

# STANDARD ARTICLES

of the

## AGREEMENT BETWEEN OWNER AND ARCHITECT

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### Article 1 DEFINITIONS

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

- A. ABC:** The Technical Staff of the Alabama Building Commission.
- B. BUDGET or PROJECT BUDGET:** The amount that is available to and allocated by the Owner for the Cost of the Work as defined in Article 8. It is stated in the Agreement form whether the Budget is fixed or is tentative pending development of design and cost estimates by the Architect. If the Budget is tentative, it shall be validated by the Architect or, based on the Architect's estimate(s), mutually adjusted by the Owner and Architect prior to advertising the Project for bids.
- C. BULLETIN 1983 No. 26:** "Construction Requirements for County and City Public Schools, Bulletin 1983, Number 26" as currently published by the Alabama State Department of Education as of the date of the Agreement. References to "Bulletin 1983 No. 26" are not applicable if the Project does not involve a County or City Public School.
- D. CONTRACTOR:** The Contractor is the person or persons, firm, partnership, joint venture, association, corporation, cooperative, limited liability company, or other legal entity to whom the Owner awards a Construction Contract for all or a part of the Work covered by the Agreement. The term "Contractor" is used in the Agreement as if singular in number,.
- E. GENERAL CONDITIONS of the CONTRACT:** ABC Form C-8 currently published for incorporation into ABC construction contracting documents.

- F. MANUAL of PROCEDURES:** The “Manual of Procedures of the Alabama Building Commission” currently published as of the date of the Agreement.
- G. SDE:** The Alabama State Department of Education. The SDE is represented by the State School Architect with respect to the Agreement. References to “SDE” are not applicable if the Project does not involve a County or City Public School.
- H. Terms** defined in the current edition of the General Conditions of the Contract (ABC Form C-8) shall have the same meaning when used in the Agreement.

## **ARTICLE 2**

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

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

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

#### **B. OWNER’S RESPONSIBILITIES**

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

**(2) Owner’s Planning Program.** As used in the Agreement, the term “Planning Program” shall mean a written description of the Project objectives, including intended use of facilities and site, design constraints and criteria, physical parameters, space requirements and relationships, and any requirements for special equipment, systems, or materials. The Owner shall furnish its Program to the Architect.

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

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

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

- (a) A complete and accurate survey of the building site, giving the grades and lines of streets, pavements, and adjoining properties; the rights, restrictions, easements, boundaries, and contours of the building site; existing utilities, and full information as to sewer, water, gas and electrical services; and legal description of the property.
- (b) The services of geotechnical engineers, testing laboratories, and other consultants to provide professional evaluations and recommendations pertaining to conditions of the site and existing improvements, including, but are not limited to, tests and surveys required to ascertain and address surface and subsurface conditions, structural integrity of existing structures, the presence of Existing Hazardous Materials, and environmental issues.

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

- (a) The services of independent, professional testing firms and laboratories to perform tests and evaluations that are stipulated in the Contract Documents to be furnished by the Owner, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.
- (b) Inspections, tests, demonstrations, or approvals that are in addition to the Specified Inspections of the Contract Documents and that are reasonably recommended by the Architect, desired by the Owner, or determined necessary by public authorities having jurisdiction to verify that the Contractor's in-progress and completed Work is in conformance with the Contract Documents.

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

**(7) Hazardous Materials.** Unless otherwise provided in the Special Provisions of the Agreement, the Owner shall have responsibility for the presence and abatement of Existing Hazardous Materials that may be discovered at the Project site. If, at any time, the Owner has reason to believe that Existing Hazardous Materials are present at the Project site, or the Architect reasonably recommends that the Owner ascertain whether Existing Hazardous Materials are present at the Project site, or the Contractor encounters a suspected Existing Hazardous Material, the Owner shall obtain the services of an independent laboratory or professional consultant, appropriately licensed and qualified, to identify Hazardous Materials requiring abatement and to certify after their abatement that they have

been rendered harmless. Any abatement of Existing Hazardous Materials will be the responsibility of the Owner. The Owner will advise the Architect and Contractor in writing of the persons or entities who will determine the nature of the suspected material and those who will, if necessary, perform the abatement. The Owner will not employ persons or entities to perform these services to whom the Architect or Contractor has reasonable objection.

