ROUTING SLIP
CONTRACTS AND AGREEMENTS

Originating Department: General Services **Council Meeting Date:** 6/25/2015

Department Contact: Jeff Easter **Phone #** 256-427-5281

Contract or Agreement: Agreement

Document Name: Administration Building Canopy and Minor Renovations

City Obligation Amount: $29,000

Total Project Budget: $29,000

Uncommitted Account Balance:

Account Number:

Procurement Agreements

Select... Title 39 | NOT Applicable | Select...

Grant-Funded Agreements

Select... **Grant Name:**

Department	Signature	Date
1) Originating		06/12/15 6/15/15
2) Legal		6/17/2015
3) Finance		6/18/15
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

Revised 04/15/2011

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular **Meeting Date:** Jun 25, 2015

Action Requested By: General Services **Agenda Type:** Resolution

Subject Matter:

Administration Building Canopy and Minor Renovations

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter an agreement between the City of Huntsville and Fuqua & Partners Associates for architectural services for the Administration Building Canopy and Minor Renovations

Note: If amendment, Please state title and number of the original

Item to be considered for: Action **Unanimous Consent Required:** No

Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

Renovations of existing canopy at the main entrance of the Municipal building to include the addition of EIFS column wraps, fascia and soffit, recessed LED lighting, roof drainage and railings as required and minor renovations.

Associated Cost: $29,000.00 **Budgeted Item:** Yes

MAYOR RECOMMENDS OR CONCURS: YES

Department Head: _____ **Date:** 6/19/15

RESOLUTION NO. 15-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into an agreement by and between the City of Huntsville and Fuqua & Partners Architects in the amount of Twenty Nine Thousand Dollars and No/100's($29,000.00) for the Administration Building Canopy and Minor Renovations located at 308 Fountain Circle, Huntsville, Alabama on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to the certain document attached hereto and identified as "Standard Agreement for Professional Architectural Services between the City of Huntsville and Fuqua & Partners Associates" consisting of twenty seven(27) pages, together with the signature of the City Council President and an executed copy of said document being permanently kept on file in the Office of the City Clerk Treasurer of the City of Huntsville, Alabama

ADOPTED this the _____ day of _____, 2015.

_____
President of the City Council of the City of Huntsville, Alabama

APPROVED this the _____ day of _____, 2015.

_____
Mayor of the City of Huntsville, Alabama

STANDARD AGREEMENT FOR PROFESSIONAL ARCHITECTURAL SERVICES BETWEEN THE CITY OF HUNTSVILLE AND FUQUA & PARTNERS ARCHITECTS

This Agreement is made by and between
The City of Huntsville, Alabama:

City of Huntsville
P.O. Box 308
Huntsville, Alabama 35804

(hereinafter referred to as the "Owner") and:

Fuqua & Partners Architects
100 Church Street
Suite 700
Huntsville, Alabama 35801

(hereinafter referred to as the "Architect" or "Professional") under seal for services described below to be rendered for the following Project:

Project Title: Administration Building Canopy and Minor Renovations
Project Location: 308 Fountain Circle
Address: 308 Fountain Circle
General Project Description: Renovation of existing canopy at the main entrance of the Municipal building to include the addition of EIFS column wraps, fascia and soffit, recessed LED lighting, roof drainage and railings as required and minor renovations.

This Agreement shall be effective on the date it is executed by the last party to execute it. The Owner and the Architect hereby agree as follows:

Date:_____

President of the City Council:_____

RECITALS

WHEREAS the Owner intends to construct the Project and is engaging the Architect to perform certain architectural and engineering services for the project; and

WHEREAS the Owner and the Architect each acknowledges that it will act in good faith in carrying out its duties and obligations;

WHEREAS the Owner's engagement of the Architect is based upon the Architect's representations to the Owner that it is an organization of professionals experienced in the type of services the Owner is engaging the Professional to perform, is authorized and licensed to do business in the State of Alabama, is qualified, willing and able to perform professional services for the Project, and has the expertise and ability to provide professional services which will meet the Owner's objective and requirements, and which will comply with the requirements of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.

WHEREAS the Owner and the Architect each acknowledge that it has reviewed and familiarized itself with this Agreement for Professional Architectural Services, including all documents enumerated herein, and agree to be bound by the terms and conditions contained therein.

NOW THEREFORE, for good and valuable consideration, the parties do mutually agree as follows:

ARTICLE I
THE ARCHITECT'S BASIC DUTIES TO THE OWNER

1.1 By executing this Agreement, the Architect represents to the Owner that the Architect is a professional qualified to act as the Architect for the project and is licensed to practice Architecture by all public entities having jurisdiction over the Architect and the Project. The Architect further represents to the Owner that the Architect will maintain all necessary licenses, permits or other authorizations necessary to act as Architect for the Project until Architect's remaining duties hereunder have been satisfied. The Architect assumes full responsibility to the Owner for the negligent acts, errors and omissions of its consultants or others employed or retained by the Architect in connection with the Project.

1.2 Execution of this Agreement by the Architect constitutes a representation that the Architect has become familiar with the Project site and the local conditions under which the Project is to be implemented. The Architect agrees to provide all necessary architectural and engineering services required to professionally accomplish the Architect's scope of services.

1.3 PERIOD OF PERFORMANCE

1.3.1 The Architect shall commence services pursuant to this agreement as of June 25, 2015. The final completion date for the completion of the Project shall be approximately March 25, 2015.

1.4 GENERAL PROJECT SERVICES

1.4.1 The Architect shall coordinate all consultants and professionals of both the Owner and the Architect, and shall coordinate the work of all such consultants and professionals in a manner to assure the Project is kept on schedule. The Architect shall interface and coordinate with the Huntsville Facilities Project Department.

1.4.2 Within **seven (7)** calendar days after the execution of this Agreement, the Architect shall prepare and submit a written Project design schedule to the Owner for the Owner's review and approval. The Project design schedule shall include all key and important Project dates, events, and periods. As a minimum, such schedule shall include the project design completion date, any guidelines and milestone dates required by the Owner or this Agreement, sufficient time for review of documents and submittals, and the final completion date of the Project as required by the Owner. Such schedule shall also include and properly coordinate all dates for performance of services and tasks so that the Project design and the Project construction can be completed in a timely and orderly fashion consistent with the required date of final project completion. In the event that the Architect determines that

adjustments are necessary to the Project design schedule, the Architect shall promptly notify the Owner in writing, but no such adjustments shall be effective unless approved in writing by the Owner.

1.4.3 The Architect shall set forth in the Construction Documents appropriate and advisable Project testing requirements including, but not limited to, geo-technical, structural, electrical, mechanical tests and investigations, and construction materials testing; prepare scopes of work, including preliminary testing parameters for geo-technical work, soil borings and load test for soil bearing capacity, to assist the Owner in securing necessary Project testing; coordinate testing and determine timing and order of testing; evaluate all test results; and , recommend all necessary and advisable additional Project testing.

1.4.4 The Architect shall assist the Owner as necessary in securing all approvals from governing authorities with jurisdiction over the Project. Without limitation, the Professional shall timely assist the Owner in making application for site plan approval, local variances or other approvals, including completion of all necessary applications and supporting documentation; and attend any and all meetings required to secure all approvals from governing authorities with jurisdiction over the Project.

1.4.5 Any other required services pursuant to this Agreement shall be set forth in Appendix 1 hereto and incorporated by reference herein.

1.5 SCHEMATIC DESIGN SERVICES

1.5.1 The Architect shall review and examine the information, including any desired schedule and budgetary requirements, furnished by the Owner to understand the requirements of the Project and shall review the understanding of such requirements with the Owner. The Architect shall visit and thoroughly inspect the Project site, familiarize itself with the survey of the location and existing structures, utilities, conditions, streets, equipment, components, and other attributes having or likely to have an impact on the Project. The Architect shall familiarize itself with the Owner's layout and design requirements, conceptual design objectives and the budgeted fixed limitation on construction costs. The Architect shall familiarize itself with pertinent Project dates and schedules, shall review and analyze all pertinent tests, investigations, and recommendations, shall familiarize itself with all zoning restrictions and requirements, and shall gather other information necessary for a comprehensive and thorough understanding of the project.

