

AGREEMENT BETWEEN OWNER AND PROFESSIONAL
(FOR USE ON CONSTRUCTION MANAGER AT RISK PROJECTS)

THIS AGREEMENT between Owner and Professional is made and entered into as of the latest date signed below (“Effective Date”) 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. No. _____, hereinafter called the Professional, which is authorized to do business in Florida.

WITNESSETH:

WHEREAS, Owner solicited statements of qualifications from interested Professionals for the design of the project described on Exhibit A (the “Project”); and

WHEREAS, based on Professional’s interview, Professional’s qualifications statement and related submissions, Owner has selected Professional for the Project; and

WHEREAS, Owner and Professional desire to enter into this Agreement;

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

ARTICLE 1 PROFESSIONAL'S RESPONSIBILITIES

1.1 Professional's Services

1.1.1 The Professional's services consist of those services performed by the Professional, Professional's employees and Professional's consultants as enumerated in Articles 2 and 3 of this Agreement.

1.1.2 The Professional 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 Professional shall at all times carry out its duties and responsibilities as expeditiously as possible and in accordance with the Project’s design schedule set forth on **Exhibit B**, subject to delays in the schedule not the fault of Professional or its consultants. The Professional represents that it is thoroughly familiar with and understands the requirements of the Project scope and is experienced in the design and administration of construction of building projects of the type and scope contemplated by the Owner’s program for the Project.

1.1.3 The Professional shall use the Project Team (including any consultants) as designated in **Exhibit C**. The Professional shall not remove or replace any members of the Project Team, except upon approval by the Owner in writing based upon good cause shown. Further, if any member of the Project Team discontinues service on the Project for any reason whatsoever, Professional shall promptly replace such team member with an individual approved by Owner, in writing, which approval will not be unreasonably withheld.

1.1.4 The Professional shall (i) visit and thoroughly inspect 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 utilize all Project geotechnical, archaeological, Hazardous Substances (hereinafter defined), structural, chemical, electrical, mechanical and construction materials tests, investigations and recommendations; and (vi) any other information necessary for a thorough understanding of the Project provided by Owner. If the Project involves modifications to any existing structure(s) or other man-made feature(s) on the Project site, the Professional shall also review all as-built and record drawings, plans and specifications of which Professional has been informed by Owner and thoroughly inspect the existing structure(s) and man-made

feature(s) to identify existing deficiencies and ascertain the specific locations of pertinent structural components.

1.1.5 The Professional shall perform its services in conjunction, and coordination, with the services to be performed by the Construction Manager to be engaged by Owner.

1.1.6 The Professional shall immediately make additions, changes and corrections to any documents prepared by Professional necessitated by errors and omissions in the Professional's performance of its services at no additional cost to the Owner.

1.1.7 The Professional shall furnish professional services in accordance with professional standards currently practiced by Professional firms on projects similar in size, complexity and cost to the Project.

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

1.1.9 The Professional shall participate in and cooperate with, design phase and construction phase commissioning (including peer review), validation, and other third-party quality assurance and quality control processes, if any.

1.1.10 The Professional will participate in and comply with Florida's Art in State Buildings Program established by Section 265.284(c) F.S.

ARTICLE 2 SCOPE OF PROFESSIONAL'S BASIC SERVICES

2.1 General

2.1.1 The Basic Services consist of those described in this Article 2 and as described on **Exhibit C**, the Schedule of Services and Consultants. The Professional shall be responsible for all services performed by the Professional's consultants and shall assure that the work of its consultants complies with all of the requirements of this Agreement. Owner is an intended third party beneficiary of Professional's contracts with such consultants and the contracts between the Professional and such consultants shall so provide. Furthermore, the Professional's contracts with its consultants shall require that in the event of default under, or termination of, this Agreement, and upon request of Owner, the Professional's consultants will perform services for the Owner.

2.1.2 The Professional shall perform all services in accordance with requirements of governmental agencies having jurisdiction over the Project and applicable guidelines described on **Exhibit D**. In addition, the Professional's design shall comply with all applicable building codes, accessibility laws and regulations, and other standards in effect at the time of the design work. To the extent Owner's standards are higher than applicable legal requirements, such standards shall be met unless Professional obtains a variance from Owner in writing.

2.1.3 The design and construction drawings shall be developed using the latest version of Autodesk AutoCAD Architectural software approved by UWF.

