

APPROVED AS TO FORM

(GHW)  
Office of the City Attorney

Prepared By: GHW  
Requested: Projects Cmte.  
Presentation on: 08-09-16  
Suspension of Rules: NO

RESOLUTION

RESOLUTION AUTHORIZING CONTRACT WITH WARD SCOTT  
ARCHITECTURE FOR PROFESSIONAL ARCHITECTURAL AND RELATED  
SERVICES FOR DESIGN OF ALBERTA PARK  
(A15-0757)

BE IT RESOLVED BY THE CITY COUNCIL OF TUSCALOOSA AS  
FOLLOWS:

That the Mayor is authorized to execute a contract with Ward Scott  
Architecture for professional architectural and related services for design of Alberta  
Park, as follows:

- Total Basic A/E Fee \$87,017;
- Total Additional Services \$74,360; and,
- Total Reimbursable Expenses \$2,000,

Total Contract Amount: \$163,377 [not to exceed],

by, and as an act for, and on behalf of the City of Tuscaloosa, and the City Clerk is  
authorized to attest the same.

FUNDING REQUIRED:  Yes  No

\$ 1,300,000 Total  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: [Signature]  
Finance Director

COUNCIL ACTION

Resolution ✓  
Ordinance \_\_\_\_\_  
Introduced \_\_\_\_\_  
Passed 8-9-16  
2<sup>nd</sup> Reading \_\_\_\_\_  
Unanimous \_\_\_\_\_  
Failed \_\_\_\_\_  
Tabled \_\_\_\_\_  
Amended \_\_\_\_\_  
Comments \_\_\_\_\_

STATE OF ALABAMA )  
TUSCALOOSA COUNTY )  
CITY OF TUSCALOOSA )

**AGREEMENT TO FURNISH ARCHITECTURAL AND RELATED SERVICES  
TO THE CITY OF TUSCALOOSA, ALABAMA FOR THE DESIGN AND  
CONSTRUCTION OF ALBERTA PARK  
Project No. A15-0757**

**WHEREAS**, the City of Tuscaloosa, Alabama, desires to contract with the Architectural Firm of Ward Scott Architecture, Inc. to provide architectural and related services to the City of Tuscaloosa for the design and construction of Alberta Park (the Project), to be located on City property at 2600 University Boulevard East, in Tuscaloosa, Alabama; and,

**WHEREAS**, the City Council has duly authorized the Mayor to execute such a contract.

**W-I-T-N-E-S-S-E-T-H:**

**NOW, THEREFORE, THIS AGREEMENT** made and entered into on this the 30<sup>th</sup> day of August, 2016 by and between the Firm of Ward Scott Architecture, Inc., a professional architectural corporation, hereinafter referred to as the "Architect," which will provide architectural and related services as hereinafter defined, to the City of Tuscaloosa, a Municipal Corporation, Post Office Box 2089, Tuscaloosa, Alabama, hereinafter sometimes referred to as the "Owner" or as the "City" for a project as hereinafter described and further specified for the consideration set forth herein as follows:

## ARTICLE 1. SCOPE OF SERVICES

The general scope of services as hereinafter more particularly described to be provided on the Project, shall consist of architectural and related services of programming, schematic design, design development, construction documents, bidding, construction supervision, and shall include the following associated professional services: civil engineering, structural engineering, MP/FP engineering, electrical engineering, landscape and irrigation design, construction cost consulting and, as additional services: fountain engineering design, technology engineering design and topographic survey.

The Project (hereinafter also sometimes referred to as the "Alberta Park") is generally described as follows:

### THE ALBERTA PARK

All design services are subject to Owner's approval of design documents as presented and provided herein.

The Owner's budget for construction of the Project is One Million Two Hundred Thousand Dollars (\$1,200,000), not including any fees and/or professional services. Said budget includes a 5% contingency.

## ARTICLE 2. ARCHITECT'S SERVICES AND RESPONSIBILITIES

### A. BASIC SERVICES

#### 1. PROGRAMMING PHASE

The Architect shall provide Programming services (hereinafter sometimes "Services") to identify the programming needs of the Project based upon the Owner's anticipated use of the same and based upon Owner's expectations of the nature, scope and extent of operations of the Project within the Owner's stated budget for the Project.

The Architect will prepare a draft Program (building & site) outlining what spaces are required in the Project, as well as square footage, occupancy, and adjacency requirements of the Project. The Program shall identify each area of the Project and shall consider the following issues: accessibility by the public, crowd flow and control, interaction between the various functions of the Project. Once the Program is complete; the Architect will send it to the Owner for review and comment. Once reviewed by Owner, the Architect will incorporate any comments by the Owner and reissue to the Owner for final review and approval. Once the Program is approved by

the Owner, it will serve as a guide to the Architect for design and construction of the Project. However, if during the course of design it is determined that the approved Program does not coincide with the construction budget for the Project, the Architect shall meet with the Owner to determine appropriate modifications to the approved Program to reconcile it with the construction budget for the Project.

**2. SCHEMATIC DESIGN PHASE**

**a. Preliminary Evaluation:**

The Architect shall provide a preliminary evaluation of the Program and the Project budget requirements, each in terms of the other.

**b. Alternative Approaches:**

The Architect shall review with the Owner alternative approaches to design and construction of the Project.

**c. Documents, etc.:**

Based on the mutually agreed upon Program and Project budget requirements, the Architect shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

**3. DESIGN DEVELOPMENT PHASE**

**a. Generally:**

Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the Program or Project budget, the Architect shall prepare, for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the entire Project as to architectural, structural, mechanical, electrical and related systems, materials and such other elements as may be appropriate.

**b. Statement of Probable Construction Cost:**

The Architect shall submit to the Owner a revised Statement of Probable Cost of constructing the Project, including a detailed estimate of the Cost.

**c. Owner Review:**

Schematic and Design Development documents shall be submitted to Owner's representative.

#### **4. CONSTRUCTION DOCUMENTS PHASE**

**a. Generally:**

Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the Project budget authorized by the Owner, the Architect shall prepare, for approval by the Owner, Construction Documents consisting of, but not limited to the following: Drawings, Construction Contracts and Plans and Specifications setting forth in detail the requirements for the construction of the Project. Contracts shall comply with all applicable provisions of Alabama Law, including but not limited to Ala. Code §39-1-1 et seq., 39-2-1, et seq. and 39-3-1, et seq. (1975). Architect shall also prepare documents of alternate, separate or sequential bids, and shall provide incidental extra services in connection with bidding or negotiation when requested by the Owner.

**b. Owner Review:**

The Architect shall submit four (4) sets of the Construction Documents to the Owner's representative at least two weeks prior to advertising the Project for bidding. At least one such set shall be in Autocad format.

**c. Preparation of Documents, etc.:**

The Architect shall prepare the necessary bidding information, bidding forms, the conditions of the contract and the formal agreement between the Owner and the Contractor subject to the approval of the Owner and City Attorney.

**d. Adjustments to Cost Estimates:**

The Architect shall advise the Owner of any adjustments to previous Statements of Probable Construction Cost indicated by changes in requirements or general market conditions.

**e. Filings:**

The Architect shall have the responsibility for filing documents and obtaining the required approval of governmental authorities having jurisdiction over the Project, including but not limited to the Alabama Building Commission and the U. S. Army Corps of Engineers.

**f. Indemnity:**

The Architect shall be solely responsible for the accuracy and adequacy of the construction documents, including but not limited to plans, specifications and drawings prepared and/or reviewed as part of Architect's services herein. In the event damages are sought or recovered from Owner by any third party based upon, arising from or attributable to, errors, omissions, inaccuracies or inadequacies in the construction documents, including without limitation plans, specifications, drawings, or contracts, then the Architect shall indemnify and hold the Owner harmless there from. If the Architect carries professional liability insurance which covers any damages or loss referred to in this paragraph, then the extent of the Architect's indemnity of the Owner shall be the limits of such professional insurance limits.

