

UWF BOARD OF TRUSTEES
AGREEMENT FOR ARCHITECT/ENGINEER SERVICES
FOR FORMULA AND DEPARTMENT FUNDED PROJECTS

THIS AGREEMENT

made this _____ day of _____, _____, by and between the University of West Florida, for and on behalf of the University of West Florida Board of Trustees, hereinafter called the Owner, and _____, Federal I.D. Number: _____, hereinafter called the Architect/Engineer.

WHEREAS, the primary intent of this Agreement is to obtain professional discipline services for projects related to the University of West Florida; however, other universities in the State University System may at their discretion utilize this Agreement to obtain professional architectural or engineering services when the location of their projects makes such an arrangement convenient;

WHEREAS, it is expected that the work Architect/Engineer will accomplish under this Agreement will be for Minor Projects, including Formula and Department Funded Projects which shall include repairs, modifications, alterations, and new construction projects whose Project Amounts as defined in Paragraph 7.1 hereinafter do not exceed \$2 million or the fee for study activity does not exceed \$200,000.

NOW THEREFORE, the Owner and the Architect/Engineer, for the considerations hereinafter set forth, agree as follows:

ARTICLE 1. The Architect/Engineer agrees to provide professional services for each project as hereinafter set forth.

ARTICLE 2. The Owner agrees to pay the Architect/Engineer as compensation for services:

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

2.2 For Additional Services, only when approved in writing by the Owner or, compensation based on the provisions of Paragraph 2.1 above.

2.3 The Owner shall determine whether the compensation is to be based on a lump sum or on the above listed hourly rates.

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

ARTICLE 3. ARCHITECT/ENGINEER'S BASIC SERVICES

3.1 Preliminary Design Phase. If authorized in writing by the Owner.

3.1.1 Upon written notice to proceed for each project, the Architect/Engineer shall consult with the Owner to ascertain the requirements of the project.

3.1.2 The Architect/Engineer shall prepare Schematic Design Studies leading to a recommended solution together with a general description of the Project for approval by the Owner, and shall submit to the Owner an estimate of Probable Project Construction Cost based on current area, volume, or other unit costs.

3.1.3 The Architect/Engineer shall prepare, from the approved Schematic Design Studies, the Design Development Documents consisting of plans, elevations and other drawings, including perspective sketches and outline specifications which follow the UWF "Building Design and Construction Standards" 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 Architect/Engineer shall submit to the Owner a further Estimate of Probable Project Construction Cost.

3.2 Construction Document Phase. If authorized in writing by the Owner.

3.2.1 The Architect/Engineer shall prepare, from the Approved Design Development Documents, Working Drawings and Specifications setting forth in detail the work required for the architectural, structural, mechanical, electrical, service-connected equipment, and site work, and the necessary bidding information, General Conditions of the Contract and shall assist in the drafting of Proposal and Contract Forms.

3.2.2 The Architect/Engineer shall keep the Owner informed of any adjustments to previous Estimates of Probably Project Construction Cost indicated by changes in scope, requirements, or market conditions.

3.2.3 The Architect/Engineer shall furnish up to six (6) copies of the Signed and Sealed Contract Documents, as directed by the Owner, consisting of construction drawings, specifications, construction agreement forms, general conditions, special provisions and technical provisions.

3.2.4 The Architect/Engineer shall furnish one set of completed construction documents and specifications in electronic format to the Department of Architectural and Engineering Services for archives and to be utilized for updating Space File floor plans. A duplicate set will be furnished in electronic format to the Office of Procurement and Contracts.

3.3 Construction Phase – General Administration of Construction Contracts. If authorized in writing by the Owner.

3.3.1 The Architect/Engineer shall assist the Owner in obtaining proposals from Contractors and in awarding and preparing construction contracts.

3.3.2 To the extent provided by this Agreement between the Owner and the Contractor, the Architect/Engineer shall make decisions on all claims of the Owner and Contractor and on all other matters relating to the execution and progress of the work or the interpretation of the Contract Documents. The Architect/Engineer shall check samples, schedules, shop drawings and other materials submitted within 21 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 Architect/Engineer. The Architect/Engineer shall prepare Change Orders, and assemble written guarantees required of the Contractor.

