AGREEMENT
FOR ARCHITECTURAL AND ENGINEERING SERVICES TO
DEVELOP THE CONSTRUCTION
PLAN FOR THE JUDICIAL BUILDING

This Agreement is made and entered into this _____ day of _____, 2014, by and between the **PUBLIC BUILDING AUTHORITY OF RUTHERFORD COUNTY, TENNESSEE** (the "Authority"), and **RUTHERFORD COUNTY, TENNESSEE** (the "County").

W I T N E S S E T H:

WHEREAS, the County believes that it is in the best interest of the County to construct a new Rutherford County Judicial Building and any associated structures and improvements to meet the needs of the citizens of the County; and

WHEREAS, the Rutherford County Commission has authorized an expenditure not to exceed $5,000,000.00 for the purpose of land, planning, design and construction of a judicial building and also has authorized the execution of an agreement between the County and the Authority to be entered to allow the Authority to engage architect(s); engineer(s) and other professional(s) to perform services to develop and construct a Judicial Building at a total cost not to exceed $5,000,000.00 for the design services (the "Design Services Project"); and

WHEREAS, the Rutherford County Commission recommended that the Design Services Project be undertaken by the Authority pursuant to the terms of this Agreement; and

WHEREAS, in order to coordinate the activities of the parties hereto in connection with the Design Services Project, it is deemed necessary and desirable for the parties to enter into this Agreement, as authorized by the Rutherford County Commission.

NOW, THEREFORE, for and in consideration of the promises and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficient of which is hereby acknowledged, the parties agree as follows:

1. Creation of Committees. The Authority and County agree that it is appropriate to establish committees to assist with the completion of the activities to be undertaken under this Agreement. To that end, the following committees are hereby established:

   a. PBA/Judicial Services Center Design Review Committee. A PBA/Judicial Services Center Design Review Committee ("Design Review Committee") will be established for the purpose of consultation, review, and approval of various aspects of the Design Services Project and shall consist of the following individuals:

      (i) The Chairman of the PBA, or his designee from the PBA;

(ii) The County Mayor, or his designee;

(iii) The Presiding Judge, or his designee;

(iv) The Circuit Court Clerk, or her designee;

(v) The Programatic Advisor, or its designee (as defined hereinbelow);

(vi) Rutherford County Property Management Committee Chairman, or his designee from the Property Management Committee; and

(vii) The Project Manager or Construction Manager, or its designee from either the Project Manager or Construction Manager.

b. Dispute Resolution Committee. In order to resolve any disputes that may arise in the process of the Design Services Project as contemplated by this Agreement, or the subsequent construction, the parties agree there should be established a Dispute Resolution Committee (the "Dispute Resolution Committee") which will be charged with resolving any such conflict and shall include the following individuals:

(i) The Chairman of the PBA;

(ii) The County Finance Director;

(iii) The County Mayor;

(iv) The Rutherford County Property Management Committee Chairman.

c. Construction Oversight Committee. The parties agree that there shall be established a Construction Oversight Committee (the "Construction Oversight Committee") that will be charged with the general oversight of the project at such time as construction begins. Although this Committee may be established during the Design Services Project phase, it will continue in existence and be charged with its responsibilities throughout the construction of the project and shall consist of the following individuals:

(i) The Chairman of the PBA, or his designee from the PBA;

(ii) The County Mayor, or his designee;

(iii) The County Building and Codes Director;

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(iv) The Rutherford County Property Management Committee Chairman, or his designee from the Property Management Committee; and

(v) The Project Manager/Construction Manager.

2. The parties agree that the Programatic Advisor is a professional service and shall be Justice Planning Associates, with its principal, Mike Thomas, as the designated representative. The parties agree that Justice Planning Associates was already retained by the County and conducted the study on various aspects of the Project and is thus an appropriate entity to serve in this role pursuant to T.C.A. §12-10-124(d).

3. Project Manager/Construction Manager. The Project Manager/Construction Manager shall be selected by the Authority, with the advice, consent and approval of the County Mayor.

4. Representation of the Authority. The Authority represents and covenants that it will negotiate for a qualified professional(s) for the purpose of performing the Design Services Project as may be required by this Agreement.

