk County, Texas would hereafter maintain such road or Street within the Lake Livingston Estates SEC 4 Subdivision, until such time as the continued maintenance of said road should be formally discontinued by this Court.

THEREFORE, Be It Resolved, that the undersigned members of the Commissioners Court of Polk County, Texas, acting pursuant to authority vested in said court, do hereby accept the above and foregoing Dedication of a Public Interest in the above and foregoing road(s) or streets within, upon, and across the Lake Livingston Estates SEC 4 Subdivision, said right-of-way being of such widths and dimensions as are set forth in the Final Plat of said Subdivision as filed of record as heretofore described, and that such Acceptance of Dedication is made on behalf of and as the act and deed of Polk County, Texas.

IT IS FURTHER Resolved and Ordered that the original Dedication, and this Resolution and Order of Acceptance of said Dedication, be filed in both the Minutes of the Commissioners Court of Polk County, Texas, as well as the Deed Records of Polk County, Texas, and that such filing shall serve as public evidence of the said dedication and acceptance by way of this Order.

IT IS FURTHER Resolved and Ordered that a map of the road described in this Order be prepared and inserted into the Polk County Road Map, as filed of record in the Minutes of the Commissioners Court of Polk County, Texas.

DATE: 7.22.08

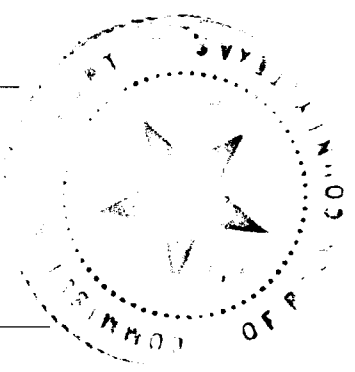
APPROVED: *John P. Sawyer*  
County Judge

As Commissioner of Precinct No. 2, Polk County, Texas, I verify that I have inspected the road/s described within the Order and that said road/s have been constructed to and currently meet the minimum standards set out within the Polk County Subdivision Regulations, with the following exceptions which have been duly authorized by variance granted by the Commissioners Court of Polk County, Texas;

\_\_\_\_\_  
\_\_\_\_\_  
Date of variance: \_\_\_\_\_

*Roni V...*  
Commissioner, Pct. 2

ATTEST:  
*Barbara M. Bellator*  
County Clerk, Polk County, Texas



IN THE COMMISSIONERS COURT OF  
POLK COUNTY, TEXAS

ACCEPTANCE FOR PUBLIC MAINTENANCE  
CERTAIN ROADS SET ASIDE IN FINAL  
PLAT OF THE Lake Livingston Estates Sec 4 SUBDIVISION  
OF POLK COUNTY, TEXAS

BE IT REMEMBERED, that on the 22<sup>nd</sup> day of June, 1970, the Commissioners Court of Polk County, Texas did approve and file of record in the Minutes of the Polk County Commissioners Court the final plat of Lake Livingston Estates Sec 4 subdivision, approval of said Final Plat appearing of record in Vol. 19, Page 287 of the Minutes of the Commissioners Court of Polk County, Texas and

WHEREAS, a copy of said Final Plat of the Lake Livingston Est Sec 4 Subdivision was also filed of record in Vol. 4, Page 1, of the Deed Records of Polk County, Texas, and

WHEREAS, said Final Plat, as publicly recorded, contained a dedication of roads and streets within said Subdivision to the Public for purposes of ingress and egress into, upon and within said Subdivision, and

WHEREAS, the Commissioners Court of Polk County, Texas, in the exercise of discretion vested upon said Commissioners Court by Chapter 81 of the Texas Local Government Code, and Chapter 251 of the Texas Transportation Code, finds that the public interest would be served by the extension of public maintenance by Polk County, Texas to the following specifically named roads within the Lake Livingston Est Sec 4 Subdivision:

1. Oak Ridge Lane (road name), beginning at a point of intersection with Big Lake Drive (Existing Road), and extending 1363.0 feet to the N.E. (direction), to a (a point of intersection with Hammerbill St. (Existing Road) or a point of terminus.
2. (Repeat for each road to be accepted for maintenance.)

WHEREAS, it would be in the best interest of the citizens of Polk County to accept the dedication of the right-of-way described in the Final Plat of the Lake Livingston Est. Sec 4 Subdivision, and

WHEREAS, the inclusion of the roads identified above into the Polk County transportation system would increase the convenience to the public, insure better transportation within the county, and generally contribute to the economic and social benefit of Polk County, Texas, and

WHEREAS, by way of this acceptance of said dedication, the public would acquire a public

interest by dedication in said road and right-of-way as of the 22<sup>ND</sup> day of June 1970, and Polk County, Texas would hereafter maintain such road or Street within the Lake Livingston Est. Sec 4 Subdivision, until such time as the continued maintenance of said road should be formally discontinued by this Court.

THEREFORE, Be It Resolved, that the undersigned members of the Commissioners Court of Polk County, Texas, acting pursuant to authority vested in said court, do hereby accept the above and foregoing Dedication of a Public Interest in the above and foregoing road(s) or streets within, upon, and across the Lake Livingston Est. Sec 4 Subdivision, said right-of-way being of such widths and dimensions as are set forth in the Final Plat of said Subdivision as filed of record as heretofore described, and that such Acceptance of Dedication is made on behalf of and as the act and deed of Polk County, Texas.

IT IS FURTHER Resolved and Ordered that the original Dedication, and this Resolution and Order of Acceptance of said Dedication, be filed in both the Minutes of the Commissioners Court of Polk County, Texas, as well as the Deed Records of Polk County, Texas, and that such filing shall serve as public evidence of the said dedication and acceptance by way of this Order.

IT IS FURTHER Resolved and Ordered that a map of the road described in this Order be prepared and inserted into the Polk County Road Map, as filed of record in the Minutes of the Commissioners Court of Polk County, Texas.

DATE: 7. 22. 08

APPROVED:  
John D. Louisa  
County Judge

As Commissioner of Precinct No. 2, Polk County, Texas, I verify that I have inspected the road/s described within the Order and that said road/s have been constructed to and currently meet the minimum standards set out within the Polk County Subdivision Regulations, with the following exceptions which have been duly authorized by variance granted by the Commissioners Court of Polk County, Texas;

\_\_\_\_\_  
\_\_\_\_\_

Date of variance: \_\_\_\_\_

Boni Carson  
Commissioner, Pct. 2

ATTEST:  
Barbara Middleton  
County Clerk, Polk County, Texas



IN THE COMMISSIONERS COURT OF  
POLK COUNTY, TEXAS

ACCEPTANCE FOR PUBLIC MAINTENANCE  
CERTAIN ROADS SET ASIDE IN FINAL  
PLAT OF THE Lake Livingston Estates Sec. 5 SUBDIVISION  
OF POLK COUNTY, TEXAS

BE IT REMEMBERED, that on the 8 day of Sept, 1997, the Commissioners Court of Polk County, Texas did approve and file of record in the Minutes of the Polk County Commissioners Court the final plat of Lake Livingston Estates Sec. 5 subdivision, approval of said Final Plat appearing of record in Vol. 43, Page 931 of the Minutes of the Commissioners Court of Polk County, Texas and

WHEREAS, a copy of said Final Plat of the Lake Livingston Est. Sec. 5 Subdivision was also filed of record in Vol. 11, Page 23, of the Deed Records of Polk County, Texas, and

WHEREAS, said Final Plat, as publicly recorded, contained a dedication of roads and streets within said Subdivision to the Public for purposes of ingress and egress into, upon and within said Subdivision, and

WHEREAS, the Commissioners Court of Polk County, Texas, in the exercise of discretion vested upon said Commissioners Court by Chapter 81 of the Texas Local Government Code, and Chapter 251 of the Texas Transportation Code, finds that the public interest would be served by the extension of public maintenance by Polk County, Texas to the following specifically named roads within the Lake Livingston Est. Sec. 5 Subdivision:

1. Egrett Street (road name), beginning at a point of intersection with Lake Livingston Blvd. (Existing Road), and extending 330.0 feet to the N.W. (direction), to a (a point of intersection with Prescott (Existing Road) or a point of terminus.
2. (Repeat for each road to be accepted for maintenance.)

WHEREAS, it would be in the best interest of the citizens of Polk County to accept the dedication of the right-of-way described in the Final Plat of the Lake Livingston Est. Sec. 5 Subdivision, and

WHEREAS, the inclusion of the roads identified above into the Polk County transportation system would increase the convenience to the public, insure better transportation within the county, and generally contribute to the economic and social benefit of Polk County, Texas, and

WHEREAS, by way of this acceptance of said dedication, the public would acquire a public

interest by dedication in said road and right-of-way as of the 6 day of April, 1973, and Polk County, Texas would hereafter maintain such road or Street within the Lake Livingston Est. Sec. 5 Subdivision, until such time as the continued maintenance of said road should be formally discontinued by this Court.

THEREFORE, Be It Resolved, that the undersigned members of the Commissioners Court of Polk County, Texas, acting pursuant to authority vested in said court, do hereby accept the above and foregoing Dedication of a Public Interest in the above and foregoing road(s) or streets within, upon, and across the Lake Livingston Est. Sec. 5 Subdivision, said right-of-way being of such widths and dimensions as are set forth in the Final Plat of said Subdivision as filed of record as heretofore described, and that such Acceptance of Dedication is made on behalf of and as the act and deed of Polk County, Texas.