3.3.3 The Architect/Engineer shall visit the site a minimum of once per week, or at more frequent intervals 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 Architect/Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality of quantity of the work, or be responsible for the techniques or sequences of construction or the safety precautions incidental thereto; neither will the Architect/Engineer be responsible for the Contractor's 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 Architect/Engineer will keep the Owner informed of the progress of the work, will endeavor to guard the Owner against defects and deficiencies in the work of the Contractors, and may condemn work as failing to conform to the Contract Documents. Based on such observations and the Contractor's Applications for Payment, the Architect/Engineer will determine the amount owing to the Contractor 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 Architect/Engineer will also represent to the Owner that, to the best of the Architect/Engineer'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 Architect/Engineer 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 full information as to the requirements for the Project.
- 4.2 The Owner shall furnish or direct the Architect/Engineer to obtain, at the Owner's expense, a certified survey of the site giving, as required, 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 The Owner shall arrange and pay for such legal, auditing and insurance counseling services as may be required by the Owner for the Project.
- 4.5 If the Owner observes or otherwise becomes aware of any defect in the Project, the Owner shall give prompt written notice thereof to the Architect/Engineer.
- 4.6 If the Estimate of the Probably Project Construction Cost or the Detailed Cost Estimate or the lowest bona fide proposal is in excess of any limit stated herein, the Owner may give written approval of an increase in the limit or shall direct the Architect/Engineer to revise the project scope or quality, or both, to reduce the cost as required.
- 4.7 The Owner shall review and approve or take other appropriate action on all work submittals of the Architect/Engineer within Owner's review time as noted in the project request submittal.

ARTICLE 5. REIMBURSABLE EXPENSES

- 5.1 Reimbursable Expenses include actual expenses for Reproduction of drawings and specifications (excluding copies for Architect/Engineer's office use and sets furnished under Subparagraph 3.2.3) in the amounts set forth in Architect/Engineer's proposal and expenditures made by the Architect/Engineer in the interest of the Project for the following incidental expenses:
- 5.1.1 Fees paid for securing approval of authorities having jurisdiction over the project; and iron pipes and concrete monuments. No travel or wages will be allowed from the Architect/Engineer's office to project site. If other travel is authorized in advance by the Owner, the reimbursement shall be in accordance with Section 112.061, F.S.
- 5.1.2 If authorized in advance by the Owner, premium portions of overtime; renderings or models for the Owner's use.
- 5.1.3 If their employment is authorized in advance by the Owner, fees of special consultants, for other than the normal structural, mechanical and electrical engineering services and fees for estimators making Detailed Cost Estimates.

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 by the Owner.
- 6.1.3 The Architect/Engineer's latest Estimate of Probable Project Construction Cost based on current area, volume or other unit costs.

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

ARTICLE 7. STATEMENTS OF PROJECT COST

7.1 Owner's Project Amount: the Project Amount is the amount budgeted for actual construction of the Project including connections to utilities but is exclusive of cost of land, furnishings, contingencies and professional fees. The Project Amounts will be determined by the Owner on an individual basis.

7.2 Architect/Engineer's Estimates: Since the Architect/Engineer does not have control over the cost of labor and materials, nor over competitive bidding and market conditions, the estimates of construction cost provided for herein are to be made on the basis of experience and qualifications; however, the Architect/Engineer does not guarantee the accuracy of the estimates or probably cost as compared to the Contractor's bid. The Architect/Engineer shall, however, conform to the following provisions in an attempt to keep the Project cost within the Project Amount.

7.2.1 At the start of the Construction Document phase, the Architect/Engineer shall resolve with the Owner any apparent discrepancy between his/her Estimates of Probable Construction Cost 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 Project Amount. 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 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 Project Amount.

7.2.2 If the Architect/Engineer advises the Owner in writing, after the Preliminary Design Phase is completed and/or before the Construction Documents are 50% complete, that in the Architect/Engineer's opinion the scope of work which the Owner establishes and insists upon will cause the construction cost to exceed the funds available and resolution thereafter 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 compensation for the extra work of the Architect/Engineer, as required, to include alternates in the Bidding Documents as requested by the Owner and/or redesign and redraft the contract documents, shall be negotiated as provided for in Article 2 hereinabove.

7.2.3 If an award of construction contract is delayed more than four months following the completion of contract documents the Architect/Engineer shall be permitted to revise the estimates in accordance with the recognized published changes in construction costs.

ARTICLE 8. PERIOD OF SERVICE

8.1 Unless sooner terminated, as provided in Article 11, this Agreement shall remain in force for a one-year period, beginning July 1, 2005. This Agreement shall remain in force beyond the stated contract period as may reasonably be required for the design, award of contracts and construction of each Project initiated by June 30, 2006 including extra work and any required extension thereto.

8.2 This agreement may be renewed at the Owner's option for three additional one-year periods based upon satisfactory performance of the Architect/Engineer.

