



# AGREEMENT BETWEEN OWNER AND ARCHITECT/ ENGINEER

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Project Name:  
**Continuing Services**

Architect/Engineer:

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March 2022 Edition

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**AGREEMENT BETWEEN OWNER AND ARCHITECT/ENGINEER**

This Agreement Between Owner and Architect/Engineer (the "Agreement") is made as of the Effective Date (as defined herein) by and between The Florida International University Board of Trustees, whose principal business address is Modesto Maidique Campus, 11200 S.W. 8<sup>th</sup> Street, Miami, Florida 33199, Attention: Associate Vice President of Facilities Management, (hereinafter called "Owner") and \_\_\_\_\_, whose principal business address is \_\_\_\_\_, Federal I.D. number \_\_\_\_\_, (hereinafter called "Architect/Engineer"). Architect/Engineer and Owner may be collectively referred to herein as the "parties" and each may be individually referred to herein as the "party."

WITNESSETH:

**WHEREAS**, Owner intends to implement the Project (hereinafter defined); and

**WHEREAS**, Owner solicited statements of qualifications from interested architect/engineers for the design of the Project; and

**WHEREAS**, based upon Architect/Engineer's interview and Architect/Engineer's qualifications statement and related submissions, Owner has selected Architect/Engineer for the Project; and

**WHEREAS**, Architect/Engineer has represented that it is willing and able to provide the services called forth under this Agreement, and

**WHEREAS**, based on the above representations, Owner has selected Architect/Engineer to perform said services;

**NOW THEREFORE**, for and in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties hereby agree as follows:

The parties acknowledge and agree that the above recitals are true and correct and incorporated herein by reference.

ARTICLE 1

Project

The Project(s) for which Architect/Engineer is being hired to perform services under this Agreement are individual consulting projects which may only include those projects (a) for which the estimated construction cost of each individual project under the contract does not exceed Four Million Dollars (\$4,000,000); or (b) for study activity if the fee for professional services for each study activity under the contract does not exceed Five Hundred Thousand Dollars (\$500,000), or such greater amount(s) as may be permitted by Florida Statutes (hereinafter collectively referred to in this Agreement as "Project").

The parties acknowledge and agree that this is a non-exclusive Architect/Engineer Continuing Services Agreement and Owner may enter into other agreements for the performance of similar services as deemed in the best interests of Owner.

ARTICLE 2

ARCHITECT/ENGINEER'S RESPONSIBILITIES

2.1 ARCHITECT/ENGINEER'S SERVICES

2.1.1 Architect/Engineer's services shall consist of those services to be performed by Architect/Engineer, Architect/Engineer's employees and Architect/Engineer's consultants as enumerated in this Agreement.

2.1.2 Architect/Engineer understands and acknowledges that time is of the essence in completion of each Project and Owner will incur damages if each Project is not completed on time. Architect/Engineer shall at all times carry out its duties and responsibilities as expeditiously as possible consistent with professional skill and care and the orderly progress of the Work and in accordance with each Project's design schedule agreed upon by the parties in writing. Architect/Engineer shall submit for Owner's written approval a schedule for the performance of Architect/Engineer's services based on the time periods agreed upon by the parties which may be adjusted upon Owner's prior written approval, as each Project proceeds. Architect/Engineer's schedule of performance shall include allowances for periods of time required for Owner's review/approval and for approval of submissions by authorities having jurisdiction over each Project. Time limits established by this schedule as approved by Owner in writing shall not be exceeded by Architect/Engineer. Architect/Engineer represents that it is thoroughly familiar with and understands each Project's scope requirements and is experienced in the design and administration of construction of building projects of this type and scope contemplated by Owner's program for each Project.

2.1.3 Architect/Engineer shall use the Project team (including any consultants) as designated on Architect/Engineer's Professional Qualifications Supplement submitted to Owner for each Project. Architect/Engineer shall not remove or replace any members of the Project team, except upon prior written approval of Owner based upon good cause shown. Further, if any member of the Project team discontinues service on the Project for any reason whatsoever, Architect/Engineer shall promptly replace such team member with an individual approved by Owner in writing, which approval will not be unreasonably withheld.

2.1.4 Architect/Engineer shall: (i) visit and do a visual inspection of each Project Site and any structure(s) or other man-made features to be modified; (ii) familiarize itself with the survey, including the location of all existing buildings, utilities, conditions, streets, equipment, components and other attributes having or likely to have an impact on each Project; (iii) familiarize itself with Owner's layout and design requirements, conceptual design objectives and budget for each Project; (iv) familiarize itself with pertinent Project dates and programming needs, including the Project design schedule; (v) review and analyze all Project geotechnical, Hazardous Substances, structural, chemical, electrical, mechanical, and construction materials tests, investigations and recommendations; and (vi) gather any other information necessary for a thorough understanding of each Project. If any Project involves modifications to any existing structure(s) or other man-made feature(s) on the Project Site, Architect/Engineer shall also review all pertinent as-built and record drawings, plans and specifications and perform a thorough visual inspection of the existing structure(s) and man-made feature(s) to identify existing deficiencies and ascertain the specific locations of pertinent structural components.

2.1.5 Architect/Engineer shall perform its services in conjunction, and coordination, with the services to be performed by the Builder to be engaged by Owner.

2.1.6 Architect/Engineer shall, at no additional cost to Owner, immediately make additions, changes, and corrections to any documents prepared by Architect/Engineer necessitated by errors and omissions in the Architect's/Engineer's services.

2.1.7 Architect/Engineer shall furnish professional services in accordance with professional standards currently practiced by architectural/engineering firms on projects similar in size, complexity, and cost to the Project.

2.1.8 Architect/Engineer shall furnish Owner with a copy of its quality assurance program within thirty (30) calendar days of request thereof by Owner.

2.1.9 Architect/Engineer shall participate in and cooperate with design phase and continuing through the completion of each Project.

### ARTICLE 3

## SCOPE OF ARCHITECT/ENGINEER'S BASIC SERVICES

### 3.1 DEFINITION

3.1.1 Architect/Engineer's "Basic Services" consist of those services described in this Article, and include structural, civil, mechanical and electrical engineering services, as well as services of any special consultants included as a part of the Project team on Architect/Engineer's Professional Qualifications Supplement. Architect/Engineer shall be responsible for all services performed by Architect/Engineer's consultants and shall insure that the work of its consultants complies with all of the requirements of this Agreement. Owner is an intended third party beneficiary of Architect/Engineer's contracts with such consultants and the contracts between Architect/Engineer and its consultants shall so provide. Furthermore, Architect/Engineer's contracts with its consultants shall require that in the event of default under, or termination of, this Agreement, and upon written request of Owner, Architect/Engineer's consultants shall perform the services for Owner. Architect/Engineer shall be responsible for retaining any Architect/Engineer's consultants and shall be solely responsible for paying any and all costs or expenses related thereto. Architect/Engineer's consultants shall be considered as agents of Architect/Engineer, and Architect/Engineer shall be responsible for all actions, omissions, breaches, negligence and misconduct of Architect/Engineer's consultants, as if Architect/Engineer had performed the services of Architect/Engineer's consultants directly. All of Architect/Engineer's agreements with Architect/Engineer's consultants shall be in writing, signed by both parties and shall include the following provision: "Owner is intended to be an express, recognized third-party beneficiary of this Agreement." Should Owner terminate this Agreement, Architect/Engineer shall, upon Owner's request, obtain assignment of those of Architect/Engineer's agreement(s) elected by Owner. Each of Architect/Engineer's agreements with Architect/Engineer's consultants shall specifically provide that Owner shall only be responsible to the consultant for those obligations of Architect/Engineer that accrue subsequent to Owner's exercise of its right to take an assignment of such agreement. Upon Owner's request, Architect/Engineer shall provide to Owner copies of all of Architect/Engineer's agreements with Architect/Engineer's consultants.