2.1.4 During the design phases, Professional agrees to provide, as part of Basic Services, on-site program and budget verification, development and review workshops necessary or desirable to develop a design, acceptable to Owner and its user groups, which is within Owner's budget. Such workshop(s) will be conducted with the Professional and representatives of Owner's user groups and shall utilize the Charrette format. Without limitation of the foregoing, at the Concept Schematic Design, Advanced Schematic Design and Design Development phases, the Professional shall support and attend presentations and shall include drawings, models, renderings and other tools as necessary to illustrate and convey information on particulars of the design intent. The Professional will use Building Information Modeling (B.I.M.) 3-dimensional software with Conceptual Schematic Design, Advanced Schematic Design, and Design Development phases. The Professional will use B.I.M. for presentation meetings with the User Committee and Facilities Staff at these submittal phases. This shall include site plans with building footprint, landscape and tree

removal plans, building elevations, and architectural details as needed. At such presentations the Professional shall also address all issues and concerns previously identified but not yet addressed by the Professional to the University Review Committee's satisfaction.

2.1.5 The Escambia County Office Planning and Zoning is the Authority having jurisdiction for plan code governance, Americans with Disabilities Act Compliance, and construction permitting.

2.1.6 The Professional shall submit on behalf of the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

2.1.7 The Professional shall receive Owner written comments to ASD, DD, and CD design submittals. The Professional will acknowledge each item within a written document to the Owner by identifying a) will comply, b) cannot comply due to code/accessibility/design standards conflict, or c) not in scope of work/project budget. The Professional will await Owner written approval prior to proceeding to the next design phase.

2.2 Pre-Design Phase (PD)

2.2.1 The Professional 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.

2.2.2 The Professional 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 Subparagraph 5.2.1.

2.2.3 After reviewing the Project requirements, the Professional shall advise the Owner of the tests and surveys described in Article 4 that should be conducted prior to development of plans and specifications.

2.2.4 The Professional shall review with the Owner alternative approaches to design and construction of the Project.

2.2.5 When the Professional makes submittals to the Owner and Professional at the various phases of design as described in Sections 2.3 through 2.6 below, the Professional shall comply with the requirements for such submittals set forth on **Exhibit E**.

2.3 Concept Schematic Design (CSD)

2.3.1 Based on the approved program, schedule and construction budget requirements, the Professional shall prepare several alternative design solutions. The Professional shall present these alternatives to the Owner, making submittals of studies, consisting of sketches and initial concepts. After receiving the Owner's comments, the Professional shall prepare, for approval by the Owner, Conceptual Schematic Design Studies which shall represent one or more recommended solutions. The submittal shall consist of documents, including sketches, initial concepts, orientation, and relationships to existing and future programmed projects and a Construction Cost Estimate Report. If an independent cost estimator is employed (by the Professional or the Owner), the Professional shall provide the Conceptual Schematic Design submittal to, and work with, the independent cost estimator to reconcile its estimate with the independent cost estimator's estimate. The Professional shall, if requested by the Owner, study, consider, initiate and/or implement cost savings proposals as provided in Subparagraph 5.2.2.

2.4 Advanced Schematic Design (ASD)

2.4.1 Based upon the approved Conceptual Schematic Design studies, the Professional shall prepare, for approval by the Owner, Advanced Schematic Design Documents consisting of drawings, renderings and other documents illustrating the scale and relationship of Project components, energy conservation approach and building systems parameters. The Professional shall submit to the Owner a preliminary estimate of Construction Cost based on current area, volume or other unit costs, and the Advanced Schematic Design Documents for review. If an independent cost estimator is employed (by the Professional or the Owner), the

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Professional shall also provide the Advanced Schematic Design submittal to, and work with, the independent cost estimator to reconcile its estimate with the independent cost estimator's estimate. The Professional shall, if requested by Owner, study, consider, initiate, and/or implement cost savings proposals as provided in Subparagraph 5.2.2.

2.4.2 If a life-cycle cost computer analysis is authorized by Owner under **Exhibit C** by Additional Services Authorization, the necessary documentation will be submitted with the Advanced Schematic Design Documents and such submittals shall comply with **Exhibit E**. The Professional shall prepare data, input the data and run a life-cycle cost computer program analysis approved by the Owner. Before preparing the data, the Professional shall discuss the energy-saving schemes proposed for the Project with the Owner's project manager. When an agreement has been reached, the Professional shall document the approved energy-saving schemes and obtain the written concurrence of the Owner's project manager. The Professional shall input the data and run the computer program using the following economic factors:

- a). Discount rate = 7%;
- b). Operating & Maintenance cost escalation = 0%;
- c). Energy Replacement costs escalation = 1%;
- d). Project Life = 25 years.

