

**Standard Terms & Conditions
of
Agreement between Owner & Designer**

Design Services & Expectations for Performance

ARTICLE 1. Basic Services

The Designer agrees to perform, for the referenced Work, the basic professional Services **A**, and **B**, and **C**, and **D** and **E**, as hereinafter defined, unless otherwise noted in the Agreement:

- A. Programming, Planning and Schematic Design:** Review Owner furnished Project Program document; prepare and furnish Scope of Work documents / narrative, which shall include as a minimum, consultation, preliminary research, and analysis as required to define Project goals and objectives; prepare and furnish the initial Revit Model and Schematic Design drawings, which shall include as a minimum, site plan, floor plans, and exterior elevations; building system and material narrative description; engineering systems analysis and description; schematic energy concept; minutes of meetings; design schedules; preliminary construction cost estimate; and submission of required drawings and documents to governing review agencies as required for the proper execution of this Service of the Work. See Article 3. Design Services. See University of Alabama Design Phase Deliverables Documentation Requirements for additional information and deliverables required for 10% Schematic Design submission. See Article 7. Documents and Files.

A.1 Schematic Design Approval: As part of the Service A 10% Schematic Review Submittal, the Designer shall furnish the Owner an estimate of project cost based upon the Service A 10% Review Submittal. The approval of project cost estimate and the Service A 10% Review Submittal by the Owner and all public agencies involved will constitute authority for the Designer to proceed with the performance and completion of Service B.

- B. Design Development:** Prepare and furnish Scope of Work documents, which shall include as a minimum, the preparation and furnishing of the updated Revit Model and the Design Development drawings and outline specifications; major engineering equipment schedules; engineering systems analysis; preliminary energy analysis and cost study; minutes of meetings; updated design schedules; updated construction cost estimate; tracking and estimating changes in scope of work; and submission of required drawings and documents to governing review agencies as required for the proper execution of this Service of the Work. See Article 3. Design Services. See University of Alabama Design Phase Deliverables Documentation Requirements for additional information and deliverables required for 30% Design Development submission. See Article 7. Documents and Files.

B.1 Design Development Approval: As part of the Service B 30% Review Submittal, the Designer shall furnish the Owner a revised project cost estimate based upon the Service B 30% Review Submittal. The approval of the revised 30% Review Submittal project cost estimate and the Service B 30% Review Submittal by the Owner and all public agencies involved will constitute authority for the Designer to proceed with the performance and completion of Service C.

- C. Construction Documents:** Prepare and furnish 1 bid package of Contract Documents, which shall include as a minimum, the preparation and furnishing the Revit Model and the Contract Documents and Specifications necessary for Contract purposes including sufficient proposal, contract, and bond forms for the execution of the Work; tracking and estimating of changes in scope of work; updated design schedules; updated construction cost estimate; minutes of meetings; and submission of required drawings and documents to governing

review agencies as required for the proper execution of this Service of the Work. Provide up to 25 sets of Contract Documents for the bidding and execution of the work, without reimbursement for cost of the reproduction. If additional sets of contract documents beyond 25 are required, the Owner will pay the cost thereof, except those where cost of production was paid by the recipient, upon submittal by the Designer of a certified tabulation showing the number of sets reproduced and the disposition of same. The Designer will prepare the Advertisement for Bids and submit the ad to the Owner for review, approval, and distribution. The Owner is responsible for the cost of the Advertisement. See [Article 3. Design Services](#). See University of Alabama Design Phase Deliverables Documentation Requirements for additional information and deliverables required for 60% and 90% review submissions, and the 100% submittal. See [Article 7. Documents and Files](#).

C.1 Construction Document Cost Estimates: As part of Service C, 60%, 90% and 100% Review Submittals, the Designer shall furnish the Owner a revised project cost estimate based upon the 60%, 90%, and 100% Service C submittals. See [Article 14. Definition of the Cost of the Work](#).

D. Bid Phase: Furnish and distribute Contract Documents; which shall include preparation of addenda, details and explanatory drawings; the Revit Model for information only; distribution of bid documents to plan rooms as noted in Instructions to Bidders; minutes of meetings; the procuring and analysis of bids; preparation and distribution of the certified Tabulation of Bids; preparation and distribution of the Construction Contract between the Owner and Contractor; and providing instructions and distribution of any other required project documents necessary for the proper execution of this Service of the Work. The Architect shall provide a conforming set of contract documents and the conforming Revit Model to the Contractor and Owner, inclusive of all design changes and bid addendum made from the time the bid documents were issued and the project was awarded. The Architect shall have these documents available to the contractor at the time of the pre-construction meeting. Copies of conforming documents will count against the 25 sets allowed under item C in this section. Also, the architect will post electronically, in PDF format, the conforming drawings and Revit Model to the University's project ESTUS site.

D.1 Undue Competitive Bid Advantage: The Designer shall not retain any consultant or vendor to aid in the preparation of the bid documents, job requirements and specifications or to consult on the nature or scope of the project where there is a reasonable expectation that the consultant or vendor may participate in the bidding process for that project and where there is a reasonable expectation that the aid provided by consultant or vendor would result in an undue competitive advantage to that consultant or vendor, regardless of whether the consultant or vendor is reimbursed for its services.

E. Construction Administration: General administration of the construction contract which shall include as a minimum, attending Owner, Designer and Contractor (ODC) meetings as required; providing appropriate inspections during the commissioning and formal testing of partial systems during various construction phases and as total systems when system construction is completed; verification and approval of contractor Certificates of Payment; preparation of construction records (field reports, request for proposals, change order requests, change orders, etc.); responding to Request for Information and providing instructions necessary for the proper execution of the Work; checking and approval of manufacturer's data and shop drawings; minutes of meetings as required; generate punchlists and, upon receipt of written certification from the contractor that the punchlist items are complete, provide written verification of punchlist completion to the designer's standard of care; year end inspections; closeout documentation review; and providing other required project documents and instructions necessary for the proper execution of this Service of the Work. See Article 11 for specific administration requirements.

Delivery & Instruments of Service

ARTICLE 2. Meetings

- 2.01** For all scheduled meetings the Designer is required to attend, they and/or their Representative, shall meet with Construction Administration 15 to 30 minutes prior to the scheduled meeting time to discuss any issues. This will be considered mandatory for all meetings.
- 2.02** The Designer, and Designer's Consultants if applicable, shall attend the Pre-Design Conference scheduled by the Owner.

