

NOTICE OF MEETING
COMMISSIONERS COURT OF UPSHUR COUNTY, TEXAS
NOVEMBER 13, 1997, 1:00PM, SPECIAL SESSION
UPSHUR COUNTY COURTHOUSE, THIRD FLOOR

AGENDA

1. Commissioners Court will convene into open session.
2. Court will go into closed meeting as authorized by VTCS Section 551.072 to meet with Danny Butler, Lamarr McDonald and District Attorney, Tim Cone to review contracts and discuss the jail expansion project. Contract to be finalized upon approval of all parties.
3. Hear from Southwest Securities representative Ed Moore on any comments relative to the jail project.
4. Re-convene into open session to take any action required on matters discussed in the closed session.


Charles L. Still
County Judge

FILED
REX A. SHAW
COUNTY CLERK
97 NOV 10 PM 2:09
UPSHUR COUNTY, TX
BY _____
DEPUTY

**NOTICE OF MEETING
COMMISSIONERS COURT OF UPSHUR COUNTY, TEXAS
NOVEMBER 13, 1997, 1:00 PM, SPECIAL SESSION
UPSHUR COUNTY COURTHOUSE, THIRD FLOOR**

AGENDA

ADDENDUM

1. Consider adopting a resolution concerning the Texas Water Development Board.
2. Accept for recording the publishers affidavit from the Gilmer Mirror for the Notice of Intention to Issue Certificates of Obligation.



**Charles L. Still
County Judge**

RECEIVED
COUNTY CLERK
97 NOV 13 AM 8:02
UPSHUR COUNTY, TEXAS
PRIORITY

UPSHUR COUNTY COMMISSIONER'S COURT

11-13-1997

Commissioner's Court met in Special Session. All members present

Addendum

1 Motion by Gaddis Lindsey seconded by Rick Jackson to approve Resolution concerning the Texas Water Development Board and placing Upshur County into an area compounded of the 14 county ETCOG region for surface water planning and that Upshur County be placed within a water planning region with other counties lying above the Corrizo-Wilcox aquifer for aquifer water planning

2 Motion by Rick Jackson seconded by Kenney Thompson to approve placing into minutes for recording purposes. Affidavit of Publication concerning Certificates of Obligation Motion carried. Copy attached.

Commissioner's Court convened into Executive Session

Motion by Kenney Thompson seconded by Rick Jackson to reconvene into Special Session.

Ed Moore, financial advisor for County, met with Court to discuss matters pertaining to the jail project

Motion by Kenney Thompson seconded by Addis Lindsey to approve contracts for Lamar McDonald of McDonald Architects, Inc. as architect for expansion of Upshur County jail and also Danny Butler of Dinosaur Valley Construction Inc. as construction manager of expansion of Upshur County jail. Motion carried. Copy of contract between Upshur County and Lamar McDonald attached

Motion by Rick Jackson seconded by Kenney Thompson to adjourn. Motion carried. Copy attached.

Attendance sheet placed into minutes for recording purposes only

Charles F. Still
JUDGE CHARLES STILL

COMMISSIONER GADDIS LINDSEY

Tommy Stanley
COMMISSIONER TOMMY STANLEY

Rick Jackson
COMMISSIONER RICK JACKSON

Kenney Thompson
COMMISSIONER KENNEY THOMPSON

UPSHUR COUNTY COMMISSIONERS COURT

RESOLUTION

WHEREAS, the Commissioners Court of Upshur County is aware of the importance of regional water planning areas to implement the requirements of Senate Bill # 1, and

WHEREAS, the Texas Water Development Board in its original division into areas has placed Upshur County out of the East Texas Council of Governments (ETCOG) region. This 14 county region has served as a super effective planning agency for 30 + years and Upshur County does not wish to be removed from this regional organization in the Texas Water Development Board plan, and

WHEREAS, the Upshur County Commissioners Court states for the record: We wish to be incorporated into a water planning district composed of the 14 county ETCOG region (for surface water plan), and

WHEREAS, Upshur County and all of the ETCOG region population lives over the Corrizo-Wilcox aquifer and a major part of our potable water is pumped from this renewable source, and

WHEREAS, the Commissioners Court of Upshur County is asking the Texas Water Development Board to consider the areas of our state underlaid with all aquifers and let this be a factor in our regional water planning.

NOW, THEREFORE, be it noted and adopted by Upshur County Commissioners Court that the Texas Water Development Board place our county into an area compounded of the 14 county ETCOG region for surface water planning and that Upshur County be placed within a water planning region with other counties lying above the Corrizo-Wilcox aquifer for aquifer water planning.

ADOPTED this 17th day of November, 1992.

