

**STANDARD FORM OF AGREEMENT BETWEEN
THE OWNER AND THE PROFESSIONAL**

This Agreement made the _____ day of _____, 20____ between the Owner:

Bureau of Building, Grounds and Real Property Management
501 North West Street, Suite 1401B
Jackson, Mississippi 39201

created by Section 7-1-451 et seq., and Section 31-11-1, et seq., **Mississippi Code of 1972, Annotated** and acting for the State of Mississippi; and the Professional:

Business Name _____
Mailing Address _____
City/State/Zip _____ Phone: _____ E-mail: _____

The Professional is a *(Check and complete one of the following)*:

- CORPORATION solely organized and existing under the laws of the State of _____ and having its principal office in _____ (City) _____ (County) _____ (State).
- PARTNERSHIP of the following *(List all partners)*:

- SOLE PROPRIETORSHIP

For the following Project:

and limited as described in Paragraph 4.3 to the amount of \$ _____ as authorized by an action of the Owner.

PROFESSIONAL:

By: _____
(Signature)

(Name and Title)

OWNER: BUREAU OF BUILDING, GROUNDS AND REAL PROPERTY MANAGEMENT

By: _____
(Signature)
Charles R. "Rick" Snowden, Director
(Name and Title)

APPROVED AS TO FORM:

By: _____
(Signature of Attorney)

The Owner and the Professional agree as set forth in pages one through twenty-one, Articles one through ten, as follows:

TERMS AND CONDITIONS OF AGREEMENT BETWEEN OWNER AND PROFESSIONAL
ARTICLE 1: PROFESSIONAL COMPENSATION

1.1 FEE

1.1.1 For the Professional's basic services as described in Subparagraph 2.1.1, the fee shall be a percentage of the Project cost. The specific fee is indicated in Subparagraph 6.1.1.

1.1.2 The Professional may provide additional services beyond the basic services and those additional services and their compensation are indicated in Paragraph 1.3.

1.1.3 When the Professional is called upon to provide extra services as described in Paragraph 7.4, the compensation shall be fixed at the fee indicated in Paragraph 1.4.

1.2 BASIC SERVICES - PERCENTAGE OF CONSTRUCTION COST

1.2.1 Compensation for basic services shall be a percentage of construction cost based on each awarded Project Construction Contract for which the Professional provides services and in accordance with Article 6.

1.2.2 The building classification as defined in Subparagraph 6.2.1 for the Project shall be:

A B C D E

1.2.3 The Project does not embrace substantial renovation and/or repairs and the total fee shall be the basic fee shown in Subparagraph 6.2.2.

The Project does embrace substantial renovation and/or repairs and the total fee shall be 115% of the basic fee shown in Subparagraph 6.2.2 and as indicated in Subparagraph 1.2.2.

1.2.4 The fees for the Project will include a credit in the amount of \$ _____ for fees earned on previous Project # entitled _____.

1.2.5 The fees for the Project will include a credit in the amount of \$ _____ for fees earned and paid by the Using Agency.

1.3 ADDITIONAL SERVICES

1.3.1 The Project does not include any additional services which will require an additional fee.

The Project includes additional services listed in Subparagraph 2.1.2. In addition to the basic services fee, an additional fee for each service shall be indicated as follows:

1.3.2 Program Phase
Lump Sum Fee: \$ _____ described in Paragraph 2.4.

1.3.3 Special Study
Lump Sum Fee: \$ _____ described in Paragraph _____.

1.3.4 Rendering
Lump Sum Fee: \$ _____ described in Subparagraph 3.5.1.

1.3.5 Model
Lump Sum Fee: \$ _____ described in Subparagraph 3.5.2.

1.3.6
Lump Sum Fee: \$ _____ described in Paragraph _____.

1.4 EXTRA SERVICES

1.4.1 In special cases, fees shall be paid to the Professional for extra services as described in Paragraph 7.3 and shall be in addition to the basic services fee as follows

1.4.2 Principal's time at a fixed rate of Seventy-Five Dollars (\$75.00) per hour. For the purposes of this *Agreement*, the principals are:

1.4.3 Employee's time computed at a multiple of two and one half (2 1/2) times the employee's direct personnel expense as defined in Paragraph 7.6.

1.4.4 Additional services performed by Professional Consultants engaged for the normal structural, mechanical, electrical, or architectural services, at the amount billed to the Professional computed in accordance with Subparagraphs 1.4.2 and 1.4.3.

1.5 REIMBURSEMENTS

1.5.1 As approved by the Owner, reimbursements to the Professional shall be made for the following during the course of the Project and in accordance with the referenced Subparagraphs.

1.5.2 Reimbursement shall be made for topographical information outlined in Subparagraph 2.3.1.

1.5.3 Reimbursement shall be made for subsurface conditions outlined in Subparagraph 2.3.2.

1.5.4 Reimbursement shall be made for Asbestos and/or Hazardous Material Inspection/Sampling/Testing as outlined in Subparagraphs 2.11.4 and 2.12.3.

1.5.5 Reimbursement shall be made for Contract Documents for bidding and actual construction purposes outlined in Subparagraphs 2.7.4 and 3.4.1.

1.5.6 Reimbursement shall be made for renderings and models outlined in Paragraph 3.5.

1.5.7 Reimbursement shall be made for record document permanent reproducible transparencies outlined in Subparagraphs 2.9.12 and 3.4.3.

1.5.8 Reimbursement shall be made for final independent air clearance tests, if required, as outlined in Subparagraphs 2.11.8, 2.11.9 and 2.12.5.

1.5.9 Reimbursement shall be made for the electronic submittals as outlined in Subparagraphs 2.8.5, 2.9.12, and 3.4.

ARTICLE 2: PROFESSIONAL'S SERVICES AND RESPONSIBILITIES

2.1 SERVICES

2.1.1 The Professional's basic services shall consist of Paragraphs 2.2 and the phases listed and marked below. Any phase listed but not marked shall not be part of the basic services.

Program Phase described in Paragraph 2.4

Schematic Design Phase described in Paragraph 2.5

Design Development Phase described in Paragraph 2.6

Construction Document Phase described in Paragraph 2.7

Bidding Phase described in Paragraph 2.8

- Construction Phase described in Paragraph 2.9
- Asbestos Abatement described in Paragraph 2.11 and Hazardous Materials described in Paragraph 2.12
- Record document permanent reproducible transparencies described in Subparagraph 2.9.12
- Perform services under the direction of a Manager described in Paragraph 3.6.

2.1.2 The Professional shall provide additional services as listed and marked below. Any phase listed but not marked shall not be an additional service to this *Agreement*.

- Program Phase described in Paragraph 2.4
- Special Study described in Paragraph

2.1.3 The Professional's basic services listed in Subparagraph 2.1.1 shall include consulting services listed below and meeting requirements of Paragraph 2.10. Any consultant listed but not marked shall not be a consultant to this *Agreement*.

Consulting Service:	Services to be Performed by:
<input type="checkbox"/> Program	_____
<input type="checkbox"/> Structural	_____
<input type="checkbox"/> Mechanical	_____
<input type="checkbox"/> Electrical	_____
<input type="checkbox"/> Hazardous Material	_____
<input type="checkbox"/>	_____

2.2 TIME

2.2.1 The Professional shall perform services as expeditiously as is consistent with Professional skill and care and the orderly progress of the Work. The Professional shall submit for the Owner's approval, an estimated *Schedule of Performance* of services in 2.2.2. This *Schedule* may be adjusted as the Project proceeds and shall include allowances for periods of time required for the Owner's review and approval of submissions and for approvals of authorities having jurisdiction over the Project. This *Schedule*, when approved by the Owner, shall not, except for reasonable cause, be exceeded by the Professional.

2.2.2 The estimated *Schedule of Performance* described in Subparagraph 2.2.1 shall be in the following format: (Type)

- .1 Professional services beginning date:
- .2 Program Phase described Paragraph 2.4: _____ days
- .3 Schematic Phase described in Paragraph 2.5: _____ days
- .4 Design Development Phase described in Paragraph 2.6: _____ days
- .5 Construction Document Phase described in Paragraph 2.7: _____ days
- .6 Total planning: _____ days

2.2.3 The dates for receipt of phases shall be the date the Documents are stamped into the Owner's office if they are in an approval condition. If submittals are rejected, then the clock will continue to run without charge for that time being reviewed by the Owner.