1.5.2 The Architect shall furnish to the Owner a preliminary written evaluation of such information in light of any Project budget requirements.

1.5.3 The Architect shall review and discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall regularly meet with the Owner to discuss and review the schematic design along with related drawings and documents.

1.5.4 The Architect shall prepare and submit to the Owner for review schematic design documents consisting of drawings and other documents illustrating the scale and relationship of proposed Project components. Such drawings and documents shall include, but not be limited to, elevations and cross-sections, as well as alternative design recommendations and proposals.

1.5.5 The Architect shall prepare an estimate for submittal to the Owner of a **schematic** estimate of probable construction costs based upon current area, volume, other unit costs or other information. Such estimate shall be broken down by line item into major construction disciplines and systems.

1.5.6 The Architect shall submit an estimate of the annual cost per square foot for utilities.

1.5.7 In the event that the architect's schematic estimate of probable construction cost exceeds the Fixed Limitation for Construction Cost set forth in this Agreement, the Owner may accept the schematic estimate of probable construction cost and revise the budgeted Fixed Limitation for Construction Cost; cancel the Project or any portion thereof; revise the scope of the Project as required to reduce the schematic estimate of construction cost; or require the Architect, at no cost to the Owner, to modify the schematic design drawings in a manner which will result in an estimate of probable construction cost within the budgeted Fixed Limitation for Construction Cost.

1.6 DESIGN DEVELOPMENT

1.6.1 Based on the approved schematic design documents and any adjustments authorized by the Owner in its program, desired schedule or Project budget, the Architect shall prepare and submit to the Owner for review, design development documents consisting of drawings and other documents to fix and describe the size and character of the project as to engineering, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

1.6.2 The Architect shall review his estimate of probable construction costs and, shall make any appropriate revisions, thereto, and furnish same to the Owner.

1.7 CONSTRUCTION DOCUMENTS, BIDDING & NEGOTIATIONS

1.7.1 Construction Documents

1.7.1.1 Upon the Owner's authorization, the Architect shall prepare Construction Documents consisting of drawings and specifications setting forth in detail the requirements for construction of the Project. Such Construction Documents shall be reasonably accurate, coordinated and adequate for the construction and shall be in conformity and comply with applicable laws, codes, standards and regulations. Products specified for use shall be readily available unless written authorization to the contrary is given by the Owner. Products or materials specified by the Architect which are available from only one source shall be justified in writing by the Architect in order to meet applicable federal, state, or local procurement or bid requirements. The Architect shall coordinate with governing agencies to determine which Codes and requirements will be in force based on the anticipated plan submission date.

1.7.1.2 During the process of preparation of the Construction Documents, the Architect shall review the Construction Documents and the estimate of probable construction cost with the Owner. Such review shall be, at a minimum, at the stage when the Construction Documents are between 50%to 60% complete and again at the 90% completion stage. Following such reviews, the Architect shall make appropriate revisions thereto to assure compliance with the Owner's Fixed Limitation of Construction Cost and shall furnish same to the Owner.

1.7.1.3 The Architect shall prepare appropriate bid alternates as necessary in order to assure that the project can be awarded within the Fixed Limitation for Construction Cost.

1.7.1.4 When the Construction Documents are complete, the Architect shall furnish the Owner with three (3) sets of Review Construction Documents which shall be complete, accurate, coordinated, and adequate for bidding, negotiating and constructing the Work; take into account existing site features and structures, and safely and efficiently integrate the Work into existing Site features and structures; include all labor, material, and equipment necessary to complete the Work; portray Work which meets the Owner's disclosed, demonstrated or documented aesthetic, functional and operational objectives; be fit and proper for the purpose intended; and comply with applicable laws, statutes, building codes, rules and regulations of governmental, public and quasi-public authorities and agencies having jurisdiction over the Project in effect on the date the documents are delivered to the Owner. Such review of the Construction Documents shall include the Architect's review comments on the estimate of probable construction costs which shall be prepared by an Independent Estimator engaged by the Owner (if the Owner provides such estimate) in such detail to estimate the base bid and each bid alternate in award sequence. The Architect must submit and obtain the Owner's approval for the structure and order of the bid alternates. This estimate shall demonstrate compliance with the established Fixed Limitation for Construction Cost.

1.7.1.5 After receipt and review of the Owner's comments on the Review Construction Documents and the estimated probable construction cost, the Architect shall prepare final Construction Documents which detail the Work.
When the final Construction Documents are furnished to the Owner, the Architect shall notify the Owner in writing of any comments of the Owner, which have not been incorporated into the final Construction Documents. All final Construction Documents prepared by the Architect shall bear the seal of the Architect responsible for the Construction
Documents.

1.7.2 Bidding & Negotiating

1.7.2.1 The Architect shall obtain from the Owner, the most current version of the Owner's Contract for Construction. The Architect shall review and familiarize itself with the Owner's Contract for Construction and shall promptly notify the Owner of any proposed modifications or additions necessitated or suggested by the conditions in the Project location. The Owner shall furnish to the Architect the final version of the Contract for Construction for inclusion in the documents packets for use in the bidding process.

1.7.2.2 The Architect will prepare and assemble the following information and items in the form of Document Packets for use in the bidding process for the Contract for Construction:

A. Final Construction Documents (in electronic and paper format);

B. Detailed list of all shop drawings, samples and product data to be supplied to the Architect and the Owner for review and comment; and

C. Contract for Construction, as furnished by the Owner pursuant to 1.7.2.1 above.

1.7.2.3 The Architect shall provide Facilities Project Management Division three (3) complete sets of the Construction Documents; Procurement Services shall receive one (1) set of specifications only. In addition, an electronic medium of the finished work products (Construction Documents (plans and specifications)) suitable for reproduction shall be furnished by the Architect to the Owner in a format suitable for the Owner to provide to the Owner's printing contractor.

1.7.2.4 The Architect shall assist the Owner in publicizing and developing interest in the Project; pre-qualifying the bidders; disseminating Document Packets to potential bidders; organizing, conducting, and preparing minutes of the Pre-Bid Conference for potential bidders; advise the Owner of any requests for information received from any bidder and respond to such requests as appropriate, and advise the Owner with respect to the responsiveness of each bid and if each firm is a responsible bidder.

1.7.2.5 The Architect shall review and approve or take other appropriate action on proposed substitutions and voluntary alternates, if any. The Architect will be responsible for the preparation, of any addenda to the Construction Documents, and otherwise assist the Owner as required to resolve any questions arising during the bidding and negotiating process. The cost of reproduction and distribution of any Addenda shall be paid for by the Owner, except should Addenda be required to correct for significant errors or omissions on the part of the Architect or his consultants. In such case the costs related thereto will be born by the Architect.

1.7.2.6 The Architect shall be present at the public bid opening. Representatives from Facility Project Management Department and Procurement Services shall be in attendance at the bid opening as well as at all negotiations following the bid opening. The results of any such negotiations shall become a part of the contract document.

1.7.2.7 The Architect shall ensure that no Document Packet or other information or materials furnished by the Architect for use in the competitive bidding process contains any reference to or discloses in any way the Fixed Limitation for Construction Cost or the Owner's budgeted amount for construction.

1.8 ADMINISTRATION OF CONSTRUCTION

1.8.1 The Architect shall provide administration of the Construction Contract as set forth below and shall perform those duties and discharge those responsibilities set forth herein.

1.8.2 The Architect shall represent the Owner during construction. Instructions and other appropriate communications from the Owner to the Contractor shall be communicated primarily through the Architect. The Architect shall act on behalf of the Owner only to the extent provided herein. The Architect shall be the Owner's design representative during performance of the Project, shall consult with and advise the Owner on all design and technical matters, shall be the Owner's representative in dealing with the Construction Contractor and shall administer the Contract for Construction, including resolution of the Construction Contractor's questions concerning Construction Documents.

