

CONSULTANT CONTRACT

Architectural and Engineering Services

Between the University of West Florida Board of Trustees,
a public body corporate ("University") and
NAME OF COMPANY ("Consultant")

THIS AGREEMENT

is made as of the last date signed below, between the University of West Florida Board of Trustees, public body corporate, hereinafter called the University and (Consultant's Name) Federal I.D. No. , hereinafter called Consultant.

The University and the Consultant agree as set forth below.

ARTICLE 1 – GOVERNING LAW

This Contract is governed by the laws of the state of Florida and any provisions herein in conflict therewith shall be void and of no effect. Venue for all actions or proceedings arising in connection with this Contract shall be tried and litigated exclusively in the state or federal (if permitted by law and a party elects to file an action in federal court) courts located in Escambia County, Florida. This choice of venue is intended by the parties to be mandatory. Each party waives any right it may have to assert the doctrine of *forum non conveniens* or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Section.

ARTICLE 2 – SERVICES AND SCHEDULE

The Consultant shall provide architectural and engineering services as described in Attachment A "Scope of Services".

The Consultant's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Upon request of the University, the Consultant shall submit for the University's approval a schedule for the performance of the Consultant's services. The Consultant shall not, except for reasonable cause, exceed the time limits established by this schedule as approved by University.

ARTICLE 3 – CONTRACT SUM

The University shall pay the Consultant for the performance of the work, subject to additions and deductions by written Change Order, the Contract Sum of \$xx,xxxx.xx, amount written out and /100 dollars.

If additional services are authorized, Consultant will invoice at the rate of \$90/hour.

ARTICLE 4 – STANDARDS

The design and contract documents shall be developed in accordance with the *University of West Florida Design and Construction Standards* dated February 2002.

The procedures and requirements as set forth in the *State University System Professional Services Guide* dated December 1998 (as included in the UWF Building Design and Construction Standards) for architects and engineers will be enforced and will be strictly adhered to and all submittals shall be completed as specified.

Consultant shall observe and abide by all applicable laws, ordinances and regulations of federal, state and local governments, in connection with services performed hereunder.

ARTICLE 5 – MODIFICATIONS OF WORK

The University reserves the right to make changes in the Work, including alterations, reductions therein or additions thereto. Upon receipt by the Consultant of the University's notification of a contemplated change, the Consultant shall (1) if requested by the University, provide an estimate for the increase or decrease in cost due to the contemplated change, (2) notify the University of any estimated change in the completion date, and (3) advise the University in writing if the contemplated change shall effect the Consultant's ability to meet the completion dates or schedules of this Contract.

If the University so instructs in writing, the Consultant shall suspend work on that portion of the Work affected by a contemplated change, pending the University's decision to proceed with the change.

If the University elects to make the change, the University shall issue a Contract Amendment or Change Order and the Consultant shall not commence work on any such change until such written amendment or change order has been issued and signed by each of the parties.

ARTICLE 6 – INSPECTIONS

All services performed in connection with this Contract shall be subject to quality inspection and approval by University at all times, but such approval shall not relieve Consultant of responsibility for the proper performance of the work. Consultant shall provide sufficient, safe and proper facilities at all times for such inspection of the work, and shall furnish all information concerning the work, and grant University's duly authorized representatives free access at all reasonable times to Consultant's facilities where the work is to be performed.

ARTICLE 7 – INVOICE

The Consultant shall deliver to the University on at least a regular basis an invoice with a written report stating the services performed or progress made toward completion of the service obligation during the immediate preceding period. Bills and invoices for fees or other compensation for services or expenses shall be submitted in sufficient detail for a proper pre-audit and post-audit thereof. Payment will be tendered only for services of the portion of services completed prior to the submission of the bill or invoice or for expenses incurred prior to such submission.

If this Contract expressly provides that the University will be responsible for paying for Consultant's travel expenses, such travel expenses, meals and lodging shall be paid in accordance with Section 112.061, Florida Statutes. Any expenses in excess of the amounts prescribed by law shall be borne by Consultant.

ARTICLE 8 – PAYMENT

As provided by Section 215.422, Florida Statutes, if a warrant in payment of an invoice is not mailed by the University within 40 days after receipt of the invoice and receipt, inspection, and approval of the services, the University shall pay to the Consultant in addition to the amount of the invoice, interest at a rate of one percent per month, or portion thereof, on the unpaid balance from the expiration of such 40-day period until such times as the warrant is mailed to the Consultant. These provisions apply only to undisputed amounts for which payment has been authorized. Invoices 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 is provided to the University.