2.2.4 The date for approval and beginning of the next phase shall be the date of receipt, by the Professional, of the letter of approval from the Owner.

2.2.5 All time for review of documents by the Owner, which result in an approval with instructions to move to the next phase, shall not be charged to the Professional's days for performing services.

2.3 SURVEYS, BORINGS, AND TESTS

2.3.1 The Professional shall be responsible for obtaining a survey of the building site which shall include applicable grades and lines of streets, alleys, pavements, adjoining property, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site, locations dimensions, data pertaining to existing buildings, utilities, other improvements, locations of trees, and information concerning available service and utility lines, both public and private.

2.3.2 The Professional shall be responsible for obtaining reports on subsurface conditions including test borings or pits, chemical, mechanical, laboratory, or other tests for determining subsurface soil bearing values, and other soil or subsoil conditions required for the structural design.

2.3.3 The obtaining of surveys, tests, engineering data, and any other information obtained by the Professional and described under Subparagraphs 2.3.1 and 2.3.2 shall be the responsibility of the Professional. The Owner shall reimburse the Professional directly for obtaining this information from competent laboratories, engineers, and licensed surveyors selected by and responsible to the Professional, provided the selection and cost have prior approval from the Owner.

2.4 PROGRAM PHASE

2.4.1 The Professional shall meet with the Owner to ascertain the general requirements for the Project and shall meet with the Project Program Committee to define in more detail the Scope of the Project, the functional and departmental objectives of the Project, the relationship of the Project to other structures and facilities, and the criteria for selection of the site. The Professional shall advise the Owner and the Project Program Committee as to cost of the Project and time requirements for planning and construction. The Professional shall prepare and submit to the Owner a comprehensive written Project Program. The Program will include as a minimum the following elements:

1. **Goal:** Design objectives, limitations, and criteria
2. **Site:** Site requirements and analysis including location, boundaries, topography, vegetation, utilities, climate, flooding, traffic, noise, and adjacent buildings
3. **Space:** Space requirements and relations including narrative description by area (square footage recommendations)
4. **People:** Number and functional responsibility of personnel
5. **Equipment:** Special equipment and systems
6. **Alterations:** Flexibility and ability to expand
7. **Energy:** Energy and sustainability considerations (Manual 400.11)
8. **Existing:** Analysis of existing facilities
9. **Concept:** Summary of Project concept, Scope and Goal
10. **Budget:** Total Project budget

2.4.2 The Professional shall submit to the Owner ten (10) copies of the written Project program.

2.4.3 The Professional shall assist the Owner in the preparation of applications to the U.S. Government or other granting agencies for construction, interest subsidy, or other forms of grants.

2.4.4 The Professional shall show progress to date, confirm the remainder of the *Schedule of Performance*, and obtain the Owner's written approval of the Program Phase before proceeding with the Schematic Design Phase.

2.5 SCHEMATIC DESIGN PHASE

2.5.1 The Professional shall confirm the Program requirements of the Owner. If a program has not been provided either within this *Agreement* or other sources, the Professional shall prepare and submit to the Owner a comprehensive written document which defines the Project Scope. The Scope document will include as a minimum the following elements:

1. **General:** General statement of work to be accomplished
2. **Goal:** Design objectives, limitations and criteria
3. **Space:** Space requirements and relations including narrative description by area (square footage recommendations)
4. **People:** Number and functional responsibility of personnel
5. **Equipment:** Special equipment and systems
6. **Concept:** Summary of Project concept, Scope and Goal
7. **Budget:** Total Project budget

The Professional shall submit to the Owner four (4) copies of the written Project Scope.

2.5.2 The Professional shall develop and submit to the Owner an analysis of the site describing significant features of physical environment and characteristics of the site such as climate, topography, soils, soil conditions, ecology, utilities, circulation, views, noise, existing structures, and a statement of the implications of the above factors on design.

2.5.3 The Professional shall develop and submit to the Owner conceptual diagrams of alternative approaches for translating Program requirements into conceptual design solutions. These diagrams shall include, but shall not be limited to, functional relationships within the Program, consideration of relationships to master plans and the environment, consideration of land use, traffic, parking, transportation, utilities, systems described in Subparagraph 2.5.6, and organization of major building functions.

2.5.4 The Professional shall prepare and submit to the Owner visual studies related to the concepts required in Subparagraph 2.5.3 which shall include, but shall not be limited to, massing studies in model and/or diagrammatic form, sketches of design concepts showing elevations and exterior appearances, and any other sketches or visual studies necessary for evaluation of the alternative concepts.

2.5.5 Upon approval by the Owner of a design concept, the Professional shall prepare and submit to the Owner Schematic Drawings of the approved concept. The Schematic Drawings shall include, but shall not be limited to, the following information:

- .1 The basic design approach drawn at an agreed upon scale
- .2 Site location in relationship to the existing environment
- .3 Relationship to master plans
- .4 Circulation
- .5 Organization of building functions
- .6 Functional/aesthetic aspects of the design concepts under study
- .7 Graphic description of critical details
- .8 Visual and functional relationship
- .9 Compatibility of the surrounding environment

2.5.6 The Professional shall prepare and submit to the Owner a description of building systems and give design criteria for the major elements of the following basic building systems (include basic economic and energy usage and sustainability (Manual 400.11) considerations when required):

Structure	Interior Walls & Partitions	Special Items
Foundations	Interior Finishes	Plumbing
Floor on Grade	Sight Lines	HVAC
Floor Stairs	Stairs	Electrical
Roof Systems	Elevators	Built-In Equipment
Exterior Walls		Site Construction

2.5.7 The Professional shall prepare and submit to the Owner an estimate of probable total Project cost based on proposed square footage and/or volume unit costs.

2.5.8 The Professional shall show progress to date, confirm the remainder of the *Schedule of Performance*, and obtain the Owner's written approval of the Schematic Design Phase before proceeding with the Design Development Phase.

2.6 DESIGN DEVELOPMENT PHASE

2.6.1 Based on the approved Schematic Design Phase, the Professional shall develop and submit to the Owner a fully developed design concept.

2.6.2 The Professional shall prepare and submit to the Owner floor plans showing spaces by name and number, actual net area of each space, structural module, fixed equipment, mechanical spaces, chases, and circulation areas. Drawings shall show overall building dimensions and major lines of dimensions. The Professional shall also prepare and submit site plans which show topography, adjacent buildings, and utilities. Drawings shall include information to adequately explain HVAC, electrical, and structural systems. Information concerning furnishings, miscellaneous equipment, layouts, lists, and schedules necessary to explain the plans are to be indicated on floor plans. The Professional shall also prepare preliminary specifications following the Construction Specifications Institute (CSI) format and giving basic descriptions of essential building materials, finishes, components, and all systems. The level of detail on the plans and

specifications shall be at a level sufficient for the development of the preliminary quantity cost estimate required at completion of the Design Development Phase.

2.6.3 The Professional shall prepare and submit to the Owner building elevations, sections and design details. Building elevations shall show fenestration, proposed exterior materials, and shall be developed using shades and shadows which will adequately show the proposed building exteriors. These Design Development Drawings shall be developed to a point which will permit the Professional to proceed with the Contract Document Phase when the Design Development Phase is approved.

2.6.4 The Professional shall prepare and submit to the Owner a construction cost analysis showing allocation of costs for various building systems. The basis for the cost estimate shall be a preliminary quantity survey which shall be required for all building systems described in Subparagraph 2.5.6. The construction cost estimate shall show escalation projections from the date of the estimate to the projected bid date.

2.6.5 The Professional shall show progress to date, confirm the remainder of the *Schedule of Performance*, and obtain the Owner's written approval of the Design Development Phase before proceeding with the Construction Document Phase.

2.7 CONSTRUCTION DOCUMENT PHASE

2.7.1 Upon approval of the Design Development Phase by the Owner, the Professional shall prepare and submit to the Owner four (4) copies of Working Drawings and Specifications detailing and prescribing the Work to be accomplished including materials; workmanship; finishes; mechanical and electrical systems; special equipment; general, special, and *Supplementary Conditions* of the *Agreement Between the Owner and the Contractor*; and any and all other information required for receiving bids on the Project and subsequent preparation of shop drawings and detail drawings.

