

FLORIDA INTERNATIONAL UNIVERSITY

**AGREEMENT BETWEEN
OWNER AND CONSULTANT
FOR CONTINUING SERVICES**

PROJECT

**CONTINUING SERVICES
FOR
Florida International University**

_____ **CONSULTANT**

**AGREEMENT BETWEEN OWNER AND CONSULTANT
FOR CONTINUING SERVICES**

This Agreement for Continuing Services ("Agreement") is made this _____ day of _____, 200__ by and between The Florida International University Board of Trustees, on behalf of Florida International University, hereinafter called the "Owner", and

[insert name, address and federal tax identification number] called the "Consultant".

WHEREAS, the Owner intends to retain professional consulting services for designated projects at all or some of the Florida International University Sites; and

WHEREAS, the individual consulting projects to be performed under this Agreement shall be limited to those projects for which (a) the construction costs do not exceed \$1,000,000.00; or (b) the fee for study activity does not exceed \$100,000.00, or such greater amount as may be permitted by Florida Statute.

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

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

ARTICLE 1.

The Consultant agrees to provide professional services for each project as hereinafter set forth.

ARTICLE 2.

The Owner agrees to pay the Consultant as compensation for services on the following terms:

2.1 For Basic Services described in Article 3, a lump sum amount negotiated on each occasion of activating a specific designated project, or a not-to-exceed amount based on the following hourly rates:

Principal	\$
Project Manager	\$
Designer (if applicable)	\$
Senior Architect/Engineer (if applicable)	\$
Project Architect/Engineer (if applicable)	\$
Senior Field Technician (if applicable)	\$
Construction Inspector (if applicable)	\$
Site Rep	\$
CADD Draftsperson	\$
Clerical	\$

2.2 For Additional Services, compensation shall be based on the provisions of Paragraph 2.1 hereof. All Additional Services must be pre-authorized by the Owner in writing. The Owner shall determine whether the compensation for Additional Services is to be based on a lump sum or on the above listed hourly rates.

2.3 The hourly rates may be revised only by written amendment to this Agreement signed by both parties.

2.4 The design and contract documents shall be developed in accordance with the “**Cost Containment Guidelines for the State University System of Florida, dated January, 1996**” (the “Guidelines”). The Guidelines are available on the **facilities.fiu.edu website**. The Guidelines submittal shall be made as described in the Guidelines.

2.5 The design and contract documents shall be developed **using AutoCAD 2000 or a later version. The Consultant shall follow the current Florida International University Building Standards (“Building Standards”) which are** available on the **facilities.fiu.edu website**. In addition, Consultant’s work shall 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 the Consultant obtains a variance from Owner in writing.

2.6 The Consultant’s services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work.

ARTICLE 3 BASIC SERVICES

3.1 The Consultant agrees to perform consulting services as assigned by the Owner in writing. This is a non-exclusive professional services Agreement and the Owner may enter into other agreements for the performance of similar consulting services as deemed in the best interests of Owner.

3.2 The Scope of Work may include, but not be limited to, the following services:

3.3 If a construction manager has been retained by Owner to provide pre-construction services, Consultant will work with the construction manager at each phase that Construction Cost estimates are provided by Consultant to reconcile, study, consider, initiate and/or implement cost savings proposals. This shall be a Basic Service.

3.4 Preliminary Design Phase. The following services shall be performed if authorized by Owner in writing:

3.4.1 Upon written notice to proceed for each project, the Consultant shall consult with the Owner to ascertain the requirements of the project, including Owner’s schedule and budget for the project.

3.4.2 Based upon the Owner’s requirements, schedule and construction budget for the project, the Consultant shall prepare and submit to the Owner for approval Schematic Design Studies leading to a recommended solution, together with a general description of the project. The Consultant shall submit to the Owner an estimate of Probable Project Construction Cost based on current area, volume, or other unit costs.

3.4.3 Upon approval of the Schematic Design Studies by Owner, Consultant shall prepare Design Development Documents consisting of plans, elevations and other drawings, including perspective sketches and outline specifications to fix and illustrate the size and character of the entire project in its essentials as to kinds of materials, type of structure, mechanical and electrical systems and such other work as may be required. The Consultant shall submit the Design Development Documents to the Owner

for prior written review and approval, together with a further estimate of Construction Cost based on current area, volume or other unit costs.

3.5 Construction Document Phase. The following services shall be performed if authorized by Owner in writing:

3.5.1 Based on the approved Design Development Documents, the Consultant shall submit to Owner for prior written review and approval, Construction Documents setting forth in detail the work required for the architectural, structural, mechanical, electrical, service-connected equipment, and site work, and the necessary bidding information, the General Conditions of the Contract, and shall assist in the drafting of the Proposal and Contract Forms.