IT IS FURTHER Resolved and Ordered that the original Dedication, and this Resolution and Order of Acceptance of said Dedication, be filed in both the Minutes of the Commissioners Court of Polk County, Texas, as well as the Deed Records of Polk County, Texas, and that such filing shall serve as public evidence of the said dedication and acceptance by way of this Order.

IT IS FURTHER Resolved and Ordered that a map of the road described in this Order be prepared and inserted into the Polk County Road Map, as filed of record in the Minutes of the Commissioners Court of Polk County, Texas.

DATE: 7.22.08

APPROVED:

John P. Stauffer  
County Judge

As Commissioner of Precinct No. 2, Polk County, Texas, I verify that I have inspected the road/s described within the Order and that said road/s have been constructed to and currently meet the minimum standards set out within the Polk County Subdivision Regulations, with the following exceptions which have been duly authorized by variance granted by the Commissioners Court of Polk County, Texas;

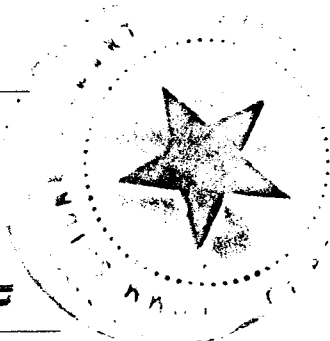
\_\_\_\_\_  
\_\_\_\_\_

Date of variance: \_\_\_\_\_

Roni [Signature]  
Commissioner, Pct. 2

ATTEST:

Barbara M. [Signature]  
County Clerk, Polk County, Texas



#4(Q)

COPY



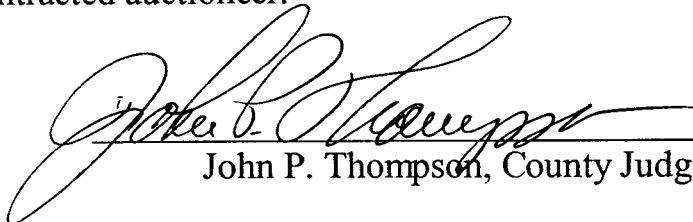
**ORDER**

**OF THE POLK COUNTY COMMISSIONERS COURT**

Designating Surplus Property to be disposed in Public Auction.

**WHEREAS**, in a regular meeting of the Polk County Commissioners Court held July 22, 2008, certain items as listed and attached hereto as "Exhibit A", were determined to be Surplus/salvage property as defined by Local Government Code, Chapter 263 Subchapter D, Section 263.151.

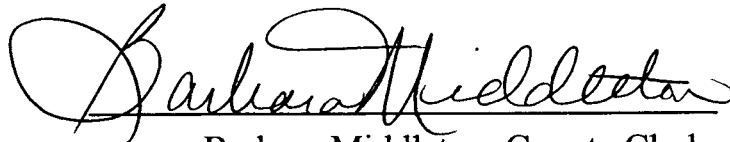
**THEREFORE**, the aforementioned items are hereby designated as Surplus/salvage Property of the County and shall be disposed of in a Public Auction to be held online and administered by the County's contracted auctioneer.

  
John P. Thompson, County Judge

**CERTIFICATE OF THE COUNTY CLERK**

The undersigned, being the County Clerk of Polk County, Texas, does hereby certify that this ORDER was duly adopted by the Commissioners Court for Polk County on July 22, 2008.

**IN WITNESS WHEREOF**, I have affixed my signature and the official seal of the Polk County Commissioners Court to this certification.



Barbara Middleton, County Clerk  
Polk County, Texas





For Sheriff Dept

2003 Ford CVP VIN 2FAFP71W13X152138	Inventory # 5600000008
2004 Ford CVP VIN 2FAFP71W04X122145	Inventory # 5600000035
2004 Ford CVP VIN 2FAFP71W74X122143	Inventory # 5600000036
2004 Ford CVP VIN 2FAFP71W94X122144	Inventory # 5600000034

Jail Expansion

Latina Petties Trailer,  
I do not yet have any information on the trailer, i.e. year model and make etc.

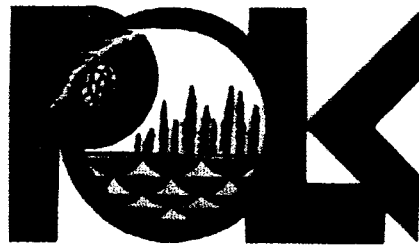
R & B Pct 1

1987 GMC Dump Truck VIN 1GDT9C4J2HV500162	Inventory # 6210000024
---	------------------------

R& B Pct 3

- 11- 4ft X 36in Concrete Culverts
- 25- 4ft X 24in Concrete Culverts
- 33- 6ft X 24in Concrete Culverts
- 5- 8ft X 24in Concrete Culverts
- 30- 6ft X 24in Sloped End Treatments
- 58- 7 ½ ft X 18in Sloped End Treatments
- 150- 7ft X 24 in Galvanized Sloped End Treatments
- 60- 7ft X 30in Galvanized Sloped End Treatments
- 20- 4 ½ ft X 15in Galvanized Sloped End Treatments
- Misc. Galvanized Bands
- 11- I Beams (15ft X 36in)

#4(S.)



POLK COUNTY, TEXAS

Barbara Middleton  
County Clerk

P. O. Drawer 2119 - Livingston, Texas 77351  
Telephone (936) 327-6805 - Fax (936) 327-6874

July 17, 2008

Honorable Commissioners Court  
John P. Thompson, County Judge  
Commissioner Bob Willis  
Commissioner Ronnie Vincent  
Commissioner Buddy Purvis  
Commissioner Tommy Overstreet

**Re: Appointment of Election Judges & Alternates**

Texas Election Code - Section 32.002 / Appointment Procedures

**Appointments** of the following persons to serve as **Election Judges & Alternates** for **(20) Voting Precincts** of Polk County. Included with this appointment, is the request for approval for the **Judges & Alternates to serve for the remainder of current term, July 22, 2008 to June 1, 2009.** In the event that any **additional Vacancies** occur during this period the County Clerk is authorized to make the necessary replacement appointments.

Election Judges & Alternates		
Precinct #1 Segno	Shirley Cain, Judge	Irene Milner, Alternate
Precinct #2 Ace	Liz Ellis, Judge	Kristen Leader, Alternate
Precinct #3 Goodrich	Dorothy Clevenger, Judge	Aline Fisher, Alternate
Precinct #4 Lutheran Church	Jerry Hawkins, Judge	
Precinct #5 Scenic Loop	Danny Freeman, Judge	Celeste Williamson, Alt.
Precinct #6 Onalaska	James Oestreich, Judge	Helen Felder, Alternate
Precinct #7 City Hall - Liv	Doyle Coburn, Judge	Joan Reeves, Alternate
Precinct #8 Leggett	Gwendolyn Guidey, Judge	
Precinct #9 Moscow	Harvey Stewart, Judge	June Parrish, Alternate

Precinct #10 Corrigan	Bobby Smiley, Judge	LaVon Golden, Alternate
Precinct #11 Barnum	Frances Proctor, Judge	Delores Swearingen, Alt.
Precinct #12 Indian Res.	Sharon Miller, Judge	Armando Rodriguez, Alt.
Precinct #13 Big Sandy	Frances Adams, Judge	Hershel Phillips, Alternate
Precinct #14 Indian Springs	Debra Harlow, Judge	Jay Lee, Alternate
Precinct #15 Schwab City	Velma Key, Judge	Nell Mayo, Alternate
Precinct #16 VFW	James Walker, Judge	Brady Templeton, Alternate
Precinct #17 Blanchard	Hugh Myers, Judge	
Precinct #18 Dunbar	Elgin Davis, Judge	Rita Bloodworth, Alternate
Precinct #19 Escapee's Activity Center	Dianne Harlan, Judge	Joan Anderson, Alternate
Precinct #20 Escapee's Care Center	Leslie Dudley, Judge	Joan Anderson, Alternate

Respectfully submitted,



Barbara Middleton  
County Clerk & Elections Administrator

#9  
ADDENDUM TO AMENDED AND RESTATED FACILITY OPERATION AND  
MANAGEMENT SERVICES AGREEMENT

This Addendum to Amended and Restated Facility Operation and Management Services Agreement (hereinafter "Addendum") is entered into by and between Polk County, Texas (hereinafter "County") and Civigenics-Texas, Inc. (hereinafter "Operator") to become effective as set forth herein.

RECITALS

WHEREAS, the County and the Operator entered into that certain amended and Restated Operation and Management Services Agreement dated December 21, 2006 (hereinafter "Agreement") under which Operator is managing and operating the 1054 bed Polk County Detention Center (hereinafter "Facility") on behalf of the County; and

WHEREAS, Section 3.04(a) of the Agreement provides for the Operator to be paid a fixed per prisoner, per diem of \$34.75; and

WHEREAS, Section 3.04(b) of the Agreement provides for the Operator to pay the County a County Administrative Fee of \$2.75 per prisoner, per day when the Facility is at an inmate population of 526 or less, and \$4.25 per prisoner, per day for each prisoner in excess of 526 prisoners; and

WHEREAS, on July 25, 2007, the United States Immigration and Customs Enforcement (hereinafter "ICE"), requested additional services for prisoner/detainees that it placed at the Facility. This required an increase to the per prisoner/per day fee charged to ICE, and an Intergovernmental Service Agreement (hereinafter "IGSA") was entered into by the County with ICE providing for a per prisoner/per diem of \$55.95. The accompanying increased costs to the Operator necessitated an increase in the Operator's per prisoner/per diem rate to \$41.70, which increase was approved by the County. ; and

WHEREAS, ICE thereafter again requested additional services and supervision for its prisoners assigned to the Facility, which resulted in increased costs to the Operator necessitating an increase in the per prisoner/per diem paid by ICE; and

WHEREAS, pursuant to the IGSA approved by the County and dated March 1, 2008, ICE agreed to pay a per prisoner/per diem of \$57.65; and

WHEREAS, the increased cost to the Operator necessitated that the Operator be paid an increased per prisoner/per diem rate of \$43.40, which was approved by the County; and

WHEREAS, it is necessary and appropriate to amend the Agreement by this Addendum to reflect these changes.