A Vendor Ombudsman has been established within the University of West Florida. The duties of this individual include acting as an advocate for vendors who may be experiencing

problems in obtaining timely payment(s) from the University. The Vendor Ombudsman may be contacted at (850) 474-2636.

ARTICLE 9 – TAXES

The University is a tax immune sovereignty and exempt from the payment of all sales, use or excise taxes. The Consultant shall pay all personal property taxes on leased equipment and all taxes based upon net income. The Consultant shall be responsible for payment of its own and its share of FICA and Social Security benefits with respect to this Contract. The University shall issue a Form 1099 to the Consultant.

ARTICLE 10 – TRUTH-IN-NEGOTIATION CERTIFICATE

Signature on this Contract by the Consultant shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Contract are accurate, complete, and current as of the date of the Contract and no higher than those charged the Consultant's most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the University determine that the rates and costs were increased due to inaccurate, incomplete, or non-current wage rates or due to inaccurate representations of fees paid to outside consultants. The University shall exercise its rights under this "Certificate" within one (1) year following final payment.

ARTICLE 11 – INDEPENDENT CONSULTANT/CONTRACTOR RELATIONSHIP

The Consultant is, and shall be, in the performance of all work services and activities under this Contract, an Independent Consultant, and not an employee, agent, or representative of the University. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the Consultant's sole direction, supervision, and control. The Consultant shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Consultant's relationship and the relationship of its employees to the University shall be that of an Independent Consultant and not as employees or agents of the University. The Consultant does not have the power or authority to bind the University in any promise, agreement, or representation other than specifically provided for in this Contract.

ARTICLE 12 – CONTINGENT FEES

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

ARTICLE 13 – TERMINATION

Termination without Cause. Either party may terminate this Contract upon thirty (30) days written notice without penalty or cause. A termination penalty may not be charged to the University. The University shall be liable only for payment for services rendered prior to the effective date of termination.

Termination for Cause. The contract may be terminated in the event of a breach in the contract. The aggrieved party will provide the other party written notification describing the breached provision. The Respondent will have 10 days from receipt of notice to correct the

deficiency. If the deficiency is not corrected within the 10 day allotted period, then the aggrieved party may terminate the contract by providing 10 days written notice of termination to the Respondent. Termination for cause shall not relieve either party of the responsibility of discharging its duties already begun.

The University shall be reimbursed by the Consultant for paid services that the University did not or will not receive from the Consultant. The Consultant shall be paid for services rendered to the University's satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the University, the Consultant shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other material related to the terminated work to the University.
- D. Continue and complete all parts of the work that have not been terminated.

ARTICLE 14 – FORCE MAJEURE/EXCUSABLE DELAYS

The **Consultant** shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the **Consultant's** control and without its fault or negligence. Such causes may include, but are not limited to: acts of God; the University's failures; natural or public health emergencies; labor disputes; freight embargoes; and severe weather conditions.

Upon the **Consultant's** request, the University shall consider the facts and extent of any failure to perform the work and, if the **Consultant's** failure to perform was without it or its **Consultant's** fault or negligence, the Contract Schedule and/ or any other affected provision of this Contract shall be revised accordingly; subject to the University's rights to change, terminate, or stop any or all of the work at any time.

ARTICLE 15 – CLAIMS AND DISPUTES

Claims, disputes or other matters in question between the parties to this Contract arising out of or relating to this Contract or breach thereof shall be resolved as follows:

Claims of \$100,000 or less in value shall be conducted pursuant to and under the procedures of the Administrative Procedures Act, Chapter 120, F.S.

All other claims, disputes and other matters not covered by previous paragraph shall be determined under the judiciary system of the State of Florida.

ARTICLE 16 – EXERCISE OF DISCRETION

Where Consultant has the ability to make a sole judgment or determination or may act upon its own option, it shall only make such a determination, judgment, or exercise an option when such action has a reasonable basis. Upon the request of the University, Consultant shall notify the University of its decision in writing and the basis therefore.

ARTICLE 17 – INSURANCE

A. The **Consultant** shall not commence work under this Contract until it has submitted all insurance required and the University has approved such insurance. The **Consultant** is required to maintain the insurance for the life of the project plus 1 (one year).