**g. Warranties and Guaranties:**

Architect shall include in construction contracts for the Project express warranties and guarantees from contractor(s) in a form substantially as follows:

"The contractor warrants to the Owner and the Architect that all materials and equipment furnished under this contract will be new unless otherwise specified and that all work will be of good quality, free from faults, defects, and in conformance with the contract documents. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective."

"If, within one (1) year from the date of final completion of the work or designated portion thereof, or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the contract documents, any of the work is found to be defective or not in accordance with the contract documents, the contractor shall correct it promptly after receipt of a written notice from the Owner to do so, unless the Owner has previously given the contractor a written acceptance of such condition. This obligation shall survive termination of the contract and shall be in addition to any other remedy at law or equity available to the Owner and/or Architect. The Owner shall give such notice promptly after discovery of the condition."

**5. BIDDING OR NEGOTIATION PHASE**

**a. Generally:**

The ARCHITECT, following the Owner's approval of the construction documents and of the latest statement of probable construction costs, shall prepare and complete all necessary documents, specifications, and contracts for obtaining bids for construction of the Project and submit the same to the Owner for approval or to the Construction Manager for Trade Contractor Bid Package preparation if a Construction Manager is being utilized. The Project shall be bid in accordance with Ala. Code §39-1-1 (1975) et. seq. and Ala. Code §39-2-1 et. seq. (1975).

Note: If the Owner elects to bid the Project in more than one phase, the Architect shall provide the same services set forth herein for each phase.

The Architect shall provide the following Bid Phase Services per Project or per Project phase:

1. Conducting prequalification of Contractors and/or Construction Manager if requested by Owner.
2. Conducting pre-bid conferences.
3. Providing and coordinating bid phase activities including but not limited to the following activities:
  - Preparing and placing advertisements for bids (Cost of advertisement to be paid by Owner) pursuant to Ala. Code §39-2-2(a) (1975).
  - Reproduction, distribution and handling of plans, specifications and Contract Documents to bidders, pursuant to Ala. Code §39-2-3 (1975).
  - Accepting deposits from bidders (not in excess of twice the cost of reproduction and handling) and making refunds of deposits as required by Ala. Code §39-2-3 (1975).
  - Providing 25 copies of Contract Documents for Owner and all State or Federal agencies.
  - Communicating with bidders and addressing questions and issues raised by bidders.
  - Providing technical interpretations.
  - Preparing addenda to specifications or plans.

- Assisting Owner in letting contracts including bid openings, presence at Council Meeting pertaining to the same and opening of bids.
- Promptly analyzing and preparing written tabulations of bid proposals.
- Evaluating and returning bid bonds in accordance with Ala. Code §39-2-4(a) and Ala. Code §39-2-5 (1975).
- Recommending contract award to Owner in writing.
- Notifying low bidder of conditional award in accordance with Ala. Code §39-2-6 (1975).
- Promptly preparing Contract Documents for execution by bidder, presenting to bidder and verifying prior to delivery to the Owner that the same are properly executed with all necessary supporting documents including bonds and insurance, pursuant to Ala. Code §39-2-8 (1975).
- Concluding Owner execution of Contract Documents pursuant to Ala. Code §39-2-9 and issuing notice to proceed pursuant to Ala. Code §39-2-10.

In addition, Architect shall assist the Construction Manager and/or the Owner in obtaining bids, rebids, or negotiated proposals, assist in awarding the bid, and shall assist the Construction Manager and/or the Owner in preparing construction contracts for approval by Owner. Provided, however, the Owner reserves the right to utilize its own construction contracts or insert clauses in those provided by the Architect.

**b. Rebid Cost Bid Exceeds Budget, Revisions, etc.:**

See Article 6, Design within Funding Limitation.

**c. Sole Source Materials:**

In the provision of Bid Phase Services to the Owner, the Architect, if the Scope of Architectural Services or the Project provides for the purchase of materials for the construction, modification, alteration, or repair of any publicly owned facility, shall not specify in any bid document the use of materials or systems by a sole source, unless the Architect, in accordance with Ala. Code §39-2-2(f) and 41-16-57(b) (1975), performs the following:



- Documents to the satisfaction of the City Council that the "sole source" product or service is of an "indispensable" nature, that all viable alternatives have been explored, and it has been determined that only this product or service will fulfill the function for which the product is needed. Frivolous features will not be considered.
- The sole source specification is recommended by the Architect of record and the Architect documents that there is no other product available and that the use of the requirement is of an indispensable nature and why.
- All information substantiating the use of a sole source specification is documented by the Architect in writing and maintained by the Architect and provided to the Owner.
- Complies with all applicable federal regulations.
- The Owner approves.

**6. CONSTRUCTION PHASE - ADMINISTRATION OF THE CONSTRUCTION CONTRACT**

**a. Generally:**

The Construction Phase will commence with the award of the Contract for Construction and, together with the Architect's obligation to provide Basic Services under this Agreement, will terminate (with the exception of the one year inspection) when final payment to the Contractor is due, or in the absence of a final Certificate for Payment or of such due date, sixty (60) days after the Date of Completion of the Work.

**b. Architect, Owner's Representative:**

For the purposes of this agreement, the Architect shall be a representative of the Owner during the construction of the Project and shall advise and consult with the Owner or the Owner's representatives. Generally, with the exception of administering codes, laws and regulations, the Owner's instructions to the Contractor shall be forwarded through the Architect. Provided, Owner reserves the right to communicate directly with Contractor. The Architect shall have authority to act on behalf of the Owner, but only to the extent provided for herein and as provided in the Contract Documents. The Architect shall not have authority to bind the Owner

in any manner that is contrary to any term or condition of this agreement or any other contract to which the Owner is a party.

**c. Architect Duties:**

Although the Architect does not guarantee the performance of the Contractor, it shall be the duty of the Architect (1) to require the Contractor to strictly adhere to the plans and specifications of the Contract Documents, (2) to use his best efforts to secure faithful performance of the contract by the Contractor, (3) to guard the Owner against defects and deficiencies in the work of the Contractors or subcontractors and (4) to promptly advise the Owner verbally and promptly notify the Owner in writing of any significant departure in the quality of the materials or workmanship from the requirements of the plans and specifications. The Architect shall promptly advise the Owner verbally and promptly notify the Owner in writing of any significant problem with the work or of potential claims.

**d. Access to Work:**

The Architect shall at all times have access to the Work wherever it is in preparation or progress.

**e. Certificates of Payment:**

The Architect shall determine the amount owed to the contractor based on inspections at the site and on evaluations of the contractor's application for payment and shall issue certificates of payment in such amounts provided for in the contract documents after verifying in writing to the Owner that the work for which the contractor is requesting payment on the applications has to the best of his knowledge, information, and belief been performed by the contractor, including change orders pursuant to the contract terms and conditions.

The issuance of a Certificate for Payment shall constitute a representation by the Architect to the Owner, based on the Architect's inspections at the site as provided herein and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated; that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents

correctable prior to completion, and to any specific qualifications stated in the Certificate for Payment); and that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Architect has made any examination to ascertain how and for what purpose the Contractor has used the moneys paid on account of the Contract Sum.

**f. Interpretation of Documents:**

The Architect shall be an interpreter of the requirements of the contract documents. In such capacity, the Architect shall render interpretations necessary for the proper execution or progress of the work with reasonable promptness on written request of either the Owner or the contractor, and shall render written decisions within a reasonable time, on all claims, disputes and other matters in question between the Owner and the contractor relating to the execution or progress of the work or the interpretation of the contract documents. However, the City of Tuscaloosa, as Owner, reserves the right to render its own interpretation of the contract documents, and in the event the Architect's and the Owner's interpretations differ, the Owner's interpretation shall prevail.

Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the contract documents and shall be in written or graphic form. The Architect shall endeavor to secure faithful performance by the contractor. The City of Tuscaloosa reserves the right not to be obligated or bound by interpretations or decisions of the Architect.