2.7.2 Include four (4) copies of design calculations for the electrical, mechanical and structural systems when submitting data in Subparagraph 2.7.1.

2.7.3 Upon receipt of the review comments from the Owner, the Professional shall complete the Contract Documents to conform with the review comments and furnish final four (4) copies to the Owner prior to release of documents for bids.

2.7.4 The Professional shall furnish complete sets of plans, specifications, and other Bidding Documents as are necessary for bidding purposes. The actual cost of printing and mailing these Bid Documents shall be paid by the Professional and reimbursed by the Owner, with cost approval by the Owner before printing is ordered. Reimbursement to the Professional by the Owner of printing costs is to assure that an adequate number of plans and specifications shall be available for bidding purposes and thereby resulting in the best possible competitive bids being received by the Owner for the Project. Costs of all plans and specifications, other than for bidding, required for the design process shall be at the expense of the Professional.

2.7.5 The Professional shall prepare and submit to the Owner a detailed Construction Cost Analysis showing allocation of cost for various systems. The basis for the cost estimate shall be a quantity survey. The estimate shall show an escalation projected from the date of the estimate to the projected bid date.

2.7.6 The date for receipt of bids shall be established by the Owner.

2.7.7 The Professional agrees that approval of Drawings and Specifications by any person, body, or agency shall not relieve him of the responsibility for the adequacy, fitness, suitability, correctness of design, and for designing the work in accordance with sound and accepted architectural and engineering practices and in compliance with prevailing building codes, federal and state laws and regulations regarding hazardous materials.

2.8 BIDDING PHASE

2.8.1 The Professional, following the Owner's approval of the Construction Document Phase, shall assist the Owner in obtaining bids and in award and preparation of Construction Contracts.

2.8.2 The Professional shall attend the bid opening and furnish a suitably detailed tabulation sheet for recording the name of each Bidder, the Bidder's *Certificate of Responsibility Number*, *Bid Security*, Base Bid, Alternates, and remarks. The Professional shall furnish sufficient tabulation sheets for all in attendance. Immediately after receipt of bids, the Professional shall submit to the Owner a certified tabulation of all bids received, along with his recommendation as to Contract award.

2.8.3 The Professional, following the award of a Construction Contract, shall prepare and submit to the Owner, two (2) copies of updated Construction Documents (Plans/Specifications). Each copy shall be marked *OFFICIAL CONTRACT DOCUMENTS* and shall include an executed bid *Proposal Form, Agreement Form, Contract Bond, Power of Attorney, Certificate of Insurance*, all bulletins, Addenda, and supplemental Drawings. One (1) copy shall be retained by the Owner, one (1) copy shall be for the Contractor. Any other contract document guidelines will be distributed to the Professional at the bid opening.

2.8.4 The Professional shall also furnish the area and volume of the building computed in accordance with criteria of the American Institute of Architects; and the square foot and cubic foot costs of only the building, the mechanical system, the electrical system, special built-in equipment, and the total Project cost.

2.8.5 The Professional shall, unless waived by the Owner, also submit one electronic format copy of the updated Contract Documents (plans and specifications) in coordination with said Contract Documents in 2.8.3 above. Said electronic submittal to be submitted within thirty (30) days after award by Owner in .pdf format. The actual cost of the electronic submittal shall be paid by the Owner, with cost approval by the Owner before printing is ordered in accordance with 3.4.

2.9 CONSTRUCTION PHASE

2.9.1 The Professional's relationship to the General Contractor shall be set forth in the *General Conditions* or the *Supplemental Conditions* of the *Agreement Between the Owner and the Contractor*, or modified by this *Agreement*. The Professional is responsible for keeping the Owner completely apprized of the Project during the Construction Phase.

2.9.2 The Construction Phase begins with the award and the preparation of the Construction Contract(s). The Construction Phase is concerned with the professional services required to direct the two (2) components of construction - office and field. The Professional services performed for the office component include:

- .1 Complete administration of all Construction Contracts
- .2 Issuing *Certificates for Payment*
- .3 Examining and approving shop drawings and correcting shop drawings when necessary for conformance with the design intent
- .4 Making revisions, corrections, or clarifications in the Contract Documents by bulletins or Change Orders, together with all correspondence and clerical work in connection with bulletins and Change Orders
- .5 Providing sufficient on-site investigation to substantiate any of the above and accepting the completed Project, together with such *Certificates, Manuals, and Guarantees* as provided in the Contract Documents

2.9.3 The Professional shall collect, maintain and house copies of weekly payrolls from all Contractors and Subcontractors for compliance with the labor standard provisions of the Construction Contract when labor standard provisions are contained in the Contract.

2.9.4 The Professional services performed for the field component comprise on-site inspection by the Professional and/or Consultants to guard against nonconformity of the Work with the Contract Documents and to observe and report on compliance with agreed upon construction schedules. Notwithstanding the above, the Professional shall be responsible for insuring field inspections are made as needed and during the critical phases of construction by the Consultants and the Professional's firm. The Professional shall maintain a log of all visits to the site by the Consultants and the Professional's firm. The Professional shall not be responsible for construction means, methods, techniques, sequence of procedures, or the safety precautions and programs in connection with the work. The Professional may disapprove or reject work as failing to conform to the Contract Documents.

2.9.5 On-site inspections shall be done by a principal of the Professional's firm and/or of each Consultant firm, or a qualified employee of each firm as approved by the Owner. Once a month a written report, including a copy of the visit log described in Subparagraph 2.9.4, shall be submitted apprising the Owner of the progress and condition of the Work. Any additional reports shall be collectively submitted by the Professional.

2.9.6 The Professional shall be the interpreter of the requirements of the Contract Documents and judge of the performance thereunder of the Contractor. The Professional shall render written interpretations necessary for the proper execution of the Work with reasonable promptness upon written request of either the Owner or the Contractor.

2.9.7 The Professional shall not issue any verbal or written orders for omissions from, additions to, or changes in the Construction Contract until approved in writing by the Owner, or as modified by this *Agreement*.

2.9.8 The Professional shall prepare Change Orders for the Owner's approval and execution in accordance with the Contract Documents and shall have authority to order minor changes in the work which do not involve an adjustment in the Contract Sum or an extension of the Contract Time and which is not inconsistent with the intent of the Contract Documents.

2.9.9 The Professional shall determine the amounts owed to the Contractor based on inspections at the site and evaluations of the Contractor's applications for payment and will recommend, for the Owner's approval, the issuance of certificates for payment in such amounts as provided in the Contract Documents.

2.9.10 The approval of a *Certificate for Payment* shall constitute a representation by the Professional to the Owner, based on the inspections at the site 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 Professional's knowledge, information and belief, the quality of the work is in accordance with the Contract Documents; and, that the Contractor is entitled to payment in the amount certified. The issuance of a certificate for payment will not be a representation that the Professional has made any examination to ascertain how and for what purpose the Contractor has used the monies paid on account of the Contract Sum, other than to secure certification under oath that all Materialmen, Laborers, and Subcontractors have been paid by the Contractor.

2.9.11 When the Professional is notified by the Contractor that the Work has been completed and the Project is ready for inspection, the Professional and Consultants shall conduct a semi-final inspection. The Professional and Consultants shall prepare lists of items needing correction. When these items have been corrected by the Contractor, the Professional and all Consultants shall, with a Representative of the Owner present, make the final inspection and shall certify to the best of their knowledge to the Owner completion of the Project in compliance with the Contract Documents. It is the responsibility of the Professional to have representative(s) of Consultants present for the semi-final and final inspection(s).

2.9.12 Upon completion of the Project, the Professional shall furnish corrected documents to conform to the Project as finally constructed and shall deliver to the Owner two (2) sets of record documents. Record documents shall reflect all changes caused by addenda, field changes, change orders, and observed changes by the Professional, Contractor, or Subcontractors. When required in Subparagraph 2.1.1, the record documents shall be on permanent erasable transparencies suitable for reproduction. The actual cost of printing the permanent reproducible transparencies shall be paid by the Owner, with cost approval by the Owner before printing is ordered. In addition, the Professional shall deliver to the Owner the Manufacturer's data for the roof materials used, the Manufacturer's Guarantee, and the Roofing Contractor's Guarantee. The Professional shall, unless waived by the Owner, also submit one electronic format copy of the updated As-Built documents in .pdf format in coordination with the project Close-Out Documents. The actual cost of the electronic submittal shall be paid by the Owner, with cost approval by the Owner before printing is ordered in accordance with 3.4.