ARTICLE 3. Design Services

- 3.01** The Designer agrees that all plans, specifications, detail drawings, Revit Model, Civil 3D Model, approvals, etc., for engineering services pertaining to the design of structural, mechanical, electrical and other specialized phases of engineering will be executed by Professional Engineers registered in the State of Alabama and employed for the particular work, except where such engineering services are of such minor nature as to be considered purely incidental to the architectural services required for the project. When such engineering services can be justifiably classified as purely incidental, then these services may be performed, and responsibility accepted, by an Architect registered in the State of Alabama. Any architectural work required for the project shall be performed by an Architect registered in the State of Alabama, unless such work is purely incidental to Professional Engineering work required, in which case such architectural work may be performed, and responsibility accepted, by a Professional Engineer registered in the State of Alabama.
- 3.02** All drawings prepared by Professional Engineers and Architects shall be separately identified by title, sheet number, and official registration seal or signature and registration number.
- 3.03** The key participants that comprise the Designer's Design Team, which includes any designated Consultants, shall remain assigned to this project until all Work, as required by the Agreement, is complete. There shall be no changes made to Design Team key participants unless requested and approved by the Owner in writing or by Amendment to the Agreement.
- 3.04** After Designer's receipt of any additional information from Owner, and the resolution of all problems, conflicts, defects, or deficiencies in the Services A and B submittals, Designer shall prepare Construction Documents as described in Services C and D including drawings and specifications that:
1. are complete, accurate, adequate, consistent, coordinated, and sufficient for bidding, negotiating, and constructing the Work in accordance with customary standards;
 2. take into account all labor, material, and equipment necessary to complete the Work;
 3. meet the Owner's aesthetic, functional, and operational objectives;
 4. are fit and proper for the purpose intended; and
 5. comply with all applicable laws, statutes, rules, and regulations of any local, state, or federal authority or agency, including all applicable building codes requirements, in effect at the time the final, complete Service C submittal is delivered to the Owner.
 6. endeavor to comply with accessibility design standards as contained in the American with Disabilities Act Accessibility Guidelines (ADAAG).

ARTICLE 4. Engineer Services

- 4.01** Notwithstanding anything to the contrary in Article 11 or elsewhere in the Agreement, the Designers' Engineer, as part of Article 15 – Extra Services, shall attend and record minutes

of commissioning meetings and provide requested guidance and appropriate inspections of such third party commissioning services to ensure compliance with the Contract Documents. The final commissioning of all systems shall be performed prior to the project's final inspection.

- 4.02** The cost of observation of the Work and site visits performed by the Engineering Consultants or Associates listed in Article 3 hereof are included in the fee for Designer's basic services. The frequency of the observation of the Work and site visits by such Engineering Consultants or Associates shall be consistent with the size and nature of the Work and as described in Attachment A, UA Minimum Field Inspection Requirements. Observation/Inspections of the Work and site visits by such Engineering Consultants or Associates shall neither eliminate nor substitute for the Designer's minimum weekly observation of the Work as required in this Contract.

ARTICLE 5. Surveys, Borings, Environmental Assessments, and Tests

- 5.01** The Owner shall, insofar as the Work under the Agreement, furnish the Designer with the following information: A complete and accurate survey of the existing building site, giving the grades and lines of streets, pavements, and adjoining properties; the rights, restrictions, easements, boundaries, and contours of the building site; and full information as to sewer, water, gas and electrical services. It is the Designer's responsibility to confirm and verify through field verification, the Control Point Reference Datum provided by the Owner, and its relationship to the design coordinates. The Owner shall pay for borings or test pits and for chemical, mechanical or other tests when required for the preparation of plans and specifications. All civil design work shall be done in AutoCAD Civil 3D format and the fully modeled in three-dimensional space. The Civil 3D file will be included in the 90% review set submittal with the electronic files being uploaded to ESTUS.
- 5.02** The Designer is not required to furnish environmental investigations or Phase I Environmental Assessments of the project site as part of its basic services under the Agreement.
- 5.03** The Designer shall provide a coordinate staking plan, both electronically (in a format as required) and within the Construction Documents, to the Contractor of Record with the Alabama State Plane coordinate system, west zone NAD 83 as the base datum. For projects where the relative alignment with adjacent structures or elements governs, the Designer shall provide staking relative to those existing controlling elements.

ARTICLE 6. Completion Schedule

- 6.01** Unless otherwise modified by written amendment to the Agreement, Services A, B, C, and D each shall be completed and submitted to Owner in accordance with the schedule outlined in the Agreement. The submittal packages, including all drawings and specifications contained therein for each review stage listed, should be, at a minimum, complete for all design disciplines in the percentage indicated in the Agreement for that review submittal including Alabama Building Commission submittals as delineated by the Manual of Procedures and Article 9.

ARTICLE 7. Documents and Files

- 7.01** **Design Phase Deliverables:** In addition to the provisions in Article 1, Basic Services, the Designer also shall comply strictly with all of the provisions of the document entitled, "The University of Alabama Design Phase Deliverables," and "The University of Alabama Building Information Modeling (BIM) Guidelines and Standards for Architects, Engineers, and Contractors" which is expressly incorporated into and made a part of the Agreement by reference. The Designer acknowledges that it has received a copy of "The University of

Alabama Design Phase Deliverables" in a compact disc format, and within five (5) days after its receipt of the compact disc, the Designer will give written notice to Owner of any difficulty in accessing or reading the materials on the compact disc. Upon request, Owner will furnish to Designer a printed version of the latest edition of the "The University of Alabama Design Phase Deliverables."

