

**Standard Articles
of
Agreement between Owner & Professional Service Provider**

The following Standard Articles are incorporated into the Agreement to which they are attached. As used in these Standard Articles, “Professional Service Provider” or “Service Provider” shall mean either a Commissioning Agent, Materials Testing Engineer, Programming Designer, Surveyor, or other professional Consultant possessing a high degree of professional skill where the personality of the individual will play decisive role and which is thereby exempt from the Alabama Bid Law.

The type of Professional Service Provider shall be designated in the subject Agreement. Sections of these Standard Articles referencing “Professional Service Provider” or “Service Provider” will be applicable for all Service Providers. Sections referring to one or more types of Service Provider(s) shall be applicable only to that Service Provider unless otherwise indicated.

ARTICLE 1 Scope of Basic Services: As stated in the subject Agreement, the Professional Service Provider shall perform those services as described for the designated Project. The Service Provider shall furnish all equipment and labor necessary to perform the services set for in the Agreement. The Service Provider shall identify any additional services and agree, in writing, by Amendment to this Agreement before any additional work is done. Compensation for any additional work shall be at the hourly rate, per the attached billing rate schedule (if applicable) or as agreed to by the parties in a subsequent Amendment to this Agreement.

Service Provider represents and warrants to the Owner that it and all of its employees working on the project for the Owner are fully qualified and competent to perform all services required herein and that to the extent required, Service Provider has or will secure at its own expenses, all personnel required in performing the services under this agreement. Such personnel shall not be employees of or have any contractual relationship with the Owner. All of the services required hereunder will be performed by Service Provider or under its supervision and all personnel engaged in the work shall be fully qualified to perform such services.

Service Provider agrees to perform the scope of services set forth in the Agreement. In addition:

1.01 FOR COMMISSIONING AGENTS: Unless otherwise stated in the Agreement, the Commissioning Agent’s services shall include the following: Commissioning Plan and Specification will be created and incorporated into the construction documents. This will include defining the roles and responsibilities of each team member as it relates to the Commissioning Process, pre-functional checklists, and functional testing procedures.

The Commissioning Agent will provide one representative to attend scheduled jobsite meetings related to the commissioning process and to conduct ongoing field investigations during the course of construction. Each meeting and field investigation will be documented and reported to the owner for review.

The Commissioning Agent will execute the commissioning plan developed in the Pre-Construction Phase including the following:

1. Verification of Pre-Functional testing through subcontractor documentation
2. Develop, verify, and witness functional testing procedures
3. Compile project information into final commissioning report

With the completion of the project, Commissioning Agent will produce a finalized commissioning report that will include an executive summary, list of participants and roles, brief building description, overview of the commissioning and testing scope, and a general description of the testing and verification methods. For each piece of commissioned equipment, the report will contain the disposition of the CA regarding the condition of the equipment.

- 1.02 FOR MATERIALS TESTING ENGINEERS:** The construction materials testing to be performed, estimated duration of construction materials testing, and site observations shall be set forth in the Agreement. The estimated number of tests are based on the Contract Documents for the Project. The total number of tests and observations will be contingent on the rate of construction, the number of test per site visit, and the number of retest required. Any required testing in excess of the estimated quantities indicated in the Agreement will be charged at the indicated unit price for specific test. Such cost for retesting will be responsibility of the construction Contractor and will be deducted from the Contractor's Request for Partial Payment by the Owner.

Special Inspection services when preformed as part of this Agreement will be provided in accordance with Chapter 17 of the International Building Code (IBC), edition as noted in the Contract Documents or enforced by the jurisdiction having authority.