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

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

**(10) Advertisement of Completion.** If the Contract Sum is less than \$50,000, the Owner is responsible for publishing the Advertisement of Completion of the Construction Contract. If the Contract Sum is greater than \$50,000, the Contractor is responsible for preparing and publishing the Advertisement of Completion of the Construction Contract.

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

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

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

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

## C. ARCHITECT'S RESPONSIBILITIES

**(1) Manual of Procedures and Bulletin 1983 No. 26.** In performing the services required by the Agreement the Architect shall adhere to the applicable procedures of the Manual of Procedures and Bulletin 1983 No. 26, utilizing the applicable ABC uniform documents and standard forms.

**(2) Standard of Performance.** The Architect shall perform the services of the Agreement with reasonable care and competence, applying the technical knowledge and skill which is ordinarily applied by architects of good standing with the Alabama Board for Registration of Architects (in the case of Engineers, the State Board of Licensure for Professional Engineers and Land Surveyors).

The performance of these services shall be consistent with the Conditions of the Construction Contract, and in such a timely manner as will facilitate the orderly progress of the Project. (See Article 11 for the agreed design schedule.)

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

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

- (a) review and comply with laws, codes, and regulations applicable to the design, incorporating requirements imposed by governmental authorities having jurisdiction over the Project;
- (b) consider and advise the Owner of the comparative values of alternative materials, building systems and equipment relative to construction, maintenance, and life-cycle costs to achieve a design that is appropriate for the Owner's Program and suitable for the Project Budget; and
- (c) coordinate the documents prepared by the Architect and the Architect's consultants, including checking the compatibility of specified equipment and systems with spaces provided for them.

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

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

**(7) Notification and Correction of Errors.** The Architect shall provide prompt written notice to the Owner and Contractor if the Architect becomes aware of any fault or defect in the Project, including any errors, omissions, or inconsistencies in the Drawings, Specifications, other Contract Documents or instructions and information issued to the Contractor by the Architect. At no cost to the Owner, the Architect will correct errors, omissions, or inconsistencies found in the Drawings, Specifications, or other Contract Documents.

### **ARTICLE 3** **BASIC SERVICES**

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

#### **A. SCHEMATIC DESIGN PHASE (Service A)**

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

**(2) Schematic Drawings and Specifications.** Based on the Owner's Program, Project schedule and delivery method, Project site, Budgeted Cost of the Work, and preparatory surveys, tests, and consultants' reports, and any agreed adjustments thereto, the Architect shall prepare schematic drawings and other documents as prescribed in the Manual of Procedures and Bulletin 1983 No. 26 for Schematic Plan Submittal.

**(3) Submit for Approval.** The Architect shall submit the schematic design documents for the approval of the Owner, ABC, and SDE. The schematic design documents approved by the Owner shall constitute the Approved Project Program which can then be revised only by written agreement of the Architect and Owner.

#### **B. PRELIMINARY DESIGN PHASE (Service B)**

**(1) Preliminary Drawings and Specifications.** Based upon the schematic design documents approved by the Owner, ABC, and SDE and any adjustments then authorized by the Owner in budgeted Cost of the Work, Program, Project Schedule or delivery method, the Architect shall prepare preliminary drawings, outline specifications, and other documents as prescribed in the Manual of Procedures and Bulletin 1983 No. 26 for Preliminary Plan Submittal.

**(2) Submit for Approval.** The Architect shall submit the preliminary design documents for the approval of the Owner, ABC, and SDE.

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

#### **C. FINAL DESIGN PHASE (Service C)**

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

**(2) Final Drawings and Specifications.** The Architect shall prepare final Drawings and Specifications as prescribed in the Manual of Procedures and Bulletin 1983 No. 26 for Final Plan Submittal.

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

**(4) Submit for Approval.** The Architect shall submit the final Drawings and Specifications for the approval of the Owner, ABC, SDE, and other approving authorities.

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

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

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

#### **D. CONSTRUCTION CONTRACT PROCUREMENT (Service D)**

After obtaining approval of the final Drawings and Specifications from the Owner, ABC, SDE, and other approving authorities and incorporating their review comments into the Drawings and Specifications, the Architect shall assist the Owner in procuring a Construction Contract for the Work.

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

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

**(a) Bid Document Deposit.** The Architect shall distribute sets of Bid Documents to bidders

upon receipt of a deposit for each set. The amount of the deposit shall be determined by the Owner with the Architect's assistance, but, as prescribed by Title 39, Code of Alabama, 1975 as amended, the deposit shall not exceed twice the cost of printing, reproduction, handling, and distribution of each set.