2.9.13 During the Warranty period of the Construction Contract(s), the Professional shall work with a Representative of the Owner in securing remedy of defects that become apparent. The Professional shall make, with a Representative of the Owner present, a Warranty inspection of the Project prior to the expiration of the Warranty period and report observed discrepancies to the Contractor for correction.

2.9.14 The Construction Phase shall terminate upon expiration of the Warranty period or settlement of all Warranty claims, whichever occurs last.

2.10 PROFESSIONAL CONSULTING SERVICES

2.10.1 If the Professional, who is a party to this *Agreement*, renders basically architectural services, he hereby agrees that all plans, specifications, detail drawings, and miscellaneous services required for engineering work pertaining to heating, ventilation, refrigeration, electrical, mechanical, or structural work shall be performed by a registered engineer in his own organization or he agrees to employ, without additional cost to the Owner and subject to the approval of the Owner, the services of a registered engineer regularly engaged in the work. Drawings prepared shall bear the stamp of the responsible registered Professional. The Professional shall enter into Contract agreements with such registered Professional with Contracts binding them to terms and responsibilities substantially set forth herein regarding design and inspection services.

2.10.2 If the Professional, who is a party to this *Agreement*, renders basically engineering services, he hereby agrees that all plans, specifications, detail drawings, and miscellaneous services required for architectural work pertaining to heating, ventilation, refrigeration, electrical, mechanical, or structural work shall be performed by a registered architect in his own organization or he agrees to employ, without additional cost to the Owner and subject to the approval of the Owner, the services of a registered architect regularly engaged in the work. Drawings prepared above shall bear the stamp of the responsible registered Professional. The Professional shall enter into

Contract agreements with such registered Professional with Contracts binding them to terms and responsibilities substantially set forth herein regarding design and inspection services.

2.11 ASBESTOS ABATEMENT

2.11.1 The Professional shall be responsible for obtaining asbestos consulting services to inspect, locate, identify and abate any Asbestos Containing Materials (ACM) present in the Project; or, the Professional may select to perform these duties. All abatement activities shall be in accordance with federal and state laws, directives and requirements.

2.11.2 The Professional, or Asbestos Consultant, may be used to handle the abatement planning process. Regardless, the removal of the ACM will be part of the general *Agreement Between the Owner and the Contractor* awarded by the Owner.

2.11.3 The Professional, or Asbestos Consultant, shall possess a current *Project Designer* and *Project Inspector* certificate issued by the Mississippi Department of Environmental Quality, Office of Pollution Control. A copy of each certificate shall be attached to the report described in Subparagraph 2.11.4, Item .3.

2.11.4 During the Schematic Design Phase described in Paragraph 2.5, the Professional, or Asbestos Consultant, shall conduct an Inspection/Sampling/Testing Phase enumerated (1-5) as follows:

- .1 All asbestos related services for reimbursement must receive prior written approval by the Owner. The Professional shall submit to the Owner written proposals describing the work and cost. The Owner may request the Professional to secure additional proposals as deemed necessary. Upon written approval by the Owner, the Professional may begin the authorized asbestos services described in Subparagraph 2.11.4. Any work performed without the Owner's approval will be the financial responsibility of the Professional.
- .2 Perform a complete inspection of the Project to determine the types, locations and approximate quantities of suspect ACM.
- .3 Secure the services of a testing laboratory qualified by the National Institute of Safety and Health (NIOSH) to conduct tests for the presence of asbestos. The services should include sample collection, analysis and reporting. If the Professional and/or Asbestos Consultant is also a NIOSH qualified laboratory, the collection, analysis and reporting may be conducted in-house.
- .4 Prepare and submit to the Owner four (4) copies of a comprehensive written document which defines the extent of ACM present, its type, location and approximate quantity. The document should include drawings, the testing laboratory report, cost options and Owner options.
- .5 The total cost of asbestos services required in Subparagraph 2.11.4 shall be reimbursed to the Professional once, and only upon delivery and satisfactory completion of the comprehensive written report required in Item .3 of Subparagraph 2.11.4. An itemized statement from the Professional, complete with photo copies of all related invoices, is necessary in order to process the payment.

2.11.5 Immediately after receipt of Owner's approval of the Inspection/Sampling/Testing Phase described in Subparagraph 2.11.4, the Professional shall submit Project data required by the Attorney General's Special Counsel described in Article 10 and/or any other notification required by the Owner.

2.11.6 After Owner's approval of the Inspection/Sampling/Testing Phase described in Subparagraph 2.11.4, the Professional shall prepare and include in the working drawings and specifications the work to be accomplished and the protective measures in accordance with Environmental Protection Agency (EPA) guidelines. Procedures shall include a plan for shutting down mechanical and electrical systems, phasing of work if required, and outlining responsibilities for cleaning and removing loose equipment.

2.11.7 The Professional shall provide for the Owner Project data required by the Attorney General's Special Counsel as described in Article 10 and/or any other information required.

2.11.8 The daily air monitoring and final air clearance testing shall be included as the Contractor's responsibility in the Abatement Documents. The Contractor shall select, supervise and pay for all job air monitoring. If for any reason this is omitted from the Contractor's responsibility, the Professional shall provide the air monitoring services without additional cost to the Owner.

2.11.9 If Asbestos Hazard Emergency Response Act (AHERA) regulations require a final air clearance test by an independent testing laboratory not associated with the Contractor, the Professional shall be responsible for obtaining that final independent air clearance tests. The Owner shall reimburse the Professional directly for obtaining these services, provided the selection and costs are preapproved by the Owner in writing.

2.12 HAZARDOUS CONTAINING MATERIALS

2.12.1 The Professional shall be responsible for obtaining consulting services to inspect, locate, identify and remove any hazardous materials (HCM) present in the Project; or, the Professional may select to perform these duties himself. All removal activities shall be in accordance with federal and state laws, directives and requirements.

2.12.2 The Professional or Consultant may be used to handle the planning process. Regardless, the removal of the HCM will be part of the General Contract awarded by the Owner.

2.12.3 During the Schematic Design Phase described in Paragraph 2.5, the Professional and/or Consultant shall conduct an Inspection/Sampling/Testing Phase enumerated (1-5) as follows:

- .1 All hazardous related services for reimbursement must receive prior written approval by the Owner. The Professional shall submit to the Owner written proposals describing the work and cost. The Owner may request the Professional to secure additional proposals as deemed necessary. Upon written approval by the Owner, the Professional may begin the authorized hazardous services described in Subparagraph 2.12.3. Any work performed without the Owner's approval will be the financial responsibility of the Professional.
- .2 Perform a complete inspection of the Project to determine the types, locations and approximate quantities of suspected HCM
- .3 Secure the services of a testing laboratory qualified to conduct tests for the presences of hazardous materials. The services should include sample collection, analysis and reporting. If the Professional and/or Consultant is also a qualified laboratory, the collection, analysis and reporting may be conducted in-house.
- .4 Prepare and submit to the Owner four (4) copies of a comprehensive written document which defines the extent of HCM present, its type, location and approximate quantity. The document should include drawings, the testing laboratory report, cost options and Owner options.
- .5 The total cost of hazardous material services required in Subparagraph 2.12.3 shall be reimbursed to the Professional once, and only upon delivery and satisfactory completion of the comprehensive written report required in Item .3 of Subparagraph 2.12.3. An itemized statement from the Professional, complete with photo copies of all related invoices, is necessary in order to process payment.

2.12.4 After Owner's approval of the Inspection/Sampling/Testing Phase described in Subparagraph 2.12.3, the Professional shall prepare and include in the working drawings and specifications the Work to be accomplished and the protective measures necessary. Procedures shall include a plan for shutting down mechanical and electrical systems, phasing of work if required, and outlining responsibilities for cleaning and removing loose equipment.

2.12.5 The daily air monitoring and final air clearance testing shall be included as the Contractor's responsibility in the removal Documents. The Contractor shall select, supervise and pay for all job air monitoring. If for any reason this is omitted from the Contractor's responsibility, the Professional shall provide the air monitoring services without additional cost to the Owner.