**g. Ensure Contract Compliance, etc.:**

It shall be the duty of the Architect to require the contractor and all subcontractors to strictly adhere to the contract documents, to exercise its best efforts to guard the Owner against defects and deficiencies in the work of the contractors and subcontractors and to promptly notify the Owner in writing of any significant departure in the quality of the materials or workmanship from the requirements of the plans and specifications and contract documents; however, the Architect does not guarantee the performance of the contracts.

**h. Rejection of Work, Special Inspections, etc.:**

The Architect shall have authority to reject Work which does not conform to the Contract Documents. Whenever, in the Architect's reasonable opinion and with Owner's consent, it is necessary or

advisable for the implementation of the intent of the Contract Documents, the Architect will have authority, subject to Owner's consent, to require special inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work be then fabricated, installed or completed.

**i. Shop Drawings, etc.:**

The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**j. Bid Law, Change Orders, etc.:**

It shall be the responsibility of the Architect to require compliance with the Alabama Bid Law, Ala. Code §41-16-50, et seq., 39-1-1, et seq. and §39-2-1, et seq. (1975), by the contractor and subcontractors, particularly as it relates to change orders. Architect shall determine if a change order is needed in any given case during performance of the contract. If the Owner or the Architect determines that a change order is needed, then the Architect shall prepare any necessary revisions to the plans or specification and a written change order stating all pertinent facts and submit the same for approval by the Owner or Owner's designated representative. All change orders which would increase the contract sum or construction bid price, extend the contract time or materially change the contractor's scope of work or services, are subject to approval by the Owner's City Council.

The Architect shall verify to the Owner or to Owner's designated representative, in writing, that said change orders have been satisfactorily implemented. The Architect may have authority to order minor changes in the work not involving an adjustment in the contract sum or construction bid price, in extension of the contract time or a material change in the contract scope of work or services.

Any construction contract or subcontract to be supervised and administered by the Architect, pursuant to this agreement, shall not contain clauses pertaining to change orders which conflict with the foregoing provisions.

**k. Completion, Inspections, etc.:**

The Architect shall conduct inspections to determine the Dates of Substantial Completion and final completion shall receive and forward to the Owner for the Owner's review written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment.

**l. Extent of Authority:**

The extent of the duties, responsibilities and limitations of authority of the Architect as the Owner's representative during construction shall not be modified or extended beyond the scope as stated herein without written consent of the Owner and the Architect.

**m. Site Observations:**

Administration of the contract by the Architect shall include observations by the Architect, appropriate architectural and engineering professionals and subconsultants who prepared or assisted in the preparation of the plans and specifications for the work on the Project.

In addition, observations by Architect and any subconsultants must be at critical phases of the Project. The Administration of the contract by the Architect is not normally to be construed as meaning the furnishing of continuous inspections unless an on-site representative is desired by the Owner as herein provided. However, the administration by the Architect shall be consistent with the size and nature of the work and must include at least one (1) inspection each week, a final inspection, and an inspection thirty (30) days prior to the end of any guarantee period by the contractor or subcontractors.

For the purpose of this Contract, observations shall mean visual observations of construction and equipment and materials used therein, to permit the Architect to become familiar with and to render professional judgment as to the progress and quality of the Project and to determine if the Project is proceeding in accordance with the contract documents; however, the Architect does not guarantee the performance of the contractor. The observations shall not relieve the contractor, subcontractor, or any other party from its obligations under the contract documents or generally accepted industry custom.

The Architect shall promptly furnish the Owner, and each of the Owner's designated representatives, a copy of the written report of each observations by him or his representative, engineers, or subconsultants.

**n. Required Tests:**

The Architect shall require in the contract documents that the contractor or subcontractors shall perform and furnish structural, mechanical, chemical and other tests (not construction testing), inspections and reports as required by law, manufacturers, or the contract documents, and Architect shall inform Owner of such required tests, inspections and reports. Owner may elect to contract separately for construction testing.

**B. ADDITIONAL SERVICES**

With the exception of significant Change Order services in Section B.5, the following additional services shall be provided only if authorized or confirmed in writing by the Owner or compensation is provided for the services in this agreement or as agreed between the parties at that time in addition to the compensation for Basic Services. The Owner shall advise Architect if such additional services are desired.

**1. Future Facilities:**

Providing services relative to future facilities, systems and equipment which are not intended to be constructed during the Construction Phase.

**2. Coordination of Work:**

Providing coordination of Work performed by separate contractors or by the Owner's forces.

**3. Separate Consultants:**

Providing services in connection with the work of a construction manager or separate consultants retained by the Owner.

The following services will be considered Additional Services:

- Topographic Survey. The estimated fee for this service is \$1,200.00
- Fountain Engineering. The estimated fee for this service is \$45,000.00
- Fountain Engineering Additional Services (Bidding/CA). The

estimated fee for this service is \$2,400.00

- Landscape Design. The estimated fee for this service is \$9,000.00.
- Datacom Design. The estimated fee for this service is \$10,000.00

**4. Substantial Post Approval Revisions:**

Making revisions in Drawings, Specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents or are due to other causes not solely within the control of the Architect.

**5. Significant Change Order Services:**

Preparing Drawings, Specifications and supporting data and providing other services in connection with routine change orders are included within compensation for basic services and are not an additional service. Provided; however, providing such services in relation to significant Change Orders to the extent that the Basic Compensation is not commensurate with the services required of the Architect is considered an Additional Service, provided such Change Orders are required by causes not within the control of the Architect and are not attributable in whole or in part to the Architect. A significant Change Order is generally a single Change Order that in itself exceeds 2.5% of the construction cost. The Architect shall be compensated for significant Change Orders by the amount of work effort based on the Architect's hourly rate schedule.

**6. Owner Construction Services:**

Making investigations, surveys, valuations, inventories or detailed appraisals of existing facilities, and services required in connection with construction performed by the Owner.

**7. Replacement Work:**

Providing consultation concerning replacement of any Work damaged by fire or other cause during construction, and furnishing services as may be required in connection with the replacement of such Work.

**8. Services Due to Contractor's Default:**

Providing services made necessary by the default of the Contractor, or by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for

Construction, unless such defects or deficiencies are attributable in whole or in part to Architect.

**9. Extensive Equipment Assistance, etc.:**

Providing extensive assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

**10. Post Final Payment Services:**

Providing services after issuance to the Owner of the final Certificate for Payment, except as provided herein.

**11. Expert Witness:**

Preparing to serve or serving as an expert witness in connection with any public hearing, arbitration proceeding or legal proceeding, except as otherwise provided herein.

**12. Other Services:**

Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.

**13. Models, mockups, etc.:**

Providing models and/or mockups and renderings of the Project.

**14. Site Evaluations, etc.:**

Providing planning surveys, site evaluations, environmental studies or comparative studies of prospective sites and preparing special surveys, studies and submissions required for approvals for governmental authorities.

**15. Estimates of Operation Cost, etc.:**

Providing detailed estimates of construction cost, analyses of owning and operating costs, or detailed quantity surveys or inventories of equipment, material and labor.

**16. Special Tests, etc.:**



Preparing special surveys, environmental studies and submissions required for approval of governmental authorities having jurisdictional authority over the Project.

**C. TIME**

The Architect agrees to complete all services required by this agreement within the following time periods unless otherwise extended in writing by the Owner. Time is of the essence. Owner will not unreasonably withhold its agreement to extend the time if the circumstances require such so long as the necessity for such an extension is not attributable to the Architect:

**1. Programming Phase:**

Architect will complete and submit all items required for the Programming Phase by NA

**2. Schematic Design Phase:**

Architect will complete and submit all items required for the Schematic Design Phase by 30 days.

**3. Design Development Phase:**

Architect will complete and submit all items required for the Design Development Phase by 30 days.

**4. Construction Document Phase:**

Architect will complete and submit all items required for Construction Document Phase for site work and foundations by 30 days, and for the remainder of the Project by \_\_\_\_\_.

**5. Bidding Phase:**

Architect will complete and submit all items required for Bid Phase of the Project by 45 days.

**6. Construction Time:**

There is a four (4) month construction schedule for the entire Project with an anticipated and expected substantial completion date of \_\_\_\_\_ and final completion on \_\_\_\_\_.