- 7.02** **Record Documents:** When Service E is included in the Agreement, the Designer shall make available to the contractor, at no cost, CAD files of updated contract documents reflecting all design changes made by the architect, including scope changes and clarifications (ASPs, RFI responses, etc.) made, up to the point of the Owner's 95% close-out meeting for the Contractor's use in preparing Record Documents. Further, the Architect shall review all Record Documents provided by the Contractor and certify in writing to the Owner that the Contractor's Record Documents represent all the contract change orders and modifications. The Record Documents shall be delivered to the Designer by the Contractor, for review prior to scheduling the final inspection and shall be approved by the Owner before final Designer's inspecting fee is paid.
- 7.03** **Ownership of Documents:** Drawings, Revit Models and specifications, including any electronic media as instruments of service, are the property of the Owner whether the Work, for which they are made, is executed or not. Should the work as herein agreed be terminated on the completion of Services A, B, and C the Designer shall deliver, unless requested by the Owner to postpone delivery until so requested, up to 5 sets of non-reproducible drawings and specifications, one complete set of documents containing one reproducible set of full size drawings, one complete set of documents containing one set of half-size drawings. The Owner shall be entitled to use these drawings, Revit Models and specifications, without modification, for the construction of all or part of one entire project as planned and specified without further payment to the Designer, other than as provided for in Article Two hereof. Owner shall be entitled to use the Revit Models, drawings and specifications, with or without modification, in connection with subsequent renovations, repairs, and other modifications and improvements to the completed project without further payment to Designer. Designer shall retain and hold the copyright in the Revit Model, Drawings, but hereby grants to Owner a royalty-free, non-exclusive, perpetual and worldwide license to reproduce, prepare derivative works, distribute copies and allow others to use the Revit Models, Drawings and Specifications, including any electronic media as instruments of service, for any purpose. Owner, to the extent permitted by law, agrees that Designer and its consultants shall not be liable for any resulting damages if the Revit Model, drawings and specifications are used for any purpose not intended or for any construction in which Designer is not involved.
- 7.04** **Contract Documents** will be produced on electronic media, compatible with AutoCAD Revit software or a version acceptable to the Owner (per the Design Guidelines) for drawings and Microsoft Word for specifications. The drawing size shall be 24" x 36" or 30"x42". Larger sizes must be mutually agreed to by all parties. One set of the final Contract Documents will be provided to the Owner on read and re-writable compact disk, (CD). Should the Work as herein agreed be terminated, electronic media containing all Contract Documents shall be delivered to Owner on the completion of Services A, B, C and D.
- 7.05** Designer will furnish and deliver three complete sets of black line documents and Revit Model to Owner for review as part of the review submittal packages due at the completion of each of the Services A, B and C review submittals as described above. Of the three complete sets, two complete sets of documents shall be full size (1/8" text size required), and one set of half-size drawings. (1/16" text size required). Three complete (sets) of specifications are required, one being loose leaf.

ARTICLE 8. Due Care

- 8.01 The Designer agrees that it will exercise due care to prevent damaging the Owner's property. Designer agrees that should it negligently or recklessly damage Owner property, it will pay the Owner, on demand, the cost of repairing or replacing the damaged property.

Reviews and Approvals

ARTICLE 9. Alabama Building Commission Approval of Plans and Specifications

- 9.01 Schematic, preliminary, and final drawings and specifications for all projects, the planning and construction of which is within the jurisdiction of the State Building Commission, shall be submitted to its Director of Technical Staff for approval in strict conformity with its established policies and procedures.
- 9.02 Schematic and preliminary submittals are not required for small projects of limited scope (such as minor alterations, re-roofing projects, parking lots and re-grading, HVAC or electrical renovations) or projects for which the review is for compliance with accessibility standards only.

ARTICLE 10. Board Approval

- 10.01 All capital construction projects which will substantially affect the visual appearance of the campus (such as new construction, major building additions, exterior renovations, etc.) must be presented for review and approval to the Board of Trustees.
- 10.02 The Designer will be responsible for the preparation of the models and providing information per the Rendering Guidelines. Renderings are not required for interior renovations (of existing facilities) which fall within this category.
- 10.03 Information regarding line-of-sight impact, scale and massing of new construction as it relates to existing buildings in the immediate area of the new construction shall be prepared by the Designer for review and approval by the Board of Trustees.

ARTICLE 11. Administration of the Construction Contract

- 11.01 The Designer will exercise care and endeavor to require the Contractor to strictly adhere to the plans and specifications, to guard the Owner against defects and deficiencies in the work of Contractors, and based upon its on-site observations and inspections shall promptly notify the Owner in writing of any significant departure in the quality of materials or workmanship from the requirement of the plans and specifications, but he does not guarantee the performance of the construction contracts.
- 11.02 The Designer's actions shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Designer's professional judgment to permit adequate review.
- 11.03 The Designer, as the representative of the Owner during the Construction Phase, shall advise and consult with the Owner and all of the Owner's instructions to the Contractor shall be issued through the Designer. The Designer shall have authority to act on behalf of the Owner to the extent provided in the General Conditions unless otherwise modified in writing.
- 11.04 The Designer shall at all times have access to the Work whenever it is in preparation or progress.

- 11.05** The Designer shall make monthly or bi-monthly visits to the site and as hereinafter defined to familiarize himself generally with the progress, quantity, and quality of the Work and to carefully observe the work of the Contractor to determine in general if the Work is proceeding in accordance with the requirements of the Contract Documents. On the basis of his on-site observations and inspections as the Designer, he shall exercise care and endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor, from unexcused delays in the schedule, and from overpayment to the Contractor. The Designer shall not be required to make continuous on-site inspections to check the progress, quality, or quantity of the Work. The Designer shall not be responsible for construction means, methods, techniques, or procedures, or for safety precautions and programs in connection with the Work, and he shall not be liable for results of the Contractor's failure to carry out the work in accordance with the Contract Documents.
- 11.06** Based on such observations at the site and on the Contractor's Applications for Payment, the Designer shall determine the amount owing to the Contractor and shall issue Certificates for Payment in such amounts. The issuance of a Certificate for Payment shall constitute a representation by the Designer to the Owner, based on the Designer's observations at the site as provided in the preceding paragraph and on the data comprising the Application for Payment, that the Work has progressed to the point indicated, that to the best of the Designer's knowledge, information and belief, the quantity and quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. By issuing a Certificate for Payment the Designer shall not be deemed to represent that he has made any examination to ascertain how and for what purpose the Contractor has used the moneys paid on account of the Contract Sum.
- 11.07** The Designer shall have authority to reject Work, which does not conform to the Contract Documents. The Designer shall not be liable to the Owner for the consequences of any decision made by him in good faith either to exercise or not to exercise his authority to stop the Work.
- 11.08** The Designer shall review and approve shop drawings, samples, closeout documentation and other submissions of the Contractor only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents.
- 11.09** Whenever necessary, due to receipt of a high volume of simultaneous submittals, the Designer shall notify the Contractor that submittal review must be prioritized and request the Contractor to provide said prioritization, in writing, of those simultaneous submittals based on the contractor's approved project schedule. This shall have the effect of staying the twenty-one day review requirement for the lower priority submittals.
- 11.10** The administration of the Contract by the Designer is not normally to be construed as meaning the furnishing of continuous inspection, which may be obtained by the employment of an On-Site Inspector. However, the administration shall be consistent with the size and nature of the Work and must include, at least, one (1) inspection per month while work is in progress. A final inspection, including written verification of completion of the punchlist according to the designer's standard of care, and an inspection at the end of the one-year guarantee period shall be required on all projects. If included under Article 4, or if later authorized by the Owner by written amendment to this Agreement, an On-Site Inspector acceptable to the Owner and Designer shall be engaged by the Designer at a salary satisfactory to the Owner and paid for by the Owner upon presentation of the Designer's monthly statements. See Article 4.
- 11.11** The Designer shall promptly furnish the Owner and each of the public agencies involved a copy of the written report of each inspection by him or his representative or engineers.

