FACILITIES DIVISION

ACCS FORM 1-B

# STANDARD ARTICLES *of the* AGREEMENT BETWEEN OWNER *and* ARCHITECT

## FORWARD

To be consistent with the ethical aspiration to advance standards of aesthetic excellence and preserve the architectural character of the facility, all mechanical, electrical, plumbing, communications, and utility systems shall be thoughtfully integrated into the architectural design. Exposed conduit, piping, ductwork, equipment, and wall penetrations visible from public viewpoints shall be concealed within the building envelope or screened as an integral architectural feature. Exterior penetrations shall be minimized, consolidated, and shall not occur on facades without ACCS approval. MEP systems shall be routed within the building envelope, concealed within walls or chases, or incorporated behind coordinated architectural screening so that they do not detract from the appearance or character of the facility. In addition to visual integration, MEP systems and equipment requiring service or maintenance shall be designed to provide safe and practical ground-level access. Installations located above ceilings and/or confined to spaces with less than three feet of clearance on all sides is not approved. All MEP systems shall therefore be coordinated during the design process to ensure both architectural integration and operational accessibility, rather than being added as an afterthought. Any exceptions to these requirements shall require ACCS written approval.

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### Article 1
## DEFINITIONS

Whenever the following terms, or pronouns in place of them, are used in the Agreement, the intent and meaning shall be interpreted as follows:

**A** **ACCS FACILITIES DIVISION:** The ACCS Facilities Division, which is responsible for oversight and management of all ACCS construction projects, pursuant to the policies and procedures adopted by the ACCS Board of Trustees.

**B** **BUDGET or PROJECT BUDGET:** The amount that is available to and allocated by the Owner for the Cost of the Work as defined in Article 8. It is stated in the Agreement form whether the Budget is fixed or is tentative pending development of design and cost estimates by the Architect. If the Budget is tentative, it shall be validated by the Architect or, based on the Architect's estimate(s), mutually adjusted by the Owner and Architect prior to advertising the Project for bids.

**C** **CONTRACTOR:** The Contractor is the person or persons, firm, partnership, joint venture, association, corporation, cooperative, limited liability company, or other legal entity to whom the Owner awards a Construction Contract for all or a part of the Work covered by the Agreement. The term "Contractor" is used in the Agreement as if singular in number.

**D** **GENERAL CONDITIONS** *of the* **CONTRACT:** ACCS FACILITIES DIVISION General Conditions that are incorporated and adopted into ACCS Construction Contracts.

**E** **MANUAL of PROCEDURES:** The "Construction Manual of Procedures" of the ACCS FACILITIES DIVISION currently published as of the date of the Agreement.

**F** **OWNER:** As defined in the current edition of the General Conditions of the Contract, "Owner" shall have the same meaning when used in the Owner / Architect Agreement.

## Article 2
## RELATIONSHIP *and* RESPONSIBILITIES *of the* PARTIES

### A RELATIONSHIP *of* OWNER *and* ARCHITECT

The Architect is an independent contractor providing professional services to the Owner and not an agent or employee of the Owner and is not entitled to receive merit system or other employee benefits from the Owner.

### B OWNER'S RESPONSIBILITIES

**(1) Contracting Documents:** The Owner shall promptly inform the Architect of the source or sources of Project funding (state, local, federal, etc.) or of special requirements or regulations of the Owner which may require supplementation of ACCS FACILITIES DIVISION's standard construction contracting documents, forms, or reporting.

**(2) Owner's Project Plan.** The term "Project Plan shall mean a written description of the Project objectives, including intended use of facilities and site, design constraints and criteria, physical parameters, space requirements and relationships, and any requirements for special equipment, systems, or materials. The Owner shall furnish its Project Plan to the Architect.

**(3) Owner's Program:** A detailed listing of the spaces, approximate square footage, and unique characteristics of each space with allowances for building service areas, circulation, and other common spaces.

**(4) Project Schedule.** If not agreed between the parties upon executing the Agreement, the Owner will promptly establish its desired or required Date of Substantial Completion of the Project. The Owner will consider the Architect's reasonable recommendations regarding Project schedule to facilitate the orderly performance of the services required under the Agreement and the cost-effective execution of the Work.

**(5) College Designated Representative.** The Owner will designate a College Representative through whom the Architect shall communicate regarding the Project. The Owner will state the extent to which this representative is authorized to act on behalf of the Owner with respect to the Project. In response to documents, questions, or recommendations submitted by the Architect, the College Representative will render decisions, directions, and answers, or obtain them from the Owner, in a timely manner to avoid unreasonable delay in the orderly and sequential progress of the Architect's services or performance of the Work by the Contractor.

**(6) Preparatory Surveys, Tests, and Consultants.** Unless otherwise stipulated in the Special Provisions of the Agreement, the Owner shall either furnish or reimburse the Architect pursuant to Article 6, Reimbursable Expenses, for obtaining surveys, tests, and consultants to the extent they are reasonably required and requested by the Architect for the preparation of Drawings and Specifications of the Work. The Architect shall be entitled to rely upon the accuracy and completeness of information obtained from such preparatory surveys, tests, and consultants, but shall promptly notify the Owner in writing of any significant errors, omissions, or inconsistencies in the information recognized by the Architect. If the Owner instructs the Architect to obtain these services as Reimbursable Expenses, the Owner shall determine or appove the provider(s) and the prices, terms, and conditions of the agreements and shall be responsible to

the Architect for the information obtained therefrom. Such preparatory surveys, tests, and consultants may include the following:

**(a)** A complete and accurate survey of the building site, giving the grades and lines of streets, pavements, and adjoining properties; the rights, restrictions, easements, boundaries, and contours of the building site; existing utilities, and full information as to sewer, water, gas and electrical services; and legal description of the property.

**(b)** The services of geotechnical engineers, testing laboratories, and other consultants to provide professional evaluations and recommendations pertaining to conditions of the site and existing improvements, including, but are not limited to, tests and surveys required to ascertain and address surface and subsurface conditions, structural integrity of existing structures, the presence of Existing Hazardous Materials, and environmental issues.

**(7) In-progress Inspections, Tests, and Consultants.** Unless otherwise stipulated in the Special Provisions of the Agreement, the Owner shall either furnish or reimburse the Architect pursuant to Article 6, Reimbursable Expenses, for obtaining the following inspections, tests, and consultants during or following the Contractor's performance of the Work:

**(a)** The services of independent, professional testing firms and laboratories to perform tests and evaluations that are stipulated in the Contract Documents to be furnished by the Owner, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

**(b)** Inspections, tests, demonstrations, or approvals that are in addition to the Specified Inspections of the Contract Documents and that are reasonably recommended by the Architect, desired by the Owner, or determined necessary by public authorities having jurisdiction to verify that the Contractor's in-progress and completed Work is in conformance with the Contract Documents.

If the Owner instructs the Architect to obtain these services as Reimbursable Expenses, the Owner shall determine or approve the provider(s) and the prices, terms, and conditions of the agreements and shall be responsible to the Architect for the information obtained therefrom.

**(8) Hazardous Materials.** Unless otherwise provided in the Special Provisions of the Agreement, the Owner shall have responsibility for the presence and abatement of Existing Hazardous Materials that may be discovered at the Project site. If, at any time, the Owner has reason to believe that Existing Hazardous Materials are present at the Project site, or the Architect reasonably recommends that the Owner ascertains whether Existing Hazardous Materials are present at the Project site, or the Contractor encounters a suspected Existing Hazardous Material, the Owner shall obtain the services of an independent laboratory or professional consultant, appropriately licensed and qualified, to identify Hazardous Materials requiring abatement and to certify after their abatement that they have been rendered harmless. Any abatement of Existing Hazardous Materials will be the responsibility of the Owner. The Owner will advise the Architect and Contractor in writing of the persons or entities who will determine the nature of the suspected material and those who will, if necessary, perform the abatement. The Owner will not employ persons or entities to perform these services to whom the Architect or Contractor has reasonable objection.

**(9) Priority of Alternates.** If bid alternates are to be used, the order in which they shall be listed in the Proposal Form and cumulatively considered for determination of the lowest bidder shall be determined by the Owner after consulting with the Architect.

**(10) Advertisement for Bids.** The Owner is responsible for the cost of publishing the Advertisement for Bids, but the Architect shall prepare it and arrange for its publication. The Architect shall obtain the Owner's approval regarding the number of newspapers in which the advertisement is to be published.

**(11) Advertisement of Completion.** If the Contract Sum is $100,000 or less, the Owner is responsible for publishing the Advertisement of Completion of the Construction Contract. If the Contract Sum is greater than $100,000, the Contractor is responsible for preparing and publishing the Advertisement of Completion of the Construction Contract.

**(12) Determination of Lowest Responsible and Responsive Bidder.** After receiving the Architect's certified Tabulation of Bids and recommendations, the Owner is responsible for the final determination of the lowest responsible and responsive bidder to whom the Construction Contract is awarded.

**(13) Legal, Accounting, and Insurance Counseling.** The Owner shall furnish all legal, accounting, and insurance counseling services required to protect the Owner's interests and meet its needs pertaining to the Project, including any auditing service.

**(14) Access to the Work.** The Owner shall insure that the Architect will have access to the Work whenever it is in preparation or progress.

**(15) Notification of Errors.** The Owner shall promptly notify the Architect in writing if the Owner becomes aware of any fault or defect in the Project, including any significant errors, omissions, or inconsistencies in the Drawings, Specifications, other Contract Documents, or instructions and information issued to the Contractor by the Architect.

## C ARCHITECT'S RESPONSIBILITIES

**(1) Standard of Performance.** The Architect shall perform the services of the Agreement with reasonable care and competence, applying the technical knowledge and skill which is ordinarily applied by architects of good standing with the Alabama Board for Registration of Architects (in the case of Engineers, the State Board of Licensure for Professional Engineers and Land Surveyors). The performance of these services shall be consistent with the Conditions of the Construction Contract, and in such a timely manner as will facilitate the orderly progress of the Project. (See Article 11 for the agreed design schedule.)

**(2) Full Professional Team.** For the performance of the services required by the Agreement the Architect will employ the services of consulting engineers so as to provide a full professional team as dictated by the disciplines of architectural and engineering design involved in the Work. (See Article 10, Engineering Services.)

**(3) Quality of Documents.** In preparing the Drawings and Specification and other Contract Documents, the Architect shall endeavor to:

**(a)** review and comply with laws, codes, and regulations applicable to the design, incorporating requirements imposed by governmental authorities having jurisdiction over the Project;

**(b)** consider and advise the Owner of the comparative values of alternative materials, building systems and equipment relative to construction, maintenance, and life-cycle costs to achieve a design that is appropriate for the Owner's Program and suitable for the Project Budget; and

**(c)** coordinate the documents prepared by the Architect and the Architect's consultants, including checking the compatibility of specified equipment and systems with spaces provided for them.