**7. Construction-Administration-Supervision Phase:**

Architect must complete all services required by the terms of this agreement for the administration and supervision of the construction project or work within the time period for the construction contract.

**8. Additional Services:**

Additional services shall be completed at the appropriate time when needed within the framework of the basic services.

**D. LIQUIDATED DAMAGES**

The Architect shall substantially complete work on the Project as enumerated herein. The Architect agrees to pay the Owner liquidated damages in the sum of Two Hundred Fifty (\$250.00) Dollars per business day beyond the specified date that the work on any phase of the Project remains substantially uncompleted, unless the parties agree to an amendment to this contract or unless the delay is no fault of the Architect.

**E. GENERALLY**

**1. Numbering Documents:**

All plans prepared by the Architect or any or professional engineering consultants for all phases shall be separately identified by title, sheet number and official registration seal or signature and administration number. Architect drawings shall not be combined with other drawings unless deemed to be in the 'incidental' category.

**2. Revisions to Drawings:**

All revisions to the Plans or Drawings by the Architect must be issued on full size paper with the changes marked by a number. If a page in the specifications Book is revised then a complete new sheet with the changes marked by a revision number must be issued.

**3. Subconsultants:**

Designated herewith (as applicable) are the subconsultants or associates of the Architect:

Civil Engineer:

Bradley, Porter., P.E.  
Walker Associates, Inc.  
2890 Rice Mine Road, NE  
Tuscaloosa, Alabama 35406

Mechanical Engineer

Lee Stegall, PE, AL #22530  
Smith, Stegall & Associates, PC  
2110 Eighth Street  
Tuscaloosa, Alabama 35401

Electrical Engineer

Randy Smith, PE, AL #18245  
Smith, Stegall & Associates, PC  
2110 Eighth Street  
Tuscaloosa, Alabama 35401

Fountain Engineer

Josh Martin  
Aquatic Design & Engineering  
189 South Orange Avenue, Suite 1220  
Orlando, Florida 32801

Technology Engineer

Tim Lewis  
TALA Professional Services  
1116 20<sup>th</sup> Street South #306  
Birmingham, Alabama 35205

Landscape Architect

Dale Fritz, AL #335  
Dale Fritz & Associates, Inc.  
5815 5<sup>th</sup> Terrace South  
Birmingham, Alabama 35212

No changes will be made in consultants designated without prior written consent of the Owner.

**F. PERSONNEL**

1. The Architect agrees to assign experienced and competent professional personnel to provide the services to the Owner pursuant to this agreement. The Architect represents to Owner that the following persons are so qualified and are assigned to this Project or, with the consent of Owner's representative, individuals with similar experience and qualifications:

Project Principal Consultant: Kimberly McMurray, AIA

Project Manager: Jordan Morris, AIA

2. The Owner's designated representative for services in this contract shall be Clif Penick, Director Facilities Maintenance, City of Tuscaloosa, 2201 University Blvd., Tuscaloosa, AL, 35401, (205) 233-2667
3. All notices, bills, invoices and reports required by this agreement shall be sufficient if sent by the parties hereto in the United States Mail, postage prepaid thereon to the addresses noted below:

Owner: Mr. Clif Penick  
City of Tuscaloosa  
Post Office Box 2089  
Tuscaloosa, Alabama 35403-2089

With a copy to: n/a  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Architect represents and warrants to the City that its Project Principal Consultant, Project Manager and the principle performance of services by Architect pursuant to the terms and conditions of this agreement shall not be changed without the prior written consent of the City's representative.

### ARTICLE 3. THE OWNER'S RESPONSIBILITIES

#### A. GENERALLY

The Owner has provided herein the information regarding requirements for the Project which set forth the objectives, constraints and criteria, including space requirements and relationships, and expandability, special equipment and systems and site requirements. If the Architect requires further information, he shall make inquiry to the Owner's representatives.

#### B. BUDGET

The Owner's budget for construction cost (estimated construction contract price) including a 5% contingency and excluding all fees is One Million Two Hundred Dollars (\$ 1,200,000.)

#### C. OWNER DESIGNATED REPRESENTATIVE

The Owner's designated representative is authorized to act in the Owner's behalf in certain circumstances with respect to the Project. Depending upon the circumstances, the Owner or such authorized designated representative shall examine the documents submitted by the Architect and shall render decisions pertaining thereto promptly to avoid unreasonable delay in the progress of the Architect's services to the extent not in conflict with other provisions herein.

**D. NOTIFICATION OF FAULTS**

If the Owner observes or otherwise becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents, prompt written notice thereof shall be given by the Owner to the Architect.

**E. TIMELY DECISIONS**

The Owner shall endeavor to furnish required information and services and shall endeavor to render approvals and decisions within a reasonable period of time as possible for the orderly progress of the Architect's services and of the Work.

**ARTICLE 4. ARCHITECT'S RECORDS**

Records of Reimbursable Expenses and expenses pertaining to additional services and services performed shall be kept on the basis of generally accepted accounting principles and shall be available to the Owner or the Owner's authorized representative during normal business hours.

Architect shall maintain complete and accurate records with respect to all matters performed pursuant to this agreement. The City shall have free access at all proper and reasonable times to such records and the right to examine and audit the same and to make transcripts there from and to inspect all program data, documents, proceedings and activities of Architect in regard to the Project. Such inspection shall not be in violation of confidentiality guarantees as elsewhere provided herein.

**ARTICLE 5. OWNERSHIP AND USE OF DOCUMENTS**

**A. REPORTS, INTELLECTUAL PROPERTY AND OWNERSHIP OF DOCUMENTS**

**Periodic Reports:** Architect shall, at such time and in such format as the City's representative may require, furnish such periodic reports concerning the status of the Project as may be requested by the City's representative. During the course of providing services, the Architect shall furnish the City, upon request, with copies of all documents and other materials prepared and developed in relation with or as part of the Project. Such a request shall be reasonable and within normal business practices for such work.

**Final Plans and Reports:** The final plans, drawings, specifications, periodic reports, final reports or other documents generated by the Architect as instruments of service pursuant to this agreement, are considered work made for hire and shall be the property and intellectual property solely of the City of Tuscaloosa as Owner. As instruments of service such documents may be used by the Owner in subsequent phases of the Project or program which is the subject of this Agreement, for future improvements, repairs or expansions of and connections to the Project or program, on subsequent projects or programs utilizing in whole or in part information or data in the instruments of service of the Architect and also for reference and other information on other projects or programs all without any further compensation to or approval by the Architect. The Owner may also make submissions or distributions of any such instruments of service of the Architect to meet official regulatory requirements or for other purposes in connection with the operations or business of the Owner without any further compensation to or approval by the Architect. The Architect shall take the necessary measures to insure that the Owner has the same rights regarding all subconsultants' instruments of service.

**City Logo and Name:** The Architect shall not use the City of Tuscaloosa's name or insignia or logo in any magazine, trade paper, newspaper, advertisement or other medium without first obtaining the written consent of the Owner.

**Critical Infrastructure information:** Pursuant to Ala. Code §36-12-40 (1975) as amended by Acts of Alabama 2004-487, neither the Architect, its officers, agents, employees nor any subconsultant, shall at any time allow the dissemination or copying of any information exempted from public disclosure by this section and Tuscaloosa City Code §2-4(d) which specifically provides the location of critical infrastructure or critical energy infrastructure as defined in 42 U.S.C. §5195c(e) and 18 C.F.R. §388.113(c)(1), as amended, belonging to or provided to the Owner.

**Ownership of Non Instruments of Service:** With the exception of instruments of service as previously identified herein, the parties acknowledge and agree that the intellectual property of either party shall remain the property of the respective party. This includes intellectual property developed by the Architect during the course of this agreement such as working papers which include, but are not limited to, preliminary drawings and sketches, calculations, proprietary techniques, procedures or programs, project notes, memoranda, non-owner correspondence, etc., developed or employed in the performance of services to the Owner which shall belong exclusively to the Architect or its subconsultants. The Architect shall clearly mark and identify any such documents or materials that are not instruments of service it deems intellectual property and/or copyrighted information. To the extent they are identified as such, the Owner will take steps reasonably necessary with its employees with respect to the use, copy, protection, and security of such intellectual property of Architect.

