

**AGREEMENT BETWEEN COUNTY AND TREANOR ARCHITECTS**

---

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

---

**THIS AGREEMENT** is made on the \_\_\_\_\_ day of \_\_\_\_\_, 2018

Between the **COUNTY:** BRAZOS COUNTY, TEXAS  
c/o Brazos County Commissioners' Court  
Attention: County Judge  
200 South Texas Ave., Ste. 332  
Bryan, Texas 77803

and the **ARCHITECT:** Treanor HL  
1700 Pacific Avenue, Suite 2630  
Dallas, TX 75201

for the following **PROJECT:**  
Jail kitchen expansion and remodel feasibility study and cost analysis as per attached scope of work. If funded by Commissioners' Court, subsequent full design of the Jail kitchen expansion can be added as an amendment to this contract with associated scope and pricing.

---

---

The COUNTY and ARCHITECT agree as set forth below.

**ARTICLE I**  
**ARCHITECT RESPONSIBILITY**

**1.1 ARCHITECT'S SERVICE**

1.1.1 The ARCHITECT'S services consist of those services performed by the ARCHITECT, ARCHITECT'S employees and the ARCHITECT'S consultants as enumerated in Articles 2 and 3 of this Agreement.

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. The ARCHITECT shall submit

for the COUNTY'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 COUNTY'S review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the COUNTY shall not, except for reasonable cause, be exceeded by the ARCHITECT or the COUNTY.

## **ARTICLE II** **SCOPE OF ARCHITECT'S BASIC SERVICES**

### 2.1 DEFINITION

2.1.1 The ARCHITECT'S Basic Services consist of those described in attached Exhibit "A" and incorporated by reference hereto – SCOPE OF BASIC SERVICES TO BE PROVIDED BY TREANOR HL., TO BRAZOS COUNTY.

## **ARTICLE III** **ADDITIONAL SERVICES**

### 3.1 GENERAL

3.1.1 The services described in attached Exhibit "A" as Additional Services are not included in the Basic Services. It is expressly understood and agreed that ARCHITECT shall not furnish any of the additional services without the prior written authorization of the COUNTY or the COUNTY'S designee. The COUNTY shall have no obligation to pay for such additional services, which have been performed without the prior written authorization of the COUNTY as herein above provided.

3.1.2 Services which could possibly be required, but at the time of this Agreement were yet to be determined and which are not included in the Basic Services or Additional Services as identified and described in EXHIBIT "A", shall be considered Contingent Additional Services. A list of possible Contingent Additional Services that could be needed as the Project proceeds is included at the end of Exhibit "A."

3.1.3 It is expressly understood and agreed that the ARCHITECT shall not furnish any of the Contingent Additional Services without the prior written authorization of the COUNTY or the COUNTY'S designee. The COUNTY shall have no obligation to pay for such Contingent Additional Services, which have been performed without the prior written authorization of the COUNTY as herein above provided.

## **ARTICLE IV** **COUNTY'S RESPONSIBILITY**

4.1 The COUNTY shall provide full information regarding requirements for the Project, including a program, which shall set forth the COUNTY's objective, schedules, constraints and criteria.

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

4.3 The COUNTY shall designate a representative authorized to act on the COUNTY'S behalf with respect to the Project. The COUNTY, 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 service.

4.4 The COUNTY shall give prompt written notice to the ARCHITECT if the COUNTY becomes aware of any fault or defect in the Project or non-conformance with the contract documents. Any delay by the COUNTY in providing said notice shall not constitute a waiver, a bar or act to estop the COUNTY from exercising any of its rights under this contract.

4.5 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 the COUNTY deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the ARCHITECT.

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

4.7 The COUNTY shall also provide those specific items identified in the attached Exhibit A incorporated by reference hereto – ITEMS TO BE PROVIDED BY THE COUNTY TO THE ARCHITECT.