2.4.3 The Professional will revise the documents as needed to bring the Project's estimated construction cost within the Owner's target construction budget at no additional cost to the Owner unless the Owner has advised the Professional to proceed with a scope which the Professional has advised is over budget.

2.5 Design Development Phase

2.5.1 Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, the Professional shall prepare, for approval by the Owner, Design Development Documents consisting of drawings, renderings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical, plumbing, fire protection and electrical systems, materials and such other elements as may be appropriate. The Professional shall submit the Design Development Documents, together with the Construction Cost Estimate Report to the Owner for review. If an independent cost estimator is employed (by the Professional or the Owner), the Professional shall also provide the Design Development submittal to, and work with, the independent cost estimator to reconcile its estimate with the independent cost estimator's estimate. The Professional shall, if requested by the Owner, study, consider, initiate, and/or implement cost savings proposals as provided in Subparagraph 5.2.2.

2.5.2 The Professional will revise the documents as needed to bring the Project's estimated construction cost within the owner's target construction budget at no additional cost to the Owner unless the Owner has advised the Professional to proceed with a scope which the Professional has advised is over budget.

2.6 Construction Documents Phase

2.6.1 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 Professional shall prepare and submit to Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project. Construction Documents shall be provided to Owner in accordance with **Exhibit E**. The Owner will use AIA Document A201-1997 Revision General Conditions of the Contract for Construction as revised 2/14/2005, with only such changes and modifications as are agreed upon by Owner (the "General Conditions of the Contract for Construction").

2.6.2 The Professional shall submit its Construction Cost Estimate Reports to Owner at the same time as it submits Construction Documents in accordance with Exhibit E. If an independent cost estimator is employed (by the Professional or the Owner), the Professional shall also provide the submittals to, and work with, the independent cost estimator to reconcile its estimate with the independent cost estimator's estimate. The Professional shall, if requested by the Owner, study, consider, initiate and /or implement cost savings proposals as provided in Subparagraph 5.2.2.

2.6.3 For a threshold building, as defined in Chapter 553, Florida Statutes, a structural inspection plan shall be included in the Specifications.

2.6.4 The Professional will revise the documents as needed to bring the Project's estimated construction cost within the owner's target construction budget at no additional cost to the Owner unless the Owner has advised the Professional to proceed with a scope which the Professional has advised is over budget.

2.7 Solicitation or Negotiation Phase

2.7.1 The Professional shall attend the Owner's pre-submittal meetings with potential respondents and be available to respond to questions as requested by Owner.

2.7.2 The Professional shall respond to Owner's requests for clarifications as soon as possible but no later than seven business days prior to the solicitation due date to allow the Owner to issue addenda as necessary to potential bidders.

2.7.3 The Professional shall submit to the Owner a Corrected/Conformance Document Set incorporating all design review comments, revisions and addenda issued as a result of the construction solicitation process.

2.7.4 The Professional shall assist the Owner with pre-qualification or "Best Value" analyses of potential respondents if applicable.

2.7.5 The Professional shall assist, upon Owner's request, in reviewing submittals to determine whether such submittals are responsive to Owner's solicitation.

2.7.6 In the event Construction Manager does not receive bids from their pre-qualified subcontractors and vendors within the Owner's construction budget for the Project, and the Project must be re-designed, the Professional shall revise the Construction Documents as needed to bring the Project's Construction Cost within the Owner's budget at no additional expense to the Owner unless the Owner has advised the Professional to proceed with a scope which the Professional has advised is over budget.

2.8 Construction Phase Administration of the Construction Contract

2.8.1 The Professional's responsibility to provide Basic Services for the construction phase under this Agreement commences with the Owner's execution of a construction agreement with the Construction Manager. Subject to Paragraph 9.2, such responsibility shall continue until final completion of the Project (which, in general, shall be the date when construction of the Project is completed and final payment is due to the Construction Manager).

2.8.2 The Professional shall carry out its Construction Administration services as set forth below and in the standards set forth on **Exhibit D**. To the extent the terms of this Agreement, the standards set forth on Exhibit D, and the General Conditions of the Contract for Construction are inconsistent, the terms of this Agreement shall govern.

2.8.3 Duties, responsibilities and limitations of authority of the Professional shall not be restricted, modified or extended without written agreement of the Owner and Professional.

2.8.4 The Professional shall be a representative of, and shall advise and consult with, the Owner during construction until final payment to the Construction Manager is made. The Professional shall have authority to act on behalf of the Owner only to the extent provided in this Agreement.