ARTICLE 2 Basic Fee: For the Service Provider's services hereunder, the Owner agrees to pay the Service Provider the fee set forth in the attached Agreement. This fee shall include all professional fees, expenses and:

- 2.01 FOR COMMISSIONING AGENTS:** all documents, plans, testing, schedule jobsite meetings related to commissioning process, field investigations, final reports, and summaries.
- 2.02 FOR MATERIALS TESTING ENGINEERS:** all preliminary submittals, laboratory test data, calculations, test/boring location plans, construction material testing, construction material test reports, boring reports, field notes, field data, estimates, earthwork monitoring, construction monitoring, requested attendance to jobsite meetings, field investigations, final reports, miscellaneous documents, and special inspections as per the applicable International Building Code.
- 2.03 FOR PROGRAMMING DESIGNERS:** all documents, preliminary submittals and final plans, scheduled jobsite meetings, field investigations, final reports, and summaries.
- 2.04 FOR SURVEYORS:** all documents, preliminary submittals and final land survey plans, schedule jobsite meetings, field investigations, final reports, and summaries.

2.05 The Owner's payment of the basic fee shall include and cover all of the fees and expenses incurred by the Service Provider, the Service Provider's Engineers and other Consultants. Unless expressly listed herein as an expense paid for by Owner or an reimbursable expense, all expenses incurred by Service Provider in connection with the project, including, without limitation, telephone and facsimile charges, postage, 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. Expenses not specifically identified as reimbursable expenses or not listed in the Special Provisions of the Agreement are covered by the Basic Fee.

2.06 **Reimbursable Expenses:** Allowable reimbursable expenses are limited to and shall be paid based on the actual, verifiable, and documented costs to the Service Provider (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. Service Provider 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)

2.07 **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

2.08 **Payment:** Owner will remit payment to Service Provider within thirty (30) days from receipt of approved invoice. Provided, however, the Owner may delay payment for a reasonable time on all or any portion of an invoice, without the accrual of any interest or charges, on the basis of improper, contested or inadequate explanation of invoices by Service Provider.

In the event of such disputed or contested invoice, only that portion so contested shall be withheld by the Owner, and the undisputed portion shall be paid in accordance with the provisions herein. The Owner will exercise reasonableness in contesting any invoice or portion thereof.

In the event Service Provider is required by the scope of services to provide documents or testimony on behalf of the Owner in response to claims, demands or actions against the Owner, its officers, agents or employees by third parties, Service Provider shall bill the Owner for services rendered based on the ten current professional fees and expenses

incurred. Provided, however, in the event of a final adjudication by a court or other forum having jurisdiction that the services or any portion thereof provided by Service Provider were not properly performed, then Service Provider will refund to Owner all sums paid Service Provider for all work related to the testimony. No task will be undertaken by Service Provider without prior notification to the Owner. The provisions hereof are intended to apply only to third party actions based upon the Owner's implementation of Service Provider's report and findings and not in regard to claims or actions by or between the Owner and Service Provider.

Provided, however, nothing herein contained shall prevent the Owner from utilizing any document studies, forms or other data or information otherwise resulting from the performance of this agreement by Service Provider, in bringing, defending or otherwise assisting in litigation, claims, actions or demands undertaken or defended by the Owner, without any additional cost to the Owner.

In no event shall the making by the Owner of any payment to Service Provider constitute or be construed as a waiver by the Owner of any breach of covenant, or any default which may exist on the part of Service Provider and the making of any such payment by the Owner while any such breach or default exists shall in no way impair or prejudice any rights or remedies available to the Owner in respect to such breach or default.

ARTICLE 3 Completion Schedule: Service Provider shall complete all services within the time set forth in the Agreement. Service Provider agrees and understands that time is of the essence in the performance of this agreement.

Service Provider shall commence, carry on and complete the project with all practicable dispatch, in a sound, economical and efficient manner, in accordance with the provisions hereof and applicable laws. In accomplishing the project, Service Provider shall take such steps as are appropriate to insure that the work involved is properly coordinated with related work and policies being carried on by the Owner. Service Provider shall provide services in the order indicated by Owner.

ARTICLE 4 Termination of Agreement: Either party, hereto for its convenience may terminate this Agreement by giving the other party ten (10) days written notice of such termination. In case of such termination, the Owner shall have no liability to Service Provider for termination charges, loss of profits, business income, or consequential or direct damages of any kind whatsoever. Upon the termination of this Agreement, the Owner shall pay to Service Provider the amount of any unpaid services rendered before the termination date and for materials and supplies purchased before said date.