## **ARTICLE V** **PROJECT COST**

### 5.1 DEFINITION

5.1.1 The Project Cost shall be the total cost or estimated cost to the COUNTY of all elements of the Project designed or specified by the ARCHITECT.

5.1.2 The Project Cost shall include the cost at current market rates of labor and materials furnished by the COUNTY and equipment designed, specified, selected or specially provided 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 Project Cost does not include the compensation of the ARCHITECT and the ARCHITECT'S consultants, financing or other costs which are the responsibility of the COUNTY.

### 5.2 RESPONSIBILITY FOR PROJECT COSTS

5.2.1 Evaluations of the COUNTY'S Project budget, preliminary estimates of Project Cost and detailed estimates of Project 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 COUNTY 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 COUNTY'S Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the ARCHITECT.

## **ARTICLE VI**

### **USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS**

6.1 The COUNTY shall be the absolute and unqualified owner of all drawings, preliminary layouts, record drawings, sketches and other documents prepared pursuant to this Agreement by the ARCHITECT with the same force and effect as if the COUNTY prepared same. Copies of complete or partially completed mylar reproducible, preliminary layouts, record drawings, sketches and other documents prepared pursuant to this Agreement shall be delivered to the COUNTY when and if this Agreement is terminated or upon completion of this Agreement, whichever occurs first. The ARCHITECT may retain one set of reproducible copies of the documents and these copies shall be for the ARCHITECT'S sole use in preparation of studies or reports for the COUNTY. The ARCHITECT is expressly prohibited from selling, licensing, or otherwise marketing or donating these documents, or using the documents in preparation of other work for any other client, without the prior express written permission of the COUNTY.

6.2 All documents including reports, drawings and specifications prepared by the ARCHITECT pursuant to this Agreement are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse by the COUNTY or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by the ARCHITECT for the specific purposes intended will be at the COUNTY'S sole risk and without liability or legal exposure to the ARCHITECT. Any such verification or adaptation will entitle the ARCHITECT to further compensation at rates to be agreed upon by the COUNTY and the ARCHITECT.

6.3 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 VII**

### **TERMINATION, SUSPENSION OR ABANDONMENT**

7.1 This Agreement may be terminated by either party upon not less than fourteen (14) days written notice should the other party fail to substantially perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

7.2 If the COUNTY suspends the Project for more than thirty (30) consecutive days, the ARCHITECT shall be compensated for services performed prior to notice of such suspension.

7.3 This Agreement may be terminated by the COUNTY upon not less than fourteen (14) days written notice to the ARCHITECT in the event that the Project is permanently abandoned. If the COUNTY abandons the Project for more than ninety (90) consecutive days, the ARCHITECT may terminate this Agreement by giving written notice.

7.4 If the COUNTY fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, the ARCHITECT may, after giving seven (7) days written notice to the COUNTY, suspend services under this Agreement.

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

7.6 If the COUNTY fails to make payment when due to the ARCHITECT for services and expenses, the ARCHITECT may, upon seven (7) days written notice to the COUNTY, suspend performance of services under this Agreement. Unless the ARCHITECT receives payment in full within seven (7) 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 COUNTY for delay or damage caused by the COUNTY because of suspension of services.

7.7 In the event of termination that is not the fault of the ARCHITECT, the ARCHITECT shall be compensated for services performed prior to termination, together with Reimbursable Expenses, if any, then due.

## **ARTICLE VIII** **MISCELLANEOUS PROVISIONS**

8.1 Unless otherwise provided, this Agreement shall be governed by the law of the principal place of business of the COUNTY. Venue for any dispute or disagreement regarding the terms of this Agreement shall be in Brazos County, Texas.

8.2 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 limitation shall commence to run not later than either the date of Substantial Completion, or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion.

8.3 The COUNTY and the 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 representative of such other party with respect to all covenants of this Agreement. Neither the COUNTY nor the ARCHITECT shall assign this Agreement without the express written consent of the other party.