Provided, however, the Owner is granted a perpetual license by Architect to utilize any of such Architect's intellectual property or copyrighted material in its possession for and on behalf of its internal operations, as well as maintenance, construction and repair of the Project which was the subject of the agreement or in reference to any program developed or implemented utilizing the services of the Architect pursuant to this agreement without further approval or compensation to the Architect. Such license also extends to the right of the Owner to utilize such intellectual property or copyrighted material during the course of any judicial, mediation, arbitration, or administrative proceeding, regardless of whether the matter concerns Architect or the services or Project to which this agreement pertains. The Owner's license also extends to making submissions or distributions of such intellectual property or copyrighted material of Architect to meet official regulatory or statutory requirements or for other purposes in connection with the Project or program and future improvements, repairs or expansions of and connections to the Project. Any of such submissions or distributions or usage of Architect's intellectual or copyrighted material shall not be an infringement and shall not be construed as publication or use in derogation of the Architect's rights.

**B. STATE AND FEDERAL LAWS AND REGULATIONS**

The Scope of Services as defined herein and as provided by Architect are based upon those federal and state laws, regulations or requirements in effect on the date of execution of this agreement. State or federal laws, regulations or requirements enacted or promulgated after the date of said execution shall automatically be incorporated by Architect into the Scope of Services to the extent applicable.

**C. CONFIDENTIALITY**

All ideas, memorandums, specifications, plans, manufacturing procedures, drawings, descriptions, and all other written information, drawings, maps and documents submitted to the Architect in connection with the performance of this Agreement shall be held confidential by the Architect and its subconsultants, and shall not, without the prior written consent of the Owner, be used for any purpose other than the performance of the Project, nor be disclosed to any entity not connected with the performance of this Project. Nothing furnished to the Architect, which is otherwise known to the Architect or is, or becomes, generally known to the related industry, shall be deemed confidential.

**D. CONFLICTS OF INTEREST**

The Architect represents and warrants to the Owner that neither it nor any of its subconsultants are aware of any conflict of interest which exists or could arise by means of its provision of services to the Owner pursuant to the terms and conditions of this agreement. This is an exclusive personal service agreement and Architect will not represent the interest of any other person, firm or entity that conflicts with the interest of the Owner in regard to the subject matter of this

agreement or the performance of services pursuant to the terms and conditions hereof.

It is understood by and between the parties hereto that neither the Architect, nor any of its officers, agents or employees nor any sub consultant to the Architect nor any subsidiary, parent entity, principal officers nor any entity having a beneficial interest in any of the same, may submit a bid or proposal in response to any request for proposals or advertisement for bids resulting from the services provided in whole or in part pursuant to this agreement.

**E. PUBLICATIONS**

Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's rights.

**F. RECORD DRAWINGS, ETC.**

The Architect shall require in the contract documents that the Contractor furnish the Owner two (2) complete record sets of plans and specifications of the Project, as finally constructed, with all corrections, provisions and changes clearly shown thereon (one set of a permanent nature on CD or disk, as appropriate, compatible with City software and hardware systems, and the other to be a "blue line print") and two (2) complete sets of specifications to which shall be attached copies of all addenda, contract change orders and modifications. The record document shall be delivered to the Owner immediately after final inspection and before final Architect's fee is paid.

**G. OWNER'S USE**

Should the Project or the services of the Architect as herein agreed be terminated upon completion of the services or any phase or portion thereof, the Architect shall immediately deliver, unless requested by Owner to postpone delivery until so requested, ten (10) sets of plans and specifications. The Owner shall be entitled and shall have the right to use these drawings, plans and specifications, with or without modification, and without further compensation to the Architect for the construction of all or any part of the Project. The Owner may utilize such drawings and specifications for subsequent expansion, enlargement, improvement, repair or modification to the building. Provided; however, the Owner shall not hold the Architect liable for any such subsequent use of the Plans and Specification and agrees to hold the Architect harmless therefrom.



## **H. OWNER-FURNISHED DATA**

That, the Owner shall provide to the Architect all technical data in the Owner's possession, including previous reports, maps, surveys, and all other information in its possession that the Architect informs Owner's representative is needed and relating to the Architect's work on the Project. Such information shall include, but not be limited to, the Owner's requirements for the Project, and any criteria or constraints known to Owner. Unless otherwise indicated by the Owner, the Architect may reasonably rely upon the adequacy of the information provided by the Owner in performing Architect's services to the Owner, subject to the same recognitions and caveats applicable to Architect's information as provided herein at Article 4. B. and with the further recognition that the Owner is not responsible for the adequacy or accuracy of information and/or data prepared or supplied by third parties.

## **I. OWNERSHIP OF CONTRACT DOCUMENTS**

This contract and the construction contract documents, and copies of parts thereof, are furnished and owned by the City. All portions and copies of parts thereof, are the instruments of serve for this Project. They are not to be used on other work and are to be returned to the City on request at the completion of the work. Any reuse of these materials without specific written verification or adaptation by the City will be at the risk of the user and without liability or legal expense to the City. Such user shall hold the City harmless from any and all damages, including reasonable attorneys' fees, from any and all claims arising from any such reuse. Any such verification and adoption shall entitle the City to further compensation at rates to be agreed upon by the user and the City.

## **ARTICLE 6. DESIGN WITHIN FUNDING LIMITATIONS**

- A.** The Architect shall accomplish the design and all related services required under this contract so as to permit the award for the construction of the Project at a price that does not exceed the estimated construction contract price as set forth herein. When bids or proposals for the construction contract are received that exceed the estimated price, the Owner shall analyze the reasons for the excessive prices and, if appropriate, the Architect shall perform such redesign and other services as are necessary to permit rebidding and contract award within the funding limitation of the Budget amount.
  
- B.** In the event the total of the lowest bid(s) received by Owner for the Project exceeds the estimated construction contract price for the Project, the Architect agrees to make such revisions and changes to the plans and specifications necessary to reduce the cost of the Project to an amount not in excess of the

funds allocated by the Owner for the Project and will perform the incidental work and furnish the number of necessary documents as required by the agreement.

The Architect will be compensated pursuant to the terms and conditions of this agreement for revising plans and specifications at its hourly rate (attached hereto as Exhibit "A"); if the bid overrun does not exceed fifteen percent (15%) of the Architect's estimated construction contract price for the Project (Budget), and provided that the bid overrun is not attributable to the Architect. If the bid overrun exceeds fifteen percent (15%) of the Architect's estimated construction contract price for the Project or the bid overrun is attributable to the Architect, the Architect will revise the plans and specifications at no cost to the Owner.

- C. The Architect will promptly advise the City Representative if it at anytime finds that the Project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within these limitations. Upon receipt of such information, the City representative will review the Architect's revised estimate of construction cost. The Owner may, if it determines that the estimated construction cost contract price set forth in this contract is so low that award of a construction contract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth herein.
- D. **Effect of Bid Delay:** If the Bidding or Negotiation Phase has not commenced within six (6) months after the Architect submits the Construction Documents to the Owner, any Project budget or fixed limit of Construction Cost may be adjusted to reflect any change in the general level of prices in the construction industry between the date of submission of the Construction Documents to the Owner and the date on which proposals are sought.

## **ARTICLE 7. BASIS OF COMPENSATION**

The Owner shall compensate the Architect for the Scope of Services provided in accordance with the terms and conditions of this Agreement, as follows:

- A. **Basic Compensation:**

FOR BASIC SERVICES, as described in Article 1 and 2 "A":

The Architect shall receive a total payment in the sum of Eighty-Seven Thousand Seventeen Dollars and Zero Cents (\$87,017). Payment shall be in increments as indicated in subsection B below.