**(b) Distribution and Refund of Deposits.** Two sets of Bid Documents shall be provided to General Contractor bidders upon receipt of the deposit and the deposit shall be refunded in full for each set returned in reusable condition within ten days after bid opening. Additional sets for General Contractor bidders and sets for subcontractors, vendors, and dealers shall be provided upon receipt of the deposit and the deposit shall be refunded, less the cost of printing, reproduction, handling, and distribution, for each set returned in reusable condition within ten days after bid opening. All refunds due shall be paid within twenty days after opening of bids. Building exchanges and similar agencies may be provided Bid Documents without charge.

**(c) Reimbursement.** The Architect shall furnish sets of Bid Documents in sufficient number for bidding and prosecuting the Work upon award of a Construction Contract, but shall not furnish more than 25 sets without reimbursement for cost of printing, reproduction, handling, and distribution of each additional set. If additional sets are required, or authorized by the Owner, the Owner will reimburse the Architect, as a Reimbursable Expense, for the cost of printing, reproducing, handling, and distributing those sets in excess of 25 and for which these expenses were not paid by the recipient. The Owner's payment for additional Bid Documents shall be based upon:

- .1 the Architect's certified tabulation showing the number of sets reproduced, their disposition, and any payments received therefor, and
- .2 rates not exceeding those commercially available in the Architect's locale.

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

**(4) Addenda.** The Architect shall review and approve, or take other appropriate action upon, requests for substitutions submitted in accordance with the procedures for "Pre-bid Approval" prescribed in the Instructions to Bidders and prepare responses to questions from prospective bidders pertaining to the Drawings, Specifications, and other Contract Documents. The Architect shall prepare and distribute in a timely manner addenda to all prospective bidders identifying approved substitutions and providing clarifications and interpretations of the Contract Documents.

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

**(6) Tabulation of Bids.** The Architect shall prepare a certified Tabulation of Bids and recommendations for award in accordance with the Manual of Procedures and furnish a copy to the Owner, ABC, and SDE.

**(7) Preparation of Construction Contract.** The Architect shall prepare the Construction Contract for acceptance and execution by the Contractor and Owner, delivering the Construction Contract with required bond forms for the Contractor's execution first. Upon receipt of the executed Construction Contract with bonds, evidence of required insurance, and other required attachments (if



any) from the Contractor, the Architect shall verify that the documents are accurate, complete, and in order and then forward them to the Owner for appropriate approvals and execution.

#### **E. CONSTRUCTION CONTRACT ADMINISTRATION (Service E)**

The Architect shall perform Construction Contract Administration consistent with the General Conditions of the Contract and in accordance with the applicable Manual of Procedures or Bulletin 1983 No. 26, using and preparing all standard forms and uniform documents prescribed therein.

**(1) Representative of the Owner.** The Architect will be a representative of the Owner during construction and in this capacity will endeavor to: **(a)** guard the Owner against variances from the requirements of the Contract Documents by the Contractor, **(b)** require the Contractor to complete the Work within the time specified in the Construction Contract or subsequently extended by the Owner, **(c)** and guard the Owner against Defective Work. The Architect will advise and consult with the Owner regarding the performance and progress of the Contractor and regarding solutions to conditions or problems that may arise out of the design or construction. The Architect shall have authority to act on behalf of the Owner to the extent provided in the General Conditions of the Contract, which may only be modified in writing.

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

- (a)** supervising or coordinating the Contractor's performance of the Work, the Contractor's Construction Methods, or the safe execution of the Work, unless the Contract Documents give other specific instructions concerning these matters;
- (b)** acts or omissions of the Contractor, Subcontractors, or their agents or employees or any persons or entities performing portions of the Work, or
- (c)** the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents; however, it shall be a requirement of this Agreement that the Architect notify the Owner and Contractor of any Defective Work observed by the Architect.

**(3) Interpretations and Decisions.**

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

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

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

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

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

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

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

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

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

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

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

(d) The Architect will review and respond to all Submittals with reasonable promptness to

avoid delay in the Work or in the activities of the Owner, Contractor or separate contractors.