8.4 This Agreement represents the entire integrated agreement between the COUNTY and the ARCHITECT and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the COUNTY and the ARCHITECT.

8.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the COUNTY or the ARCHITECT.

8.6 Unless otherwise provided for in this Agreement, the ARCHITECT and the ARCHITECT'S consultants 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.

8.7 The ARCHITECT shall have the right to include representations of the design of the Project, including photographs, among the ARCHITECT'S promotional professional materials. The ARCHITECT'S materials shall not include the COUNTY'S confidential or proprietary information, if the COUNTY has previously advised the ARCHITECT in writing of the specific information considered by the COUNTY to be confidential or proprietary.

8.8 COMPLIANCE AND STANDARDS. The ARCHITECT agrees to perform the work hereunder in accordance with generally accepted standards applicable thereto, and shall use that degree of care and skill commensurate with the surveying profession to comply with all applicable state, federal and local laws, ordinances, rules and regulations relating to the work to be performed hereunder and the ARCHITECT'S performance.

8.9 INDEMNIFICATION: ARCHITECT shall save and hold harmless the COUNTY from and against any and all claims and liability due to activities of the ARCHITECT, its agents or employees, performed under this Agreement and which result from any negligent act, error, or omission of the ARCHITECT, or of any person employed by the ARCHITECT. The ARCHITECT shall also save harmless the COUNTY from and against any and all expenses, including attorney's fees which might be incurred by the COUNTY in litigation, or otherwise, resisting said claims or liabilities which might be imposed on the COUNTY as the result of such activities by the ARCHITECT, its agents or employees.

8.10 LIQUIDATED DAMAGES: Intentionally blank.

## **ARTICLE IX** **PAYMENTS TO THE ARCHITECT**

### 9.1 PAYMENTS ON ACCOUNT OF BASIC SERVICES

9.1.1 Upon approval by the COUNTY, or the COUNTY'S designee, payment for Basic Services shall be made monthly and shall be in proportion to services performed that month within each phase of service.

### 9.2 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

9.2.1 Upon approval by the COUNTY or the COUNTY'S designee of the ARCHITECT'S statement of services rendered or expenses incurred, payment on account of the ARCHITECT'S Additional Services and for Reimbursable Expenses shall be made monthly.

### 9.3 PAYMENTS WITHHELD

9.3.1 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.

#### 9.4 ARCHITECT'S ACCOUNTING RECORDS

9.4.1 Records of Reimbursable Expenses pertaining to Additional Services and services performed on an hourly basis shall be available to the COUNTY or the COUNTY'S authorized representative at mutually convenient times.

#### 9.5 LIMIT OF APROPRIATION

9.5.1 Prior to the execution of this Agreement, the ARCHITECT has been advised by the COUNTY and the ARCHITECT fully understand and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the total maximum compensation that ARCHITECT may become entitled to hereunder, and the total maximum sum that the COUNTY shall become liable to pay to the ARCHITECT hereunder, shall not, under any conditions, circumstances or interpretations hereof, exceed the sum certified as available by the County Auditor in the Auditor's Certificate attached hereto.

### **ARTICLE X** **BASIS OF COMPENSATION**

The COUNTY shall compensate the ARCHITECT from funds obtained through current revenue of Brazos County as follows:

#### 10.1 BASIC COMPENSATION

10.1.1 For Basic Services, as described in Article 2, Basic Compensation shall be computed as follows:

In accordance with the attached Exhibit "A" incorporated by reference hereto, SCHEDULE OF FEES.

10.1.2 For Reimbursable Travel Expenses, the ARCHITECT shall be compensated based on the attached Exhibit "B", Vendor Travel Policy.

#### 10.2 COMPENSATION FOR ADDITIONAL SERVICES

10.2.1 For Additional Services of the ARCHITECT, as described in Article 3, compensation shall be computed as follows:

In accordance with the attached Exhibit "A" incorporated by reference hereto, SCHEDULE OF FEES.

