

Architect w/ Construction Manager
THIS DOCUMENT PREPARED BY:
City of Tuscaloosa
Office of the City Attorney

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:
THE EDGE BUSINESS RESOURCE CENTER**

Project No. A13-0623

WHEREAS, heretofore, the City of Tuscaloosa Office of the City Attorney negotiated a contract by and between the Architectural Firm of Ward Scott Architecture, Inc. and the City to provide architectural and related services to the City of Tuscaloosa for the design and construction of THE EDGE BUSINESS RESOURCE CENTER, (the Project); and,

WHEREAS, the City Council has authorized the Mayor to execute such a contract and the ARCHITECT and the City of Tuscaloosa, as OWNER, now wish to formalize their agreement for such services.

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

NOW, THEREFORE, THIS AGREEMENT made and entered into on this the 15th day of April, 2014, 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, P. O. 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, shall consist of architectural and related services, including, but not limited to the design, construction documents, bidding, and construction administration of a Project generally described as follows:

THE EDGE BUSINESS RESOURCE CENTER

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

ARTICLE 2

ARCHITECT'S SERVICES AND RESPONSIBILITIES

A. BASIC SERVICES

1. Facility Programming:

Discussions between the architect and owner to establish the goals, needs, and function of the project; design expectations and available budget; and pertinent building code and zoning regulations. Preparing a detailed list of the scope of the proposed project that allows a quantitative comparison with the budget.

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.

d. Statement of Probable Cost:

The Architect shall submit in collaboration with the Construction Manager, to the Owner a Statement of Probable Construction Cost based on current area, volume or other unit costs.

e. Construction Manager:

Architect shall assist Owner in selection of the Construction Manager and work with the Construction Manager to the extent of the Construction Manager's duties and obligations to the Owner.

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 review by the Construction Manager and 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, basic landscaping and such other elements as may be appropriate.

b. Statement of Probable Construction Cost:

The Architect shall collaborate with the Construction Manager and the Owner a further Statement of Probable Construction Cost, including a detailed estimate of Construction Cost.

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 review by the Construction Manager and approval by the Owner, Construction Documents consisting of, but not limited to, Drawings, Construction Contracts utilizing the construction manager method of building construction and Specifications setting forth in detail the requirements for the construction of the Project for each trade bid package. 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 or provide incidental extra services in connection with bidding, negotiation or construction and when requested by the Owner to provide non-incidental additional services. Architect will not be expected to delineate separate trade bid packages on the drawings. A description of each trade bid package will be included in the summary of work.

b. Preparation of Documents, etc.:

The Architect shall assist the Construction Manager to prepare the necessary bidding information, bidding forms, the conditions of the contracts and the formal agreement between the Owner and each Trade Contractor subject to the approval of the Owner and City Attorney.

c. Adjustments to Cost Estimates:

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

d. Filings:

The Architect shall have the responsibility for filing documents and obtaining the required approvals of governmental authorities having jurisdiction over the project, including the Alabama Building Commission and the U. S. Army Corps of Engineers.

e. 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 in whole or in part to, negligent 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 therefrom. 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.

f. 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 all work will be of good quality, free from faults, defects, 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 and to the Construction Manager for Trade Contractor Bid Package preparation.

The ARCHITECT shall provide the following Bid Phase Services per project:

1. Review and comment on Owner-generated 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 place advertisements for bids (Cost of advertisement to be paid by OWNER) pursuant to Ala. Code §39-2-2(a) (1975)
- Reproduction and provision of plans, specifications and Contract Documents to Construction Manager for distribution to bidders, pursuant to Ala. Code §39-2-3 (1975)
- Provide adequate number of copies of Contract Documents for OWNER and all State or Federal agencies.
- Communicate with bidders and address questions and issues raised by bidders
- Provide technical interpretations
- Prepare addenda to specifications or plans
- Assist OWNER in letting contracts including bid openings, presence at Council Meeting pertaining to the same and opening of bids
- Promptly analyze and assist Construction Manager prepare written tabulations of bid proposals
- Assist Construction Manager to evaluate and return bid bonds in accordance with Ala. Code §39-2-4(a) and Ala. Code §39-2-5 (1975)
- Recommend contract award to OWNER for each trade
- Assist Construction Manager to prepare Contract Documents for execution by trade contract bidders and verify prior to delivery to the OWNER that the same are properly executed with all necessary or required supporting documents including bonds and insurance, pursuant to Ala. Code §39-2-8 (1975)
- Assist Construction Manager to conclude OWNER execution of Contract Documents pursuant to Ala. Code §39-2-9 and issue notice to proceed pursuant to Ala. Code §39-2-10

