

Form 17
Contract for ACEDP ARCHITECT Services

The terms of this Agreement, made this _____ day of _____, 20____ by and between _____, hereinafter referred to as the OWNER and _____, hereinafter referred to as the ARCHITECT shall be as follows:

Whereas the OWNER intends to construct a _____, hereinafter called the Project, in _____ County, State of Arkansas, for which the ARCHITECT and any employees or consultants employed by him shall perform the various professional architectural services as specified in Section 1 through 6 of this Agreement.

Witnesseth:

That for and in consideration of the mutual covenants between the parties hereto, it is hereby agreed:

SECTION 1
BASIC ARCHITECT SERVICES

PHASE I

- 1.1 During the Schematic Design Phase, the ARCHITECT shall
 - 1.1.1 Complete preliminary schematic design documents consisting of drawings and other documents illustrating the scale and relationship of all project components.
 - 1.1.2 Prepare a preliminary estimate of construction costs based on current area, volume or other unit costs.
 - 1.1.3 Provide a preliminary site map in sufficient detail to identify all proposed improvements in relation to the project and include surrounding properties and utility connections. This requirement shall be waived should the drawings specified in 1.1.1 above achieve the purpose of this subparagraph.

- 1.2 During the Design Development Phase, the ARCHITECT shall:
 - 1.2.1 Prepare final design development documents, in sufficient detail to allow advertisement for construction bids, consisting of drawings and other documents to fix and describe the size and character of the project as to architectural, mechanical and electrical systems and other such appropriate elements. Whenever a material, article or piece of equipment is identified on the plans or specifications by manufacturers' or vendors' names, catalog numbers, etc., it is intended only to establish a standard. Any material, article or equipment of other manufacturer or vendor shall be considered

equally acceptable provided it is, in the opinion of the ARCHITECT, of equal substance and function.

- 1.2.2 Define/provide to the OWNER and other applicable parties references to standards specified.
- 1.2.3 Prepare construction cost estimates with such accuracy and detail as is necessary to compare with bids for determining whether they are reasonable and not in excess of costs generally prevailing for comparable construction work. The breakdown will include:
 - 1.2.3.1 Estimated quantities for the various items of construction, as applicable. Costs shall include the current market rate labor costs and materials to be furnished by the contractor; equipment designed, specified, selected or specially provided for by the ARCHITECT; plus a reasonable allowance for contractor profit and reasonable contingencies. Construction cost does not include architectural fees, acquisition costs, financing or other OWNER-related costs.
 - 1.2.3.2 Estimated unit costs for each item, as applicable.
 - 1.2.3.3 Total estimated costs for each deductible item that will be taken in the bidding process. **Deductible Alternatives are required on all projects.**
 - 1.2.3.4 All cost estimates are probable costs and are intended to represent the best judgment of the ARCHITECT. It is understood that the ARCHITECT cannot and does not guarantee that proposals, bids, or actual project or construction cost will not vary from opinions of probable cost prepared by him.
 - 1.2.3.5 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, and to make reasonable adjustments in the scope of the project.
 - 1.2.3.6 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 construction cost established 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 by formal bid.
 - 1.2.3.7 If the estimate of construction cost is exceeded by the

lowest bona fide bid or negotiated proposal, the OWNER shall:

- With prior funding agency approval, give written approval of an increase in such fixed limit;
- Authorize rebidding or renegotiating the project within a reasonable time;
- If the project is abandoned, negotiate final payment and terminate this Agreement in accordance with Section 5 below; or,
- Cooperate in revising the project scope and quality as required to reduce the construction cost.

If the OWNER elects to revise the project scope, then the ARCHITECT without additional charge, shall modify the contract documents as necessary to comply with such revision.

1.2.3.8 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 budget or any other construction cost estimate or evaluation.

1.2.4 Provide assistance to the OWNER in submission of contract documents for review to all necessary State and Federal agencies.

1.2.5 Prior to the advertisement for bids, the ARCHITECT will provide for each construction contract, at least five copies for the required approvals by the OWNER, and appropriate Federal, State, and local agencies. The cost of such drawings, specifications, and contract documents shall be included in the basic compensation paid to the ARCHITECT.