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

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

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

(b) The Architect may specify any scheduling method and format that the Architect considers to be appropriate for the Project and which is acceptable to the Owner, but the Architect shall also require the Contractor to prepare and update ABC Form C-11, Progress Schedule and Report, in accordance with the General Conditions of the Contract. The Architect shall promptly deliver a copy of the Contractor's approved Progress Schedule and Report, and any revisions to it, to the BC Project Inspector.

(c) The Architect shall require the Contractor to update the Progress Schedule and Report with each monthly Application for Payment and shall otherwise monitor and keep the Owner apprised of the Contractor's progress.

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

**(8) Inspections.** The Architect shall coordinate, schedule, and conduct the Scheduled Inspections and Conferences defined in the Contract Documents and as are appropriate to the scope of the Work. The Architect shall perform Periodic Inspections defined in the Contract Documents and as enumerated below. The Architect shall attend Specified Inspections and Tests defined in the Contract Documents when attendance by the Architect is specified or is otherwise appropriate.

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

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

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

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

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

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

.6 keeps the Owner fully informed about the Project.

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

**(c) Frequency.** Unless the Special Provisions of the Agreement provides for the Architect's employment of an On-site Representative, the Architect is not required to provide continuous inspection. The Architect's Periodic Inspections shall be at intervals appropriate to the stage of the Contractor's operations and consistent with the size and nature of the Work, but not less than an average of one inspection per week while construction is ongoing. The performance of a Scheduled Inspection satisfies the weekly inspection requirement. The weekly inspection requirement may be waived during periods in which weather or other conditions delay progress, or during slow phases of construction, making weekly inspections unwarranted. (See Article 10 for required frequency of inspections by the Architect's consultants.)

**(d) Inspections by Registered Architect.** Inspections may be performed by a representative of the Architect to whom the Owner has no objection; however, the Architect or a member of the Architect's staff who is an Alabama registered architect shall perform an average of at least one Periodic Inspection each month during construction. This requirement for monthly inspection by an Alabama registered architect may be waived during periods in which weather or other conditions delay progress, or during slow phases of construction, making inspections during such period unwarranted.

**(e) Reporting.** Using the form prescribed in the Manual of Procedures, the Architect shall promptly prepare a complete report of each inspection by the Architect, Architect's representative, or consulting engineer and promptly furnish a copy of each report to the Owner, Contractor, ABC, SDE, and BC Project Inspector. The Architect shall prepare and distribute an inspection report weekly during construction; for weeks during which inspections are unwarranted, the Architect shall state in the report that no inspection was performed and why.

**(f) Notifications of Deficiencies.** The Architect shall promptly notify the Contractor and Owner in writing of any Defective Work, inadequate progress that may jeopardize timely completion of the Project, or other departures from the requirements of the Contract Documents observed by the Architect.

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

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

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

**(a)** The Architect's review, approval, and certification of Applications for Payment shall be

based on the Architect's general knowledge of the Work obtained through inspections at the site and the information provided by the Contractor with the Application. The Architect shall not be required to perform exhaustive examinations, evaluations, or estimates of the cost of completed or uncompleted Work or stored materials to verify the accuracy of amounts requested by the Contractor.

**(b)** The Architect shall not be required to withhold payment for completed or partially completed Work for which compliance with the Contract Documents remains to be determined by Specified Inspections or Final Inspections to be performed in their proper sequence. However, if Work for which payment has been approved, certified, or made under an Application for Payment is subsequently determined not in compliance with the Contract Documents, the Architect shall determine an appropriate amount that will protect the Owner's interest against such noncompliance and:

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

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

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

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

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

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

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

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

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

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

**(e)** Using the form prescribed in the Manual of Procedures the Architect shall recommend, as

applicable, the Contractor's proposals for acceptance by the Owner. Each recommendation of acceptance will be based upon the Architect's professional opinion that a proposal is complete, in conformance with the Contract Documents, represents fair and reasonable pricing, and justifies change order action in the case of claims for extra work, or does not warrant procurement by competitive bid in the case of added work. Determination of the legality of a change order shall be the responsibility of the Owner and its legal advisor.

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

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

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

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

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

#### **Article 4** **BASIC FEE**

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

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

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

**B. MAJOR RENOVATION WORK**

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

**C. SUBSTANTIAL DUPLICATION**

If the Basic Fee is a Basic Fee Rate and the Work covered by the Agreement involves substantial duplication of buildings on the same or separate sites, the Basic Fee Rate will be adjusted for the duplicated buildings in accordance with Chapter 4-Supplement of the Manual of Procedures unless otherwise stated in the Special Provisions of the Agreement.