Architect shall assist the Construction Manager and Owner in obtaining bids, rebids, or negotiated proposals, assist in awarding the bid, and shall assist the Construction Manager 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.:

In the event the total of the lowest bid(s) received by Owner for the project exceeds the amount of funds the Owner has authorized, allocated, or otherwise made available 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 to be agreed upon at that time for revising plans and specifications if bid overrun is up to ten percent (10%) of the funds made available by the Owner. If the bid overrun exceeds ten percent (10%), the Architect will revise the plans and specifications at no cost to the Owner.

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, all of the 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.

6. CONSTRUCTION PHASE

a. Generally:

The Construction Phase will commence with the award of the Contract(s) 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 Contractors is due, or in the absence of a final Certificate for Payment or of such due date, sixty days after the Date of Completion of the Work.

b. ARCHITECT/Construction Manager:

The Owner will retain and utilize the services of a Construction Manager for the construction of the project. In addition to assisting the City in selecting and contracting with a Construction Manager, Architect will communicate and coordinate with the Construction Manager throughout the course of design, bidding and construction. Architect shall review and approve all Construction Manager requests for payment and monitor the work of the Construction Manager, reporting any concerns to the Owner's representative. All communication with suppliers and Trade Contractors by the Architect shall be made through the Construction Manager.

c. Generally:

Although the Architect does not guarantee the performance of the Contractors, nor that of the Construction Manager, it shall be the duty of the Architect through the Construction Manager (1) to require the Contractors 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 Contractors, (3) to guard the Owner against defects and deficiencies in the work of the Contractors or subcontractors and (4) to promptly advise the Owner and the Construction Manager 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 Construction Manager and 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 Construction Manager shall review and verify applications for payment from any Trade Contractor and submit the same to the Architect. The Architect shall further verify the amount owing to the Trade Contractor based on his observations at the site and on his evaluations of the 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 that Trade 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 Trade 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 Trade 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 Trade Contractor has used the moneys paid on account of the Contract Sum.

f. Interpretation of Documents:

The Architect shall be the initial 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, the Construction Manager or a contractor, and shall render written decisions within a reasonable time, on all claims, disputes and other matters in question 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 contractors. 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 Construction Manager and all contractors and 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 Construction Manager and all 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 inform the Construction Manager when Work which does not conform to the Contract Documents and should be rejected. 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 instruct the Construction Manager 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 in collaboration with the Construction Manager, establish and implement a procedure for expediting the processing, review, and approval of shop drawings and samples. The Architect shall review and approve or take other appropriate action upon 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 Architect determines that a change order is needed, then he shall prepare 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, shall be approved by the 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, an extension of the contract time or a material change in the contract scope of work or services.

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 Construction Manager and the Owner for review, all written warranties and related documents required by the Contract Documents and assembled by the Construction Manager, 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 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:

The Architect shall conduct Observations of the work including 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. The Architect shall endeavor to conduct Observations in the company of the Construction Manager if at all possible, or if not possible, to advise the Construction Manager of the results of such Observations.

In addition, Observations by Architect and any subconsultants must be at critical phases of the project. Such Observations by the Architect is not normally to be construed as meaning the furnishing of continuous Observations. However, the Observations by the Architect shall be consistent with the size and nature of the work and must include at least two (2) Observations each week, a final observation, and an observation

thirty (30) days prior to the end of any guarantee period by the contractor or subcontractors.

For the purpose of this Contract, observation 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, but Architect does not guarantee the performance of the contractor. The Observations shall not relieve the Construction Manager, contractor, subcontractor, or any other party from its obligations under the contract documents or generally accepted industry custom.