1.2.6 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 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.

PHASE II

- 1.3 During the Preconstruction Phase, the ARCHITECT shall
 - 1.3.1 Organize and attend a pre-bid conference, if it is deemed necessary by the OWNER
 - 1.3.2 Assist the OWNER with advertisement for bids and answering all questions, preparing and dispensing addenda in a timely manner, recommending to the OWNER selection of the lowest qualified bidder and awarding the construction contract(s)
 - 1.3.3 Furnish additional copies of the drawings, specifications and contract documents as required by prospective bidders, material suppliers, and other interested parties, but may charge them for the reasonable cost of such copies. Upon award of each contract, the ARCHITECT will furnish to the OWNER five sets of the contract documents for execution. The cost of these sets shall be included in the basic compensation paid to the ARCHITECT
 - 1.3.4 Consult with and advise the OWNER as to the acceptability of substitute materials and equipment proposed by the contractor as a substitute as stated above.

PHASE III

- 1.4 During the Construction Phase, the ARCHITECT shall
 - 1.4.1 Arrange and attend Preconstruction conference(s).
 - 1.4.2 Reject work that does not conform to the contract documents. The ARCHITECT will not guarantee the performance of the contractor.
 - 1.4.3 Consult and advise the OWNER and issue all instructions in regard to the contract documents to the contractor(s) requested by the OWNER.
 - 1.4.4 Prepare change orders with supporting documentation and data as necessary 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 is not inconsistent with the intent of the contract documents.
 - 1.4.5 Review and approve contractor's submittals such as shop drawings, product data and samples, but only for the 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 specified by the ARCHITECT of construction methods, techniques, means, sequences or procedures. The ARCHITECT 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.

1.4.6 Provide the contractor(s) with two copies and the OWNER with one copy of all reviewed submittals, shop drawings, laboratory tests, and samples.

1.4.7 Based upon the ARCHITECT'S observations and best knowledge of evaluations of the contractor's applications for payment, shall prepare monthly pay estimates, for the OWNER'S approval, and certify amounts due to the contractor. Pay estimates are to be prepared by the 25th of each month unless a more suitable date is set and recorded at the Preconstruction conference. The final pay estimate will be prepared when all work is verified as substantially complete and in accordance with the contract documents by the ARCHITECT

However, the issuance of a certificate for payment shall not be 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 the money previously paid on account of the contract sum.

1.4.8 Document and provide in writing to the OWNER the outcome of all meetings

1.4.9 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 his 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 contract documents.

PHASE IV

1.5 During the Postconstruction Phase the ARCHITECT shall

1.5.1 Notify the OWNER in writing that the project is complete, acceptable, and ready for final payment

- 1.5.2 Conduct, in company with the OWNER and any other interested parties, a final inspection. Verify that all punch list items are completed. Issue Certificate(s) of Substantial Completion.
 - 1.5.3 Based upon construction records, prepare a set of half-size photo reproductions/drawings (record drawings) for submission to the OWNER of the project should changes occur
 - 1.5.4 Provide all other services to the OWNER that will assist in obtaining a complete project.
 - 1.5.5 Furnish any services and consultations necessary to correct deficiencies not caused by contractor efforts for one year after the date of substantial completion of the project. These services will include instruction to the OWNER regarding initial project operation and maintenance but will not include supervision of normal operation.
 - 1.5.6 Conduct and attend an end-of-year warranty inspection during the eleventh month after the date of substantial completion, make recommendations to the OWNER as a result thereof and record and verify that deficiencies are corrected.
- 1.6 Under the Following Miscellaneous Provisions, the ARCHITECT shall
- 1.6.1 Attend and represent the OWNER at all specified meetings which will be agreed upon by the OWNER and the ARCHITECT
 - 1.6.2 Cooperate and work closely with State and Federal representatives throughout the project
 - 1.6.3 Obtain and maintain, at the ARCHITECT'S expense, such insurance as will protect the ARCHITECT from claims under the Workman's Compensation Act and such comprehensive general liability insurance as will protect the OWNER and the ARCHITECT from all claims for bodily injury, death or property damage which may arise from the performance by the ARCHITECT or by the ARCHITECT'S employees of the ARCHITECT'S functions and services required under this Agreement.
 - 1.6.4 The ARCHITECT shall have the 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 when necessary to implement the intent of the contract documents. However, neither the 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, subcontractor, material and equipment suppliers, their agents or employees or other persons performing portions of the work.
 - 1.6.5 If any of the work specified above is not accomplished within the time period specified, this Agreement may be terminated by the OWNER. The time for completion will be extended by the