3.5.2 The Consultant shall keep the Owner informed of any adjustments to previous estimates of Construction Cost indicated by changes in scope, requirements, or market conditions.

3.5.3 The Consultant shall furnish up to ten (10) copies of the Contract Documents, as directed by the Owner, consisting of construction drawings, specifications, construction agreement forms, general conditions, special provisions and technical provisions. **The Consultant shall also provide one (1) set of specifications and documents in electronic format to Owner at each phase authorized.**

3.6 Construction Phase - General Administration of Construction Contracts. If authorized by the Owner in writing:

3.6.1 The Consultant shall assist the Owner in obtaining proposals from contractors and construction managers, as applicable, evaluating and awarding such proposals, evaluating trade packages and preparing construction contracts.

3.6.2 To the extent provided by the Agreement between Owner and Contractor or the Construction Manager, as applicable, the Consultant shall make decisions on all claims of the Owner and Contractor and on all matters relating to the execution and progress of the work or the interpretation of the Contract Documents. The Consultant shall check samples, schedules, shop drawings and other materials submitted within twenty-one (21) calendar days after receipt, and shall issue an approval if found to be in conformity with the design concept of the project and in compliance with the information given by the Contract Documents prepared by the Consultant. The Consultant shall review **Change Orders, and if acceptable, recommend such Change Order(s)** for Owner's approval, and assemble written guarantees required of the Contractor or Construction Manager, as applicable.

3.6.3 The Consultant shall visit the site a minimum of one (1) time per week, or at more frequent intervals as appropriate to the stage of construction, to remain familiar generally with the progress and quality of the work and to determine, in general, if the work is proceeding in accordance with the Contract Documents. The Consultant will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, or be responsible for the techniques or sequences of construction or the safety precautions incident thereto; neither will the Consultant be responsible for the contractor's or construction manager's, as applicable, failure to carry out the construction work in accordance with the Contract Documents. On the basis of observations as a qualified professional while at the site, the Consultant will keep the Owner informed of the progress of the work, will guard the Owner against defects and deficiencies in the Work of the contractors or construction manager, as applicable. The Consultant has authority to reject Work which does not conform to the Contract Documents. Based on such observations and the Contractor's or Construction Manager's Applications for Payment, as applicable, the Consultant will determine the amount owing to the Contractor or Construction Manager, as applicable, and will issue Certificates for Payment in such amounts. These certificates will constitute a representation to the Owner, based on such observations and the data comprising the Application for Payment, that the work has progressed to the point indicated. By issuing a Certificate for Payment, the Consultant will also represent to the Owner that, to the best of the Consultant's knowledge, information

and belief, based on what the observations have revealed, the quality of the work is in accordance with the Contract Documents. The Consultant will conduct inspections to determine the dates of substantial and final completion and issue a Final Certificate for Payment.

ARTICLE 4. THE OWNER'S RESPONSIBILITIES

4.1 The Owner shall provide information as to the requirements for the Project.

4.2 If required, the Owner shall furnish or direct the Consultant to obtain, at the Owner's expense, a certified survey of the site giving grades and lines of streets, alleys, pavements and adjoining property; rights of way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the building site; locations, dimensions and complete data pertaining to existing buildings, other improvements and trees; full information as to available service and utility lines, both public and private; and test borings and pits necessary for determining subsoil conditions.

4.3 The Owner shall pay for structural, chemical, mechanical, soil mechanics or other tests and reports, if required.

4.4 If the Owner observes or otherwise becomes aware of any defect in any project implemented hereunder, the Owner shall give prompt written notice thereof to the Consultant.

4.5 Owner's review, inspection, or approval of any design documents, Applications for Payment or other submittals to Owner by Consultant shall be solely for the purpose of determining whether the same are generally consistent with Owner's program and requirements. No review, inspection, or approval by Owner of such documents shall relieve Consultant of its responsibility for the performance of its obligations under the Contract Documents or the accuracy, adequacy, fitness, suitability, or coordination of the services to be provided hereunder. Approval by any governmental or other regulatory agency or other governing body of any Contract Documents shall not relieve Consultant of responsibility for the performance of its obligations under this Agreement. Furthermore, payment by Owner pursuant to the Contract Documents shall not constitute a waiver of any of Owner's rights under the Contract Documents or at law, and Consultant expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by Owner.