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

n. Required Tests:

The Architect shall require in the contract documents that Trade Contractors or subcontractors shall perform and furnish structural, mechanical, chemical and other tests, inspections and reports as required by law 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

The following additional services shall be provided if authorized or confirmed in writing by the Owner, and they shall be paid for by the Owner as provided in this Agreement, or as agreed between the parties at that time in addition to the compensation for Basic Services. The Architect shall advise Owner if such additional services are desired.

1. To be at Owner's Request:

The Architect shall render additional services as set forth in this agreement only upon the direct written request of the Owner or if authorized within this agreement.

2. Future Facilities:

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

3. Substantial Post Approval Revisions:

Making revisions in Drawings, Specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given, or 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.

4. Significant Change Order Services:

Preparing Drawings, Specifications and supporting data and providing other services in connection with Change Orders to the extent that the adjustment in the Basic Compensation resulting from the adjusted Construction Cost is not commensurate with the services required of the Architect, provided such Change Orders are required by causes not within the control of the Architect.

5. 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.

6. 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.

7. Services Due to Contractor's Default:

Providing services made necessary by the default of the Construction Manager or any 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.

8. Extensive Equipment Assistance, etc.:

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

9. Post Final Payment Services:

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

10. 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.

11. Other Services:

Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice, such as extensive interior designer services, extensive landscape architectural services, special lighting design, technology consultant, acoustician, system commissioning, LEED certification, multiple bid packages, or food service consultant.

12. Models, mockups, etc.:

Providing models and/or mockups of the project.

13. 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.

14. 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.

15. Site Survey:

Providing a legal description and a certified land survey of the site, giving as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights of way, restrictions, easements, encroachments, zoning deed restrictions, boundaries and contours of the site; locations, dimensions and complete data pertaining to existing buildings, other improvements and trees; and full information concerning available service and utility lines both public and private, above and below grade, including inverts and depths.

16. Special Tests, etc.:

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

17. Record Drawings:

Preparing a set of reproducible record drawings showing changes in the work made during construction based upon marked up prints, drawings and other data furnished by the Construction Manager to the Architect.

18. Prequalification:

Development of system for prequalification, preparing prequalification documents, extensive examination of prequalification documents received from Contractors, and recommendation to Owner of prequalified contractors.

19. Providing extra services to facilitate phasing of the completion of the project. Services considered extra are preparation of planning and phasing documents, extra substantial and final completion tasks for architectural, mechanical, plumbing, and electrical disciplines.

The following additional services shall be provided and are authorized and approved by the Owner, and they shall be paid for by the Owner as provided below, or as agreed between the parties at that time in addition to the compensation for Basic Services.

20. Construction Period Services:

Providing site observations beyond basic services. Providing ADEM storm water permit services.

21. Providing colored renderings approximately 18" x 24", of the approved design of the project. The cost will be as follows:
Four framed copies of one unique view: \$5,000.
22. Civil engineering services. The estimated fee for this service is \$11,000.00.
23. Interior design services. The estimated fee for this service is \$30,000.00.
24. Landscape design services. The estimated fee for this service is \$11,000.00.

25. Technology engineering services.
26. Construction Materials Testing and Special Inspections.
27. Professional Engineering Services During Construction (SDC).

C. TIME

1. 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:

(a) Schematic Design Phase.

Upon review and approval of Programming by the Owner, Architect must complete and submit all items required in the Schematic Design Phase within 45 days from receipt of the Owner's written notice to proceed .

(b) Design Development Phase.

Upon review and approval of the previous phase, Architect must complete and submit to Owner all services for the Design Development Phase pursuant to the requirements of this agreement within 45 days of the date of approval by Owner of the Schematic Design Phase.

(c) Construction Document Phase.

Upon review and approval of the previous phase, Architect must complete and submit to Owner all services for the Construction Document Phase pursuant to the requirements of this agreement within 60 days of the date of approval by Owner of the Design Development Phase.

(d) Bidding Phase.

Upon review and approval of the previous phase, Architect must complete and working in conjunction with the Construction Manager, submit to Owner all services of the Bidding Phase pursuant to the requirements of this agreement within 30 days of the date of approval by Owner of the Construction Document Phase.

(e) Construction-Administration Phase.

Architect must complete all services required by the terms of this agreement

for the administration of the construction project or work within the time period established by the trade contracts .