OWNER for a reasonable time if completion is delayed due to unforeseeable causes beyond the control and without the fault or negligence of the ARCHITECT

- 1.6.6 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.
- 1.6.7 The ARCHITECT'S decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the contract documents.
- 1.6.8 The ARCHITECT shall render written decisions subject to arbitration within a reasonable time on all claims, disputes or other matters in question between the OWNER and contractor relating to the execution or progress of the work as provided in the contract documents.
- 1.6.9 Meet all requirements of the Arkansas Economic Development Commission grant agreement, including project schedules, as provided by the OWNER.

SECTION 2
OWNER'S RESPONSIBILITIES

- 2.1 The OWNER shall
- 2.1.1 Provide all criteria and full information as to the OWNER'S requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, special equipment, systems and site requirements, and budgetary limitations; and furnish copies of all design and construction standards which the OWNER will require to be included in the drawings and specifications.
 - 2.1.2 Assist the ARCHITECT by placing at his disposal all available information pertinent to the project including previous reports and any other data relative to design or construction of the project. The surveys and legal information shall include, as applicable, topography, 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 information on the survey shall be referenced to a project benchmark.
 - 2.1.3 Arrange for access to and make all provisions for the Architect to enter upon public and private property as required for the Architect to perform his services.
 - 2.1.4 Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by the ARCHITECT obtain advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of ARCHITECT
 - 2.1.5 Give prompt written notice to the ARCHITECT whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ARCHITECT'S services, or any defect in the work of contractor(s).
 - 2.1.6 Bear all costs incidental to compliance with the requirements of Section 2 of this Agreement.
 - 2.1.7 If the OWNER designates one person to represent him at the project site who is not the ARCHITECT'S agent or employee, the duties, responsibilities and limitations of authority of this person, and the effect on the duties and responsibilities of the ARCHITECT under this Agreement will be set forth in an amendment that is to be

identified, attached to and made a part of this Agreement, before services begin.

- 2.1.8 Provide accounting, advertising, auditing, insurance counseling, legal and other services that the OWNER may require and the ARCHITECT may recommend in conjunction with this project.
- 2.1.9 Provide, with the assistance of the ARCHITECT all permits and approvals from all local, State and Federal agencies, as required.
- 2.1.10 Notify the ARCHITECT contractor(s) and other interested parties of the end of year warranty inspection. A report regarding this inspection must be submitted to the Arkansas Economic Development Commission no later than 10 days after such inspection.
- 2.1.11 Provide the ARCHITECT with a copy of the Arkansas Economic Development Commission grant agreement, for the project for which the work is being completed.
- 2.1.12 Provide to the ARCHITECT at all times access to the work wherever it is in preparation or progress.
- 2.1.13 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 sub-soil conditions, with reports and appropriate professional recommendations.
- 2.1.14 Furnish structural, mechanical, chemical, air and water tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the contract documents.

SECTION 3
DUTIES, RESPONSIBILITIES AND LIMITATIONS OF
ARCHITECT DURING CONSTRUCTION ADMINISTRATION PHASE

- 3.1 During the Construction Administration Phase the ARCHITECT shall
- 3.1.1 Be a representative of and shall advise and consult with the OWNER during construction until final payment to the contractor is due. The ARCHITECT shall have authority to act on behalf of the OWNER only to the extent provided in this Agreement unless modified with the consent of both parties.
 - 3.1.2 Visit the site at intervals appropriate to the stage of construction 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 and the construction time schedule. On the basis of on-site observations, the ARCHITECT shall keep the OWNER informed of the progress and quality of the work and shall endeavor to guard the OWNER against defects, omissions and deficiencies in the work.
 - 3.1.3 Prepare periodic progress reports to include, but not be limited to, entries of activities, work observed, weather conditions etc., and shall be available for review by OWNER and the Arkansas Economic Development Commission.
 - 3.1.4 Not be responsible for supervision of the contractor(s) or his employees, or determination of the contractor's methods, techniques, sequences, procedures or safety precautions.
 - 3.1.5 Payment for such services shall be in accordance with Section 4 "Compensation for Architectural Services".