NOW, THEREFORE, the parties agree as follows:

1. The Agreement is amended by this Addendum to add Section 3.04A, which provides as follows:

3.04A FOR PRISONERS/DETAINEES OF THE U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT ONLY. Operator shall be paid a fixed fee per prisoner, per day (actual occupancy) for the operation and management services provided hereunder to be paid on a monthly basis from the Operating Account. The compensation to Operator shall be payable solely out of the Operating Account, and solely on a fixed per diem basis in the following priority as available from the Operating Account on a monthly basis:

(a). Effective from July 25, 2007-A fixed per prisoner, per diem fee of \$41.70.  
Effective from March 1, 2008-A fixed per prisoner, per diem fee of \$43.40.

(b). The Immigration and Customs Enforcement prisoners/detainees shall be counted in determining the County Administrative Fee due the County under 3.04 (b.), and the County shall be paid the County Administrative Fee on all such prisoners/detainees.

The minimum aggregate annual Administrative Fee to the County shall continue to apply as set forth in 3.04(b) above.

In addition, Operator shall pay the County a \$1.00 per prisoner, per day Additional County Administrative Fee for all U.S. Immigration and Customs Enforcement prisoners/detainees housed at the Facility, to be paid to the County monthly. This is in addition to the County Administrative Fee addressed in 3.04(b.).

(c). In the event that the Operator is not paid its full compensation as set forth in Section 3.04A(a) hereof for any calendar month, the deficiency in such payment shall be carried over to the following months and added to the Operator's Compensation due in following months during the term of this Agreement. On the termination of this Agreement, the unpaid compensation due and owing to the Operator shall be paid solely to the extent that monies are available therefor in the Operating Account, but only after all other Operation and Management Costs (as defined in the Trust Indenture), and any Operator Fee (Cost Plus) (as defined in the Trust Indenture) has been paid.

(d). The provisions providing for increased compensation to the Operator in this Section 3.04A apply only to U.S. Immigration and Customs Enforcement prisoners/detainees housed under the Intergovernmental Service Agreements entered into between the County and that agency dated July 25, 2007 and March 1, 2008 respectively. Payments to the Operator remain subject to funds being available for such payment in the Operating Account.

2. All other provisions of the Agreement remain unchanged and in full force and effect.

SIGNED this 22nd day of July, 2008.

POLK COUNTY, TEXAS

By *John P. Thompson*  
JOHN P. THOMPSON  
County Judge

ATTEST:

*Barbara Middleton*  
County Clerk

APPROVED:

*Kenneth Hammock*  
Polk County Sheriff



**CIVIGENICS-TEXAS, INC.**

Operator

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Corporate Secretary

ACKNOWLEDGED:

U.S. BANK NATIONAL ASSOCIATION  
Trustee

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its Assistant Vice President



IAH PUBLIC FACILITY CORPORATION  
Lessor

By:   
JOHN P. THOMPSON, President

#9.  
Resolution and Order authorizing purchase and/or litigation to condemn certain property needed for construction of the Polk County Jail Project at 1733 North Washington, Livingston, Texas:

**WHEREAS**, Polk County, Texas, a body Corporate and Politic under the laws of the State of Texas is vested with the power of eminent domain to acquire land for jail purposes under the law of the State of Texas, Chapter 261.001 of the Local Government Code of Texas and Chapter 21 Eminent Domain of the Property Code of Texas.

**WHEREAS**, a necessity exists for acquisition of land to construct additional jail facilities and add on to the existing jail situated in Livingston, Texas at 1733 North Washington Street.

**WHEREAS**, the Commissioners Court of Polk County, Texas passed a resolution at its regular business meeting on February 27, 2007, of its intention to issue certificates of obligation for the purpose of acquisition of a jail site and construction of a new County Law Enforcement Center (jail) and for payment of professional services and costs related thereto not to exceed \$19,000,000.00, and **WHEREAS**, notice of intention to issue certificates of obligation were duly given under Government Code Section 271.041 et seq., on March 8, 2007 and March 15, 2007 and **WHEREAS**, pursuant to the resolution and notice, Polk County, Texas Certificates of Obligation Series 2007 were authorized and issued on March 27, 2007; and

**WHEREAS**, it is necessary to use such funds to acquire, and/or condemn, additional lands for expansion and addition to the law enforcement center; and

**WHEREAS**, in accordance with Texas Law, offers to purchase various tracts of land have been duly made and Landowner Bill of Rights have been given to the respective landowners who own the land to be acquired and/or condemned, particularly the owners of Tract 1, a .440 acre tract of land, more or less, in the M.L. Choate Survey, A-15, Polk County, Texas; and

**WHEREAS**, said landowners have not accepted the offer made to purchase their tract and have not made a counter offer to Polk County which is acceptable to Polk County and negotiations have failed; and

**WHEREAS**, the County has obtained the services of an attorney to represent Polk County in the condemnation of property under the Eminent Domain Law of Texas, and Polk County has retained the services of Jake Lyon and Associates and Ernest L. McClendon, Jr., Attorney, PLLC to handle the Eminent Domain and condemnation proceedings for the new jail project; and

**WHEREAS**, Judge Thompson, Jake Lyon and Ernest L. McClendon, Jr., Attorney, PLLC have made reports on the progress of negotiations and purchase of the various tracts which are to be included in the improvements and additions to the law enforcement center at 1733 North Washington Street, Livingston, Texas.

**WHEREAS**, Commissioners Court, through its duly appointed agents, Jake Lyon and Ernest L. McClendon, Jr., Attorney, PLLC has made offers, and attempted to negotiate settlements for purchase of the Eugene DeWalt Estate Tract needed for construction of the Polk County Jail Project

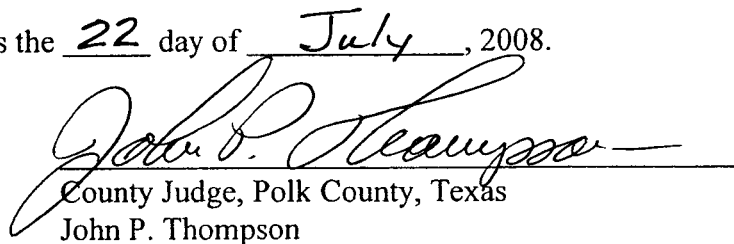
in Livingston, Polk County, Texas; and **WHEREAS**, negotiations have failed and no agreement for the purchase and sale of the Eugene DeWalt Estate Tract can be reached, and **WHEREAS**, a public necessity exist and time is of the essence to commence construction of the jail additions and renovations; and **WHEREAS**, the best alternative for the County is to commence condemnation litigation procedures.


**NOW, THEREFORE, IT IS ORDERED and DECREED** that the County Judge, Jake Lyon and Ernest L. McClendon, Jr., Attorney, PLLC are hereby authorized and directed to perform any and all necessary acts toward the final acquisition of the Eugene DeWalt Estate Tract together with improvements, if any, for the expansion, additions and improvements to the Law Enforcement Center, including but not limited to commencement of litigation proceedings in condemnation to acquire the tract referred as Tract 1, a .440 acre tract owned by Eugene DeWalt heirs and defisees, namely the unknown heirs of Inell Dewalt, Lorene Horn, Tilda Osaw Smith, Betty Jo King, Eugene Osaw, Charles Etta Osaw and Leotis Dewalt or his unknown heirs.

**IT IS ORDERED and DECREED** that E. L. McClendon, Jr., Attorney, PLLC, as legal counsel for Polk County, Texas, is hereby directed to proceed with litigation to condemn Tract 1, being the Eugene DeWalt Estate Tract under the law of condemnation of the State of Texas including but not limited to filing a Petition in Condemnation, appointment of Special Commissioners, setting a hearing, giving Notice of Lis Pendens, hiring a certified appraiser and all steps and procedures necessary to acquire fee title to the .440 acre tract known as the Eugene DeWalt Estate Tract as expediently as possible through eminent domain condemnation procedure.

Further resolved that all actions heretofore taken by the County Judge, Jake Lyon and Ernest L. McClendon Jr., Attorney, PLLC, concerning the negotiations to purchase the Eugene DeWalt Estate Tract are hereby ratified and approved including, but not limited to the following: Negotiating offers to purchase said Tract 1 and the rejection of the offer, if any, made by the heirs of Eugene DeWalt and Lorene Horn, Tilda Smith, Betty Jo King, Eugene Osaw and Charles Etta Osaw.

PASSED AND APPROVED this the 22 day of July, 2008.

  
County Judge, Polk County, Texas  
John P. Thompson

ATTEST:  
  
County Clerk, Polk County, Texas  
Barbara Middleton

COMMISSIONERS COURT SEAL

Resolution and Order authorizing purchase and/or litigation to condemn certain property needed for construction of the Polk County Jail Project at 1733 North Washington, Livingston, Texas:

**WHEREAS**, Polk County, Texas, a body Corporate and Politic under the laws of the State of Texas is vested with the power of eminent domain to acquire land for jail purposes under the law of the State of Texas, Chapter 261.001 of the Local Government Code of Texas and Chapter 21 Eminent Domain of the Property Code of Texas.