3.1.2 Architect/Engineer shall perform all services in accordance with applicable laws and requirements of governmental agencies having jurisdiction over the Project and any other applicable guidelines set forth in this Agreement. The design and contract documents shall be developed in accordance with Owner's current "Building Standards," which are available on the Facilities Management's Website at <https://facilities.fiu.edu/formsandstandards.htm>. Additionally, Architect/Engineer acknowledges and agrees that the procedures and requirements set forth in the *Florida International University Professional Services Guide* ("FIU Professional Services Guide"), available on the Facilities Management's Website at <https://facilities.fiu.edu/formsandstandards.htm>, will be enforced and will be strictly adhered to and all submittals shall be completed as specified therein.

3.1.3 The design and Construction Documents shall be developed with software in accordance with Owner's current "Building Information Modeling (BIM) Standard and Guide" ("BIM Standards"), which is available on the Facilities Management's Website at <https://facilities.fiu.edu/formsandstandards.htm>. All electronic files developed by Architect/Engineer shall be convertible for Owner's use to Auto-CAD Release 2016 (or as may be updated by Owner) or other software in accordance with BIM Standards. Architect/Engineer shall also comply with all applicable building codes, accessibility laws and regulations in effect at the time of the Work. To the extent Owner's standards are higher than the applicable legal requirements, Owner's standards shall be met unless Architect/Engineer obtains a variance from Owner in writing.

### 3.2 BUILDING PROGRAMMING PHASE – If requested by Owner:

3.2.1 Architect/Engineer shall meet with Owner to ascertain the requirements of each Project. The "Facility Program Document" for each applicable project shall serve as the basic planning document for the development of a detailed facility program in compliance with Owner's standard practices.

3.2.2 Architect/Engineer shall prepare a draft detailed facility program for review with Owner. After receiving Owner's comments, Architect/Engineer shall prepare, for prior written approval by Owner, the final detailed facility

program which shall represent a recommended final facility program document. The submittal shall consist of a minimum of five (5) sets of documents.

### 3.3 SCHEMATIC DESIGN PHASE

3.3.1 Architect/Engineer shall meet with Owner to ascertain the requirements of each Project. The approved facility program shall serve as the basic planning document for the development of plans and specifications in compliance with all applicable codes and standards.

3.3.2 Architect/Engineer shall provide a preliminary evaluation of Owner's program, schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in this Agreement.

3.3.3 After reviewing each Project's requirements, Architect/Engineer shall advise Owner of the tests and surveys that should be conducted prior to development of plans and specifications.

3.3.4 Architect/Engineer shall review, with Owner, alternative approaches to design and construction of each Project.

3.3.5 Based on the approved program, schedule and construction budget requirements, Architect/Engineer shall prepare several alternative design solutions, but no less than three. Architect/Engineer shall present these alternatives to Owner, consisting of sketches and initial concepts. After receiving Owner's comments, Architect/Engineer shall prepare, for approval by Owner, Conceptual Schematic Design(s), which shall represent no less than three recommended solutions. The submittal shall consist of a minimum of five (5) sets of documents, including sketches, initial concepts, orientation, and relationships to existing and future programmed projects. The submittal also shall include the cost estimate and space analysis referenced in Section 4.3.1.15 of the *FIU Professional Services Guide* (without limitation of Architect/Engineer's obligation to complete all submittals as referenced in Section 3.1.2 of this Agreement).

3.3.6 Based upon the approved Conceptual Schematic Design, Architect/Engineer shall prepare, for approval by Owner, Advanced Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components, energy conservation approach and equipment parameters (all as set forth in more detail in the *FIU Professional Services Guide*, including, without limitation, in Sections 4.3 and 4.4 therein). Architect/Engineer shall submit to Owner a preliminary estimate of Construction Cost based on current area, volume or other unit costs, and a minimum of five (5) half-size sets of Advanced Schematic Design Documents.

### 3.4 DESIGN DEVELOPMENT PHASE - If requested by Owner:

3.4.1 Based on the approved Advanced Schematic Design Documents and any adjustments authorized in writing by Owner in the program, schedule or construction budget, Architect/Engineer shall prepare, for Owner's approval, "Design Development Documents" consisting of drawings and other documents to fix and describe the size and character of each Project as to architectural, structural, mechanical, plumbing, fire protection systems and electrical systems, materials and such other elements as may be appropriate (all as set forth in more detail in the *FIU Professional Services Guide*, including, without limitation, in Section 4.5 therein). Architect/Engineer's team shall submit five (5) sets of Design Development Documents files to Owner for review, together with an updated estimate of Construction Cost.

3.4.2 Architect/Engineer shall advise Owner in writing of any adjustments to the preliminary estimate of Construction Cost indicated by changes in requirements or general market conditions, to the extent applicable.

### 3.5 CONSTRUCTION DOCUMENTS PHASE

3.5.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of each Project or in the construction budget authorized by Owner, Architect/Engineer shall prepare, for written approval by Owner, "Construction Documents" consisting of drawings and specifications setting forth in detail the requirements for the construction of each Project. Architect/Engineer shall submit five (5) sets of documents including one set of AutoCAD electronic files and one (1) set of BIM files, as required by BIM Standards

to Owner for review and approval at 100% completion, together with an updated estimate of Construction Cost. Architect/Engineer shall submit three (3) sets of 100% Construction Documents (signed and sealed), after they have been reviewed and approved by Owner in writing, together with an updated estimate of Construction Cost. Prior to Builder's written notice to proceed, Architect/Engineer must submit an Architect/Engineer affidavit to the FIU Department of Building Code Administration to be able to issue permit to Builder.

3.5.1.1 At the completion of 100% Construction Documents, Builder will prepare a Construction Price proposal based on the 100% Construction Documents prepared by Architect/Engineer. Architect/Engineer shall resolve with Owner any discrepancy between the estimates of Construction Cost and the scope and requirements of Owner. Architect/Engineer shall assist Owner in its negotiations with Builder in an effort to develop an acceptable Construction Price. If Owner does not accept the Construction Price proposal, Architect/Engineer shall cooperate in value engineering with Owner and Builder to revise the Construction Documents as necessary in order to reach an agreement. Architect/Engineer shall analyze the final Construction Price for each Project, and shall submit a written analysis of each of the documents to Owner, pointing out any inaccuracies listed in the respective proposals.

3.5.2 Architect/Engineer shall furnish to Owner one (1) complete AutoCAD set of Contract Documents (hereinafter defined) and one (1) complete set of BIM files, as required by BIM Standards.

3.5.3 After each Construction Price has been accepted, Architect/Engineer shall incorporate into the Construction Documents any revisions which are necessary to clarify and explain the scope of work included in each Construction Price.

3.5.4 Architect/Engineer shall assist Owner in connection with Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over each Project.

### 3.6 BIDDING OR NEGOTIATION PHASE

3.6.1 Architect/Engineer, following Owner's approval of the Construction Documents, shall attend the pre-bid meetings, and shall be available to respond to questions regarding the Construction Documents.

3.6.2 For a threshold building as defined in Florida Statutes Chapter 553, a structural inspection plan shall accompany Architect/Engineer's recommendation of award.