2.8.5 The Professional 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 Professional shall visit the site the minimum number of times required on **Exhibit A**, or at more frequent intervals appropriate to the stage of construction, or as otherwise agreed by the Owner and Professional, in writing, 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. However, the Professional shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of on-site observations as an architect or as an engineer, the Professional 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.

2.8.6 The Professional 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 Construction Manager's Agreement with the Owner. The Professional shall not be responsible for the Construction Manager's schedules or failure to carry out the Work in accordance with the Contract Documents. The Professional shall not have control over or charge of acts or omissions of the Construction Manager, its subcontractors, or any of their agents or employees, or of any other persons performing portions of the Work.

2.8.7 The Professional shall at all times have access to the Work wherever it is in preparation or progress.

2.8.8 Except as may otherwise be provided in the Contract Documents or when direct communications have been specifically authorized, the Owner and Construction Manager shall communicate through the Professional. Communications by and with the Professional's consultants shall be through the Professional.

2.8.9 Based on the Professional's observations and evaluations of the Construction Manager's Applications for Payment, the Professional shall review and certify the amounts due the Construction Manager. The Professional's certification for payment shall constitute a representation to the Owner, based on the Professional's observations at the Project site 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 Professional'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 Professional. The issuance of a Certificate for Payment shall further constitute a representation that the Construction Manager is entitled to payment in the amount certified.

2.8.10 The Professional shall reject Work which does not conform to the Contract Documents. Whenever the Professional considers it necessary or advisable for implementation of the intent of the Contract Documents, the Professional 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 Professional 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 Professional to the Construction Manager, its subcontractors, material and equipment suppliers, any of their agents or employees or other persons performing portions of the Work.

2.8.11 The Professional shall review, certify, approve, reject or take other appropriate action upon Construction Manager's inquiries and submittals, such as shop drawings, product data and samples. The Professional shall not approve any such submittals unless such submittals conform with (i) the Project program and design concept; (ii) the Construction Documents; (iii) the Owner's total budgeted Construction Cost; (iv) the University of West Florida Design and Construction Standards; and (v) governing codes and authorities having jurisdiction. In the event the University of West Florida Design and Construction Standards exceed applicable legal requirements, those University of West Florida standards shall govern. The Professional's review shall be completed so that all Work can be performed without delay and all products or materials may be ordered or fabricated with sufficient time to meet the Project schedule.

2.8.12 The Professional shall prepare Change Orders, with supporting documentation and data, if the Professional determines the same is necessary for the Owner's approval and execution in accordance with the Contract Documents.

2.8.13 The Professional shall conduct inspections to determine the dates of Substantial Completion and Final Completion, 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 by the Construction Manager with the requirements of the Contract Documents.

2.8.14 The Professional shall interpret and make recommendations 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 Professional's response to such request shall be made within 15 (fifteen) calendar days of receipt of such a request.

2.8.15 Interpretations and decisions of the Professional 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 Professional shall endeavor to secure faithful performance by both Owner and Construction Manager and shall not show partiality to either.

2.8.16 The Professional'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.

2.8.17 The Professional shall prepare "As-Built" or record drawings at Project completion in accordance with the requirements set forth on **Exhibit E**. These drawings shall include changes made to the Project by Change Orders, Addenda to the Construction Documents, Architect's Supplemental Information, field orders, field reports, Requests for Information, shop drawings, other directives and submittals and information provided by the Professional.

2.8.18 The Professional shall work with Owner to pursue Owner's goal, if any, of a Leadership in Energy and Environmental Design (LEED) certification for the Project, at the level set forth on **Exhibit A**.

2.8.19 The Professional shall perform all of its required services relating to the Substantial Completion deliverables in accordance with applicable documents and standards set forth in Section 2.1.2 or listed in **Exhibit D**.

2.9 Post Occupancy Phase

2.9.1 The Professional shall perform all of its required services relating to final completion of construction deliverables in accordance with the University of West Florida Design Services Guide.

2.9.2 The Professional shall respond to Owner's requests to review design and construction issues during the construction warranty period; coordinate and participate in the end of the warranty period inspection in accordance with applicable documents and standards set forth in Section 2.1.2 or listed in **Exhibit D** and produce a summary report documenting deficiencies, problems, or other outstanding items.

2.9.3 The Professional will coordinate warranty issues as required for one (1) year following the Date of Substantial Completion.

ARTICLE 3 ADDITIONAL SERVICES

3.1 General

3.1.1 If the services described in this Article 3 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 prior to their performance unless they are listed in **Exhibit C**.

3.1.2 For Additional Services described in this Article 3, a lump sum or not-to-exceed amount which is satisfactory to both parties shall be negotiated on each occasion of activating a specific additional services authorization. The Professional's staff costs associated therewith shall be based on the hourly rates set forth on **Exhibit F**.