B. The Consultant must provide within five calendar days of contract award, an original ACORD Certificate of Insurance evidencing the insurances provided by the Consultant, and signed by the insurance companies or their authorized agents, certifying to the name and address of the party insured, the University as the Certificate holder and Additional Insured,

the description of the work covered by such insurance, the insurance policy numbers, the limits of liability of the policies and the dates of their expirations with a further certification from the insurance companies that their policies will not be materially modified, amended, changed, canceled or terminated without thirty (30) days business days prior written notice to the University. The Consultant and insurers shall waive any and all rights of subrogation against University which may arise under any policies of insurance provided hereunder.

C. Compliance with the foregoing requirements shall not relieve the **Consultant** of its liability and obligations under this Contract.

D. The **Consultant** shall maintain, during the term of this Contract,

- General Liability - \$1,000,000 per occurrence, with public liability - \$1,000,000 for bodily injury, and property damage - \$500,000 for each occurrence, aggregate \$1,000,000.
- Automobile – when applicable - \$ 1,000,000. combined single limit to include “Any Auto”
- Workers Compensation – Bodily injury \$100,000 each accident, \$500,000 policy limit by disease
- Umbrella Coverage: Employer’s Liability, General Liability or Auto Liability of not less than \$1,000,000 for any one occurrence.
- Professional Liability – when applicable - \$1,000,000.

ARTICLE 18 – INDEMNIFICATION

The **Consultant** agrees to indemnify and hold harmless, assume liability for and defend, the University, the State of Florida, the Florida Board of Education, the University of West Florida Board of Trustees and their officers, employees, and agents, from and against any and all actions, claims, liabilities, assertions of liability, losses, costs and expenses, which in any manner arise or are alleged to have arisen, from the acts, omissions or wrongful conduct of **Consultant** or **Consultant**'s officers, employees, agents, guests, patrons, licensees, invitees or sub-consultants in connection with or related to their operations, activities, occupancy or use of the facilities or property of the University in connection with the performance of this Contract.

The Consultant shall construe nothing in this Contract as an indemnification of the **Consultant**. The University warrants and represents that as a sovereign entity, it is self-insured. **Consultant** and University agree that nothing contained herein shall be construed or interpreted as (a) the consent of the University or the State of Florida or its agents and agencies to be sued; or (b) a waiver of sovereign immunity of the University or the State of Florida.

ARTICLE 19 – SUCCESSORS AND ASSIGNS

The University and the **Consultant** each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Contract and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the University nor the **Consultant** shall assign any right or delegate any duties hereunder nor may it transfer, pledge, surrender, or otherwise encumber or dispose of its interest in any portion of this Contract without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the University, which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the University and the **Consultant**.

ARTICLE 20 – AFFIRMATIVE ACTION & ADA

As a condition of this Contract, the **Consultant** agrees to comply with Section 202, Executive Order 11246, as amended by Executive Order 11375, and regulations published by the U.S. Department of Labor implementing Section 503 of the Rehabilitation Act of 1973, Public Law 93-112, as amended, which are incorporated herein by reference.

The **Consultant** agrees to comply with the Americans with Disability Act (ADA) of 1990.

ARTICLE 21 – UNIFORM COMMERCIAL CODE

The Uniform Commercial Code in accordance with Chapter 672, Florida Statutes, shall prevail as the basis for contractual obligations between the **Consultant** and the University for any terms and conditions not specifically stated in this Contract.

ARTICLE 22 – CONFLICT OF INTEREST

In accordance with Section 112.3185, Florida Statutes, the **Consultant** hereby certifies that to the best of his/her knowledge and belief no individual employed by him/her or subcontracted by him/her has an immediate relation to any employee of the University who was directly or indirectly involved in the procurement of said services and would conflict in any manner with the performance of services required hereunder. Violation of this section by **Consultant** shall be grounds for cancellation of this Contract by the University.

The **Consultant** shall promptly notify the University in writing of all potential conflicts of interest for any prospective business association, interest or other circumstance, which may influence or appear to influence the **Consultant's** judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the **Consultant** may undertake and request an opinion of the University as to whether the association, interest or circumstance would, in the opinion of the University, constitute a conflict of interest if entered into by the **Consultant**. The University agrees to notify the **Consultant** of its opinion in writing within 30 days of receipt of notification by the **Consultant**. If, in the opinion of the University, the prospective business association, interest or circumstance would not constitute a conflict of interest by the **Consultant**, the University shall so state in the notification and the **Consultant** shall, at his/her option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the University by the **Consultant** under the terms of this Contract.