- B. Payments for Basic Services shall be made as provided in Subparagraph A of this Article, so that Basic Compensation for each Phase shall equal the following percentages of the total Basic Compensation payable:

Programming Phase:	percent (0%)
Schematic Design Phase:	percent (15%)
Design Development Phase:	percent (25%)
Construction Documents Phase:	percent (35%)
Bidding or Negotiation Phase:	percent (5%)
Construction Phase:	percent (20%)

The total cost to the Owner for Basic architectural services as described in Article 1 and 2 A, shall be the sum as specified herein above.

C. Compensation for Additional Services:

With the exception of significant Change Orders for additional services of the Architect, authorized by the Owner as Additional Services, and any other additional services enumerated in Article 2 B. "Additional Services" for which compensation is provided for separately, compensation for any additional service shall be at the Architects hourly rate as stated in Exhibit A attached hereto an adopted herein by reference. Payment of reimbursable expenses or expenses or fees for additional services or services of other consultants for which a separate fee or reimbursable expense is provided shall not increase the Architect's fee for basic services as set forth in Article 7, Section A. Basis of Compensation.

D. Invoices:

The Architect shall invoice the Owner for services rendered monthly. The invoice format will be to the satisfaction of the Owner. If payment of the amounts due, or any portion thereof, on any particular invoice, is not made by the Owner within thirty (30) days of receipt of billing, interest on the unpaid balance thereof will accrue at the rate of 1 1/2% per month and become due and payable at the time said overdue payments are due unless delay in payment is due to the improper, contested or inadequate billing procedures followed by the Architect. In the event of disputed or contested billing, only that portion so contested shall be withheld, and the undisputed portion shall be paid in accordance with the payment provisions outlined herein. The Owner shall exercise reasonableness in contesting any bill or portion thereof. Where usury limits are less than the stated interest rate above, the maximum lawful interest rate shall apply to the unpaid balance.

The Owner has the right to ask for clarification on any Architect's billing within thirty (30) days of the billing. Until said clarification is issued, no interest will accrue. In the event payment for services rendered has not been made within sixty (60) days from receipt of the invoice for any uncontested billing, the Architect may, after giving seven (7) days' written notice to Owner and without penalty or liability of any nature, suspend all work involved in that particular phase to which the billing relates. Under no circumstances shall the Architect be entitled to payment for services which have not as yet been rendered, or when Architect services have not

been fully rendered for which a billing has been made, the Owner shall have the right to deduct from any payment to Architect liquidated damages.

- E. The Owner and the Architect agree in accordance with the Terms and Conditions of this Agreement that if the scope of the Project or if the Architect's services are changed materially, the amounts of compensation may be equitably adjusted through negotiation between the parties.
- F. If the services covered by this Agreement have not been completed within one (1) year after the scheduled completion of the Project, through no fault of the Architect, the amounts of compensation, rates and multiples set forth herein may be equitably adjusted.
- G. The scope and extent of architectural services to be provided under this agreement does not include the cost of the architect for required requested assistance to support, prepare, document, bring, defend or assist in litigation undertaken or defended by the Owner, except for suits or claims between the parties to this Agreement. However, documents, studies, and other data or information otherwise resulting from the performance of this Agreement or amendment thereto by the Architect, may be utilized by the Owner in bringing, defending, or otherwise assisting in litigation undertaken or defended by the Owner without any additional cost to the Owner.

All such services required or requested by the Owner or the Architect will be provided and shall be paid for on a cost reimbursable basis to be negotiated between the parties.

## **ARTICLE 8. REIMBURSABLE EXPENSES**

### **A. GENERALLY**

Reimbursable expenses are in addition to the compensation for basic and additional services and include direct expenditures made by the Architect and Architect's employees and consultants, in the interest of the Project for the expenses listed in the following subsections only, with the prior written consent and approval of the Owner or the Owner's designated representative. Payment of reimbursable expenses or expenses or fees for additional services or services of other consultants for which a separate fee or reimbursable expense is provided shall not increase the Architect's fee for basic services as set forth in Article 7 Section A. Basis of Compensation.

### **B. FEES**

Fees paid for securing approval of authorities having jurisdiction over the Project.

**C. REPRODUCTIONS**

Expenses of reproductions, postage and handling of drawings, specifications and other design or bid documents excluding reproductions for the office use of the Architect and Architect's consultants and reimbursement of refunds of contract documents, not to exceed a total amount of \$2,000.00 Maximum cost limitation.

- D. If authorized in advance by Owner, expense of data processing and photographic production techniques when used in connection with Additional Services.
- E. If authorized in advance by the Owner, expense of overtime work requiring higher than regular rates.

**F. TRAVEL EXPENSES**

All travel expenses incurred shall be reasonable and directly associated with the work of the Architect pursuant to this contract. Expenses shall include, travel cost such as airfare, public transportation (taxi, bus, train, or car rental) tolls and parking charges, travel time, lodging and meals while traveling for activities by Architect and for meetings with Owner staff and officials. Additional reimbursable expenses include miscellaneous costs incurred and directly associated with such travel of the Consultant pursuant to this agreement, including telephone, fax (\$1.00 per page maximum), postage or shipping charges. All mileage will be at \$0.51 per mile from Consultant's offices to local airport or other incurred personal mileage in private vehicle. Provided; however, Consultant may elect to receive a per diem allowance of a maximum of \$50.00 per day for all travel expenses other than airfare, reproduction cost and car rental mileage, in lieu of reimbursement and accounting for actual expense.

The sum of \$2,100.00 is hereby established as the budgetary maximum for expenses which will not be exceeded except by mutual written agreement of the parties.

Travel time associated with the performance of services in this agreement is included in the basic fee and is not included in the maximum cost for expenses.

**Note:** There are to be no travel expenses charged by Architect to Owner for time or travel expenses from Architect's offices to Tuscaloosa.

## **ARTICLE 9. MATTERS AFFECTING PAYMENTS TO ARCHITECT**

### **A. PAYMENTS FOR BASIC SERVICES**

Payments for Basic Services shall be made monthly and shall be in proportion to services performed within each phase of services, on the basis set forth in the article relating to compensation.

### **B. EXTENSION OF CONTRACT TIME**

If and to the extent that the Contract Time initially established in the Contract for Construction is exceeded or extended for a period of at least one hundred twenty (120) days through no fault of the Architect, compensation for any Basic Services required for such extended period of Administration of the Construction Contract may be equitably adjusted as agreed between the parties.

### **C. PERCENTAGE, DELETIONS**

If any portion of the Project is deleted or otherwise not constructed as planned, compensation for such portions of the Project shall be payable to Architect only to the extent services are performed on such portions, in accordance with the percentage set forth in Article 7, based on (1) the lowest bona fide bid or negotiated proposal or, (2) if no such bid or proposal is received, the most recent Statement of Probable Construction Cost or Detailed Estimate of Construction Cost for such portions of the Project.

### **D. PAYMENTS FOR ADDITIONAL SERVICES**

Payments on account of the Architect's Additional Services as defined in Article 2.B. and for Reimbursable Expenses as defined in Article 8 shall be made monthly upon presentation of the Architect's statement of services rendered or expenses incurred if such services are approved by the Owner.

### **E. PAYMENTS WITHHELD**

With the exception of final payment to the Architect for the Construction Phase, no deduction shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors or on account of the cost of changes in the work other than those for which the Architect is responsible in whole or in part.

**F. UNDER ESTIMATE OF CONSTRUCTION COST**

The Architect acknowledges that the Owner's agreement to the compensation amounts set forth herein was derived in part from either the Owner's budget for the Project or the Architect's estimate of construction cost. In any event, if the total bid award for construction of the Project is more than 15% less than said estimate or Owner's Budget within which Architect was to design the Project, the Owner may elect to adjust or receive a refund from Architect in an amount equal to the percentage excess beyond 15% of the bid award of the Architect's maximum payment. See Article 2.4.b. for rebid provisions.

**G. PROJECT COMPLETION, FINAL PAYMENT, ETC.**

Upon satisfactory completion of construction work and its final acceptance by the Owner, the Architect shall be paid any unpaid balance of fee due hereunder. Prior to such final payment under this contract or prior to settlement upon termination or abandonment of the contract, and as a condition precedent thereto, the Architect shall deliver to the Owner all required guaranties, record drawings, and close out documents.

