



AGREEMENT  
BETWEEN  
OWNER AND  
ARCHITECT/ENGINEER

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Project: **BT** \_\_\_\_\_  
Project Name:

\_\_\_\_\_  
\_\_\_\_\_

Architect/Engineer:

\_\_\_\_\_  
\_\_\_\_\_

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April 2016 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 the "Owner"), and \_\_\_\_\_, whose principal business address is \_\_\_\_\_, Federal I.D. number \_\_\_\_\_ (hereinafter called the "Architect/Engineer"). The Architect/Engineer and the Owner may be collectively referred to herein as the "parties" and each may be individually referred to herein as the "party."

WITNESSETH:

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

**WHEREAS**, the 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, the Owner has selected the 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 for which the Architect/Engineer is being hired to perform services under this Agreement is the \_\_\_\_\_ Project No. \_\_\_\_\_.

ARTICLE 2

ARCHITECT/ENGINEER'S RESPONSIBILITIES

**2.1 ARCHITECT/ENGINEER'S SERVICES**

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

2.1.2 The Architect/Engineer understands and acknowledges that time is of the essence in completion of the Project and the Owner will incur damages if the Project is not completed on time. The 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 the Project's design schedule set forth in this Agreement. The Architect/Engineer shall submit for the Owner's written approval a schedule for the performance of

the Architect/Engineer's services based on the time periods established in this Agreement, which may be adjusted upon Owner's prior written approval, as the Project proceeds. The Architect/Engineer's schedule of performance shall include allowances for periods of time required for the Owner's review/approval and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule as approved by the Owner in writing shall not be exceeded by the Architect/Engineer. The Architect/Engineer represents that it is thoroughly familiar with and understands the Project scope requirements and is experienced in the design and administration of construction of building projects of this type and scope contemplated by the Owner's program for the Project.

2.1.3 The Architect/Engineer shall use the "Project Team" (including any consultants) as designated on the Architect/Engineer's "Professional Qualifications Supplement" submitted to the Owner for this Project. The Architect/Engineer shall not remove or replace any members of the Project Team, except upon prior written approval of the Owner based upon good cause shown. Further, if any member of the Project Team discontinues service on the Project for any reason whatsoever, the 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 The Architect/Engineer shall: (i) visit and do a visual inspection of the 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 the Project; (iii) familiarize itself with the Owner's layout and design requirements, conceptual design objectives and budget for the 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 (hereinafter defined), structural, chemical, electrical, mechanical, and construction materials tests, investigations and recommendations; and (vi) gather any other information necessary for a thorough understanding of the Project. If the Project involves modifications to any existing structure(s) or other man-made feature(s) on the Project site, the 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 The Architect/Engineer shall perform its services in conjunction, and coordination, with the services to be performed by the "Construction Manager" to be engaged by Owner.

2.1.6 The Architect/Engineer shall immediately make additions, changes, and corrections to any documents prepared by the Architect/Engineer necessitated by errors and omissions in the Architect's/Engineer's services.

2.1.7 The 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 The Architect/Engineer shall furnish the Owner with a copy of its quality assurance program within thirty (30) calendar days of execution of this Agreement.

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

### ARTICLE 3

#### SCOPE OF ARCHITECT/ENGINEER'S BASIC SERVICES

##### 3.1 DEFINITION

3.1.1 The 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 the Architect/Engineer's Professional Qualifications Supplement. The Architect/Engineer shall be responsible for all services performed by the Architect/Engineer's consultants and shall insure that the work of its consultants complies with all of the Agreement requirements. Owner is an intended third party beneficiary of the Architect/Engineer's contracts with such consultants and the contracts between the

Architect/Engineer and its consultants shall so provide. Furthermore, the 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 the Owner, the Architect/Engineer's consultants shall perform the services for the Owner.

3.1.2 The Architect/Engineer shall perform all services in accordance with 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 the Owner's current "Building Standards," which is available on Facilities Management's Website. Additionally, the 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, will be enforced and will be strictly adhered to and all submittals shall be completed as specified therein.

3.1.3 The design and contract documents shall be developed with software in accordance with the Owner's current "Building Information Modeling (BIM) Standard and Guide" ("BIM Standards"), which is available on the Facilities Management's Website. All electronic files developed by the Architect/Engineer shall be convertible for the Owner's use to Auto-CAD Release 2016 (or as may be updated by the Owner) or other software in accordance with BIM Standards. The 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

[Check box if this section is not applicable

3.2.1 The Architect/Engineer shall meet with the Owner to ascertain the requirements of the Project. The "Facility Program Document" for the Project which has been approved and executed by the Owner shall serve as the basic planning document for the development of a detailed facility program in compliance with the Owner's standard practices.