1.8.3 Upon receipt, the Architect shall carefully review and examine the Contractor's Schedule of Values, together with any supporting documentation or data, which the Owner or the Architect may require from the Contractor. The purpose of such review and examination will be to preserve the Schedule of Values so that unbalancing does not occur which allocates greater value to certain elements of the Work than is indicated by such supporting documentation or data or, than is reasonable under the circumstances. If the Schedule of Values is not found to be appropriate, or if the supporting documentation or data is deemed to be inadequate, and unless the Owner directs the Architect to the contrary in writing, the Schedule of Values shall be returned to the Contractor for revision or supporting documentation or data. After making such examination, if the Schedule of Values is found to be appropriate as submitted, or if necessary, as revised, the Architect shall sign the Schedule of Values thereby indicating the Architect's informed belief that the schedule of Values constitutes a reasonable, balanced basis for payment of the Contract Price to the Contractor. The Architect shall not sign such Schedule of Values in the absence of such belief unless directed to do so, in writing, by the Owner.

1.8.4 The Architect shall carefully observe the Work of the Contractor whenever and wherever appropriate. The purpose of such observations will be to determine the quality, extent and progress of the Work in comparison with the requirements of the Construction Contract, the Construction Schedule, applicable laws, statutes, building codes, or other rules or regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project. In making such observations, the Architect shall exercise customary care to identify defects or deficiencies in the Work, to minimize unexcused delays in the schedule, and to prevent overpayment under the Construction Contract. Following each such observation the Architect shall submit a written field report of such observation, together with any appropriate comments or recommendations, to the Owner. The Architect shall attend regular job site meetings with the Construction Contractor and other necessary parties and shall cause the General Contractor to record the minutes of such job site meetings. The Architect shall check and correct, as necessary, minutes recorded and submitted by the General Contractor.

1.8.5 The Architect shall at all times have access to the Work wherever it is located. The Architect shall not have control or charge of construction means, methods, techniques, sequences or procedures, or safety precautions or programs in connection with the Work.

1.8.6 The Architect shall determine amounts owed to the Contractor based upon observations of the Work as required in Subparagraph 1.8.4, evaluations of the Contractor's rate of progress in light of the remaining Contract Time and upon evaluations of the Contractor's Request for Payment, and shall approve, modify or deny the request for payment and report to the Owner within ten (10) days of receipt of the request from the contractor.

1.8.7 The approval of a Request for Payment shall constitute a representation by the Architect to the Owner that the Architect has made an observation of the Work as provided in Subparagraph 1.8.4 and, that the Work has progressed to the level indicated, that the quality of the Work generally meets the requirements of the Construction Contract, that all necessary and appropriate lien waivers have been submitted, and that, the Contractor is entitled to payment of the amount certified. In the case of unit price work the Architect's recommendations for payment will constitute a final determination of quantities and classifications of such work.

1.8.8 The Architect shall be the initial interpreter of the requirements of the Construction Documents and the judge of the performance thereunder by the Contractor. The Architect shall act as the Owner's advisor on claims. The Architect shall render written or graphic interpretations and decisions necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.

1.8.9 The Architect's decisions in matters relating to artistic or aesthetic effect shall be final if consistent with the intent of the Construction Contract.

1.8.10 The Architect may reject Work that does not conform to the Contract Documents unless directed by the Owner, in writing, not to do so. Whenever, in the Architect's opinion, it is necessary or advisable, the Architect may require special examination or testing of the Work in accordance with the provisions of the Construction Contract whether or not such Work is fabricated, installed or completed. The Architect shall timely notify in writing the Owner of work that does not conform to the contract documents.

1.8.11 The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples. Approval by the Architect of the Contractor's submittal shall constitute the Architect's representation to the Owner that such submittal is generally in conformance with the Project design concept, the Construction Documents, the Contract for Construction, and the Owner's Fixed Limitation for Construction Cost. Such action shall be taken with reasonable promptness so as to cause no delay to the Contractor or the Project. Owner shall receive a copy of all approved shop drawings, product data, samples, etc.

1.8.12 The Architect shall promptly review, approve, or take other appropriate action on proposed "equal materials or equipment." The Architect shall not approve any such proposed equal materials or equipment unless such equals conform to the Project design concept, the Construction Documents, the Contract for Construction, and the Owner's Fixed Limitation for Construction Cost, and the estimated life cycle project projections.

1.8.13 The Architect shall promptly review and evaluate the results of all inspections, tests and written reports required by the Contract for Construction, which were required by any applicable laws, statutes, building codes, rules and regulations of governmental public and quasi-public authorities and agencies having jurisdiction over the Project or which were necessary or advisable. The Architect shall take appropriate action on test results and shall promptly reject any work which does not conform to and comply with the requirements, unless the Owner, after written notification by the Architect, agrees with a recommendation from the Architect that it is in the best interest of the Owner to accept the work. The Architect shall provide timely written notice to the Owner of any work, which does not conform to and comply with the requirements.

1.8.14 The Architect shall promptly review, administer, manage, and advise the Owner concerning, proposals and requests for Change Orders from the Contractor. The Architect shall prepare Change Orders for the Owner's approval and execution in accordance with the Construction Contract, and shall have authority to order, with the Owner's approval by written Field Order, minor changes in the Work not involving an adjustment in the Contract Price, the time for construction, the Project scope, aesthetics, visual concepts or approved design elements. The Architect shall not be authorized to "swap out" required changes with reduced construction requirements without the written consent of the Owner. The Architect shall promptly prepare required drawings, specifications and other supporting data as necessary in connection with minor changes, change order requests, and change orders.

1.8.15 The Architect shall promptly notify the Owner, in writing, of any information it obtains pertaining to any claim, alleged claim, including but not limited to mechanics' liens, construction liens, and builder's trust fund claims, or similar claims, involving any Project Contractor, supplier, subcontractor, or consultant, whether or not such claims or alleged claims arise from or relate to the Project.

1.8.16 When the Contractor believes that the Work is substantially complete, the Contractor shall submit to the Architect a list of items to be completed or corrected. When the Architect, on the basis of field observation, determines that the Work is in fact substantially complete, it will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall restate the responsibilities of the Owner and the Contractor as established in the Owner Contractor Agreement for Project security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items

listed therein. Guarantees required by the Contract shall commence on the date of Substantial Completion of the Work. The Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such certificate. Upon Substantial Completion of the Work, and execution by both the Owner and the Contractor of the Certificate of Substantial Completion, the Owner shall pay the Contractor an amount sufficient to increase total payments to the Contractor to one hundred percent (100%) of the Contract Price less three hundred percent (300%) of the reasonable costs as determined by the Owner and the Architect for completing all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, and handling all unsettled claims.

1.8.17 The Architect shall secure from the Contractor, on behalf of the Owner, all keys, manuals, required maintenance stocks, guaranties, warranties, affidavits, releases, bonds, waivers, permits, record drawings and markups, and other documents necessary for close out of the Work, including the Certificate of Occupancy. Additionally, the Architect shall obtain, review and determine the propriety of all closeout documents, and shall immediately inform the Contractor about any deficiencies. The Architect shall assist in having the Contractor meet with the Owner's representative(s) to deliver the documents to familiarize them with respect to maintenance and use of the Project.