**(4) Sole Source Specifications.** In preparing the Drawings and Specifications the Architect shall not specify the use of any sole source materials, products, systems, or services in violation of § 39-2-2(f), Code of Alabama, 1975 as amended.

**(5) Conflicts of Interests.** Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, enter into other agreements, accept any employment, interest, or contribution, or specify any material, product, or system that would, or would appear to, create a conflict of interests compromising the Architect's professional judgment with respect to this Project.

**(6) Notification and Correction of Errors.** The Architect shall provide prompt written notice to the Owner and Contractor if the Architect becomes aware of any fault or defect in the Project, including any errors, omissions, or inconsistencies in the Drawings, Specifications, other Contract Documents or instructions and information issued to the Contractor by the Architect. At no cost to the Owner, the Architect will correct errors, omissions, or inconsistencies found in the Drawings, Specifications, or other Contract Documents. However, the Architect shall not be liable to the Owner to the extent that betterment, added value, and project enhancement as upgrades results from the addition of such component elements.

## Article 3
## BASIC SERVICES

The Agreement includes Basic Services A, B, C, D, and E unless stated otherwise in the Special Provisions of the Agreement, and the Architect agrees to perform these professional services as they are defined below:

### A SCHEMATIC DESIGN PHASE (Service A)

**(1) Preliminary Evaluation.** The Architect shall provide preliminary evaluation of the Owner's Project Plan and Program, if available, Project schedule, Project site, Budgeted Cost of the Work, and available surveys, tests, and reports to ascertain that each is consistent and comparable with the others and the requirements of the Project. If the Architect detects any inconsistencies or incompatibilities among the documents and information provided by the Owner, the Architect shall promptly recommend reasonable adjustments.

**(2) Schematic Drawings and Specifications.** Based on the Owner's Program, Project schedule and delivery method, Project site, Budgeted Cost of the Work, and preparatory surveys, tests, and consultants' reports, and any agreed adjustments thereto, the Architect shall prepare schematic drawings and other documents as prescribed in the Construction Manual of Procedures for Schematic Plan Submittal.

**(3) Estimate of the Cost of the Work.** The Architect shall prepare and submit at the time of schematic design documents submittal, an estimate of the Cost of the Work to the Owner (for approval) and to the ACCS FACILITIES DIVISION. The Architect shall have the discretion of determining the estimating method(s) and detail, but the estimate shall accommodate traceable, supportable revisions as may become required pursuant to Article 3.C(3).

**(4) Submit for Approval.** The Architect shall submit the schematic design documents for the approval of the College Designated Representative and ACCS FACILITIES DIVISION. The schematic design documents approved by the ACCS FACILITIES DIVISION shall constitute the Approved Project Program which can then be revised only by written agreement of the Architect and Owner.

## B PRELIMINARY DESIGN PHASE (Service B)

**(1) Preliminary Drawings and Specifications.** Based upon the schematic design documents approved by the Owner and ACCS FACILITIES DIVISION and any adjustments then authorized by the Owner in budgeted Cost of the Work, Program, Project Schedule or delivery method, the Architect shall prepare preliminary drawings, outline specifications, and other documents as prescribed in the Construction Manual of Procedures for Preliminary Plan Submittal.

**(2) Submit for Approval.** The Architect shall submit the preliminary design documents for the approval of the College Designated Representative and ACCS FACILITIES DIVISION. In the event revisions to the design at the Preliminary Design Review are necessary, it is required that the Design Professional re-submit revised Preliminary Design documents for ACCS FACILITIES DIVISION approval prior to proceeding.

**(3) Estimate of the Cost of the Work.** The Architect shall prepare and submit at the time of preliminary design documents submittal, an estimate of the Cost of the Work to the Owner (for approval) and to the ACCS FACILITIES DIVISION. The Architect shall have the discretion of determining the estimating method(s) and detail, but the estimate shall accommodate traceable, supportable revisions as may become required pursuant to Article 3.C(3).

## C FINAL DESIGN PHASE (Service C)

**(1) Authorization.** The Owner's approval of the Architect's estimate of the Cost of the Work and the preliminary drawings and outline specifications and ACCS FACILITIES DIVISION's approval of the Preliminary Plan Submittal will constitute authority for the Architect to proceed with the completion of final plans and specifications.

**(2) Final Drawings and Specifications.** The Architect shall prepare final Drawings and Specifications as prescribed in the Construction Manual of Procedures for Final Plan Submittal.

**(3) Changes in Design or Costs.** If during the preparation of the Final Drawings and Specifications, unforeseen conditions should arise or the Owner requires changes from the approved preliminary Drawings and Specifications and such conditions or changes would affect the Cost of the Work or Project schedule, or could require changing the Approved Project Program to maintain budget, the Architect shall notify the Owner and the ACCS FACILITIES DIVISION in writing immediately. The Architect shall submit to the Owner and to the ACCS FACILITIES DIVISION a revised estimate of the affected Cost of the Work and/or Project schedule. Resulting agreements to revise the budgeted Cost of the Work and/or Project schedule shall be confirmed through an Amendment to the Agreement. Owner requested revisions to Owner-approved Drawings or Specifications may be subject to Article 5, Extra Services.

**(4) Submit for Approval.** The Architect shall submit the final Drawings and Specifications for the approval of the College Designated Representative and ACCS FACILITIES DIVISION. In the event revisions to the design at the Final Design Review are necessary, it is required that the Design Professional re-submit revised Final Design documents for ACCS FACILITIES DIVISION approval prior to proceeding. Bid will be delayed.

**(5) Estimate of the Cost of the Work.** The Architect shall prepare and submit at the time of final design documents submittal, an estimate of the Cost of the Work to the Owner (for approval) and to the ACCS FACILITIES DIVISION. The Architect shall have the discretion of determining the estimating method(s) and detail, but the estimate shall accommodate traceable, supportable revisions as may become required pursuant to Article 3.C(3).

**(6) Bid Over-runs.** If the lowest responsible and responsive bid received by the Owner for the Work is greater than the budgeted Cost of the Work, the Architect will, upon instructions from the Owner, make revisions to the Drawings and Specifications, consistent with the Approved Project Program, as may be necessary to re-bid the Work within the budgeted Cost of the Work, or a higher amount as may be authorized by the Owner. The Owner will cooperate with the Architect in revising the scope and quality of the Work as necessary to reduce the Cost of the Work. Compensation for such revision of the Drawings and Specifications shall be determined as follows:

**(a)** If the bid over-run is not greater than 10% of the budgeted Cost of the Work, the Architect will be compensated under Article 5, or as otherwise agreed, for revising the Drawings and Specifications.

**(b)** If the bid over-run is greater than 10% of the budgeted Cost of the Work and (i) the Owner has received bids for the Work within 90 days after final approval of the Drawings and Specifications and (ii) the reason that the over-run exceeds 10% of the budgeted Cost of the Work is not attributable to a unique or unexpected market condition which the Architect would not have reasonably contemplated in its estimates, the Architect will revise the Drawings and Specifications to conform to the budgeted Cost of the Work, or a higher amount authorized by the Owner, at no cost to the Owner.

## D CONSTRUCTION CONTRACT PROCUREMENT (Service D)

After obtaining approval of the final Drawings and Specifications from the Owner, ACCS FACILITIES DIVISION and other approving authorities, including authorities responsible for code compliance review, and incorporating their review comments into the Drawings and Specifications, the Architect shall assist the Owner in procuring a Construction Contract for the Work.

**(1) Advertisement for Bids.** The Architect shall prepare the Advertisement for Bids, consult with the Owner regarding the number of locations in which it is to be published, and have it appropriately published. The Owner will either pay for the publication directly to the publisher(s) or reimburse the Architect for publication pursuant to Article 6, Reimbursable Expenses.

**(2) Distribution of Bid Documents.** The Architect shall furnish and distribute Bid Documents (Drawings and Project Manuals which shall also be the Contract Documents) to prospective bidders in accordance with the Advertisement for Bids and the Construction Manual of Procedures.

**(a) Bid Document Deposit and Distribution.** The Architect shall distribute Bid Documents to bidders in electronic PDF form with no deposit required.

**(3) Pre-bid Conference.** If the Owner and Architect agree that a pre-bid conference will be advantageous to the Project, the Architect shall organize and conduct a pre-bid conference for prospective bidders. If pre-bid conference attendance is to be a prerequisite to bidding, the Architect shall state this fact in the Advertisement for Bids.

**(4) Addenda.** The Architect shall review and approve, or take other appropriate action upon, requests for substitutions submitted in accordance with the procedures for "Pre-bid Approval" prescribed in the Instructions to Bidders and prepare responses to questions from prospective bidders pertaining to the Drawings, Specifications, and other Contract Documents. All addenda when published must be submitted to the Owner and the local AHJ or Independent Code Consultant for review to confirm compliance with the applicable Building Codes. The Architect shall prepare and distribute in a timely manner addenda to

all prospective bidders identifying approved substitutions and providing clarifications and interpretations of the Contract Documents. All addenda must be approved by ACCS FACILITIES DIVISION before a construction contract will be reviewed.

**(5) Opening of Bids.** The Architect shall participate in or, at the Owner's request, shall conduct the opening of the bids.

**(6) Tabulation of Bids.** The Architect shall prepare a certified Tabulation of Bids and recommendations for award in accordance with the Construction Manual of Procedures and furnish a copy to the Designated Representative and ACCS FACILITIES DIVISION.

**(7) Conformance Documents.** The Architect shall provide to the Contractor the Conformance Documents which consists of a set of Drawings and a Project Manual that incorporates all addenda items and all accepted alternates. These Drawings should be identified on the drawing cover and border of each sheet. This Project Manual should be identified on the cover with a new date.

**(8) Preparation of Construction Contract.** The Architect shall prepare the Construction Contract for acceptance and execution by the Contractor and Owner, delivering the Construction Contract with required bond forms for the Contractor's execution first. Upon receipt of the executed Construction Contract with bonds, evidence of required insurance, and other required attachments (if any) from the Contractor, the Architect shall verify that the documents are accurate, complete, and in order and then forward them to the Owner for appropriate approvals and execution.

## E CONSTRUCTION CONTRACT ADMINISTRATION (Service E)

The Architect shall perform Construction Contract Administration consistent with the General Conditions of the Contract and in accordance with the applicable Construction Manual of Procedures, using and preparing all standard forms and uniform documents prescribed therein.