3.2.2 The Architect/Engineer shall prepare a draft detailed facility program for review with the Owner. After receiving the Owner's comments, the Architect/Engineer shall prepare, for prior written approval by the Owner, the final detailed facility program which shall represent a recommended final facility program document. The submittal shall consist of a minimum of ten (10) sets of documents.

### 3.3 SCHEMATIC DESIGN PHASE

3.3.1 The Architect/Engineer shall meet with the Owner to ascertain the requirements of the Project. The approved building 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 The Architect/Engineer shall provide a preliminary evaluation of the 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 the Project requirements, the Architect/Engineer shall advise the Owner of the tests and surveys that should be conducted prior to development of plans and specifications.

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

3.3.5 Based on the approved program, schedule and construction budget requirements, the Architect/Engineer shall prepare several alternative design solutions, but no less than three. The Architect/Engineer shall present these alternatives to the Owner, consisting of sketches and initial concepts. After receiving the Owner's comments, the Architect/Engineer shall prepare, for approval by the Owner, Conceptual Schematic Design(s), which shall represent no less than three recommended solutions. The submittal shall consist of a minimum of eight (8) sets of documents, including sketches, initial concepts, orientation, and relationships to existing and future programmed projects.

3.3.6 Based upon the approved Conceptual Schematic Design Studies, the Architect/Engineer shall prepare, for approval by the 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. The Architect/ Engineer shall submit to the Owner a preliminary estimate of Construction Cost (hereinafter defined) based on current area, volume or other unit costs, and a minimum of eight (8) half-size sets of Advanced Schematic Design Documents.

#### 3.4 DESIGN DEVELOPMENT PHASE

3.4.1 Based on the approved Advanced Schematic Design Documents and any adjustments authorized in writing by the Owner in the program, schedule or construction budget, the 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 the Project as to architectural, structural, mechanical, plumbing, fire protection systems and electrical systems, materials and such other elements as may be appropriate. The Architect/Engineer's team shall submit a minimum of seven (7) half-size sets and one (1) full-size set of Design Development Documents, including one (1) set of AutoCAD electronic files and one (1) set of BIM files, as required by BIM Standards, to the Owner for review and approval, together with an estimate of construction cost.

3.4.2 The Architect/Engineer shall advise the 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 the Project or in the construction budget authorized by the Owner, the Architect/Engineer shall prepare, for written approval by the Owner, "Construction Documents" consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project. The Architect/Engineer shall submit a minimum of seven (7) half-size sets and one (1) full-size set of documents, including one (1) set of AutoCAD electronic files and one (1) set of BIM files, as required by BIM Standards, to the Owner for review and approval at 50% completion and then again at 100% completion, together, each time, with an estimate of Construction Cost. The Architect/Engineer shall submit a minimum of four (4) full size sets of 100% Construction Documents (signed and sealed), after they have been reviewed and approved by Owner in writing, together with an estimate of Construction Cost. Prior to Construction Manager's written notice to proceed, the Architect/Engineer must submit an Architect/Engineer affidavit to the FIU Department of Building Code Administration to be able to issue permit to Construction Manager.

3.5.1.1 At the completion of 100% Construction Documents, the Construction Manager will prepare a Guaranteed Maximum Price (hereinafter referred to as the "Guaranteed Maximum Price" or "GMP") proposal based on the 100% Construction Documents prepared by the Architect/Engineer. The Architect/Engineer shall resolve with the Owner any discrepancy between the estimates of Construction Cost and the scope and requirements of the Owner. The Architect/Engineer shall assist the Owner in its negotiations with the Construction Manager in an effort to develop an acceptable Guaranteed Maximum Price. If the Owner does not accept the Construction Manager's Guaranteed Maximum Price proposal, the Architect/Engineer shall cooperate in value engineering with the Owner and the Construction Manager to revise the Construction Documents as necessary in order to reach an agreement. The Architect/Engineer shall analyze each of the final Guaranteed Maximum Price documents, and shall submit a written analysis of each of the documents to the Owner, pointing out any inaccuracies listed in the respective GMPs.