1.8.18 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the Owner and the Architect thereof in writing. The Architect shall secure from the Contractor at or prior to final completion inspection certification that all obligations for payment for labor, materials or equipment related to the Work have been paid or otherwise satisfied; certification that all insurance required of the Contractor beyond final payment, if any, is in effect and will not be canceled or allowed to expire without notice to the Owner; the written consent of the surety (ies), if required, to final payment; and full waivers of mechanics or construction liens, releases or builder's trust fund or similar claims; and release of security interests or encumbrances on the Project property. The Architect shall review and determine the propriety of all Final Completion documents, and shall immediately inform the Contractor about any deficiencies. Thereupon, the Architect will make final inspection of the Work to include inspecting the Work; determining whether the Contractor has satisfactorily completed or corrected all items on the list included with the Certificate of Substantial Completion; determining whether the Work complies with the Construction Contract, applicable laws, statutes, building codes, rules or regulations of all governmental, public, and quasi-public authorities and agencies having jurisdiction over the Project, and applicable installation and workmanship standards; determining whether required inspections and approvals by the officials(s) having jurisdiction over the Project have been satisfactorily completed; and, determining, in consultation with the Owner, whether the Work is finally complete

1.8.19 If the Work is complete in accordance with the requirements enumerated herein and the Contractor has submitted proper final completion close-out documents, the Architect will promptly issue a Certificate for Final Payment certifying the Owner that the Project is complete, that all liens and claims have been resolved in the alternative, all appropriate waivers and appropriate indemnification(s) have been secured, and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to the Construction Contract. If the Architect is unable to issue its final Certificate of Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment. In addition to the Certificate for Final Payment, the Architect shall submit to the Owner, Final Completion close-out documents and two (2) sets of record documents depicting final construction conditions, as recorded and prepared by the Contractor.

1.8.20 The Architect shall, without additional compensation for time, reproduction or distribution, promptly correct any errors, omissions, deficiencies or conflicts in the Architect's work product.

1.9 ADDITIONAL SERVICES

The following services of the Architect are not included in Paragraphs 1.1 through 1.8. Nevertheless, the Architect shall provide such services if authorized in writing by the Owner, and they shall be paid for by the Owner as provided hereinafter.

1.9.1 Providing services to examine or investigate existing conditions or to make measured drawings, or to verify the accuracy of drawings or other information provided by the Owner.

1.9.2 Making revision in drawings, specifications or other documents when such revisions are inconsistent with written direction by the Owner previously given, are required by the enactment of revision of codes, laws or regulations subsequent to the preparation of such documents and not reasonably anticipated, or are due to other causes not within the control or responsibility of the Architect, either in whole or in part.

1.9.3 Preparing drawings, specifications and supporting data in connection with Change Orders, provided that such
Change Orders are issued by the Owner due to causes not within the control or responsibility of the Architect, either in whole or in part.

1.9.4 Providing additional services for repair or replacement of Work damaged by fire or other cause during construction provided that such services are required by causes not the responsibility of the Architect, either in whole or in part.

1.9.5 Providing services made necessary solely by the default of the Contractor or major defects or deficiencies in the
Work of the Contractor.

1.9.6 Lifecycle cost analysis for major components of the project.

1.10 SERVICE SCHEDULE

1.10.1 The Architect shall perform its services expeditiously. In accordance with paragraph 1.4.2, the Architect shall submit for the Owner's approval a schedule for the performance for the Architect's services which shall include allowance for time required for the Owner's review of submissions and for approvals of authorities having jurisdiction over the Project. This schedule, when approved by the Owner, shall not, except for cause, be exceeded by the Architect.

1.11 PERSONNEL

1.11.1 The Architect shall assign only qualified personnel to perform any service concerning the project. All services rendered by the Architect for the Project shall be performed by or under the immediate supervision of experienced and qualified professionals licensed and registered in the State of Alabama possessing expertise in the discipline of the service being rendered. At the time of execution of this Agreement, the parties anticipate that the individuals named in Attachment "A" hereto will perform those functions/responsibilities indicated therein. So long as the individuals named above remain actively employed or retained by the Architect, they shall perform the functions/responsibilities at the hourly rates as indicated in Attachment "A". Newly hired employees by the Architect after the execution of this contract shall be declared to the Owner in writing and classed in a manner similar to existing employees, and subject to all of the terms of this Agreement. The Architect shall promptly inform the Owner in writing of any proposed changes in responsibilities/functions or of any replacement personnel, the reasons for such changes or replacement, and the name or qualifications of such replacement. The Owner shall have the right to reject any proposed replacement. The following designated Architect representative(s) are authorized to make decisions, shall be available on an on-call basis, and shall be called in the order listed herein:

Name	Address	Work Telephone /Fax/E-mail
Les Tillery	100 Church Street: Suite 700	256-534-3516

1.11.2 The basic compensation fee for Architectural services shall include the cost to the Architect for the services of consultants. Based on project requirements, the Architect could choose to include the following consultants:

- Civil Engineer
- Structural Engineer
- Mechanical Engineer
- Plumbing Engineer
- Security Electronics
- Laundry Design
- Landscape Architect
- Roofing

- Electrical Engineer
- Food Service Consultant
- Fire Protection Engineer
- Interiors
- Life Cycle Cost Analysis
- ADA

The Architect shall not enter into any agreement with any consultant for services relative to the Project, without prior notification in writing to the Owner. The Owner shall have the right to reject any consultant provided that the Owner raises a timely objective. Should the Owner require the use of a new consultant, and that consultant require additional compensation, the Owner will pay the difference. At the time of the execution of this Agreement, the parties anticipate that the consultants listed in Attachment "B" hereto will be retained by the Architect to provide services with respect to the Project. Attachment "B" shall include the names of key team members in each Consultant's firm who will be performing services on behalf of the Consultant along with the hourly rates to be charged for such services.

1.11.3 The Owner shall be represented by the Facilities Project Management Department and in certain circumstances may employ a consultant. These individuals shall act as the Owner's representatives and are the designated representatives who are authorized to make all decisions except for change orders on the Owner's behalf when requested to do so by the Architect.

The Owner shall furnish a revised listing to the Architect when any changes occur affecting this list. Additionally, the Owner shall provide to the Architect a listing of the Owner's consultants performing services relative to the Project. Such listing shall include the name of the Owner's consultants and the general duties each consultant retained by the Owner will perform. At any time during the term of this Agreement, the Owner reserves the right to engage any other consultants which it deems necessary or desirable for the Project, and, at its sole discretion, to remove any consultant from the Project.

ARTICLE II
THE OWNER'S BASIC DUTIES TO THE ARCHITECT OTHER THAN COMPENSATION

2.1 The Owner shall provide the Architect with adequate information regarding the Owner's requirements for the Project including master plan and programming information and any desired or required design or construction schedule, or both, and any budgetary requirements.

2.2 The Owner shall review any documents submitted by the Architect requiring the Owner's decision, and shall promptly render any required decision pertaining thereto.

2.3 The Owner shall furnish a legal description and any necessary survey of the site, including as may be reasonably required, grades and lines of streets, alleys, pavements and adjoining structures, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to the existing buildings and other improvements; and information concerning available service utility lines above and below grade, including inverts and depths.

2.4 The Owner shall furnish the services of Geotechnical and other consultants when such services are necessary and are requested by the Architect.

2.5 The Owner shall furnish structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Contract Documents. The Architect shall disclose to the Owner any testing or inspection requirements contained in the Contract Documents that exceed those customary or that serve to reduce the Architect's normal field observation duties and responsibilities. Any testing or inspection requirements contained in the Contract Documents which exceed or are less than customary industry practices shall be disclosed by the Architect and must be approved by the Owner in writing.

2.6 If the Owner becomes aware of any fault or defect in the Project, nonconformance with the Construction Contract, or of any errors, omissions or inconsistencies in the drawings or specifications, prompt notice thereof shall be given by the Owner to the Architect.

2.7 The Owner shall perform those duties set forth in Paragraphs 2.1 through 2.6 as expeditiously as may reasonably be necessary for the orderly progress of the Architect's services and of the Work.

2.8 The Owner's review of any documents prepared by the Architect or its consultants shall be solely for the purpose of determining whether such documents are generally consistent with the Owner's construction program and intent. No review of such documents shall relieve the Architect of its responsibility for the accuracy, adequacy, fitness, suitability and coordination of its work product.