4.6 If any of Consultant's estimates of Construction Cost for a specific project is in excess of Owner's budget for a specific project, Owner may either give written approval of an increase in Owner's budget or shall direct the Consultant to re-design such project to bring the estimated cost thereof within Owner's budget. Such revisions shall be a Basic Services, unless Consultant had previously provided Owner with the notice specified in **Article 7**.

4.7 The Owner shall review and approve or take other appropriate action on all work submittals of the Consultant within twenty one (21) business days after Owner's receipt of same

ARTICLE 5. REIMBURSABLE EXPENSES

5.1 Reimbursable Expenses include actual expenditures made by the Consultant in the interest of each project for the following incidental expenses:

5.1.1 Reproduction of drawings and specifications (excluding copies for Consultant'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..

5.1.2 No travel or wages will be allowed from the Consultant's office to project site. If other travel is authorized in advance and in writing by the Owner, the reimbursement shall be in accordance with and subject to the terms of Florida Statutes §112.061.

5.1.3 If authorized in advance and in writing by the Owner, premium portions of overtime; renderings or models for the Owner's use.

5.1.4 Fees of special consultants, for other than the normal structural, mechanical and electrical engineering services and fees for estimators making Detailed Cost Estimates, if their employment is pre-authorized by Owner in writing.

ARTICLE 6. PROJECT CONSTRUCTION COST

6.1 Project Construction Cost shall be based upon one of the following sources with precedence in the order listed:

6.1.1 Lowest acceptable bona fide Contractor's proposal received for any or all portions of the Project.

6.1.2 Detailed estimate of Project Construction Cost if authorized in writing by the Owner.

6.1.3 The Consultant's latest estimate of Probable Project Construction Cost based on current area, volume or other unit costs.

6.1.4 When labor, material or service connected equipment is furnished by the Owner, the Project Construction Cost shall include costs therefore at current market cost.

[SHOULD WE MENTION THAT THIS WILL BE A DEDUCTION TO THE OVERALL COST?]

ARTICLE 7. STATEMENTS OF PROJECT COST

7.1 The Construction Cost budget is the amount budgeted for actual construction of each project, including connections to utilities, but is exclusive of cost of land, furnishings, and Owner's contingency and professional fees. The Construction Cost budget will be determined by the Owner on a project by project basis and provided in the activation for each project.

7.2 Evaluations of the Owner's Project budgets and estimates of Construction Cost represent the Consultant's best judgment as a design professional familiar with the construction industry. It is recognized however that neither the Consultant nor the Owner has control over the cost of labor and materials, nor over competitive bidding and market conditions. Accordingly, the Consultant does not guarantee the accuracy of the estimates or probable cost as compared to the Contractor's bid or Construction Manager's guaranteed maximum price proposal, as applicable. The Consultant shall, however, conform to the following provisions in an attempt to keep the project cost within the Construction Cost budget as part of Basic Services.

7.2.1 At the start of the Construction Document phase, the Consultant shall resolve with the Owner any apparent discrepancy among its estimates of Construction Cost, the scope and requirements of the Owner and the Construction Cost budget. The Consultant 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 budget. **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 Consultant to be required to revise the project at the Consultant's own cost and expense in accordance with the requirements of this Agreement until a contract can be awarded within the Construction Cost budget.**

7.2.2 **Notwithstanding the above provision, the Consultant shall not be responsible for the Owner not being able to award a construction contract within the available funds under the following specified conditions only:**

(a) If the Consultant advises the Owner in writing, any time *before the Preliminary Design Phase is completed*, that, in the Consultant's opinion, the scope of the work which the Owner establishes and insists upon will cause the construction cost to exceed Construction Cost budget and it is through no fault of the Consultant; or

(b) or if the Owner adds scope and/or requirements to a project and the Consultant so notifies the Owner in writing of the probable increase in cost, and the Owner orders the Consultant to proceed notwithstanding.

Under the above limited conditions only, the compensation for the extra work of the Consultant, as required, to include alternates in the Bidding Documents as requested by the Owner and/or to redesign and redraft the Contract Documents, shall be negotiated as provided for in Article 2 hereof.

7.2.3 If an award of construction contract is delayed more than four (4) months following the completion of the Construction Documents, through no fault of the Consultant, the Consultant shall be permitted to revise the estimates in accordance with recognized published changes in construction costs.

ARTICLE 8. PERIOD OF SERVICE

8.1 Unless sooner terminated, as provided under this Agreement, this Agreement shall remain in force for a period which may reasonably be required for the design, award of contracts and construction of each Project initiated by _____, including extra work and any required extension thereto.