- 11.12 The Designer shall not be responsible for the acts or omissions of the Contractor, of any Subcontractors, or any of the Contractor's or Subcontractor's agents or employees, or any other persons performing any of the Work.

Fees for Services

ARTICLE 12. Basic Fees

- 12.01 For percentage based fees, the Basic Fee, including all design & engineering consultants, extra fees, and reimbursable expenses is stated in the Agreement, provided the Cost of the Work does not change. If the Owner increases the Cost of the Work, the Designer's Basic Fees shall be adjusted accordingly (per the Schedule of Basic Fee Rates).

The Owner agrees to pay the Designer for the basic services in the Agreement, based on the following percentages of the basic fee of the Fee Schedule except as may be modified in the Special Provisions of the Agreement:

For **A.** Ten percent of the basic fee

For **B.** Twenty percent of the basic fee

For **C.** Forty-five percent of the basic fee

For **D.** Five percent of the basic fee

For **E.** Twenty percent of the basic fee

For lump sum fees, the basic fee, including all design & engineering consultants, extra fees, and reimbursable expenses, is stated in the Agreement. This fee is a negotiated fixed fee between the parties that will be increased or decreased only by written amendment.

For not-to-exceed fees, the basic fee is a maximum fee the Designer may charge. The use of the not-to-exceed fee is appropriate for instances where the exact scope and extent of services cannot be ascertained with specificity prior to the commencement of services. The Owner shall pay the Designer only for the services actually performed. All invoices must be based on actual, verifiable costs and supported by documentation such as, but not limited to, hourly time sheets, invoices for reimbursable expenses, and subconsultant invoices. The Designer shall not be compensated for fees or costs in excess of the not-to-exceed amount without written amendment to the Agreement.

Any special or unusual conditions not covered hereinbefore shall be as detailed in the Special Provisions of the Agreement.

- 12.02 The applicable basic rate shall apply to the combined cost of all buildings or other work covered by the Agreement whether in one or more construction contracts, including separate contracts for any phase of the work.
- 12.03 The Owner's payment of the basic fee shall include and cover all of the fees and expenses incurred by the Designer, the Designer's Engineers and other Consultants listed in Article 3.
- 12.04 **Application of the Basic Fee Rate: (Applicable to Percentage Based Fees only)** 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 (as described below) until opening of bids and then retroactively to the amount of the Construction Contract, including Change Orders 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.

12.05 Major Renovation Work: The Basic Fee agreed upon in the Agreement fully compensates the Designer 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 the Revit Model, Drawings and Specifications of the Work covered by the Agreement.

12.06 Bid Alternate Design Fee: (Not applicable to a Lump Sum or Not-to-Exceed Fee) Unless otherwise provided in the Special Provisions of the Agreement, the Designer shall be paid a Bid Alternate Design Fee for additive Bid Alternates included in the Bid Documents at the Owner's request, whether or not the additive Bid Alternates are accepted and the work constructed. The Bid Alternate Design Fee covers Services A, B, and C rendered relative to Owner-requested additive Bid Alternates and, therefore, shall be equal to 75 percent of the Basic Fee Rate applied to the lowest responsible and responsive bid received for each unaccepted additive Bid Alternate.

12.07 Additional services are those services beyond the scope of services detailed in Article 1. Services which are detailed in Article 1 are covered by the basic fee and shall not be billed as additional services. All fees for additional services should be justified and supported in the Agreement

12.08 Reimbursable expenses are allowed provided they meet UA criteria. All reimbursable expenses must be identified and negotiated as part of the agreement of the fee for basic services.

12.09 Unless expressly listed herein as an eligible expense to be paid for by Owner or a reimbursable expense, all expenses incurred by Designer in connection with the project, including, without limitation, the following: transportation expenses and mileage, telephone and facsimile charges, postage, in-office printing costs, courier services, CAD plotting, CAD and drafting equipment/time, and copying expense, are deemed the normal cost of doing business and as such part of the basic fee (as per the Alabama Building Commission). Therefore, any expenses not specifically identified as reimbursable expenses or not listed herein or in the Special Provisions are to be covered by the Designer as part of the Basic Fee.

12.10 Reimbursable Expenses: Allowable reimbursable expenses are limited to and shall be paid based on the actual, verifiable, and documented costs to the Designer (maximum 10% markup of direct cost).

UA allowed reimbursables include the following:

- 1) Mileage reimbursement for firms which are located a distance greater than 100 miles radius from UA Campus
- 2) Airfare. Designer should make all reasonable efforts to book air travel in a timely manner and schedule flight so as to avoid excessive charges.
- 3) Hotel or overnight lodging (to be negotiated and agreed to prior)
- 4) Per diem meals for overnight stays (to be negotiated and agreed to prior)
- 5) Printing costs of construction drawings and specifications above 25 sets
- 6) Fees for review of drawings and specifications by governmental authorities having jurisdiction over the project (excludes city/county/state reviews)

12.10 Nonreimbursable Expenses: Expenses **disallowed** as reimbursable expenses include, but are not limited to, the following:

- 1) Meals for single day campus visits
- 2) Alcoholic beverages & alcohol related costs
- 3) Entertainment expenses
- 4) First class airfare (reimbursed only at economy rate)
- 5) Hourly rates for travel time in transit to Campus

ARTICLE 13. Building Type Groupings

13.01 The Schedule of Basic Fee Rates is divided into five (5) basic building type groupings as listed herewith, each grouping carrying the Basic Fee Schedule as tabulated hereinafter.

Group I. Parking structures and Repetitive Garages, Simple Loft Type Structures, Warehouses (exclusive of automated equipment), other similar utilitarian type buildings, Farm Structures, Industrial Buildings without special facilities.

Group II. Armories, Apartments, Bakeries, Bowling Alleys, Cold Storage Facilities, Dormitories, Exhibition Halls, Freight Facilities, Hangars, Manufacturing/Industrial Plants, Motels, Office Buildings*, Packaging and Processing Plants, Printing Plants, Public Markets, Skating Rinks, Service Garages.
*Without tenant improvements.

