

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

This Agreement made effective 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 _____ E-mail address: _____

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

- () CORPORATION (includes PA, LLC, or PLLC) 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*): _____ JOINT VENTURE (*list all joint venture firms*)

- () SOLE PROPRIETORSHIP

For the following Project:

for initial nominal consideration of one dollar (\$1.00) and limited as described in Paragraph 4.1.2 to fees and authorized Additional Services, Extra Services and Reimbursements within the amount of \$ _____ as total project budget which shall not be revised except 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)
_____, Director
(Name and Title)

APPROVED AS TO FORM:

By: _____
(Signature of Attorney)

The Owner and the Commissioning Authority Professional agree as set forth in pages one through thirteen, Articles one through nine, as follows:

mechanical systems commissioning, controls commissioning, electrical systems commissioning, life safety systems commissioning, conveying systems commissioning or building envelope commissioning services, at the amount billed to the Professional computed in accordance with Subparagraphs .1 and .2 above.

1.5 **REIMBURSEMENTS**

1.5.1 As approved by the Owner, reimbursements to the Commissioning Authority Professional shall be made for testing, adjusting and balancing services during the course of the Project and in accordance with Paragraph 7.4.

ARTICLE 2: COMMISSIONING AUTHORITY 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.

Pre-Design Phase described in Paragraph 2.3

Schematic Design Phase described in Paragraph 2.4

Design Development Phase described in Paragraph 2.5

Construction Document Phase described in Paragraph 2.6

Construction Phase described in Paragraph 2.7

2.1.2 The Commissioning Authority 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*.

2.1.3 The Commissioning Authority Professional's basic services listed in Subparagraph 2.1.1 shall include consulting services listed below and comply with 300.4 of Owner Procedure Manual. Any consultant listed but not marked shall not be a consultant to this *Agreement*

Consulting Service:

Services to be Performed by:

<input type="checkbox"/> Mechanical	_____
<input type="checkbox"/> Controls	_____
<input type="checkbox"/> Electrical	_____
<input type="checkbox"/> Life Safety System	_____
<input type="checkbox"/> Conveying Systems	_____
<input type="checkbox"/> Building Envelopes	_____
<input type="checkbox"/> _____	_____
<input type="checkbox"/> _____	_____

2.2 **TIME**

2.2.1 The Commissioning Authority Professional shall perform services as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. The Commissioning Authority 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 Commissioning Authority Professional. The Initial Meeting Date referenced below is the latter of the Pre-Design Conference or the OPR Workshop for the Commissioning Agent, if required, as scheduled by the Owner. The Initial Meeting Date referenced below is the latter of the Pre-Design Conference or the OPR Workshop for the Commissioning Agent, if required, as scheduled by the Owner.

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

- .1 Professional services beginning date will be the Initial Meeting Date described above.
- .2 Pre-Design Phase described Paragraph 2.3: n/a days from the Initial Meeting Date.
- .3 Schematic Design Phase described Paragraph 2.4: days from approval by Owner of the Pre-Design Phase, if required, or from the Initial Meeting Date.
- .4 Design Development Phase described Paragraph 2.5: days from approval by Owner of SD's.
- .5 Construction Document Phase described Paragraph 2.6: days from approval by Owner of DD's.
- .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 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 Commissioning Authority Professional's days for performing services.

2.3 **PRE-DESIGN PHASE**

2.3.1 The Commissioning Authority Professional shall meet with the Owner to establish the initial Commissioning Team for the Project. Once team members are identified, the Commissioning Authority Professional shall schedule, chair, facilitate and document the Owner's Project Requirements Workshop. The Commissioning Authority Professional shall utilize the information obtained in the Workshop to develop the Owner's Project Requirements Document.

2.3.2 Upon approval by the Owner of the Owner's Project Requirements Document, the Commissioning Authority Professional shall prepare and submit to the Owner four (4) copies of the Pre-Design Phase Documents. The Pre-Design Phase Documents shall include, but shall not be limited to, the following:

- .1 Commissioning Team Contact List
- .2 Owner's Project Requirements Document
- .3 Preliminary Commissioning Plan

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

2.4 **SCHEMATIC DESIGN PHASE**

2.4.1 The Commissioning Authority Professional shall confirm the Owner's Project Requirements. If a Preliminary Commissioning Plan has not been provided either within this *Agreement* or other sources, the Commissioning Authority Professional shall prepare and submit to the Owner four (4) copies of a Preliminary Commissioning Plan.