ARTICLE III
LIMITATION ON CONSTRUCTION COST

3.1 The Architect understands and acknowledges that the Owner has established a budget for the Project of One Hundred Eighty Thousand Dollars ($180,000). The Architect agrees to design the Project so that the actual Total Project Construction Cost does not exceed the Fixed Limitation for Construction Cost.

3.2 If the Fixed Limitation on the Construction Cost is exceeded by the lowest qualified bid, the Owner may in addition to any other remedies provided by this Agreement or law (1) give written approval of an increase in such fixed limit: (2) authorize and require the Architect, at no cost to the Owner, to re-bid or enter into negotiations with the low bidder on the Project; (3) terminate the Project or any portion thereof as determined necessary by the Owner and terminate this Agreement in whole or in part in accordance herewith; or (4) revise the Project scope, quality, or schedule, engage in value engineering as required to reduce the Total Project Construction Cost, and require the Architect, at no cost to the Owner, to modify the Construction Documents and re-bid or negotiate with the low bidder of the Project to result in a bid or negotiated total project construction cost within the Fixed Limitation for Construction Cost for the Project. In order to reduce the Total Project Construction Cost to the budgeted Fixed Limitation on the Construction Cost, the Architect shall, in addition to the above, at the Owner's request and at no additional cost to the Owner, provide value engineering including but not limited to evaluation of any value engineering proposals as necessary, shall assist the Owner in redefining the scope of the Project, and shall revise and incorporate into all plans, specifications and any other Contract Documents as necessary to reflect such scope revisions, value engineering modifications or any other modifications made in the Project in order to achieve compliance with the Fixed Limitation on Construction Cost. The Architect shall reissue the Contract Documents as revised in accordance with the processes described herein and shall redeliver sets of the Contract Documents in accordance with paragraph 1.7.2.3.

ARTICLE IV
BASIS OF COMPENSATION

4.1 The Owner shall compensate the Architect for services rendered pursuant to this Agreement, excepting those services described as Additional Services in Paragraph 1.9 of this Agreement, by payment of the fixed sum of Twenty Nine Thousand Dollars ($29,000). This amount does not include the items specifically set forth as reimbursables as identified in Article V.

4.2 Payment to the Architect of the sum set forth in Paragraph 4.1 shall be allocated as follows:

Schematic Design:	10%
Design Development:	15%
Construction Documents:	40%
Bidding:	5%
Construction:	30%

Additional services of the Architect as described in Paragraph 1.9, if any, shall be compensated as follows: Compensation for such services shall be computed on an hourly basis in accordance with Attachment "A" attached herewith. Compensation for such services rendered by consultants shall be computed in accordance with the hourly rates set forth in Attacment "B". Additional Services of consultants, if any, shall be compensated on the basis of a multiple of one and one tenth (1.1) times the amounts billed at the hourly rates to the Architect for such service.

4.3 Reimbursable Expenses as defined in Article V, shall be reimbursed to the Architect by the Owner as provided in Article V.

4.4 If the Architect's services are changed materially through no fault of the Architect, compensation due to the Architect shall be equitably adjusted by mutual agreement of the parties, either upward or downward.

4.5 Several bid alternates may be included in the Construction Documents to allow the Owner to evaluate the cost of various systems and materials and to determine whether or not to include them in the project. Should work designed and included in the bid documents as Alternates not be accepted, the Architect will be compensated only for efforts through the bidding phase.

ARTICLE V
PAYMENT TO THE ARCHITECT

5.1 ARCHITECT'S INVOICES

5.1.1 Not more frequently than monthly, unless otherwise agreed in writing by the Architect and the Owner, the Architect shall submit an invoice to the Owner requesting payment for services properly rendered and reimbursement for Reimbursable Expenses due hereunder. The Architect's invoice shall describe with reasonable particularity each service rendered, the date thereof, the time expended if services under Paragraph 1.9 are included in the invoice and the person(s) rendering such service. The Architect's invoice shall be accompanied by such documentation or data in support of Reimbursable Expenses for which reimbursement is sought as the Owner may require.

5.1.2 If payment is requested for services rendered by the Architect, other than services pursuant to Paragraph 1.9, the invoice shall additionally reflect the allocations as provided in Paragraph 4.2 and shall state the percentage of completion as to each such allocation. The invoice shall bear the signature of the Architect, which signature shall constitute the Architect's representation to the Owner that the services indicated in the invoice have progressed to the level indicated, have been properly and timely performed as required herein that the Reimbursable Expenses included in the invoice have been reasonably incurred, that all obligations of the Architect covered by prior invoices have been paid in full, and that, to the best of the Architect's knowledge, information and informed belief, the amount requested is currently due and owing, there being no reason known to the Architect the payment of any portion thereof should be withheld. Submission of the Architect's invoice for final payment and reimbursement shall further constitute the Architect's representation to the Owner that, upon receipt from the Owner of the amount invoiced, all obligations of the Architect to others, including its consultants, incurred in connection with the Project, will be paid in full.

5.2 TIME FOR PAYMENT

5.2.1 The Owner shall make payment to the Architect of all sums properly invoiced as provided in Paragraph 5.1, within thirty (30) days of the Owner's receipt thereof.

5.3 OWNER'S RIGHT TO WITHHOLD PAYMENT

5.3.1 In the event the Owner becomes credibly informed that any representations of the Architect, provided pursuant to Subparagraph 5.1.2, are wholly or partially inaccurate, the Owner may withhold payment of sums then or in the future otherwise due to the Architect until the inaccuracy, and the cause thereof, is corrected to the Owner's reasonable satisfaction. Additionally, failure by the Architect to supply substantiating records shall be reason to

exclude related costs from the amounts, which might otherwise by payable by the Owner to the Architect.

5.4 REIMBURSABLE EXPENSES

5.4.1 In addition to the requirements set forth in 5.1 above, invoices for reimbursable expenses shall include such documentation as the Owner may require. Reasonable expenses are limited to the following expenses:

(a) out-of-state transportation approved in advance by the Owner in writing and incurred in connection with the Project;
(b) transportation between the offices of the Architect and Consultants to Huntsville and other travel costs in connection with the project.
(c) charges for long-distance communications;
(d) fees paid for securing approval of authorities having jurisdiction over the Project;
(e) actual costs of reproduction;
(f) postage and handling charges incurred for drawings, specifications and other documents; and
(g) renderings, models and mock-ups requested by the Owner.

The Architect shall set forth with particularity on its invoice the nature and cost of the expense item being billed, and attach to its invoice the written authorization, if any, required for such item; and shall bill expenses at actual cost or prevailing rate and with the additional charge of an administrative multiple of 1.10.

Reimbursable expenses shall be limited during the term of this agreement to a Not to Exceed cost of One Thousand Dollars ($1,000).

5.4.2 Reproduction and printing of bid and contract documents shall be performed by the Owner and shall not be a reimbursable expense to the Architect unless the Owner specifically requests in writing that the Architect reproduce these items in bulk.

5.4.3 When a payment is received by the Architect from the Owner, the Architect shall promptly pay all professionals, consultants, or subcontractors providing services for the Project through the Architect in the amounts that are due for the work covered by such payment. In the event the Owner becomes informed that the Architect has not paid such professionals, consultants, or subcontractors the amounts due, the Owner shall have the right, but not the duty, to issue future checks in payment to the Architect of amounts otherwise due hereunder naming the Architect and any such professional, consultant, or subcontractor as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity nor obligation or duty on the part of the Owner beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

5.5 ARCHITECT'S RECORDS

5.5.1 Documentation accurately reflecting services performed and the time expended by the Architect and his personnel and records of Reimbursable Expenses shall be prepared concurrently with the performance of the services and shall be maintained by the Architect. The Architect shall maintain record copies of all written communications, and any memoranda of verbal communications related to the Project. All such records and documentation shall be maintained for a minimum of five (5) years after the Project date of Final Completion or for any longer period of time as may be required by law or good practice. If the Architect receives notification of a dispute or of pending or commencement of litigation during this five-year period, the Architect shall continue to maintain all Project records until final resolution of the dispute or litigation. The Architect shall make such records and documentation available to the Owner upon notice and shall allow the authorized representative(s) of the Owner to inspect, examine, review and copy the Architect's records at the Owner's reasonable expense.