**D. ADJUSTMENT FOR MAJOR CHANGES IN SERVICES**

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

**E. PAYMENT SCHEDULE**

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

For Service A - Schematic Design Phase	Ten percent (10%)
For Service B - Preliminary Design Phase	Fifteen percent (15%)
For Service C - Final Design Phase	Fifty percent (50%)
For Service D - Construction Contract Procurement	Five percent (5%)
For Service E - Construction Contract Administration	Twenty percent (20%).

**F. BID ALTERNATE DESIGN FEE** (Not applicable to a Fixed Fee.)

Unless otherwise provided in the Special Provisions of the Agreement, the Architect shall be paid a Bid Alternate Design Fee for 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.

**G. SUBSEQUENT DUPLICATION**

It is agreed that if buildings covered by the Agreement are substantially duplicated under any subsequent Owner-Architect Agreement, the Basic Fee of the subsequent Owner-Architect Agreement will be paid in accordance with the terms detailed in Chapter 4-Supplement of the Manual of Procedures for substantial duplication, except that any change in the fee schedule in effect at the date of the subsequent Agreement will be applicable.

**Article 5**  
**EXTRA SERVICES**

**A. DEFINITION**

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

- (1) Revising, at the Owner's instruction, Drawings, Specifications, bid documents, or other documents which have been prepared in accordance with previous instructions or approval of the Owner, including revisions required to accommodate bid alternates not previously requested by the Owner.
- (2) Revising Drawings, Specifications, or other documents to conform to codes, laws, or regulations enacted or revised subsequent to the preparation of the documents.
- (3) Duplication of Basic Services, or other major expenses, required by errors committed by the Contractor, the Owner's failure to make timely decisions, or damage to Work caused by fire, storm, or other casualty.
- (4) Extended performance of Service E required by the Contractor's failure to achieve Substantial Completion of the Work within the Contract Time.
- (5) Extended performance or duplication of Services E required by the Contractor's failure to complete all "punch list" items within the time stated in a Certificate of Substantial Completion or, if no such time is stated, within 30 days after the respective Date of Substantial Completion.



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

## **B. AUTHORIZATION**

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

## **C. EMERGENCIES**

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

## **D. CONTRACTOR DELAY**

If the Architect believes that compensable Extra Services are being, or will be, rendered due to the Contractor's failure to achieve Substantial Completion of the Work within the Contract Time or the Contractor's delayed completion of "punch list" items, the Architect shall notify the Owner in writing, but shall not suspend or otherwise alter services to the detriment of the Owner and Project. As a prerequisite to entitlement to compensation for such Extra Services, the Architect shall have fulfilled its obligations under the terms of the Agreement to issue timely Notice(s) to Cure to the Contractor and to have advised the Owner of the Contractor's inadequate progress and possible actions to be taken by the Owner. Unless otherwise stipulated in the Special Provisions of the Agreement or an amendment to the Agreement, the Architect shall be equitably paid for validated Extra Services to the extent that the Owner is entitled to recover same from the Contractor (or its Surety) under the terms of the Construction Contract.

## **E. CONTRACTOR DEFAULT, TERMINATION or SUSPENSION**

Default by the Contractor or the Owner's termination of the Construction Contract or suspension of the Work shall constitute a suspension of Services E from the effective date of the action until the date upon which Work is resumed. In the absence of other agreement confirmed by amendment to the Agreement at that time, all services requested by the Owner and provided by the Architect shall constitute Extra Services during the period in which Services E are suspended. The Architect's notification prior to providing Extra Services shall not be required during this period; however, in response to the Owner's requests for services, the Architect will advise the Owner if the Architect considers the requested service is not prudent or that it would be inappropriate for the Architect to

perform the service. The Architect shall keep a complete accounting of all expenses incurred, each referenced to the respective request for service, and present them to the Owner in such format as the Owner may require to facilitate recovery from others.