Charles L. Still
County Judge Charles L. Still

Gaddis Lindsey
Commissioner Pct. 1 Gaddis Lindsey

Tommy Stanley
Commissioner Pct. 2 Tommy Stanley

Rick Jackson
Commissioner Pct. 3 Rick Jackson

Kenny Thompson
Commissioner Pct. 4 Kenny Thompson

Rex A. Shaw
Attest: County Clerk Rex A. Shaw

FILED
REX A. SHAW
COUNTY CLERK
97 NOV 14 PM 2:32
UPSHUR COUNTY, TX.
BY _____
AFFIDAVIT

AFFIDAVIT OF PUBLICATION

THE STATE OF TEXAS §
 §
COUNTY OF UPSHUR §

BEFORE ME, the undersigned authority on this day personally appeared Sarah Greene, Publisher of the Gilmer Mirror, a newspaper published in the County of Upshur, Texas, who, being by me duly sworn, upon oath deposes and says:

That said newspaper is of general circulation in Upshur County, Texas, and that the attached "NOTICE OF INTENTION TO ISSUE UPSHUR COUNTY, TEXAS, CERTIFICATES OF OBLIGATION", hereto attached, was published in said newspaper in its issues of

November 5, 1997; and

November 12, 1997;

and said newspaper devotes not less than twenty-five percent (25%) of its total column lineage to items of general interest, is published not less frequently than once each week, entered as periodical postal matter in the county where it is published and has been published regularly and continuously for not less than twelve (12) months prior to the date of the publication of said "NOTICE OF INTENTION TO ISSUE UPSHUR COUNTY, TEXAS, CERTIFICATES OF OBLIGATION".

Sarah L. Greene
Title: Publisher

SWORN TO AND SUBSCRIBED BEFORE ME, this the 12 day of November, 1997.

Kathy A. Davidson
Notary Public, State of Texas

(Notary Seal) *



FILED
REX A. SHAW
COUNTY CLERK
97 NOV 12 PM 3:32
UPSHER COUNTY, TX.
BT
OFFICE

Public Notices

**NOTICE OF INTENTION
TO ISSUE
UPSHUR COUNTY, TEXAS
CERTIFICATES OF
OBLIGATION**

TAKE NOTICE that the Commissioners Court of Upshur County, Texas, shall convene at 9:00 o'clock A.M. on the 24th day of November, 1997, at its regular meeting place in the County Courthouse, Gilmer, Texas, and during such meeting, the Court will consider the

Public Notices

passage of an order authorizing the issuance of certificates of obligation in an amount not to exceed \$3,535,000 for the purpose of paying contractual obligations to be incurred for (i) constructing and equipping jail facilities and (ii) professional services rendered in relation to such project and the financing thereof, such certificates to be payable from ad valorem taxes. The certificates are issued, and this notice is given, under and

Public Notices

pursuant to the provisions of the laws of the State of Texas, including V.T.C.A., Local Government Code, Subchapter C of Chapter 271.

Charles L. Smith,
County Judge,
Upshur County, Texas

FILED
REX A. SHAW
COUNTY CLERK
97 NOV 12 PM 3:32
UPSHUR COUNTY, TX
BY _____
ES:PTJ

Upshur County Notice of intention
to issue

Page 14A — THE GILMER MIRROR, Gilmer, Texas November 5, 1997

**NOTICE OF INTENTION
TO ISSUE
UPSHUR COUNTY, TEXAS
CERTIFICATES OF
OBLIGATION**

TAKE NOTICE that the Commissioners Court of Upshur County, Texas, shall convene at 9:00 o'clock A.M. on the 24th day of November, 1997, at its regular meeting place in the County Courthouse, Gilmer, Texas, and during such meeting, the Court will consider the passage of an order authorizing the issuance of certificates of obligation in an amount not to exceed \$3,535,000 for the purpose of paying contractual obligations to be incurred for (i)

Public Notices

constructing and equipping jail facilities and (ii) professional services rendered in relation to such project and the financing thereof, such certificates to be payable from ad valorem taxes. The certificates are issued, and this notice is given, under and pursuant to the provisions of the laws of the State of Texas, including V.T.C.A., Local Government Code, Subchapter C of Chapter 271

Charles L. Still,
County Judge,
Upshur County, Texas

BY _____
CLERK

UPSHUR COUNTY, TX

97 NOV 12 PM 3:32

FILED
REX A. SHAW
COUNTY CLERK



AIA Document B141

Standard Form of Agreement Between Owner and Architect

1987 EDITION

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

AGREEMENT

made as of the twenty- Seventh day of October in the year of Nineteen Hundred and ninety-seven

BETWEEN the Owner: County of Upshur
(Name and address) Upshur County Court House
Gilmer, Texas 75644

and the Architect: J. Lamarr McDonald, AIA
(Name and address) McDonald Architects, Inc.
One Summit, Ste. 614
Fort Worth, Texas 76102

For the following Project:
(Include detailed description of Project, location, address and scope)
Additions and Alterations to the Upshur County Justice Center, Gilmer, Texas

The Owner and Architect agree as set forth below.

Copyright 1917, 1926, 1948, 1951, 1953, 1958, 1961, 1963, 1966, 1967, 1970, 1974, 1977, ©1987 by The American Institute of Architects, 1735 New York Avenue, N.W., Washington, D.C. 20006. Reproduction of the material herein or substantial quotation of its provisions without written permission of the AIA violates the copyright laws of the United States and will be subject to legal prosecution.

AIA DOCUMENT B141 • OWNER-ARCHITECT AGREEMENT • FOURTEENTH EDITION • AIA® • ©1987
THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON D.C. 20006

B141-1987 1

WARNING: Unlicensed photocopying violates U.S. copyright laws and is subject to legal prosecution.