ARTICLE 23 – ARREARS

The **Consultant** shall not pledge the University's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The **Consultant** further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

ARTICLE 24 – DISCLOSURE AND OWNERSHIP OF DOCUMENTS

The **Consultant** shall deliver to the University for approval and acceptance, and before eligible for final payment of any amounts due, all documents and materials prepared by and for the University under this Contract.

All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the University or at its expense will be kept confidential by the **Consultant** and will not be disclosed to any other party, directly or indirectly, without the University's prior written consent unless required by a lawful order. All drawings, maps, sketches, and other data developed, or purchased, under this Contract or at

the University's expense shall be and remain its property and may be reproduced and reused at the discretion of the University.

The University may unilaterally cancel this Contract for refusal by **Consultant** to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received in conjunction with this Contract.

All covenants, agreements, representations, and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

ARTICLE 25 – HAZARDOUS MATERIALS

Unless otherwise provided in the Contract, the Consultant and its employees shall have no responsibility for the discovery, prior presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

ARTICLE 26 – LICENSES

In the event either party is required to obtain from any governmental authority any permit, license, or authorization as a prerequisite to perform its obligations hereunder, the cost thereof shall be borne by the party required to obtain such permit, license, or authorization.

ARTICLE 27 – ACCESS AND AUDITS

The **Consultant** shall maintain adequate records to justify all charges, expenses, and costs incurred in performing the work for at least three (3) years after completion of this Contract. The University shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the **Consultant's** place of business.

ARTICLE 28 - EQUAL OPPORTUNITY IN EMPLOYMENT

Consultant affirms, without reservation, the principles of equal opportunity employment. **Consultant** will not discriminate against qualified candidates for any unlawful reasons, including race, religion, gender, national origin, age or disability.

ARTICLE 29 – UNAUTHORIZED ALIENS

The employment of unauthorized aliens by an consultant is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the Consultant knowingly employs unauthorized aliens, such violation shall be cause of the unilateral cancellation of the contract.

ARTICLE 30 – ENTIRETY OF CONTRACTUAL AGREEMENT

The University and the **Consultant** agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

Any amendments, alterations or modifications to this Contract must be in writing, signed or initialed and approved by all signatories of this Contract to be effective

ARTICLE 31 – ENFORCEMENT COSTS

If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract, the successful or prevailing party or parties shall be entitled to recover reasonable attorney’s fees, court costs, and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs, and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

ARTICLE 32 – AUTHORITY TO PRACTICE

The Consultant hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the University upon request.

ARTICLE 33 – SEVERABILITY

In the event any provision of this Contract is held invalid or unenforceable by any court of competent jurisdiction, or by an Administrative Law Judge in accordance with Chapter 120, Florida Statutes, such holding shall not invalidate or render unenforceable any other provision hereof. However, where a breach of this Contract goes to the whole of this Contract, this Contract is unenforceable.

ARTICLE 34 – NOTICE

All notices required in this Contract shall be sent in writing by FAX or a delivery service requiring evident of receipt of delivery and if sent to the University shall be mailed to:

The University of West Florida
Elaine Smith, Manager
Procurement & Contracts
11000 University Parkway
Bldg. 8, Room 106
Pensacola, FL 32514
FAX: 850-474-2090

Notices sent to the Consultant shall be mailed to:

XXXXXXXXXX
XXXXXXXXXXXX
XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXX

ARTICLE 35 – PUBLIC ENTITY CRIME

In accordance with Fla. Stat. §287.133(2) (a), any person or affiliate who has been placed on the Convicted Contractor List following a conviction for a Public Entity Crime, may not participate in bids or proposals, and may not perform work or transact business with any public entity in excess of the threshold amount stated in Fla. Stat. §287.017 (Category Two) for thirty-six months from the date first placed on the list.

IN WITNESS WHEREOF, the University of West Florida Board of Trustees and Consultant have made and executed this Contract as of the last date signed below.

**University of West Florida
Board of Trustees, a Public Body
Corporate**

Consultant Name

By:

By:

Authorized Signature

Authorized Signature

Title

Title

Date

Date

Name (Printed)