2.4.2 The Commissioning Authority Professional shall facilitate the development of the Design Professional's Basis of Design Document. The Basis of Design Document shall include, but shall not be limited to, the following:

- .1 System and Assembly Options and Selection Reasoning
- .2 Facility, System and Assembly Performance Assumptions
- .3 Narrative System and Assembly Descriptions
- .4 Codes, Standards, Guidelines, Regulations and Other References
- .5 Specific Descriptions of Systems and Assemblies

2.4.3 The Commissioning Authority shall review and verify that Project Schematic Design Documents produced by the Design Professional meet and properly convey the Owner's Project Requirements. Review shall include, but shall not be limited to, the following:

- .1 General quality review of the documents, including legibility, consistency and level of completeness

- .2 Coordination between disciplines
- .3 Discipline-specific review for achieving the Owner's Project Requirements
- .4 Specification applicability and consistency with Owner's Project Requirements and Basis of Design

2.4.4 Throughout the Schematic Design Phase, the Commissioning Authority Professional shall:

- .1 Schedule, chair, facilitate and document Commissioning Team meetings
- .2 Update the Owner's Project Requirements Document
- .3 Update the Commissioning Plan
- .4 Track/document all issues relating to the Owner's Project Requirements and document resolutions in the Issues Log.

2.4.5 Upon completion of the Schematic Design Phase, the Commissioning Authority Professional shall prepare and submit to the Owner four (4) copies of the Schematic Design Phase Commissioning Documents. The Schematic Design Phase Commissioning Documents shall include, but shall not be limited to, the following:

- .1 Review Comments for Design Professional's Schematic Design Submittal
- .2 Updated Owner's Project Requirements Document
- .3 Updated Commissioning Plan
- .4 Review Comments for Design Professional's Basis of Design Document
- .5 Issues Log
- .6 Commissioning Process Progress Reports

2.4.6 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, unless Owner waives the Design Development Phase, directing Professional to proceed to the Contract Document Phase.

2.5 DESIGN DEVELOPMENT PHASE

2.5.1 The Commissioning Authority shall review and verify that Project Design Development Documents produced by the Design Professional meet and properly convey the Owner's Project Requirements. Review shall include, but shall not be limited to, the following:

- .1 General quality review of the documents, including legibility, consistency and level of completeness
- .2 Coordination between disciplines
- .3 Discipline-specific review for achieving the Owner's Project Requirements
- .4 Specification applicability and consistency with Owner's Project Requirements and Basis of Design

2.5.2 Throughout the Design Development Phase, the Commissioning Authority Professional shall:

- .1 Schedule, chair, facilitate and document Commissioning Team meetings
- .2 Update the Owner's Project Requirements Document
- .3 Update the Commissioning Plan
- .4 Track/document all issues relating to the Owner's Project Requirements and document resolutions in the Issues Log.

2.5.3 Upon completion of the Design Development Phase, the Commissioning Authority Professional shall prepare and submit to the Owner four (4) copies of the Design Development Phase Commissioning Documents. The Design Development Phase Commissioning Documents shall include, but shall not be limited to, the following:

- .1 Review Comments for Design Professional's Design Development Submittal
- .2 Updated Owner's Project Requirements Document
- .3 Updated Commissioning Plan
- .4 Review Comments for Design Professional's Updated Basis of Design Document
- .5 Updated Issues Log
- .6 Commissioning Process Progress Reports

2.6 CONSTRUCTION DOCUMENT PHASE

2.6.1 The Commissioning Authority shall review and verify that Project Construction Documents produced by the Design Professional meet and properly convey the Owner's Project Requirements. Review shall include, but shall not be limited to, the following:

- .1 General quality review of the documents, including legibility, consistency and level of completeness
 - .2 Coordination between disciplines
 - .3 Discipline-specific review for achieving the Owner's Project Requirements
 - .4 Specification applicability and consistency with Owner's Project Requirements and Basis of Design
- 2.6.2 The Commissioning Authority Professional shall develop Construction Specifications for Commissioning to be included in the Contract Documents. The Commissioning Authority Professional's submission of Specifications shall be sufficiently in advance of completion of Construction Document Phase to allow for inclusion in Design Professional's Construction Document Phase submission. Specifications to be provided shall include General Requirements for the Commissioning Process, Sample Test Procedures and Component Commissioning Process Specifications, as well as language/requirements to be included in individual Specification Sections in other Divisions to address the following:
- .1 Commissioning Process Activities
 - .2 Installation and Start-up
 - .3 Testing, Adjusting and Balancing
 - .4 Demonstration and Training
 - .5 Operation and Maintenance Data
- 2.6.3 Throughout the Construction Document Phase, the Commissioning Authority Professional shall:
- .1 Schedule, chair, facilitate and document Commissioning Team meetings
 - .2 Update the Owner's Project Requirements Document
 - .3 Update the Commissioning Plan
 - .4 Track/document all issues relating to the Owner's Project Requirements and document resolutions in the Issues Log
- 2.6.4 Upon completion of the Construction Document Phase, the Commissioning Authority Professional shall prepare and submit to the Owner four (4) copies of the Construction Document Phase Commissioning Documents. The Construction Document Phase Commissioning Documents shall include, but shall not be limited to, the following:
- .1 Review Comments for Design Professional's Construction Document Submittal
 - .2 Updated Owner's Project Requirements Document
 - .3 Updated Commissioning Plan
 - .4 Review Comments for Design Professional's Basis of Design Document
 - .5 Updated Issues Log
 - .6 Commissioning Process Progress Reports
 - .7 Construction Specifications for Commissioning
- 2.7 **CONSTRUCTION PHASE**
- 2.7.1 The Construction Phase for the Commissioning Authority Professional shall begin at the Pre-Bid Conference for the Construction Contract. The Commissioning Authority Professional shall attend this Conference to alert bidders to Commissioning Process requirements with which they may not be familiar.
- 2.7.2 The Commissioning Authority Professional shall schedule participation of Owner's representatives in Commissioning Process activities.
- 2.7.3 The Commissioning Authority Professional shall conduct a Pre-Construction Commissioning Process Meeting which shall be coordinated to coincide with the Owner's Pre-Construction Conference, scheduled by the Owner. Subject matter to be discussed shall include the Owner's Project Requirements, Basis of Design and unique contract document requirements as well as specific roles of the contractor relative to the Commissioning Process activities.
- 2.7.4 Concurrent with Design Team and Owner review, the Commissioning Authority Professional shall review coordination drawings, shop drawings and other project submittals for compliance with the Owner's Project Requirements. Comments shall be distributed to Owner and Design Professional.
- 2.7.5 The Commissioning Authority Professional shall provide assistance in identifying commissioning process activities to be included in the Contractor's Construction Schedule.
- 2.7.6 The Commissioning Authority Professional shall be responsible for developing component, system/assembly and inter-system test procedures, checklists and test data record format for execution by the Contractor. The Commissioning Authority

Professional shall be responsible for witnessing of tests, verification of tests or verification of test data reports throughout the Construction Phase.