### 3.7 CONSTRUCTION PHASE-ADMINISTRATION OF THE CONSTRUCTION CONTRACT

3.7.1 Architect/Engineer's responsibility to provide Basic Services for each Construction Phase under this Agreement commences with Owner's written acceptance of the Builder's Construction Price for each Project and continues and terminates in accordance with the terms of the *FIU Professional Services Guide*.

3.7.2 Architect/Engineer shall provide administration of the Contract for Construction which shall include but not be limited to: (i) Owner's current General Terms and Conditions; and (ii) the Construction Documents which shall include, but not be limited to, Division I of the Specifications (hereinafter collectively referred to as the "Contract Documents"). The Contract Documents are available on FIU's Facilities Management website at <https://facilities.fiu.edu/formsandstandards.htm> and are hereby incorporated in this Agreement by reference. The incorporated documents are intended to be complimentary and interpreted in harmony. To the extent there is a conflict between any of these documents and the Agreement terms, the documents shall govern in the following order of precedence: first, the Agreement terms; second, the Technical Project Design Specifications incorporated in the above documents; and third, the Design Drawings incorporated in the above documents.

3.7.3 Duties, responsibilities and limitations of authority of Architect/Engineer shall not be restricted, modified or extended without prior written agreement of Owner and Architect/Engineer.

3.7.4 Architect/Engineer shall be a representative of and shall advise and consult with Owner during construction until final payment to the Builder is made. Architect/Engineer shall have authority to act on behalf of Owner only to the extent provided in this Agreement unless otherwise modified by written instrument.

3.7.5 Architect/Engineer shall attend regularly scheduled construction meetings at the Site and shall provide such representation as may be required to fulfill the intent and interpretation of the plans and specifications for each Project. In any event, Architect/Engineer shall visit the Site a minimum of once per week, or at more frequent intervals appropriate to the stage of construction and to satisfy the required inspections in accordance with the applicable technical codes, or as otherwise agreed by Owner and Architect/Engineer in writing. Architect/Engineer shall visit the Site to become familiar with the progress and quality of the Work completed and to determine if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. Architect/Engineer shall keep Owner informed of the progress and quality of the Work, and shall guard Owner against defects and deficiencies in the Work.

3.7.6 Architect/Engineer shall not have control over, or charge of, and shall not be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Builder's responsibility under the Contract for Construction. Architect/Engineer shall not be responsible for the Builder's schedules or failure to carry out the Work in accordance with the Contract Documents, however, Architect/Engineer must timely notify Owner in writing of any actions by the Builder which may result in the failure to carry out the Work in accordance with the Contract Documents and/or Contract Time. Architect/Engineer shall not have control over or charge of acts or omissions of the Builder, its subcontractors, agents or employees, or of any other persons performing portions of the Work.

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

3.7.8 Except as may otherwise be provided in the Contract Documents or when direct communications have been specially authorized, Owner and the Builder shall communicate through Architect/Engineer. Communications by and with Architect/Engineer's consultants shall be through Architect/Engineer.

3.7.9 Based on Architect/Engineer's observations and evaluations of the Builder's Applications for Payment, Architect/Engineer shall review and certify the amounts due the Builder.

3.7.10 Architect/Engineer's certification for payment shall constitute a representation to Owner, based on Architect/Engineer's observations at each Project Site in accordance with the Agreement terms and on the data comprising the Builder's Application for Payment, that the Work has progressed to the point indicated and that, to the best of Architect/Engineer's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by Architect/Engineer. The issuance of a Certificate for Payment shall further constitute a representation that the Builder is entitled to payment in the amount certified.

3.7.11 Architect/Engineer shall have authority to recommend to Owner the rejection of Work which does not conform to the Contract Documents. Whenever Architect/Engineer considers it necessary or advisable for implementation of the intent of the Contract Documents, Architect/Engineer will have authority to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of Architect/Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of Architect/Engineer to the Builder, its subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the Work.

3.7.12 Architect/Engineer shall review, certify, approve, reject or take other appropriate action upon Builder's inquiries and submittals such as Shop Drawings, Product Data, Tests, and Samples. Architect/Engineer's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the construction of Owner or of separate contractors, while allowing sufficient time in Architect/Engineer's professional judgment to permit adequate review.

3.7.13 Architect/Engineer shall prepare Change Orders, with supporting documentation and data, if deemed necessary by Architect/Engineer as provided in this Agreement for Owner's approval and execution in accordance

with the Contract Documents, and Architect/Engineer may authorize minor changes in the Work upon written approval by Owner, involving neither an adjustment in the contract sum nor an extension of the contract time, which are not inconsistent with the intent of the Contract Documents (as more fully set forth in the *FIU Professional Services Guide*).

3.7.14 Architect/Engineer shall conduct inspections to determine the date or dates of Substantial Completion as defined in the Construction Contract and the date of Final Completion, as defined in the Construction Contract, shall receive and forward to Owner for Owner's review and records written warranties and related documents required by the Contract Documents and assembled by the Builder, and shall issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

3.7.15 Architect/Engineer shall interpret and decide matters concerning performance of Owner and Builder under the requirements of the Contract Documents on written request of either Owner or Builder. Architect/Engineer's response to such request shall be made within fifteen (15) calendar days of the receipt of such a request.

3.7.16 Interpretations and decisions of Architect/Engineer shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, Architect/Engineer shall endeavor to secure faithful performance by both Owner and Builder, shall not show partiality to either, and shall not be liable for results of interpretations or decisions so rendered in good faith.

3.7.17 Architect/Engineer's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents, and if concurred with by Owner in writing.

3.7.18 Architect/Engineer shall render a written decision within ten (10) calendar days of date of all claims, disputes or other matters in question between Owner and Builder relating to the execution or progress of the Work as provided in the Contract Documents. Architect/Engineer shall render a final decision as set forth in the General Terms and Conditions of the Contract for Construction.

3.7.19 Architect/Engineer's decisions on claims, disputes or other matters between Owner and Builder, except for those relating to aesthetic effect as provided in this Agreement, shall be subject to resolution as provided in the Contract Documents.

3.7.20 Architect/Engineer shall perform all of its required services related to the Substantial Completion deliverables in accordance with the *FIU Professional Services Guide*.

## ARTICLE 4

### ADDITIONAL SERVICES

#### 4.1 GENERAL

4.1.1 If the services described in this Article are not specifically included in Basic Services or reasonably inferable therefrom, they shall be paid for by Owner as provided in this Agreement in addition to the compensation for Basic Services. Architect/Engineer shall notify Owner in writing (the "Additional Services Notice") immediately upon Architect/Engineer's determination that Additional Services are being required of it and it believes it is entitled to compensation for such Additional Services. The "Additional Services" (Basic Services and Additional Services are cumulatively referred to herein as "Services") shall be performed only if authorized in writing by Owner as an Additional Service prior to performance of the services (the "Additional Services Authorization").

Architect/Engineer shall indicate in the Additional Services Notice (a) the scope of the Additional Services, (b) the reason for the need for the Additional Services, (c) the party, if any, whose acts or omissions Architect/Engineer believes resulted in the proposed Additional Services, (d) the estimated financial and schedule impacts of the Additional Services, and (e) a definitive statement of fees that Architect/Engineer believes to be due to Architect/Engineer for such proposed Additional Services. Such Additional Services Notice is a condition precedent to Owner's obligation to pay for such services. No increase in compensation or extension of time to perform shall



be granted unless this notice requirement is fully and timely satisfied. Failure to give an immediate and complete Authorized Services Notice shall operate as a waiver of rights, if any exist, for adjustment of compensation and extension of time; but that failure does not relieve Architect/Engineer of Architect/Engineer's obligation to timely perform according to the instructions issued by Owner. Further, notwithstanding anything to the contrary set forth in this Agreement, however, Architect/Engineer shall not be entitled to additional compensation if the Additional Services are due to defective construction documents, errors or omissions by Architect/Engineer or its consultants, changes to the Construction Documents required by the State Fire Marshall and/or Building Code Office, or are otherwise necessitated by the fault of Architect/Engineer or its consultants.