**(1) Representative of the Owner.** The Architect will be a representative of the Owner during construction and in this capacity will endeavor to:

**(a)** guard the Owner against variances from the requirements of the Contract Documents by the Contractor,

**(b)** require the Contractor to complete the Work within the time specified in the Construction Contract or subsequently extended by the Owner,

**(c)** and guard the Owner against Defective Work. The Architect will advise and consult with the Owner regarding the performance and progress of the Contractor and regarding solutions to conditions or problems that may arise out of the design or construction. The Architect shall have authority to act on behalf of the Owner to the extent provided in the General Conditions of the Contract, which may only be modified in writing.

**(2) Limitation of Responsibilities.** The Architect does not guarantee the performance of the Contractor. The Architect shall not be responsible for or liable to the Owner, Contractor, or others for:

**(a)** supervising or coordinating the Contractor's performance of the Work, the Contractor's Construction Methods, or the safe execution of the Work, unless the Contract Documents give other specific instructions concerning these matters;

**(b)** acts or omissions of the Contractor, Subcontractors, or their agents or employees or any persons or entities performing portions of the Work, or

**(c)** the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents; however, it shall be a requirement of this Agreement that the Architect notify the Owner and Contractor of any Defective Work observed by the Architect.

**(3) Interpretations and Decisions.**

**(a)** In response to questions from the Contractor or Owner about the Contract Documents, or as the Architect deems appropriate, the Architect shall provide interpretations and clarifications of the Contract Documents that are consistent with the intent of and reasonably inferable from the Contract Documents. Interpretations and clarifications shall be in the form of written explanations or directions and/or supplementary details or drawings, whichever is required to complete, explain or make definite any of the provisions of the Drawings and Specifications and give them due effect.

**(b)** The Architect shall respond to questions about the Contract Documents in a timely manner consistent with the terms of the Contract Documents.

**(c)** If, with undue frequency, the Contractor requests information that is obtainable through reasonable examination and comparison of the Contract Documents, site conditions, and previous correspondence, interpretations, or clarifications, the Architect shall be entitled to additional compensation pursuant to Article 5, but only to the extent that the Contractor is responsible to the Owner for such expenses.

**(d)** Upon written request of the Contractor or Owner, and as provided in the Conditions of the Construction Contract, the Architect shall render prompt, impartial decisions on claims, disputes, or other matters in question between the Contractor and Owner arising out of the Construction Contract.

**(e)** Decisions by the Architect, including interpretations and clarifications of the Drawings, Specifications, or other Contract Documents, and directions or decisions regarding performance of the Work, shall be in writing and shall be advisory to the Contractor and Owner, except that the Architect's decisions on matters relating to aesthetic effect will be final and binding if consistent with the intent expressed in the Contract Documents.

**(4) Project Record.** The Architect shall maintain the Project Record consisting of Project-related correspondence, memoranda, notes, Statements for Services and related documents, Application and Certification for Payments and related documents, minutes of meetings, and inspection reports issued or received by the Architect. The Owner shall have access to the Project Record during the Architect's normal office hours. If requested to reproduce the Project Record, or significant portions of it, for the Owner, the Architect will do so as a Reimbursable Expense.

**(5) Communications.** So as to maintain continuity in the Architect's administration of the Construction Contract and performance of the Work by the Contractor, and to facilitate complete documentation of the Project record, all communications between the Contractor and Owner regarding matters of or related to the Contract shall be directed through the Architect with copy furnished to the Owner, unless direct communication is otherwise required to effect legal notification. Unless otherwise authorized by the Architect, communications by and with the Architect's consultants shall be through the Architect. Unless


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otherwise authorized by a Contractor, communications by and with Subcontractors and material suppliers shall be through the Contractor.

**(6) Submittal Review:** The Architect shall review the Contractor's Submittals for conformance with requirements of, and the design concept expressed in, the Contract Documents and approve or take other appropriate action upon them.

**(a)** This review is not intended to verify the accuracy and completeness of details such as dimensions and quantities or to substantiate installation instructions or performance of equipment or systems, all of which shall be the responsibility of the Contractor. However, the Architect shall advise the Contractor of any errors or omissions which the Architect may detect during this review.

**(b)** As provided in the General Conditions of the Contract, the Architect is authorized to approve "minor" deviations from the requirements of the Contract Documents (see paragraph 10a for "minor" definition). Deviations which are not "minor" may be authorized only by the Owner through change order action.

**(c)** If the Contract Documents specify that a Submittal is to be prepared and sealed by a registered architect or licensed engineer retained by the Contractor, the Architect shall specify all performance and design criteria that such services must satisfy. The Architect shall not approve such a Submittal if any of its drawings, calculations, specifications, or certifications do not bear the required Alabama seal of registration and signature of the registered/licensed design professional who prepared them or under whose supervision they were prepared. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of such a Submittal, provided the Architect has adequately specified all performance and design criteria that must be satisfied by the Submittal.

**(d)** The Architect will review and respond to all Submittals with reasonable promptness to avoid delay in the Work or in the activities of the Owner, Contractor or separate contractors.

**(e)** Within thirty days after Substantial Completion of the Work by the Contractor the Architect will furnish the Owner one complete physical and one complete digital set of the Contractor's approved Submittals, organized in a logical manner.

**(7) Review of Construction Schedules.** The Architect shall review and approve/disapprove the Contractor's construction schedule, monitor the Contractor's progress, and consult with the Owner regarding appropriate action to be taken when it is apparent that the Contractor's progress is jeopardizing Substantial Completion of the Work within the Contract Time.

**(a)** The Architect's review and approval of the Contractor's construction schedule shall be only for compliance with the specified format, Contract Time, and suitability for monitoring progress, and such review and approval shall not be construed as a representation that the Architect has analyzed the schedule to form opinions of sequences or durations of time represented in the schedule.

**(b)** The Architect may specify any scheduling method and format that the Architect considers to be appropriate for the Project. The Architect shall promptly deliver a copy of the Contractor's approved Progress Schedule and Report to the ACCS FACILITIES DIVISION at or before the Pre-Construction Conference, and send any revised Progress Schedules to the ACCS FACILITIES DIVISION Project Inspector.

**(c)** The Architect shall require the Contractor to update the Progress Schedule and Report with each monthly Application for Payment and shall otherwise monitor and keep the Owner appraised of the Contractor's progress. In the event the schedule gets behind, it is expected that the Architect formally notify the Contractor to produce a recovery schedule in order to meet construction deadlines, inspections, etc.

**(d)** If, in the Architect's opinion, the Contractor's progress falls materially behind the approved construction schedule, the Architect shall consult with the Owner and, with the Owner's concurrence, issue the Contractor a Notice to Cure the condition.

**8. Inspections.** The Contractor's responsibility is to communicate to the Architect the date and time of requested inspection(s). The Architect's responsibility is to coordinate date and time of the requested inspection with the Contractor, AHJ or ICC, Owner (ACCS), and College (college designated representative). The Architect shall coordinate, schedule, and conduct the Scheduled Inspections and Conferences defined in the Contract Documents and as are appropriate to the scope of the Work. The Architect shall perform Periodic Inspections defined in the Contract Documents and as enumerated below. The Architect shall attend Specified Inspections and Tests defined in the Contract Documents when attendance by the Architect is specified or is otherwise appropriate. Minimum participation requirements for required inspections is both the Contractor and the Architect of Record, even if the required inspection is with an AHJ or ICC.

**(a)** **Definition.** The Architect's "inspections" means the service performed by the Architect through which the Architect:

**.1** becomes generally familiar with the in-progress and completed Work and the quality of the Work,

**.2** determines whether the Work is progressing in general accordance with the Contractor's schedule and is likely to be completed within the Contract Time,

**.3** visually compares readily accessible elements of the Work to the requirements of the Contract Documents to determine, in general, if the Contractor's performance of the Work indicates that the Work will conform to the requirements of the Contract Documents when completed,

**.4** endeavors to guard the Owner against Defective Work, but does not include making exhaustive investigations or examinations of the in-progress or completed portions of the Work to expose the presence of Defective Work,

**.5** reviews and addresses with the Contractor any problems in implementing the requirements of the Contract Documents that the Contractor may have encountered, and

**.6** keeps the Owner fully informed about the Project.

**(b)** **Coordination with ACCS FACILITIES DIVISION.** When scheduling Scheduled Inspections and Conferences the Architect shall first contact the ACCS FACILITIES DIVISION and establish a mutually acceptable date and time for the inspection or conference, and confirm the agreed date and time in writing at least seven days prior to the date of the inspection or conference.

**(c)** **Frequency.** Unless the Special Provisions of the Agreement provides for the Architect's employment of an On-site Representative, the Architect is not required to provide continuous inspection. The Architect's Periodic Inspections shall be at intervals appropriate to the stage of the Contractor's

operations and consistent with the size and nature of the Work, but not less than an average of one inspection per week while construction is ongoing. The performance of a Scheduled Inspection satisfies the weekly inspection requirement. The weekly inspection requirement may be waived during periods in which weather or other conditions delay progress, or during slow phases of construction, making weekly inspections unwarranted. (See Article 10 for required frequency of inspections by the Architect's consultants.)

**(d)** **Inspections** by Registered Architect. Architect of Record shall perform an average of at least one Periodic Inspection each month during construction. This requirement for monthly inspection by an Alabama registered architect may be waived during periods in which weather or other conditions delay progress, or during slow phases of construction, making inspections during such period unwarranted.

**(e)** **Reporting.** The Architect shall promptly prepare a complete report of each inspection by the Architect, Architect's representative, or consulting engineer and promptly furnish a copy of each report to the Owner, ACCS FACILITIES DIVISION, and Contractor. Anytime there is an inspection performed a report should be completed. The Architect shall prepare and distribute an inspection report weekly during construction; for weeks during which inspections are unwarranted, the Architect shall state in the report that no inspection was performed and why.

**(f)** **Notifications of Deficiencies.** The Architect shall promptly notify the Contractor and Owner in writing of any Defective Work, inadequate progress that may jeopardize timely completion of the Project,or other departures from the requirements of the Contract Documents observed by the Architect. All deficiencies shall be tracked on a Deficiency Log and reviewed and updated at least once a month at OAC meetings.

**(d)** **Stopping the Work.** The Architect shall have the authority to require the Contractor to stop work only when, in the Architect's reasonable opinion, such stoppage is necessary to avoid Defective Work. The Architect shall not be liable to the Contractor or Owner for the consequences of any decisions made by the Architect in good faith either to exercise or not to exercise this authority.

**(e)** **Safety.** The duty of the Architect to visit the Project site to conduct inspections of the Work or for other purposes shall not give rise to a duty to review or approve the adequacy of the Contractor's safety program, safety supervision, or any safety measure which the Contractor takes or fails to take in, on, or near the Project site.

