

#11.

COPY

VOL. 54 PAGE 997

## 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.

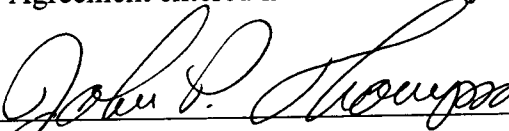
§1.5.7 An initial payment of Forty Thousand Dollars (\$40,000) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account at final payment. Subsequent payments for services shall be made monthly, and where applicable, shall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

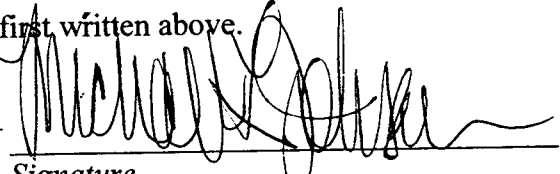
§1.5.8 Payments are due and payable Fifteen (15) days from the date of presentation of the Architect's invoice to the Commissioners Court. Amounts unpaid 30 days after the presentation of the invoice to the Commissioners Court shall bear interest at the rate entered below, or in the absence thereof,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