4.1.2 For Additional Services being provided by firms not included on Architect/Engineer's original Project team, which require no work on the part of Architect/Engineer other than administering the work of the consultant (i.e., securing the services, approving the work, and invoicing on behalf of the consultant), Architect/Engineer may request a mark-up not to exceed eight percent (8%) on the consultant's fee to cover Architect/Engineer's administrative costs. This mark-up will be based on the complexity and time spent.

## 4.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES

4.2.1 If more extensive representation at the Site than is described in this Agreement is required, Architect/Engineer may request Owner's prior written approval to provide a Project Representative to assist in carrying out such additional on-site responsibilities.

4.2.2 The Project Representative described in this Agreement shall be selected, employed and directed by Architect/Engineer (with the understanding that the number, identity, salary, and length of service of such representative shall be agreed to by Owner in advance in writing), and Architect/Engineer shall be compensated therefor as agreed by Owner and Architect/Engineer in writing. The duties, responsibilities and limitations of authority of Project Representative shall be as described in the General Terms and Conditions of the Contract for Construction.

4.2.3 Architect/Engineer shall endeavor, through the observations by the on-site Project Representative described in this Section, to provide further protection for Owner against defects and deficiencies in the Work. However, the furnishing of such project representation shall not modify the rights, responsibilities or obligations of Architect/Engineer.

## 4.3 OTHER ADDITIONAL SERVICES

4.3.1 Making revisions in Drawings, Specifications or other documents but only if such revisions are:

4.3.1.1 inconsistent with approvals or instructions previously given by Owner; or

4.3.1.2 required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents and not reasonably foreseeable at the time of preparation of such documents.

4.3.2 Providing services required because of significant changes in the Project including, but not limited to, scope, size, quality, complexity, Owner's schedule, except for services required under the Article entitled "Scope of Architect/Engineer's Basic Services".

4.3.3 Preparing Drawings, Specifications and other documentation and supporting data in connection with Change Orders or Construction Change Directives which require design or redesign, and which are not required to correct the Construction Documents, or which are not due to oversights of Architect/Engineer.

4.3.4 Providing consultation concerning replacement of Work damaged by fire or other cause, not a result of the Architect/Engineer, its consultants or other representatives' actions, during construction, and furnishing services required in connection with the replacement of such Work.

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

- 4.3.6 When required by Owner, preparing documents for alternate, separate, sequential bids, or phased construction.
- 4.3.7 Programming the requirements of the Project, if not included in the original Project scope.
- 4.3.8 Providing planning surveys, Site evaluations or comparative studies of prospective sites.
- 4.3.9 Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.
- 4.3.10 Providing services relative to future facilities, systems and equipment, when not specifically included in the original Project scope.
- 4.3.11 Making measured drawings of existing construction when required for planning additions or alterations thereto.
- 4.3.12 Providing coordination of construction performed by separate Builders or by Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by Owner.
- 4.3.13 Providing detailed estimates of Construction Cost beyond that already required in Basic Services.
- 4.3.14 Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.
- 4.3.15 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.
- 4.3.16 Preparing and submitting a set of reproducible as-built record drawings on BIM or AutoCAD electronic files, showing significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Builder to Architect/Engineer. Architect/Engineer will submit one set of reproducible as-built record drawings along with the as-built record drawings on archival quality disks (CD's).
- 4.3.17 Providing services after issuance by Owner of the final payment to the Builder, except for the post occupancy inspection as described in the *FIU Professional Services Guide*, which is part of Architect/Engineer's Basic Services.
- 4.3.18 When requested by Architect/Engineer in writing and approved by Owner in writing, providing services of consultants for other than architectural, structural, civil, mechanical and electrical engineering portions of the Project or other than any special consultants included as a part of the Project team on Architect/Engineer's Professional Qualification Supplement, which are included as a part of Basic Services.
- 4.3.19 Providing Site surveys, geotechnical testing services or other special tests, if required.
- 4.3.20 Providing special inspection on threshold buildings, if applicable, as defined in Chapter 553, Florida Statutes. All threshold reports shall be signed and sealed by the architect or engineer of record.
- 4.3.21 Providing any other services not otherwise included in this Agreement and which have been preapproved by Owner in writing.

For clarification purposes, Architect/Engineer acknowledges and agrees that if any of the activities in this Article are included in the *FIU Professional Services Guide*, any such activity is part of Architect/Engineer's Basic Services and not considered an Additional Service under this Agreement.

## ARTICLE 5

## OWNER'S RESPONSIBILITIES

- 5.1 Owner shall provide information regarding requirements for each Project.
- 5.2 Owner shall establish and update an overall budget for each Project, including the Construction Cost, Owner's other costs and reasonable contingencies related to all of these costs.
- 5.3 Owner shall designate a representative authorized to act on Owner's behalf with respect to each Project. Owner's representative shall be the sole party authorized to render decisions under this Agreement on Owner's behalf. If Architect/Engineer accepts and relies on direction from any other FIU representative under this Agreement, Architect/Engineer shall do so at its own risk and shall be responsible for all costs associated therewith. Owner or such authorized representative shall render decisions within the time frames specified in this Agreement pertaining to documents submitted by Architect/Engineer to avoid unreasonable delay in the orderly and sequential progress of the Architect/ Engineer's services.
- 5.4 Owner shall review and approve or take other appropriate action on all Work submittals of Architect/Engineer within fifteen (15) calendar days after Owner's receipt of each submittal.
- 5.5 If required, Owner may furnish, or direct Architect/Engineer to obtain at Owner's expense, surveys describing physical characteristics, legal limitations and utility locations for the Site of the Project, including a written legal description of the Project Site, if required. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the Site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths.
- 5.6 If required, Owner shall furnish, or direct Architect/Engineer to obtain at Owner's expense, the services of geotechnical engineers as necessary for the Project. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of Hazardous Substances, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.
- 5.7 Owner shall pay for structural, mechanical, chemical, air and water pollution tests; tests for Hazardous Substances; and, other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.
- 5.8 Review of Architect/Engineer's documents shall be solely for purposes of determining whether such documents are generally consistent with Owner's intent and such review shall not relieve Architect/Engineer of any of its responsibilities. Prompt written notice shall be given by Owner to Architect/Engineer if Owner becomes aware of any fault or defect in the Project or non-conformance with the Contract Documents. Further, nothing in this Agreement is intended or shall be construed to require Owner to determine the adequacy, accuracy or sufficiency of the design, Architect/Engineer's Work or Architect/Engineer's Services and nothing in this Agreement shall impose upon Owner a duty to third parties to assure that Architect/Engineer, Architect/Engineer's consultants, Construction Manager, subcontractors or others are adhering to applicable laws. Further, Owner's review of, inspection of, acceptance of, or payment for any of Architect/Engineer's Services shall not constitute acceptance of, or a waiver of any of Owner's rights or remedies relating to, Services that fail to conform to the requirements of this Agreement, unless Owner expressly accepts such non-conforming Services in writing.

## ARTICLE 6

### CONSTRUCTION COST

#### 6.1 DEFINITION

6.1.1 The "Construction Cost" shall be the total cost or estimated cost to Owner of all elements of each Project designed or specified by Architect/Engineer.