- 2.7.7 The Commissioning Authority Professional shall be responsible for witnessing and assisting in the execution of Owner Training conducted by Contractor.
- 2.7.8 Throughout the Construction Phase, the Commissioning Authority Professional shall:
- .1 Schedule, chair, facilitate and document Commissioning Team meetings
 - .2 Update the Owner's Project Requirements Document
 - .3 Update the Commissioning Plan
 - .4 Make and document periodic site visits to verify compliance with Owner's Project Requirements
 - .5 Update Issues Log
- 2.7.9 The Commissioning Authority Professional shall develop and distribute a Draft Construction Phase Commissioning Process Report to the Commissioning Team for review and comments. A Final Construction Phase Commissioning Process Report shall be submitted to the Commissioning Team which incorporates review comments from the Owner.
- 2.7.10 The Commissioning Authority Professional shall review the testing, adjusting and balancing report and perform quality control sampling to ensure reliability. Furnish a summary report and distribute to the Commissioning Team.
- 2.7.11 The Commissioning Authority Professional shall verify that the Systems Manual, developed by the Contractor, is updated to incorporate materials generated during the Construction Phase. The Commissioning Authority Professional shall be responsible for furnishing to the Contractor only those items produced by the Commissioning Authority Professional. Materials to be added shall include, but shall not be limited to, the following:
- .1 Test Procedures and Test Data Records
 - .2 Training Plans
 - .3 Training Records
 - .4 Submittal Review Reports
 - .5 Updated Owner's Project Requirements
 - .6 Updated Commissioning Plan
 - .7 Updated Basis of Design
 - .8 Updated Issues Log
 - .9 Commissioning Process Progress Reports
- 2.7.12 During the period of time between Substantial Completion and the end of the Warranty period of the Construction Contract, the Commissioning Authority Professional shall work with the Design Professional and a Representative of the Owner in securing remedy of defects that become apparent. The Commissioning Authority Professional shall attend, with the Design Professional and a Representative of the Owner present, the Warranty inspection of the Project prior to the expiration of the Warranty period and report observed discrepancies to the Owner and Design Professional.
- 2.7.13 During the period of time between Substantial Completion and the end of the Warranty period of the Construction Contract, the Commissioning Authority Professional shall perform two off-season Functional Performance Tests.
- 2.7.14 The Construction Phase shall terminate upon expiration of the Warranty period or settlement of all Warranty claims, whichever occurs last.

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 PRINTING COSTS

3.2.1 Reimbursement shall not be made for any printing, photocopying or photographic methods used as an aid in the development of documents, reports or other instruments of service.

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 Commissioning Authority 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.
- 4.1.2 The total Project Budget includes the Contract(s) for construction, including information technology, furnishing and equipping, if applicable, 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. Where project services as defined in Paragraph 2.1.1 do not include any phase beyond Construction Document Phase, the total Project and budget shall include only the fees based on a percentage of estimated construction cost, special Consultants and Contracts, and any other expenses needed to complete the planning of the Project through completion of the last designated planning phase.

ARTICLE 5: MISCELLANEOUS PROVISIONS

5.1 **OWNERSHIP OF DOCUMENTS**

- 5.1.1 Documents and Specifications as instruments of service are the property of the Owner whether the work for which they are intended is executed 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 Documents and Specifications for execution of the Project. Original documents and specifications may remain in the files of the Commissioning Authority Professional until the Owner requests delivery.

5.2 **REFERENCE STANDARDS**

- 5.2.1 The Commissioning Authority Professional shall prepare Documents and Specifications in conformance with the following Reference Standards in effect as of the date of this *Agreement*, unless a different edition is so noted.
- .1 ASHRAE Guideline 0-200X The Commissioning Process
 - .2 ASHRAE Guideline 1-200X The HVAC&R Commissioning Process
 - .3 NIBS Guidelines 2-200X through 14-200X

5.3 **CONSULTING PROFESSIONALS**

- 5.3.1 The Consulting Professionals retained or otherwise employed by the Commissioning Authority Professional must be approved by the Owner. The Commissioning Authority Professional shall not employ or otherwise retain consulting Professionals with proprietary interests.
- 5.3.2 The Commissioning Authority Professional agrees to employ the Consultants for complete services, including inspection.

5.4 **SUCCESSORS AND ASSIGNMENTS**

- 5.4.1 The Commissioning Authority Professional shall not assign, subcontract or otherwise transfer in whole or in part, its right or obligations under this agreement without prior written consent of the Department of Finance and Administration, through the Bureau of Building, Grounds and Real Property Management. Any attempted assignment or transfer without said consent shall be void and of no effect.