**WHEREAS**, a necessity exists for acquisition of land to construct additional jail facilities and add on to the existing jail situated in Livingston, Texas at 1733 North Washington Street.

**WHEREAS**, the Commissioners Court of Polk County, Texas passed a resolution at its regular business meeting on February 27, 2007, of its intention to issue certificates of obligation for the purpose of acquisition of a jail site and construction of a new County Law Enforcement Center (jail) and for payment of professional services and costs related thereto not to exceed \$19,000,000.00, and **WHEREAS**, notice of intention to issue certificates of obligation were duly given under Government Code Section 271.041 et seq., on March 8, 2007 and March 15, 2007 and **WHEREAS**, pursuant to the resolution and notice, Polk County, Texas Certificates of Obligation Series 2007 were authorized and issued on March 27, 2007; and

**WHEREAS**, it is necessary to use such funds to acquire, and/or condemn, additional lands for expansion and addition to the law enforcement center; and

**WHEREAS**, in accordance with Texas Law, offers to purchase various tracts of land have been duly made and Landowner Bill of Rights have been given to the respective landowners who own the land to be acquired and/or condemned, particularly the owners of Tract 5, being the South One-Half (S ½) of a One and One-Half (1 ½) acre tract, more or less, in the M.L. Choate Survey, A-15, Polk County, Texas, and being more particularly described in deed dated October 15, 1953, from Jessie Lee Slade to Booker T. Netherly, recorded in Volume 160, Page 90 et seq., Deed Records, Polk County, Texas; and

**WHEREAS**, said landowners or unknown heirs or Booker T. Netherly and Cynthia Osaw John<sup>504</sup>, whereabouts are unknown, negotiations are possible, have not accepted the offer made to purchase their tract and have not made a counter offer to Polk County which is acceptable to Polk County and negotiations have failed; and

**WHEREAS**, the County has obtained the services of an attorney to represent Polk County in the condemnation of property under the Eminent Domain Law of Texas, and Polk County has retained the services of Jake Lyon and Associates and Ernest L. McClendon, Jr., Attorney, PLLC to handle the Eminent Domain and condemnation proceedings for the new jail project; and

**WHEREAS**, Judge Thompson, Jake Lyon and Ernest L. McClendon, Jr., Attorney, PLLC have made reports on the progress of negotiations and purchase of the various tracts which are to be included in the improvements and additions to the law enforcement center at 1733 North Washington Street, Livingston, Texas.

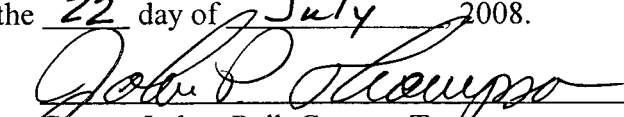
**WHEREAS**, Commissioners Court, through its duly appointed agents, Jake Lyon and Ernest L. McClendon, Jr., Attorney, PLLC has attempted to make offers, and attempted to negotiate settlements for purchase of the Booker T. Netherly Tract needed for construction of the Polk County Jail Project in Livingston, Polk County, Texas; and **WHEREAS**, negotiations have failed and no agreement for the purchase and sale of the Booker T. Netherly Tract can be reached, and **WHEREAS**, a public necessity exist and time is of the essence to commence construction of the jail additions and renovations; and **WHEREAS**, the best alternative for the County is to commence condemnation litigation procedures.


**NOW, THEREFORE, IT IS ORDERED and DECREED** that the County Judge, Jake Lyon and Ernest L. McClendon, Jr., Attorney, PLLC are hereby authorized and directed to perform any and all necessary acts toward the final acquisition of the Booker T. Netherly Tract together with improvements, if any, for the expansion, additions and improvements to the Law Enforcement Center, including but not limited to commencement of litigation proceedings in condemnation to acquire the tract referred as Tract 5, being the South One-Half (S 1/2) of a One and One-Half (1 1/2) acre tract, more or less, in the M.L. Choate Survey, A-15, Polk County, Texas owned by Booker .T Netherly.

**IT IS ORDERED and DECREED** that E. L. McClendon, Jr., Attorney, PLLC, as legal counsel for Polk County, Texas, is hereby directed to proceed with litigation to condemn Tract 5, being the Booker T. Netherly Tract under the law of condemnation of the State of Texas including but not limited to filing a Petition in Condemnation, appointment of Special Commissioners, giving notice by publication to the unknown heirs of Booker T. Netherly and Cynthis Osaw Johnson, setting a hearing, giving Notice of Lis Pendens, hiring a certified appraiser and all steps and procedures necessary to acquire fee title to the South One-Half (S 1/2) of a One and One-Half (1 1/2) acre tract, more or less, in the M.L. Choate Survey, A-15, Polk County, Texas known as the Booker T. Netherly Tract as expediently as possible through eminent domain condemnation procedure.

Further resolved that all actions heretofore taken by the County Judge, Jake Lyon and Ernest L. McClendon Jr., Attorney, PLLC, concerning the negotiations to purchase the Booker T. Netherly Tract are hereby ratified and approved including, but not limited to the following: Negotiating offers to purchase said Tract 5 to parties in possession and the heirs of Booker T. Netherly, and the rejection of the offer, if any, made by Booker T. Netherly or his heirs, executors or assigners.

PASSED AND APPROVED this the 22 day of July 2008.

  
\_\_\_\_\_  
County Judge, Polk County, Texas  
John P. Thompson

ATTEST:  
  
\_\_\_\_\_  
County Clerk, Polk County, Texas  
Barbara Middleton

COMMISSIONERS COURT SEAL

Resolution and Order authorizing purchase and/or litigation to condemn certain property needed for construction of the Polk County Jail Project at 1733 North Washington, Livingston, Texas:

**WHEREAS**, Polk County, Texas, a body Corporate and Politic under the laws of the State of Texas is vested with the power of eminent domain to acquire land for jail purposes under the law of the State of Texas, Chapter 261.001 of the Local Government Code of Texas and Chapter 21 Eminent Domain of the Property Code of Texas.

**WHEREAS**, a necessity exists for acquisition of land to construct additional jail facilities and add on to the existing jail situated in Livingston, Texas at 1733 North Washington Street.

**WHEREAS**, the Commissioners Court of Polk County, Texas passed a resolution at its regular business meeting on February 27, 2007, of its intention to issue certificates of obligation for the purpose of acquisition of a jail site and construction of a new County Law Enforcement Center (jail) and for payment of professional services and costs related thereto not to exceed \$19,000,000.00, and **WHEREAS**, notice of intention to issue certificates of obligation were duly given under Government Code Section 271.041 et seq., on March 8, 2007 and March 15, 2007 and **WHEREAS**, pursuant to the resolution and notice, Polk County, Texas Certificates of Obligation Series 2007 were authorized and issued on March 27, 2007; and

**WHEREAS**, it is necessary to use such funds to acquire, and/or condemn, additional lands for expansion and addition to the law enforcement center; and

**WHEREAS**, in accordance with Texas Law, offers to purchase various tracts of land have been duly made and Landowner Bill of Rights have been given to the respective landowners who own the land to be acquired and/or condemned, particularly the owners of Tract 6, a 0.56 acre tract of land, more or less, in the M.L. Choate Survey, A-15, Polk County, Texas; and

**WHEREAS**, said landowners have not accepted the offer made to purchase their tract and have not made a counter offer to Polk County which is acceptable to Polk County and negotiations have failed; and

**WHEREAS**, the County has obtained the services of an attorney to represent Polk County in the condemnation of property under the Eminent Domain Law of Texas, and Polk County has retained the services of Jake Lyon and Associates and Ernest L. McClendon, Jr., Attorney, PLLC to handle the Eminent Domain and condemnation proceedings for the new jail project; and

**WHEREAS**, Judge Thompson, Jake Lyon and Ernest L. McClendon, Jr., Attorney, PLLC have made reports on the progress of negotiations and purchase of the various tracts which are to be included in the improvements and additions to the law enforcement center at 1733 North Washington Street, Livingston, Texas.

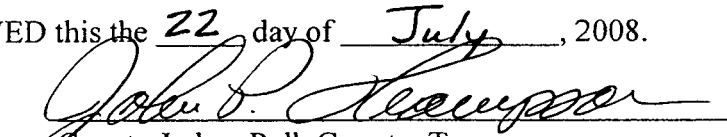
WHEREAS, Commissioners Court, through its duly appointed agents, Jake Lyon and Ernest L. McClendon, Jr., Attorney, PLLC has made offers, and attempted to negotiate settlements for purchase of the Jo Ann Starghill Estate and Jessie Lee White Frazier Tract needed for construction of the Polk County Jail Project in Livingston, Polk County, Texas; and WHEREAS, negotiations have failed and no agreement for the purchase and sale of the Jo Ann Starghill Estate and Jessie Lee White Frazier Tract can be reached, and WHEREAS, a public necessity exist and time is of the essence to commence construction of the jail additions and renovations; and WHEREAS, the best alternative for the County is to commence condemnation litigation procedures.

NOW, THEREFORE, IT IS ORDERED and DECREED that the County Judge, Jake Lyon and Ernest L. McClendon, Jr., Attorney, PLLC are hereby authorized and directed to perform any and all necessary acts toward the final acquisition of the Jo Ann Starghill Estate and Jessie Lee White Frazier Tract together with improvements, if any, for the expansion, additions and improvements to the Law Enforcement Center, including but not limited to commencement of litigation proceedings in condemnation to acquire the tract referred as Tract 6, a 0.56 acre tract owned by Jo Ann Starghill Estate and Jessie Lee White Frazier.