5. Duties of the Authority. The Authority agrees that it will use its best efforts to negotiate contract(s) with architect(s), engineer(s) and other professional(s) (the "Contracts") providing for the Design Services Project subject to funding by the County Commission. The Authority will work with the County and the Design Review Committee in developing the design of the project. The design of the project, subject to the input of the County and the Committee, shall be the duty of the Authority. The selection of the architect(s), engineer(s) and other professional(s) shall be the duty and responsibility of the Authority, subject to the advice and consent of the County Mayor.

6. Representations of the County. The County hereby represents and covenants that it will participate in the development of the Design Services Project, by assisting the Authority on the design of same pursuant to the recommendation of the Rutherford County Commission hereinabove set out and as otherwise consistent with this Agreement.

7. Duties of the County. The County covenants and agrees that it will in good faith devote its best efforts in a responsible manner to perform its duties as follows:

   a. The County covenants and agrees to take all steps reasonably necessary to assist the Authority in Design Services Project consistent with this Agreement.

b. Authorize the funding at a total cost not to exceed $5,000,000.00 for the purchase of land, planning, design and construction for the Design Services Project.

8. Entry of Construction Contract. At such time as the Design Services Project contemplated by this Agreement is complete, and subject to appropriate funding, the parties shall enter an Agreement for Construction of a Judicial Building/Center in a form substantially as shown on Exhibit "A" attached hereto.

9. Term of Agreement. The term of this Agreement, and the duties and responsibilities of the parties hereunder, shall commence as of the date hereof and shall continue until the earliest to occur of:

(i) performance of all obligations hereunder; or

(ii) termination pursuant to Section 10 thereof.

10. Default and Remedies. In the event either of the parties hereto shall fail to perform any of its obligations hereunder or shall become unable to perform by reason of bankruptcy, insolvency, receivership or other similar event, the other party, so long as said party is not itself in default hereunder, (i) may terminate this Agreement, whereupon the terminating party shall be relieved of any further obligations hereunder, or (ii) seek specific performance, mandamus or other extraordinary relief to compel the defaulting party to perform hereunder, the parties hereto hereby recognizing that the duties and obligations hereunder are such that money damages are insufficient and incalculable remedy.

11. Illegality. If any provisions of the Agreement or application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by law. If any change in law shall occur or an opinion from a Court or the Tennessee Attorney General calls into question the legality of any provision of this Agreement, the parties shall work in good faith to reform the Agreement to comply with any such applicable law or opinion and, otherwise, the Agreement shall be deemed amended to the extent necessary to comply with the law.

12. Binding Effect. This Agreement shall be binding upon the parties hereto and their permitted successors and assigns. This Agreement shall not be changed orally but may be changed only by a written agreement signed by the Authority and the County. No waiver of any breach of any covenant, condition or agreement contained herein shall be construed to be a subsequent waiver of that covenant, condition or agreement or of any subsequent breach thereof or of this Agreement.

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13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee.

14. Entire Agreement; Controlling Agreement. This Agreement contains the entire understanding between the parties with respect to the matters contained herein, and supersedes any prior understanding and agreements between them respecting the within subject matter. There are no representations, agreements, arrangements, or understanding, oral or written, between or among the parties hereto relating to the subject matter of this Agreement which are not fully expressed herein.

15. Paragraph Headings. The paragraph headings are inserted only as a matter of convenience and for references and in no way define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement.

16. Time. Time is of the essence of this Agreement.

17. Required Actions by Representatives. Any action required of or permitted to be taken by either of the parties hereto may be performed by an authorized representative of the respective party without further action by the governing body of such party.

18. Assignment. The obligations and duties hereunder shall not be assignable without the express written consent of all the parties.

[Signatures appear on next page]

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IN WITNESS WHEREOF, the parties hereby have caused this Agreement to be executed by their respective duly authorized officers, as of the day and year above written.