6.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished by Owner and Builder and equipment designed, specified, selected or specially provided for by Architect/Engineer, including connections to utilities, plus a reasonable allowance for the Builder's overhead and profit.

6.1.3 The Construction Cost does not include the compensation of Architect/Engineer and Architect/Engineer's consultants, the costs of the land, rights-of-way, furnishings, contingencies or other costs which are the responsibility of Owner as provided in this Agreement.

## 6.2 RESPONSIBILITY FOR CONSTRUCTION COST

6.2.1 Evaluations of Owner's Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Cost, if any, prepared by Architect/Engineer, represent Architect/Engineer's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither Architect/Engineer nor Owner has control over the cost of labor, materials or equipment, over the Builder's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, Architect/Engineer cannot and does not warrant or represent that bids or negotiated prices will not vary from Owner's Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by Architect/Engineer. Architect/Engineer, however, shall conform to the provisions of this Section entitled "Responsibility for Construction Cost" in an attempt to keep the Project cost within the Construction Cost.

6.2.2 At the start of the Construction Document phase, Architect/Engineer shall resolve with Owner any apparent discrepancy between the estimates of Construction Cost as set forth in this Article and in Article 3 and the scope and requirements of Owner. Architect/Engineer shall be permitted to include acceptable alternates in the Contract Documents for the purpose of providing a finished and acceptable facility within the Construction Cost. Inability of Owner to award an acceptable construction contract because the lowest acceptable Construction Price is greater than the available funds shall be cause for Architect/Engineer to be required to revise the Project and to reprint bidding documents at Architect/Engineer's own cost and expense in accordance with the requirements of this Agreement until a contract can be awarded within the Construction Cost.

6.2.3 If Architect/Engineer advises Owner in writing, before commencement of the Construction Documents Phase, that in the opinion of Architect/Engineer the scope of the work which Owner establishes and insists upon will cause the Construction Cost to exceed the funds available and resolution of this discrepancy fails, or if Owner increases the Probable Construction Cost during the Construction Document Phase by adding to the scope and/or requirements and Architect/Engineer so notifies Owner in writing of the probable increase in cost, and Owner orders Architect/Engineer to proceed notwithstanding, then Architect/Engineer shall not be responsible for Owner not being able to award a construction contract within the available funds. Under such conditions the extra work of Architect/Engineer, as required to include in the Bidding Documents alternates as requested by Owner and/or to redesign and redraft the Construction Documents, shall be considered an "Additional Service" and payment for such extra work shall be as provided for under the Article entitled "Additional Services" above.

## ARTICLE 7

### USE OF ARCHITECT/ENGINEER'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

7.1 For purposes of this Agreement, "Work Product" means all work product produced, prepared, and/or developed by or for Architect/Engineer in connection with the services Architect/Engineer renders to Owner pursuant to or in connection with this Agreement, including all plans, drawings, designs, specifications, systems, reports, data, materials, models, prototypes, methodologies, studies, processes, improvements, sketches, concepts, know-how, formulae, inventions, discoveries, models, CAD drawings, BIM models, and other electronic expression, documents, diagrams, graphs, charts, notes, writings, discoveries, customizations, modifications, fixes, research, photographs and other expression.

7.2 Assignment. Architect/Engineer hereby expressly assigns to Owner, without reservation except that which is expressly allowed in this Article, all of Architect/Engineer's right, title and interest in and to all Work Product, including all patent, copyright, trademark, trade secret, design and other proprietary rights that may now or in the future exist therein or appurtenant thereto, whether in oral, written graphic, electronic, machine readable, human readable or any other form and in whatsoever medium now known or hereinafter developed, and all copies of the foregoing and all information, data and knowledge incorporating, based upon or derived from the foregoing. ALL WORK PRODUCT SHALL BE AND AT ALL TIMES SHALL REMAIN THE SOLE AND EXCLUSIVE PROPERTY OF OWNER. All Work Product shall be, where applicable, considered "works made for hire" as provided by applicable laws. Owner, in return, hereby grants Architect/Engineer a revocable, nonexclusive license to reproduce the Work Product for purposes relating directly to Architect/Engineer's performance of the services under this Agreement and for Architect/Engineer's archival records. This nonexclusive license shall terminate automatically upon the occurrence of either a breach of this Agreement by Architect/Engineer or upon termination of this Agreement. This nonexclusive license is granted to Architect/Engineer alone and shall not be assigned by the Architect/Engineer to any other person or entity, except that the nonexclusive license granted in this Agreement to Architect/Engineer for purposes of Architect/Engineer's performance under this Agreement may be sub-licensed to Architect/Engineer's consultants (with the same limitations). Subject to the foregoing, this nonexclusive license shall terminate automatically upon an attempted assignment of this license in violation of this Section. Architect/Engineer will mark all Work Product with Owner's copyright or other proprietary notice and will take all actions deemed necessary by Owner to protect Owner's rights therein. In the event that any Work Product is ever deemed not to constitute works made for hire, or in the event that Architect/Engineer is ever deemed, by operation of law or otherwise, to retain any rights in or to any Work Product, Architect/Engineer shall promptly assign all of Architect/Engineer's right, title and interest in and to such Work Product to Owner. Architect/Engineer shall execute any documents of assignment or registration of proprietary or other rights requested by Owner and will perform any and all further acts deemed necessary or desirable by Owner in order to confirm or enforce the rights herein granted and assigned by Architect/Engineer to Owner, and should Architect/Engineer fail to do so upon Owner's request, Architect/Engineer hereby expressly authorizes Owner and its agents and/or representatives to execute all such documents in Architect/Engineer's name and on Architect/Engineer's behalf, and make appropriate disposition of them, including filing and/or recording such documents in appropriate governmental or administrative offices anywhere throughout the world. Owner's obligation to pay Architect/Engineer is expressly conditioned upon Architect/Engineer obtaining a valid written assignment of all right, title and interest from Architect/Engineer's consultants as to their respective Work Product in terms identical to those that obligate Architect/Engineer to Owner as expressed in this Section, which right, title and interest Architect/Engineer hereby assigns to Owner.

7.3 Architect/Engineer shall indemnify, defend and hold harmless Indemnitees from all Adverse Consequences suffered or incurred by Indemnitees which are related or connected to infringement of intellectual property rights, whether or not the infringement is potential, accused or proven. If, in any such suit or claim, the services, the Project or any part, combination or process thereof, is held to constitute an infringement and its use is preliminarily or permanently enjoined, Architect/Engineer shall promptly use its best efforts to secure for Owner a license, at no cost to Owner, authorizing continued use of the infringing work. If Architect/Engineer is unable to secure such a license within a reasonable time, Architect/Engineer shall, at its own expense and without impairing performance requirements, either replace the affected work, in whole or part, with non-infringing components or parts or modify the same so that they become non-infringing. Should Owner become aware of, or receive notice of, potential, accused or actual infringement of intellectual property rights, Owner shall, in its sole option, have the right to engage independent legal counsel to advise Owner as to the infringement. Owner shall deliver notice to Architect/Engineer prior to engaging counsel or incurring expense that is to be included within Architect/Engineer's indemnification obligations under this Section. The costs and fees for such counsel shall be borne by Architect/Engineer and shall be immediately recoverable by Owner against amounts due or otherwise to be due to Architect/Engineer, Architect/Engineer's fees being reduced by that amount, or, in the event that no further amounts are due or to be due Architect/Engineer, such costs and fees shall be payable by Architect/Engineer to Owner upon Owner's written demand. The provisions of this Section shall survive the expiration or termination of this Agreement.