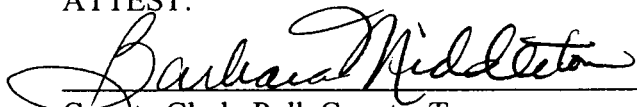
IT IS ORDERED and DECREED that E. L. McClendon, Jr., Attorney, PLLC, as legal counsel for Polk County, Texas, is hereby directed to proceed with litigation to condemn Tract 6, being the Jo Ann Starghill Estate and Jessie Lee White Frazier Tract under the law of condemnation of the State of Texas including but not limited to filing a Petition in Condemnation, appointment of Special Commissioners, setting a hearing, giving Notice of Lis Pendens, hiring a certified appraiser and all steps and procedures necessary to acquire fee title to the 0.56 acre tract known as the Jo Ann Starghill Estate and Jessie Lee White Frazier Tract as expediently as possible through eminent domain condemnation procedure.

Further resolved that all actions heretofore taken by the County Judge, Jake Lyon and Ernest L. McClendon Jr., Attorney, PLLC, concerning the negotiations to purchase the Jo Ann Starghill Estate and Jessie Lee White Frazier Tract are hereby ratified and approved including, but not limited to the following: Negotiating offers to purchase said Tract 6 and the rejection of the offer, if any, made by the heirs of Jo Ann Starghill, deceased and Jessie Lee White Frazier.

PASSED AND APPROVED this the 22 day of July, 2008.

  
County Judge, Polk County, Texas  
John P. Thompson

ATTEST:

  
County Clerk, Polk County, Texas  
Barbara Middleton

COMMISSIONERS COURT SEAL

Resolution and Order authorizing purchase and/or litigation to condemn certain property needed for construction of the Polk County Jail Project at 1733 North Washington, Livingston, Texas:

**WHEREAS**, Polk County, Texas, a body Corporate and Politic under the laws of the State of Texas is vested with the power of eminent domain to acquire land for jail purposes under the law of the State of Texas, Chapter 261.001 of the Local Government Code of Texas and Chapter 21 Eminent Domain of the Property Code of Texas.

**WHEREAS**, a necessity exists for acquisition of land to construct additional jail facilities and add on to the existing jail situated in Livingston, Texas at 1733 North Washington Street.

**WHEREAS**, the Commissioners Court of Polk County, Texas passed a resolution at its regular business meeting on February 27, 2007, of its intention to issue certificates of obligation for the purpose of acquisition of a jail site and construction of a new County Law Enforcement Center (jail) and for payment of professional services and costs related thereto not to exceed \$19,000,000.00, and **WHEREAS**, notice of intention to issue certificates of obligation were duly given under Government Code Section 271.041 et seq., on March 8, 2007 and March 15, 2007 and **WHEREAS**, pursuant to the resolution and notice, Polk County, Texas Certificates of Obligation Series 2007 were authorized and issued on March 27, 2007; and

**WHEREAS**, it is necessary to use such funds to acquire, and/or condemn, additional lands for expansion and addition to the law enforcement center; and

**WHEREAS**, in accordance with Texas Law, offers to purchase various tracts of land have been duly made and Landowner Bill of Rights have been given to the respective landowners who own the land to be acquired and/or condemned, particularly the owners of Tract 8, a one and one-half (1½) acre tract of land, more or less, in the M.L. Choate Survey, A-15, Polk County, Texas; and

**WHEREAS**, said landowners have not accepted the offer made to purchase their tract and have not made a counter offer to Polk County which is acceptable to Polk County and negotiations have failed; and

**WHEREAS**, the County has obtained the services of an attorney to represent Polk County in the condemnation of property under the Eminent Domain Law of Texas, and Polk County has retained the services of Jake Lyon and Associates and Ernest L. McClendon, Jr., Attorney, PLLC to handle the Eminent Domain and condemnation proceedings for the new jail project; and

**WHEREAS**, Judge Thompson, Jake Lyon and Ernest L. McClendon, Jr., Attorney, PLLC have made reports on the progress of negotiations and purchase of the various tracts which are to be included in the improvements and additions to the law enforcement center at 1733 North Washington Street, Livingston, Texas.

**WHEREAS**, Commissioners Court, through its duly appointed agents, Jake Lyon and Ernest L. McClendon, Jr., Attorney, PLLC has made offers, and attempted to negotiate settlements for purchase of Tract 8 now known as the Eunice Alona Jordan-Tilda Joyce Smith Property needed for



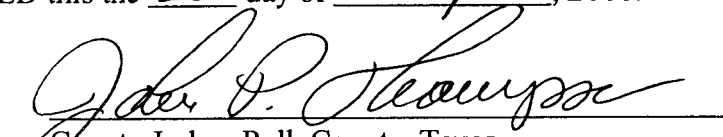
construction of the Polk County Jail Project in Livingston, Polk County, Texas; and **WHEREAS**, negotiations have failed and no agreement for the purchase and sale of the Eunice Alona Jordan-Tilda Joyce Smith Property can be reached, and **WHEREAS**, a public necessity exist and time is of the essence to commence construction of the jail additions and renovations; and **WHEREAS**, the best alternative for the County is to commence condemnation litigation procedures.

**NOW, THEREFORE, IT IS ORDERED and DECREED** that the County Judge, Jake Lyon and Ernest L. McClendon, Jr., Attorney, PLLC are hereby authorized and directed to perform any and all necessary acts toward the final acquisition of the Eunice Alona Jordan-Tilda Joyce Smith Property together with improvements, if any, for the expansion, additions and improvements to the Law Enforcement Center, including but not limited to commencement of litigation proceedings in condemnation to acquire the tract referred as Tract 8, a one and one-half (1 ½) acre tract owned by Eunice Alona Jordan-Tilda Joyce Smith.

**IT IS ORDERED and DECREED** that E. L. McClendon, Jr., Attorney, PLLC, as legal counsel for Polk County, Texas, is hereby directed to proceed with litigation to condemn Tract 8, being the Eunice Alona Jordan-Tilda Joyce Smith Property under the law of condemnation of the State of Texas including but not limited to filing a Petition in Condemnation, appointment of Special Commissioners, setting a hearing, giving Notice of Lis Pendens, hiring a certified appraiser and all steps and procedures necessary to acquire fee title to the one and one-half (1 ½) acre tract known as the Eunice Alona Jordan,-Tilda Joyce Smith Property as expediently as possible through eminent domain condemnation procedure.

Further resolved that all actions heretofore taken by the County Judge, Jake Lyon and Ernest L. McClendon Jr., Attorney, PLLC, concerning the negotiations to purchase the Eunice Alona Jordan-Tilda Joyce Smith Property are hereby ratified and approved including, but not limited to the following: Negotiating offers to purchase said Tract 8 and the rejection of the offer, if any, made by Eunice Alona Jordan, Tilda Joyce Smith, Betty O. King, the Estate of Sim Osaw and the unknown heirs of Sim Osaw.

PASSED AND APPROVED this the 22 day of July, 2008.

  
County Judge, Polk County, Texas  
John P. Thompson

ATTEST:

  
County Clerk, Polk County, Texas  
Barbara Middleton

COMMISSIONERS COURT SEAL

#10

**ERNEST L. McCLENDON, JR.**  
**ATTORNEY, P.L.L.C.**  
501 North Washington, Livingston, Texas 77351  
Phone No. (936) 327-5483 Fax No. (936) 327-2606  
email: mcclendonlaw@livingston.net

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**ATTORNEY-CLIENT COMMUNICATION: THIS DOCUMENT AND  
ITS CONTENTS CONSTITUTE LEGALLY PRIVILEGED INFORMATION**

May 14, 2008

County of Polk  
101 West Church Street  
Livingston, Texas 77351

Re: Polk County Jail Expansion; Condemnation of Property; Related work to establish title in Polk County, Texas

Dear Judge

This letter is to describe the terms and conditions under which I am offering to represent you in connection with the following:

The purchase of property and the condemnation of property for the Polk County Jail Expansion Project and the actions necessary to clear the title to various properties as approved by the Court.

This letter is a legal contract, and the terms and conditions of my agreement with you are described in some detail. This letter not only establishes the terms of my contract with you, it will help to prevent any misunderstandings. When you sign and return a copy of this letter, you are agreeing to the terms and conditions of representation which are described in this letter.

I cannot guarantee any expected outcome or conclusion of the legal matter due to numerous and complicated factors which are beyond my control. I make no express warranties concerning this transaction, and hereby expressly disclaim any implied warranties concerning it. It is expressly understood and agreed that no other representations have been made to you except those set out in this letter.

If the matter involves litigation, the County will be required to attend court appearances, through its agents, and comply with discovery requests and deposition notices.

If the matter requires negotiation, I will negotiate with the opposing party on the County's behalf. I will not conclude or settle the matter without the County's approval. Please do not communicate with any of the parties, witnesses or attorneys in the case without my involvement.

I have agreed upon an hourly basis as follows:

E.L. McClendon, Jr.	\$275.00
Office Staff	\$100.00

May 14, 2008  
County of Polk  
Page 2

Time is kept in fifteen minute- increments and the hourly charge is the time that the attorney allocates for the matters performed on behalf of Polk County, Texas.

The attorney's fees do not include court costs, depositions, appraisal fees, mileage charges, parking expense, long distance telephone charges, postage, copy and certified copy expenses, delivery charges, and any other out-of-pocket costs. These costs will be treated as additional expenses and will be included in my bill.