THE PUBLIC BUILDING AUTHORITY OF RUTHERFORD COUNTY, TENNESSEE

By:_____
Title:_____

ATTEST:

_____

RUTHERFORD COUNTY, TENNESSEE

By:_____
Title:_____

ATTEST:

_____

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AGREEMENT FOR CONSTRUCTION OF A
JUDICIAL BUILDING/CENTER

This Agreement is made and entered into this _____ day of _____, 2014, by and between the **PUBLIC BUILDING AUTHORITY OF RUTHERFORD COUNTY, TENNESSEE** (the "Authority") and **RUTHERFORD COUNTY, TENNESSEE** (the "County").

W I T N E S S E T H:

WHEREAS, the County and Authority entered an Agreement for Architectural and Engineering Services to Develop the Construction Plan for the Judicial Building, which resulted in an approved design and plan for a Rutherford County Judicial Building/Center and associated improvements; and

WHEREAS, the County believes that it is in the best interest of the County to have a new Rutherford County Judicial Building/Center and associated improvements and parking (the "Project") to meet the needs of the citizens of the County; and

WHEREAS, the County and the Authority have authorized the execution of this Agreement for the construction of the Project and the County has authorized the payment of the costs of the completion of the Project not to exceed $_____ for the construction of the Project, including architects(s), engineer(s) and other professional(s) fees, legal fees, and construction costs; and

WHEREAS, the Authority has agreed to develop the Project and construct it under the terms of this Agreement contingent upon funding as provided for herein; and

WHEREAS, the County recommends that the Authority work with the architect(s), engineer(s), and other professional(s) and contractors to obtain the best price for the Project pursuant to T.C.A. §12-10-101, *et seq.*; and

WHEREAS, in order to coordinate the activities of each of the parties hereto in connection with the development of the Project, it is deemed necessary and desirable for the parties to enter into this Agreement as authorized by the County and the Authority.

NOW, THEREFORE, for and in consideration of the promises and mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Creation and Continuation of Committees. Pursuant to the Agreement for Architectural and Engineering Services to Develop the Construction Plan for the Judicial Building (the "Design Contract"), the County and the Authority agreed to a methodology for the creation of a PBA/Judicial Services Center Design and Review Committee, Dispute Resolution Committee, and Construction Oversight Committee as provided for in paragraph 1 of the said Design Contract. The parties agree that the Dispute Resolution Committee and Construction Oversight Committee as created in the Design Contract shall continue throughout the

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construction phase of the Project as contemplated by this Agreement and shall continue to provide services in the roles and for the purposes outlined in the said Design Contract.

2. Resolution of the Authority. The Authority represents and covenants that it will negotiate for qualified architect(s), engineer(s), and other professional(s) for the purpose of construction of the Project, subject to the advice and consent of the County Mayor.

   The Authority represents and covenants that it will hire a qualified contractor(s) or Construction Manager for the purpose of constructing the Project pursuant to Tennessee Code Annotated §12-10-101, *et seq.*

3. Duties of the Authority. The Authority agrees that it will:

   a. Retain an architect(s); engineer(s) and other professional(s) and enter into a contract with said architect(s), engineer(s), and other professional(s) to supervise the construction of the Project. It is agreed between the parties that the architect(s), engineer(s), and other professional(s) will work with the Authority and the County and the Construction Oversight Committee for the construction of the Project. Selection of the architect(s), engineer(s) and other professional(s) and the contractor shall be the duty and responsibility of the Authority, subject to the consent and approval of the County Mayor. It is agreed between the parties hereto that the Architect will work with the Construction Oversight Committee.

   b. Use its best efforts to enter into a construction contract pursuant to T.C.A. §12-10-101 *et seq.* providing for the construction of the Project in accordance with the plans and specifications obtained pursuant to the Design Contract. The construction contract will provide that the contractor or Construction Manager will work with the Authority and Construction Oversight Committee in constructing the Project in accordance with the plans. The construction contract will provide that the plans may be modified by the Authority at any time with approval of the PBA/Judicial Services Center Design Review Committee, and Construction Oversight Committee so long as any increases in the cost of the Project are pre-approved, authorized and funded by the County.