Group III. Cinema, College Classroom Facilities, Convention Facilities, Correctional and Detention Facilities, Dining Halls (institutional), Fire Stations, Gymnasiums*, Hotels, Laundries and Cleaning Facilities, Marinas, Nursing Homes, Office Buildings (with tenant improvements), Parks, Playground and Recreational Facilities, Police Stations, Post Offices, Publishing Plants, Restaurants, Schools (Elementary and Secondary), Specialty Shops, Stadiums, Transportation Terminals, Welfare Buildings, Neighborhood Centers and Similar Recreational Facilities, Banks, Exchanges and other Financial Institutions, Extended Care Facilities, Hospitals, Laboratories, Libraries, Medical Schools, Medical Office Facilities and Clinics, Mental Institutions, Mortuaries, Public Health Centers, Religious Facilities, Research Facilities, Veterinary Hospitals. Also Central Utilities Plants, Water Supply and Distribution Plants, Sewage Treatment and Underground System, Electrical Substation and Primary and Secondary Distribution Systems, Roads, Bridges, and Major City Improvements when any or all are considered incidental to an overall plan of architectural development.

Group IV. Aquariums, Auditoriums, Airport Control Towers, Art Galleries, Breweries, College Buildings with special facilities, Communications Buildings, Exposition Buildings, Observatories, School (Special), Theaters and similar facilities.

Group V. Mausoleums, Memorials, Monuments, Museums, Residences*, Specialized Decorative Buildings, Custom Designed Furnishings.

*Unless otherwise agreed in the Special Provisions of the Agreement.

13.02 Schedule of Basic Fee Rates by Building Type Groupings:

COST OF WORK			GROUP AND FEE IN PERCENTAGE				
			I	II	III	IV	V
Up	To	\$100,000	8.0	9.0	10.0	11.0	12.0
100,001	To	200,000	7.0	9.0	9.0	10.0	11.0
200,001	To	300,000	6.0	7.0	8.0	9.0	10.0
300,001	To	400,000	5.9	6.9	7.9	8.9	9.9
400,001	To	500,000	5.8	6.8	7.8	8.8	9.8
500,001	To	600,000	5.7	6.7	7.7	8.7	9.7
600,001	To	700,000	5.6	6.6	7.6	8.6	9.6
700,001	To	800,000	5.5	6.5	7.5	8.5	9.5
800,001	To	900,000	5.4	6.4	7.4	8.4	9.4
900,001	To	1,000,000	5.3	6.3	7.3	8.3	9.3
1,000,001	To	1,250,000	5.2	6.2	7.2	8.2	9.2
1,250,001	To	1,500,000	5.1	6.1	7.1	8.1	9.1

1,500,001	To	1,750,000	5.0	6.0	7.0	8.0	9.0
1,750,001	To	2,000,000	4.9	5.9	6.9	7.9	8.9
2,000,001	To	2,500,000	4.8	5.8	6.8	7.8	8.9
2,500,001	To	3,000,000	4.7	5.7	6.7	7.7	8.7
3,000,001	To	3,500,000	4.6	5.6	6.6	7.6	8.6
3,500,001	To	4,000,000	4.5	5.5	6.5	7.5	8.5
4,000,001	To	5,000,000	4.4	5.4	6.4	7.4	8.4
5,000,001	To	6,000,000	4.3	5.3	6.3	7.3	8.3
6,000,001	To	8,000,000	4.2	5.2	6.2	7.2	8.2
8,000,001	To	10,000,000	4.1	5.1	6.1	7.1	8.1
10,000,001	To	12,000,000	4.0	5.0	6.0	7.0	8.0
12,000,001	To	14,000,000	3.9	4.9	5.9	6.9	7.9
14,000,001	To	16,000,000	3.8	4.8	5.8	6.8	7.8
16,000,001	To	18,000,000	3.7	4.7	5.7	6.7	7.7
18,000,001	To	20,000,000	3.6	4.6	5.6	6.6	7.6
20,000,001	To	22,000,000	3.5	4.5	5.5	6.5	7.5
22,000,001	To	24,000,000	3.4	4.4	5.4	6.4	7.4
24,000,001	To	27,000,000	3.3	4.3	5.3	6.3	7.3
27,000,001	To	30,000,000	3.2	4.2	5.2	6.2	7.2
30,000,001	To	33,000,000	3.1	4.1	5.1	6.1	7.1
33,000,001	To	36,000,000	3.0	4.0	5.0	6.0	7.0
36,000,001	To	39,000,000	2.9	3.9	4.9	5.9	6.9
39,000,001	To	42,000,000	2.8	3.8	4.8	5.8	6.8
42,000,001	To	46,000,000	2.7	3.7	4.7	5.7	6.7
46,000,001	To	50,000,000	2.6	3.6	4.6	5.6	6.6
50,000,001	To	and over	2.5	3.5	4.5	5.5	6.5

- 13.03** In changing from one cost bracket to the next higher bracket due to change orders, etc., the total fee shall remain at the maximum paid for the lower bracket until that amount and the new bracket fee are equalized, and then the new bracket fee becomes effective.
- 13.04** For major renovation and alteration work, the Basic Fee shall be increased, as negotiated with the Designer but not to exceed 25%, in the proper Group Category. Method of actual application of the increase shall be as defined in the Special Provisions of the Agreement, otherwise the increase will not be allowable.
- 13.05** The work covered by the Agreement is hereby assigned to the Group stated in the Agreement. If the work is so divided that more than one Group is involved, see the Special Provisions of the Agreement where the buildings or work in each Group are named, Group number given, and tentative budget for each Group is given. If the Agreement is for work not listed in any Grouping, see the Special Provisions of the Agreement for explanation.

ARTICLE 14. Definition of the Cost of the Work

- 14.01** The Cost of the Work means the cost to the Owner, but such cost shall not include any Architect's, Engineer's or Consultant's fees or reimbursements, or the cost of an On-Site Inspector, or the cost of fixtures or equipment except built-in or attached equipment included in plans and specifications at the Owner's request, and shall not include construction cost, expenses or fees covered by Article No. 15 and any additional work listed in the Special Provisions to the Agreement.
- 14.02** The Cost of Work shall not include the cost of movable equipment or furnishings unless requested in writing by the Owner and as defined in the Special Provisions of the Agreement or by amendment to the Agreement.
- 14.03** No deduction shall be made from the fee for design services on account of liquidated damages or other sums withheld from payments to contractors.
- 14.04** When labor or material is furnished by the Owner below its market cost, the Cost of Work shall be computed upon such market cost in determining the agreed estimate of the Cost of the Work. See the Special Provisions of the Agreement for method of calculation.