EDITOR'S NOTE

From time to time, the AIA makes minor corrections and clarifications in its documents as they are reprinted. Changes in the 7/88 reprinting of the 1987 edition of B141 were made in Subparagraphs 2.6.1 and 11.3.2. Changes in this 6/92 reprinting were made in Subparagraph 2.6.10 and Paragraph 4.5. See Section C of the Instruction Sheet for a detailed description of these changes.

TERMS AND CONDITIONS OF AGREEMENT BETWEEN OWNER AND ARCHITECT

ARTICLE 1

ARCHITECT'S RESPONSIBILITIES

1.1 ARCHITECT'S SERVICES

1.1.1 The Architect's services consist of those services performed by the Architect, Architect's employees and Architect's consultants as enumerated in Articles 2 and 3 of this Agreement and any other services included in Article 12

1.1.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Upon request of the Owner, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for the Owner's review 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

1.1.3 The services covered by this Agreement are subject to the time limitations contained in Subparagraph 11.5.1

ARTICLE 2

SCOPE OF ARCHITECT'S BASIC SERVICES

2.1 DEFINITION

2.1.1 The Architect's Basic Services consist of those described in Paragraphs 2.2 through 2.6 and any other services identified in Article 12 as part of Basic Services, and include normal structural, mechanical and electrical engineering services

2.2 SCHEMATIC DESIGN PHASE

2.2.1 The Architect shall review the program furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner

2.2.2 The Architect shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Subparagraph 5.2.1

2.2.3 The Architect shall review with the Owner alternative approaches to design and construction of the Project

2.2.4 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 Project components

2.2.5 The Architect shall submit to the Owner a preliminary estimate of Construction Cost based on current area, volume or other unit costs

2.3 DESIGN DEVELOPMENT PHASE

2.3.1 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, for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix 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

2.3.2 The Architect shall advise the Owner of any adjustments to the preliminary estimate of Construction Cost

2.4 CONSTRUCTION DOCUMENTS PHASE

2.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Architect 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

2.4.2 The Architect shall assist the Owner in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and Contractor

2.4.3 The Architect shall advise the Owner of any adjustments to previous preliminary estimates of Construction Cost indicated by changes in requirements or general market conditions

2.4.4 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project

2.5 BIDDING OR NEGOTIATION PHASE

2.5.1 The Architect, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist the Owner in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction

2.6 CONSTRUCTION PHASE—ADMINISTRATION OF THE CONSTRUCTION CONTRACT

2.6.1 The Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the Contract for Construction and terminates at the earlier of the issuance to the Owner of the final Certificate for Payment or 60 days after the date of Substantial Completion of the Work

2.6.2 The Architect shall provide administration of the Contract for Construction as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement, unless otherwise provided in this Agreement

2.6.3 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 Contractor, which consent shall not be unreasonably withheld

2.6.4 The Architect shall be a representative of and shall advise and consult with the Owner (1) during construction until final payment to the Contractor is due, and (2) as an Additional Service at the Owner's direction from time to time during the correction period described in the Contract 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.

2.6.5 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 Paragraph 3.2.)*

2.6.6 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 solely the Contractor's responsibility under the Contract for Construction. The Architect shall not be responsible for the Contractor's schedules or failure to carry out the Work in accordance with the Contract Documents. The Architect shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

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

2.6.8 Except as may otherwise be provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall communicate through the Architect. Communications by and with the Architect's consultants shall be through the Architect.

2.6.9 Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect shall review and certify the amounts due the Contractor.

2.6.10 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 Subparagraph 2.6.5 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and the quality of 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. However, 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, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

2.6.11 The Architect shall have authority 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 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 Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the Work.

2.6.12 The Architect shall review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the construction of the Owner or of separate contractors, 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 Contractor, all of which remain the responsibility of the Contractor 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.

2.6.13 The Architect shall prepare Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary by the Architect as provided in Subparagraphs 3.1.1 and 3.3.3, for the Owner's approval and execution in accordance with the Contract Documents, and may authorize minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents.

2.6.14 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, shall receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

- * ~~3.4.4 Providing special surveys, environmental studies and~~
- * ~~3.4.5 Providing services to investigate existing conditions or facilities or to make measured drawings thereof~~
- 3.4.6 Providing services to investigate existing conditions or facilities or to make measured drawings thereof
- 3.4.7 Providing services to verify the accuracy of drawings or other information furnished by the Owner
- * ~~3.4.8 Providing services to verify the accuracy of drawings or other information furnished by the Owner~~
- * ~~3.4.9 Providing detailed estimates of Construction Cost~~
- 3.4.10 Providing detailed estimates of Construction Cost
- 3.4.11 Providing detailed quantity surveys or inventories of material, equipment and labor
- 3.4.12 Providing analyses of owning and operating costs
- 3.4.13 Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment
- 3.4.14 Providing services for planning tenant or rental spaces
- 3.4.15 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities
- 3.4.16 Preparing a set of reproducible record drawings showing significant changes in the Work made during construction based on marked up prints, drawings and other data furnished by the Contractor to the Architect
- 3.4.17 Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation
- 3.4.18 Providing services after issuance to the Owner of the final Certificate for Payment, or in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of the Work
- 3.4.19 Providing services of consultants for other than architectural, structural, mechanical and electrical engineering portions of the Project provided as a part of Basic Services
- 3.4.20 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice

**ARTICLE 4
OWNER'S RESPONSIBILITIES**

4.1 The Owner shall provide full information regarding requirements for the Project, including a program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements

4.2 The Owner shall establish and update an overall budget for the Project, including the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs

4.3 If requested by the Architect, the Owner shall furnish evidence that financial arrangements have been made to fulfill the Owner's obligations under this Agreement

4.4 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services

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

4.6 The Owner shall furnish the services of geotechnical engineers when such services are requested by the Architect. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations

4.6.1 The Owner shall furnish the services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Architect

4.7 The Owner shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents

4.8 The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services the Owner may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the Owner

4.9 The services, information, surveys and reports required by Paragraphs 4.5 through 4.8 shall be furnished at the Owner's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof

4.10 Prompt written notice shall be given by the Owner to the Architect if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents

4.11 The proposed language of certificates or certifications requested of the Architect or Architect's consultants shall be submitted to the Architect for review and approval at least 14 days prior to execution. The Owner shall not request certifications that would require knowledge or services beyond the scope of this Agreement

**ARTICLE 5
CONSTRUCTION COST**

5.1 DEFINITION

5.1.1 The Construction Cost shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Architect

5.1.2 The Construction Cost 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, plus a reasonable allowance for the Contractor's overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work during construction

5.1.3 Construction Cost does not include the compensation of the Architect and Architect's consultants, the costs of the land, rights-of-way, financing or other costs which are the responsibility of the Owner as provided in Article 4

5.2 RESPONSIBILITY FOR CONSTRUCTION COST

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

5.2.2 No fixed limit of Construction Cost shall be established as a condition of this Agreement by the furnishing, proposal or establishment of a Project budget unless such fixed limit has been agreed upon in writing and signed by the parties hereto. If such a fixed limit has been established, the Architect shall be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids to adjust the Construction Cost to the fixed limit. Fixed limits, if any, shall be increased in the amount of an increase in the Contract Sum occurring after execution of the Contract for Construction

5.2.3 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the Owner and the date on which proposals are sought

5.2.4 If a fixed limit of Construction Cost (adjusted as provided in Subparagraph 5.2.3) is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in such fixed limit,
- .2 authorize rebidding or renegotiating of the Project within a reasonable time,

- .3 If the Project is abandoned, terminate in accordance with Paragraph 8.3, or
- .4 cooperate in revising the Project scope and quality as required to reduce the Construction Cost

5.2.5 If the Owner chooses to proceed under Clause 5.2.4.4, the Architect, without additional charge, shall modify the Contract Documents as necessary to comply with the fixed limit, if established as a condition of this Agreement. The modification of Contract Documents shall be the limit of the Architect's responsibility arising out of the establishment of a fixed limit. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced

ARTICLE 6

USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

6.1 The Drawings, Specifications and other documents prepared by the Architect for this Project are instruments of the Architect's service for use solely with respect to this Project and, unless otherwise provided, the Architect shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including the copyright. The Owner shall be permitted to retain copies, including reproducible copies, of the Architect's Drawings, Specifications and other documents for information and reference in connection with the Owner's use and occupancy of the Project. The Architect's Drawings, Specifications or other documents shall not be used by the Owner or others on other projects, for additions to this Project or for completion of this Project by others, unless the Architect is adjudged to be in default under this Agreement, except by agreement in writing and with appropriate compensation to the Architect

6.2 Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the Architect's reserved rights

ARTICLE 7

ARBITRATION

~~**7.1** Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise~~

~~**7.2** Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitations~~

~~**7.3** No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement.~~

~~except by written consent containing a specific reference to this Agreement signed by the Owner, Architect, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity only consented to by the parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~7.4 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

ARTICLE 8

TERMINATION, SUSPENSION OR ABANDONMENT

8.1 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

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's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Architect's services.

8.3 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect in the event that the Project is permanently abandoned. If the Project is abandoned by the Owner for more than 90 consecutive days, the Architect may terminate this Agreement by giving written notice.

8.4 Failure of the Owner to make payments to the Architect in accordance with this Agreement shall be considered substantial nonperformance and cause for termination.

8.5 If the Owner fails to make payment when due the Architect for services and expenses, the Architect may, upon seven days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Architect within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services.

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 and all Termination Expenses as defined in Paragraph 8.7.

8.7 Termination Expenses are in addition to compensation for Basic and Additional Services, and include expenses which are directly attributable to termination. Termination Expenses shall be computed as a percentage of the total compensation for Basic Services and Additional Services earned to the time of termination, as follows:

- .1 Twenty percent of the total compensation for Basic and Additional Services earned to date if termination occurs before or during the pre-design, site analysis, or Schematic Design Phases, or

- .2 Ten percent of the total compensation for Basic and Additional Services earned to date if termination occurs during the Design Development Phase, or
- .3 Five percent of the total compensation for Basic and Additional Services earned to date if termination occurs during any subsequent phase.

ARTICLE 9

MISCELLANEOUS PROVISIONS

9.1 Unless otherwise provided, this Agreement shall be governed by the law of the principal place of business of the Architect.