ARTICLE VI
CHANGES AND TERMINATION

6.1 CHANGES

6.1.1 There shall be no changes in this Agreement except by mutual agreement of the parties as indicated by written contract modification approved and executed by those individuals properly authorized to enter into contracts on behalf of each party.

6.2 TERMINATION FOR CAUSE

6.2.1 This Agreement may be terminated by either party upon seven (7) days written notice to the other should such other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination.

6.3 TERMINATION BY THE OWNER WITHOUT CAUSE

6.3.1 This Agreement may be terminated by the Owner without cause upon seven (7) days' written notice to the Architect. In the event of such a termination without cause, the Architect shall be compensated for all services performed prior to termination, together with Reimbursable Expenses incurred. In such event, the Architect shall promptly submit to the Owner its invoice for final payment and reimbursement which invoice shall comply with the provisions of Paragraph 5.1.

ARTICLE VII
INSURANCE AND INDEMNITY

7.1 INSURANCE

The Architect shall carry insurance of the following kinds and amounts in addition to any other forms of insurance or bonds required under the terms of the contract specifications. The Architect shall procure and maintain for the duration of the job until final acceptance by the Owner, or as later indicated, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Architect, his agents, representatives, employees or subcontractors.

A. MINIMUM SCOPE OF INSURANCE:

1. **General Liability:**

Insurance will be written on an occurrence basis. Claims-made coverage will be accepted only on an exception basis after the Owner's approval. General Liability Coverage and Owners Contractors Protective Insurance should be written by the same insurance company.

Commercial General Liability

Products and Completed Operations
Contractual
Personal Injury
Explosion, Collapse and Underground
Broad Form Property Damage

2. **Professional Liability:**

Insurance may be written on a "claims-made" basis, providing coverage for negligent acts, errors or omissions in the performance of professional services. Coverage will be maintained for five (5) years after completion of the professional services and Certificates of Insurance will be submitted to the Owner. Coverage shall be no less comprehensive than that which is carried by at least 25% of the registered Architects or Architectural Firms contracting in the United States. Such coverage shall be carried on a continuous basis including prior acts coverage to cover the subject project. The professional liability insurance shall contain contractual liability coverage.

3. **Automobile Liability:**

Business Automobile Liability providing coverage for all owned, hired and non-owned autos. Coverage for loading and unloading shall be provided under either automobile liability or general liability policy forms.

4. **Workers' Compensation Insurance:**

Statutory protection against bodily injury, sickness or disease or death sustained by employee in the scope of employment. Protection shall be provided by a commercial insurance company or a recognized self-insurance fund authorized before the State of Alabama Industrial Board of Relations.

5. **Employers Liability Insurance:**

Covering common law claims of injured employees made in lieu of or in addition to a worker's compensation claim.

B. **MINIMUM LIMITS OF INSURANCE:**

1. **General Liability:**

Commercial General Liability on an "occurrence form" for bodily injury and property damage:

$ 2,000,000 General Aggregate Limit
$ 2,000,000 Products - Completed Operations Aggregate
$ 1,000,000 Personal & Advertising Injury
$ 1,000,000 Each Occurrence

2. **Professional Liability:**

Insurance may be made on a "claims-made" basis:

$ 500,000 Per Claim - Land Surveyors
$ 1,000,000 Per Claim - Other Professionals

3. **Automobile Liability:**

$ 1,000,000 Combined Single Limit per accident for bodily injury and property damage.

4. **Workers' Compensation:**

As required by the State of Alabama Statute

5. **Employers Liability:**

$ 1,000,000 Bodily Injury by Accident or Disease
$ 1,000,000 Policy Limit by Disease

C. **OTHER INSURANCE PROVISIONS:**

The Owner is hereby authorized to adjust the requirements set forth in this document in the event it is determined that such adjustment is in the Owner's best interest. Any increase in premiums shall be paid by the Owner. If the insurance requirements are not adjusted by the Owner prior to the Owner's release of specifications with regard to the project in question, then the minimum limits shall apply.

The policies are to contain, or be endorsed to contain, the following provisions:

1. **All Coverages:**

The Architect is responsible to pay all deductibles. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Owner. Cancellation of coverage for non-payment of premium will require ten (10) days written notice to the Owner.

D. **ACCEPTABILITY OF INSURERS:**

Insurance is to be placed with insurers with an A. M. Best's rating of no less than A-V.

E. **VERIFICATION OF COVERAGE:**

The Owner shall be indicated as a Certificate Holder and the Architect shall furnish the Owner with Certificates of Insurance reflecting the coverage required by this document. The A. M. Best Rating and deductibles, if applicable, shall be indicated on the Certificate of Insurance for each insurance policy. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the Owner before work commences. The Owner reserves the right to require complete, certified copies of all required insurance policies at any time.

F. **CONSULTANTS AND/OR SUBCONTRACTORS WORKING FOR THE ARCHITECT:**

The Architect shall furnish separate certificates and/or endorsements for each subcontractor and/or consultant.

G. **HOLD HARMLESS AGREEMENT:**

1. **Other Than Professional Liability Exposures:**

The Architect, to the fullest extent permitted by law, shall indemnify and hold harmless the Owner, its elected and appointed officials, employees, agents, and representatives against all claims, damages, losses and expenses, including, but not limited to, attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to personal injury, including bodily injury sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom, and (2) is caused by any negligent act or omission of the Architect or any of their consultants, or anyone directly or indirectly employed by them or anyone for whose acts they are legally liable. Such

obligation should not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

2. **Professional Liability:**

The Architect agrees, to the fullest extent permitted by law, to defend, protect, indemnify and hold harmless the Owner, its elected and appointed officials, officers, directors, employees, agents, and representatives from and against any and all liability, claims, demands, damages, loss, costs, fees, and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants) actually or allegedly arising out of, or resulting from, the professional services of the Architect or the Architect's consultants, subcontractors, or suppliers, including, without limitation, any breach of contract or any negligent acts, errors, or omissions in the performance of the professional services provided pursuant to or as a result of this Agreement. Neither, the Owner nor the Architect shall be obligated to indemnify the other party in any manner whatsoever for the other parties own negligence.

To the fullest extent permitted by law, the Architect shall defend, protect, indemnify, and hold harmless the Owner, its elected and appointed officials, officers, directors, employees, agents, and representatives from and against any and all liability, claims, demands, damages, loss, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants) for infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by the Owner in writing. If the Architect has reason to believe the use of a required design, process or product is an infringement of a patent, the Architect shall be responsible for such loss unless such information is promptly given to the Owner.

ARTICLE VIII
MISCELLANEOUS PROVISIONS

8.1 GOVERNING LAW

8.1.1 This Agreement shall be governed by the law of the State of Alabama.

8.2 INTENT AND INTERPRETATION

8.2.1 The intent of this Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result shall be provided by the Architect.

8.2.2 This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document, shall be considered as required by the Contract.

8.2.3 When a word, term or phrase is used in this Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the Architectural industry; and third, if there is no generally accepted meaning in the Architectural industry, according to its common and customary usage.

8.2.4 The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation".

8.2.5 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

8.2.6 Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

8.2.7 The titles used in this Agreement are for general reference only and are not part of the Agreement.

8.3 TIME IS OF THE ESSENCE

8.3.1 Time limitations contained herein, or provided for hereby, are of the essence of this Agreement. The Architect understands and acknowledges that time is of the essence in completion of the Project and that the Owner will incur damages if the Project is not completed on time.