SECTION 4
COMPENSATION FOR ARCHITECTURAL SERVICES

- 4.1 The OWNER shall compensate the ARCHITECT an amount, not to exceed the total contract amount of \$_____, subject to satisfactory performance and other conditions contained in this Agreement.
- 4.2 Schedule of Payments
- 4.2.1 Payments shall be made to the ARCHITECT based on the work completed, provided however, the amount requested does not exceed the percentages based on project progress listed below. The OWNER shall make all payments to the ARCHITECT within 30 days of receiving a written statement from the ARCHITECT. If the ARCHITECT does not receive compensation for completed work within 30 days, late fees for past due amounts, in accordance with State law, may be charged to the OWNER by the ARCHITECT.
- 4.2.2 The ARCHITECT may receive up to 15 percent of the total contract amount for schematic design at any time prior to the required submission of the drawings, plans and specifications to all funding and regulatory agencies.
15% X \$_____ = \$_____
- 4.2.3 The ARCHITECT may receive up to an additional 35 percent of the total contract amount after final plans and specifications have been **submitted to all** funding agencies. (A maximum cumulative amount of 50 percent of the total contract may be paid to the ARCHITECT at this time.)
35% X \$_____ = \$_____
- 4.2.4 The ARCHITECT may receive up to an additional 25 percent of the total contract amount upon approval of final plans and specifications by all agencies. (A maximum cumulative amount of 75 percent may be paid to the ARCHITECT at this time.)
25% X \$_____ = \$_____
- 4.2.5 The ARCHITECT may receive up to an additional 5 percent of the total contract amount after bids have been opened, the Preconstruction Conference has been conducted and the award of all contracts culminating in issuance of the Notice to Proceed is complete. (A maximum cumulative amount of 80 percent of the total contract may be paid to the ARCHITECT at this time.)
5% X \$_____ = \$_____
- 4.2.6 The ARCHITECT will receive not more than 10 percent of the total contract amount, to be calculated on the basis of actual work performed during the construction of the project until Substantial Completion. (A maximum cumulative amount of 90 percent of the total contract may be paid to the ARCHITECT at this time.)

10% X \$ _____ = \$ _____
 4.2.7 The ARCHITECT will receive the final 10 percent of the total contract amount upon submission and approval of executed Certificate(s) of Substantial Completion.
 10% X \$ _____ = \$ _____

Summary of Payment Provisions

4.2.2	\$ _____	
+ 4.2.3	\$ _____	
+ 4.2.4	\$ _____	
+ 4.2.5	\$ _____	
+ 4.2.6	\$ _____	
+ 4.2.7	\$ _____	
=	\$ _____	Total Payment Amount

4.3 Partial payments on a monthly or other approved basis may be made for work in various stages of completion so long as the percentages defined above are not exceeded.

4.4 Payment for Additional Services
 Payment for any additional reimbursable expenditure incurred directly as a result of work performed in conjunction with this Project shall be made by the OWNER to the ARCHITECT in accordance with the following provisions governing scope, fees and payment provisions:

It is expressly understood that: such services are beyond the scope of work defined in this Agreement; prior approval of the OWNER has been obtained; and, payment shall be from sources other than the Arkansas Department Of Economic Development Funding unless Agreed to by the Arkansas Economic Development Commission in writing.

4.4.1 If more extensive representation at the construction site than is described above is required, the ARCHITECT shall provide one or more project representatives to assist in carrying out such additional on-site responsibilities. Project representatives shall be selected, employed and directed by the ARCHITECT. Through the observations by such project representative(s), the ARCHITECT

shall endeavor to provide further protection for the OWNER against defects and deficiencies in the work, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the ARCHITECT as described elsewhere in this Agreement.