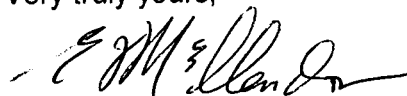
On behalf of County, the Commissioner's Court agrees to pay those reasonable expenses. If payments are not made promptly to me as requested, I reserve the right to immediately withdraw from representing the County of Polk in any and all matters that the law office is handling. On behalf of the County, you agree to the withdrawal.

This Agreement is performable in Livingston, Polk County, Texas. All monies owed hereunder are to be paid at my office in Livingston, Polk County, Texas. Jurisdiction and venue of any dispute arising hereunder are also performable in Livingston, Polk County, Texas.

On behalf of the County of Polk, you authorize me with the County's power of attorney to sign court or other legal documents which may be required in the course of the case. Also, on behalf of the County of Polk, you also will designate my law office as the County's attorney-at-law and in fact to act in its name, sign legal pleadings on its behalf and to perform the acts necessary and appropriate to effect the above described legal representation.

Please sign in the space provided below so that I may begin working on the County of Polk's behalf. If you have any questions concerning my fees or this legal matter, please call me at (936) 327-5483.

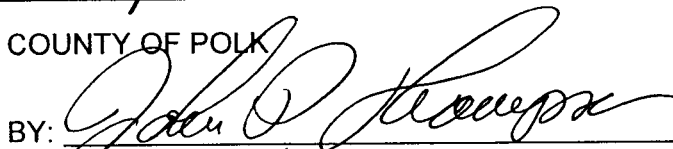
Very truly yours,



E.L. McClendon, Jr.  
ELM/pah

SIGNED on this 22 day of July, 2008.

COUNTY OF POLK

BY: 

SIGNED on this 14th day of May, 2008.

  
E.L. McClendon, Jr.

COPY

VOL. 54 PAGE 997

#11.  
**Standard Form of Agreement Between Owner and Architect**

AGREEMENT made as of the 17th day of July in the year of 2008.

BETWEEN the Owner

Polk County, a political subdivision of the State of Texas  
101 W. Church Street, Ste. 300  
Livingston, Texas 77351  
936-327-6813  
936-327-6891 (fax)

And the Architect

Johnson/McKibben Architects, Inc.  
965 Slocum Street  
Dallas, Texas 75207  
214-745-7070  
214-745-1515 (fax)

For the following Project

Polk County Jail  
1733 North Washington  
Livingston, Texas 77351

Design and produce construction documents for the Polk County Jail addition located at 1733 North Washington, Livingston, Texas 77351. The new facility consists of approximately 93,117 square feet of construction, creating approximately 238 new beds, a public administration area and a new Department of Safety station. All work to be approved by the Texas Commission of Jail Standards.

The Construction Manager is:

J.E. Kingham Construction Company  
P.O. Box 630632  
Nacogdoches, Texas 75963

The Owner and Architect agree as set forth below.

**Article 1.1 INITIAL INFORMATION**

**§1.1.1** This Agreement is based on the following information and assumptions:

Polk County, Texas is obtaining the architectural services, support and advice of Johnson/McKibben Architects, Inc. to complete the Polk County Jail addition, consisting of renovation of the existing jail and adding approximately 93,117 s.f., creating approximately 238 new beds, a public administration area and a new Department of Public Safety station.

**§1.1.2 PROJECT PARAMETERS**

**§1.1.2.1** The objective or use is:

This facility will be used for detention purposes and related support. DPS offices and sheriff offices will be designed for their use.

**§1.1.2.2** The physical parameters are:

93,117 s.f. will be added to the facility, creating approximately 238 new beds.

The Owner shall provide the Architect with an accurate Site Survey, Geotechnical Report, and Preliminary Program.

**§1.1.2.3** The Owner's Program is:

SEE ADDENDUM

**§1.1.2.4** The legal parameters are:

**§1.1.2.5** The financial parameters are as follows:

- .1 Amount of Owner's overall budget for the Project, including the Architect's compensation is: \$19,000,000
- .2 Amount of Owner's budget for the Cost of Work, excluding the Architect's compensation is: \$17,565,000.00

**§1.1.2.6** The time parameters are:

This contract shall commence upon the acceptance of a land survey of the Project site by Architect and Owner.

- Design:
- Concept: Site Design:
- Floor Plan:
- Owner's Approval:

Schematic Design: 60 days  
Owner's Approval of Schematic Design:  
Design Development: 90 days  
Owner's Approval of Design Development:  
Contract Documents:  
Owner's Approval of Contract Documents:  
Bidding and Negotiation:  
Construction Services: 370 days  
(exclusive of warranty periods)

**§1.1.2.7** The professional procurement or delivery method for the Project is:  
*(Identify method such as competitive bid, negotiated contract, or construction management)*

Construction Manager at Risk

**§1.1.2.8** Other parameters are:  
*(Identify special characteristics or needs of the Project such as energy, environmental or historic preservation)*

None.

**§1.1.3 PROJECT TEAM**

**§1.1.3.1** The Owner's Designated Representative is:

Judge John Thompson  
Polk County  
101 West Church Street, Suite 300  
Livingston, Texas 77351  
936.327.6813 (Telephone)  
936.327.6891 (Facsimile)

**§1.1.3.2** The persons or entities, in addition to the Owner's Designated Representative, who are required to review the Architect's submittals to the Owner are:

None known at time of execution.

**§1.1.3.3** The Owner's other consultants and contractors are:

J.E. Kingham Construction Company  
P.O. Box 630632  
Nacogdoches, Texas 75963

**§1.1.3.4** The Architect's Designated Representative is:

Gary McKibben  
Johnson/McKibben Architects, Inc.  
956 Slocum Street  
Dallas, Texas 75207  
214.745.7070 (Telephone)  
214.745.1515 (Facsimile)

**§1.1.3.5** The consultants retained at the Architect's expense are:

Jail Consulting:  
Gary Adams  
806 Toler Court  
Longview, Texas 75604  
903.918.5653 (Telephone)  
[amajailbuilder@cs.com](mailto:amajailbuilder@cs.com)

Structural Design:  
Stephen A. Dial, P.E.  
Hunt & Joiner, Inc.  
1825 Market Center Blvd., Suite 620  
Dallas, Texas 75207  
214.760.7000 (Telephone)  
214.760.7011 (Facsimile)  
[sdial@h-jinc.com](mailto:sdial@h-jinc.com)

Civil Engineering: unknown at time of execution

MEP Engineering: unknown at time of execution

Detention Consultant: unknown at time of execution

Surveyor:  
Alan Cook  
Cook Land Surveying Enterprises, LLC  
110 E. Abbey Street  
Livingston, Texas 77351  
936.327.8164 (Telephone)  
936.327.3794 (Facsimile)  
[cooksurveying@livingston.net](mailto:cooksurveying@livingston.net)

Cost Estimating Services:  
Greg Blanchard  
Computerized Estimating Services, Inc.  
2823 VZ CR 1222  
Grand Saline, Texas 75140  
800.705.7595 (Telephone)  
903.962.3072 (Facsimile)  
[cecostest@msn.com](mailto:cecostest@msn.com)

**§1.1.4** Other important initial information is:

**§1.1.5** If the services under this Agreement include contract administration services, the General Conditions of the Contract for Construction shall be the edition of AIA Document A201 current as of the date of this Agreement, or as follows:

AIA Document A201-1997

**§1.1.6** The information contained in this Article 1.1 may be reasonably relied upon by the Owner and Architect in determining the Architect's compensation. Both parties, however, recognize that such information may change and, in that event, the Owner and the Architect shall negotiate appropriate adjustments in schedule, compensation and Change of Services in accordance with Section 1.3.3.

## **ARTICLE 1.2 RESPONSIBILITIES OF THE PARTIES**

**§1.2.1** The Owner, Architect and Construction Manager shall cooperate with one another to fulfill their respective obligations under this Agreement. All parties shall endeavor to maintain good working relationships among all members of the Project team.

### **§1.2.2 OWNER**

**§1.2.2.1** Unless otherwise provided under this Agreement, the Owner shall provide full information in a timely manner regarding requirements for and limitations on the Project. The Owner shall, upon written request from the Architect, furnish to the Architect, within a reasonable time, information necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

**§1.2.2.2** The Owner shall establish and periodically update the budget for the Project, including that portion allocated for the Cost of the Work. The Owner shall not significantly increase or decrease the overall budget, the portion of the budget allocated for the Cost of the Work, or contingencies included in the overall budget or a portion of the budget, without the agreement of the Architect to a corresponding change in the Project scope and quality.



**§1.2.2.3** The Owner's Designated Representative identified in Section 1.1.3 shall be authorized to act on the Owner's behalf with respect to the Project. The Owner or the Owner's Designated 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 services.

**§1.2.2.4** The Owner shall furnish the services of consultants other than those designated in Section 1.1.3 or authorize the Architect to furnish them as a Change in Services when such services are requested by the Architect and are reasonably required by the scope of the Project.

**§1.2.2.5** Unless otherwise provided in this Agreement, the Owner shall furnish tests, inspections and report 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.

**§1.2.2.6** The Owner shall furnish all legal, insurance counseling 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.

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

**§1.2.2.8** The Owner shall retain a construction manager to administer the Project. The Construction Manager's services, duties and responsibilities will be as described in the edition of AIA Document A121 CMc – 2003, Standard Form of Agreement between Owner and Construction Manager where the Construction Manager is Also the Contractor. The Terms and Conditions of the Agreement between Owner and Construction Manager shall be furnished to the Architect and shall not be modified without written consent of the Architect, which consent shall not be unreasonably withheld. The Architect shall not be responsible for actions taken by the Construction Manager as modified by agreement of the Owner and Construction Manager.