14.05 With regard to tracking and furnishing estimates of cost as required by Service E, for a major change in the scope of the work requested by Owner after the contract for construction is awarded, the Designer, as part of its performance of Service E, shall prepare and furnish to the Owner a general estimate of the cost of the Owner's requested major change. The preparation and furnishing of this general cost estimate shall not constitute extra services under Article 15 of this Agreement. After Owner's receipt and review of the general cost estimate for the Owner requested major change, Owner may give Designer written instructions to prepare and furnish a detailed cost estimate (which shall include the amount of the estimator's fee for preparing the detailed cost estimate only) for the Owner requested major change. If, after receipt of the detailed cost estimate, the Owner decides not to proceed with and approve a change order for the requested major change, then Owner shall pay Designer only the amount of the estimator's fee for the preparation of the detailed cost estimate for the rejected major change.

14.06 **Changes in Design or Cost:** If, after the approval of the Service A submittals, Service B submittals, and prior to the completion of the 100% plans and specifications or other Service C work in progress, unforeseen conditions should arise which would substantially affect the Cost of the Work, or should the Owner require substantial changes from previously approved submittals or work in progress, then the Designer shall submit in writing to the Owner a revised project cost estimate which, upon approval by the Owner, shall supersede the previously approved estimates of project cost and shall become the agreed budget amount. The Designer will be compensated under Article 15, Extra Services, or as otherwise agreed, for revising the submittals and/or Revit Model, Drawings and Specifications.

14.07 **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 Designer will, upon instructions from the Owner, make revisions to the Revit Model, 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 Designer in revising the scope and quality of the Work as necessary to reduce the Cost of the Work. Compensation for such revision of the Revit Model, Drawings and Specifications shall be determined as follows:

1. For Percentage-Based Fees:
 - a. If the bid over-run is not greater than 10% of the budgeted Cost of the Work, the Designer will be compensated under Article 15, or as otherwise agreed, for revising the Revit Model, 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 Revit Model, 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 Designer would not have reasonably contemplated in its estimates, the Designer agrees that it will make such revisions and changes to the plans and specifications, as well as perform the incidental work and furnish the number of necessary documents as required by the basic Agreement, as may be necessary to reduce the Cost of the Work to an amount not in excess of the funds available and agreeable to the Owner for the Cost of the Work, at no cost to the Owner.
 - c. If the bid over-run is greater than 10% of the budgeted cost of the work, and the Owner decides to proceed with project by adding additional funds to cover the bid over-run in lieu of re-designing the project, the Designer shall only be compensated for Services A through D based on the fee for the original budgeted cost of the work. Compensation to the designer for services E shall be based on the cost of the work constructed.

2. For Lump Sum and Not-to-Exceed Fees, the Designer will be compensated under Article 15 for additional services or as otherwise agreed between the parties.

ARTICLE 15. Extra Services and Special Cases

- 15.01 If the Designer is caused extra design, drafting, supervision, or other major expenses due to major changes in completed work ordered by the Owner, due to extra work requested in writing by Owner and performed in accordance with the Owner's written instructions, or due to the delinquency or insolvency of the contractor, or as a result of damage by fire or storm, Designer shall be equitably paid for such expense and the services involved, provided that an amendment to the Agreement is executed for the extra work prior to the performance of same by the Designer. The amount to be paid for such extra work shall be either a not-to-exceed fee, or as a fee percentage based on the additional cost of the Work, or as otherwise negotiated.

ARTICLE 16. Payments

- 16.01 Payments to the Designer during the execution of the Work and in proportion to the amount of services rendered by the Designer on account of Services A, B, C, D or E in the Agreement, shall be made until the aggregate of all payments made are equal to the percentages on the Basic Fee Schedule arising from the Agreement computed on the Cost of Work as defined above and/or modified.
- 16.02 Payments (Not applicable to a Lump Sum or Not-to-Exceed Fees) 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 Schedule in Article 13. If the base fee is a lump sum or not-to-exceed fee, the Designer shall invoice for work completed monthly or at other intervals established by the parties to this Agreement.
- 16.03 Payments on account of Services A, B, and D shall be due and payable as noted below upon completion of those phases and approval of same by the Owner. Ninety percent (90%) 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 review agencies, but may be in monthly progress payments equal to the estimated percentage of Service C that has been completed by the Designer. The remaining Ten percent (10%) 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 the Bid opening. Payments requests on account of Services E shall be submitted monthly to Owner as the work progresses and shall be due and payable as noted below. Ninety percent (90%) of the Basic Fee allocated to Service E shall become payable as the Work progresses and shall be based upon an amount not to exceed the amount of Work completed as approved on the Contractor's monthly Applications for Payment. The remaining ten percent (10%) of the Service E fee shall be paid upon Designer's deliver to Owner of either the Contractor's "as built" documents, warranties, and other closeout documents required in the Construction Contract, or evidence that the Designer has made a reasonable effort to obtain these items from the Contractor, and Designer's delivery to Owner of all Submittal documents.
- 16.04 Upon satisfactory completion of construction work and its final acceptance by the Owner the Designer shall be paid any unpaid balance of fee due hereunder. Prior to such final payment under this agreement or prior to settlement upon termination of the Agreement,

and as a condition precedent thereto the Designer shall deliver to the Owner all required guarantees, record drawings or any other conditions named or implied in the Agreement.