8.2 This Agreement may be renewed at the Owner's discretion for _____, based upon satisfactory performance of the Consultant.

ARTICLE 9. PAYMENTS TO THE CONSULTANT

9.1 Payments on accounts of the Consultant's service shall be as follows:

9.2 Payments for services of the Consultant as defined in this Agreement and payment for Reimbursable Expenses, which are undisputed, shall be made within the terms and timeframes outlined in this Article 9 after Owner's receipt of a complete Application for Payment, or at such other interval as provided in the written project authorization from the Owner. Invoices shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

9.3 As provided by §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 Consultant, 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 periods until such time as the warrant is mailed to the Consultant. These provisions apply only to undisputed amounts for which payment has been authorized. Invoices or pay requests returned to the Consultant 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 the Owner. A Vendor Ombudsman has been established within the 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 the Owner. The Vendor Ombudsman may be contacted at (305) 348-2101.

9.4 No deduction shall be made from the Consultant's compensation on account of liquidated damages or other sums withheld from payments to contractors or construction manager.

9.5 If any Work designed or specified by the Consultant during any phase of service is abandoned or suspended in whole or in part, the Consultant 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 any reimbursements then due.

ARTICLE 10. CONSULTANT'S ACCOUNT RECORDS

10.1 Records relating to payment of the Consultant's personnel, consultants, and Reimbursable Expenses pertaining to projects included under this Agreement shall be kept on a generally recognized accounting basis and shall be available to the Owner or its authorized representative at mutually convenient times.

ARTICLE 11. TERMINATION, SUSPENSION OR ABANDONMENT

11.1 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 other. This Agreement may be terminated by the Owner in its sole discretion upon seven (7) days prior written notice to the Consultant. In the event of termination not the fault of the Consultant or its sub-consultants, the Consultant shall be paid for services performed to the termination date, including Reimbursable Expenses then due.

11.2 If a project is suspended by the Owner for **more than sixty (60) consecutive days**, the Consultant shall be compensated for services performed prior to notice of such suspension. **If the project is suspended for more than one (1) year, then the Consultant's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Consultant's services when the project is resumed.**

11.3 **This Agreement may be terminated by the Owner upon not less than seven (7) calendar day's prior written notice in the event that the Project is permanently abandoned.**

ARTICLE 12. USE OF CONSULTANT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

12.1 The Drawings, Specifications and other documents prepared by the Consultant for each project to be implemented hereunder are instruments of the Consultant's for use solely with respect to such project, except as may be expressly permitted herein, and the Consultant 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 Consultant's Drawings, Specifications and other documents and may use the same, without compensation to Consultant, as may be necessary or desirable in the operation and maintenance of each project and the remainder of Owner's campus, including, without limitation, additions or renovations to the project. Owner shall not use the Consultant's Drawings and Specifications for the construction of a new facility, unless agreed to in writing by the Architect/Engineer.

12.2 Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the Consultant's reserved rights.

ARTICLE 13. CLAIMS AND DISPUTES

13.1 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:

13.1.1 All other claims, disputes and other matters covered under this Agreement shall be determined under the judiciary system of the State of Florida.

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 shall lie in the courts of Miami-Dade County, Florida.

14.2 The procedures and requirements as set forth in the **State University System Professional Services Guide, revised December 15, 1998, for architects and engineers**, will be enforced and will be strictly adhered to and all submittals shall be completed as specified. **This Guide is available at facilities.fiu.edu website.**

14.3 The Owner and Consultant, 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 Consultant shall assign this Agreement without the written consent of the other party, which may be withheld in that party's sole discretion.

14.4 This Agreement represents the entire and integrated agreement between the Owner and the Consultant 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 the Consultant.

14.5 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 the Consultant. Notwithstanding the foregoing, the Owner shall be an intended third party beneficiary of the Consultant's contracts with its consultants, if any.

14.6 The Consultant represents and warrants that the Consultant has not employed or retained any company or person to solicit or secure this Agreement, and that the Consultant has not paid or agreed to pay any person, company, corporation, individual or firm any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

14.7 By execution of this document and in compliance with Section 287.055(5)(a), Florida Statutes, the Consultant 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 amounts which the Owner determines resulted in an increased fee due to inaccurate, incomplete, or non-current factual unit costs.

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

14.9 Unless otherwise provided in this Agreement, the Consultant and Consultant's consultants shall have no responsibility for the discovery of pre-existing hazardous materials at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances (collectively, "Hazardous Materials"). Notwithstanding the foregoing, the Consultant shall immediately

notify the Owner both orally and in writing of the presence or suspected presence and location of any Hazardous Substances on the Project Site of which it becomes aware.