**H. DESIGN ERRORS AND DEFICIENCIES**

The Contract Documents as prepared by the Architect and all subconsultants shall be complete and meet the standard of care in the southeastern United States for that profession. If a component or portion of the Project is incorrectly designed or omitted from the Contract Documents prepared by the Architect for the Project including those of any subconsultant to the Architect due to the negligence of the Architect or any subconsultant of the Architect, the Architect will not be held liable to the Owner to the extent of any "Betterment" or added value to the Project to correct or add the omitted component. Specifically, the Owner will be responsible for the amount it would have paid to the Contractor on the Project for the portion or component if it had been correctly designed or included in the Contract Documents initially at time of bidding. Provided; however, the Architect will be responsible for any demolition, tear out, retrofit expense, waste, consequential damages to Owner, delay claims from third parties, any intervening increase in the cost of the portion or component and a presumed "premium" of 5% of the cost of the construction or reconstruction of the portion or component.

If the Architect's designs, drawings or specifications (Contract Documents) contain omissions, errors or deficiencies, the Architect shall correct the same at no increase in price to the Owner.

## ARTICLE 10. INSURANCE

The Architect shall secure and maintain throughout the duration of this contract insurance of such type and in such amounts as may be necessary to protect interest of the Owner against hazards or risk of loss as hereinafter specified. The underwriter of such insurance shall be qualified to do business in Alabama. The certificate of insurance shall contain a provision that not less than ten (10) days written notice shall be given to the Owner before any policy or coverage is canceled. Without limiting the requirements hereinafter above set forth, the insurance coverage shall include a minimum of:

### A. WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE

Worker's compensation and employer's liability insurance, to the extent required by the State of Alabama.

### B. COMPREHENSIVE AUTOMOBILE AND VEHICLE LIABILITY INSURANCE

This insurance will be written in comprehensive form and shall protect the Architect and the Owner against claims for injuries to members of the public or damages to property and others arising from Architect and Architect's officers, agents and employee's use of motor vehicles or any other equipment and shall cover operation with respect to on-site and off-site operation under this agreement, and insurance coverage shall extend to any motor vehicles or other related equipment, irrespective of whether the same is owned, non owned or hired. The limits of liability shall not be less than Five Hundred Thousand (\$500,000.00) Dollars Combined Single Limit.

### C. COMMERCIAL GENERAL LIABILITY INSURANCE

This insurance shall be written in comprehensive form and shall protect the Owner and Architect against claims arising from injuries to members of the public, City employees or damage to property of others arising out of any act or omission of the Architect, or any of its agents, employees or subcontractors. The limit of liability shall not be less than Five Hundred Thousand (\$500,000.00) Dollars Combined Single Limit.

### D. PROFESSIONAL LIABILITY INSURANCE

Professional liability insurance coverage in an amount not less than \$1 million and subconsultants shall provide similar insurance limits commensurate with their work.



**E. OWNER AS ADDITIONAL NAMED INSURED**

The insurance coverage as is specified above shall constitute minimum requirements and the Owner, its officers, agents and employees, shall be named as an additional insured in the insurance coverage as identified in B and C.

- F.** The Architect shall also require through the contract documents that the general contractor and subcontractors secure and maintain throughout the duration of the contracts, insurance of such types and amounts as may be necessary to protect the interest of the Owner against liability and hazards and risk of loss as specified above in Subsections A, B and C under similar terms and conditions as that insurance required of the Architect herein.

**ARTICLE 11. TERMINATION OF AGREEMENT**

**A. TERMINATION**

1. That this Agreement may be terminated by the Owner for its convenience by giving thirty (30) days' written notice to the Architect.
2. This Agreement may be terminated by the Architect upon thirty (30) days' written notice to the Owner, but only if the Owner should substantially fail to perform in accordance with this Agreement through no fault of the Architect or if the performance of the Scope of Services by the Architect is stopped by conditions beyond the control of the Architect. Failure to perform includes failure of Owner to promptly pay the Architect in accordance with Article 3.
3. In the event of termination, the Architect shall be paid in full for all work previously authorized and performed up to the termination date, if the Architect delivers to the Owner all instruments of service completed or partially completed by the date of termination.
4. If no termination is implemented, relationships and obligations created by this Agreement shall terminate upon completion of all applicable requirements of this Agreement.
5. **Loss of Grant Funds:** It is understood and agreed to by and between the parties that to the extent any of the compensation to Architect is payable by Owner from the proceeds of a Grant, if the Owner loses its eligibility to receive or continue to receive Grant funds or for any reasons the Owner no longer can receive or obtain Grant funds, then the Architect agrees it shall immediately terminate the provision of any services on the Project upon notification from the Owner of this fact. While the Owner shall compensate the Architect for services rendered and expenses incurred, it will not be

liable to Architect or any of Architect's subconsultants for any services rendered subsequent to the date of notice, nor will the loss of Grant funds and termination of services constitute the basis of any claim whatsoever against Owner by Architect. Provided; however, if the Owner loses Grant funding due to a failure of the Architect or any of Architect's subconsultants failure to perform services, then Architect shall be liable to Owner for all such Grant funds and shall refund to Owner any compensation and expenses paid by Owner for such services.

**B. SUSPENSION, DELAY OR INTERRUPTION OF WORK**

That, the Owner may suspend, delay or interrupt the work of the Architect on the Project for the convenience of the Owner or for reasons beyond the control of Owner or Architect. In the event of such suspension, delay or interruption, an adjustment in compensation may be made for all increases in costs of the Architect's performance under this Agreement.

**ARTICLE 12. GENERAL LEGAL PROVISIONS**

**A. LEVEL OF COMPETENCE**

Architect represents to Owner that it and all subconsultants are fully qualified and competent to perform all services required herein. To that end, Architect shall be responsible, to the level of competence presently maintained by other practicing architects in the Southeastern United States, for the professional adequacy and accuracy of all work to be performed under this agreement. If Architect employs any subconsultants, Architect shall employ as subconsultants competent professional engineering and architectural consultants registered in the State of Alabama where needed, subject to the same standard, to assist it to fulfill the terms of this Agreement.

**B. NON-DISCRIMINATION AND COMPLIANCE**

The Architect hereby covenants and agrees that in performing its responsibilities and obligations hereunder, the Architect and its subconsultants will not, on the grounds of race, color, sex, religion, national origin, or disability, discriminate or permit discrimination against any person or group of persons, in any manner. The Architect further agrees to comply with all applicable state and federal ordinances and regulations, including but not limited to the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Civil Rights Act of 1964, and any regulations promulgated thereunder.

**C. TIMELY REVIEW**

The Owner, through its designated representative, shall examine all studies, reports, proposals and other documents presented by Architect, obtain advice of an attorney, insurance counselor, accountant, auditor, City Council, Mayor and other consultants as it deems appropriate for such examination, in a timely manner so as not to delay the services of the Architect.

**D. ADVERTISEMENTS, PERMITS AND ACCESS**

The Owner shall be responsible for and pay for all costs of publishing advertisement for bids and for obtaining permits and licensing that may be required by local, state or federal authorities and shall secure the necessary land, easements, and rights-of-ways and shall provide access as necessary for the Architect to perform his services as required.

**E. ATTACHMENTS**

That, the following are attached hereto and adopted herein by reference:

Exhibit A.	Architects Hourly Rate
Exhibit B.	NA
Exhibit C.	NA

In the event of a direct conflict between any attachment and the terms of this agreement, the latter shall prevail over the former.

**F. INDEMNITY**

Architect agrees to indemnify and hold harmless the Owner and its officers, agents and employees from any claim, suit, civil action, damages, judgment, or liability of whatever nature, which arises out of any of the following and which is not caused in whole or in part by the negligence or wantonness of the Owner:

1. Negligence by the Architect resulting in or proximately causing death, injury or property damage to Architect or any officer, agent, or employee of Architect;
2. Any negligence or other culpable act or omission by Architect or any of Architect's officers, agents or employees; and/or,
3. Architect's negligent performance under this Contract or any work incidental thereto.