- 4.4.2 Payment for additional services shall be made for revisions in drawings, specifications or other documents when such revisions are:
 - 4.4.2.1 Necessary due to new OWNER instruction which modifies the original work performed under different instruction.
 - 4.4.2.2 Required by the enactment or revision of codes, laws or regulations after preparing such original documents.
- 4.4.3 Providing services required because of significant changes in the Project including, but not limited to: size; quality; complexity; or, the method of bidding or negotiating and contracting for construction, except as required under specific provisions of this Agreement.
- 4.4.4 Providing consultation concerning replacement of work damaged by fire or other extraordinary cause during construction, and furnishing services required in connection with the replacement of such work.
- 4.4.5 Providing services in connection with a public hearing, arbitration proceeding or legal proceeding except where the ARCHITECT is party thereto.
- 4.4.6 Providing services made necessary by the default of the contractor, by major defects or deficiencies in the work of the contractor, or by failure of performance of either the OWNER or contractor under the construction contract.
- 4.4.7 Providing services of consultants for other than architectural, structural, mechanical and electrical engineering portions of the project as a part of basic services defined above.

4.5 Final Payment for Terminated Services

Compensation for all completed services at time of termination shall be payable to the extent services are performed on those portions in accordance with the terms and conditions established according to the termination provisions below.

SECTION 5
SPECIAL PROVISIONS

5.1 Indemnification

The ARCHITECT shall comply with the requirements of all applicable laws, rules, and regulations, and shall exonerate, indemnify, and hold harmless the OWNER and its agency members from and against them, and shall assume full responsibility for payments of Federal, State and local taxes or contributions imposed or required under the social security, workman's compensation, and income tax laws.

5.2 Access to Records

The OWNER, the Arkansas Economic Development Commission, the Joint Legislative Audit Division of the State of Arkansas, the United States Department of Housing and Urban Development (HUD), the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the ARCHITECT doing work under this contract which are directly pertinent to the project funded by the Arkansas Economic Development Commission for the purpose of making audit, examination, excerpts, and transcriptions.

5.3 Miscellaneous Provisions

5.3.1 This Agreement shall be constructed under and in accordance with the laws of the State of Arkansas.

5.3.2 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

5.3.3 In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

5.3.4 This Agreement may be amended by the mutual agreement of the parties hereto and in writing to be attached to and incorporated herein.

5.4 Personnel

5.4.1 The ARCHITECT represents that it has, or will secure at its own expense, all personnel required in performing the services under this contract. Such personnel shall not be employees of or have any contractual relationship with the OWNER.

5.4.2 All the services required hereunder will be performed by the ARCHITECT or under his supervision and all personnel engaged in

the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services.

5.4.3 No person who is serving sentence in a penal or correctional institution shall be employed on work under this contract.

5.4.4 None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the OWNER. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

5.5 Assignability

The ARCHITECT shall not assign any interest on this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the OWNER thereto: provided, however, that claims for money by the ARCHITECT from the OWNER under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the OWNER.

5.6 Reports and Information

The ARCHITECT, at such times and in such forms as the OWNER may require, shall furnish the OWNER such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.

5.7 Records and Audits

The ARCHITECT shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to the Agreement. The ARCHITECT shall also provide any other records as may be deemed necessary by the OWNER, to assure proper accounting for all project funds, both Federal and non-Federal shares. These records will be made available for audit purposes to the OWNER or any authorized representative, and will be retained for three years after the expiration of this Agreement unless permission to destroy them is granted by the OWNER.

5.8 Findings Confidential

All of the reports, information, data, etc., prepared or assembled by the ARCHITECT under this Agreement are confidential and the ARCHITECT agrees that they shall not be made available to any individual or organization without the prior written approval of the OWNER.

5.9 Copyright

No reports, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the ARCHITECT.

5.10 Compliance with State and Local Laws.

The ARCHITECT shall comply with all applicable laws, ordinances and codes of the State of Arkansas and local governments, and the ARCHITECT shall save the OWNER harmless with respect to any damages arising from any tort done in performing any of the work herein.