## **F. COMPENSATION**

Unless the Special Provisions of the Agreement or an amendment to the Agreement contains compensation rates or another method of computing Extra Services, the amount to be paid for Extra Services shall be determined in accordance with this paragraph. Compensation for Extra Services performed by the Architect shall be based upon the Architect's records of actual cost, plus one-hundred-twenty-five percent (125%) markup for overhead and profit. Actual cost to the Architect shall include **(1)** actual salaries of all employees involved, **(2)** proration of supervisory time, **(3)** laboratory fees if authorized by Owner, **(4)** authorized travel, **(5)** cost of maintaining Project site office for the Architect's On-site Representative, if applicable, and **(6)** miscellaneous items such as long-distance telephone calls and extra printing. The markup for overhead and profit shall include such items as normal office expense (rent, utilities, janitorial service, use of equipment, insurance) and the costs of mandatory and customary benefits such as holidays, vacations, pensions, insurance, FICA, etc. Compensation for Extra Services performed by the Architect's consultants shall be based upon the reasonable amount charged by the consultant in accordance with its existing agreement with the Architect, plus fifteen percent (15%) markup for overhead and profit for the Architect.

## **Article 6** **REIMBURSABLE EXPENSES**

### **A. DEFINITION**

Reimbursable Expenses are expenses incurred by the Architect, upon the request or authorization of the Owner or as may be provided in the Special Provisions of the Agreement, for services or work which are not included in the Basic Services and are not subject to payment as Extra Services. Reimbursable Expenses shall include only expenses specifically identified in the Special Provisions of the Agreement and the expenses of:

- (1)** Preparatory Surveys, Tests, and Consultants which are the responsibility of the Owner pursuant to Article 2.B(5), but which are obtained by the Architect.
- (2)** In-progress Inspections, Tests, and Consultants which are the responsibility of the Owner pursuant to Article 2.B(6), but which are obtained by the Architect.
- (3)** The cost of publishing the Advertisement for Bids which is the responsibility of the Owner pursuant to Article 2.B(9), but paid for by the Architect.
- (4)** The cost of printing, reproducing, handling, and distributing additional Bid Documents (Contract Documents) pursuant to the condition stipulated in Article 3.D(2).
- (5)** The cost of reproducing, assembling, and delivering the Project Record, or significant portions of it, pursuant to Article 3.E(4).

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

**B. EXCLUDED EXPENSES**

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

**C. COMPENSATION**

Unless stipulated otherwise in the Special Provisions of the Agreement, the basis upon which the Architect shall be compensated for Reimbursable Expenses shall be the Architect's cost for the service or work plus 15% mark-up.

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

**A. GENERAL**

Payments shall be made to the Architect as services are rendered and approved by the Owner, the ABC (if required), and the final approving authority prescribed by law. The Architect's statements for services rendered shall be presented to the Owner monthly and in the format prescribed in the Manual of Procedures. The Owner shall notify the Architect in writing within 15 days of receiving a disputed statement for service. Unless stipulated otherwise in the Special Provisions of the Agreement, payments for services rendered shall be as stated below.

**B. BASIC SERVICES**

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

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

to the Cost of the Work as defined in Article 8.

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

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

**(5) Service C:**

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

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

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

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

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

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

**D. EXTRA SERVICES**

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

## **E. REIMBURSABLE EXPENSES**

The Architect's billings for Reimbursable Expenses may be submitted monthly and shall be supported by documentation of the expense as required by the Manual of Procedures and to the Owner's satisfaction. Payment for Reimbursable Expenses shall be considered separate and distinct from payments made for Basic Services and shall be accounted for separately in the Architect's statements for services.

## **F. FINAL PAYMENT**

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

- (1) expiration of the period established in the last Certificate of Substantial Completion for completion of "punch list" items,
- (2) the Architect's delivery to Owner of either the Contractor's "as-built" documents, warranties, and other closeout documents required in the Construction Contract or evidence that the Architect has made a reasonable effort to obtain these items from the Contractor, and
- (3) the Architect's delivery to Owner of the Submittal documents as required under Article 3.E.6.

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

### **A. DEFINITION**

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

### **B. EXCLUDED COSTS**

Unless otherwise provided in the Special Provisions of the Agreement, or an amendment to the Agreement, the Cost of the Work does not include:

- (1) The Architect's Basic Fee, Bid Alternate Design Fee, fees for Extra Services, or Reimbursable Expenses.
- (2) The cost of an Architect's On-site Representative.
- (3) The cost of furnishings, fixtures, or equipment, except those included in Drawings and Specifications at the Owner's request.
- (4) Premium costs (for which the Architect is liable) included in Contract Change Orders, including those required to effect compliance with plan review comments of the ABC, SDE, or other reviewing authorities.
- (5) Any costs, services, or work for which the Owner is responsible pursuant to Article 2.B.
- (6) Unaccepted Bid Alternates ( see Article 4.F, Bid Alternate Design Fee).