**(9)** **Certifications for Payment.** The Architect shall review and approve as appropriate the Contractor's monthly and final Applications for Payment and issue Certifications for Payment in accordance with the General Conditions of the Contract.

**(a)** The Architect's review, approval, and certification of Applications for Payment (ACCS Form 6-D) shall be based on the Architect's general knowledge of the Work obtained through inspections at the site and the information provided by the Contractor with the Application. The Architect shall not be required to perform exhaustive examinations, evaluations, or estimates of the cost of completed or uncompleted Work or stored materials to verify the accuracy of amounts requested by the Contractor.

**(b)** The Architect shall not be required to withhold payment for completed or partially completed Work for which compliance with the Contract Documents remains to be determined by Specified Inspections or Final Inspections to be performed in their proper sequence. However, if Work for which payment has

been approved, certified, or made under an Application for Payment is subsequently determined not in compliance with the Contract Documents, the Architect shall determine an appropriate amount that will protect the Owner's interest against such noncompliance and:

**.1** if payment has not been made against the Application for Payment first including the Work in question, notify the Owner and Contractor of the amount to be withheld from the payment until the Work is brought into compliance with the Contract Documents, or

**.2** if payment has been made against the Application for Payment first including the Work in question, withhold the appropriate amount from the next Application for Payment submitted after the determination of noncompliance, such amount to then be withheld until the Work is brought into compliance with the Contract Documents.

**(c)** The Architect shall notify the Contractor in writing of any adjustments that the Architect may make to an Application for Payment in approving and certifying it.

**(d)** The Architect shall not be required to determine that the Contractor has promptly or fully paid Subcontractors and suppliers or how or for what purpose the Contractor has used monies paid under the Construction Contract. However, the Architect may, upon request and if practical, inform any Subcontractor or supplier of the amount, or percentage of completion, approved or paid to the Contractor on account of the materials supplied or the Work performed by the Subcontractor.

**(e)** On each Application for Payment the Architect shall certify to the Owner that to the best of the Architect's knowledge and belief, the Work has progressed to the point indicated in the Application, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the amount approved.

**(10) Contract Change Orders.** The Architect shall administer the change order procedures provided in the General Conditions of the Contract.

**(a)** The Architect is authorized to make "minor" changes in the Work by written order to the Contractor through the use of an Architect's Supplemental Instruction (ASI). These "minor" changes, or ASIs, in the Work are defined as those which are in the interest of the Owner, do not materially alter the quality or performance of the finished Work, and do not affect the cost or time of performance of the Work. Changes in the Work which are not "minor" may be authorized only by the Owner through a Contract Change Order.

**(b)** The Architect shall prepare details, supplemental drawings, specifications, or other descriptive documents as necessary to sufficiently delin te, for Contractor pricing and performance, proposed changes in the Work directed or authorized by the Owner.

**(c)** The Architect shall, within two days, obtain written confirmation from the Contractor of the acknowledgment of the ASI.

**(d)** The Architect shall advise the Owner regarding the method of implementing a change.

**(e)** The Architect (and the Architect's consultants, when appropriate) will review and evaluate change order proposals and claims for extra work as may be submitted by the Contractor.

**(f)** Using the form prescribed in the Construction Manual of Procedures the Architect shall recommend, as applicable, the Contractor's proposals for acceptance by the Owner. Each recommendation of acceptance will be based upon the Architect's professional opinion that a proposal is complete, in conformance with the Contract Documents, represents fair and reasonable pricing through the use of the Change Proposal Recap Sheet, and justifies change order action in the case of claims for extra work, or does not warrant procurement by competitive bid in the case of added work. Determination of the legality of a change order shall be the responsibility of the Owner and its legal advisor. Cumulative Change Orders 10% or greater of the current contract amount require the Owner's legal advisor's signature.

**(g)** The Architect shall prepare Contract Change Orders for acceptance and execution by the Contractor and Owner. In either narrative form or attached and referenced details, supplemental drawings, specifications, or other descriptive documents, Construction Change Orders shall sufficiently descri the change(s) in Work so that the requirements of the Contract Documents are clearly determinable with reasonable ease.

**(h)** The extensive preparation of details, supplemental drawings, specifications, or other documents to describe a change in the Work may warrant adjustment of the Basic Fee pursuant to Article 4.E, Adjustment for Major Changes in Services.

**(i)** Liquidated Damages are routed as Change Orders for work that the Contractor has failed to substantially complete within the Contract Time. Before the process of applying liquidated damages begins, communication and approval is required from the ACCS Chief Facilities Officer.

**(11) "As-built" Documents.** Unless otherwise provided in the Special Provisions of the Agreement, "As-built" Documents shall be prepared and furnished by the Contractor in accordance with the General Conditions of the Contract. Prior to preparing bid documents, the Architect shall consult with the Owner to determine the Owner's requirements for "As-built" Documents and shall incorporate them into the Conditions of the Contract, if they differ from those of the General Conditions. The Architect shall administer the "As-built" Document requirements of the Contract Documents, periodically verifying the Contractor's compliance during construction and reviewing the Contractor's final documents for conformance to Contract requirements.

**(12) Architect's On-site Representative.** If an Architect's On-site Representative is included in Service E or as a separately compensable service under the Special Provisions of the Agreement, or if later authorized by the Owner by amendment to the Agreement, an Architect's On-site Representative acceptable to the Owner will be provided by the Architect. If so provided, the Architect's On-site Representative shall be stationed full-time at the Project site to endeavor to further guard the Owner against Defective Work on a daily basis. Specific authority and duties of the Architect's On-site Representative shall be stipulated in the Special Provisions of the Agreement.

**(13) Owner's On-site Representative.** If the Owner desires to have an Owner's On-site Representative (Clerk-of-the-Works), such individual shall be an employee or independent contractor of the Owner and all costs and expenses of this representative shall be the responsibility of the Owner.

## Article 4
# BASIC FEE

The Basic Fee shall be the Architect's compensation in full for satisfactorily providing the Basic Services as defined in the Agreement. The Basic Fee shall be the Fixed Fee or the Basic Fee Rate as stated on Page 1 of the Agreement form.

### A APPLICATION *of the* BASIC FEE RATE

If the Basic Fee is to be determined by a Basic Fee Rate, and the Special Provisions of the Agreement or an amendment to the Agreement does not provide otherwise, the Basic Fee Rate shall be applied, without change, to: (1) the tentative Cost of the Work until opening of bids and then retroactively to the amount of the Construction Contract, including Change Orders and Sales Tax Savings and (2) the combined cost of all buildings or other Work covered by the Agreement. If the Work is executed in any manner other than under one lump sum Construction Contract, or one lump sum Construction Contract for sitework and a second lump sum Construction Contract for building construction, the Basic Fee Rate shall be subject to adjustment.

### B MAJOR RENOVATION WORK

The Basic Fee agreed upon in the Agreement typically fully compensates the Architect for investigation, research, measuring, and drawing of the reasonably accessible conditions existing in the building or spaces to be renovated or altered to facilitate the production of Drawings and Specifications of the Work covered by the Agreement.

An increase of up to 25% in the Basic Fee Rate is allowed for major renovation projects as stated in Construction Manual of Procedures Exhibit D. The Schedule of Basic Fee Rates is structured for new construction and may not adequately cover additional work required of design professionals for renovation projects. A project is considered a major renovation if more than 50% of the construction cost involves renovations and alterations. This additional work required for renovation projects usually involves investigating and developing drawings of existing conditions before design can be developed. In general, exterior projects, including, but not limited to, re-roofing, re-coating, and landscape/hardscape are not to be considered as major renovations. If the Awarding Authority/Owner can provide the design professional with drawings of the existing conditions, this adjustment may be minimized or eliminated.

If the Owner and design professional agree to increase the Basic Fee Rate of the Schedule for Major Renovation, this must be stated in the spaces provided in the Agreement form. When stating the Basic Fee Rate on the form, state the increased rate.

### C SUBSTANTIAL DUPLICATION

If the Basic Fee is a Basic Fee Rate and the Work covered by the Agreement involves substantial duplication of buildings on the same or separate sites, the Basic Fee Rate will be adjusted for the duplicated buildings in accordance with the Construction Manual of Procedures Exhibit D unless otherwise stated in the Special Provisions of the Agreement.

### D SUBSEQUENT DUPLICATION

It is agreed that if buildings covered by the Agreement are substantially duplicated under any subsequent Owner-Architect Agreement, the Basic Fee of the subsequent Owner-Architect Agreement will be paid in accordance with the terms detailed in the Construction Manual of Procedures Exhibit D for substantial duplication, except that any change in the fee schedule in effect at the date of the subsequent Agreement will be applicable.

## E ADJUSTMENT FOR CHANGES *in* SERVICES

If changes in the Work or Project budget during design or construction result in changes in the Basic Services and warrant an increase or decrease in the Basic Fee, the adjustment must be agreed upon in an Amendment to the Agreement. Changes in the Work or Project budget include, but are not limited to, changes in Project size, complexity, usage, arrangement, schedule, delivery, or phasing of the Work and may or may not result in a major, or significant, change in the Cost of the Work. A Change in Services may warrant adjustment of the Basic Fee if the change in the Work or Project budget is requested by the Owner and requires additional design, administrative, consultant, or other services not contemplated in the Agreement.

## F PAYMENT SCHEDULE

Payments to the Architect of the Basic Fee shall be allocated for the Basic Services as follows:

- **For Service A** - Schematic Design Phase — Fifteen percent **(15%)**
- **For Service B** - Preliminary Design Phase — Twenty percent **(20%)**
- **For Service C** - Final Design Phase — Thirty-five percent **(35%)**
- **For Service D** - Construction Contract Procurement — Five percent **(5%)**
- **For Service E** - Construction Contract Administration — Twenty-five percent **(25%)**

## G BID ALTERNATE DESIGN FEE (Not applicable to a Fixed Fee.)

Unless otherwise provided in the Special Provisions of the Agreement, the Architect shall be paid a Bid Alternate Design Fee for unaccepted additive Bid Alternates or accepted deductive Bid Alternates included in the Bid Documents at the Owner's request. The Bid Alternate Design Fee covers Services A, B, C, and D rendered relative to Owner-requested additive or deductive Bid Alternates and, therefore, shall be equal to 80 percent of the Basic Fee Rate applied to the lowest responsible and responsive bid received for each unaccepted additive or accepted deductive Bid Alternate.

## H SALES TAX SAVINGS

Per Act 2013-205 as codified in Title 40, Chapter 9, Article 14.1, Section (h) of the Code of Alabama, 1975, as amended:

"The intent of this section is to lower the administrative cost for the governmental entity, contractor, and subcontractor for public works projects. It is not the intent of this section to change the basis for determining professional services from fair market value, which may include sales and use taxes."