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

D. GENERALLY:

1. Numbering Documents:

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

2. Subconsultants:

Designated herewith (as applicable) are the engineering consultants or associates:

Civil Engineer:

Bruce L. Higginbotham, PE, AL #23649
Burke-Kleinpeter, Inc.
600 Lurleen Wallace Blvd, Ste 180
Tuscaloosa, Alabama 35401-1734

Structural Engineer

Jennifer Wilson, PE, AL #21871
Barnett Jones Wilson
650 Energy Center Blvd, Ste 1702
Northport, Alabama 35473

Mechanical Engineer

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

Electrical Engineer

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

Technology Engineer

Tim Lewis
T.A. Lewis & Associates, Inc.
1116 20th Street South #306
Birmingham, Alabama 35205

Landscape Architect

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

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

3. Schematic, preliminary and final drawings and specifications for the project shall be submitted to the Owner's representative for approval.

ARTICLE 3

THE OWNER'S RESPONSIBILITIES

A. GENERALLY:

The Owner requirements for the project setting forth the objectives, constraints and criteria, including space requirements and relationships, and expandability, special equipment and systems and site requirements, is attached hereto and adopted herein by reference. The Architect may rely on the accuracy, completeness, and technical sufficiency of the Owner's written requirements for the project.

B. BUDGET:

The Owner's construction budget for the Project is \$6,576,909, including contingencies for bidding, changes in the Work during construction, and other costs which are the responsibility of the Owner. The Owner shall, at the request of the Architect, provide a statement of funds available for the Project, and their source.

C. OWNER DESIGNATED REPRESENTATIVE:

The Owner's designated representative is Clif Penick, who 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. SURVEY:

The Owner, unless it elects to have these services provided by Architect, shall furnish a legal description and boundary survey of the site, as well as a topographic and utility survey.

E. NOTIFICATION OF FAULTS:

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

F. 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.

G. GEOTECHNICAL REPORT:

The Owner, unless it elects to have these services provided by Architect, shall furnish a report of subsurface geotechnical investigation identifying underlying soil conditions and recommending foundation concepts.

ARTICLE 4

CONSTRUCTION COST

A. DEFINITION:

The Construction Cost shall be the total or estimated cost to the Owner of construction elements on the Project designed or specified by the Architect and approved by the Owner for actual construction of the Project.

B. CONSTRUCTION COST EXCLUDES:

Construction Cost excludes all the following: Architect fees, construction management fees and expenses, site, property or right of way acquisition cost, geotechnical, Wetlands, archeological, historical or similar consulting services, construction testing and cost, the cost of interior consultants and the cost of furnishings and any expenses or cost paid directly by Owner to third parties other than general contractors or trade and/or subcontractors providing services on the Project.

C. RESPONSIBILITY FOR CONSTRUCTION COST, ARCHITECT BEST JUDGMENT:

Evaluations of the Owner's Project budget, Statements of Probable Construction Cost and Detailed Estimates of Construction Cost prepared by the Architect, represent the Architect's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Project budget proposed, established or approved by the Owner, if any, or from any Statement of Probable Construction Cost or other cost estimate or evaluation prepared by the Architect.

D. BUDGET CONTINGENCIES:

A fixed budget has been established by Owner for the project. With the consent of the Owner's representative, the Architect may include reasonable contingencies for design, bidding, and price escalation, to determine what materials, equipment, component systems, and types of construction are to be included in the contract documents, to make reasonable adjustments in the scope of the project and to include in the contract documents alternate bids to adjust the construction costs to the fixed limit.

E. EFFECT OF BID DELAY:

If the Bidding or Negotiation Phase has not commenced within three 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 5

REIMBURSABLE EXPENSES

A. GENERALLY:

Reimbursable expenses are in addition to the compensation for basic and additional services and include actual 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.

Reimbursable expenses will be charged at a multiple of 1.10 of the cost incurred by the Architect:

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 documents excluding reproductions for the office use of the Architect and Architect's consultants and reimbursement of refunds of Contract Documents.

D. 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:

- a. Mileage for travel related to the project for out-of-town consultants traveling to the project site, or for in-town consultants traveling out-of-town for project purposes: \$0.565 per mile
- b. Lodging: \$75.00 per day
- c. Per Diem for Meals: \$11.25 per day per person for 6 to 12 hour trips.
- d. Per Diem for Meals: \$30.00 per day per person for 12 hour to overnight trips.