3.5.2 The Architect/Engineer shall assist the Owner in the preparation of the Owner-Construction Manager Agreement and the General Terms and Conditions of the Contract. The 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 Guaranteed Maximum Price has been accepted, the Architect/Engineer shall incorporate into the Construction Documents any revisions which are necessary to clarify and explain the scope of work included in the Guaranteed Maximum Price.

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

### 3.6 BIDDING OR NEGOTIATION PHASE

3.6.1 The Architect/Engineer following the 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 the Architect/Engineer's recommendation of award.

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

3.7.1 The Architect/Engineer's responsibility to provide Basic Services for each Construction Phase under this Agreement commences with the Owner's written acceptance of the Construction Manager's Guaranteed Maximum Price. The Architect/Engineer may request an Additional Service Authorization for prolonged contract administration if the construction time specified for substantial completion is exceeded by more than sixty (60) days due to no fault of the Architect/Engineer. No compensation shall be granted for the first sixty (60) days of prolonged construction administration.

3.7.2 The 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 herein as the "Contract Documents"). The Contract Documents are available on FIU's Facilities Management website 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 the Architect/Engineer shall not be restricted, modified or extended without written agreement of the Owner and Architect/Engineer.

3.7.4 The Architect/Engineer shall be a representative of and shall advise and consult with the Owner (1) during construction until final payment to the Construction Manager is made, and (2) as an Additional Service at the Owner's direction during the period of prolonged contract administration as provided in this Agreement. The Architect/Engineer shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written instrument.

3.7.5 The 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 the Project. In any event, the Architect/Engineer shall visit the site a minimum of once per week with no less than eight hours 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 the Owner and Architect/Engineer in writing. The 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. The Architect/Engineer shall keep the Owner informed of the progress and quality of the Work, and shall guard the Owner against defects and deficiencies in the Work. (More extensive site representation may be agreed to as an Additional Service(s), on the terms described in this Agreement.)



3.7.6 The 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 Construction Manager's responsibility under the Contract for Construction. The Architect/Engineer shall not be responsible for the Construction Manager's schedules or failure to carry out the Work in accordance with the Contract Documents; however, the Architect/Engineer must timely notify the Owner in writing of any actions by the Construction Manager which may result in the failure to carry out the Work in accordance with the Contract Documents and/or Contract Time. The Architect/Engineer shall not have control over or charge of acts or omissions of the Construction Manager, subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

3.7.7 The 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, the Owner and the Construction Manager shall communicate through the Architect/Engineer. Communications by and with the Architect/Engineer's consultants shall be through the Architect/Engineer.

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

3.7.10 The Architect/Engineer's certification for payment shall constitute a representation to the Owner, based on the Architect/Engineer's observations at the Project site in accordance with the Agreement terms and on the data comprising the Construction Manager's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the 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 the Architect/Engineer. The issuance of a Certificate for Payment shall further constitute a representation that the Construction Manager is entitled to payment in the amount certified.

3.7.11 The Architect/Engineer shall have authority to recommend to the Owner the rejection of Work, which does not conform to the Contract Documents. Whenever the Architect/Engineer considers it necessary or advisable for implementation of the intent of the Contract Documents, the 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 the 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 the Architect/Engineer to the Construction Manager, subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the Work.

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

3.7.13 The Architect/Engineer shall prepare Change Orders, with supporting documentation and data, if deemed necessary by the Architect/Engineer as provided in this Agreement for the Owner's approval and execution in accordance with the Contract Documents, and the Architect/Engineer may authorize minor changes in the Work upon written approval by the 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.

3.7.14 The 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 the Owner for the Owner's review and records written warranties and related documents

required by the Contract Documents and assembled by the Construction Manager, and shall issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

3.7.15 The Architect/Engineer shall interpret and decide matters concerning performance of the Owner and Construction Manager under the requirements of the Contract Documents on written request of either the Owner or Construction Manager. The 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 the 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, the Architect/Engineer shall endeavor to secure faithful performance by both Owner and Construction Manager, 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 The 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 the Owner in writing.

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

3.7.19 The Architect/Engineer's decisions on claims, disputes or other matters between the Owner and Construction Manager, 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. The Architect/Engineer shall perform all of its required services related to the Substantial Completion deliverables in accordance with Florida International University's policies and procedures.

#### 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 the Owner as provided in this Agreement in addition to the compensation for Basic Services. The Additional Services shall be performed only if authorized in writing by the Owner as an additional service prior to performance of the services.

4.1.2 For Additional Services being provided by firms not included on the Architect/Engineer's original Project team, which require no work on the part of the 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), the Architect/Engineer may request a mark-up not to exceed eight percent (8%) on the consultant's fee to cover the Architect/Engineer's administrative costs.