If the Basic Fee is determined by a Basic Fee Rate, unless otherwise provided in the Special Provisions of the Agreement, the Architect shall be paid a Basic Fee to be based on a Cost of Work to include Sales Tax Savings. After approval of Final Payment to the Contractor, the Architect is allowed to receive the supplemental Sales Tax savings payment based on the ACCS Form 5-H "Accounting of Sales Tax for Bid Proposal" submitted at the Bid Opening. The requested adjustment is to be submitted on ACCS Form 1-D "Amendment to Agreement Between Owner and Architect".

## I ALLOWANCES

If Allowances, including but not limited to general contingency, are used in the Construction Contract, any un-used Allowances shall be credited back to the Owner at the close of the project by Change Order. The Basic Services Fee shall be adjusted based on the final cost of the work.

## Article 5
# SPECIAL SERVICES *and* EXTRA SERVICES

## A SPECIAL SERVICES

**(1) Definition.** Special Services are services in addition to Basic Services and are to be listed in Special Provisions of the Agreement or in an Amendment. Special Services can be a lump sum if negotiated, or a Not-To-Exceed [NTE] amount. If Special Services have an NTE, the NTE and hourly rates must be stated in Special Provisions of the Agreement or in an Amendment. Special Services include, but are not limited to:

**(a) Special Consultants.** The graduation of fee rates by five Building Groups in the Schedule of Basic Fee Rates is intended to compensate for the level of consultants' services required to design the buildings and improvements within each Building Group. Therefore, the Standard Articles state that the Basic Services and Basic Fee include the services of engineers and consultants required to design the Work covered by an Agreement unless the Work is to include features, equipment, or systems not normally included in such work. If, in the opinion of the design professional and the Owner, it is necessary that the design professional employ the services of a consultant in a specialized field not normally involved in such a design, these services can be added as "Special Services" or negotiated into the Basic Services and Basic Fee. Such items include but are not limited to security systems, detail cost estimating from outside companies, industrial hygienists for abatement services, feasibility/assessment studies.

**(b) Periodic Inspections by Consulting Engineers**. Standard Article 10, Engineering Services, obligates the primary design professional to require its consulting engineers and other consultants to perform, or to have their qualified representatives perform, inspections of the Work appropriate to their discipline of design and in keeping with the primary design professional's obligations to the Owner. The number of "periodic inspections" to be made by consulting engineers is not defined in the Standard Articles; therefore, the Awarding Authority/Owner may wish to establish a minimum number of "periodic inspections' to be performed by the various consultants.

**(c) Roofing Consultants**. Unless the design professional is knowledgeable of roofing systems and their details and specifications, the design professional should, as a Basic Service, employ the services of a roofing consultant during design. However, ACCS FACILITIES DIVISION encourages the employment of a qualified roofing consultant for not only the design stage of the project, but also for frequent inspections of the in-progress work. For re-roofing projects, the roofing consultant may be used to obtain information defining the existing conditions and exact procedure for code compliance in roof replacement or recovery. The specific scope and basis of payment for these services should be clearly defined in the agreement.

**(d) Architect's On-Site Representative.** For larger, more complex projects, continuous monitoring of the in-progress work may be necessary, which is a service that is not included in the Basic Services of the Standard Articles. If this service is to be included, it must be specifically provided for in the Special Provisions section of the Agreement form, or later authorized by an amendment to the agreement, with the scope of the service, authority of the representative, and terms of payment for the service clearly stipulated.

**(2) Compensation.** Unless stipulated otherwise in the Special Provisions of the Agreement, the basis upon which the Architect shall be compensated for Special Services shall be the Architect's cost for the service or work and up to 15% mark-up.

## B EXTRA SERVICES

**(1) Definition.** Extra Services are services in addition to Basic Services and Special Services which are not provided for in the provisions of the Agreement but are required by events or circumstances that are beyond the Architect's control. Extra Services include, but are not limited to:

**(a)** Revising, at the Owner's instruction, Drawings, Specifications, bid documents, or other documents which have been prepared in accordance with previous instructions or approval of the Owner, including revisions required to accommodate bid alternates not previously requested by the Owner.

**(b)** Revising Drawings, Specifications, or other documents to conform to codes, laws, or regulations enacted or revised subsequent to the preparation of the documents.

**(c)** Duplication of Basic Services, or other major expenses, required by errors committed by the Contractor, the Owner's failure to make timely decisions, or damage to Work caused by fire, storm, or other casualty.

**(d)** Extended performance of Service E required by the Contractor's failure to achieve Substantial Completion of the Work within the Contract Time.

**(e)** Extended performance or duplication of Services E required by the Contractor's failure to complete all closeout items within the time stated in a Certificate of Substantial Completion or, if no such time is stated, within 45 days after the respective Date of Substantial Completion.

**(f)** Services provided as a direct result of the Contractor's default, the Owner's termination of the Construction Contract, or the Owner's suspension of the Work.

**(2) Authorization.** Except in cases of emergency, the Contractor's failure to achieve Substantial Completion of the Work within the Contract Time, or the Contractor's delayed completion of "punch list" items, the Architect shall render Extra Service only upon the Owner's authorization through an amendment to the Agreement. If the Architect considers any instructions or request by the Owner to require Extra Services, the Architect shall give the Owner prompt written notice thereof and execute an appropriate amendment to the Agreement prior to performing Extra Services. No compensation for Extra Services shall be due in the absence of prior notice.

**(3) Emergencies.** In case of an emergency that causes the Architect to render Extra Services, the Architect shall, within five days of the occurrence of the emergency, notify the Owner in writing as to the nature of the emergency and Extra Services rendered or to be rendered. The Architect shall be equitably compensated for reasonable Extra Services rendered in good faith during the five days preceding the written notice and until the Owner notifies the Architect in writing to terminate the Extra Services. The Agreement shall be amended to provide for the agreed compensation for such Extra Services as soon as practical following the emergency.

**(4) Contractor Delay.** If the Architect believes that compensable Extra Services are being, or will be, rendered due to the Contractor's failure to achieve Substantial Completion of the Work within the Contract Time or the Contractor's delayed completion of "punch list" items, the Architect shall notify the Owner in writing, but shall not suspend or otherwise alter services to the detriment of the Owner and Project. As

a prerequisite to entitlement to compensation for such Extra Services, the Architect shall have fulfilled its obligations under the terms of the Agreement to issue timely Notice(s) to Cure to the Contractor and to have advised the Owner of the Contractor's inadequate progress and possible actions to be taken by the Owner. Unless otherwise stipulated in the Special Provisions of the Agreement or an amendment to the Agreement, the Architect shall be equitably paid for validated Extra Services to the extent that the Owner is entitled to recover same from the Contractor (or its Surety) under the terms of the Construction Contract.

**(5) Contractor Default, Termination or Suspension.** Default by the Contractor or the Owner's termination of the Construction Contract or suspension of the Work shall constitute a suspension of Services E from the effective date of the action until the date upon which Work is resumed. In the absence of other agreement confirmed by amendment to the Agreement at that time, all services requested by the Owner and provided by the Architect shall constitute Extra Services during the period in which Services E are suspended. The Architect's notification prior to providing Extra Services shall not be required during this period; however, in response to the Owner's requests for services, the Architect will advise the Owner if the Architect considers the requested service is not prudent or that it would be inappropriate for the Architect to perform the service. The Architect shall keep a complete accounting of all expenses incurred, each referenced to the respective request for service, and present them to the Owner in such format as the Owner may require to facilitate recovery from others.

**(6) Compensation.** Unless the Special Provisions of the Agreement or an amendment to the Agreement contains compensation rates or another method of computing Extra Services, the amount to be paid for Extra Services shall be determined in accordance with this paragraph. Compensation for Extra Services performed by the Architect shall be based upon the Architect's records of actual cost, plus one-hundred-twenty-five percent (125%) markup for overhead and profit. Actual cost to the Architect shall include:

1. **actual salaries of all employees involved**
2. **proration of supervisory time**
3. **laboratory fees if authorized by Owner**
4. **authorized travel**
5. **cost of maintaining Project site office for the Architect's On-site Representative, if applicable, and**
6. **miscellaneous items such as long-distance telephone calls and extra printing.**

The markup for overhead and profit shall include such items as normal office expense (rent, utilities, janitorial service, use of equipment, insurance) and the costs of mandatory and customary benefits such as holidays, vacations, pensions, insurance, FICA, etc. Compensation for Extra Services performed by the Architect's consultants shall be based upon the reasonable amount charged by the consultant in accordance with its existing agreement with the Architect, plus up to ten percent (10%) markup for overhead and profit for the Architect. The markup shall be agreed upon in the Agreement.

## Article 6
## REIMBURSABLE EXPENSES

### A DEFINITION

Reimbursable Expenses are expenses which are the Owner's responsibilities (see Article 2) but are incurred by the Architect, upon the request or authorization of the Owner. Such services or work are not included in the Basic Services and are not subject to payment as Special Services or Extra Services. Reimbursable

Expenses shall include only expenses specifically identified with a Not-To-Exceed amount in the Special Provisions of the Agreement or in an Amendment, and may include but is not limited to:

**(1)** Preparatory Surveys, Tests, and Consultants which are the responsibility of the Owner pursuant to Article 2.B(5), but which are obtained by the Architect.

**(2)** In-progress Inspections, Tests, and Consultants which are the responsibility of the Owner pursuant to Article 2.B(6), but which are obtained by the Architect.

**(3)** The cost of publishing the Advertisement for Bids which is the responsibility of the Owner pursuant to Article 2.B(9), but paid for by the Architect.

**(4)** The cost of printing, reproducing, handling, and distributing additional Bid Documents (Contract Documents) pursuant to the condition stipulated in Article 3.D(2).

**(5)** The cost of reproducing, assembling, and delivering the Project Record, or significant portions of it, pursuant to Article 3.E(4).

**(6)** Providing renderings, models and mock-ups of the Work or portions of the Work.

### B EXCLUDED EXPENSES

In performing the Basic Services, any expenses incurred by the Architect or its consultants for postage (regular or overnight), telephone, facsimile transmittal, document or Submittal transmittal, plotting and printing drawings for the Architect's in-house use and review, transportation and travel (to the Project site, Owner's office, locations of Specified Inspections, and other locations necessary for the conduct of Project-related business) are deemed normal expense of doing business and are not reimbursable. Expenses that are not specifically identified as Reimbursable Expenses in the Special Provisions of the Agreement or added through an Amendment are deemed to be covered by the Basic Fee and excluded as Reimbursable Expenses.