ARTICLE 9. PAYMENTS TO THE ARCHITECT/ENGINEER

9.1 Payments on accounts of the Architect/Engineer's service shall be as follows:

9.1.1 For Basic or Additional Services, upon satisfactory completion thereof, the amount prescribed in accordance with Article 2 hereinabove.

9.2 Payments for services of the Architect/Engineer as defined in Article 3 hereinabove, and for Reimbursable Expense as defined in Paragraph 5.1 hereinabove shall be made monthly upon presentation of a detailed invoice. Invoices shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

9.3 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 agency shall pay to the Architect/Engineer 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 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. 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.

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

9.5 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 reimbursements then due and any terminal expense resulting from the abandonment or suspension for more than three months.

ARTICLE 10. ARCHITECT/ENGINEER'S ACCOUNT RECORDS

10.1 Records relating to payment of the Architect/Engineer's personnel, consultants, and Reimbursable Expense pertaining to projects included under this Agreement and records of accounts between the Owner and Contractor shall be kept on a generally recognized accounting basis and shall be available to the Owner or his authorized representative at mutually convenient times.

ARTICLE 11. TERMINATION OF AGREEMENT

11.1 This Agreement may be terminated by either party upon seven days notice by mutual agreement, or should the other party fail substantially to perform in accordance with its terms through no fault of the other. In the event of termination, due to the fault of others than the Architect/Engineer, the Architect/Engineer shall be paid for services performed to termination date, including reimbursements then due, plus terminal expense. This Agreement may be terminated by the Owner at its sole discretion upon seven day's written notice to the Architect/Engineer.

ARTICLE 12. USE OF ARCHITECT/ENGINEER'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

12.1 The Drawings, Specification 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 reproducible copies in the electronic format of AutoCAD rel. 2000 or higher 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. The Architect/Engineer's Drawings, Specifications or other documents may be used by the Owner or others for future additions 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.

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 Architect/Engineer'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 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.

13.1.2 All other claims, disputes and other matters not covered by Subparagraph 7.1.1 shall be determined under the judiciary system of the State of Florida.

ARTICLE 14. SPECIAL PROVISION

14.1 This Agreement shall be governed by the laws of Florida.

14.2 Terms in this Agreement shall have the same meaning as those in the General Conditions of the Contract for Construction. As used herein, "General Conditions" shall mean: Division 0 – General Conditions, Division 1 – General Requirements, all as provided to the Architect/Engineer in connection with the Request for Proposals and all Addenda issued prior to execution of this Agreement and all modifications issued subsequent thereto. The General Conditions also include the General Conditions of the Contract for Construction prepared by the Office of Capital Programs of the Florida Board of Regents (or its successor the Florida Board of Education) for its use in connection with the Construction Program for the State University System of Florida, as amended from time to time, to the extent not consistent herewith.

14.3 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 engineerw will be enforced and will be strictly adhered to and all submittals shall be completed as specified.

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.

14.8 Prohibition against contingent fees: the Architect/Engineer 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 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 As required by Section 287.058, Florida Statutes, this contract may be unilaterally cancelled by the Owner for refusal by the Architect/Engineer to allow public access to all documents, paper, letters, or other material subject to the provisions of Chapter 119 and made or received by the Architect/Engineer in conjunction with the contract.

14.11 Unless otherwise provided in this Agreement, the Architect/Engineer and Architect/Engineer's consultants 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.

14.12 The Architect/Engineer shall enlist the services of a qualified consultant when approved in writing by the Owner, for, but not limited to, surveys, subsurface investigation, testing and cost estimating when required. The direct cost of these services shall be invoiced to the Owner from the Consultant through the Architect/Engineer, with approval for payment by the Architect/Engineer stated on the invoice. The Owner may pay the consultant directly, at the Architect/Engineer's discretion, in accordance with the terms of the written authorization.

14.13 As provided by Section 287.0582, F.S., the State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature.

14.14 As required by Section 287.133, F.S., the Architect/Engineer warrants that it is not on the convicted vendor list for a public entity crime committed within the past 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 \$10,000 in connection with this Project for a period of 36 months from the date of their being placed on the convicted vendor list.

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

***** ARCHITECT/ENGINEER*****

Attest:

By: _____

By: _____

(Name, Title and Corporate Seal)

(Name, Title)

As Witnessed by:

Date: _____

*****OWNER*****

By: _____

David O'Brien, C.P.M.
Associate Vice President
Administrative Services

As Witnessed by:

Date: _____