5.11 Civil Rights Act/Equal Employment Opportunity

5.11.1 The ARCHITECT shall not discriminate against any employee or applicant for employment because of race, creed, sex, color, age, handicap, veteran status or natural origin. The ARCHITECT will take affirmative steps to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color, age, handicap, veteran status or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The ARCHITECT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the OWNER setting forth the provisions of this non-discrimination clause.

5.11.2 The ARCHITECT shall, in all solicitation or advertisements for employees placed by or on behalf of the ARCHITECT; state that all qualified applicants will receive consideration for employment without regard to race, creed, sex, color, age, handicap, veteran status or national origin.

5.11.3 The ARCHITECT shall cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

5.11.4 The ARCHITECT shall comply with Executive Order (EO) 11246, entitled Equal Employment Opportunity, as amended by EO 11375, and as supplemented by Department of Labor regulations 4 CFR 6(D).

5.12 "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities. The ARCHITECT covenants that

5.12.1 The work to be performed under this Agreement is on a project assistance from HUD through The Arkansas Economic

Development Commission and is subject to the requirements of Section 3 of the HUD Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

- 5.12.2 It shall comply with the provisions of Section 3 and the regulations issued pursuant thereto by the Secretary of HUD set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The ARCHITECT certifies and agrees that it is under no contractual or other disability which would prevent it from complying with these requirements.
- 5.12.3 It shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- 5.12.4 It shall include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the OWNER, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of HUD, 24 CFR 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

5.13 "Section 503" Handicapped

Affirmative Steps for Handicapped Workers

- 5.13.1 The ARCHITECT shall not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which he is qualified. The ARCHITECT agrees to take affirmative steps to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

- 5.13.2 The ARCHITECT agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- 5.13.3 In the event of the ARCHITECT'S noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- 5.13.4 The ARCHITECT agrees to post notices in conspicuous places, available to employees and applicants for employment. Such notices shall state the ARCHITECT'S obligation under the law to take affirmative steps to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- 5.13.5 The ARCHITECT shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the ARCHITECT is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative steps to employ and advance in employment physically and mentally handicapped individuals.
- 5.13.6 The ARCHITECT will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon subcontractor with respect to any subcontract or purchase order as the Director of the Offices of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

5.14 Interest of Other Local Public Officials and/or Members of the Locality

No member of the governing body of the grantee, and no other officer, employee, or agent of the grantee, who exercises any functions or responsibilities in connection with the planning and carrying out of the program shall have any personal financial interest, direct or indirect, in this Agreement; and the ARCHITECT shall take appropriate steps to assure compliance.

5.15 Interest of ARCHITECT and Employees

- 5.15.1 The ARCHITECT covenants that he presently has no interest and shall not acquire interest, direct or indirect, in the project area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The ARCHITECT further covenants that in the performance of this Agreement, no person having any such interest shall be employed.
- 5.15.2 The ARCHITECT will comply with all requirements and regulations of HUD and the Arkansas Economic Development Commission pertaining to reporting patent line omitted demonstration work with respect to any discovery of invention

which arises or is developed in the course of this Agreement. The ARCHITECT will also comply with HUD and The Arkansas Economic Development Commission requirements and regulations pertaining to copyrights and rights in data.

5.16 Termination

5.16.1 Termination of Agreement for Cause

If, through any cause, the ARCHITECT shall fail to fulfill in timely and proper manner his obligations under this Agreement, or if the ARCHITECT shall violate any of the covenants, agreements or stipulations of this Agreement, the OWNER shall thereupon have the right to terminate this Agreement by giving written notice to the ARCHITECT of such termination and specifying the effective date thereof, at least seven days before the effective date of such termination.

In such event, all finished or unfinished documents, data, studies, and reports prepared by the ARCHITECT under this Agreement shall, at the option of the OWNER, become its property, and the ARCHITECT shall be compensated based on the costs as allowed under this Agreement, for any satisfactory work completed on such documents.

Notwithstanding the above, the ARCHITECT shall not be relieved of liability to the OWNER for damages sustained by the OWNER by virtue of any breach of the Agreement by the ARCHITECT, and the OWNER may withhold any payments to the ARCHITECT until such time as the exact amount of damages due to the OWNER from the ARCHITECT is determined.