### C COMPENSATION

Unless stipulated otherwise in the Special Provisions of the Agreement or an Amendment, the basis upon which the Architect shall be compensated for Reimbursable Expenses shall be the Architect's cost for the service or work plus up to 15% mark-up, except travel expenses cannot be marked-up.

## Article 7
## PAYMENTS *to the* ARCHITECT

### A GENERAL

Payments shall be made to the Architect as services are rendered and approved by the College Designated Representative and ACCS FACILITIES DIVISION. The Architect's statements for services rendered shall be presented to the College Designated Representative monthly and in the format prescribed in the Construtction Manual of Procedures. The Owner shall notify the Architect in writing within 15 days of receiving a disputed statement for service. Unless stipulated otherwise in the Special Provisions of the Agreement, payments for services rendered shall be as stated below.

### B BASIC SERVICES

**(1) Payment Schedule.** Payments shall be made for Basic Services rendered, allocating the Basic Fee to each Service in accordance with Article 4.F.

**(2) Reconciliation of Payments upon Opening Bids.** (Not applicable to a Fixed Fee.) Payments for Basic Services A, B, and C shall be computed by applying the Basic Fee Rate to the lesser of the Tentative Budget and the agreed estimate of the Cost of the Work until the opening of bids and determination of the Contract Sum of the Construction Contract to be awarded. The Basic Fee allocable to Services A, B, and C shall then be computed on the basis of the Contract Sum and reconciled with previous payments in the Architect's next statement for services. The total of all payments for Basic Services shall not exceed the amount computed by applying the Basic Fee Rate to the Cost of the Work as defined in Article 8.

**(3) Service A.** The Basic Fee allocated to Service A shall become payable when the schematic drawings and related design documents have been completed and approved by the Owner and the ACCS FACILITIES DIVISION.

**(4) Service B.** The Basic Fee allocated to Service B shall become payable when the preliminary drawings and related design documents have been completed and approved by the Owner and the ACCS FACILITIES DIVISION and the Architect's preliminary estimate of the Cost of the Work has been approved by the Owner.

**(5) Service C:**

**(a) Basic Fee rate:** 90 percent of the Basic Fee allocated to Service C shall become payable when the final drawings and related design documents have been completed and approved by the Owner and the AHJ or Independent Code Consultant, but may be in monthly progress payments equal to the estimated percentage of Service C that has been completed by the Architect. The remaining 10 percent of the Basic Fee allocated to Service C shall become payable upon completion of Service D, at which time previous payments can be reconciled pursuant to Subparagraph (2) above.

**(b) Fixed Fee:** The Basic Fee allocated to Service C shall become payable when the final drawings and related design documents have been completed and approved by the Owner, ACCS FACILITIES DIVISION, and the AHJ or Indendependent Code Consultant, but may be paid in monthly progress payments equal to the estimated percentage of Service C that has been completed by the Architect.

**(6) Services D:** The Basic Fee allocated to Service D shall become payable upon the Architect's preparation and distribution of the certified Tabulation of Bids and Construction Contract to the Owner.

**(7) Service E:** 90 percent of the Basic Fee allocated to Service E shall become payable as the Work progresses and shall be based upon a percent of Work completed not to exceed the percent of Total Completed Work and Stored Materials as approved on the Contractor's monthly Applications for Payment. The remaining 10 percent of the Service E fee shall be paid with the Final Payment under this Agreement and shall become payable pursuant to Article 7.G.

## C BID ALTERNATE DESIGN FEE (Not applicable to a Fixed Fee.)

The Bid Alternate Design Fee shall be payable at the same time as Service D, but shall be considered separate and distinct from payments made for Basic Services and shall be accounted for separately in the Architect's statements for services. If a Bid Alternate is subsequently incorporated into the Construction Contract by change order action, the Bid Alternate Design Fee shall be appropriately adjusted to avoid duplicating payment of Basic Services.

### D SPECIAL SERVICES

The Architect's billings for Special Services, if any, may be submitted monthly following inclusion in Special Provisions of the Agreement or in an Amendment and then as rendered. Provide back-up and/or receipts for all Special Services, attached to the design professional's Statement for Services. Provide breakdown of hourly rates charged including dates, tasks, and hours per task when a Special Services fee is a Not-To-Exceed amount (instead of a negotiated lump sum). If a mark-up is charged, show the cost of the item, the mark-up percent and amount, and the total amount of the item and mark-up. Mark-up on travel expenses is not allowed. Payment for Special Services shall be considered separate and distinct from payments made for Basic Services and shall be accounted for separately in the Architect's statements for services.

### E REIMBURSABLE EXPENSES

The Architect's billings for Reimbursable Expenses may be submitted monthly and shall be supported by documentation of the expense to the Owner's satisfaction and per the following: Provide back-up and/or receipts for all Reimbursable Expenses, attached to the design professional's Statement for Services. Provide breakdown of hourly rates charged including dates, tasks, and hours per task. If a mark-up is charged, show the cost of the item, the mark-up percent and amount, and the total amount of the item and mark-up. Mark-up on travel expenses is not allowed. Payment for Reimbursable Expenses shall be considered separate and distinct from payments made for Basic Services and shall be accounted for separately in the Architect's statements for services.

### F EXTRA SERVICES

Extra Services, if any, shall become payable after inclusion in an amendment to the Agreement and then as rendered. Extra Services may be billed monthly. Payment for Extra Services shall be considered separate and distinct from payments made for Basic Services and shall be accounted for separately in the Architect's statements for services.

### G FINAL PAYMENT

Any unpaid balance of the amount due under the Agreement shall be payable and due 30 days after:

**(1)** expiration of the period established in the last Certificate of Substantial Completion for completion of closeout items,

**(2)** the Architect's delivery to Owner of either the Contractor's "as-built" documents, warranties, and other closeout documents required in the Construction Contract or evidence that the Architect has made a reasonable effort to obtain these items from the Contractor, and

**(3)** the Architect's delivery to Owner of the Submittal documents as required under Article 3.E.6.

**(4)** the completion of the required 3 weeks of Advertisement of Completion.

## Article 8
## DEFINITION *of* COST *of the* WORK

### A DEFINITION

For determination of the Architect's Basic Fees, the Cost of the Work shall mean the cost to the Owner or, for any portion of the Project that is not completed, the agreed estimate of the cost to the Owner, of all elements of the Project designed or specified by the Architect.

## B EXCLUDED COSTS

Any unpaid balance of the amount due under the Agreement shall be payable and due 30 days after:

**(1)** The Architect's Basic Fee, Bid Alternate Design Fee, fees for Extra Services, or Reimbursable Expenses.

**(2)** The cost of an Architect's On-site Representative.

**(3)** The cost of furnishings, fixtures, or equipment, except those included in Drawings and Specifications at the Owner's request.

**(4)** Premium costs (for which the Architect is liable) included in Contract Change Orders, including those required to effect compliance with plan review comments of the AHJ or other reviewing authorities.

**(5)** Any costs, services, or work for which the Owner is responsible pursuant to Article 2.B.

**(6)** Unaccepted Bid Alternates (see Article 4.G, Bid Alternate Design Fee).

## C PAYMENTS WITHHELD *from the* CONTRACTOR

The Cost of the Work shall not be decreased nor shall deductions be made from the Basic Fee on account of liquidated damages or other sums withheld from payments to Contractors.

## D SELF-PERFORMANCE *by* OWNER

When labor or material is furnished by the Owner below its fair market value, the Cost of the Work shall be computed upon its fair market value in determining the agreed estimate of the Cost of the Work. "Fair market value" shall mean the prevailing cost of applicable labor, materials, equipment, and supervision in the locale of the Project and shall include a reasonable markup for overhead and profit as would be appropriate in competitively bidding the work.

# Article 9
# SUSPENSION *and* TERMINATION *of* CONTRACT

## A SUSPENSION *of the* AGREEMENT

**(1) Owner's Right to Suspend.** If the Owner determines that postponement or delay of the Project is in the Owner's best interest, the Owner may suspend performance of the Agreement upon written notice to the Architect. Upon receipt of such notice the Architect shall immediately suspend all services under the Agreement pending request by the Owner to resume them. Resumption of services may require accommodation of the Architect's workload and staff a  signments.

**(2) Payment Due.** The Architect shall be entitled to payment in full for all services completed and reimbursable expenses incurred as of the effective date of suspension.

**(a)** The amount due for Basic Service shall be in accordance with Article 4 based upon percentage of completion of each service as mutually agreed by the Owner and Architect. Upon request by the Owner, the Architect shall deliver copies of all documents either completed or in progress to the Owner so that this determination can be made.

**(b)** The Cost of the Work as of the effective date of suspension shall be determined as follows:

**.1** For any portion of the Project for which bids have not yet been received, the Cost of the Work shall be the lesser of the budgeted Cost of the Work and the Architect's approved estimate of the Cost of the Work.

**.2** For any portion of the Project for which bids have been received, but no Construction Contract has been awarded, the Cost of the Work shall be the lowest responsible and responsive bid received, as may have been subsequently negotiated, and which is within the budgeted Cost of the Work or the Architect's approved estimate of the Cost of the Work. Service C and D shall be deemed 100% complete for such portions of the Project.

**.3** For any portion of the Project for which a Construction Contract has been awarded, the Cost of the Work shall be the current Contract Sum of the Construction Contract.

**(3) Suspension Expenses.** Upon resuming service at the Owner's instruction, the Architect shall be compensated pursuant to Article 5, Extra Services, for any reasonable, documented expenses directly attributable to the suspension for which the Architect is not otherwise compensated.

## B OWNER'S RIGHT *to* TERMINATE

**(1) Termination for Convenience.** In the event of the proration of the fund from which payments under this Agreement are to be made or determination by the Owner that termination is otherwise in the Owner's best interest, the Owner may terminate the Agreement, in whole or in part, upon written notice to the Architect. Upon receipt of the Owner's written notification of termination, the Architect shall immediately stop all Services under the Agreement as instructed by the Owner and the Architect shall be paid for Services rendered.

**(2) Termination for Cause.**

**(a) Notice to Cure:** If the Architect fails or refuses to comply with any provisions of the Agreement, the Owner may give the Architect written notice to cure the condition of noncompliance within a reasonable, stated time, but not less than ten days after the Architect receives the notice.

**(b) Notice of Termination:** If, at the expiration of the time stated in the Notice to Cure, the Architect has not proceeded and satisfactorily continued to cure the condition of noncompliance or provided the Owner with written verification that satisfactory positive action is in process to cure the condition, the Owner may, without prejudice to any other rights or remedies of the Owner, give the Architect written notice that the Agreement is terminated upon the Architect's receipt of the written Notice of Termination.