3.1.3 For Additional Services being provided by consultants not included on the original Project Team, which require no work on the part of the Professional other than administering the work thereof (i.e., securing the services, approving the work, and invoicing on behalf of the consultant), the Professional may request a mark-up not to exceed percentage specified in **Exhibit A** on the consultant's fee to cover the Professional's administrative costs. This mark-up will be based on the complexity and time spent.

3.2 Services Considered Additional Services

3.2.1 Construction phase representation at the Project site more extensive than that described in Subparagraph 2.8.5.

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

3.2.2.1 Inconsistent with approvals or instructions previously given by the Owner; or

3.2.2.2 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 the preparation of such documents.

3.2.3 Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity and the Owner's schedule and budget.

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

3.2.5 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

3.2.6 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 Construction Manager's Agreement with the Owner.

3.2.7 Providing services in connection with a public hearing or legal proceeding except where the Professional is party thereto.

3.2.8 When required by the Owner, preparing documents for alternate, separate or sequential bids, except issuing early solicitation packages in support of fast-track construction delivery process.

3.2.9 Programming the requirements of the Project.

3.2.10 Providing planning surveys, site evaluations or comparative studies of prospective sites.

3.2.11 Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.

3.2.12 Providing services relative to future facilities, systems and equipment, when not specifically included in the original program for the Project.

3.2.13 Making measured drawings of existing construction when required for planning additions or alterations thereto.

3.2.14 Providing coordination of construction performed by separate Construction Managers or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.

3.2.15 Providing interior design and other similar services required for, or in connection with, the selection, procurement or installation of furniture, furnishings and related equipment.

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3.2.16 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.

3.2.17 Preparing Mylar reproducible record drawings.

3.2.18 Providing services after issuance by the Owner of the final payment to the Professional, except those services described in paragraph 2.9 which may be provided after final payment to the Professional.

3.2.19 Providing services of consultants for other than architectural, structural, mechanical, plumbing, fire protection and electrical engineering portions of the Project and those services described on **Exhibit C**.

3.2.20 Preparing data, inputting the data and running a life-cycle cost computer program analysis approved by the Owner.

3.2.21 Providing site surveys, geotechnical testing services or other special tests.

3.2.22 Providing special inspection on threshold buildings as defined in Chapter 553, Florida Statutes.

3.2.23 Providing prolonged contract administration and construction observation should the construction time specified for final completion be exceeded by more than 60 days due to no fault of the Professional.

3.2.24 Providing any other services not otherwise included in this Agreement.

3.2.25 Notwithstanding anything to the contrary herein, Professional shall not be entitled to additional design fees if the same are necessitated by the fault of Professional.

3.2.26 Providing any other services shown on **Exhibit C** marked with a "No/X" that may be considered at a later date.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 The Owner shall provide full information regarding requirements for the Project.

4.2 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.

4.3 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Professional in order to avoid unreasonable delay in the orderly and sequential progress of the Professional's services.

4.4 The Owner shall review and approve or take other appropriate action on all work submittals of the Professional within the timeframes set forth in **Exhibit B**.

4.5 If required, the Owner shall furnish, or direct the Professional to obtain at the Owner's expense, surveys describing physical characteristics, legal limitations and utility locations for the Project site, and a written legal description of the Project site. 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.

4.6 If required, the Owner shall furnish, or direct the Professional 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, sub-surface imaging, 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.

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

4.8 The Owner shall furnish all legal, accounting and insurance counseling services as may be required by the Owner for the Project, including auditing services the Owner may require to verify the Construction Manager's Applications for Payment or to ascertain how, or for what purposes, the Construction Manager has used the money paid by or on behalf of the Owner.

4.9 Review of Professional's documents by the Owner shall be solely for the purpose of determining whether such documents are generally consistent with the Owner's intent and such review shall not relieve the Professional of any of its responsibilities. Notwithstanding the foregoing, prompt written notice shall be given by the Owner to the Professional if the Owner becomes aware of any fault or defect in the Project or non-conformance with the Contract Documents.

ARTICLE 5 CONSTRUCTION COST

5.1 Definition

5.1.1 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 Professional.

5.1.2 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 Professional, including connections to utilities, plus a reasonable allowance for the Construction Manager's overhead and profit.

5.1.3 The Construction Cost does not include the compensation of the Professional and Project Team, Owner's consultants, the costs of the land, rights-of-way, fixtures, furnishings and equipment and contingencies or other costs which are the responsibility of the Owner as provided in Article 4. For this Project, Construction Costs shall not exceed the amount set forth on **Exhibit A**.