ARTICLE 5 Insurance: Upon execution of this Agreement, the Service Provider shall procure the insurance coverages identified below at the Service Provider's own expense, and to evidence that such insurance coverages are in effect, the Service Provider shall furnish and attach to this 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.

- 5.01 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 VII or larger. The Service Provider 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 Service Provider has excess workers' compensation insurance to cover all statutory obligations above the amount they have been authorized to self-insure.
- 5.02 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.
- 5.03 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 / 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, 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 limits on a "per job" or "per project" basis.
- 5.04 Service Provider's Insurance Coverages:** Unless otherwise provided in the Special Provisions of the Agreement, the Service Provider 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 Service Provider 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 per occurrence and \$2,000,000 in the aggregate. Unless otherwise specified, the limits of liability shall be dedicated to this project and no sharing of occurrence or aggregate limits will be permitted. **(Note: This coverage is only required for Commissioning Agents, Materials Testing Engineers, and Surveyors)**

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.

5.05 Service Provider's Consultants' Insurance Coverages:

1. **Workers' Compensation and Employer's Liability Insurance.** The Service Provider 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 5.04 Item 1.
2. **Automobile and General Liability Insurance.** The Service Provider 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 5.04 Item 3 & 4.
3. **Professional Liability Insurance.** The Service Provider shall require each of its consultants to obtain and maintain Professional Liability Insurance with coverage as described in preceding Article 5.04 Item 5. **(Note: This coverage is only required for Commissioning Agents, Materials Testing Engineers, and Surveyors)**
4. **Enforcement Responsibility.** The Service Provider shall have responsibility to enforce its consultants' compliance with these insurance requirements; however, the Service Provider shall, upon request, provide the Owner acceptable evidence of insurance for any consultant.

5.06 Termination of Obligation to Insure: Unless otherwise expressly provided in the Special

Provisions of the Agreement, the obligation of the Service Provider and its consultants to insure as provided herein shall continue as follows:

1. **Professional Liability (Errors & Omissions) Insurance**
 - a. **COMMISSIONING AGENTS:** two years after the date of Substantial Completion of the construction contract.
 - b. **MATERIALS TESTING ENGINEERS:** two years after the delivery date of final test reports and data.
 - c. **SURVEYORS:** two years after the delivery date of final survey documents.
2. **Other Insurance:**
 - a. **COMMISSIONING AGENTS:** The obligation to carry the other insurance coverages of preceding Article 5.04 or coverages equal to them, shall remain in effect after the last Date of Substantial Completion of the Construction Contract at any time the Commissioning Agent, 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, but in no case shall be less than 24 months beyond the Date of Substantial Completion.

- b. **MATERIALS TESTING ENGINEERS:** The obligation to carry the other insurance coverages of preceding Article 5.04 or coverages equal to them, shall remain in effect after the delivery date of final test reports and data at any time the Materials Testing Engineer, its consultants, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, returns to the Project site to perform services required of this Agreement, but in no case shall be less than 24 months beyond the Date of Substantial Completion.
- c. **PROGRAMMING DESIGNERS:** The obligation to carry the insurance coverages of preceding Article 5.04 or coverages equal to them shall remain in effect 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 this Agreement, but in no case shall be less than 24 months beyond the Date of Substantial Completion of the construction contract.
- d. **SURVEYORS:** The obligation to carry the other insurance coverages of preceding Article 5.04 or coverages equal to them, shall remain in effect after the delivery date of final Land Survey Documents at any time the Surveyor, its consultants, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, returns to the survey site to perform services required of this Agreement.
- e. **OTHER CONSULTANTS:** The obligation to carry the other insurance coverages of preceding Article 5.04 or coverages equal to them, shall remain in effect after the delivery date of the final report, study, or other deliverable to the Owner.