*Only as related to preliminary design, and only if travel is pre-approved by the City.

G. Reimbursable expenses for this project shall not exceed a total amount of \$15,000 (maximum cost limitation).

ARTICLE 6

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 Article 13.

B. EXTENSION OF CONTRACT TIME:

If and to the extent that the Contract Time initially established in the Contract(s) for Construction is materially exceeded or extended 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:

When compensation is based on a percentage of Construction Cost and any portions of the Project are deleted or otherwise not constructed, compensation for such portions of the Project shall be payable to the extent services are performed on such portions, in accordance with the schedule set forth in Article 13, 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, if authorized, as defined in Article 2(B) and for Reimbursable Expenses as defined in Article 5 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. PROJECT SUSPENSION OR TERMINATION:

If the project is suspended or abandoned in whole or in part for more than three (3) months, the Architect shall be compensated for all services rendered prior to receipt of written notice from the Owner of such suspension or abandonment, together with reimbursable expenses then due. If the project is resumed after being suspended for more than three (3) months, the Architect's compensation may be adjusted by agreement of the parties.

If the Owner abandons, terminates, delays or postpones the project as defined herein, the Architect shall deliver to the Owner copies of all documents, either completed or in progress along with his final statement for services rendered and reimbursable expenses.

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.

ARTICLE 7

ARCHITECT'S ACCOUNTING 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.

ARTICLE 8

OWNERSHIP AND USE OF DOCUMENTS

A. INSTRUMENTS OF SERVICE:

Drawings and specifications as instrument of service are and shall remain the property of the Architect, whether the project for which they are made is executed or not. The drawings and specifications and those of its subconsultants shall not be used by the Owner on a project other than the one which is the subject of this agreement. Provided; however, the Owner may utilize such drawings and specifications for subsequent expansion, enlargement, improvement, repair or modification to the building without additional compensation to the Architect or any subconsultant. All other contract documents, construction documents, forms and records shall be the exclusive property of Owner.

B. 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.

C. RECORD DRAWINGS, ETC.:

The Architect shall furnish the Owner, if directed by Owner in writing to provide as an additional service under Article 2, B. Additional Services, 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 Owner's hardware and software applications and systems, and the other to be a "blue line print") and two complete (2) sets of specifications to which shall be attached copies of all contract addenda, 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. Drawings and specifications, as instruments of service, are the property of the Architect; however, as heretofore stated the Owner shall retain record sets thereof for use by Owner.

D. 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 part of the project. The Owner may also utilize such drawings and specifications for subsequent expansion, enlargement, improvement, repair or modification to the building. Owner may utilize the contract documents, construction documents, forms or any other records of the Project for any purpose.

ARTICLE 9

TERMINATION OF AGREEMENT

A. This agreement shall terminate without notice should the project be abandoned, or be postponed or delayed for more than one year. This agreement may also be terminated by the Owner at the expiration of ten (10) days after written notice to the Architect at any time. If the Owner determines that the project is to be abandoned, postponed, terminated or delayed, it shall so notify the Architect in writing and the Architect shall immediately stop all work on the project. The Architect shall be compensated for all services rendered and reimbursable expenses as of the date that the agreement is to be terminated.

B. Suspension, Delay or Interruption of Work:

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 10

MISCELLANEOUS PROVISIONS

Unless otherwise specified, this Agreement shall be governed by the law of the State of Alabama.

ARTICLE 11

SUCCESSORS AND ASSIGNS

- A. 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.
- B. 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.

ARTICLE 12

EXTENT OF AGREEMENT

This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect. This Agreement shall not be construed against the party that provided it.

ARTICLE 13

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. Fee shall be paid to Architect on a 60/30/10 percent basis, as follows:

60% of the total fee for the project during design phase.

30% on a proportionate basis during construction.

10% after the as-built plans have been given to the Owner, the Summary Change order has been completed, and the final inspection form submitted to ADECA.

A. Basic Compensation:

FOR BASIC SERVICES, as described in Article Two as part of Basic Services, Basic Compensation shall be computed as follows: Architect shall receive a lump sum fee in the total maximum amount of **Four-Hundred Sixty-Three Thousand One-Hundred Fifty-Six Dollars and Seventy-Seven Cents (\$463,156.77)**.