## ARTICLE 8

### CLAIMS AND DISPUTES

8.1 Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be determined under the judiciary system of the State of Florida.

## ARTICLE 9

### TERMINATION, SUSPENSION OR ABANDONMENT

9.1 Termination by Owner for Default. If Architect/Engineer defaults by failing to perform, in accordance with the terms of this Agreement, as reasonably determined by Owner, Owner may give written notice to Architect/Engineer (a) terminating this Agreement effective seven (7) days from the date of notice; or (b) setting forth the nature of the default and requesting Architect/Engineer initiate cure within seven (7) days from the date of notice. At any time thereafter, if Architect/Engineer fails to initiate cure upon the request of Owner and diligently prosecute such cure until complete, Owner may give notice to Architect/Engineer of immediate termination. If Owner terminates this Agreement pursuant to this Paragraph, and it is subsequently determined by a court of competent jurisdiction that Architect/Engineer was not in default, then in such event said termination shall be deemed a termination for convenience as set forth in Paragraph 9.3.

9.2 Termination by Architect/Engineer for Default. In the event of a material breach of this Agreement by Owner, Architect/Engineer shall give Owner twenty-one (21) days prior written notice of Architect/Engineer's intention to terminate or suspend provision of Services. Such notice shall specify in detail the grounds for the intended termination or suspension. If the material breach is not cured within such twenty-one (21) day period, Architect/Engineer may terminate or suspend performance under this Agreement by subsequent written notice to Owner. Notwithstanding anything herein to the contrary, Architect/Engineer will not terminate or suspend services as a result of Owner's non-payment if the non-payment is based on Owner's good faith dispute concerning the amount of or entitlement to a payment, provided that all of the following conditions are met: (a) Owner delivers written notice to Architect/Engineer within the time frame provided in this Agreement for making the payment, specifically identifying the items or amounts Owner disputes, (b) Owner pays within the time frame required by this Agreement any undisputed amounts, and (c) Owner participates in good faith in communications directed at resolving the dispute.

9.3 Termination or Suspension by Owner for Convenience. Owner may at any time give written notice to Architect/Engineer terminating this Agreement or suspending the Project, in whole or in part, for Owner's convenience and without cause. If Owner terminates this Agreement or suspends the Project, Architect/Engineer shall immediately reduce its staff, services and outstanding commitments in order to minimize the cost of termination or suspension.

9.4 Termination Compensation. If the Agreement is terminated by Owner pursuant to Paragraph 9.1, no further payment shall be made to Architect/Engineer until completion of the Project. At such time, Architect/Engineer's compensation shall, at Owner's option, be calculated: (a) on the basis of Services actually performed and expenses actually incurred prior to the effective termination date, or (b) on the basis of the payment terms set forth elsewhere herein. In either case, Architect/Engineer's compensation shall be reduced by all costs and damages incurred by Owner as a result of the default of Architect/Engineer. If the Agreement is (i) terminated by Architect/Engineer pursuant to Paragraph 9.2; (ii) terminated by Owner pursuant to Paragraph 9.3; or (iii) suspended more than ninety (90) days by Owner pursuant to Paragraph 9.3, Architect/Engineer's compensation shall be calculated on the basis of Services actually performed and expenses actually incurred prior to the effective termination or suspension date.

9.5 Refund of Prepaid Fees. Notwithstanding anything herein to the contrary, in the event of termination of this Agreement, if Owner has made any deposits or paid in advance for any Services that have not been performed by Architect/Engineer as of the date of termination, Architect/Engineer shall promptly reimburse to Owner all amounts paid in advance with respect to such Services.

9.6 Waiver of Consequential Damages. Notwithstanding anything in this Agreement to the contrary, in no event shall Architect/Engineer be entitled to receive termination expenses, unabsorbed overhead or lost profit or any other consequential, special, punitive or incidental damages, all of which are hereby expressly waived by Architect/Engineer.

ARTICLE 10

TERM PERIOD OF SERVICE

10.1 Unless sooner terminated as provided in this Agreement, this Agreement shall remain in force for such period of one year, commencing on July 1, \_\_\_\_\_ and ending on June 30, \_\_\_\_\_. Notwithstanding this provision, all Projects commenced within this one-year term shall be completed in accordance with and under the terms of this Agreement.

10.2 This Agreement may be renewed annually, at Owner's sole discretion, but in no event for a period to exceed a total of five (5) years from the Effective Date of this Agreement.

ARTICLE 11

BASIS OF COMPENSATION TO ARCHITECT/ENGINEER

11.1 Owner agrees to pay Architect/Engineer as compensation for Architect/Engineer's services:

11.1.1 For the Basic Services of each individual Project under this Agreement, a lump sum shall be negotiated and agreed upon in writing by Owner and Architect/Engineer for each Project on the basis of the State of Florida Department of Management Service Fee Guidelines available online, or on a not-to-exceed amount based on the following negotiated approved billable rates payable on the terms set forth in this Agreement:

Principal	\$ ____.
Registered Architect (Manager)	\$ ____.
Registered Architect (Staff)	\$ ____.
Architect (Graduate-in-Training)	\$ ____.
Registered Engineer (Manager)	\$ ____.
Registered Engineer (Staff)	\$ ____.
Engineer (Graduate-in-Training)	\$ ____.
CADD Draftsperson (Senior)	\$ ____.
CADD Draftsperson (Intermediate)	\$ ____.
Construction Inspector (Registered)	\$ ____.
Construction Inspector (In-Training A/E)	\$ ____.
Administrative Assistant	\$ ____.
Clerical	\$ ____.

11.2. For Additional Services to be paid as a lump sum, the lump sum must be prescribed in the Additional Services Authorization which must be approved by Owner in writing.

11.2.1 For Additional Services, compensation shall be based on the provisions of this Article. All Additional Services shall be pre-authorized by Owner in writing. Owner shall determine if the Additional Services for each Project are to be based on a lump sum or a not to exceed rate based upon the above billable hourly rates.

11.3 "Reimbursable Expenses" which are not included in Architect/Engineer's proposal are in addition to compensation for Basic Services and Additional Services and include those actual, out of pocket expenses necessarily incurred by Architect/Engineer and Architect/Engineer's employees and consultants and directly related to the performance of the Services, as identified in the following subparagraphs.

11.3.1 Transportation, meals and lodging expenses incurred by Architect/Engineer's principals and employees when traveling in connection with any Additional Services when pre-authorized by Owner in writing. Such reimbursement shall be made in accordance with Section 112.061, Florida Statutes and in Owner's Travel & Other Expenses Manual available at [http://finance.fiu.edu/controller/Docs/Travel\\_Manual.pdf](http://finance.fiu.edu/controller/Docs/Travel_Manual.pdf); shall be based on an eight (8) hour day; and shall not include reimbursement for travel time. Any expenses in excess of the amounts prescribed by Florida law shall be borne by Architect/Engineer.

11.3.2 Reproduction of drawings and specifications (excluding copies for Architect/Engineer's office use, sets required at each phase for Owner's review and approval, and sets furnished under this Agreement) and fees paid for securing approval of authorities having jurisdiction over the Project, including fees paid to the State Fire Marshal. Fees paid to the Fire Marshal will be reimbursed as a direct reimbursable, and do not require prior written authorization from Owner.

11.3.3 Expense of renderings, models and mockups requested by Owner which are not included within the required Basic Services.