5.07 Waivers of Subrogation: Unless precluded by law, to the extent damages are covered by property or liability insurance during the testing, construction, survey, or other service as applicable, the Owner and Service Provider waive all rights against each other and against the designers, contractors, consultants, trustees, officers, representatives, agents and employees of the other for damages, except such rights as they may have to proceeds of such insurance held by the Owner, Service Provider, or Contractor as fiduciary. The Owner or Service Provider, as appropriate, shall require of the designers, contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

5.08 Deductibles and Self-insured Retentions ("SIR"): The Service Provider 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 Service Provider.

- 5.09 **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.

ARTICLE 6 Documents and Files:

- 6.01 **Materials/Confidentiality:** The Owner agrees to cooperate with and provide Service Provider with access to facilities and information within its reasonable possession and control, requested by Service Provider for its review and use in performing the services herein. Provided, however, all such documents, information, results, memoranda and all other written or verbal information ("information") shall be held confidential by Service Provider and any of its subconsultants and shall not, without the prior written consent of the Owner, be used for any purpose other than the performance of this agreement nor be disclosed to any other entity not connected with performance of this agreement. Upon completion of services, Service Provider shall return all such information to the Owner. The Owner shall retain ownership of all such information and the same shall not be used by the Service Provider for any purpose or purposes without the express written permission of the Owner. Service Provider shall not use the Owner's name or insignia in any magazine, trade paper, newspaper or other medium without first obtaining the written consent of the Owner.
- 6.02 **Intellectual Property:** The Owner and Service Provider, jointly and separately, acknowledge and agree that the intellectual property of both parties shall remain owned by the respective party. With the exception of Service Provider's periodic and final reports generated for performance of this agreement to or for the Owner, reports, memorandums, electronic mail, facsimile transmissions and other written and prepared documents shall be owned by the party who authored, generated or who originally possessed the same and nothing in this agreement shall contravene said rights.
- 6.03 **Information and Reports:** Service Provider shall, at such time and in such format as the Owner's representative may require, furnish a final written report and such periodic reports concerning the status of the project as may be requested by the Owner's representative. Service Provider shall furnish the Owner, upon request, with copies of all documents and other material prepared or developed in relation with or as part of the project. Such requests shall be reasonable and within normal business practices for such work. The Owner shall own and acquire all rights, including copyright, to the periodic and final report of Service Provider.
- 6.04 **Records and Inspections:** Service Provider shall maintain complete and accurate records with respect to all matters performed pursuant to this agreement. The Owner shall have free access at all proper times to such records and the right to examine and audit the same and to make transcripts therefrom and to inspect all program data, documents, proceedings and activities of Service Provider. Such inspections shall not be in violation of confidentiality guarantees provided for herein. Promptly upon the Owner's request, all documents, materials, information and writings and all copies thereof provided by the Owner to the Service Provider directly or indirectly shall be returned by Service Provider to Owner (if applicable).

6.05 FOR COMMISSIONING AGENTS AND MATERIALS TESTING ENGINEERS:

The Service Provider will publish all testing reports and data to the specified project management control system as applicable to the Project requirements. If the project management control system is not required for the Project, the Service Provider will provide copies of all testing reports, test data and other supporting documents to the Owner, Designer (Architects and relevant engineering disciplines), and Contractor for review as part of the Scope of Work. Documents, including any electronic media as instruments of service, are the property of the Owner. Should the work as herein agreed be terminated by either party the Service Provider shall deliver documents within 10 days of termination.