#### 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, the Architect/Engineer may request Owner's prior written approval to provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities.

4.2.2 The Project Representatives described in this Agreement shall be selected, employed and directed by the Architect/Engineer (with the understanding that the number, identity, salaries, and length of service of such representatives shall be agreed to by the Owner in advance in writing), and the Architect/Engineer shall be compensated therefor as agreed by the Owner and Architect/Engineer in writing. The duties, responsibilities and



limitations of authority of Project Representatives shall be as described in the General Terms and Conditions of the Contract for Construction.

4.2.3 The Architect/Engineer shall endeavor, through the observations by the on-site Project Representatives described in this Section, to provide further protection for the Owner against defects and deficiencies in the Work. However, the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Architect/Engineer, including but not limited to the Architect's Home Office as described elsewhere in this Agreement.

#### 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 the 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, the 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 the Architect/Engineer.

4.3.4 Providing consultation concerning replacement of Work damaged by fire or other cause, not a result of the Architect, 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 Construction Manager, by major defects or deficiencies in the Work of the Construction Manager, or by failure of performance of either the Owner or Construction Manager under the Contract for Construction.

4.3.6 When required by the 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 contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the 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 Construction Manager to the Architect/Engineer. The 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 the Owner of the final payment to the Construction Manager, except for the post occupancy inspection as described in the FIU Professional Services Guide, which is part of the Architect/Engineer's Basic Services.
- 4.3.18 When requested by the Architect/Engineer in writing and approved by the 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 the 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 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 prolonged contract administration and construction observation should the construction time specified for substantial completion be exceeded by more than sixty (60) days due to no fault of the Architect/Engineer. In no case shall the initial sixty (60) day period be considered for additional compensation beyond basic services.
- 4.3.22 Providing any other services not otherwise included in this Agreement and which have been pre-approved by Owner in writing.

## ARTICLE 5

### OWNER'S RESPONSIBILITIES

- 5.1 The Owner shall provide information regarding requirements for the Project.
- 5.2 The Owner shall establish and update an overall budget for the Project, including the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.
- 5.3 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner's representative shall be the sole party authorized to render decisions under this Agreement on Owner's behalf. If the Architect/Engineer accepts and relies on direction from any other FIU representative under this Agreement, the Architect/Engineer shall do so at its own risk and shall be responsible for all costs associated therewith. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Architect/Engineer to avoid unreasonable delay in the orderly and sequential progress of the Architect/ Engineer's services.
- 5.4 The Owner shall review and approve or take other appropriate action on all Work submittals of the Architect/Engineer within twenty-one (21) calendar days after Owner's receipt of each submittal.
- 5.5 If required, the Owner may furnish, or direct the Architect/Engineer to obtain at the 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, the Owner shall furnish, or direct the Architect/Engineer to obtain at the 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 materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

5.7 The Owner shall pay for structural, mechanical, chemical, air and water pollution tests; tests for hazardous materials; and, other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

5.8 Review of the Architect/Engineer's documents shall be solely for purposes of determining whether such documents are generally consistent with the Owner's intent and such review shall not relieve the Architect/Engineer of any of its responsibilities. Prompt written notice shall be given by the Owner to the Architect/Engineer if the Owner becomes aware of any fault or defect in the Project or non-conformance with the Contract Documents.

## ARTICLE 6

### CONSTRUCTION COST

#### 6.1 DEFINITION

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

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

6.1.3 The Construction Cost does not include the compensation of the 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 the Owner as provided in this Agreement. For this Project, Construction Costs shall not exceed \_\_\_\_\_.

#### 6.2 RESPONSIBILITY FOR CONSTRUCTION COST

6.2.1 Evaluations of the Owner's Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Cost, if any, prepared by the Architect/Engineer, represent the Architect/Engineer's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect/Engineer nor the Owner has control over the cost of labor, materials or equipment, over the Construction Manager's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect/Engineer cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the Architect/Engineer. The 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, the Architect/Engineer shall resolve with the Owner any apparent discrepancy between the Estimates of Probable Construction Cost as set forth in this Article above and the scope and requirements of the Owner. The 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 the Owner to award an acceptable construction contract because the lowest acceptable bid is greater than the available funds shall be cause for the Architect/Engineer to be required to revise the Project and to reprint Bidding Documents at the 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 the Architect/Engineer advises the Owner in writing, after the Design Development Phase is completed and/or before the Construction Documents are 50% complete, that in the opinion of the Architect/Engineer the scope of the work which the Owner establishes and insists upon will cause the Construction Cost to exceed the funds available and resolution of this discrepancy fails, or if the owner increases the Probable Construction Cost during the Construction Document Phase by adding to the scope and/or requirements and the Architect/Engineer so notifies the Owner in writing of the probable increase in cost, and the Owner orders the Architect/Engineer to proceed notwithstanding, then the Architect/Engineer shall not be responsible for the Owner not being able to award a construction contract within the available funds. Under such conditions the extra work of the Architect/Engineer, as required to include in the Bidding Documents alternates as requested by the 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.