C. For Project Representation Beyond Basic Services (On site Representative), as described herein, Compensation shall be computed separately in accordance therewith.

D. Compensation for Additional Services:

For Additional Services of the Architect, authorized by the Owner as described in Article 2.B., and any other additional services compensation shall be at a rate to be agreed upon by the parties. Fees for additional services by the Architect's consultants will be charged at a multiple of 1.10 of the cost incurred by the Architect.

E. 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.

- F. The Owner and the Architect agree in accordance with the Terms and Conditions of this Agreement that if the scope of the project or of the Architect's services are changed materially, the amounts of compensation may be equitably adjusted through negotiation between the parties.
- G. IF THE SERVICES covered by this Agreement have not been completed within 24 months of the date hereof, through no fault of the Architect, the amounts of compensation, rates and multiples set forth herein may be equitably adjusted.

ARTICLE 14

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, 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 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 insurance limits for errors and omissions commensurate with their work.

E. The Architect shall also insure, through the contract documents, that the general contractor shall procure liability insurance of a type and kind to be designated by the Owner which shall name the City of Tuscaloosa, its officers, agents and employees as additional insureds, and further provide adequate property damage insurance which shall include damage to the property of the City of Tuscaloosa.

F. 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 C.

G. 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 hazards and risk of loss as specified above in Subsections A, B, C, E and F under similar terms and conditions as that insurance required of the Architect herein.

ARTICLE 15

GENERAL LEGAL PROVISIONS

The scope and extent of architectural services to be provided under this agreement does not include the cost of the Architect for 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.

A. 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 \$250 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.

B. 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. The Architect further represents to the Owner that it is experienced with the use of a construction manager approach to projects, in the private as well as the public sector.

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. The Architect shall not use the Owner's name or insignia, photographs of the work, or any other publicity pertaining to the work, in any magazine, trade paper, newspaper or other medium without the express written consent of the Owner. The Architect may use the Owner's name, photographs of the work and publicity pertaining to the work in Architect's corporate brochure, website, and proposals.

D. COURT OF JURISDICTION:

If the Owner and Architect, or any subconsultants, cannot resolve any outstanding claims, counter-claims, disputes, and other matters in question arising out of or relating to this Agreement, then resolution of the said dispute shall be decided by a Court of Competent Jurisdiction which is herein agreed to be for the Owner, Architect, or any of Architect's subconsultants, the Sixth Judicial Circuit of the State of Alabama.

E. ACCESS TO RECORDS:

Architect shall maintain books and accounts of project related payroll costs, travel, subsistence, field and incidental expenses, in accordance with generally accepted accounting principals and practices. Each of such documents shall indicate to which project or portion thereof they are applicable. Said books shall be available during Architect's normal business hours for the project duration for a period of one year after completion thereof, for an examination by Owner or Owner's representatives to the extent required to verify costs.

F. 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.

G. 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.

H. OWNER:

All references to Owner in this Agreement shall be construed to refer to the City Council of Tuscaloosa. The Owner's representative for the Project shall be: Clif Penick; 2201 University Blvd.; Tuscaloosa, AL 35401.

The Architect's representative for the Project shall be: Kim McMurray, AIA; Ward Scott Architecture, Inc.; 2715 Seventh Street; Tuscaloosa, AL 35401; 205-345-6110.

I. 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) 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 performance under this Contract or any work incidental thereto.

J. 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.

K. THIRD PARTY BENEFICIARIES:

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

L. 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.

M. FORCE MAJEURE:

Neither party to this Agreement shall hold the other party responsible for damages or delay in performance caused by acts of God, strikes, lockouts or other circumstances beyond the reasonable control of the other or the other party's employees, agents or contractors.

N. 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.

O. 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.

P. 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.

Q. 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.

R. MANDATORY AND PERMISSIVE:

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

S. 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.

T. ASSIGNMENT:

- (1) This Agreement is to be binding on the heirs, successors, and assigns of the parties hereto and is not to be assigned by either party without first obtaining the written consent of the other. No assignment of this Agreement shall be effective until the assignee assumes in writing the obligations of the assigning parties and delivers such written assumption to the other original party to this Agreement.
- (2) Use of subconsultants by the Architect or subsidiary or affiliate 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 the Owner and Architect. There shall be no third party beneficiaries to this Agreement.