ARTICLE 3: OWNER'S RESPONSIBILITY

3.1 PROJECT INFORMATION AND BUDGET

3.1.1 The Owner shall provide information regarding requirements for Project program and budget.

3.1.2 The Owner shall furnish information required in Subparagraph 3.1.1 as expeditiously as necessary for the orderly progress of work.

3.2 SITE AND SOIL INFORMATION

3.2.1 The Owner shall reimburse the Professional for the cost of adequate site information and soil analysis required for the Professional's use in designing the Project. The Owner shall establish procedures and cost requirements for both site and soil information and, only upon the Owner's written approval, shall reimbursement be made.

3.3 ADVERTISEMENT FOR BIDS

3.3.1 The Owner shall prepare the *Advertisement for Bids* and pay for the publication.

3.4 PRINTING COSTS

3.4.1 The Owner shall reimburse the Professional for actual costs of printing and mailing Construction Documents for bidding and construction phases only, less any deposits not refunded. Construction Documents are defined as final Drawings and Project Manual used in obtaining bids and for construction.

3.4.2 Reimbursement shall not be made for any printing or photographic methods used as an aid in the development of design, instruments of service, check prints, or any construction documents not used for the purpose of obtaining bids or for construction.

3.4.3 The Owner shall reimburse the Professional for the actual cost of printing permanent reproducible transparencies required at completion of the construction phase and for electronic submittals in 2.8.5 and 2.9.12.

3.4.4 The Professional shall submit a statement itemizing each item for reimbursement, along with copies of invoices for each. Reimbursement for Contract Documents described in Subparagraph 2.7.4 shall be due and payable once and only upon award of a Construction Contract. All printing of documents or electronic submittals "in house" must be supported by an outside quote and must not exceed the cost of said quote, and must be in accordance with 3.4.5 below. Reimbursement is not due if no construction award is made.

3.4.5 The Professional shall anticipate printing costs "for the entire project". When printing for the entire project totals over \$5,000.00, then two printing quotes are needed with submission to the Owner and approval by the Owner. When printing for the entire project totals over \$25,000.00, then printing bids are needed by the Professional with submission to the Owner and approval by the Owner.

3.5 RENDERING AND MODEL COSTS

3.5.1 The Owner may request the Professional to provide, at completion of any phase, a color rendering of the facility. The size rendering, style, matting, framing, and cost must be agreed upon prior to beginning. The actual total rendering cost shall be reimbursed to the Professional once and only upon delivery by the Professional to the Owner of the finished product, along with supporting original invoices.

3.5.2 The Owner may request the Professional to provide, at completion of any phase, a model of the facility. The size model, type, dust cover, construction method, and cost must be agreed upon prior to beginning. The actual total model cost shall be reimbursed to the Professional once and only upon delivery by the Professional to the Owner of the finished product, along with supporting original invoices.

3.5.3 The Owner shall approve the scope and cost of the total reimbursement in writing prior to ordering the rendering or model.

3.6 MANAGER

3.6.1 The Owner may contract by separate contract for the services of a Manager to be the Owner's Agent in managing the various project contracts entered into by the Owner.

3.6.2 When management is marked as part of the Professional's services listed under Subparagraph 2.1.1, the Professional and Owner agree to the following:

- .1 All communication with the Owner will be through the Manager
- .2 The Manager will perform all services, duties and responsibilities as described in the Owner and Manager Agreement.
- .3 The Manager does not assume any of the responsibilities or duties of the Professional as outlined in this Agreement.
- .4 The Manager assumes the responsibilities and duties of the Owner as outlined in this Agreement.

ARTICLE 4: CONSTRUCTION COST

4.1 DEFINITION

4.1.1 The construction cost means the cost of all Contracts to the Owner, but such cost shall not include the Professional's fee and/or reimbursements and shall not include loose equipment. Built-in or attached equipment shall be considered a part of the building construction cost.

4.2 EXPLANATION

4.2.1 Estimates by the Professional of the construction cost in excess of the budget furnished by the Owner to the Professional must be accompanied by a full and complete explanation detailing conditions that contributed to the cost in excess of the budget.

4.3 FIXED LIMIT OF CONSTRUCTION COST

4.3.1 Before the Professional begins the Project, the Owner shall provide the Professional with a budget of all funds available for the total Project. The total Project includes the Contract(s) for construction, all fees, special Consultants and Contracts, advertising costs, code compliance expenses, a reasonable contingency, and any other expenses necessary to complete the Project and deliver a useful facility to the Using Agency. The Professional agrees that unless the Project, as designed by him covering the complete Scope of the Work, can be actually constructed within the budget of funds available, the Owner shall not be obligated to the Professional for any part of the Professional's fee beyond the last Owner-approved phase.

4.3.2 If after bidding, the Project cannot be constructed within the budget of funds available, the Owner may authorize the Professional to do one of the following:

- .1 The Owner may authorize the Professional to revise the Contract Documents and rebid.
- .2 The Owner may authorize the Professional to modify the Program, adjust the Project Scope, revise the Contract Documents, and rebid

ARTICLE 5: MISCELLANEOUS PROVISIONS

5.1 OWNERSHIP OF DOCUMENTS

5.1.1 Drawings and Specifications as instruments of service are the property of the Owner whether the work for which they are designed is constructed or not. Upon payment of the fees accrued for the services performed through the latest completed phase as provided in Article 6, the Owner shall have full and unrestricted use of the Drawings and Specifications for construction of the Project. The Documents shall not be used again by the Professional other than for the benefit of the State and on authority of the Owner. Permanent reproducible transparencies shall be furnished to the Owner upon request and the Owner shall reimburse the Professional for the actual cost. Original tracings and specifications may remain in the files of the Professional until the Owner requests delivery.

5.1.2 The Owner shall have full and unrestricted use of the Drawings and Specifications for use on any future Project without further compensation due the Professional.

5.2 CODES

5.2.1 The Professional shall prepare Drawings and Specifications in conformance with the following 2006 ICC Codes in effect as of the date of this *Agreement*, unless a different edition is so noted. The most stringent of the following Codes will be used in order to comply with Law.

- | | | | |
|-----|--|-----|--|
| .1 | International Building Code | .14 | Mississippi Floodplain Regulations |
| .2 | International Existing Building Code | .15 | Information Technology Services (formerly Central Data Professing Authority) - <i>Computer Equipment Purchases and Telecommunication Purchases</i> |
| .3 | International Plumbing Code | | |
| .4 | International Mechanical Code | .16 | Mississippi Department of Archives and History - <i>Historic Properties</i> |
| .5 | International Fuel Gas Code | .17 | Mississippi Department of Environmental Quality's Office of Pollution Control - <i>Air and Water</i> |
| .6 | International Electrical Code | .18 | Mississippi State Department of Health's Health Facilities Licensure and Certification Division - <i>Minimum Standards of Operation for Home Health Agencies</i> |
| .7 | International Energy Conservation Code | | <i>Minimum Standards of Operation for Personal Care Homes</i> |
| .8 | International Fire Code | | <i>Minimum Standards of Operation for Chemical Dependency Units</i> |
| .9 | Mississippi Handicapped Law, Mississippi Code 1972, Annotated, Section 43-6-101 through 43-6-125 | | <i>Minimum Standards of Operation for Mississippi Hospitals</i> |
| .10 | Federal Register, Part III, Environmental Protection Agency 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants; Asbestos NESHAP Revision; Final Rule | | <i>Minimum Standards of Operation for Psychiatric Hospitals</i> |
| .11 | Mississippi Regulations for Accreditation and Certification of Asbestos Abatement Personnel (Mississippi Department of Environmental Quality) | | <i>Minimum Standards of Operation for Ambulatory Surgical Facilities</i> |
| .12 | Federal Register, Part IV, Department of Justice 28 CFR Part 35, Nondiscrimination on the Basis of Disability in State and Local Government Services; Final Rule | | <i>Minimum Standards of Operation for Institutions for the Aged and Infirmed</i> |
| .13 | Davis Bacon Act Regulations | | |

5.3 CONSULTING PROFESSIONALS

5.3.1 The Consulting Professionals retained or otherwise employed by the Professional must be approved by the Owner. The Professional shall not employ or otherwise retain consulting Professionals with proprietary interests.