5.2 Responsibility for Construction Cost

5.2.1 Evaluations of the Owner's Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Cost, if any, prepared by the Professional, represent the Professional's best judgment as a design professional familiar with the construction industry. It is also recognized, however, that neither the Professional 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 Professional 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 Professional.

5.2.2 Subject to section 5.2.1, construction cost estimating shall be the responsibility of the Professional, but detailed cost estimates may be developed by an independent third party cost estimator. In such cases, the Professional and the independent cost estimator shall work together to reconcile any material differences in their respective estimates. The cost of the independent cost estimator is not included in Basic Services. Drawings and specifications produced by the Professional shall, except as otherwise authorized or directed by the Owner, be consistent with or reasonably inferable from design documents upon which previously reconciled cost estimates are based. The Professional shall study and consider cost saving proposals made by any independent cost estimator providing services to the Project, shall itself initiate such proposals when necessary and appropriate, and at the Owner's written request, shall incorporate such proposals into the drawings and specifications provided they are consistent with the design intent of the Project and within

generally accepted standards of professional practice. Such study, consideration and incorporation shall be a Basic Service.

ARTICLE 6 USE OF PROFESSIONAL'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

6.1 The Drawings, specifications and other documents prepared by the Professional for this Project are instruments of the Professional's service for use solely with respect to this Project, except as may be expressly permitted herein. The Professional 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 format and reproducible copies, of the Professional's Drawings, specifications and other documents and may use the same, without compensation to the Professional, as may be necessary or desirable in the operation, maintenance, construction and renovation of the Project and the remainder of Owner's campus, including, without limitation, additions or renovations to this Project and submittals or distribution of the same to meet official regulatory requirements or other similar requirements, provided in no event may the Owner use the Professional's Drawings, specifications, or other documents for the construction of a new facility unless agreed to in writing by the Professional and as otherwise permitted by Florida law.

6.2 The Professional shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Professional's promotional and Professional materials. The Professional's materials shall not include the Owner's confidential or proprietary information.

ARTICLE 7 CLAIMS AND DISPUTES

7.1 The parties shall in good faith attempt to settle by informal proceedings claims, disputes, or other matters in question between the parties to this Agreement. However, if such informal proceedings are not successful, a written petition setting forth the basis for the claim shall be filed with the Owner for consideration. Such petitions shall be handled as follows:

7.1.1 Claims of less than \$200,000 shall be handled as follows:

A petition shall be considered by the president of the Owner. If the petition involves disputed issues of material fact, it shall be referred for a quasi-judicial hearing. The president of the Owner may designate an administrative law judge to conduct a hearing in accordance with university procedures. At the conclusion of the hearing, the administrative law judge shall submit a written recommended order to the president.

After consideration of the petition, or, if the matter has been the subject of a quasi-judicial hearing, after consideration of the written recommended order of the administrative law judge, the president shall issue a preliminary order for final action and notify the Professional of such order. The preliminary order of the president shall be final, unless the firm takes exception to such order; in which event, it may file with the president such exceptions within twenty-one (21) days of receipt of notice of the preliminary order. At the end of the period for filing exceptions, the president will review the preliminary order and any exceptions that have been filed, and will render the final order. The decision of the president is final. Appellate review of the final order shall be in accordance with the requirements of Rule 9.190 (b) (3), Florida Rules of Appellate Procedure.

7.1.2 All other claims, disputes and other matters shall be determined under the judiciary system of the State of Florida; provided that the parties may agree to handle such claims under the provisions of Sections 7.1.1, above. Venue shall lie in Escambia County, Florida.

ARTICLE 8 TERMINATION OR SUSPENSION

8.1 If the Professional defaults by failing to substantially perform, in accordance with the terms of this Agreement, as reasonably determined by Owner, the Owner may give written notice to the Professional (i) terminating this Agreement effective seven (7) calendar days from the date of notice; or (ii) setting forth the nature of the default and requesting the Professional initiate cure within seven (7) calendar days from the date of notice. At any time thereafter, if the Professional fails to initiate cure upon the request of the Owner

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and continue such cure until complete, the Owner may give notice to the Professional of immediate termination. If the Owner terminates this Agreement pursuant to this paragraph, and it is subsequently determined by a court of competent jurisdiction that the Professional was not in default, then in such event said termination shall be deemed a termination for convenience as set forth in Paragraph 8.3.