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

9.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion, or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion.

9.4 The Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, but only to the extent covered by property insurance during construction, 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 and Architect each shall require similar waivers from their contractors, consultants and agents.

9.5 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 Owner nor Architect shall assign this Agreement without the written consent of the other.

9.6 This Agreement represents the entire and integrated agreement between the Owner and 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.

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

9.8 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 in any form at the Project site, including but not limited to asbestos asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

9.9 The Architect shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Architect's promotional and professional materials. 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 on the construction sign and in the promotional materials for the Project.

ARTICLE 10

PAYMENTS TO THE ARCHITECT

10.1 DIRECT PERSONNEL EXPENSE

10.1.1 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, pensions and similar contributions and benefits.

10.2 REIMBURSABLE EXPENSES

10.2.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and Architect's employees and consultants in the interest of the Project, as identified in the following Clauses:

* **10.2.1.1** ~~Expense of transportation, including mileage, and fees paid for securing approval of authorities having jurisdiction over the Project.~~

10.2.1.2 Expense of reproductions, postage and handling of Drawings, Specifications and other documents.

* ~~Expense of reproduction, postage and handling of drawings, specifications and other documents.~~

10.2.1.4 Expense of renderings, models and mock ups requested by the Owner.

10.2.1.5 Expense of additional insurance coverage or limits, including professional liability insurance, requested by the Owner in excess of that normally carried by the Architect and Architect's consultants.

* ~~Expense of reproduction, postage and handling of drawings, specifications and other documents.~~

10.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES

10.3.1 An initial payment as set forth in Paragraph 11.1 is the minimum payment under this Agreement.

10.3.2 Subsequent payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in Subparagraph 11.2.2.

10.3.3 If and to the extent that the time initially established in Subparagraph 11.5.1 of this Agreement is exceeded or extended through no fault of the Architect, compensation for any services rendered during the additional period of time shall be computed in the manner set forth in Subparagraph 11.3.2.

10.3.4 When compensation is based on a percentage of Construction Cost and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Subparagraph 11.2.2, based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent preliminary estimate of Construction Cost or detailed estimate of Construction Cost for such portions of the Project.

10.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

10.4.1 Payments on account of the Architect's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Architect's statement of services rendered or expenses incurred.

10.5 PAYMENTS WITHHELD

10.5.1 No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect has been found to be liable.

10.6 ARCHITECT'S ACCOUNTING RECORDS

10.6.1 Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

ARTICLE 11

BASIS OF COMPENSATION

The Owner shall compensate the Architect as follows:

11.1 AN INITIAL PAYMENT of ZERO Dollars (\$ 0.) shall be made upon execution of this Agreement and credited to the Owner's account at final payment.

11.2 BASIC COMPENSATION

11.2.1 FOR BASIC SERVICES, as described in Article 2, and any other services included in Article 12 as part of Basic Services, Basic Compensation shall be computed as follows:

(Insert basis of compensation including stipulated sums, multiples or percentages, and identify phases to which particular methods of compensation apply, if necessary.)

6% of Construction Cost not including Construction Management Fees.
(Approx. \$3,000,000 x 6% = \$180,000)

11.2.2 Where compensation is based on a stipulated sum or percentage of Construction Cost, progress payments for Basic Services in each phase shall total the following percentages of the total Basic Compensation payable
(Insert additional phases as appropriate)

Schematic Design Phase	Twenty	percent (20%)	APPROX. (\$36,000)
Design Development Phase	Fifteen	percent (15%)	(\$27,000)
Construction Documents Phase	Forty	percent (40%)	(\$72,000)
Bidding or Negotiation Phase	Five	percent (5%)	(\$9,000)
Construction Phase	Twenty	percent (20%)	(\$36,000)
Total Basic Compensation	one hundred percent (100%)		(\$180,000)

11.3 COMPENSATION FOR ADDITIONAL SERVICES

11.3.1 FOR PROJECT REPRESENTATION BEYOND BASIC SERVICES, as described in Paragraph 3.2, compensation shall be computed as follows

HOURLY RATES FOR ADDITIONAL SERVICES OUTSIDE BASIC SERVICES

Architect	\$75.00/hr.
Structural Eng.	\$90.00/hr.
MEP Engineer	\$75.00/hr.
Cad Draftsmen	\$50.00/hr.
Clerical	\$20.00/hr.

11.3.2 FOR ADDITIONAL SERVICES OF THE ARCHITECT, as described in Articles 3 and 12, other than (1) Additional Project Representation, as described in Paragraph 3.2 and (2) services included in Article 12 as part of Basic Services, but excluding services of consultants, compensation shall be computed as follows

(Insert basis of compensation including rates and or multiples of Direct Personnel Expense for Principals and employees and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply, if necessary.)

HOURLY RATES FOR ADDITIONAL SERVICES OUTSIDE BASIC SERVICES

Architect	\$75.00/hr.
Structural Eng.	\$90.00/hr.
MEP Engineer	\$75.00/hr.
Cad Draftsmen	\$50.00/hr.
Clerical	\$20.00/hr.