- 16.05** Payments upon (1) the termination of the Agreement (2) final payments upon the completion of services prior to the determination of the final Cost of Work, and (3) partial payments shall be computed from the agreed budget or the agreed estimate of the Cost of Work whichever is the lesser. If the Owner abandons, delays or postpones the project as defined in Article 22 the Designer shall deliver to the Owner copies of all documents either completed or in progress so that a determination of the status of the Service(s) involved may be determined to be used on a percentage of completion basis for payments to the Designer.
- 16.06** Other final payments shall be adjusted and computed from the final Cost of the Work as hereinafter defined and/or modified. See Article 14.
- 16.07** Any payments due for services under the provisions of Article 15 of this Agreement will be paid as the services are performed or the necessary expenses are incurred and such payments shall be considered separate and distinct from payments made under the provisions of Articles 1 and 12.
- 16.08** Each payment request on account of Services A, B, C, D, and E submitted to Owner by Designer shall bear the signature of Designer and have attached such documentation as may be required by Owner. Each pay request shall generally itemize or show a breakdown of the various phases or parts of the Designer's Basic Fee, the value of the various phases or parts, the previously submitted payment requests, and the amount of the current payment request. The payment request shall also include a certification signed by Designer stating that Designer has paid its consultants, subcontractors and suppliers their proportional share of all previous payments received from Owner. Designer's signature on any payment request shall constitute the Designer's certification to Owner of the following:
1. Designer has billed Owner for all services rendered by it and any of Designer's consultant and subcontractors through the date of the payment request
 2. As of the date of the payment request, no outstanding amounts are due from the Owner to Designer for services rendered
 3. The services listed on the payment request have progressed to the level or percentage indicated and have been performed as required by the Contract Documents
 4. The reimbursable expenses have been reasonably incurred
 5. The amount requested is currently due and owing.
- 16.09** By acceptance of Owner's payment of a payment request, Designer releases Owner from any and all claims by Designer and by Designer's consultants and subcontractors for work and services performed, but not invoiced during the period for which payment was received.
- 16.10** Within thirty (30) days of Owner's receipt from Designer of a complete and accurate payment request, Owner shall pay to Designer the undisputed portion of that payment request.
- 16.11** For purposes of the Agreement, submission of Designer's invoice for final payment shall constitute Designer's representation to Owner that, upon receipt from Owner of the invoiced amount, all obligations of the Designer to others, including the firms and individuals listed in Article 3 hereof, incurred in connection with the project will be paid in full.
- 16.12** In the event Owner becomes credibly informed that any of Designer's representations on any of its requests for payment are wholly or partially inaccurate, the Owner may withhold payment of the disputed sums then or in the future otherwise due Designer until the inaccuracy and cause thereof is corrected to the Owner's reasonable satisfaction. Owner

shall notify Designer in writing within twenty-one days of Owner's receipt of a disputed payment request.

- 16.13** By accepting payments agreed to in the Agreement, the Designer certifies that to its knowledge no University employee or official, and no family members of a University employee or official, will receive a benefit from these payments, except as has been previously disclosed, in writing, to the University on the attached Disclosure Statement of Relationship Between Contractors/Grantees and Employees/Officials of The University of Alabama.

Insurance

ARTICLE 17. Designer's Insurance

- 17.01** Upon execution of the Agreement, the Designer shall procure the insurance coverages identified below at the Designer's own expense, and to evidence that such insurance coverages are in effect, the Designer shall furnish and attach to the Agreement insurance certificate(s) acceptable to the Owner and listing the Owner as the certificate holder. The Board of Trustees of the University of Alabama, its individual trustees, officers, directors, employees, agents and representatives shall also be named additional insured and shall be indicated on the certificate.
- 17.02** **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 must have a Best Policyholders Rating of "A-" or better and a financial size rating of Class VII or larger.

The Designer may elect to participate in a group self-insured workers' compensation program or to qualify with the State of Alabama Department of Industrial Relations as an individual self-insured employer, as long as the self-insurance program is in good standing with the Department of Industrial Relations and the Designer has excess workers' compensation insurance to cover all statutory obligations above the amount they have been authorized to self-insure.

- 17.03** **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.
- 17.04** **Insurance Certificates:** Insurance certificates 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 / additional insured
 9. Project Name and Number, if any
 10. Signature of authorized agent of the insurance company licensed to transact business in the State of Alabama

11. Telephone number of authorized agent of the insurance company
12. Mandatory thirty day notice of cancellation / non-renewal / change
13. The certificate of insurance must include the following language:
The Board of Trustees of the University of Alabama, its individual trustees, officers, directors, employees, agents and representatives are included as an additional insured as respect to the Commercial General Liability & Excess/Umbrella policy. Unless precluded by law or restricted or modified by contract, all policies waive the right to recovery or subrogation against the Board of Trustees of the University of Alabama, its individual trustees, officers, directors, employees, agents and representatives.
14. If applicable, the certificate shall identify any policy(s) with an aggregate limit on a “per job” or “per project” basis.

17.05 Designer’s Insurance Coverages: Unless otherwise provided in the Special Provisions of the Agreement, the Designer 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 or individual self-insurer must submit a certificate of authority from the Alabama Department of Industrial Relations approving the group insurance plan. The Designer must provide evidence of statutory excess insurance to cover any obligation in excess of the amount allowed to be self-insured by the State of Alabama.

2. **Employer’s Liability Insurance** limits shall be at least:

Bodily Injury by Accident - \$1,000,000 each accident
 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.

The Commercial General Liability Insurance shall provide, at minimum, the following limits:

Coverage	Limit
General Aggregate	\$ 2,000,000.00
Products, Completed Operations Aggregate	\$ 2,000,000.00
Personal and Advertising Injury	\$ 1,000,000.00 per Occurrence
Each Occurrence	\$ 1,000,000.00

The Commercial General Liability Insurance policy shall name the Owner and its individual trustees, officers, directors, employees, agents and representatives 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, 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 for each claim and \$2,000,000 aggregate.

6. **Excess/Umbrella Liability** – The required General Liability, Business Auto Liability or Employers Liability limits may be accomplished through a combination of primary and excess/umbrella liability policies written on a follow-form basis. The excess/umbrella liability coverage shall be included on the certificate of insurance and the certificate holder shall be included as an additional insured.

17.06 Designer's Consultants' Insurance Coverages:

1. **Workers' Compensation and Employer's Liability Insurance.** The Designer 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 Article 17.05 Item 1.
2. **Automobile and General Liability Insurance.** The Designer 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 Article 17.05 Item 3 & 4.
3. **Professional Liability Insurance.** The Designer shall require each of its consultants to obtain and maintain Professional Liability Insurance with coverage as described in preceding Article 17.05 Item 5.
4. **Enforcement Responsibility.** The Designer shall have responsibility to enforce its consultants' compliance with these insurance requirements; however, the Designer shall, upon request, provide the Owner acceptable evidence of insurance for any consultant.

17.07 Termination of Obligation to Insure: Unless otherwise expressly provided in the Special Provisions of the Agreement, the obligation of the Designer 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 Article 17.05 or coverages equal to them, shall remain in effect after the last Date of Substantial Completion of the Construction Contract at any time the Designer, 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 the Agreement, but in no case shall be less than 24 months beyond the Date of Substantial Completion.