6.2.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect/Engineer submits the Construction Documents to the Owner, Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the Owner and the date on which proposals are sought.

## ARTICLE 7

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

7.1 The Drawings, Specifications and other documents prepared by the Architect/Engineer for this Project are instruments of the Architect/Engineer's service for use solely with respect to this Project and, unless otherwise provided, the Architect/Engineer shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including the copyright. The Owner shall be permitted to retain copies, including electronic form and reproducible copies, of the Architect/Engineer's Drawings, Specifications and other documents for information and reference in connection with the Owner's use and occupancy of the Project and for archival purposes, without compensation to the Architect/Engineer. The Architect/Engineer's Drawings, Specifications or other documents may be used by the Owner or others for future additions, changes or renovations to this Project with no additional compensation to the Architect/Engineer. The Owner shall not use the Architect/Engineer's Drawings, Specifications, or other documents for the construction of a new facility unless agreed to in writing by the Architect/Engineer, in accordance with applicable laws.

7.2 The parties acknowledge and agree that submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project shall not constitute a publication in derogation of the Architect/Engineer's reserved rights.

## 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 resolved as follows:

8.1.1 All claims, disputes and other matters shall be determined under the judiciary system of the State of Florida.

## ARTICLE 9

### TERMINATION, SUSPENSION OR ABANDONMENT

9.1 This Agreement may be terminated by either party upon not less than seven (7) calendar days' prior written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

9.2 If the Project is suspended by the Owner for more than sixty (60) consecutive days, the Architect/Engineer shall be compensated for services performed prior to notice of such suspension subject to Owner's receipt of all required documentation evidencing same. If the Project is suspended for more than one year, then the Architect/Engineer's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Architect/Engineer's services when the Project is resumed.

9.3 This Agreement may be terminated by the Owner upon not less than seven (7) calendar days' written notice to the Architect/Engineer in the event that the Project is permanently abandoned.

9.3.1 If the Project is suspended by the Owner for more than ninety (90) consecutive days, the Architect/Engineer may terminate this Agreement by giving at least thirty (30) days prior written notice.

9.4 In the event of termination, not the fault of the Architect/Engineer, the Architect/Engineer shall be compensated for services performed prior to termination, together with Reimbursable Expenses (hereinafter defined) then due and all "Termination Expenses" as defined below. This shall be the Architect/Engineer's sole remedy at law or in equity.

9.5 Termination Expenses are in addition to compensation for Basic and Additional Services, and include expenses which are directly attributable to termination. Termination Expenses shall only be due in the event that this Agreement is terminated through no fault of Architect/Engineer or its consultants or representatives, and shall be computed as a percentage of the total compensation for Basic Services earned to the time of termination, as follows:

- i. Twenty percent (20%) of the total compensation for Basic Services earned to date if termination occurs during the Schematic Design Phases;
- ii. Ten percent (10%) of the total compensation for Basic Services earned to date if termination occurs during the Design Development Phase; or
- iii. Five percent (5%) of the total compensation for Basic Services earned to date if termination occurs during any phase following Design Development.

The Architect/Engineer shall not be entitled to any Termination Expenses if the Owner terminates this Agreement for any reason prior to the Schematic Design Phase.

9.6 This Agreement may be terminated by the Owner in its sole discretion for any reason whatsoever upon seven (7) calendar days' written notice to the Architect/Engineer.

## ARTICLE 10

### PERIOD OF SERVICE

10.1 If applicable, the services called for in the Programming Phase of this Project shall be completed and submitted within \_\_\_\_\_ (\_\_) calendar days following authorization for the Architect/Engineer to proceed.

10.2 Upon written authorization from the Owner, the Architect/Engineer shall proceed with the performance of the services called for in the Conceptual Schematic Design Phase of this Project and shall submit Schematic Design Documents and estimates of Construction Cost within \_\_\_\_\_ (\_\_) calendar days after Owner's written authorization for the Architect/Engineer to proceed.