### **§1.2.3 ARCHITECT**

**§1.2.3.1** The services performed by the Architect, Architect's employees and Architect's consultants shall be as enumerated in Article 1.4.

**§1.2.3.2** The Architect's services shall be performed as expeditiously as possible as is consistent with professional skill and care and the orderly progress of the Project. The Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which initially shall be consistent with the time periods established in Section 1.1.2.6 and which shall be adjusted, if necessary, as the Project proceeds. This 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. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner.

**§1.2.3.3** The Architect's Designated Representative identified in Section 1.1.3 shall be authorized to act on the Architect's behalf with respect to the Project.

**§1.2.3.4** The Architect shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate law, create the risk of significant harm to the public or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect shall require of the Architect's consultants similar agreements to maintain the confidentiality of information specifically designated confidential by the Owner.

**§1.2.3.5** 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 the Project.

**§1.2.3.6** The Architect shall review laws, codes and regulations applicable to the Architect's services. The Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project.

**§1.2.3.7** The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any errors, omissions or inconsistencies in such services or information.

**§1.2.3.8** The Architect agrees to make presentations at up to two (2) meetings a month coordinated with the Architect's site visits as a part of Basic Services without reimbursement for travel. Presentations or attendance at other meetings in connection with the performance of Architect's services, including Polk County Commissioners Court meetings, meetings with County staff, and team meetings with consultants and the Contractor, as needed to perform the Architect's Basic Services, will also be deemed part of the Architect's Basic Services covered by the Architect's fee for Basic Services without reimbursement for travel.

**§1.2.3.9** The Architect agrees to cooperate with the Construction Manager in connection with the Project. The Construction Manager will not serve as the Owner's Designated Representative, unless the Owner's governing body authorizes the Construction Manager to do so.

## **ARTICLE 1.3        TERMS AND CONDITIONS**

### **§1.3.1    Cost of the Work**

**§1.3.1.1** The Cost of the Work shall be within the parameters of a Fixed Construction Budget. The Cost of the Work shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project designed or specified by the Architect.

**§1.3.1.2** The Cost of Work/Fixed Construction Budget shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their 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.

**§1.3.1.3** The Cost of the Work does not include the compensation of the Architect and the Architect's consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner.

### **§1.3.2 INSTRUMENTS OF SERVICE**

**§1.3.2.1** Drawings, specification and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service for use solely with respect to this Project. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

**§1.3.2.2** Upon execution of this Agreement, the Architect grants to Owner a nonexclusive license to reproduce the Architect's Instruments of Service solely for purposes of constructing, using and maintaining the Project, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate this license. Upon such termination, the Owner shall refrain from making further reproductions of Instruments of Service and shall return to the Architect within seven days of termination all originals and reproductions in the Owner's possession or control. If and upon the date the Architect is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

**§1.3.2.3** Except for the licenses granted in Section 1.3.2.2, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge, or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. However, the Owner shall be permitted to authorize the Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the Work by license granted in Section 1.3.2.2. 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 Architect and the Architect's consultants. The Owner shall not use the Instruments of Service for future additions or alternation to this Project or for other projects, unless the Owner obtains the prior

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

**§1.3.2.4** Prior to the Architect providing to the Owner any Instruments of Service in electronic form or the Owner providing to the Architect any electronic data for incorporation into the Instruments of Service, the Owner and the Architect shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations or licenses not otherwise provided in this Agreement.

### **§1.3.3 CHANGE IN SERVICES**

**§1.3.3.1** Change in Services of the Architect, including services required of the Architect's consultants, may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed in writing if required by circumstances beyond the Architect's control, or if the Architect's services are affected as described in Section 1.3.3.2. If the Owner deems that all or a part of such Change in Services is not required, the Owner shall give prompt written notice to the Architect, and the Architect shall have no obligation to provide those services. Except for a change due to the fault of the Architect, Change in Services of the Architect shall entitle the Architect to an adjustment in compensation pursuant to Section 1.5.2, and to any Reimbursable Expenses described in Section 1.3.9.2 and Section 1.5.5.

**§1.3.3.2** If any of the following circumstances affect the Architect's services for the Project, the Architect shall be entitled to an appropriate adjustment in the Architect's schedule and compensation:

- .1 change in the instructions or approvals given by the Owner that necessitate revisions Instruments of Service;
- .2 enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Instruments of Services.
- .3 decisions of the Owner not rendered in a timely manner;
- .4 significant change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget, or procurement method;
- .5 failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .6 preparation for and attending a public hearing, except as provided in §1.2.3.8 of this Agreement; a dispute resolution proceeding, or a legal proceedings except where the Architect is a party thereto;
- .7 change in the information contained in Article 1.1

**§1.3.4 MEDIATION**

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

**§1.3.4.2** The 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, in writing, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of suit for legal or equitable relief; but, in such event, mediation shall proceed in advance of litigation, which shall be stayed pending mediation for a period of 60 days from the date of serving the other party to this Agreement with suit or for a longer period by agreement of the parties or court order.

**§1.3.4.3** 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 on in writing. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**§1.3.5**

THIS SECTION INTENTIONALLY LEFT BLANK

**§1.3.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Section 1.3.8.

**§1.3.7 MISCELLANEOUS PROVISIONS**

**§1.3.7.1** This Agreement shall be governed by the law of Texas, unless otherwise provided in Section 1.4.2.

**§1.3.7.2** Terms in this Agreement shall have the same meaning as those in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

**§1.3.7.3** Causes of action between the parties to this Agreement pertaining to acts or failure to act shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than either the date of Substantial Completion for acts or failure to act

occurring prior to Substantial Completion or the date of issuance of the final Certificate of Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the Architect's services are substantially completed.

§1.3.7.4 To the extent damages are covered by property insurance during construction, the Owner and Architect waive all rights against each other and the Construction Manager 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 the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. 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.

§1.3.7.5 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, Architect, or the Construction Manager.

§1.3.7.6 Unless otherwise provided in this Agreement, the Architect and Architect's consultants 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.

§1.3.7.7 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 if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§1.3.7.8 If 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. The Architect shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§1.3.7.9 The Owner and 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 representatives of such other party with respect to all covenants of 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 an institutional lender providing financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under this Agreement. The Architect shall execute all consents reasonably required to facilitate such assignment.

**§1.3.8 TERMINATION OR SUSPENSION**

**§1.3.8.1** 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, prior to suspension of services, the Architect shall give fifteen business days' written notice to the Owner. 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.

**§1.3.8.2** If the Project is suspended by the Owner for more than 30 consecutive days, 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.

**§1.3.8.3** If the Project is suspended or the Architect's services are suspended for more than 90 consecutive days, the Architect may terminate this Agreement by giving not less than fifteen business days' written notice.

**§1.3.8.4** This Agreement may be terminated by either upon not less than fifteen business 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.

**§1.3.8.5** This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

**§1.3.8.6** 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.

**§1.3.9 PAYMENTS TO THE ARCHITECT**

**§1.3.9.1** Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation of the Architect's statement of services to the next meeting of Commissioners Court. 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 adjudged to be liable.

**§1.3.9.2** Reimbursable expenses are in addition to compensation for the Architect's services and include expenses incurred by the Architect and the Architect's employees and consultants directly related to the Project, as identified in the following clauses:

- .1 transportation in connection with the Project at the IRS approved mileage rate for authorized out-of-town travel and subsistence; and electronic communications;
- .2 fees paid for securing approval of authorities having jurisdiction over the Project;
- .3 reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service;
- .4 expense of overtime work requiring higher than regular rates if authorized in advance by the Owner in writing;
- .5 renderings, models, and mock-ups requested by the Owner;
- .6 expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and the Architect's consultants;
- .7 reimbursable expenses as designated in Section 1.5.5;

**§1.3.9.3** Records of Reimbursable Expenses, of expenses pertaining to a Change in Services, and of services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

**§1.3.9.4** Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

## **ARTICLE 1.4**

### **SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS**

**§1.4.1** Enumeration of Parts of the Agreement. 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. This Agreement comprises the documents listed below.

**§1.4.1.1** Standard Form of Agreement Between Owner and Architect, AIA Document B141-1997, as modified herein.

**§1.4.1.2** Standard Form of Architect's Services: Design and Contract Administration, AIA Document B 141-1997, or as follows:



**§1.4.1.2.1 Schematic Design Phase:**

(a) The Architect shall review the program, schedule and construction budget furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner.

(b) The Architect shall review with the Owner and Construction Manager proposed site use and improvements; selection of materials; building systems and equipment; and methods of Project delivery.

(c) The Architect shall review with the Owner and Construction Manager alternative approaches to design and construction of the Project.

(d) Based on the mutually-agreed upon program, schedule and construction budget requirements, the Architect shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of the Project components.

(e) At intervals appropriate to the progress of the Schematic Design Phase and mutually agreeable to the Owner, Construction Manager and Architect, the Architect shall provide schematic design studies for the Owner's review and the Construction Manager's information.

(f) Upon completion of the Schematic Design Phase, the Architect shall provide drawings, outline specifications and other documents for the Owner's approval and the Construction Manager's information.

**§1.4.1.2.2 Design Development Phase:**

(a) Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, the Architect shall prepare Design Development Documents for the Construction Manager's review and the Owner's approval. The Design Development Documents shall be based upon data and estimates prepared by the Construction Manager and shall consist of drawings and other documents that establish and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

(b) At intervals mutually agreeable to the Owner, Construction Manager and Architect, the Architect shall provide drawings and other documents which depict the current status of design development for the Owner's review and the Construction Manager's information.