5.5 **LAWS**

- 5.5.1 This *Agreement* shall be governed by and construed in accordance with the Laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the state. The Commissioning Authority Professional shall comply with applicable federal, state and local laws and regulations.
- 5.5.2 E-Verify – Employee Status Verification System. If applicable, the Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq of the Mississippi Code Annotated (Supp 2008) 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 Contractor agrees to maintain records of such compliance, and upon request of the State and approval of the Social

Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the State. The Contractor further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. The Contractor understands and agrees that any breach of these warranties may subject the Contractor to the following: (a) termination of this Agreement and ineligibility for any state or 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 Contractor 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 termination/cancellation, the Contractor would also be liable for any additional costs incurred by the State due to the contract cancellation or loss of license or permit.”

5.6.3 Transparency. In accordance with the Mississippi Accountability and Transparency Act of 2008, §27-104-151, et seq., of the Mississippi Code of 1972, as Amended, the American Accountability and Transparency Act of 2009 (P.L. 111-5), where applicable, and §31-7-13 of the Mississippi Code of 1972, as amended, where applicable, a fully executed copy of this agreement shall be posted to the State of Mississippi’s accountability website at: <https://www.transparency.mississippi.gov>

5.6.4 Indemnification. To the fullest extent allowed by law, the Professional shall indemnify, defend, save and hold harmless, protect, and exonerate DFA, the Bureau of Building, Grounds and Real Property Management, its Board Members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys’ fees, arising out of or caused by the Professional and/or its partners, principals, agents, employees and/or Consultants in the performance of or failure to perform this Contract Agreement. In the State’s sole discretion, Professional may be allowed to control the defense of any such claim, suit, etc. In the event Professional defends said claim, suit, etc., Professional shall use legal counsel acceptable to the State; professional shall be solely liable for all reasonable costs and/or expenses associated with such defense and the State shall be entitled to participate in said defense. Professional shall not settle any claim, suit, etc., without the State’s concurrence, which the State shall not unreasonably withhold.

ARTICLE 6: FEES AND PAYMENTS TO THE COMMISSIONING AUTHORITY 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.

6.2 PERCENTAGE OF CONSTRUCTION COST

6.2.1 When the Project fee is based on a percentage of construction cost, the basic project shall be classified as one (1) of six (6) types. Only the Owner shall be responsible for deciding in which classification the Project falls as indicated in Subparagraph 1.2.2. The project classifications are:

- Type CxA: Projects of ordinary complexity for which commissioning will be limited to mechanical, controls, electrical, life safety and conveying systems.
- Type CxB: Projects of moderate complexity for which commissioning will be limited to mechanical, controls, electrical, life safety and conveying systems. Projects of this type include one or more non-standard system to be commissioned or include one standard system of higher than ordinary complexity.
- Type CxC: Projects of high complexity for which commissioning will be limited to mechanical, controls, electrical, life safety and conveying systems. Projects of this type include multiple non-standard systems to be commissioned or include several systems of high complexity.
- Type CxD: Projects of ordinary complexity for which commissioning will be “total building type” including mechanical, controls, electrical, life safety and conveying systems as well as building envelope.
- Type CxE: Projects of moderate complexity for which commissioning will be “total building type” including mechanical, controls, electrical, life safety and conveying systems as well as building envelope. Projects of this type include one or more non-standard system to be commissioned or include one standard system of higher than ordinary complexity.
- Type CxF: Projects of high complexity for which commissioning will be “total building type” including mechanical, controls, electrical, life safety and conveying systems as well as building envelope. Projects of this type include multiple non-standard systems to be commissioned or include several systems of high complexity.

6.2.2 The Owner shall pay the Commissioning Authority 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 project classification are as follows:

$$\text{CxA Fee percentage formula} = \frac{5}{\text{Log C}} \quad \text{CxA Fee amount formula} = C \frac{(5)}{(\text{Log C})}$$

$$\text{CxB Fee percentage formula} = \frac{6}{\text{Log C}} \quad \text{CxB Fee amount formula} = C \frac{(6)}{(\text{Log C})}$$

$$\text{CxC Fee percentage formula} = \frac{7}{\text{Log C}} \quad \text{CxC Fee amount formula} = C \frac{(7)}{(\text{Log C})}$$

$$\text{CxD Fee percentage formula} = \frac{9}{\text{Log C}} \quad \text{CxD Fee amount formula} = C \frac{(9)}{(\text{Log C})}$$

$$\text{CxE Fee percentage formula} = \frac{10}{\text{Log C}} \quad \text{CxE Fee amount formula} = C \frac{(10)}{(\text{Log C})}$$

$$\text{CxF Fee percentage formula} = \frac{11}{\text{Log C}} \quad \text{CxF Fee amount formula} = C \frac{(11)}{(\text{Log C})}$$

- 6.2.3 When Change Orders occur, the fee shall be increased or decreased accordingly if the Construction Contract amount is increased or decreased.