8.4 USE AND OWNERSHIP OF DOCUMENTS

8.4.1 The Construction Documents, including all drawings, specifications and other documents, electronic media, or

things prepared by or on behalf of the Architect for the Project are the sole property of the Owner and are free of any retention rights of the Architect upon payment of current balance due on account by the Owner. . The Architect hereby grants to the Owner an unconditional right to use, for any purpose whatsoever, the Construction documents and any other documents or electronic media prepared by or on behalf of the Professional for the Project, free of any copyright claims, trade secrets or other proprietary rights with respect to such documents. The Architect shall be permitted to retain copies thereof for its records. Any unauthorized reuse by the Owner for alterations and maintenance to the building without the written approval of the Architect, shall be at the sole risk of the Owner and the Owner shall indemnify and save harmless the Architect from any and all liability, costs, claims, damages, losses and expenses including attorney's fees arising out of, or resulting from, such reuse by the Owner; provided however, that this agreement to indemnify and save harmless shall not apply to any reuse of documents retained by, or through, the Contractor.

8.4.2 Electronic files furnished by either party shall be subject to an acceptance period of thirty (30) days during, which the receiving party agrees to perform appropriate acceptance tests. The party furnishing the electronic file shall correct any discrepancies or errors detected and reported within the acceptance period. After the acceptance period, the electronic files shall be deemed to be accepted and neither party shall have any obligation to correct errors or maintain electronic files. The Owner is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed or sealed hard-copy construction documents prepared by the Architect and electronic files, the signed or sealed hard-copy construction documents shall govern. Under no circumstances shall delivery of the electronic files for use by the Owner be deemed a sale by the Architect, and the Architect makes no warranties, either express or implied, of merchantability and fitness for any particular purpose.

8.5 SUCCESSORS AND ASSIGNS

8.5.1 The Architect shall not assign its rights hereunder, excepting its right to payment, nor shall it delegate any of its duties hereunder without the written consent of the Owner. Subject to the provisions of the immediately preceding sentence, the Owner and the Architect, respectively, bind themselves, their successors, assigns and legal representatives to the other party to this Agreement and to the successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement.

8.6 NO THIRD-PARTY BENEFICIARIES

8.6.1 This Agreement shall inure solely to the benefit of the parties hereto and their successors and assigns. Nothing contained herein is intended to or shall create a contractual relationship with, or any rights in favor of, or any cause of action in favor of any third party, against the Owner or the Architect.

8.7 INTELLECTUAL PROPERTY/ CONFIDENTIALITY

8.7.1 All information, documents, and electronic media furnished by the Owner to the Architect belong to the

Owner, are considered proprietary and confidential, unless otherwise indicated by the Owner, and are furnished solely for use on the Owner's Project. Such information, documents, and electronic media shall be kept confidential by the Architect, shall only be released as necessary to meet official regulatory requirements in connection with the Project, and shall not be used by the Architect on any other project or in connection with any other person or entity, unless disclosure or use thereof in connection with any matter other than services rendered to the Owner hereunder is specifically authorized in writing by the Owner in advance.

8.8 SUBCONTRACT REQUIREMENTS

8.8.1 The Architect shall include the terms and conditions of Articles VII and VIII of this Agreement in every subcontract or agreement with a consultant for this Project so that these terms and conditions shall be binding upon each subcontractor or consultant.

8.9 NOTICES

8.9.1 Unless otherwise provided, all notices shall be in writing and considered duly given if the original is hand delivered; if delivered by telex, facsimile, or tele-copy; or is sent by U.S. Mail, postage prepaid. All notices shall be given to the addresses set forth above. Notices, hand delivered or delivered by telex, facsimile, or tele-copy shall be deemed given the next business day following the date of delivery. Notices given by U.S. Mail shall be deemed given as of the second business day following the date of posting.

8.10 STRICT COMPLIANCE

8.10.1 No failure of the Owner to insist upon strict compliance by the Architect with any provision of this Contract for Professional Services shall operate to release, waive, discharge, modify, change or affect any of the Architect's obligations.

8.11 WAIVER

8.11.1 No provision of this Agreement may be waived except by written agreement of the parties. A waiver of any provision on one occasion shall not be deemed a waiver of that provision on any subsequent occasion, unless specifically stated in writing. A waiver of any provision shall not affect or alter the remaining provisions of this Agreement.

8.12 SEVERABILITY

8.12.1 If any provision of this Agreement, or the application thereof, is determined to be invalid or unenforceable, the remainder of that provision and all other provisions of this Agreement shall remain valid and enforceable.

8.13 ETHICS

8.13.1 The Architect shall not offer or accept any bribes or kickbacks from or to any manufacturer, consultant, trade contractor, subcontractor, supplier or any other individual or entity in connection with the Project. The Professional shall not confer on any governmental, public or quasi-public official having any authority or influence over the Project any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised. The Architect shall not, without the express written permission of the Owner, engage or recommend to the Owner engagement of any consultant, trade contractor, subcontractor, or supplier to provide services on behalf of the Professional, Owner or Project in which the Professional has a direct or indirect proprietary or other pecuniary interest; or call for the use of or by exclusion require or recommend the use of products, materials, equipment, systems, processes or procedures in which the Architect or in which any consultant, trade contractor, subcontractor, or supplier of the Architect has a direct or indirect proprietary or other pecuniary interest.

8.14 SPECIAL PROVISIONS

8.14.1 Additional terms and conditions applicable to this Agreement are included in Appendix 2 to this Agreement. Such terms and conditions are incorporated by reference herein.

8.15 ENTIRE AGREEMENT

8.15.1 This Agreement represents the entire agreement between the Owner and the Architect and supersedes all prior communications, negotiations, representations or agreements, either written or oral. This agreement may be amended only by written instrument signed by both Owner and Architect.

8.16 BETTERMENT

8.16.1 If, due to the Architect's error, any required item or component of the project is omitted from the Architect's construction documents, the Architect shall not be responsible for paying the cost to add such item or component to the extent that such item or component would have been otherwise necessary to the project or otherwise adds value or betterment to the project. In no event will the Architect be responsible for any cost or expense that provides betterment, upgrade or enhancement of the project. The Owner shall pay the cost of said component and the Architect shall pay the cost premium of procuring by change order or any required reworking.

8.17 HAZARDOUS MATERIALS

8.17.1 It is acknowledged by both parties that the Architect's scope of services does not include any services related to asbestos or hazardous or toxic materials. In the event the Architect or any other party encounters asbestos or hazardous or toxic materials at the job site, or should it become known in any way that such materials may be present at the job site or any adjacent areas that may affect the performance of the Architect's services, the Architect, at his option and without liability for consequential or any other damages, may suspend performance of services on the project until the Owner retains appropriate specialist consultant(s) or contractor(s) to identify, abate and/or remove the asbestos or hazardous or toxic materials, and warrant that the job site is in full compliance with applicable laws and regulations.

8.18 MEDIATION

8.18.1 In an effort to resolve any conflicts that arise during the design and construction of the Project or following the completion of the Project, the Owner and the Architect agree that all disputes between them arising out of or relating to this Agreement or the Project may be submitted to non-binding mediation unless the parties mutually agree otherwise.

8.19 E-VERIFY NOTICE

The Beason-Hammon Alabama Taxpayer and Citizen Protection Act, Act No. 2011-535, *Code of Alabama (1975) § 31-13-1 through 31-13-30"* (also known as and hereinafter referred to as " the Alabama Immigration Act") is applicable to contracts with the City of Huntsville. As a condition for the award of a contract and as a term and condition of the contract with the City of Huntsville, in accordance with § 31-13-9 (a) of the Alabama Immigration Act, any business entity or employer that employs one or more employees shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien and shall attest to such by sworn affidavit signed before a notary. Such business entity or employer shall provide a copy of such affidavit to the City of Huntsville as part of its bid or proposal for the contract along with a copy of the Memorandum of Understanding as documentation establishing that the business entity or employer is enrolled in the E-Verify program. The required affidavit form for the contractor and for subcontractors are included at the end of this notice.