5.3.2 The Professional agrees to employ the Consultants for complete services, including inspection.

5.4 MATERIALS AND EQUIPMENT

5.4.1 The Owner shall and does have the right to approve any and all materials and equipment used in the construction of the Project.

5.5 SUCCESSORS AND ASSIGNMENTS

5.5.1 With the written consent of the Owner, the Professional may assign a portion of his financial interest to a recognized financial institution for underwriting operations covered by this *Agreement*. The Owner and the Professional each binds himself, his Partners, Successors, Assigns, and legal Representatives or such other party in respect to all covenants of this *Agreement*. Neither the Owner, nor the Professional, shall assign, sublet, or transfer interest in this Agreement without the written consent of the Other.

5.6 LAWS

5.6.1 This *Agreement* shall be governed by the Laws of the State of Mississippi.

ARTICLE 6: FEES AND PAYMENTS TO THE PROFESSIONAL

6.1 GENERAL

6.1.1 The fee for the Project shall be a percentage of construction cost based on each construction contract awarded.

6.1.2 When the Project is composed of more than one building classification, or involves a mixture of renovation work, new construction, and/or repetitive design, an exhibit showing the fee computation shall be attached to and made a part of this *Agreement*.

6.1.3 When the Project is composed of more than one building classification, the fee may be calculated using the different building classifications as separate projects. An exhibit showing the different classifications used in the fee computation shall be attached to and made a part of this Agreement.

6.1.4 For repetitive units, the fee for the first unit shall be calculated using the basic fee; the fee for the second unit shall be calculated using seventy-five percent (75%) of the basic fee; the fee for additional units three (3) through ten (10) shall be calculated using fifty percent (50%) of the basic fee; the fee for each unit above ten (10) shall be calculated using two and five tenths percent (2.5%) of the basic fee.

6.1.5 When the Project is determined by the Owner to include substantial renovation, repair, or alteration work, the fee shall be one hundred and fifteen percent (115%) of the basic fee.

6.2 PERCENTAGE OF CONSTRUCTION COST

6.2.1 When the Project fee is based on a percentage of construction cost, the basic building shall be classified as one (1) of five (5) types. Only the Owner shall be responsible for deciding in which classification the Project falls as indicated in Subparagraph 1.2.2. The building classifications are:

Type A: Projects of simple, utilitarian character without complication or detail and with a high degree of repetition, such as parking structures, garages, loft type structures, warehouses (exclusive of automated equipment), industrial buildings and farm structures.

Type B: Project of simple character requiring normal attention to design, detail, and with moderate repetition, such as armories, apartments, bakeries, cold storage facilities, exhibition halls, freight facilities, hangars, manufacturing, industrial plants, motels, office buildings (without tenant improvements), packaging and processing plants, printing plants, public markets, roads, skating rinks, and service garages.

Type C: Projects of conventional character requiring normal attention to design and detail, complete with complete mechanical and electrical systems, such as bridges, cinema, college classroom facilities, convention facilities, dining halls (institutional), dormitories, fire stations, gymnasiums*, hotels, laundries and cleaning facilities, marinas, nursing homes, office buildings (with tenant improvements), parks, playground and recreational facilities, police stations, post offices, publishing plants, restaurants, schools (elementary and secondary), specialty shops, stadiums, transportation terminals, welfare buildings, neighborhood centers and similar recreational facilities, banks, exchanges and other financial institutions, extended care facilities, libraries, medical schools, medical office facilities and clinics, mental institutions, mortuaries, public health centers, religions facilities, research facilities, central utilities plants, water supply and distribution plants, sewage treatment and underground systems, electrical sub-station and primary and secondary distribution systems.

* Simple, prefabricated-pre-engineered, minimum types shall be classified under Classification B.

Type D: Projects of specialized character requiring a high degree of skill in design, containing large amounts of complex scientific mechanical and electrical equipment, such as aquariums, auditoriums, airport control towers, art galleries, breweries, college buildings with special facilities, communications buildings, correctional and detention facilities, exposition buildings, hospitals, laboratories, observatories, theaters and veterinary hospitals. All historical facilities requiring complete restoration, except historical facilities being repaired only are a C classification.

Type E: Projects of detail character requiring elaborate planning and execution and devoid of repetition, such as mausoleums, memorials, monuments, museums, residences, and specialized decorative buildings.

6.2.2 The Owner shall pay the Professional a fee calculated as a percentage of construction cost derived from a basic fee formula of a fixed number (X) divided by the common logarithm of the actual construction cost (C). The formulas for each building classification are as follows:

$$\text{A Fee percentage formula} = \frac{35}{\text{Log } C} \quad \text{A Fee amount formula} = C \frac{(35)}{(\text{Log } C)}$$

$$\text{B Fee percentage formula} = \frac{40}{\text{Log } C} \quad \text{B Fee amount formula} = C \frac{(40)}{(\text{Log } C)}$$

$$\text{C Fee percentage formula} = \frac{42}{\text{Log } C} \quad \text{C Fee amount formula} = C \frac{(42)}{(\text{Log } C)}$$

$$\text{D Fee percentage formula} = \frac{44}{\text{Log } C} \quad \text{D Fee amount formula} = C \frac{(44)}{(\text{Log } C)}$$

$$\text{E Fee percentage formula} = \frac{46}{\text{Log } C} \quad \text{E Fee amount formula} = C \frac{(46)}{(\text{Log } C)}$$

6.2.3 When Change Orders occur, the fee shall be increased or decreased accordingly if the Construction Contract amount is increased or decreased. If an increase is the direct result of the Professional's errors or omissions, the Owner may elect not to increase the fee. The Owner is the sole judge of whether the Change Order resulted from the Professional's error or omission.

6.3 RENOVATION

6.3.1 Only the Owner shall be responsible for deciding whether or not the Project has substantial renovation, repairs, and/or alteration work which is indicated in Subparagraph 1.2.3. When the Project embraces substantial renovation, repairs, and/or alteration work to existing facilities, the fee shall be one hundred fifteen percent (115%) of the basic fee as calculated by the formula in Subparagraph 6.2.2.

ARTICLE 7: PAYMENTS TO THE PROFESSIONAL

7.1 PAYMENTS FOR BASIC FEE

7.1.1 Payments to the Professional on account of his basic fee under Article 6 shall be made as indicated in the following paragraphs.

7.1.2 Upon completion of the Program and Schematic Design Phase and written approval of the appropriate Using Agency, Governing Board, and Owner, a sum equal to ten percent (10%) of the basic fee computed upon the approved estimate of construction cost shall be due.

7.1.3 Upon completion of the Design Development Phase and written approval of the appropriate Using Agency or Governing Board, and the Owner, a sum equal to thirty percent (30%) of the basic fee, less any previous payments, computed upon the approved estimate of construction cost shall be due.

7.1.4 Upon completion of the Construction Document Phase and written approval of the appropriate Using Agency, Governing Board, and Owner, a sum equal to sixty percent (60%) of the basic fee, less any previous payments, computed upon the approved estimate of construction cost shall be due. Such sum shall in no instance be computed upon an amount larger than the total amount available for the Project and in no event shall exceed the budget furnished by the Owner to the Professional.

7.1.5 If upon completion of the Construction Document Phase and written approval of the appropriate Using Agency or Governing Board, the Owner is unable or chooses not to execute the Bidding Phase described in Paragraph 2.5, the Professional is due a sum equal to seventy percent (70%) of the basic fee, less any previous payments, computed upon the approved estimate of construction cost. Such sum shall in no instance be computed upon an amount larger than the budget furnished by the Owner to the Professional.

7.1.6 Upon completion of the Bidding Phase, written approval of the appropriate Using Agency, Governing Board, and Owner, and receipt of an executable Construction Contract signed by the Contractor, a sum equal to seventy-five percent (75%) of the basic fee, less any previous payments, computed upon the actual Contract award amount shall be due.

7.1.7 If upon completion of the Bidding Phase and written approval of the appropriate Using Agency or Governing Board, the Owner is unable or chooses not to execute the Construction Phase described in Paragraph 2.9, the Professional is due a sum equal to seventy-five percent (75%) of the basic fee, less any previous payments, computed upon the lowest and best BASE BID [Alternates will in no case be considered.]. Such sum will in no instance be computed upon an amount larger than the BASE BID. In no instance will the fee described in this Subparagraph be due IF the computed total Project budget using the BASE BID amount exceeds the budget furnished by the Owner to the Professional. Refer to Paragraph 4.3.