10.3 Upon written authorization from the Owner, the Architect/Engineer shall proceed with the performance of the services called for in the Advanced Schematic Design Phase of this Project and shall submit Schematic Design



Documents and estimates of Construction Cost within \_\_\_\_\_ (\_\_) calendar days after Owner's written authorization for the Architect/ Engineer to proceed.

10.4 Upon written authorization from the Owner, the Architect/Engineer shall proceed with the performance of the services called for in the Design Development Phase of this Project and shall submit Design Development Documents estimates of Construction Cost within \_\_\_\_\_ (\_\_) calendar days after Owner's written authorization for the Architect/Engineer to proceed.

10.5 After written acceptance by the Owner of the Design Development Documents and revised estimates of Construction Cost indicating any specific modifications or changes in scope desired by the Owner, and upon written authorization from the Owner, the Architect/Engineer shall proceed with the performance of the services called for in the Construction Documents Phase of this Project and shall submit 50% Construction Documents and estimates of Construction Cost to the Owner for approval within \_\_\_\_\_ (\_\_) calendar days after Owner's written approval. Upon approval by the Owner of the 50% Construction Documents, the Architect/Engineer shall proceed and shall submit 100% Construction Documents and estimates of Construction Cost to the Owner for approval within \_\_\_\_\_ (\_\_) calendar days thereafter. Construction Documents for the Project shall be ready for taking bids within \_\_\_\_\_ (\_\_) calendar days thereafter.

10.6 Unless sooner terminated, as provided in this Agreement, this Agreement shall remain in force: (1) for a period which may reasonably be required for the design, award of contracts and construction of the Project, including extra work and any required extension thereto; or (2) in case construction is not commenced, for a period of twelve (12) months after the completion of the services for the Project called for in that phase of the Work last authorized, unless otherwise agreed to in writing by the parties.

## ARTICLE 11

### BASIS OF COMPENSATION TO THE ARCHITECT/ENGINEER

11.1 "Reimbursable Expenses" which are not included in the Architect/Engineer's proposal are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect/Engineer and Architect/Engineer's employees and consultants in connection with the Project, as identified in the following Subparagraphs.

11.1.1 Transportation, meals and lodging expenses incurred by Architect/Engineer's principals and employees when traveling in connection with any Additional Services when authorized by the Owner in writing. Such reimbursement shall be made in accordance with Section 112.061, Florida Statutes, 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.

11.1.2 Reproduction of drawings and specifications, (excluding copies for Architect/Engineer's office use, sets required at each phase for the 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 the Owner.

11.1.3 If authorized in advance by the Owner in writing, expenses of overtime work requiring higher than regular rates.

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

11.1.5 If required by the Owner to place an announcement for construction services in appropriate local newspapers, the Architect/Engineer shall be reimbursed for that expense.

11.2 The Owner agrees to pay the Architect/Engineer as compensation for the Architect/Engineer's services:



11.2.1 For the Basic Services described in this Agreement for the Project, the lump sum of \_\_\_\_\_ payable on the terms set forth in this Agreement. This amount shall be subject to renegotiation if construction documents for the Project are not completed within 18 months from the date of Notice to Proceed due to no fault of the Architect/Engineer.

11.2.2 For Additional Services defined in the Article entitled "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.

11.2.3 For Additional Services defined in the Article entitled "Additional Services" to be paid as a multiple of direct salary amounts, the compensation shall be determined by applying a multiple of 3.0, which covers all related overhead and expenses, to the direct salary amount. The multiple applicable to a Project Representative as described in this Agreement shall be 2.25. If more than one Project Representative is approved by the Owner, the applicable multiple shall be 1.5 for each additional representative.

11.2.4 Reimbursable expenses as defined in this Article, shall be limited to the actual amount expended, and only when authorized in a written Additional Services Authorization approved by Owner in writing.

ARTICLE 12

PAYMENTS TO THE ARCHITECT/ENGINEER

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

12.1.1 For the Architect/Engineer's Basic Services, the Architect/Engineer shall invoice the Owner upon Owner's written approval of each phase of Work for services performed as follows:

Conceptual Schematic	\$
Advanced Schematic Design	\$
Design Development	\$
50% Construction Documents	\$
100% Construction Documents	\$
Bidding or Negotiation	\$
Construction Administration	\$
Post Occupancy Inspection	\$
Total Basic Services	\$

The above payments shall be made on the terms outlined in this Section.