During the performance of the contract, such business entity or employer shall participate in the E-Verify program and shall verify every employee that is required to be verified according to the applicable federal rules and regulations. The business entity or employer shall assure that these requirements are required of every subcontractor in accordance with §31-13-9(c) and shall maintain records that are available upon request by the City, state authorities or law enforcement to verify compliance with the requirements of the Alabama Immigration Act. Failure to comply with these requirements may result in breach of contract, termination of the contract or subcontract, and

possibly suspension or revocation of business licenses and permits in accordance with §31-13-9 (e) (1) & (2) or in the case of a subcontractor, in accordance with §31-13- 9 (f) (1) & (2).

The City of Huntsville, Alabama, a Municipal Corporation

OWNER

SEAL

Tommy Battle

By:

(SIGNATURE)

Tommy Battle, Mayor
City of Huntsville
308 Fountain Circle
Huntsville, AL 35801

(DATE OF EXECUTION)

ARCHITECT

SEAL

BART G. BANKOWSKI

By:

(SIGNATURE)

Fuqua & Partners
100 Church Street
Suite 700
Huntsville, Alabama 35801

6/11/15
(DATE OF EXECUTION)

STATE OF ALABAMA)
)
COUNTY OF MADISON)

I, the undersigned, a notary public in and for said County, in said State, hereby certify that Tommy Battle, whose name as Mayor of The City of Huntsville, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, in their official capacity, executed the same with full authority for and as the act of said city on the day the same bears day.

GIVEN under my hand and official seal this the _____ day of _____, 2015.

_____
Notary Public
My Commission Expires: _____

STATE OF ALABAMA)
)
COUNTY OF MADISON)

I, the undersigned, a notary public in and for said County, in said State, hereby certify that Bart Barkowski _____ of Fagan & Partners, an Alabama corporation, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, in their capacity as such officers, executed the same with full authority for and as the act of said corporation on the day the same bears day.

GIVEN under my hand and official seal this the 11th day of June, 2015.

Colyn Rainer Taylor
Notary Public
My Commission Expires: 4.10.2016

FUQUA
& PARTNERS
ARCHITECTS

MEMBER OF THE AMERICAN INSTITUTE OF ARCHITECTS

Architecture
Interior Design
Master Planning
Media Visualization

Joseph A. Fuqua
Tim K. Packard
Rodney K. Steger
Bart G. Bankowski
Leslie N. Tillery

June 4, 2015

ATTACHMENT A

Mr. Jeff Easter
City of Huntsville
General Services Department
615 Washington Street
Huntsville, AL 35801

RE: Municipal Complex Canopy Renovation

Dear Mr. Easter,

Please accept this letter as our formal proposal for the renovation of the existing canopy at the main entrance to City Hall, and for the renovations to the 7th floor city council offices. Thank you for the opportunity to present this proposal.

Scope of Work - Canopy

The scope of work for this project includes renovations that enhance the appearance of canopy, making it suitable for the main entrance to City Hall, while maintaining the temporary nature of the structure. Renovations shall include the addition of EIFS column wraps, fascia and soffit, recessed LED can lighting, roof drainage, and misc railings as required. We anticipate that any electrical work required for the new lighting can be handled with the contractor via design build.

Scope of Work – Council Offices

The scope for the council office renovation is to provide construction documents based on the proposed plans provided by Jeffrey Alpha at our meeting and walkthrough on May 26th. Based upon our walkthrough of the space, we believe there will be very limited, if any impact to the lighting, hvac, fire protection, and life safety systems. Limited plumbing engineering will be required to provide plumbing to the relocated coffee bar. Interior design is included but limited to the replacement of finishes disturbed by construction activities.

Fee - Canopy

We propose to perform the canopy scope of work for a lump sum fee of $17,500. This includes any structural engineering that may be required. This fee is based on the existing, approved schematic design to create construction documents for use in negotiating the project with contractors. The fee includes construction observation services.

Fee – Council Offices

We propose to perform the above scope of work for the council offices for a lump sum fee of $11,500. This fee includes limited MEP engineering as required for the renovation. This fee includes further development of the schematic design already completed to

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create construction documents for use in negotiating the project with contractors. The fee includes construction observation services.

Proposal Qualifications

The fee proposed above anticipates a project schedule in which the entire scope of design is completed by August 2015. If the design phase extends past the end of August 2015 due to factors beyond our control, we would request the opportunity to adjust our fee accordingly. The proposed fee includes development of the existing schematic design(s). If additional design studies are required in order to gain approvals, we propose to perform that work as an additional service on an hourly basis.

It should be noted that the seventh floor council office area has code issues related to means of egress. There is only one exit from that floor and it requires passage through a room of assembly occupancy. This issue is inherent to this building and should be addressed, but is outside of the scope of this project. Meetings with the City of Huntsville Inspection Department and the Fire Marshal are included in the proposed fees, but any modifications they require to the plan to address code issues are not included and will require additional services.

Items not included in the scope of work and fee described above are listed below. These items, if required, will be billed at cost, plus a 1.1 multiplier.

- Renderings
- Printing
- Postage and shipping expenses

Thank you again for the opportunity to provide this proposal, do not hesitate to contact me should you have any questions.

Sincerely,

Les Tillery, AIA, LEED AP
Principal
Fuqua & Partners Architects, P.C.

Enclosure: FPA Standard Terms and Conditions

FUQUA & PARTNERS ARCHITECTS STANDARD TERMS AND CONDITIONS

This letter agreement is based on the terms and conditions below. For purposes of this agreement, City of Huntsville (COH) shall be identified as the Owner, and Fuqua & Partners Architects (FPA) shall be identified as the Architect.

- *This agreement shall be governed by the laws of the State of Alabama.*
- *This agreement may be terminated by the Owner or Architect should the other fail to perform his obligations hereunder. In the event of termination, the Owner shall pay the Architect for all services rendered to the date of termination, all reimbursable expenses, and, if applicable, reimbursable termination expenses.*
- *All documents produced by the Architect under this agreement shall remain the property of the Architect and may not be used by the Owner for any other endeavor without the written consent of the Architect.*
- *The Owner shall indemnify and hold harmless the Architect and all of its personnel from and against any and all claims, damages, losses, and expenses (including attorney's fees) arising out of or resulting from the performance of services, provided that any such claims, damage, loss or expense is caused in whole or in part by the negligent act or omission, and/or strict liability of the Owner, anyone directly or indirectly employed by the Owner (except the Architect) or anyone for whose acts any of them may be liable. This indemnification shall include any claim, damage or losses due to the presence of hazardous materials.*
- *In recognition of the unmanageable risks to the Architect intrinsic in this project, the Owner agrees that the total liability, if any, of the Architect to the Owner and to anyone claiming through the owner shall be limited to the compensation actually paid for services.*
- *Except as expressly set forth in this agreement, the Architect shall have no liability for any services provided, including any liability for simple negligence; Architect makes and the Owner receives no warranties, express or implied, statutory, or in any other provision of this agreement or any other communication; and Architect specifically disclaims any warranty or merchantability or fitness for a particular purpose.*
- *Invoices for services will be submitted monthly and are due upon receipt. Billing will be for the percentage of services completed through the invoice date. Invoice shall be considered past due if not paid within 30 days of the invoice date. Architect may, without waiving claim or right against the Owner, terminate the performance of the service for delay in payments.*
- *A monthly service charge of 1.5% of the unpaid balance (18% per annum) will be added to past due accounts. In the event any portion or all of an account remains unpaid 90 days after billing, the Owner shall pay the cost of collection, including reasonable attorney's fees.*

ATTACHMENT A

NONE

ATTACHMENT B
CONSULTANT'S CHART
(In accordance with paragraph 1.11.2)

Name	Description of type of work performed	Hourly Rates

NONE

APPENDIX 1
ADDITIONAL REQUIRED SERVICES
(In accordance with paragraph 1.4.5)

NONE

APPENDIX 2
SPECIAL PROVISIONS
(In accordance with paragraph 8.14)

NONE