7.1.8 Payment of fees to the Professional during the Construction Phase shall be made monthly in proportion to the current percentage requested by the Contractor and approved by the Owner.

7.1.9 The Owner reserves the right to determine when and who provides the Professional service items needed for this Project. Any pay request submitted by the Professional which contains service items not authorized by the Owner to be performed by the Professional may be disapproved in part, or total.

7.2 INTERIM PAYMENTS FOR BASIC FEE

7.2.1 The Owner shall make interim progress payments to the Professional on account of the basic fee under Article 6 as indicated in the following Subparagraphs when the total Owner-approved construction cost estimate is in excess of five million dollars (\$5,000,000.00).

7.2.2 Prior to completion of the Design Development Phase and at the approximate midpoint (1/2) of the Design Development Phase, a sum equal to twenty percent (20%) of the basic fee, less any previous payments, computed upon an Owner approved estimate of construction cost, shall be due. The Owner shall be the sole judge as to whether the Professional is at the mid-point (1/2) of the Design Development Phase and due the interim payment.

7.2.3 Prior to completion of the Construction Document Phase and at approximately one third (1/3) of the Construction Document Phase, a sum equal to forty percent (40%) of the basic fee, less any previous payments computed upon an Owner approved estimate of construction cost, shall be due. The Owner shall be the sole judge as to whether the Professional is at the one third (1/3) point of the Construction Document Phase and due the interim payment.

7.2.4 Prior to completion of the Construction Document Phase and at approximately two thirds (2/3) of the Construction Document Phase, a sum equal to fifty percent (50%) of the basic fee, less any previous payments computed upon an Owner approved estimate of construction cost, shall be due. The Owner shall be the sole judge as to whether the Professional is at the two thirds (2/3) point of the Construction Document Phase and due the interim payment.

7.2.5 The Professional shall prepare and submit to the Owner sufficient sketches, drawings, written material, product information, calculations, and estimates to enable the Owner to determine, without doubt, that the Professional is at or beyond the point of work necessary to receive interim payments. The Owner is the sole judge of the sufficiency of the submitted material. The Professional shall submit simultaneously the data required to the institution or agency and to the Owner.

7.2.6 The Professional shall continue the work on the specific phase during the review of the interim payment request. Project work shall not stop because phase approval has not been given. The only result of the submittal will be payment of the specified interim payment amount.

7.2.7 The payment of interim Design Development Phase or Construction Document Phase requests in no way approves any part of the particular phase. Only upon completion, submittal, and approval of a phase is it considered approved under this *Agreement*.

7.3 PAYMENTS FOR ADDITIONAL SERVICES

7.3.1 The Owner shall make payments in full upon completion and Owner approval of any additional services indicated in Paragraph 1.3.

7.3.2 Partial payments may be made upon written request by the Professional and the Owner's approval.

7.4 PAYMENTS FOR EXTRA SERVICES AND SPECIAL SITUATIONS

7.4.1 If the Professional is caused extra drafting or other expense because of major changes ordered by the Owner, the delinquency or insolvency of the Contractor, or as a result of damage by fire, the Professional may request to be paid for such extra services and expenses. If any work designed or specified is abandoned or suspended, the Professional may request to be paid for the services rendered.

7.4.2 The Professional is not due extra compensation for any work performed at the direction of the Using Agency for whom the Project is constructed or for alternates included in the bid package but not included in the actual Construction Contract award.

7.4.3 Any Professional having a claim under this Paragraph shall prepare a complete and documented explanation and submit it to the Owner for consideration. Only upon Owner approval shall extra compensation be made.

7.4.4 At the Owner's discretion, the Professional may be compensated for extra services in special situations according to the fees indicated in Paragraph 1.4, or negotiated a lump sum payment.

7.5 REIMBURSEMENTS

7.5.1 The Owner shall reimburse the Professional for expenses listed in Paragraph 1.5. The Professional shall submit a separate invoice on each item for which reimbursement is requested.

7.5.2 The Professional shall not be reimbursed for any traveling or living expenses incurred personally, by Associates and/or Consultants.

7.5.3 All requests for reimbursement must be received with or before the final request for payment. Payment of the Professional's retainage constitutes waiver by the Professional of any future claims for reimbursement.

7.6 DIRECT PERSONNEL EXPENSE

7.6.1 When applicable to the *Agreement*, direct personnel expense shall include that of employees engaged on the Project by the Professional including Architects, Engineers, Professionals, Draftsmen, Specification Writers, Inspectors, and Secretaries in consultation, research, design, production of Drawings, Specifications, and other Documents pertaining to the Project, and inspection of construction of the Project.

7.6.2 Direct personnel expense shall include the cost of salaries and mandatory and customary benefits such as statutory employee benefits, insurance, sick leave, holidays, vacations, pensions, and similar benefits.

7.7 PROFESSIONAL'S ACCOUNTING RECORDS

7.7.1 Records of the Professional's direct personnel expense, Consultant expense, and reimbursable expenses pertaining to the Project and records of accounts between the Owner and the Professional shall be maintained in conformity with generally accepted accounting principles for a period of three (3) full years from the date of final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the Owner, the Owner's duly appointed Representative, or a licensed independent public accountant.

7.8 DUPLICATED WORK

7.8.1 Duplicated work shall be defined as other projects not covered in the terms of this *Agreement*.

7.8.2 For duplicated work using Drawings and Specifications prepared under this *Agreement* and requiring only the modification of plot plans, foundations, service connections, incidental changes, and including supervision, a new Contract may be negotiated between the Owner and the Professional. The Owner is not obligated to enter a new Contract for duplicated work.

7.9 DEDUCTIONS

7.9.1 No deductions shall be made from the Professional's fee on account of penalty or liquidated damage sums withheld from payment to Contractors through no fault of the Professional.

7.10 PAYMENT LIMITATIONS

7.10.1 When the Project involves federal funds or any funds other than those authorized by the Mississippi Legislature, either by direct appropriation or by authority to issue general obligation bonds or revenue bonds of the State of Mississippi for expenditures to be made by or under the direction of the Owner, it is mutually agreed that the amount of the Professional's fee based on such funds shall in no event become due until such federal funds or other funds have been actually paid into the State Treasury.

7.10.2 E-Payment: The DFA agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Section 31-7-301, et seq. of the Mississippi Code of 1972, as amended, which generally provides for payment of undisputed amounts within forty-five (45) days of receipt of the invoice. Payments by state agencies using the Statewide Automated Accounting System (SAAS) shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of the Professional's choice. The State may, at its sole discretion, require the Professional to submit invoices and supporting documentation electronically at any time during the term of this Agreement. Professional understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency. No payment, including final payment, shall be construed as acceptance of defective or incomplete work, and the Professional shall remain responsible and liable for full performance.

Note: Contract workers are paid through SPAHRS and are not subject to the mandatory e-payment language above. Independent contractors (even if individuals) are paid through SAAS and are subject to this language.

7.10.3 E-Verify - Employee Status Verification System: The Professional represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act (Senate Bill 2988 from the 2008 Regular Legislative Session) and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. The Professional agrees to maintain records of such compliance, and upon request of the State, to provide a copy of each such verification to the State. The Professional further represents and warranty that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. The Professional understands and agrees that any breach of these warranties may subject the Professional to the following: (a) termination of this Agreement and ineligibility for any state of public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to the Professional by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such cancellation/termination, the Professional would also be liable for any additional costs incurred by the State due to the contract cancellation or loss of license or permit.

7.11 PAYMENT REQUESTS

7.11.1 All requests for payment by the Professional shall be submitted with an ORIGINAL and four (4) copies.

ARTICLE 8: LIABILITY INSURANCE

8.1 ERRORS AND OMISSIONS

8.1.1 The Professional shall purchase and maintain with a company, or companies, licensed to do business in the State of Mississippi such insurance as will provide protection from claims resulting from errors and omissions, or negligent acts arising out of the performance of professional services and operations under this *Agreement*.