**(c)** If the Architect satisfies a Notice to Cure, but the condition for which the notice was first given reoccurs, the Owner may give the Architect a Notice of Termination without giving the Architect another Notice to Cure.

**(d)** Upon receipt of the Owner's written notification of termination, the Architect shall immediately stop all Services under the Agreement as instructed by the Owner and the Architect shall be entitled to be paid for Services rendered, subject to claims of the Owner for damages, loss, or expenses resulting from the Architect's default.

## C ARCHITECT'S RIGHT *to* SUSPEND *or* TERMINATE

**(1) Suspension by Owner.** Should the Owner postpone or delay the Project or otherwise suspend performance of this Agreement for a longer period than has been allowed in the Agreement form, the

Architect may terminate the Agreement by written notice to the Owner and the Architect shall be paid for Services rendered.

**(2) Nonpayment.** The Owner's failure to pay the undisputed amount of any properly presented statement for the Architect's Basic, Special and Extra Services or Reimbursable Expenses within sixty days after receiving it shall be just cause for either of the following actions by the Architect:

**(a)** The Architect may give the Owner fourteen days' written notice that services under the Agreement will be suspended pending receipt of payment. If services are then suspended for nonpayment, the Architect will be entitled to compensation as if the suspension had been by the Owner pursuant to Paragraph A of this Article.

**(b)** The Architect may give a written Notice of Termination to the Owner which allows the Owner fourteen days after receiving the Notice in which to make such payment. Absent the Architect's receipt of payment, the Agreement shall terminate upon expiration of this fourteen day period and the Architect will be compensated by the Owner as if the termination had been for the Owner's convenience pursuant to Paragraph E of this Article.

## D DELIVERY *of* FINAL DRAWINGS

Should the Agreement be terminated upon completion of Services A, B, and C, the Architect shall, as instructed by the Owner, deliver printed or reproducible sets of the sealed final Drawings and Specifications in such quantity as the Owner requests. The Architect shall be paid the cost of printing, reproduction, handling, and delivery as Reimbursable Expenses, unless such costs are included in payments made for Service D.

## E FINAL PAYMENT UPON TERMINATION

In the event of termination of the Agreement, final settlement of, and final payment under, the Agreement shall be determined as follows:

**(1) Earned Basic Fee.**

**(a)** The percentage of completion of each Basic Service shall be determined in accordance with Article 4. Upon request by the Owner, the Architect shall deliver copies of all documents either completed or in progress to the Owner so that this determination can be made.

**(b)** The Cost of the Work as of the effective date of termination shall be determined as follows:

**.1** For any portion of the Project for which bids have not yet been received, the Cost of the Work shall be the lesser of the budgeted Cost of the Work and the Architect's approved estimate of the Cost of the Work.

**.2** For any portion of the Project for which bids have been received, but no Construction Contract has been awarded, the Cost of the Work shall be the lowest responsible and responsive bid received, as may have been subsequently negotiated, and which is within the budgeted Cost of the Work or the Architect's approved estimate of the Cost of the Work. Service C and D shall be deemed 100% complete for such portions of the Project.

**.3** For any portion of the Project for which a Construction Contract has been awarded, the Cost of the Work shall be the current Contract Sum of the Construction Contract.

**(2) Termination Expenses.** Unless the Agreement is terminated by the Owner for cause, the Architect shall be compensated as Extra Services for any reasonable, documented expenses directly attributable to the termination for which the Architect is not otherwise compensated. Termination Expenses shall not include any amount for profit anticipated by the Architect to have been derived from the Services not performed.

**(3) Final Payment.** Upon determination of the Basic Fee earned and Termination Expenses incurred by the Architect, and accounting for any Extra Services performed or Reimbursable Expenses incurred in accordance with the Agreement, the Architect shall be paid any unpaid balance of the amount then due under the Agreement.

## Article 10
## ENGINEERING SERVICES

### A FULL PROFESSIONAL TEAM

For the performance of the services required by the Agreement the Architect will employ the services of consulting engineers so as to provide a full professional team as dictated by the disciplines of architectural and engineering design involved in the Work. The consultants to be employed by the Architect are named in Item (13) "Consultants" of the Agreement form. The Architect shall notify the Owner in writing of any intended change in consultants and the Owner shall have the right of approval of any replacement consultant.

### B BASIC *and* SPECIAL SERVICES

The graduation of fee rates by Building Groups in the Schedule of Basic Fee Rates (Exhibit D, Construction Manual of Procedures) is intended to compensate for the level of consultants' services required to design the buildings and improvements within each Building Group. Therefore, the Basic Services and Basic Fee include the services of engineers and consultants required to design the Work covered by this Agreement unless the Work is to include features, equipment, or systems not normally included in such work. The scope and terms of compensation for engineering or consulting services required for such special features, equipment, and systems shall be as stated in the Special Provisions of the Agreement or an amendment to the Agreement.

### C LICENSED ENGINEERS

All engineering Drawings, Specifications, detail drawings, approvals, etc., pertaining to civil, structural, mechanical, electrical, and other specialized phases of engineering design will be performed by, or under the supervision of, Professional Engineers licensed in the State of Alabama and employed by the Architect for the particular work. If such engineering services can be justifiably classified as being of such minor nature as to be considered purely incidental to the architectural services required for the Project, then these services may be performed by persons regularly employed in the Architect's organization who are not registered Professional Engineers, but are particularly qualified by education, experience, and training to do this type of work. Any question as to whether or not these services are purely incidental to the Project will be resolved by decision of the Chief Facilities Officer of the ACCS FACILITIES DIVISION.

### D INSPECTIONS

If Construction Contract Administration (Service E) is included in the Agreement, the Architect shall require its consulting engineers and other consultants to perform, or to have their qualified representatives perform, inspections of the Work appropriate to their discipline of design and in keeping with the Architect's obligations to the Owner pursuant to Article 3.E(8).

**(1) Scheduled Inspections and Conferences.** The Architect shall require its mechanical and electrical engineers and other appropriate engineers and consultants to perform, or to have their qualified representatives perform the required inspections listed below. The Architect of Record is to conduct and attend each of these scheduled inspections and conferences. The General Contractor is to attend each of these scheduled inspections and conferences.

**(2) Periodic Inspections.** The Architect shall require its engineers and other consultants to perform, or to have their qualified representatives perform, Periodic Inspections at intervals appropriate to the stage of construction and consistent with the size and nature of the Work.

**(3) Specified Inspections and Tests.** The Architect shall require its engineers and other consultants to attend, or to have their qualified representatives attend, Specified Inspections and Tests when their attendance is a stated requirement of the Contract Documents.

**(a)** Pre-construction Conference
**(b)** Pre-roofing Conference
**(c)** Pre-Asphalt Paving Installation and Expectations Conference
**(d)** Pre-Landscape Sod Installation and Expectations Conference
**(e)** Pre-Flooring Installation and Expectations Conference
**(f)** Below Slab/Underground Utility Inspection
**(g)** Footings and Foundation Inspection
**(h)** Concrete Slab Inspection
**(i)** Waterproofing and Building Envelope Inspection
**(j)** In-Wall Inspection
**(k)** Gypsum Board Inspection
**(l)** Roofing Inspection
**(m)** Storm Shelter Inspection (if applicable)
**(n)** Above Ceiling Inspection
**(o)** Elevator Inspection
**(p)** Fire Suppression Systems Inspection
**(q)** Fire Alarm System Inspection
**(r)** Emergency Lights and Exit Signs Inspection
**(s)** ADA Inspection
**(t)** Pre-Closeout Review
**(u)** Substantial Completion
**(v)** Final Inspections

**(w)** Year-End Inspection. If the Work includes complex mechanical, electrical, and/or other systems or equipment, the Architect shall require its respective engineers and consultants to perform, or have their qualified representative perform, a Year-End Inspection of the system or equipment. If repetitious occurrence of problems with a system or equipment is experienced during the Contractor's One-Year Warranty Period, the Architect shall require its respective engineer or consultant to perform, or have their qualified representative perform, a Year-End Inspection of the system or equipment.

## Article 11
# DESIGN SCHEDULE

The periods of the Design Schedule stated on Page 2 of the Agreement form are defined as follow:

### A SCHEMATIC DRAWINGS

The number of calendar days, following receipt of the Owner's Program and the Preparatory Surveys and Tests necessary for the development of the Schematic Drawings, within which the Architect shall furnish complete Schematic Drawings for review by the Owner and ACCS FACILITIES DIVISION.

### B PRELIMINARY DRAWINGS

The number of calendar days, following receipt of necessary approvals of the Schematic Drawings, within which the Architect shall furnish complete Preliminary Drawings and outline specifications for review by the Owner, ACCS FACILITIES DIVISION, and AHJ or other reviewing entity, and shall furnish an estimate of the Cost of the Work for the Owner's approval.

### C FINAL DRAWINGS

The number of calendar days, after receipt of necessary approvals of Preliminary documents, within which the Architect shall furnish complete Final Drawings and Specifications for review by the Owner, ACCS FACILITIES DIVISION, and AHJ or other reviewing entity.

## Article 12
# OWNERSHIP *of* DOCUMENTS

### A PROPERTY *of the* ARCHITECT

Documents prepared by the Architect pursuant to this Agreement, including all Drawings and Specifications for the Project, are instruments of service and are the property of the Architect, whether the Work for which they are made be executed or not.

### B NONEXCLUSIVE LICENSE GRANTED

The Architect grants a nonexclusive license to the Owner to reproduce and use the Drawings, Specifications, and other documents prepared in whatever form for the Project solely for the purpose of constructing, using, and maintaining the Project, provided Architect is paid all amounts due it under the Agreement. The Architect retains and reserves all statutory, common law, or other rights to the instruments of service.

### C UPON TERMINATION *of* AGREEMENT

Should the Agreement be terminated upon completion of Services A, B, and C, the Architect shall, deliver the sealed final Drawings and Specifications to the Owner in accordance with Article 9. Upon making final payment to the Architect in accordance with Article 9, the Owner shall be entitled to use the Drawings and Specifications, for the construction of all or part of the entire Project as planned and specified without further payment to the Architect. However, the Owner is not authorized to use the Drawings and Specifications for construction that is not administered by an Alabama registered architect.

### D ELECTRONIC DOCUMENTS

The Architect shall not be required to provide Drawings, Specifications, or other documents to the Owner in electronic form nor shall the Owner be required to provide preparatory drawings or information to the Architect in electronic form unless the specific conditions governing the format of the electronic documents, any special limitations or licenses that may apply to their use, and the terms of compensation, if any, are established in the Special Provisions of the Agreement or an amendment to the Agreement.