11.3.3 FOR ADDITIONAL SERVICES OF CONSULTANTS, including additional structural, mechanical and electrical engineering services and those provided under Subparagraph 3.4.19 or identified in Article 12 as part of Additional Services, a multiple of (0) times the amounts billed to the Architect for such services

(Identify specific types of consultants in Article 12 if required)

11.4 REIMBURSABLE EXPENSES

11.4.1 FOR REIMBURSABLE EXPENSES, as described in Paragraph 10.2, and any other items included in Article 12 as Reimbursable Expenses, a multiple of ZERO (0) times the expenses incurred by the Architect, the Architect's employees and consultants in the interest of the Project

11.5 ADDITIONAL PROVISIONS

11.5.1 IF THE BASIC SERVICES covered by this Agreement have not been completed within (12) months of the date hereof, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Subparagraphs 10.3.3 and 11.3.2

11.5.2 Payments are due and payable fifteen (15) days from the date of the Architect's invoice. Amounts unpaid sixty (60) days after the invoice date 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

(Insert rate of interest agreed upon)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications and also regarding requirements such as written disclosures or waivers.)

11.5.3 The rates and multiples set forth for Additional Services shall be annually adjusted in accordance with normal salary review practices of the Architect

**ARTICLE 12
OTHER CONDITIONS OR SERVICES**

(Insert descriptions of other services, identify Additional Services included within Basic Compensation and modifications to the payment and compensation terms included in this Agreement.)

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

OWNER

Charles L. Still
(Signature)

(Printed name and title)

ARCHITECT

J. Lamarr McDonald, Jr.
(Signature)

J. Lamarr McDonald, Jr. - President
(Printed name and title)



CAUTION: You should sign an original AIA document which has this caution printed in red. An original assures that changes will not be obscured as may occur when documents are reproduced.

INSTRUCTION SHEET

FOR AIA DOCUMENT B141, STANDARD FORM OF AGREEMENT BETWEEN OWNER AND ARCHITECT—1987 EDITION

A. GENERAL INFORMATION

1. Purpose

AIA Document B141 is a standard form of agreement between Owner and Architect intended for use on construction projects where services are based on the customary five phases: Schematic Design, Design Development, Construction Documents, Bidding or Negotiation, and Construction.

2. Related Documents

B141 is intended to be used in conjunction with AIA Document A201, General Conditions of the Contract for Construction, which it incorporates by reference. It can be used with Architect-Consultant agreements such as AIA Documents C141, C142, C161, C431 or C727.

Other AIA Owner-Architect Agreements available for use in connection with customary services or in special circumstances include:

B141/CM	Owner-Architect Agreement, Construction Management Edition
B151	Abbreviated Owner-Architect Agreement for Projects of Limited Scope
B161	Owner-Architect Agreement for Designated Services
B161/CM	Owner-Architect Agreement for Designated Services, Construction Management Edition
B162	Scope of Designated Services (to be used in conjunction with B161 or B161/CM)
B171	Interior Design Services Agreement
B177	Abbreviated Interior Design Services Agreement
B181	Owner-Architect Agreement for Housing Services
B727	Owner Architect Agreement for Special Services
B801	Owner Construction Manager Agreement
B901	Design/Builder Architect Agreement

3. Arbitration

This document incorporates ARBITRATION by adoption of the Construction Industry Arbitration Rules of the American Arbitration Association. Arbitration is BINDING AND MANDATORY in most states and under the federal Arbitration Act. In a minority of states, arbitration provisions relating to future disputes are not enforceable, but arbitration is enforceable if agreed to after the dispute arises. A few states require that the contracting parties be especially notified that the written contract contains an arbitration provision by a warning on the face of the document, specific placement of the arbitration provision within the document or specific discussions among the parties prior to signing the document.

Arbitration provisions have been included in most AIA contract forms since 1888 in order to encourage alternative dispute resolution procedures and to provide users of AIA documents with legally enforceable arbitration provisions when the parties choose to adopt arbitration into their contract. Individuals may, however, choose to delete the arbitration provisions based upon their business decisions with the advice of counsel. To obtain a copy of the Construction Industry Arbitration Rules, write the American Arbitration Association, 140 West 51st Street, New York, NY 10020.

4. Use of Non-AIA Forms

If a combination of AIA documents and non AIA documents is to be used, particular care must be taken to achieve consistency of language and intent. Certain owners require the use of owner-architect agreements and other contract forms which they prepare. Such forms should be carefully compared to the standard AIA forms for which they are being substituted before execution of an agreement. If there are any significant omissions, additions or variances from the terms of the related standard AIA forms, both legal and insurance counsel should be consulted. Of particular concern is the need for consistency between the Owner Architect Agreement and the anticipated General Conditions of the Contract for Construction in the delineation of the Architect's Construction Phase services and responsibilities.

5. Letter Forms of Agreement

Letter forms of agreement are generally discouraged by the AIA, as is the performance of a part or the whole of professional services based on oral agreements or understandings. The standard AIA agreement forms have been developed through more than seventy-five years of experience and have been tested repeatedly in the courts. In addition, the standard forms have been carefully coordinated with other AIA documents.

6. Use of Current Documents

Prior to using any AIA document, the user should consult the AIA, an AIA component chapter or a current AIA Documents Price List to determine the current edition of each document.