17.08 Waivers of Subrogation: To the extent that loss or damage is covered by property insurance during construction, the Owner and Designer 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, Designer, or Contractor as fiduciary. The Owner or Designer, 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.

17.09 Deductibles and Self-insured Retentions ("SIR"): The Designer may elect to secure an insurance program with a deductible or SIR of up to \$25,000 without prior approval from the University. Any deductible or SIR larger than this amount must be approved by the Owner and audited financials will be required to judge the financial ability to absorb the

obligations of a deductible or SIR without a material impact on the solvency of the contractor.

- 17.10 Impairment of Limits:** In the event the insurance program required by the Owner were to have any pending claim(s), which may limit or exhaust any aggregate limits by more than 20%, the Owner shall be notified within 30 days. The Owner may require additional insurance or reinstatement of the limits of liability, as necessary to protect the financial interest of the Owner.

Contractual Responsibilities

ARTICLE 18. Contractual Responsibilities

- 18.01** The Owner and the Designer each binds himself, his partners, successors, executors, administrators, and assigns to the other party to the Agreement, and to the partners, successors, executors, administrators, and assigns of such other party in respect of all covenants of the Agreement.
- 18.02** Owner's engagement of Designer is based upon Designer's representation to Owner that:
1. It is an organization of experienced design professionals, authorized and licensed to do business in the State of Alabama
 2. It is qualified, willing, and able to perform architect of record services for the project
 3. It has the expertise and ability to provide design and engineering services which will meet the Owner's objectives and requirements to the standards of the profession
 4. It complies with all the insurance requirements as noted herein
- 18.03** The Designer shall furnish architectural/engineering services by or under the supervision of professionals licensed in, and in accordance with the professional standards currently practiced by architectural/engineering firms in the State of Alabama.
- 18.04** The Designer agrees that any claims which it may have against the Owner shall be submitted to the Alabama State Board of Adjustment [Ala. Code 41-9-60, et seq, (1975)].

ARTICLE 19. Commercial Use of Images of the Work

- 19.01** Designer shall not use photographs, video, drawings or any other visual representation of the Work for the commercial promotion of the Designer's business without the prior written permission of the Owner. This includes, but is not limited to, print and video advertisements, use at trade shows, submissions to professional organizations, and display on the Designer's web site. This provision shall also be binding on any of the Designer's subconsultants and Designer shall require its subconsultants to agree to be bound by its terms.

ARTICLE 20. Indemnification

- 20.01** The Designer agrees, at its sole cost and expense, to defend, indemnify and save harmless the Owner and the Owner's trustees, officers, employees and agents against and from any and all liability and claims by or on behalf of any person, firm, corporation, entity, or governmental authority arising from, attributable to or in connection with any breach or default on the part of Designer in the performance or non-performance of any covenant or obligation on the part of Designer to be performed pursuant to the terms of the Agreement or arising from any willful or negligent act or omission of Designer or any of Designer's contractors, servants, or employees, including, without limitation, any and all claims for injury or death to persons or damage to property.

20.02 The Designer further agrees to indemnify and hold harmless the Owner and the Owner's trustees, officers, employees and agents against and from actual fees of attorneys, expert witnesses, and other consultants which may be incurred, and other expenses and other liabilities in connection with any such claim, action, or proceeding brought against the Owner thereon and to resist or defend such claim, action, or proceeding by qualified counsel reasonably satisfactory to the Owner. The Designer shall not be obligated to indemnify the Owner for the Owner's sole negligence.

ARTICLE 21. Relationship

21.01 Nothing in this Agreement shall be deemed:

1. To constitute either party, or any employee, agent, or representative of either party, an employee, agent, or representative of the other party
2. To create any partnership, joint venture, association, or syndicate between the parties
3. To confer any expressed or implied right, power, or authority to enter into any agreement or commitment, expressed or implied, or to incur any obligation or liability on behalf of the other party. The parties to the Agreement agree that Designer is an independent business and that the relation created by the Agreement is an independent contractor relationship. Designer will be solely and entirely responsible for its acts and for the acts of its agents, employees, and subcontractors during the performance of the Agreement.

ARTICLE 22. Termination of Agreement

22.01 The Agreement shall terminate without notice should this project be abandoned, or be postponed or delayed, for more than 12 months from the date of the Agreement. It may be terminated by the Owner at the expiration of ten (10) days after written notice to the Designer for any failure of the Designer to comply with the provisions of the Agreement.

22.02 Any failure on the part of the Designer to abide by the written instructions of the Owner in regards to interpretation-decisions in regards to the terms of the Design Agreement, plan design, budget, contractual agreement, or change orders should be grounds for termination of the Designer/Owner Agreement.

22.03 If the Owner determines that the project is to be abandoned, postponed or delayed he shall notify the Designer in writing and the Designer shall immediately stop all work on the project. Payments to the Designer for work completed shall be in accordance with provisions of Article 16.

22.04 Owner's failure to pay the undisputed amount of any properly presented payment request for Designer's Basic or Extra Services within sixty (60) days after receiving it shall be just cause for either of the following actions by Designer: (a) Designer may give Owner thirty (30) days written notice that services under the Agreement will be suspended pending receipt of payment; or (b) Designer may give written notice of termination to Owner which allows Owner thirty (30) days after receiving the notice in which to make such payment, and in the absence of Designer's receipt of payment within said thirty-day period, the Agreement shall terminate upon the expiration of this thirty-day period. In either of such events, Designer's compensation shall be calculated on the basis of services actually performed and expenses actually incurred prior to the effective suspension or termination date.

22.05 For the purposes of the foregoing, the "Cost of the Work" as of the effective suspension or termination date shall be determined as follows: (i) For any portion of the Work for which bids have not been received, the Cost of the Work shall be the lesser of the budgeted Cost of the Work or the Designer's approved estimate of the Cost of the Work or (ii) For any

portion of the Work for which a construction contract has been awarded, the Cost of the Work shall be the current contract sum of the construction contract on the effective suspension or termination date.

- 22.06** In addition to the provisions in Article 22 hereof, the Agreement may be terminated by Owner without cause upon seven (7) days' written notice to Designer. In the event of such termination without cause, the Designer shall be compensated for all services performed prior to termination. In such event, the Designer shall promptly submit to the Owner its invoice for final payment showing the percentage completion of each service.

ARTICLE 23. Notices

- 23.01** Any notice or other communication in connection with the Agreement must be in writing and, if by mail, by certified mail—return receipt requested—and shall be effective when received by the addressee at the location listed in the Agreement.