## ARTICLE 12

### PAYMENTS TO ARCHITECT/ENGINEER

12.1 Payments on account of Architect/Engineer's services shall be as follows:

12.1.1 For Architect/Engineer's Basic Services, Architect/Engineer shall invoice Owner upon Owner's written approval of each phase of Work for services performed on each Project.

12.1.2 For Additional Services and for Reimbursable Expenses, payments shall be made according to the terms of the Additional Services Authorization approved by Owner in writing upon presentation and approval of a detailed invoice.

12.1.3 Invoices shall be submitted in detail sufficient to allow a proper pre-audit and post-audit thereof.

12.2 No deduction shall be made from Architect/Engineer's compensation on account of liquidated damages or other sums withheld from payments to contractors.

12.3 If any Work designed or specified by Architect/Engineer during any phase of service is abandoned or suspended in whole or in part, Architect/Engineer is to be paid for the service performed in accordance with the terms of Article 9 of this Agreement.

12.4 As provided by Section 215.422, Florida Statutes, if a warrant in payment of an invoice is not mailed or electronically transmitted by Owner within forty (40) days after receipt of the invoice and receipt, inspection and approval of the Work, Owner shall pay to Architect/Engineer, in addition to the amount of the invoice, interest at the rate established by the Florida state comptroller pursuant to Section 55.03, Florida Statutes, on the unpaid balance from the expiration of such 40-day period(s) until such time as the warrant is mailed to Architect/Engineer. These provisions apply only to undisputed amounts for which payment has been authorized. Invoices or pay requests returned to Architect/Engineer due to preparation errors will result in a payment delay. Invoice payment requirements do not start until a properly completed invoice or pay request is provided to Owner. A vendor ombudsman has been established within Owner's Office of Business and Finance. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from Owner. The vendor ombudsman may be contacted at 305 348-6585.

12.5 Accounting records of the Architect/Engineer and any consultants it may engage pursuant hereto pertaining to this Project shall be kept in accordance with a generally recognized accounting basis and shall be available to Owner or Owner's authorized representative at mutually convenient times at no additional cost to Owner. Owner may, upon reasonable notice, audit the records of Architect/Engineer and other members of the Project team during regular business hours, during the term of this Agreement and for a period of three (3) years after final payment is made by Owner to Architect/Engineer under this Agreement or longer, if required by law. Such audits may be performed by an Owner's representative or an outside representative engaged by Owner. For purposes hereof, "records" means any and all information, materials and data of every kind and character, whether hard copy or in electronic form, which may, in Owner's judgment have any bearing on or pertain to this Agreement, including, without limitation, books, subscriptions, recordings, agreements, leases, contracts, commitments, arrangements, notes, daily diaries, written policies and procedures, time sheets, payroll registers, and payroll records. Owner's authorized representative shall have reasonable access to Architect/Engineer's facilities, shall be allowed to



interview all current or former employees to discuss matters pertinent to this Agreement, shall be provided adequate and appropriate work space at Architect/Engineer's facilities, and shall have such other rights of access as may be reasonably necessary to carry out an audit.

### ARTICLE 13

#### INSURANCE

13.1 Architect/Engineer shall be required to procure and maintain for each Project all of the standard insurance policies required by Owner from Architect/Engineers as shown in the Facilities Management's website at <https://facilities.fiu.edu/formsandstandards.htm> on the terms (including but not limited to minimum amount(s) of insurance required) and time-frames set forth therein, which terms and time-frames are incorporated herein by reference. Exceptions to Owner's standard insurance requirements shall not be allowed unless authorized by Owner's Risk Management Department in writing.

### ARTICLE 14

#### SPECIAL PROVISIONS

14.1 This Agreement shall be governed by the laws of Florida without regard to its choice of law provisions and venue for any actions arising in connection with this Agreement shall be in the courts of Miami-Dade County, Florida.

14.2 Capitalized terms used in this Agreement, but not expressly defined herein, shall have the same meaning as those set forth in the Contract for Construction or the General Terms and Conditions of the Construction for Contract, as applicable.

14.3 Architect/Engineer shall comply with Owner's regulations, policies, procedures, and guidelines pertinent to this Agreement.

14.4 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run as provided by state law.

14.5 Owner and Architect/Engineer, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Architect/Engineer shall not assign this Agreement, whether by operation of law or otherwise, without the written consent of Owner.

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

14.7 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either Owner or Architect/Engineer. Notwithstanding the foregoing, Owner shall be an intended third party beneficiary of Architect/Engineer's contracts with its consultants, if any.

14.8 Prohibition against contingent fees: Architect/Engineer represents and warrants that Architect/Engineer has not employed or retained any company or person (other than a bona fide employee working solely for Architect/Engineer) to solicit or secure this Agreement, and that Architect/Engineer has not paid or agreed to pay any person, company, corporation, individual or firm (other than a bona fide employee working solely for Architect/Engineer) any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

14.9 By execution of this document and in compliance with Section 287.055 (5)(a) of the Florida Statutes, Architect/Engineer certifies that all factual unit costs supporting the fees specified in this Agreement are accurate,

complete and current at the time of negotiations; and that any other factual unit costs that may be furnished Owner in the future to support any additional fees that may be authorized will also be accurate and complete. The fees specified in this Agreement and any additional fees that may be authorized in the future shall be adjusted to exclude any significant sums which Owner determines the fee was increased due to inaccurate, incomplete, or non-current factual unit costs.

14.10 Architect/Engineer agrees to comply with all applicable public records laws, including those specifically set forth under Florida Statutes, Section 119.0701(2)(b), as amended from time to time, to the extent applicable. IF ARCHITECT/ENGINEER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ARCHITECT/ENGINEER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 348-1377, BY EMAIL AT [recordsmanagement@fiu.edu](mailto:recordsmanagement@fiu.edu) OR BY MAIL AT 11200 SW 8<sup>TH</sup> STREET, GL 460, MIAMI, FLORIDA 33199.

This Agreement may be unilaterally canceled by Owner for refusal by Architect/Engineer to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119 of the Florida Statutes and made or received by Architect/Engineer in conjunction with the herewith. Furthermore, at Owner's request, Architect/Engineer shall make available to Owner any and all documents, papers, letters, or other material made or received by Architect/Engineer pertaining to this Agreement, whether or not such documents are subject to the provisions of Chapter 119 of the Florida Statutes.

14.11 Architect/Engineer shall have the right to include representations of the design of each Project, including photographs of the exterior and interior, among Architect/Engineer's promotional and professional materials with the prior written consent of Owner. Architect/Engineer's materials shall not include Owner's confidential or proprietary information if Owner has previously advised Architect/Engineer in writing of the specific information considered by Owner to be confidential or proprietary. Owner shall provide professional credit for Architect/Engineer on the construction sign.

14.12 Owner's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

14.13 As required by Section 287.133, Florida Statutes, Architect/Engineer warrants that it is not on the convicted vendor list for a public entity crime committed within the past 36 months. Architect/Engineer further warrants that it will neither utilize the services of, nor contract with, any supplier, subcontractor, or consultant in excess of the threshold amount stated in Florida Statutes 287.017 (Category Two) in connection with each Project for a period of 36 months from the date of their being placed on the convicted vendor list. Architect/Engineer also warrants that neither it nor its principals, officers, directors, or members, as applicable, have been convicted of or charged with a felony or any crimes relating to fraud, bribery, or abuse of public competitive processes or other abuses of process.