Article 13

# ARCHITECT'S INSURANCE

Prior to performing any services under this Agreement, the Architect shall procure the insurance coverages identified below at the Architect's own expense. In order to evidence that such insurance coverages are in effect, the Architect shall furnish as an attachment to the Agreement an insurance certificate(s) acceptable to the Owner and listing the Owner as the certificate holder.

## A POLICY PROVIDERS

Each of the insurance coverages required below shall be issued by an insurer licensed by the Insurance Commissioner to transact the business of insurance in the State of Alabama for the applicable line of insurance, and such insurer (or, for qualified self-insureds or group self-insureds, a specific excess insurer providing statutory limits) must have a Best Policyholders Rating of "A-" or better and a financial size rating of Class V or larger.

## B NOTIFICATION ENDORSEMENT

Each policy shall be endorsed to provide that the insurance company agrees that the policy shall not be canceled, changed, allowed to lapse or allowed to expire for any reason until thirty days after the Owner has received written notice by certified mail as evidenced by return receipt or until such time as other insurance coverage providing protection equal to protection called for herein shall have been received, accepted and acknowledged by the Owner. Such notice shall be valid only as to the project as shall have been designated by Project Name and Number in said notice.

## C INSURANCE CERTIFICATES

Insurance certificate must provide the following information:

**(1)** Name and address of authorized agent of the insurance company

**(2)** Name and address of insured

**(3)** Name of insurance company or companies

**(4)** Description of policies

**(5)** Policy Number(s)

**(6)** Policy Period(s)

**(7)** Limits of liability

**(8)** Name and address of Owner as certificate holder

**(9)** Project Name and Number, if any

**(10)** Signature of authorized agent of the insurance company

**(11)** Telephone number of authorized agent of the insurance company

**(12)** Mandatory thirty day notice of cancellation / non-renewal /change

## D ARCHITECT'S INSURANCE COVERAGES

Unless otherwise provided in the Special Provisions of the Agreement, the Architect shall purchase the types of insurance coverages with liability limits not less than as follows:

**(1) Workers' Compensation** coverage shall be provided in accordance with the statutory coverage required in Alabama. A group insurer must submit a certificate of authority from the Alabama Department of Industrial Relations approving the group insurance plan. A self-insurer must submit a certificate from the Alabama Department of Industrial Relations stating the Architect qualifies to pay its own worker's compensation claims.

**(2) Employer's Liability Insurance** limits shall be at least:

**(a)** Bodily Injury by Accident - **$1,000,000** each accident
**(b)** Bodily Injury by Disease - **$1,000,000** each employee

**(3) Commercial General Liability Insurance**, written on an ISO Occurrence Form (current edition as of the date of this Agreement) or equivalent, which shall include, but need not be limited to, coverage for bodily injury and property damage arising from premises and operations liability, products and completed operations liability, personal injury liability and contractual liability.

**(a)** The Commercial General Liability Insurance shall provide, at minimum, the following limits:

| Coverage | Limit |
|---|---|
| **.1** General Aggregate | **$ 2,000,000.00** |
| **.2** Products, Completed Operations Aggregate | **$ 2,000,000.00** |
| **.3** Personal and Advertising Injury | **$ 1,000,000.00** per Occurrence |
| **.4** Each Occurrence | **$ 1,000,000.00** |

**(b)** The Commercial General Liability Insurance policy shall name the Owner and its agents and employees as additional insureds and shall state that this coverage shall be primary insurance for the additional insureds.

**(4) Commercial Business Automobile Liability Insurance** which shall include coverage for bodily injury and property damage arising from the operation of any owned, non-owned or hired automobile. The Commercial Business Automobile Liability Insurance Policy shall provide not less than $1,000,000 Combined Single Limits for each occurrence and shall name the Owner, ACCS, and their agents, consultants and employees as additional insureds.

**(5) Professional Liability (Errors & Omissions) Insurance** shall be carried in an amount not less than$1,000,000. The policy deductible shall not exceed $25,000.00.

## E ARCHITECT'S CONSULTANTS' INSURANCE COVERAGES

**(1) Workers' Compensation and Employer's Liability Insurance.** The Architect shall require each of its consultants who will perform services at the Project site to obtain and maintain Workers' Compensation and Employer's Liability Insurance coverages as described in preceding Paragraph D.

**(2) Automobile and General Liability Insurance.** The Architect shall require each of its consultants who will perform services at the Project site to obtain and maintain Automobile and General Liability, Insurance coverages with the limits described in preceding Paragraph D.

**(3) Professional Liability Insurance.** The Architect shall require each of its consultants to obtain and maintain Professional Liability Insurance with coverage as described in preceding Paragraph D.

**(4) Enforcement Responsibility.** The Architect shall have responsibility to enforce its consultants' compliance with these insurance requirements; however, the Architect shall, upon request, provide the Owner acceptable evidence of insurance for any consultant.

## F TERMINATION *of* OBLIGATION *to* INSURE

Unless otherwise expressly provided in the Special Provisions of the Agreement, the obligation of the Architect and its consultants to insure as provided herein shall continue as follows:

**(1) Professional Liability (Errors & Omissions) Insurance** shall be carried for two years after the last Date of Substantial Completion of the Construction Contract(s).

**(2) Other Insurance.** The obligation to carry the other insurance coverages of preceding Paragraph D or coverages equal to them, shall remain in effect after the last Date of Substantial Completion of the Construction Contract at any time the Architect, its consultants, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, returns to the Project to perform services required of this Agreement.

## G WAIVERS *of* SUBROGATION

To the extent that loss or damage is covered by property insurance during construction, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to proceeds of such insurance held by the Owner, Architect, or Contractor as fiduciary. The Owner or Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein. This waiver shall not be applicable to loss or damage that occurs after final acceptance of the Work.

# Article 14
# RESOLUTION *of* CLAIMS *and* DISPUTES

## A APPLICABILITY *of* ARTICLE

Documents prepared by the Architect pursuant to this Agreement, including all Drawings and Specifications for the Project, are instruments of service and are the property of the Architect, whether the Work for which they are made be executed or not.

**(1)** As used in this Article, "Claims and Disputes" include claims or disputes asserted by the Architect or Owner arising out of or related to the Agreement, or its breach, including without limitation claims seeking equitable adjustment of amounts payable or time of performance under the Agreement and claims and disputes arising between the Architect and Owner regarding interpretation or breach of the Agreement.

**(2)** "Resolution" addressed in this Article applies only to Claims and Disputes arising between the Architect and Owner and asserted after execution of the Agreement and prior to the date upon which final payment is made. Upon making application for final payment the Architect may reserve the right to subsequent Resolution of existing Claims by including a list of all Claims, in stated amounts, which remain to be Resolved and in that event Resolution may occur after final payment is made.

### B CONTINUANCE *of* PERFORMANCE

An unresolved Claim or Dispute shall not be just cause for the Architect to fail or refuse to proceed diligently with performance of the services of the Agreement or for the Owner to fail or refuse to continue to make payments in accordance with the Agreement.

### C GOOD FAITH EFFORT *to* SETTLE

The Architect and Owner agree that, upon the assertion of a Claim by the other, they will make a good faith effort to achieve mutual resolution of the Claim. If mutually agreed, the Architect and Owner may endeavor to resolve a Claim through mediation. If efforts to settle are not successful, the Claim shall be resolved in accordance with paragraph D or E below, whichever applies.

### D FINAL RESOLUTION

**(1)** If the Agreement is funded in whole or in part with state funds, the final Resolution of Claims and Disputes which cannot be resolved by the Architect and Owner shall be by the Chancellor of Alabama Community College System, whose decision shall be final, binding, and conclusive.

**(2)** When it becomes apparent to the party asserting a Claim (the Claimant) that an impasse to mutual resolution has been reached, the Claimant may request in writing to the Chancellor that the Claim be resolved by decision of a Professional, with Alabama licensing if the profession requires it, appointed by the Chancellor to review and determine the Claim. Such request by the Architect shall be submitted through the College Designated Representative. Should the Owner fail or refuse to submit the Architect's request within ten days of receipt of same, the Architect may forward such request directly to the Chief Facilities Officer. Upon receipt of a request to resolve a Claim or on his or her own choice, the Chancellor, in his or her discretion, will appoint the appropriate Professional, and the Chief Facilities Officer will instruct the parties as to procedures to be initiated and followed.

**(3)** If the respondent to a Claim fails or refuses to participate or cooperate in the Resolution procedures to the extent that the Claimant is compelled to initiate legal proceedings to induce the Respondent to participate or cooperate, the Claimant will be entitled to recover, and may amend its Claim to include, the expense of reasonable attorney's fees so incurred.

## Article 15
## MISCELLANEOUS PROVISIONS

### A ENTIRE AGREEMENT

The AGREEMENT BETWEEN OWNER AND ARCHITECT, including the Standard Articles incorporated therein and any documents cited and identified in the Special Provisions of the Agreement as

"Attachments", represents the entire agreement between the Owner and the Architect, superseding any and all prior written or oral negotiations, representations, or agreements. The Agreement may be amended only by an Amendment executed by the Architect, Owner, and other signatories to the Agreement.

## B SUCCESSORS *and* ASSIGNMENTS

The Owner and the Architect each bind themselves, and their partners, successors, executors, administrators, heirs, and assigns, to the other party to the Agreement, and to the partners, successors, executors, administrators, heirs, and assigns of such other party in respect of all covenants of the Agreement.

## C CONFLICTS *with* LAWS

It is agreed that if any provision of the Agreement shall contravene any statute or constitutional provision or amendment, either now in effect or which may, during the course of the Agreement, be enacted, then that conflicting provision in the Agreement shall be deemed null and void without affecting the remaining provisions of the Agreement.

## D PROMOTIONAL USE

Unless otherwise stipulated in the Special Provisions of the Agreement, the Architect may include photographs or artistic representations of the Project among the Architect's promotional and professional materials.

## E ALABAMA IMMIGRATION LAW

Per ACT 2011-535 as codified in Title 31, Chapter 13 of the Code of Alabama, 1975, as amended:
The contracting parties affirm, or the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

## F ALABAMA BOYCOTT LAW

Per Act 2016-312 as codified in Title 41, Chapter 16, Article 1 of the Code of Alabama, 1975, as amended:
The contracting parties affirm, or the duration of the agreement, that they are not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.

## G ACCOUNTING *of* SALES TAX

Per Act 2013-205 as codified in Title 40, Chapter 9, Article 1 of the Code of Alabama, 1975, as amended. (Section 40-9-14.1).

In bidding the work on a tax exempt project, the bid form shall provide for an accounting for the tax savings.

# END of STANDARD ARTICLES