#### 10.3 COMPENSATION FOR CONTINGENT ADDITIONAL SERVICES

10.3.1 For Contingent Additional Services of the ARCHITECT, as described in Article 3, compensation shall be computed as follows:

In accordance with the attached Exhibit "A" incorporated by reference hereto, SCHEDULE OF FEES.

10.3.2 Payments shall be made by the COUNTY in accordance with Texas Government Code Chapter 2251. The COUNTY shall pay the ARCHITECT'S invoice as approved by the COUNTY's designee within thirty (30) days after the COUNTY'S designee's approval of the same, provided that the approval or payment of any such invoice shall not be considered to be evidence of performance by the ARCHITECT to the point indicated by such invoice or of receipt or acceptance by the COUNTY of the work covered by such invoice.

## **ARTICLE XI** **OTHER CONDITIONS OR SERVICES**

### **11.1 INSURANCE**

11.1.1 The ARCHITECT shall file with the COUNTY a Certificate of Errors and Omissions Insurance having minimum limits of One Million and No/100 Dollars (\$1,000,000.00) for each occurrence and annual One Million and No/100 Dollars (\$1,000,000.00) aggregate. Such Errors and Omissions Insurance shall have a deductible not in excess of Two Hundred Thousand and No/100 Dollars (\$200,000.00) self-insured. Such Certificate shall bear the endorsement "Not to be canceled without thirty (30) days prior notice to BRAZOS COUNTY, TEXAS." The ARCHITECT shall maintain the Errors and Omissions Insurance at all times this Agreement is in effect and for a period of five (5) years after completion of the Project. Failure to maintain the required insurance shall be deemed to be a material breach of this Agreement.

11.1.2 The ARCHITECT shall also provide Worker's Compensation, automobile and comprehensive general liability policies. The ARCHITECT shall deliver the insurance certificates to the COUNTY. The coverage provided herein shall contain an endorsement providing thirty (30) days notice to the COUNTY prior to any cancellation of coverage. Said coverage shall be written by an insurer acceptable to the COUNTY and shall be in a form acceptable to the COUNTY. If the ARCHITECT has canceled or allowed to lapse any of these insurance policies then the COUNTY may pay for such insurance and may hold the amount of such payment out of the ARCHITECT's fees or be otherwise reimbursed. Failure to maintain the required insurance shall be deemed to be a material breach of this Agreement.

### **11.2 PERIODS OF SERVICE**

11.2.1 The ARCHITECT shall begin work immediately upon receipt of the Notice-to-Proceed in writing by the COUNTY or the COUNTY's designee. The project will proceed according to the schedule shown in Exhibit "A." The schedule makes certain assumptions regarding review processes and other activities that are beyond the control of the ARCHITECT.

11.2.2 Working days shall be defined as standard workdays between Monday and Friday, exclusive of holidays.

11.2.3 This schedule assumes an orderly progression of the ARCHITECT'S services. Delays beyond the control of the ARCHITECT may be cause for extension of this period of service, in which case the ARCHITECT shall submit in writing to the COUNTY its request for such extensions a minimum of thirty (30) calendar days prior to the end of the affected service period.



11.2.4 If the COUNTY has requested significant modifications or changes in the general scope, extent or character of the Project, the time or performance of the ARCHITECT'S services shall be adjusted equitably.

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

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolution extending said authority have been duly passed and are now in force and effect.

**BRAZOS COUNTY, TEXAS**

**ARCHITECT FIRM**

\_\_\_\_\_  
Duane Peters, County Judge

\_\_\_\_\_  
by:  
Principal

Acting by and through the authority of  
the Brazos County Commissioners Court

Attest:

\_\_\_\_\_  
County Clerk

Approved as to Form:

\_\_\_\_\_  
Assistant County Attorney