14.14 E-Verify. Pursuant to §448.095, Fla. Stat., Architect/Engineer certifies that it is registered with and uses the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by Architect/Engineer during the term of the Agreement. If Architect/Engineer enters into a contract with a subcontractor to perform work or provide services pursuant to the Agreement, Architect/Engineer shall likewise require the subcontractor to comply with the requirements of §448.095, Fla. Stat., and the subcontractor shall provide to Architect/Engineer an affidavit stating that the subcontractor does not employ, contract with or subcontract with an unauthorized alien. Architect/Engineer shall maintain a copy of such affidavit for the duration of its contract with Owner. This section serves as notice to Architect/Engineer regarding the requirements of §448.095, Fla. Stat., and Owner's obligation to terminate the Agreement if it has a good faith belief that Architect/Engineer has knowingly violated §448.095, Fla. Stat. If terminated for such reason, Architect/Engineer will not be eligible for award of a public contract for at least one year after the date of such termination. Further, Owner has an obligation to order the immediate termination of any contract between Architect/Engineer and a subcontractor performing work on its behalf should Owner develop a good faith belief that the subcontractor has knowingly violated §448.095, Fla. Stat. Owner reserves the right to request documentation from Architect/Engineer evidencing its compliance with §448.095, Fla. Stat. at any time during the term of the Agreement.

14.15 To the maximum extent permitted by law, Architect/Engineer shall indemnify and hold Owner and its officers, employees and trustees (collectively, "Indemnitees") harmless from and against any and all charges, complaints,

actions, suits, proceedings, hearings, investigations, delays, claims, demands, judgments, awards, orders, decrees, stipulations, injunctions, damages, dues, penalties, fines, expenses, amounts paid in settlement, liabilities (whether known or unknown, whether absolute or contingent, whether liquidated or unliquidated, and whether due or to become due), obligations, taxes, liens, losses, fees and costs, including all attorneys' fees and all court and arbitration costs (at any level or of any type), (collectively, "Adverse Consequences") in connection with Architect/Engineer's performance of this Agreement to the extent caused by the negligent acts or omissions, recklessness, or intentional wrongful misconduct of Architect/Engineer or anyone for whose acts or omissions Architect/Engineer may be liable. The provisions of this Paragraph shall be in addition to, and shall not be construed to negate, abridge, or reduce other rights or obligations of, any other indemnification right that may be available to Indemnitees under this Agreement or applicable laws. Architect/Engineer's indemnification obligations under this Agreement, including those specified in this Paragraph, shall be deemed part of the Project specifications and to fully comply with Section 725.06 or 725.08, Florida Statutes, as applicable, including any amendments thereto, in all respects. If any word, clause or provision of any of the indemnification provisions of this Agreement is determined not to be in compliance with Section 725.06 or 725.08, Florida Statutes, as applicable, including any amendments thereto, it shall be stricken and the remaining words, clauses and provisions shall remain in full force and effect. It is the intent of the parties that Architect/Engineer's indemnification obligations comply fully with Section 725.06 and 725.08, Florida Statutes, as applicable, including any amendments, in all respects. Architect/Engineer's obligations under this Paragraph shall survive the expiration or earlier termination of this Agreement and the completion of the services.

14.16 Architect/Engineer shall be responsible to promptly make corrections to Architect/Engineer's Work when Architect/Engineer's Work is found to contain discrepancies, errors or omissions. To the extent that such discrepancies, errors or omissions are the fault of Architect/Engineer, costs associated with corrections of Architect/Engineer's services and delays and/or costs of the construction work resulting from loss of use, increased costs of construction, cost for correction or replacement of construction work already performed and damages associated with Architect/Engineer's Work or the work of other Project participants resulting from such discrepancies, errors or omissions shall be borne by Architect/Engineer.

14.17 The parties acknowledge and agree that all exhibits referenced in this Agreement are attached hereto and incorporated herein by reference.

14.18 If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.

14.19 No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver of any provision of this Agreement shall be effective, unless in writing and signed by the party to be charged. No delay in acting with regard to any breach of any provision of this Agreement shall be construed to be a waiver of such breach.

14.20 Neither party shall be liable to the other party for any delay, failure in performance, loss, or damage to the extent caused by force majeure conditions such as acts of God, fire, explosion, power blackout, acts of regulatory or governmental agencies, or other causes beyond the impacted party's reasonable control not anticipated and provided for in this Agreement. The impacted party shall use diligent efforts to end the failure or delay and ensure the effects of such force majeure event are minimized. The impacted party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. The parties expressly agree that Section 9.1 of this Agreement remains in full force and effect, can be exercised by Owner at any time in accordance with the terms of this Agreement and is not vitiated by the terms of this paragraph.

14.21 The Effective Date of this Agreement shall be the latest date it is fully executed by the parties.

14.22 Architect/Engineer acknowledges and agrees that nothing contained herein shall be construed or interpreted as (i) denying to Owner any remedy or defense available to it under the laws of the State of Florida; (ii) the consent of Owner or the State of Florida or their agents and agencies to be sued; or (iii) a waiver of sovereign immunity of Owner or of the State of Florida beyond the limited waiver provided in section 768.28, Florida Statutes.

14.23 All provisions of this Agreement which contain continuing obligations shall survive its expiration or termination.

**14.24 Waiver of Jury Trial. To the extent allowed by applicable law, Owner and Architect/Engineer expressly covenant and agree to waive the right to trial by jury in connection with any litigation or judicial proceeding related to or concerning, directly or indirectly, this Agreement, or the conduct, omission, action, obligation, duty, right benefit, privilege or liability of a party. This waiver of right to trial by jury is separately given and is knowingly, intentionally and voluntarily made by the parties, and both acknowledge that separate and good and valuable consideration has been provided by each for this waiver. The parties have had an opportunity to seek legal counsel concerning this waiver. This waiver is intended to and does encompass each instance and each issue as to which the right to a jury trial would otherwise accrue. The parties further certify and represent to each other that no employee, representative or agent of Architect/Engineer or Owner (including their respective counsel) has represented, expressly or otherwise, to Architect/Engineer or Owner or to any agent or representative of Architect/Engineer or Owner (including their respective counsel) that they will not seek to enforce this waiver of right to jury trial. This waiver shall apply to this Agreement and any future amendments, supplements or modifications hereto.**

14.25 In any claims between Owner and Architect/Engineer or Architect/Engineer's consultants, the parties expressly opt out of the provisions of Chapter 558, Florida Statutes. Architect/Engineer shall include a substantially similar provision in its agreements with Architect/Engineer's consultants.

14.26 Architect/Engineer warrants that it is not plaintiff or defendant in any civil litigation currently pending in the United States and concerning the type of work/services to be performed under this Agreement that would materially impair its ability to perform its obligations under this Agreement. If Architect/Engineer becomes either a plaintiff or defendant in such civil litigation during the term of this Agreement, Architect/Engineer will inform Owner as soon as practicable. If Architect/Engineer fails to inform Owner of such civil litigation, Owner may terminate this Agreement and Architect/Engineer will be responsible for all costs and damages incurred by Owner as a result of said termination.

14.27 Architect/Engineer is an independent contractor to Owner. Owner shall not in any manner be responsible or accountable for: (a) any violation by Architect/Engineer or the Architect/Engineer's team of any applicable laws, or (b) for any injury, loss or damage arising from or out of any act or omission of Architect/Engineer or Architect/Engineer's team.

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, the parties have affixed their signatures, effective on the date(s) set forth below.

**ARCHITECT/ENGINEER:**

\_\_\_\_\_  
(Architect/Engineer Company Name)

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**OWNER:**

**The Florida International University  
Board of Trustees**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_  
Wendy Vargas  
Senior University Counsel

Date: \_\_\_\_\_