7. Limited License for Reproduction

AIA Document B141 is a copyrighted work and may not be reproduced or excerpted from in substantial part without the express written permission of the AIA. The B141 document is intended to be used as a consumable—that is, the original document purchased by the user is intended to be consumed in the course of being used. There is no implied permission to reproduce this document, nor does membership in The American Institute of Architects confer any further rights to reproduce them.

A limited license is hereby granted to retail purchasers to reproduce a maximum of ten copies of a completed or executed B141, but only for use in connection with a particular Project. Further reproductions are prohibited without the express written permission of the AIA.

B. CHANGES FROM THE PREVIOUS EDITION**1. Format Changes**

Former Article 1, Architect's Services and Responsibilities, has been subdivided into three new articles. All provisions dealing with payments to the Architect, including Direct Personnel Expense, Reimbursable Expenses and Architect's Accounting Records, have been consolidated and moved to the end of the document.

2. Changes in Content

The 1987 edition of B141 has been revised to reflect changes made in the 1987 edition of AIA Document A201, General Conditions of the Contract for Construction. The following changes in content have been made on the recommendation of owners, AIA members, committees and the AIA board of directors:

Article 2: Scope of Architect's Basic Services**Subparagraphs 2.2.4, 2.3.2 and 2.4.3**

The term "Statement of Probable Construction Cost" has been changed to "preliminary estimate of Construction Cost" to simplify the terminology of the document.

Subparagraph 2.6.5

New language has been added to indicate that the Architect's on-site visits are for the purpose of determining that the Work, when completed, will be in accordance with the Contract Documents. A note has been added to alert users of the form that more extensive site representation is available under Additional Services.

Subparagraph 2.6.6

It is noted that the Contractor, not the Architect, is responsible for construction means, methods and schedules.

Subparagraph 2.6.8

During construction, communications between the Owner and Contractor are to be directed through the Architect.

Subparagraph 2.6.10

The Architect's Certificates for Payment are further qualified as not indicating a review of construction means or methods or review of Subcontractors' requisitions.

Subparagraph 2.6.11

It is specifically noted that the Architect's authority to reject Work is not intended to be exercised for the benefit of the Contractor, Subcontractors, suppliers, or their agents or employees.

Subparagraph 2.6.12

The Architect's review of submittals is further qualified to limit such review to the information and design concepts expressed in the Contract Documents. When professional certificates of performance are required from the Contractor, the Architect shall be entitled to rely upon them.

Subparagraph 2.6.13

Preparation of Change Orders and Construction Change Directives by the Architect is a Basic Service, but preparation of supporting documentation and data is now an Additional Service.

Article 3: Additional Services

Three new categories of Additional Services have been consolidated under this new article. The Contingent Additional Services are commenced upon notification of the Owner by the Architect of the need for such services. The other two categories, Project Representation Beyond Basic Services and Optional Additional Services, require the Owner's written approval before or after their commencement to authorize payment for those Additional Services.

Article 4: Owner's Responsibilities

A new Paragraph 4.3 has been added requiring the Owner to furnish evidence that financial arrangements have been made to pay the Architect. The Owner is now required to furnish tests for hazardous materials at the Owner's expense. If the Owner requires the Architect to provide certificates or certifications, the Owner must allow the Architect 14 days for review.

Article 6: Use of Architect's Drawings, Specifications and Other Documents

It is noted that documents prepared by the Architect in addition to the Drawings and Specifications are also the property of the Architect, who retains all common law, statutory and other reserved rights.

2.6.4 The Architect shall be a representative of and shall advise and consult with the Owner (1) during construction until final payment to the Contractor is due, and (2) as an Additional Service at the Owner's direction from time to time during the correction period described in the Contract 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.

2.6.5 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 Paragraph 3.2.)*

2.6.6 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 solely the Contractor's responsibility under the Contract for Construction. The Architect shall not be responsible for the Contractor's schedule or failure to carry out the Work in accordance with the Contract Documents. The Architect shall not have control over or charge of acts or omissions of the Contractor, subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

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

2.6.8 Except as may otherwise be provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall communicate through the Architect. Communications by and with the Architect's consultants shall be through the Architect.

2.6.9 Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect shall review and certify the amounts due the Contractor.

2.6.10 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 Subparagraph 2.6.5 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and the quality of 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. However, 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, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

2.6.11 The Architect shall have authority 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 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 Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the Work.

2.6.12 The Architect shall review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the construction of the Owner or of separate contractors, 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 Contractor, all of which remain the responsibility of the Contractor 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.

2.6.13 The Architect shall prepare Change Orders and Construction Change Directives with supporting documentation and data if deemed necessary by the Architect as provided in Subparagraphs 3.1.1 and 3.4.3, for the Owner's approval and execution in accordance with the Contract Documents, and may authorize minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents.