12.1.2 For Additional Services as defined in the Article entitled "Additional Services" above, and for Reimbursable Expense as defined in the Article entitled "Payments to the Architect/Engineer" above, 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 the 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 the Architect/Engineer during any phase of service is abandoned or suspended in whole or in part, the Architect/Engineer is to be paid for the service performed on account of it prior to receipt of written notice from the Owner of such abandonment or suspension, together with authorized reimbursements then due and any termination expense, if applicable, which may be due as provided in the Article entitled "Termination, Suspension, or Abandonment".

12.4 As provided by Section 215.422, Florida Statutes, if a warrant in payment of an invoice is not mailed by the Owner within 40 days after receipt of the invoice and receipt, inspection and approval of the services, the Owner shall pay to the Architect/Engineer in addition to the amount of the invoice, interest at the rate established pursuant to the Florida State Comptroller pursuant to Section 55.03 of the Florida Statutes on the unpaid balance from the expiration of such 40-day period until such time as the warrant is mailed to the Architect/Engineer. These provisions apply only to undisputed amounts for which payment has been authorized. Invoices returned to the Architect/Engineer due to preparation errors will result in a payment delay. Invoice payment requirements do not start until a properly completed invoice is provided to the Owner.

12.5 Records of the Architect/ Engineer's Consultants and Reimbursable Expense pertaining to this Project shall be kept on a generally recognized accounting basis and shall be available to the Owner or the Owner's authorized representative at mutually convenient times. Additionally, all records maintained by the Architect/Engineer in connection with this Agreement shall be subject to, and be available for, review, inspection or audit by Owner or other personnel authorized by Owner at all reasonable times during normal business hours.

### ARTICLE 13

#### INSURANCE

13.1 The Architect/Engineer shall be required to procure and maintain for the Project all of the standard insurance policies required by the Owner from Architect/Engineers as shown in Facilities Management's website 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 the Owner's standard insurance requirements shall not be allowed unless authorized by Owner's Risk Management Department in writing.

13.2 Requirements Pertaining to all Insurance Required under this Agreement. All insurance policies shall be issued and countersigned by duly authorized representatives of such companies and, except for Professional Liability, shall be written on ISO standard forms or their equivalent. Additionally, all insurance under this Section must be issued by an insurance company authorized to do business in the State of Florida and have an AM Best rating of A-, VII or higher. The insurance certificate(s) shall state that any such insurance policy(ies) shall include an endorsement indicating it cannot be canceled, terminated, non-renewed without thirty (30) days' prior written notice to the Owner. In addition, the insurance company and/or Architect/Engineer must provide thirty (30) days prior written notice to the Owner of any reduction in any of the policy limits. The Architect/Engineer shall require all subcontractors, consultants, and agents ("consultants" for purposes of this provision) providing services on the Project to carry any and all insurance coverage that adequately covers each consultant's exposure based on the type of services they are providing in connection with the Project. In addition, the Architect/Engineer shall notify the Owner, in writing, of any reduction in the aggregate coverage provided by the Architect/Engineer's insurance within (30) days after each such revision in coverage. In the event the Architect/Engineer or its consultants fail to maintain the insurance required hereby, the Owner may, at its discretion, pay any premium necessary to maintain the coverage required hereby and deduct such premium costs from the Architect/Engineer's fees under this Agreement.

13.3 The Architect/Engineer shall release and discharge the Owner and the Owner's Related Parties of and from all liability to the Architect/Engineer, and to anyone claiming by, through or under the Architect/Engineer, by subrogation or otherwise, on account of any loss or damage to tools, machinery, and equipment or other property, however caused.

13.4 Architect/Engineer must provide the Owner with a Certificate(s) of Insurance(s) reflecting all of the insurance coverages satisfying the above requirements not later than ten (10) calendar days after the Effective Date of this Agreement and prior to commencement of any operations or activities hereunder. Additionally, the insurance required under this Agreement shall be carried by the Architect/Engineer at least until the Project reaches Final Completion and is accepted by the Owner.

13.5 Owner shall not be liable for amounts that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Architect/Engineer.

13.6 The absence of a demand for any type of insurance certificates or policy or insurance condition, or for

higher coverage limits shall not be construed as a waiver of the Architect/Engineer's obligations to carry and maintain the appropriate types of insurances at limits that are appropriate to the liability exposure associated with this Agreement. FIU does not represent that coverage and the limits specified herein will necessarily be adequate to cover Architect/Engineer's liability.