6.06 FOR PROGRAMMING DESIGNERS:

1. **Ownership of Documents.** Programming documents, 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. As such, the Owner shall be entitled to use these documents, with or without modification, without further payment to the Designer. Should the work as herein agreed be terminated by either party, the Designer shall deliver up to 5 sets of up-to-date, non-reproducible programming documents, and one complete set of documents containing one reproducible set of full size up-to-date drawings within ten (10) days of termination. The Owner shall be entitled to use these programming documents, 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 or elsewhere in the Agreement. Owner shall be entitled to use the programming documents, with or without modification, in connection with subsequent renovations, repairs, and other modifications and improvements to the completed project without further payment to Designer. If applicable, Designer shall retain and hold the copyright in the programming documents, 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 Drawings and Specifications programming documents, 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 drawings and specifications programming documents are used for any purpose not intended or for any construction in which Designer is not involved.
2. **Drawings:** Will be produced on electronic media, compatible with AutoCAD software (per UA Design Guidelines) for drawings and Microsoft Word for programming text. The drawing size shall be 24" x 36" or larger as mutually agreed to by all parties. Drawings will be provided to the Owner on Compact Disk (CD).

6.07 FOR SURVEYORS: The Surveyor will provide two complete sets of black line documents to Owner for review as part of the review submittal package, and two complete (sets) of survey reports.

1. **Ownership of Documents:** Programming documents, 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. As such, the Owner shall be entitled to use these documents, with or without modification, without further payment to the Surveyor. Should the work as herein agreed be terminated by either party, the Surveyor shall deliver up to 5 sets of up-to-date, non-reproducible programming documents, and one complete set of documents containing one reproducible set of full size up-to-date drawings within ten (10) days of termination.
2. **Final Survey Documents** will be produced on electronic media, compatible with AutoCAD software (per UA Design Guidelines) for drawings and Microsoft Word for written documentation and reports. The drawing size shall be 24" x 36" or larger as mutually agreed to by all parties. One set of the final Survey Documents will be provided to the Owner on read and re-writable compact disk, (CD), one set of black line document, and one set of Mylar copies.

ARTICLE 7 Due Care: The Service Provider agrees that it will exercise due care to prevent damaging the Owner's property. The Service Provider 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.

7.01 FOR MATERIALS TESTING ENGINEERS: In the prosecution of the Work, the Materials Testing Engineer will take all reasonable precautions to avoid damage or injury to subterranean structures or utilities. Upon request from the Materials Testing Engineer, the Owner will furnish plans and information concerning subterranean structures, but the Owner does not warrant the accuracy of any such information of plans provided to the Materials Testing Engineer. The Materials Testing Engineer assumes all risk in determining the location of any subterranean structures or utilities.

ARTICLE 8 Indemnification: The Service Provider 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 Service Provider in the performance or non-performance of any covenant or obligation on the part of Service Provider to be performed pursuant to the terms of this Agreement or arising from any willful or negligent act or omission of Service Provider or any of Service Provider's contractors, servants, or employees, including, without limitation, any and all claims for injury or death to persons or damage to property. The Service Provider 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 Service Provider shall not be obligated to indemnify the Owner for the Owner's sole negligence.

ARTICLE 9 Relationship: 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; or
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 this Agreement agree that Service Provider is an independent business and that the relation created by this Agreement is an independent contractor relationship. The Service Provider will be solely and entirely responsible for its acts and for the acts of its agents, employees, and subcontractors during the performance of this Agreement.

ARTICLE 10 Claims: The Service Provider 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 11 Notices: 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.

ARTICLE 12 Commercial Use of Images of the Work: Service Provider shall not use photographs, video, drawings or any other visual representation of the Work for the commercial promotion of the Service Provider'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 Service Provider's web site. This provision shall also be binding on any of the Service Provider's subconsultants and Service Provider shall require its subconsultants to agree to be bound by its terms.

ARTICLE 13 Conflicts of Interest/Undue Competitive Advantage:

- 13.01 By accepting payments agreed to in the Agreement, the Service Provider certifies that to its knowledge no Owner employee or official, and no family members of an Owner employee or official, will receive a benefit from these payments, except as has been previously disclosed, in writing, to the Owner on the Vendor Disclosure Statement attached to the Agreement.
- 13.02 The Service Provider 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.

ARTICLE 14 Miscellaneous Provisions:

- 14.01 **Amendment:** Any waiver, amendment, or modification of the provisions of this Agreement, or any right, power, or remedy, hereby, shall not be effective unless made in writing and signed by the parties.