ARTICLE 7: PAYMENTS TO THE COMMISSIONING AUTHORITY PROFESSIONAL

7.1 PAYMENTS FOR BASIC FEE

- 7.1.1 Payments to the Commissioning Authority 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 Schematic Design Phase and written approval of the Owner, a sum equal to five percent (5%) 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 Owner, a sum equal to fifteen percent (15%) 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 Owner, a sum equal to thirty-five percent (35%) of the basic fee, less any previous payments, computed upon the approved estimate of construction cost shall be due.
- 7.1.5 Upon award of the Contract for Construction and written approval of the Owner, a sum equal to thirty-five percent (35%), less any previous payments, computed upon the actual awarded construction amount shall be due.
- 7.1.6 Payment of fees to the Commissioning Authority Professional during the Construction Phase shall be made monthly in proportion to the current percentage requested by the Contractor and approved by the Owner.
- 7.1.7 Fifteen percent (15%) of the Professional's total fee shall be retained throughout the Project. When the Owner has received the Final Systems Manual as defined in Subparagraph 2.7.9, then the fifteen percent (15%) retainage will be released, minus any offsets.
- 7.1.8 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 Commissioning Authority Professional which contains service items not authorized by the Owner to be performed by the Commissioning Authority Professional may be disapproved in part, or total.

7.2 PAYMENTS FOR ADDITIONAL SERVICES

- 7.2.1 Upon completion of any additional services indicated in Paragraphs 1.3 and 2.1.2 and written approval of the Owner, payment in full shall be due, minus any offsets.
- 7.2.2 Partial payments may be made upon written request by the Commissioning Authority Professional and the Owner's written approval, minus any offsets.

7.3 PAYMENTS FOR EXTRA SERVICES AND SPECIAL SITUATIONS

- 7.3.1 If the Commissioning Authority Professional is caused extra documentation, review 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 Commissioning Authority Professional may request to be paid for such extra services and expenses.
- 7.3.2 Any Commissioning Authority Professional having a claim under this Paragraph shall prepare a complete and documented explanation and submit it to the Owner for consideration. Only upon written Owner approval shall extra compensation be made.
- 7.3.3 At the Owner's discretion, and only after receiving the Owner's written approval, the Commissioning Authority 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.

7.4 REIMBURSEMENTS

- 7.4.1 The Owner shall reimburse the Commissioning Authority Professional for expenses listed in Paragraph 1.5 and previously approved by Owner. The Commissioning Authority Professional shall submit separate invoices for each item for which reimbursement is requested.
- 7.4.2 The Commissioning Authority Professional shall not be reimbursed for any traveling or living expenses incurred personally, by Associates or by Consultants identified in Paragraph 2.1.3.
- 7.4.3 All requests for reimbursement must be received with or before the final request for payment. Payment of the Commissioning Authority Professional's retainage constitutes waiver by the Commissioning Authority Professional of any future claims for reimbursement.

7.5 DIRECT PERSONNEL EXPENSE

- 7.5.1 When applicable to the *Agreement*, direct personnel expense shall include that of employees engaged on the Project by the Commissioning Authority Professional including Architects, Engineers, Professionals, Specification Writers, Inspectors and Secretaries involved in consultation, research, design, production of Reports, Specifications and other Documents pertaining to the Project and inspection of construction of the Project.
- 7.5.2 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.

7.6 COMMISSIONING AUTHORITY PROFESSIONAL'S ACCOUNTING RECORDS

- 7.6.1 Records of the Commissioning Authority Professional's direct personnel expense, Consultant expense, and reimbursable expenses pertaining to the Project and records of accounts between the Owner and the Commissioning Authority 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.