13.7 Effect of Insurance. Compliance with insurance requirements shall not relieve the Architect/Engineer of any responsibility to indemnify the Owner for any liability to the Owner as specified in any other provision of this Agreement, and the Owner shall be entitled to pursue any remedy in law or equity if the Architect/Engineer fails to comply with the contractual provisions of this Agreement. Indemnity obligations specified elsewhere in this Agreement shall not be negated or reduced by virtue of any insurance carrier's (i) denial of insurance coverage for the occurrence or event which is the subject matter of the claim; or (ii) refusal to defend any named insured.

13.8 This entire Article shall survive expiration of this Agreement.

#### 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.

14.3 The 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 The 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. Neither Owner nor Architect/Engineer shall assign this Agreement without the written consent of the other.

14.6 This Agreement represents the entire and integrated agreement between the 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 the Owner or Architect/Engineer. Notwithstanding the foregoing, the Owner shall be an intended third party beneficiary of the Architect/Engineer's contracts with its consultants, if any.

14.8 Prohibition against contingent fees: the Architect/Engineer represents and warrants that the Architect/Engineer has not employed or retained any company or person (other than a bona fide employee working solely for the Architect/Engineer) to solicit or secure this Agreement, and that the 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 the 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, the 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 the 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 the 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 THE ARCHITECT/ENGINEER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE 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 the Owner for refusal by the 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 the Architect/Engineer in conjunction with the herewith. Furthermore, at Owner's request, the Architect/Engineer shall make available to the Owner any and all documents, papers, letters, or other material made or received by the 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 The Architect/Engineer shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Architect/Engineer's promotional and professional materials with the prior written consent of the Owner. The Architect/Engineer's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect/Engineer in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect/Engineer on the construction sign.

14.12 The 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, the Architect/Engineer warrants that it is not on the convicted vendor list for a public entity crime committed within the past thirty-six (36) months. The 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 this Project for a period of 36 months from the date of their being placed on the convicted vendor list. The 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 The Architect/Engineer shall not be entitled to, and hereby waives any monetary claims for damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any indirect consequential damages.

14.15 To the maximum extent permitted by law, the Architect/Engineer hereby agrees to indemnify and hold Owner, Florida International University, and their respective trustees, officers and employees, harmless for, from and against all liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Architect/Engineer and other persons employed or utilized by the Architect/Engineer in the performance of this Agreement.

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 the 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 interruption, failure, inability, or delay to perform hereunder, if such failure, inability, or delay is due to any cause beyond the reasonable control of the party so failing, including without limitation, acts of God, acts of any government, war or other hostility, civil disorder, the elements, fire, explosion, power failure, industrial or labor dispute and due diligence is used in curing such cause and in resuming performance.

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

## ARTICLE 15

### CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

15.1. Architect/Engineer certifies that neither the firm nor any person associated therewith in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, and/or position involving the administration of federal funds: (1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions, as defined in 2 CFR §180 *et. seq.*, by any federal department or agency; (2) has within a three-year period preceding this certification been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state or local government transaction or public contract; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; (3) is presently indicted for or otherwise criminally or civilly charged by a federal, state or local government entity with commission of any of the offenses listed above; and (4) has within a three-year period preceding this certification had one or more federal, state, or local government public transactions terminated for cause or default.

15.2 Architect/Engineer certifies that no (1) Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency in connection with the awarding of any Federal loan, or entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. (3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

15.3 If and to the extent applicable, Architect/Engineer shall comply with all applicable standards, orders and regulations issued pursuant to the Clean Air Act (42 U.S.C. §7401 *et. seq.*) and the Federal Water Pollution Control Act, as amended (33 U.S.C. §1251 *et. seq.*).

15.4 If and to the extent applicable, Architect/Engineer shall comply with the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §6901 *et.*

*seq.*), as they apply to the procurement of items designated in 40 CFR Part 247 (Comprehensive Procurement Guideline for Products Containing Recovered Materials).

**[SIGNATURE PAGE FOLLOWS]**



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

**ARCHITECT/ENGINEER:**

Attest:

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

By: \_\_\_\_\_  
(Name, Title and Corporate Seal)

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

Witnessed by:

\_\_\_\_\_  
\_\_\_\_\_

**OWNER:**

**The Florida International University  
Board of Trustees**

Witnessed by:

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Print Name: Mark B. Rosenberg  
Title: President  
Date: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY

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

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