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

14.11 Throughout the Project, the Consultant shall carry, at the Consultant's own expense, commercial general liability insurance (occurrence form) including products/completed operations providing coverage in the minimum amount of \$1,000,000 per occurrence and professional liability insurance (occurrence form) providing coverage in the minimum amount of \$1,000,000 per occurrence. If the professional liability coverage is provided on a claims-made basis, then such insurance shall continue throughout the term of this Agreement and upon the termination of this Agreement, or the expiration or cancellation of the insurance, Consultant shall purchase, tail coverage for a period of three years after the termination of this Agreement or the expiration or cancellation of the claim-made coverage (said tail coverage shall be in amounts and type equivalent to the claims-made coverage). An insurance certificate shall be provided to the Owner within ten (10) calendar days following the full execution of this Agreement.

14.12 The insurance certificate shall provide that such insurance policy shall not be canceled, terminated, non-renewed, or materially changed without thirty (30) days' prior written notice to the Owner. In addition, the Consultant shall require all consultants on the Project Team to carry professional liability coverage in the same amount as the Consultant is required to carry. The Consultant shall provide the Owner with insurance certificates for these consultants with the same provisions required of the Architect/Engineer's insurance certificate at the same time it provides its certificate of insurance to Owner. In addition, the Consultant shall notify the Owner, in writing, of any reduction in the aggregate coverage provided by the Consultant insurance within (30) days after each such revision in coverage. In the event the Consultant 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 Consultant's fees under this Agreement.

The certificates shall indicate that the Commercial General Liability policy carries an endorsement (no more restrictive than CG 20 10) which names *The Florida International University Board of Trustees, Florida International University, the State of Florida, The Florida Board of Governors, and their respective trustees, directors, officers, employees and agents, are additional insureds*. The Consultant's policy shall be primary and that any insurance carried by FIU shall be noncontributing with respect thereto.

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 Consultant 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 Consultant's liability.

14.13 The Consultant shall not be entitled to, and hereby waives any monetary claims for or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any indirect consequential damages.

14.14 Owner's selection of one or more remedies for breach of this Agreement shall not limit the Owner's right to invoke any other remedy available to the Owner under this Agreement or by law or in equity.

14.15 The Consultant hereby agrees to indemnify, defend and hold Owner, Florida International University, the Florida Board of Governors, the State of Florida, and their respective trustees, officers and employees harmless for, from and against all liabilities, damages, losses, claims and any other costs or expenses whatsoever, (including, but not limited to, reasonable attorneys' fees and costs, whether suit is instituted or not, and if instituted, at all tribunal levels) arising directly or indirectly out of: (a) Consultant's performance or breach of the Agreement terms, (b) the acts, omissions, negligence, recklessness, or wrongful conduct of the Consultant and other persons employed or utilized by the Consultant, including its consultants, in the performance of the Agreement; and (c) the Consultant's operations on or use of the Owner's Property.

This provision shall survive expiration of this Agreement.

14.16 All capitalized terms used but not defined in this Agreement shall have the meaning assigned to such terms in the General Conditions of the Contract for Construction.

14.17 The Consultant shall enlist the services of a qualified sub-consultant when approved in writing by the Owner, to provide surveys, subsurface investigation, testing, cost estimating and similar services when required. The direct cost of these services shall be invoiced to the Owner by the Consultant.

14.18 The Consultant warrants that it is not on the convicted vendor list for a public entity crime committed within the past 36 months. The Consultant 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 Agreement if such person is on the convicted vendor list for a public entity crime committed within the past 36 months.

14.19 Consultant shall be responsible to promptly make corrections to Consultant's work when Consultant's work is found to contain discrepancies, errors or omissions. To the extent that such discrepancies, errors or omissions are the fault of Consultant, costs associated with corrections of Consultant'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 Consultant's work or the work of other Project participants resulting from such discrepancies, errors or omissions shall be borne by Consultant.

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

IN WITNESS WHEREOF, the parties have affixed their signatures, effective on the date first written above.

***** _____ **CONSULTANT** *****

Attest:

Name of Company

By: _____
Signature

By: _____
Signature

Print Name & Title of Company Executive (Affix Corporate Seal) Print Name & Title of President

Date: _____

As Witnessed by:

Signature

***** **OWNER** *****

**The Florida International University
Board of Trustees**

As Witnessed By:

By: _____
Modesto A. Maidique, President

ate: _____

APPROVED AS TO FORM AND LEGALITY

University Attorney Date