U. 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.

V. OWNERSHIP OF CONTRACT DOCUMENTS: The Contract Documents, and copies of parts thereof, are furnished and owned by the City. All portions of the Contract Document, 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.

W. FINES AND PENALTIES: The Contractor shall be solely liable for any and all fines or penalties which may be levied by any governmental authority against the Owner and/or Contractor which are related to the Contractor's operations. The Owner shall deduct the amount of the levied fine or penalty from the Contract amount.

X. 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.

Y. 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.

Z. BETTERMENT: If a component of the Project is omitted from the Contract Documents due to the breach of Contract or negligence of the Architect/Engineer, the Architect/Engineer will not be liable to the Owner to the extent of any betterment or added value to the Project. Specifically, the Owner will be responsible for the amount it would have paid to the Contractor for the component if it had been included in the Contract Documents, and the Architect/Engineer will be responsible for any retrofit expense, waste, any intervening increase in the cost of the component furnished through a Change Order from the contractor.

ARTICLE 16

24 CFR § 85.36 REQUIREMENTS

Contracts procured pursuant to 24 CFR § 85.36 are required to contain the following provisions. Certain provisions contained below may not be applicable to this contract, as noted. The terms of Article 16 shall take precedence over any other provisions contained in this contract which conflict with the terms of Article 16:

A. Violation or breach of contract terms. If the Contractor is adjudged as bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the agreement, or is assessed liquidated damages as set forth herein, then the City may, without prejudice to any of its other rights or remedies and after giving the Contractor and his surety, if any,

seven (7) days' written notice, during which period the Contractor fails to cure the violation, terminate the employment of the Contractor. In such case, the Contractor shall not be entitled to receive any further payment from the City.

B. Termination for cause and for convenience. The City reserves the right with or without cause to terminate the agreement by giving written notice to Contractor of such termination at least fifteen (15) days before the effective date thereof. In the event of termination, Contractor shall cease performing any work pursuant to the agreement and be entitled to compensation for services rendered through the effective date of termination.

C. Access to records. The City, any subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the Contractor which are directly pertinent to the contract for the purpose of making audit, examination, excerpts, and transcriptions.

D. Retention of records. Contractor is required to retain all records as required by applicable federal law for three years after the City or any or subgrantee makes final payments and all other pending matters are closed.

E. Compliance, generally. As applicable, for contracts in excess of \$100,000, Contractors are required to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

F. Energy efficiency. As applicable, Contractors are required to comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

G. Value engineering. As applicable, **for architectural/engineering (A/E) contracts**, Contractor is encouraged to develop, prepare, and submit to the City value engineering change proposals (VECP's) voluntarily. Value engineering change proposal (VECP) means a proposal that requires a change to this, the current contract, to implement, and results in reducing the overall projected cost to the City without impairing essential functions or characteristics.

H. Equal Employment Opportunity. As applicable, Contractors shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). **(Applies to all construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees).**


I. Anti-Kickback. As applicable, Contractors shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (Applies to all contracts and subgrants for construction or repair).

J. Davis-Bacon. As applicable, Contractors shall comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Applies to all construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation).

K. Work Hours and Safety Standards. As applicable, Contractors shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Applies to all construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

IN WITNESS WHEREOF, the parties executed this agreement on the date first above written.

ARCHITECT: Ward Scott Architecture, Inc.

BY: 
Its: President James W. Ward


WITNESS:



CITY OF TUSCALOOSA, a Municipal Corporation

BY: 
Walter Maddox, Mayor

ATTEST:


City Clerk.

STATE OF ALABAMA)
COUNTY OF TUSCALOOSA)

I, Lynda B. Franklin, a Notary Public in and for said State at Large, hereby certify that _____, who is named as _____, 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 21st day of May, 2014.

Lynda B. Franklin
Notary Public.

My Commission Expires: 6.23.14

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 27th day of May, 2014.

Vickie Hilliland
Notary Public.

My Commission Expires: 3/17/15