If the Project is abandoned by the OWNER for more than 90 consecutive days, the ARCHITECT may terminate this Agreement by giving written notice.

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

5.16.2 Termination for Convenience of OWNER

The OWNER may terminate this Agreement any time by giving at least seven days notice in writing from the OWNER to the ARCHITECT. If the Agreement is terminated by the OWNER as provided herein, the ARCHITECT will receive equitable compensation based on costs as allowed under this Agreement less payments of compensation previously made; provided, however, that if less than sixty percent of the services covered by this Agreement have been performed upon the effective date of such termination, the ARCHITECT shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket

expenses (not otherwise reimbursed under this Agreement) incurred by the ARCHITECT during the contract period which are directly attributable to the uncompleted portion of the service covered by this Agreement. If this Agreement is terminated due to the fault of the ARCHITECT, Section 5.16.1 hereof relative to the termination shall apply.

SECTION 6 AGREEMENT

- 6.1 This Agreement consists of Sections 1 through 6 and Attachment 1, and constitutes the entire Agreement between the OWNER and the ARCHITECT.
- 6.2 This Agreement shall be subject to the Arkansas Economic Development Commission review prior to requesting funds for services defined herein.
- 6.3 This Agreement may be amended or modified by a duly executed written instrument signed by the OWNER and the ARCHITECT and approved by the Arkansas Economic Development Commission.

Justifiable examples necessitating an amendment to this Agreement will include but not be limited to additional architectural services necessitated by: acts of God, default by the contractor, and/or work requested by the OWNER beyond the limits of the scope of work for the Project.

- 6.4 The OWNER and ARCHITECT may elect to settle any dispute arising from this Agreement in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.

Signature Page

(SEAL)

ATTEST:

(Signature)

(Typed Name)

(Title)

OWNER:

BY _____
(Signature)

(Typed Name)

(Title)

(SEAL)

ATTEST:

(Signature)

(Typed Name)

(Title)

ARCHITECT:

BY _____
(Signature)

(Typed Name)

(Title)

Special Conditions

1. Provide detailed description of any item not specifically included in Sections 1 through 6, including a map, if applicable.

- 1.1 Basis of compensation for items not specifically included in Sections 1 through 6. Describe each additional service listed above and justify why service(s) is not part of standard contract defined in Sections 1 through 6 above. *(Any additional services must be approved by the Arkansas Economic Development Commission PRIOR to contract execution.)*

Total Items not specifically included in Sections 1 through 6 will not exceed
\$_____

Adjusted Contract Amount: \$_____

2. Project Area
3. Meetings
4. Resident Project Representative (If applicable)

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 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.

- 2.6.15** 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.
- 2.6.16** 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 Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions so rendered in good faith.
- 2.6.17** The ARCHITECT'S decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.
- 2.6.18** The ARCHITECT shall render written decisions within a reasonable time on all claims, disputes or other matters in question between the OWNER and Contractor relating to the execution or progress of the Work as provided in the Contract Documents.
- 2.6.19** The ARCHITECT'S decisions on claims, disputes or other matters, including those in question between the OWNER and Contractor, except for those relating to aesthetic effect as provided in Subparagraph 2.6.17 shall be subject to arbitration as provided in this Agreement and in the Contract Documents.

ARTICLE 3 ADDITIONAL SERVICES

3.1 GENERAL

- 3.1.1** The services described in this Article 3 are not included in Basic Services unless so identified in Article 12, and they shall be paid for by the OWNER as provided in this Agreement, in addition to the compensation for Basic Services. The services described under Paragraphs 3.2 and 3.4 shall only be provided if authorized or confirmed in writing by the OWNER. If services described under Contingent Additional Services in Paragraph 3.3 are required due to circumstances beyond the ARCHITECT'S control, the ARCHITECT shall notify the OWNER prior to commencing such services. If the OWNER deems that such services described under Paragraph 3.3 are not required, the OWNER shall give prompt written notice to the ARCHITECT. If the OWNER indicates in writing that all or part of such Contingent Additional Services are not required, the ARCHITECT shall have no obligation to provide those services.