- 14.02 Assignment:** Neither party to this Agreement shall have the right to assign any of its rights or obligations under this Agreement without the express written consent of the other party.
- 14.03 Choice of Law:** This Agreement shall be deemed to be an Agreement made under the laws of the State of Alabama, without regard to conflicts of laws principles and, for all purposes of this Agreement, plus any related or supplemental documents or notices, shall be construed in accordance and governed by the laws of the State of Alabama.
- 14.04 Agreement Date/Counterparts:** The date of this agreement is intended as and for a date for the convenient identification of this agreement and is not intended to indicate that this agreement was necessarily executed and delivered on said date. This instrument may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same instrument.
- 14.05 Capacity:** Each party to this agreement represents and warrants to the other as follows:
1. That it is an individual of the age of majority or otherwise a legal entity duly organized and in good standing pursuant to all applicable laws, rules and regulations.
 2. That each has full power and capacity to enter into this agreement, to perform and to conclude the same including the capacity, to the extent applicable, to grant, convey and/or transfer; areas, assets, facilities, properties, (both real and personal), permits, consents and authorizations and/or the full power and right to acquire and accept the same.
 3. That to the extent required, each party has obtained the necessary approval of its governing body or board and a resolution or other binding act has been duly and properly enacted by such governing body or board authorizing this agreement and said approval has been reduced to writing and certified or attested by the appropriate official of the party.
 4. That each party has duly authorized and empowered a representative to execute this agreement on their respective behalf and the execution of this agreement by such representative fully and completely binds the party to the terms and conditions hereof.
 5. That absent fraud, the execution of this agreement by a representative of the party shall constitute a certification that all such authorizations for execution exist and have been performed and the other party shall be entitled to rely upon the same. To the extent a party is a partnership, limited liability company or joint venture, the execution of this agreement by any member thereof shall bind the party and to the extent that the execution of agreement is limited to a manager, managing partner or specific member then the person so executing this agreement is duly authorized to act in such capacity for the party.
 6. That each party represents and warrants to the other that there is no litigation, claim or administrative action threatened or pending or other proceedings to its knowledge against it which would have an adverse impact upon this transaction or upon either's ability to conclude the transaction or perform pursuant to the terms and conditions of this agreement.

7. That each party has obtained any and all required permits, approvals and/or authorizations from third parties to enable it to fully perform pursuant to this agreement.
- 14.06 Third Party Beneficiaries:** It is the intent of the parties hereto that there shall be no third party beneficiaries to this agreement.
- 14.07 Final Integration:** This agreement, together with any amendments, constitutes the entire agreement of the parties, as a complete and final integration thereof with respect to its subject matter. In the event of a direct conflict between the provisions hereof and any prior agreement or amendment, the latter shall supersede the former. All written or oral understandings and agreements heretofore had between and among the parties are merged into this agreement, which alone fully and completely expresses their understandings. No representation, warranty, or covenant made by any party which is not contained in this agreement or expressly referred to herein have been relied on by any party in entering into this agreement.
- 14.08 Force Majeure:** Neither party to this agreement shall hold the other party responsible for damages or delay in performance caused by acts of God, strikes, lockouts or other circumstances beyond the reasonable control of the other or the other party's employees, agents or contractors.
- 14.09 Binding Effect:** This Agreement shall bind the parties and their respective personal representatives, heirs, next of kin, legatee, distributees, successors, and assigns. If any provision in this agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- 14.10 Captions:** The captions of this agreement are for convenience and reference only, are not a part of this agreement, and in no way define, describe, extend, or limit the scope or intent of this agreement.
- 14.11 Construction:** This agreement shall be construed in its entirety according to its plain meaning and shall not be construed against the party who provided or drafted it.
- 14.12 Mandatory and Permissive:** "Shall", "will", and "agrees" are mandatory; "may" is permissive.

END OF STANDARD ARTICLES