8.2 If the Owner defaults by failing to substantially perform in accordance with the terms of this Agreement, the Professional shall give written notice to the Owner setting forth the nature of the default and requesting cure within seven (7) calendar days from the date of notice. If the Owner fails to cure within seven (7) calendar days from the date of notice, Professional may give notice to the Owner of immediate termination.

8.3 The Owner may at any time give written notice to the Professional terminating this Agreement or suspending the Project, in whole or in part, for the Owner's convenience and without cause. If the Owner terminates this Agreement or suspends the Project, the Professional shall immediately reduce its staff, services and outstanding commitment in order to minimize the cost of termination or suspension.

8.4 If the Agreement is terminated by the Owner pursuant to Paragraph 8.1, no further payment shall be made to the Professional until completion of the Project. At such time, the Professional's compensation shall, at Owner's option, be calculated (i) on the basis of services actually performed and expenses actually incurred prior to the effective termination date, or (ii) on the basis of the payment terms set forth elsewhere herein. In either case, the Professional's compensation shall be reduced by all costs and damages incurred by Owner as a result of the default of Professional. If the Agreement is (i) terminated by the Professional pursuant to Paragraph 8.2; (ii) terminated by the Owner pursuant to Paragraph 8.3; or (iii) suspended more than ninety (90) days by the Owner pursuant to Paragraph 8.3, the Professional's compensation shall be calculated on the basis of services actually performed and expenses actually incurred prior to the effective termination or suspension date and reasonable costs associated with the termination or suspension.

ARTICLE 9 PERIOD OF SERVICE

9.1 The Professional's Basic Services shall be performed in compliance with the Project schedule attached hereto as **Exhibit B**, as the same may be amended by agreement of the Owner and the Professional, in writing, subject to delays not the fault of the Professional or its consultants.

9.2 Unless sooner terminated, this Agreement shall remain in force for the 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, and the post-occupancy phase contemplated by Subparagraph 2.9.

ARTICLE 10 PAYMENTS TO THE PROFESSIONAL

10.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Professional and the Professional's employees and consultants in the interest of the Project, as identified in the following subparagraphs:

10.1.1 Expenses of transportation and temporary lodging of principals and employees when traveling in connection with services other than those defined in Article 2 when authorized in writing by the Owner, at the rates set forth in Section 112.061, Florida Statutes.

10.1.2 Expenses associated with reproduction of Drawings and Specifications, excluding copies for Professional's office use and sets required at each phase for the Owner's review and approval as set forth on **Exhibit E**.

10.1.3 Fees paid for securing approval of authorities having jurisdiction over the Project, if any.

10.1.4 If authorized in advance by the Owner in writing, the actual expense of overtime work requiring higher than regular rates.

10.1.5 Expense of renderings, models and mock-ups requested by the Owner, in writing, which are more extensive than those required to be provided as part of Basic Services.

10.1.6 If required by the Owner to place an announcement for construction services, the Professional shall be reimbursed for that expense.

10.1.7 Except as expressly provided otherwise to the contrary in this Agreement, Reimbursable Expenses will be reimbursed only when authorized in advance and in writing.

10.2 The Owner agrees to pay the Professional as compensation for the Professional's services:

10.2.1 For the Basic Services described in Article 2, and on **Exhibit C**, the lump sum amount set forth on **Exhibit G**. The Professional will use the Exhibit G format for submitting payment requests to the Owner using the Standard University of West Florida Facilities "Consultant's Pay Request" form.

10.2.2 For Additional Services defined in Article 3 to be paid as a lump sum, the lump sum or sums prescribed in the Additional Services Authorization.

10.2.3 For Additional Services defined in Article 3 to be a not-to-exceed amount, the actual costs for such services, which shall be equal or less than the not-to-exceed amount prescribed in the Additional Services Authorization.

ARTICLE 11 BASIS OF COMPENSATION

11.1 Payments on account of the Professional's services shall be as follows:

11.1.1 For the Professional's Basic Services, Additional Services and Reimbursable Expenses payments shall be made upon approval of each phase of services performed as described on **Exhibit G**. Upon completion of each phase, Professional shall submit an Application for Payment with applicable back-up documentation. Undisputed payments owed shall be paid by Owner within thirty (30) days of receipt of a complete Application for Payment.

11.2 A Vendor Ombudsman has been established within the owner's office of Internal Auditing and Management Services. The duties of this office 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 (850) 474-2637.

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

ARTICLE 12 SPECIAL PROVISIONS

12.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without regard to its choice of laws provisions and venue shall lie in the courts in Escambia County, Florida.

12.2 Capitalized terms used herein but not expressly defined herein shall have the meaning ascribed thereto in the General Conditions of the Contract for Construction.