**C. PAYMENTS WITHHELD from the CONTRACTOR**

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

**D. SELF-PERFORMANCE by OWNER**

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

**Article 9**  
**SUSPENSION and TERMINATION of AGREEMENT**

**A. SUSPENSION of the AGREEMENT**

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

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

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

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

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

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

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

**(3) Suspension Expenses.** Upon resuming service at the Owner's instruction, the Architect shall be compensated pursuant to Article 5, Extra Services, for any reasonable, documented expenses

directly attributable to the suspension for which the Architect is not otherwise compensated.

## **B. OWNER'S RIGHT to TERMINATE**

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

### **(2) Termination for Cause.**

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

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

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

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

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

**(1) Suspension by Owner.** Should the Owner postpone or delay the Project or otherwise suspend performance of this Agreement for a longer period than has been allowed in the Agreement form, the Architect may terminate the Agreement by written notice to the Owner and the Architect shall be paid for Services rendered.

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

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

**(b)** The Architect may give a written Notice of Termination to the Owner which allows the Owner fourteen days after receiving the Notice in which to make such payment. Absent the Architect's receipt of payment, the Agreement shall terminate upon expiration of this fourteen

day period and the Architect will be compensated by the Owner as if the termination had been for the Owner's convenience pursuant to Paragraph E of this Article.

#### **D. DELIVERY of FINAL DRAWINGS**

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

#### **E. FINAL PAYMENT UPON TERMINATION**

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

##### **(1) Earned Basic Fee.**

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

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

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

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

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

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

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

### **Article 10** **ENGINEERING SERVICES**



**A. FULL PROFESSIONAL TEAM**

For the performance of the services required by the Agreement the Architect will employ the services of consulting engineers so as to provide a full professional team as dictated by the disciplines of architectural and engineering design involved in the Work. The consultants to be employed by the Architect are named on Page 2 of the Agreement form. The Architect shall notify the Owner in writing of any intended change in consultants and the Owner shall have the right of approval of any replacement consultant.

**B. BASIC and SPECIAL SERVICES**

The graduation of fee rates by Building Groups in the Schedule of Basic Fee Rates (Chapter 4 - Supplement, Manual of Procedures) is intended to compensate for the level of consultants' services required to design the buildings and improvements within each Building Group. Therefore, the Basic Services and Basic Fee include the services of engineers and consultants required to design the Work covered by this Agreement unless the Work is to include features, equipment, or systems not normally included in such work. The scope and terms of compensation for engineering or consulting services required for such special features, equipment, and systems shall be as stated in the Special Provisions of the Agreement or an amendment to the Agreement.

**C. LICENSED ENGINEERS**

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

**D. INSPECTIONS**

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

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

require its respective engineer or consultant to perform, or have their qualified representative perform, a Year-End Inspection of the system or equipment.

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

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

## **Article 11** **DESIGN SCHEDULE**

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

### **A. SCHEMATIC DRAWINGS**

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

### **B. PRELIMINARY DRAWINGS**

The number of calendar days, following receipt of necessary approvals of the Schematic Drawings, within which the Architect shall furnish complete Preliminary Drawings and outline specifications for review by the Owner, the ABC, and the SDE and shall furnish an estimate of the Cost of the Work for the Owner's approval.

### **C. FINAL DRAWINGS**

The number of calendar days, after receipt of necessary approvals of Preliminary documents, within which the Architect shall furnish complete Final Drawings and Specifications for review by the Owner, the ABC, the SDE, and other approving authorities.

## **Article 12** **OWNERSHIP of DOCUMENTS**

### **A. PROPERTY of the ARCHITECT**

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

**B. NONEXCLUSIVE LICENSE GRANTED**

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

**C. UPON TERMINATION of AGREEMENT**

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

**D. ELECTRONIC DOCUMENTS**

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

**Article 13**  
**ARCHITECT'S INSURANCE**

Within ten days after receiving the fully executed Agreement and prior to performing any services under this Agreement, the Architect shall procure the insurance coverages identified below at the Architect's own expense, and to evidence that such insurance coverages are in effect, the Architect shall furnish the Owner an insurance certificate(s) acceptable to the Owner and listing the Owner as the certificate holder.