2.6.14 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, shall receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

Identification of Parties Parties to this Agreement should be identified using the full legal name under which the Agreement is to be executed, including a designation of the legal status of both parties (sole proprietorship, partnership, joint venture, unincorporated association, limited partnership or corporation [general, closed or professional], etc.) Where appropriate, a copy of the resolution authorizing the individual to act on behalf of the firm or entity should be attached

Project Description: The proposed Project should be described in sufficient detail to identify (1) the official name or title of the facility, (2) the location of the site, if known, (3) the proposed building type and usage, and (4) the size, capacity or scope of the Project, if known

3. Article 11—Basis of Compensation

Paragraph 11.1

Insert the dollar amount of the initial payment

Subparagraph 11.2.1

Sample language is provided below for describing four methods of computing compensation

Compensation—Multiple of Direct Personnel Expense "Compensation for services rendered by Principals, employees and professional consultants shall be based on a Multiple of Direct Personnel Expense in the same manner as described in Subparagraph 11.3.2"

Compensation—Professional Fee Plus Expenses "Compensation shall be a Fixed Fee of _____ Dollars (\$) plus compensation for services rendered by Principals, employees and professional consultants, in the same manner as described in Subparagraph 11.3.2"

Compensation—Stipulated Sum "Compensation shall be a stipulated sum of _____ Dollars (\$)."

Compensation—Percentage of Construction Cost "Compensation shall be based on one of the following Percentages of Construction Cost, as defined in Article 5

For portions of the Project to be awarded under

- A single stipulated sum construction contract _____ percent (%)
- Separate stipulated-sum construction contracts _____ percent (%)
- A single cost plus construction contract _____ percent (%)
- Separate cost-plus construction contracts _____ percent (%)

Subparagraph 11.2.2

For compensation based on professional fee plus expenses, stipulated sum or percentage of Construction Cost, insert the percentages of total payment payable for each separate phase of services. These percentages may vary with each Project and do not necessarily have a direct relationship to the time and efforts of the Architect

Because phases may overlap in time, these percentages have been expressed separately for each phase, rather than cumulatively. This facilitates billing when services are being provided in more than one phase at a time.

Subparagraph 11.3.1

Insert the basis of compensation for Project Representation Beyond Basic Services

Subparagraph 11.3.2

If billing rates are used and Principals and employees are classified in accordance with the AIA publication *Compensation Guidelines for Architectural/Engineering Services*, insert

- (a) Principals' time at the fixed rate of _____ Dollars (\$) per hour.
For the purposes of this Agreement, the Principals are (list Principals)
- (b) Supervisory time at the fixed rate of _____ Dollars (\$) per hour.
For the purposes of this Agreement, supervisory personnel include (Describe supervisory personnel by job title, such as Project Architect)
- (c) Technical Level I time at the fixed rate of _____ Dollars (\$) per hour.
For the purposes of this Agreement, Technical Level I personnel include (Describe by job title, such as Senior Designer, Specifier, etc.)
- (d) Technical Level II time at the fixed rate of _____ Dollars (\$) per hour.
For the purposes of this Agreement, Technical Level II personnel include (Describe by job title, such as Junior Designer, Senior Draftsman, etc.)
- (e) Technical Level III and clerical time at the fixed rate of _____ Dollars (\$) per hour.
For the purposes of this Agreement, Technical Level III and clerical personnel include (Describe by job title, such as Junior Draftsman, Secretary, etc.)

If a multiple of Direct Personnel Expense is used, insert "Principals' and employees' time at a multiple of () times their Direct Personnel Expense as defined by the AIA publication *Compensation Guidelines for Architectural/Engineering Services*."

If a multiple of direct salaries is used, the term "Direct Salaries" should be substituted for Direct Personnel Expense above

VOL 49 PG 374

Subparagraph 11.3.3

Insert the multiple to be used to determine the cost to the Architect of Additional Services of consultants as defined in Article 3 or Article 12

Subparagraph 11.4.1

Insert the multiple to be used to determine the amount due the Architect, Architect's employees or consultants for Reimbursable Expenses as described in Paragraph 10.2 or Article 12.

Subparagraph 11.5.1

Insert the number of months beyond which the Architect shall be compensated for Basic Services on the same basis as for Additional Services

Paragraph 11.5.2

Insert the percentage rate and basis (monthly, annual) of interest charges

Article 12—Other Conditions or Services

Insert provisions, if any, on additional phases of services, Additional Services, special compensation arrangements, other consultants, the choice of project delivery method or any other conditions

E. EXECUTION OF THE AGREEMENT

VOL 49 PG 377

Each person executing the Agreement should indicate the capacity in which they are acting (i.e., president, secretary, partner, etc.) and the authority under which they are executing the Agreement. Where appropriate, a copy of the resolution authorizing the individual to act on behalf of the firm or entity should be attached.

FILED
REX A. STANLEY
COUNTY CLERK
97 NOV 13 PM 2:58
DESPER COUNTY, TX.
BY _____
CFRUIT

Date: 11-

COMMISSIONER COURT
ATTENDANCE SHEET

Name	City of Residence
Philly Williams	TAMM ^{GILMER} MORNING TELEGRAPH
Leida Jewel	Gilmer
Mac Querton	MCCOY
Ed Moore	Longview
LAWRENCE McDONALD	FN
Jerry Butte	Glen Rose TX
Robert Crowley	Gilmer TX
R. D. Cross	" "
Ben Shappard	White Oak
Tim Cone	Gilmer
Op Ann Spis	Gilmer

97 NOV 14 PM 2:32
 DEPT. OF CORRECTIONS
 BY _____

FILED
 REX A. SMITH
 COURT CLERK