   c. Cause all bills related to the Project to be paid in a timely manner. It is understood between the parties that valid invoices are to be submitted to the Authority pursuant to the terms of the construction contract to be entered. Said invoices are to be approved, in the case of construction invoices, by the architect(s) and as to all invoices including construction invoices by the Chairman of the Authority. After approval of same by the Chairman of the Authority, in the case of construction invoices by the architect, said invoices are to be submitted by the Authority to the County Finance Director for Rutherford County, Tennessee, Rutherford County

Courthouse, Murfreesboro, Tennessee, who will be the paying agent for said Project. Said invoices are to be paid directly to the contractor or other provider of services in a timely manner after submission of same.

d. Insure that all punch-list items are completed and all service contracts and warranties are obtained.

e. Upon achievement of the completion of the Project by the contractor, cause the Project to be delivered in turn-key fashion by the contractor to the County in accordance with the construction contract upon final payment of the contract price.

4. Duties of the County. The County covenants and agrees that it will in good faith devote its best efforts in a responsible manner to perform its duties as follows:

a. Fund all draw requests made by the Authority for the costs of architect(s), engineer(s), and other professional(s) fees, legal costs, and payments due as required by the construction contract, and for any and all other costs related to the Project immediately when made, up to $_____. The County shall act as the paying agent for all expenses of the Project. All invoices and fees to be paid for the Project shall be submitted by the Authority after approval by the Chairman of the Authority and in the case of construction related invoices, the architect, to the Finance Director for the County and upon submission by the Authority, the County shall pay all invoices on a timely basis in accordance with the construction contract.

b. Provide the site on which said Project is to be constructed.

5. Substantial Completion. The term "substantial completion" or "substantially complete" shall have the meaning ascribed to it by the American Institute of Architects Document A201, General Conditions, including the issuance of a Certificate of Occupancy, lien waivers, and satisfactory evidence that all environmental requirements have been met.

6. Term of Agreement. The term of this Agreement, and the duties and responsibilities of the parties hereunder, shall commence as of the date hereof and shall continue until completion of the Project.

7. Default and Remedies. In the event either of the parties hereto shall fail to perform any of its obligations hereunder, the other party hereto shall have the right to sue for damages and/or specific performance.

8. Illegality. If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by law. If any change in law shall occur or an

opinion from a Court or the Tennessee Attorney General calls into question the legality of any provision of this Agreement, the parties shall work in good faith to reform the Agreement to comply with any such applicable law or opinion and, otherwise, the Agreement shall be deemed amended to the extent necessary to comply with the law.

9. Binding Effect. This Agreement shall be binding upon the parties hereto and their permitted successors and assigns. This Agreement shall not be changed orally but may be changed only by a written agreement signed by the Authority and the County. No waiver of any breach of any covenants, condition or agreement contained herein shall be construed to be a subsequent waiver or that covenant, condition or agreement or of any subsequent breach thereof or of this Agreement.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee.

11. Entire Agreement; Controlling Agreement. This Agreement contains the entire understanding between the parties with respect to the matters contained herein, and supersedes any prior understanding and agreements between them respecting the within subject matter. There are no representations, agreements, arrangements, or understandings, oral or written, between or among the parties hereto relating to the subject matter of this Agreement which are not fully expressed herein.

12. Paragraph Headings. The paragraph headings are inserted only as a matter of convenience and for references and in no way define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement.

13. Time. Time is of the essence of this Agreement.

14. Required Actions by Representatives. Any action required of or permitted to be taken by any of the parties hereto may be performed by an authorized representative of the respective party without further action by the governing body of such party.

15. Dispute Resolution. Any disputes as to the implementation of any provision of this Agreement or as to any issues involved in the completion of the Project shall be resolved by the Dispute Resolution Committee. If any dispute is not resolved by the Dispute Resolution Committee, it shall be decided by non-binding arbitration in Rutherford County, Tennessee.

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IN WITNESS WHEREOF, the parties hereby have caused this Agreement to be executed by their respective duly authorized officers, as of the day and year above written.

THE PUBLIC BUILDING AUTHORITY OF RUTHERFORD COUNTY, TENNESSEE

By:_____
Title:_____

ATTEST:

_____

RUTHERFORD COUNTY, TENNESSEE

By:_____
Title:_____

ATTEST:

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