(c) Upon completion of the Design Development Phase, the Architect shall provide drawings, outline specifications and other documents for the Owner's approval and the Construction Manager's information.

**1.4.1.2.3 Construction Documents Phase:**

(a) Based on the approved Design Development Document and any further adjustments authorized by the Owner in the scope and quality of the Project or in the construction budget, the Architect, utilizing data and estimates prepared by the Construction Manager, shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project.

(b) At intervals mutually agreeable to the Owner, Construction Manager and Architect, the Architect shall provide Drawings and Specifications for the Owner's approval and the Construction Manager's information.

(c) The Architect shall assist the Owner and Construction Manager in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contracts, and the forms of Agreement between the Owner and the Contractors. The Architect shall assist the Construction Manager in issuing bidding documents to bidders and conducting prebid conferences with prospective bidders. The Architect, with the assistance of the Construction Manager, shall respond to questions from bidders and shall issue addenda.

(d) The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

**§1.4.1.2.4 Bidding or Negotiation Phase:**

(a) The Architect, following the Owner's approval of the Construction Documents and of the Construction Manager's latest estimate of Construction Cost, shall assist the Construction Manager in obtaining bids or negotiating proposals and assist in preparing contracts for construction.

(b) The Architect shall provide administration of the Contract for construction in cooperation with the Construction Manager as set forth herein and in the edition of AIA Document A201 – 1997; General Conditions of the Contract for Construction, current as of the date of this Agreement.

**§1.4.1.2.5 Construction Phase/Administration of the Construction Contract:**

(a) Duties, responsibilities and limitations of authority of the Architect shall not be restricted, modified or extended without written agreement of the Owner and Architect with consent of the Contractors and the Construction Manager, which consent shall not be unreasonably withheld.

(b) The Architect shall be a representative of and shall advise and consult with the Owner (1) during construction until final payment to the Contractors is due, and (2) as an Additional Service at the Owner's direction from time to time during the correction period described in the Contracts for Construction. The Architect shall have authority to act on behalf

of the Owner only to the extent provided in this Agreement unless otherwise modified by written instrument, and shall not be considered an agent, servant, or employee of owner, acting at all times as an independent contractor

(c) The Architect shall visit the site at intervals appropriate to the stage of construction or as otherwise agreed by the Owner and Architect in writing to become generally familiar with the progress and quality of the Work completed and to determine in general if the Work is being performed in a manner indicating that the Work when 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. On the basis of on-site observations as an architect, the Architect shall keep the Owner informed of the progress and quality of the Work, and shall endeavor to guard the Owner against defects and deficiencies in the Work. (More extensive site representation may be agreed to as an Additional Service, as described in Section 3.2.)

(d) The Architect shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are the Contractors' responsibility under the Contracts for Construction. The Architect shall not be responsible for the Contractors' schedules or failure to carry out the Work in accordance with the Contract Documents. The Architect shall not be responsible for the performance by the Construction Manager of the services required by the Construction Manager's agreement with the Owner. The Architect shall not have control over or charge of acts or omissions of the Contractors, Subcontractors, or their agents or employees, or of any other persons performing services or portions of the Work.

(e) The Architect shall at all times have access to the Work wherever it is in preparation or progress.

(f) Communications by and with the Architect's consultants shall be through the Architect.

(g) Based on the Architect's observations and evaluations of each Contractor's Application for Payment, the Architect shall review and certify the amounts due the respective Contractors.

(h) The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's observations at the site as provided in Section 2.6.5, on the recommendations of the Construction Manager and on the data comprising the Contractors' Applications for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified.

(i) The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work reviewed or (2) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

(j) The Architect shall have authority, after notification to the Construction Manager, to reject Work which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority, upon written authorization from the Owner, to require additional 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 Construction Manager, Contractors, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the Work.

(k) The Architect shall review and approve or take other appropriate action upon Contractors' 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. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Contractors' Work or in construction by the Owner's own forces, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractors, all of which remain the responsibility of the Contractors to the extent required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of 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. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

(l) The Architect shall review and sign or take other appropriate action on Change Orders and Construction Change Directives prepared by the Construction Manager for the Owner's approval and execution in accordance with the Contract Documents.

(m) The Architect may authorize minor changes in Work not involving an adjustment in a Contract Sum or an extension of a Contract Time which are not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order issued through the Construction Manager.

(n) The Architect, assisted by the Construction Manager, shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion. The Architect shall forward to the Owner warranties and similar submittals required by the Contract Documents which have been received from the Construction Manager. The Architect shall issue a final Project Certificate for Payment upon compliance with the requirements of the Contract Documents.

(o) The Architect shall interpret and decide matters concerning performance of the Owner and Contractor under the requirements of the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made with reasonable promptness and within any time limits agreed upon.

(p) Interpretations and decisions 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 initial decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractors, shall not show partiality to either, and shall not be liable for results of interpretations or decisions so rendered in good faith.

(q) The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

(r) The Architect shall render written decisions within a reasonable time on all claims, disputes or other matters in question between the Owner and Contractors relating to the execution or progress of the Work as provided in the Contract Documents.

**§1.4.1.3** Other documents as follows:

Owner shall furnish a complete site survey prior to Architect completing conceptual design.

**§1.4.2** Special Terms and Conditions. Special terms and conditions that modify this Agreement are as follows:

**§1.4.2.1** The Architect's Basic Services include regular site visits and written reports corresponding to site visits, at least two meetings a month coordinated with Architect's site visits without reimbursement for travel, presentations or attendance at other meetings in connection with the performance of Architect's services, including Polk County Commissioners Court meetings, meetings with County staff, and team meetings with consultants and the Contractor, as needed to perform Basic Services.

**§1.4.2.3** The Architect shall assist the Owner and Construction Manager in preparation and submission of applications, drawings, specifications and other documents to utility companies and providers and shall assist Owner and Construction Manager in obtaining approvals and development and building permits necessary to complete the Project in a timely manner.

**§1.4.2.4** The Owner requires contractors to warrant the construction work to be free from defects and deficiencies for a period of one year after Substantial Completion. Under Basic Services, the Architect shall provide limited assistance to the Owner through the one-year warranty period on matters involving malfunctions or deficiencies of the Work.

**§1.4.2.5** The Architect shall accomplish an on-site review of the Work accompanied by its subconsultants approximately one month before the one-year anniversary date of Substantial Completion. As a result of this on-site review Architect shall prepare a list of items needing correction and request the Contractor to resolve them. After reviewing the Contractor's corrective actions and determining that deficiencies have been corrected, the Architect shall so notify the Owner in writing. This notification by the Architect does not release the Contractor from its responsibilities set forth in the Contract Documents and shall not be construed as an implied or express warranty or representation by the Architect, that the deficiencies have been corrected or that there are not other deficiencies on the Project.

## **ARTICLE 1.5            COMPENSATION**

**§1.5.1** For the Architect's services as described under Article 1.4, compensation shall be computed as follows:

Compensation shall be a Fixed Fee for Basic Services in the amount of \$1,435,000.00. Additional Services shall be calculated by a fixed fee or an hourly rate as negotiated with the Owner.

**§1.5.2** If the services of the Architect are changed as described in Section 1.3.3.1, the Architect's compensation shall be adjusted. Such adjustment shall be calculated as described below or, if no method of adjustment is indicated in this section 1.5.2, in an equitable manner.

Adjustments shall be calculated as a percent of construction cost at the percentage of 8.593%

**§1.5.3** For a Change in Services of the Architect's consultants, compensation shall be computed as a multiple of 1.10 times the amounts billed to the Architect for such services.

**§1.5.4** For Reimbursable Expenses as described in Section 1.3.9.2, and any other items to be included in Section 1.5.5 as Reimbursable Expenses, the compensation shall be computed as a multiple of 1.25 times the expenses incurred by the Architect and the Architect's employees and consultants, except that expenses for fuel or gasoline incurred during authorized travel shall be reimbursed at the IRS mileage rate at the time the expense is incurred.

**§1.5.5** Other Reimbursable Expenses, if any, are as follows:

Travel in addition to normal site visits, reproduction costs, long distance telephone, delivery charges and postage.

§1.5.6 The rates and multiples for services of the Architect and the Architect's consultants as set forth in this Agreement shall be adjusted in accordance with their normal salary review practices.


§1.5.7 An initial payment of Forty Thousand Dollars (\$40,000) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account at final payment. Subsequent payments for services shall be made monthly, and where applicable, shall be in proportion to services performed on the basis set forth in this Agreement.

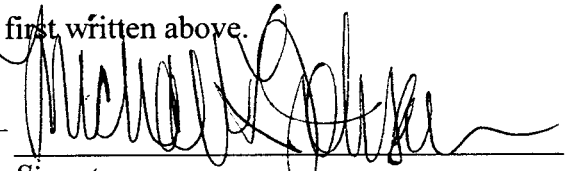
§1.5.8 Payments are due and payable Fifteen (15) days from the date of presentation of the Architect's invoice to the Commissioners Court. Amounts unpaid 30 days after the presentation of the invoice to the Commissioners Court shall bear interest at the rate entered below, or in the absence thereof, at the legal rate prevailing from time to time at the principal place of business of the Architect

Not applicable.

§1.5.9 If the services covered by this Agreement have not been completed within one year, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Section 1.5.2.

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

  
Signature,  
Judge John Thompson, Polk County Judge

  
Signature,  
Michael L. Johnson, President