7.7 DEDUCTIONS

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

7.8 PAYMENT LIMITATIONS

- 7.8.1 It is expressly understood and agreed that the obligation of the Department of Finance and Administration, through the Bureau of Building, Grounds and Real Property Management, to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the *Agreement* are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the Department of Finance and

Administration, through the Bureau of Building, Grounds and Real Property Management, the Department of Finance and Administration, through the Bureau of Building, Grounds and Real Property Management shall have the right upon ten (10) working days written notice to the Professional, to terminate this agreement without damage, penalty, cost or expenses to the Department of Finance and Administration, through the Bureau of Building, Grounds and Real Property Management, of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

7.9 PAYMENT REQUESTS

7.9.1 All requests for payment by the Commissioning Authority Professional shall be submitted with an ORIGINAL and one (1) copy.

7.10 **E-Payment and E-Invoice:** The word “contractor” herein shall mean Professional, Vendor, Architect, Engineer, Lessor, etc.

(Currently – July 2009 – the BoB is exempt from E-Invoice.)

The State 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 electronic payment and remittance vehicle shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of the Contractor’s choice. The State may, at its sole discretion, require the Contractor to submit invoices and supporting documentation electronically at any time during the term of this Agreement. Contractor 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 Contractor shall remain responsible and liable for full performance.

ARTICLE 8: LIABILITY INSURANCE, ET AL

8.1 ERRORS AND OMISSIONS / WORKERS COMP

8.1.1 The Commissioning Authority 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 Commissioning Authority Professional should elect with the written concurrence of the Owner, to increase the mandatory deductible amounts or purchase this insurance with voluntary deductible amounts, the Commissioning Authority 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 Commissioning Authority Professional shall arrange for the restoration of the limit of liability so that full coverage is maintained at all times.

8.1.4 The Commissioning Authority Professional shall be fully responsible to the Owner for work performed by Associates and/or Consultants. 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 Workers Comp Insurance when and if there are five or more workers in the Professional’s firm.

8.1.6 The errors and omissions insurance and workers comp coverages shall remain in effect for the period of time the Commissioning Authority Professional is responsible for the Project.

8.1.7 The Professional, on signing this *Agreement*, shall provide the Owner two (2) copies of a Certificate of Insurance. The Insurance Coverage may not be canceled or not renewed during the term of subject Contract. Professional’s contractual obligation is to procure and maintain the requisite coverage(s) throughout the life of subject Project/Contract, when applicable.

ARTICLE 9: TERMINATION AND EXTENT OF AGREEMENT

9.1 TERMINATION OF AGREEMENT FOR CAUSE

9.1.1 If, through any cause, the Commissioning Authority 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 Commissioning Authority Professional of such termination and specifying the effective date of termination. At the option of the Owner, all finished or unfinished Documents and Specifications prepared by the Commissioning Authority Professional shall be the property of the Owner, and the Commissioning Authority Professional shall not be entitled to any compensation beyond the last approved design phase as listed in Subparagraph 2.1.1. Should termination occur prior to approval of any design phase, the initial minimal consideration of one dollar (\$1.00) shall not be due or payable to the Professional.

9.1.2 Notwithstanding the above, the Commissioning Authority 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 Commissioning Authority Professional, and the Owner may withhold any payments to the Commissioning Authority Professional for the purpose of offset until such time as the exact amount of damages due the Owner from the Commissioning Authority 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 Commissioning Authority Professional. In this event, all finished or unfinished Documents and Specifications prepared by the Commissioning Authority Professional shall be the property of the Owner. If this *Agreement* is terminated by the Owner as provided herein, the Commissioning Authority 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 Commissioning Authority Professional covered in this *Agreement*.

Should termination occur prior to approval of any design phase, the initial minimal consideration of one dollar (\$1.00) shall not be due or payable to the Professional.

9.3 EXTENT OF AGREEMENT

9.3.1 This *Agreement* represents the entire and integrated *Agreement Between the Owner and the Commissioning Authority 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 Commissioning Authority Professional.

*** END OF AGREEMENT ***