8.1.2 The errors and omissions insurance required in Subparagraph 8.1.1 shall be written for not less than:

Total Project Funds (<i>Amount Listed on Page One</i>)	Minimum Limit of Insurance
\$ 0 - \$ 999,999	\$ 0
\$ 1,000,000 - \$ 7,499,999	\$ 250,000
\$ 7,500,000 - \$ 14,999,999	\$ 500,000
\$ 15,000,000 - Up	\$ 1,000,000

8.1.3 If by the terms of this insurance any mandatory deductibles are required, or if the Professional should elect with the concurrence of the Owner, to increase the mandatory deductible amounts or purchase this insurance with voluntary deductible amounts, the Professional shall be responsible for payment of the amount of the deductible in the event a claim is paid. In the event of a claim against the policy, the Professional shall arrange for the restoration of the limit of liability so that full coverage is maintained at all times.

8.1.4 The Professional shall be fully responsible to the Owner for work performed by any Associates and/or Consultants. Errors and omissions insurance coverage for the total Project design, including that of all Associates and/or Consultants, rests solely with the Professional. In the case of joint ventures, joint venture errors and omissions insurance coverage shall be required in accordance with the limits stated in Subparagraph 8.1.2.

8.1.5 The errors and omissions insurance coverage shall remain in effect for the period of time the Professional is responsible for the Project.

8.1.6 The Professional, on signing this *Agreement*, shall provide the Owner three (3) copies of a Certificate of Insurance. The Certificate of Insurance shall contain a provision stating that the policy may not be canceled or not renewed without at least thirty (30) days prior written notice to the Owner.

ARTICLE 9: TERMINATION AND EXTENT OF AGREEMENT

9.1 TERMINATION OF AGREEMENT FOR CAUSE

9.1.1 If, through any cause, the Professional shall fail to fulfill in a timely and proper manner obligations under this *Agreement*, the Owner shall thereupon have the right to terminate this *Agreement* at any Phase by giving seven (7) days written notice to the Professional of such termination and specifying the effective date of termination. At the option of the Owner, all finished or unfinished Drawings and Specifications prepared by the Professional shall be the property of the Owner, and the Professional shall not be entitled to any compensation beyond the last approved design phase as listed in Subparagraph 2.1.1.

9.1.2 Notwithstanding the above, the Professional shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of this *Agreement* by the Professional, and the Owner may withhold any payments to the Professional for the purpose of setoff until such time as the exact amount of damages due the Owner from the Professional is determined.

9.2 TERMINATION FOR CONVENIENCE OF OWNER

9.2.1 The Owner may terminate this *Agreement* at any time by written notice from the Owner to the Professional. In this event, all finished or unfinished documents as described in Subparagraph 9.1.1 shall be the property of the Owner. If this *Agreement* is terminated by the Owner as provided herein, the Professional shall be paid for services in an amount bearing the same ratio to the total compensation as

the services actually performed bear to the total services of the Professional covered in this *Agreement*.

9.3 EXTENT OF AGREEMENT

9.3.1 This *Agreement* represents the entire and integrated *Agreement Between the Owner and the Professional* and supersedes all prior negotiations, representations, or agreements, either written or oral. This *Agreement* may be amended only by written instrument signed by both the Owner and the Professional.

ARTICLE 10: OTHER CONDITIONS OR SERVICES

10.1 NOTIFICATION OF ASBESTOS

10.1.1 Asbestos Containing Material (ACM) abatement projects undertaken by the State of Mississippi are a critical activity with respect to the lawsuit whereby **Mike Moore, ex al, State of Mississippi v. The Flintkote Co., et al - Asbestos Abatement Projects**. On January 23, 1990, the Court signed and placed into effect the *INSPECTION, TESTING AND SAMPLING* order which governs activities associated with ACM abatement projects. The Court Order requires certain detailed information which must be provided to the Defendants regarding the abatement of Asbestos Containing Material from state properties.

10.1.2 The Professional is to submit information as soon as the types, locations and approximate quantities of Asbestos Containing Materials which are present and are to be removed are identified. This information is to be sent to the Owner and to:

The Scruggs Law Firm, P.A. Post Office Drawer 1136 Oxford, Mississippi 38655	with copy to:	Michael Lanford, Deputy Attorney General Attorney General's Office – State of Mississippi Post Office Box 220 Jackson, Mississippi 39205
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10.1.3 The Professional is to submit the following information required by the Court Order:

- A. Building(s) Affected:
 - 1. Name/Address/Building Number
 - 2. Name and Address of Custodian of Blueprints, Floor Plans, Construction Specifications, Renovation Specifications, Abatement Proposals, Bids, Contracts, Subcontracts and Specifications, and Documents pertaining to Plaintiff's Bulk and Air Sampling
- B. Description of Asbestos Containing Products to be Abated:
 - 1. Type(s) of Product
 - 2. Total Square or Linear Footage of each Product to be Abated
 - 3. Specific Location of each Product to be Abated within each Building
- C. Description of Other Known Asbestos Containing Products Identified by Plaintiff as Present in the Building:
 - 1. Type(s) of Product
 - 2. Total Square or Linear Footage of each such Product
 - 3. Specific Location of each such Product within each Building
- D. Description of Abatement Work:
 - 1. Action to be taken with respect to each Product and Location
 - 2. Expected Commencement Date of Abatement Activities with Respect to each Product and Location
 - 3. Expected Completion Date of Abatement Activities with respect to each Product and Location
 - 4. Name and Address of Abatement Contractor with respect to each Product and Location
 - 5. Projected Cost of Abatement Activities with respect to each Product and Location
- E. Name(s) and Address(es) of Company Performing the Abatement:
- F. Name(s) and Address(es) of the Professional(s) (i.e., Architect/Engineer Firm and/or Mechanical Contractor)
- G. Will the building be occupied or unoccupied during abatement?
- H. Sampling Protocol: Bid specifications should make provision for required sampling by the abatement testing lab firm or

Contractor according to the following protocol. The Professional shall incorporate the following into Testing Lab Services (Air Monitoring) on all State of Mississippi buildings (including Institution of Higher Learning buildings) Asbestos Abatement projects:

1. The Testing Lab firm shall designate a technician qualified to make the samples required and the technician shall certify by his signature that he performed the sampling required below:
 - a. After plasticizing has been approved by the Professional, take a sample of 10 to 20 grams (approximately the size of a package of cigarettes) from each type of ACM removed per floor. An additional sample is to be taken from each additional 10,000 sq. ft. of spray-on materials and each additional 1,000 linear feet of pipe insulation. The samples will be used by the Owner's separate lab to test for ACM constituent analysis and homogeneity throughout the building. Samples of *multi-layered ACM* shall be taken in a manner that will keep layers intact. These samples are to be treated as multiple product, therefore, *twice the amount is needed*, trying to keep the layers intact.
 - b. If a wetting application is necessary for abatement, it is suggested that no additives be added to the water. If additives are used, a description or list of the additives should be supplied with each sample.
 - c. Representative samples of floor tile/mastic shall consist of one whole tile of each design, color, pattern and/or distinguishing feature of the resilient floor tile. Samples should be removed from an area which is least exposed to light.
 - d. Samples of all other materials, i.e. roofing felt, etc. shall be of one square foot in size.
 - e. All samples shall be packaged in proper ACM containers furnished by the Air Monitoring Lab. Containers shall be identified by the Office of Building project number, institution/agency, building name, sample's removal location, type of material, sample number, person and firm taking sample, and date of sampling.
 - f. The Testing Lab shall deliver samples by Certified Mail (Return Receipt Requested) to the following location:
Spray-on/Plaster Samples and
Pipe/Boiler/Floor/Tile & Mastic/All Other Samples:
Micro-Methods
6500 Sunplex Drive
Ocean Springs, MS 39564
 - g. Send copy of the lab transmittal letter to Lewis Harkey, at The Scruggs Law Firm, P.A. - P.O. Drawer 1136 - Oxford, Mississippi, 38655.
 - h. The Owner's Representative will verify if this has been accomplished prior to the issuance of Final Payment.
- I. The Owner will prepare the *Advertisement for Bids* and notify The Scruggs Law Firm, P.A.. No asbestos removal may take place until sixty (60) days after the *Advertisement for Bids* has been sent unless approved by The Scruggs Law Firm, P.A..
- J. The Professional will provide updates to the Owner and The Scruggs Law Firm, P.A.. Updates will include changes of scope during planning and at the time of award, selection of alternates, and/or change orders.

*** END OF AGREEMENT ***