3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES

- 3.2.1** If more extensive representation at the site than is described in Subparagraph 2.6.5 is required, the ARCHITECT shall provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities.
- 3.2.2** Project Representatives shall be selected, employed and directed by the ARCHITECT, and the ARCHITECT shall be compensated therefor as agreed by the OWNER and ARCHITECT. The duties, responsibilities and limitations of authority of Project Representatives shall be as described in the edition of AIA Document B352 current as of the date of this Agreement, unless otherwise agreed.
- 3.2.3** Through the observations by such Project Representatives, the ARCHITECT shall endeavor to provide further protection for the OWNER against defects and deficiencies in the Work, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the ARCHITECT as described elsewhere in this Agreement.

3.3 CONTINGENT ADDITIONAL SERVICES

- 3.3.1** Making revisions in Drawings, Specifications or other documents when such revisions are
- .1** Inconsistent with approvals or instructions previously given by the OWNER, including revisions made necessary by adjustments in the OWNER'S program or Project budget;
 - .2** Required by enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or
 - .3** Due to changes required as a result of the OWNER'S failure to render decisions in a timely manner.
- 3.3.2** Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the OWNER'S schedule, or the method of bidding or negotiating and contracting for construction, except for services required under Subparagraph 5.2.5.
- 3.3.3** Preparing Drawings, Specifications and other documentation and supporting data, evaluating Contractor's proposals, and providing other services in connection with Change Orders and Construction Change Directives.
- 3.3.4** Providing services in connection with evaluating substitutions proposed by the Contractor and making subsequent revisions to Drawings, Specifications and other documentation resulting therefrom.

- 3.3.5 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.
- 3.3.6 Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the OWNER or Contractor under the Contract for Construction.
- 3.3.7 Providing services in evaluating an extensive number of claims submitted by the Contractor or others in connection with the Work.
- 3.3.8 Providing services in connection with a public hearing, arbitration proceeding or legal proceeding except where the ARCHITECT is party thereto.
- 3.3.9 Preparing documents for alternate, separate or sequential bids or providing services in connection with bidding, negotiation or construction prior to the completion of the Construction Documents Phase.

3.4 OPTIONAL ADDITIONAL SERVICES

- 3.4.1 Providing analyses of the OWNER's needs and programming the requirements of the Project.
- 3.4.2 Providing financial feasibility or other special studies.
- 3.4.3 Providing planning surveys, site evaluations or comparative studies of prospective sites.
- 3.4.4 Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.
- 3.4.5 Providing services relative to future facilities, systems and equipment.
- 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 coordination of construction performed by separate contractors or by the OWNER'S own forces and coordination of services required in connection with construction performed and equipment supplied by the OWNER.
- 3.4.9 Providing services in connection with the work of a construction manager or separate consultants retained by the OWNER.

- 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.

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 sub-soil conditions, with reports and appropriate professional recommendations.
- 4.6.1** The OWNER shall furnish the services of other consultants when such services are reasonable 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 designated 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 duly 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 shall 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 predesign, site analysis, or Schematic Design Phases; or
 - .2** 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 in connection with the Project; expenses in connection with authorized out-of-town travel; long-distance communications; 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.

10.2.1.3 If authorized in advance by the OWNER, expense of overtime work requiring higher than regular rates.

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.

10.2.1.6 Expense of computer-aided design and drafting equipment time when used in connection with the Project.

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
BASIC OF COMPENSATION**

The OWNER shall compensate the ARCHITECT as follows:

11.1 AN INITIAL PAYMENT of _____ None Required this Project -----Dollars (\$----
-----) 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.)*

ARCHITECTS fee to be a fixed amount of \$_____.

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.)

See Attached Amendment 1 to Architectural Agreement.

Schematic Design Phase: percent (%)

Design Development Phase: percent (%)

Construction Documents Phase: percent (%)

Bidding or Negotiation Phase: percent (%)

Construction Phase: percent (%)

Total Basic Compensation: one hundred percent (100%)

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:

Not Applicable this Project

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.)

Not Applicable this Project

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 () times the amounts billed to the ARCHITECT for such services.

Not Applicable this Project

(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 () 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 with Twenty-four (24) 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 thirty (30) 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.)