12.3 Professional shall strictly adhere to the procedures and requirements as set forth in the applicable documents listed in **Exhibit D**.

12.4 The Owner and Professional, 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 Professional shall assign this Agreement without the written consent of the other.

12.5 This Agreement represents the entire and integrated agreement between the Owner and Professional 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 Professional.

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

12.7 The Professional represents and warrants that the Professional has not employed or retained any entity or person (other than a bona fide employee working solely for the Professional) to solicit or secure this Agreement, and that the Professional has not paid or agreed to pay any entity or person (other than a bona fide employee working solely for the Professional) any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

12.8 This Agreement may be unilaterally canceled by the Owner if the Professional or its consultants refuse to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, which are made or received by the Professional or its consultants in conjunction with this Agreement.

12.9 In consideration for this Agreement, the Professional hereby conveys, sells, assigns and transfers to the Owner all of its right, title and interest in and to any and all causes of action it may now have or may hereafter acquire under the antitrust laws of the United States and the State of Florida for price fixing, relating to the goods or services purchased or acquired by the Owner under this Agreement.

12.10 Unless otherwise provided in this Agreement, the Professional and its consultants shall have no responsibility for the discovery, prior presence, handling, removal or disposal of or exposure of persons to hazardous substances in any form at the Project site regulated by federal law or the laws of the State of Florida or county in which the property is located, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances (collectively, "Hazardous Substances"). Notwithstanding the foregoing, the Professional shall immediately notify the Owner both orally and in writing of the presence or suspected presence and location of any Hazardous Substances on the Site of which it becomes aware.

12.11 The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

12.12 The Professional represents and warrants that it is not on the convicted vendor list for a public entity crime committed within the past thirty six (36) months. The Professional further represents and warrants that it will neither utilize the services of, nor contract with, any supplier, subcontractor, or consultant for an amount in excess of \$10,000.00 in connection with this Project if such supplier,

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subcontractor or consultant is on the convicted vendor list for a public entity crime committed within the past thirty six (36) months.

12.13 Professional and the other members of the Project Team shall each carry an insurance policy or policies covering their liability under this Agreement for any and all errors or omissions committed by them. The coverage shall be maintained during the term of the Agreement and for at least three years following completion of all operations to be performed. The policy or policies shall have a limit of liability not less than the amount set forth in **Exhibit I**. The policy retroactive date will coincide with or precede the start of services being provided hereunder (including subsequent policies purchased as renewals or replacements). The Professional shall make every effort, and cause the other members of the Project Team to make every effort, to maintain similar insurance for at least three (3) years following Project completion. If the insurance is terminated for any reason, the Professional agrees, and will cause the other members of the Project Team to agree, to purchase an extended reporting provision of at least three years to report claims arising from work that is being performed. The policy will allow for reporting of circumstances or incidents that might give rise to future claims. All insurance policies will be with a company or companies lawfully authorized to do business in Florida, and with an A.M. Best rating of no less than B+. All insurance policies shall be issued and countersigned by duly authorized representatives of such companies and shall be written on ISO standard forms or their equivalents. The insurance policies shall require that the insurer shall provide at least thirty (30) days written notice to Owner if a policy is to be canceled, modified or the coverage thereunder reduced before the expiration date thereof and Professional shall provide Owner with a copy of an endorsement to the policy evidencing the same.

12.14 The Professional shall also obtain and maintain the minimum insurance commercial general liability, automobile liability, worker's compensation and umbrella coverage as set forth in **Exhibit I**. By requiring such minimum insurance, the Owner shall not be deemed or construed to have assessed the risk that may be applicable to the Professional. The Professional shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. The Professional is not relieved of any liability or other obligations assumed or pursuant to the Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

12.15 The Professional 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.

12.16 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.

12.17 To the maximum extent permitted by law, the Professional hereby agrees to indemnify and hold Owner and its 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 Professional and other persons employed or utilized by the Professional, including its consultants, in the performance of the Agreement. This indemnification shall survive the expiration or earlier termination of this Agreement.

12.18 All modifications to this Agreement are set forth on **Exhibit A**.

12.19 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.

FOR THE **PROFESSIONAL:**

ATTEST:

(CORPORATE SEAL)

AS WITNESSED BY:

BY: _____

NAME: _____

TITLE: _____

DATE: _____

FOR THE **OWNER:**

THE UNIVERSITY OF WEST FLORIDA BOARD OF TRUSTEES

AS WITNESSED BY:

BY: _____

David O'Brien, Associate Vice President and Chief Contracting Officer

DATE: _____