## **G. CAPACITY**

Each Party to this agreement represents and warrants to the other as follows:

1. That it is an individual of the age of majority or otherwise a legal entity duly organized and in good standing pursuant to all applicable laws, rules and regulations.
2. That each has full power and capacity to enter into this agreement, to perform and to conclude the same including the capacity, to the extent applicable, to grant, convey and/or transfer; areas, assets, facilities, properties, (both real and personal), permits, consents and authorizations and/or the full power and right to acquire and accept the same.
3. That to the extent required, each Party has obtained the necessary approval of its governing body or board and a resolution or other binding act has been duly and properly enacted by such governing body or board authorizing this agreement and said approval has been reduced to writing and certified or attested by the appropriate official of the Party.
4. That each Party has duly authorized and empowered a representative to execute this agreement on their respective behalf and the execution of this agreement by such representative fully and completely binds the Party to the terms and conditions hereof.
5. That absent fraud, the execution of this agreement by a representative of the party shall constitute a certification that all such authorizations for execution exist and have been performed and the other Party shall be entitled to rely upon the same. To the extent a Party is a partnership, limited liability company or joint venture, the execution of this agreement by any member thereof shall bind the Party and to the extent that the execution of agreement is limited to a manager, managing partner or specific member then the person so executing this agreement is duly authorized to act in such capacity for the Party.
6. That each party represents and warrants to the other that there is no litigation, claim or administrative action threatened or pending or other proceedings to its knowledge against it which would have an adverse impact upon this transaction or upon either's ability to conclude the transaction or perform pursuant to the terms and conditions of this agreement.
7. That each party has obtained any and all required permits, approvals and/or authorizations from third parties to enable it to fully perform pursuant to this agreement.

**H. THIRD PARTY BENEFICIARIES**

It is the intent of the parties hereto that there shall be no third party beneficiaries to this agreement.

**I. FINAL INTEGRATION**

This Agreement, together with any amendments, constitutes the entire agreement of the parties, as a complete and final integration thereof with respect to its subject matter. In the event of a direct conflict between the provisions hereof and any prior agreement or amendment, the latter shall supersede the former. All written or oral understandings and agreements heretofore had between and among the parties are merged into this Agreement, which alone fully and completely expresses their understandings. No representation, warranty, or covenant made by any party which is not contained in this Agreement or expressly referred to herein has been relied on by any party in entering into this Agreement.

**J. FORCE MAJEURE**

Neither the Owner nor the Architect shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, or other events beyond the control of the other or the other party's employees and agents.

**K. AMENDMENT IN WRITING**

This Agreement may not be amended, modified, altered, changed, terminated, or waived in any respect whatsoever, except by a further agreement in writing, properly executed by all of the parties.

**L. BINDING EFFECT**

This Agreement shall bind the parties and their respective personal representatives, heirs, next of kin, legatees, distributees, successors, and assigns. If any provision in this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**M. CAPTIONS**

The captions of this Agreement are for convenience and reference only, are not a part of this Agreement, and in no way define, describe, extend, or limit the scope or intent of this Agreement.

**N. CONSTRUCTION**

This Agreement shall be construed in its entirety according to its plain meaning and shall not be construed against the party who provided or drafted it.

**O. MANDATORY AND PERMISSIVE**

"Shall", "will", and "agrees" are mandatory; "may" is permissive.

**P. GOVERNING LAWS**

The laws of the State of Alabama shall govern the validity of this Agreement, the construction of its terms, the interpretation of the rights, the duties of the parties, the enforcement of its terms, and all other matters relating to this Agreement.

**Q. COURT OF JURISDICTION**

That, if the Owner and Architect cannot resolve any outstanding claims, counter-claims, disputes, and other matters in question arising out of or relating to this Agreement, then resolution of said disputes shall be decided by a court of competent jurisdiction. Unless otherwise specified, this Agreement shall be governed by the laws of the State of Alabama.

**R. WAIVER**

Non enforcement of any provision of this agreement by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remaining terms and conditions of the agreement.

**S. SUCCESSORS AND ASSIGNS**

1. The Owner and the Architect, respectively bind themselves, their partners, successors, assigns and legal representatives to the other party to this agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants and conditions of this agreement. Neither the Owner nor the Architect shall assign, sublet or transfer any interest in this agreement without the written consent of the other.
2. Use of subconsultants by the Architect or subsidiary or affiliated firms of the Architect for technical or professional services shall not be considered an assignment of a portion of this agreement. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than Owner and Architect. There shall be no third party beneficiaries to this agreement.

No such assignment or delegation shall in any manner whatsoever relieve any party from its obligations and duties hereunder and such assigning or delegating party shall in all respects remain liable hereunder irrespective of such assignment or delegation.

**T. FINES AND PENALTIES**

The Architect shall be solely liable for any and all fines or penalties which may be levied by any governmental authority against the Owner which are attributable to the Architect's services pursuant to this agreement. The Owner may deduct the amount of the levied fine or penalty from the Contract amount.

**U. AGREEMENT DATE/COUNTERPARTS**

The date of this Agreement is intended as and for a date for the convenient identification of this Agreement and is not intended to indicate that this Agreement was necessarily executed and delivered on said date. This instrument may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

**V. USE OF WORDS AND PHRASES**

The following words and phrases, where used in this document, shall be given the following and respective interpretations: "Herein," "hereby," "hereunder," "hereof," and other equivalent words refer to this document as an entirety and not solely to the particular portion hereof in which any such word is used.

The definitions set forth in any portion of this Agreement, unless the text or context indicates differently, shall be deemed applicable whether the words defined are herein used in the singular or the plural. Wherever used herein any pronoun or pronouns shall be deemed to include both singular and plural and to cover all genders.

**W. SEVERABILITY**

Each provision of this agreement shall be considered to be severable and, if for any reason, any such provision or any part thereof, is determined to be invalid and contrary to any existing or future applicable law, such invalidity shall not impair the operation of or affect those portions of this agreement that are valid, invalid or unenforceable provision or part thereof had been omitted.

No present or future official, officer, or employee of the City shall ever be personally liable for the performance of any obligations hereunder.

**X. COMPLIANCE WITH IMMIGRATION LAW**

By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom, to the extent allowed by Federal law.

**XI. COMPLIANCE WITH AFFORDABLE HEALTH CARE ACT.**

By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal compliance laws pertaining to the Affordable Health Care Act. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom, to the extent allowed by Federal law.

**IN WITNESS WHEREOF**, the parties have executed this agreement to be effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**ARCHITECT:** Ward, Scott Architecture, Inc.

**BY:** \_\_\_\_\_



**WITNESS:**

\_\_\_\_\_  
*Stacy DeLoach*

**CITY OF TUSCALOOSA, a Municipal Corporation**

**BY:** \_\_\_\_\_

\_\_\_\_\_  
*Walter Maddox*  
**WALTER MADDOX, MAYOR**

**ATTEST:**

\_\_\_\_\_  
*Tony Meyer*  
**City Clerk**



STATE OF ALABAMA )  
COUNTY OF TUSCALOOSA )

I, Christy L. Baker, a Notary Public in and for said State at Large, hereby certify that Kimberly McMurray, who is named as Architect, is signed to the foregoing document, and,

- Who is known to me, or
- Whose identity I proved on the basis of \_\_\_\_\_, or
- Whose identity I proved on the oath/affirmation of \_\_\_\_\_, a creditable witness to the signer of the above document

and that being informed of the contents of the document, he/she, as such officer and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 30<sup>th</sup> day of August, 2016

My Commission Expires: 5-17-20  
Christy L. Baker  
Notary Public.

STATE OF ALABAMA )  
TUSCALOOSA COUNTY )

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that Walter Maddox, whose name as Mayor of the City of Tuscaloosa, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the within instrument, he, as such officer and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 24<sup>th</sup> day of August, 2016.

My Commission Expires: 2/3/19  
Vickie Milliland  
Notary Public.