**A. POLICY PROVIDERS**

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

**B. NOTIFICATION ENDORSEMENT**

Each policy shall be endorsed to provide that the insurance company agrees that the policy shall not be canceled, changed, allowed to lapse or allowed to expire for any reason until thirty days after the

Owner has received written notice by certified mail as evidenced by return receipt or until such time as other insurance coverage providing protection equal to protection called for herein shall have been received, accepted and acknowledged by the Owner. Such notice shall be valid only as to the project as shall have been designated by Project Name and Number in said notice.

### C. INSURANCE CERTIFICATES

Insurance certificate must provide the following information

- (1) Name and address of authorized agent of the insurance company
- (2) Name and address of insured
- (3) Name of insurance company or companies
- (4) Description of policies
- (5) Policy Number(s)
- (6) Policy Period(s)
- (7) Limits of liability
- (8) Name and address of Owner as certificate holder
- (9) Project Name and Number, if any
- (10) Signature of authorized agent of the insurance company
- (11) Telephone number of authorized agent of the insurance company
- (12) Mandatory thirty day notice of cancellation / non-renewal / change

### D. ARCHITECT'S INSURANCE COVERAGES

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

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

- (2) **Employer's Liability Insurance** limits shall be at least:
- (a) Bodily Injury by Accident - \$1,000,000 each accident
  - (b) Bodily Injury by Disease - \$1,000,000 each employee

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

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

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

.4 Each Occurrence

\$ 1,000,000.00

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

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

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

#### E. ARCHITECT'S CONSULTANTS' INSURANCE COVERAGES

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

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

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

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

#### F. TERMINATION of OBLIGATION to INSURE

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

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

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

**G. WAIVERS of SUBROGATION**

To the extent damages are covered by property insurance during construction, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to proceeds of such insurance held by the Owner, Architect, or Contractor as fiduciary. The Owner or Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

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

**A. APPLICABILITY of ARTICLE**

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

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

**B. CONTINUANCE of PERFORMANCE**

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

**C. GOOD FAITH EFFORT to SETTLE**

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

**D. FINAL RESOLUTION for STATE-FUNDED AGREEMENTS**

(1) If the Agreement is funded in whole or in part with state funds, the final Resolution of Claims and Disputes which cannot be resolved by the Architect and Owner shall be by the Director of the Technical Staff, Alabama Building Commission, whose decision shall be final, binding, and conclusive upon the Architect and the Owner.

(2) When it becomes apparent to the party asserting a Claim (the Claimant) that an impasse to mutual resolution has been reached, the Claimant may request in writing to the Director that the Claim be resolved by decision of the Director. Such request by the Architect shall be submitted through the Owner. Should the Owner fail or refuse to submit the Architect's request within ten days of receipt of same, the Architect may forward such request directly to the Director. Upon receipt of a request to resolve a Claim, the Director will instruct the parties as to procedures to be initiated and followed.

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

#### **E. FINAL RESOLUTION for LOCALLY-FUNDED AGREEMENTS**

If the Agreement is funded in whole with funds provided by a city or county board of education or other local governmental authority and the Agreement does not stipulate a binding alternative dispute resolution method, the final resolution of Claims and Disputes which cannot be resolved by the Architect and Owner may be by any legal remedy available to the parties. Alternatively, upon the written agreement of the Architect and the Owner, final Resolution of Claims and Disputes may be by submission to binding arbitration before a neutral arbitrator or panel or by submission to the Director in accordance with preceding Paragraph D.

### **Article 15** **MISCELLANEOUS PROVISIONS**

#### **A. ENTIRE AGREEMENT**

The AGREEMENT BETWEEN OWNER AND ARCHITECT, including the Standard Articles (ABC Form B-2A) incorporated therein and any documents cited and identified in the Special Provisions of the Agreement as "Attachments", represents the entire agreement between the Owner and the Architect, superseding any and all prior written or oral negotiations, representations, or agreements. The Agreement may be amended only by an Amendment executed by the Architect, Owner, and other signatories to the Agreement.

#### **B. SUCCESSORS and ASSIGNMENTS**

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

#### **C. CONFLICTS with LAWS**

It is agreed that if any provision of the Agreement shall contravene any statute or constitutional provision or amendment, either now in effect or which may, during the course of the Agreement, be

enacted, then that conflicting provision in the Agreement shall be deemed null and void without affecting the remaining provisions of the Agreement.

**D. PROMOTIONAL USE**

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

END of STANDARD ARTICLES