

AGREEMENT BETWEEN OWNER AND ARCHITECT/ENGINEER

THIS AGREEMENT

made this day of , 2004, by and between the **University of Central Florida, on behalf of the Board of Trustees, State of Florida**, hereinafter called the Owner, and **Architects Name & Address** Federal I.D. number **00-00000000**, hereinafter called the Architect/Engineer.

WHEREAS, the Owner intends to implement the program entitled, **Name of Program**, Facilities Planning Building Program, **Dated**, which Project shall be known as **Project Name**, State Project No. BR-**000**, hereinafter called the Project.

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

ARTICLE 1

ARCHITECT/ENGINEER'S RESPONSIBILITIES

1.1 ARCHITECT/ENGINEER'S SERVICES

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

1.1.2 The Architect/Engineer'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 Owner, the Architect/Engineer shall submit for the Owner's approval a schedule for the performance of the Architect/Engineer's services based on the time periods established in Article 9 herein, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule as approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect/Engineer or Owner.

1.1.3 The Architect/Engineer shall use the Project Team as designated on the Architect/Engineer's Professional Qualifications Supplement. The Architect/Engineer shall not remove or replace any members of the Project Team, except upon approval by the Owner based upon good cause shown.

ARTICLE 2

SCOPE OF ARCHITECT/ENGINEER'S BASIC SERVICES

2.0 DEFINITION

2.1 PROGRAM VERIFICATION

2.1.1 The Architect/Engineer shall provide a detailed space analysis based on the approved building program and meetings with the Owner. The Architect/Engineer shall prepare a draft of the revised program for review and comment by the Owner. Based on the review and comments by the Owner, the Architect/Engineer shall prepare and submit ten (10) copies of a final revised program to the Owners.

2.1.2 The Architect/Engineer's Basic Services consist of those described in Paragraphs 2.1 through 2.8 as part of Basic Services, and include structural, mechanical and electrical engineering services, as well as services of any

special consultants included as a part of the Project Team on the Architect/Engineer's Professional Qualifications Supplement.

2.1.3 The design and contract documents shall be developed in accordance with the *University of Central Florida Design and Construction Guidelines*. The *Guidelines* submittal shall be made as described in the *Guidelines*. The Architect/Engineer shall follow the guidelines entitled, *University of Central Florida Design and Construction Guidelines dated July, 2003*

2.1.4 The design and contract documents shall be developed using AutoCad release 2000.

2.2 SCHEMATIC DESIGN PHASE

2.2.1 The Architect/Engineer shall meet with the Owner to ascertain the requirements of the Project. The approved building program shall serve as the basic planning document for the development of plans and specifications in compliance with all applicable codes and standards.

2.2.2 The Architect/Engineer shall provide a written 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 Architect/Engineer shall advise the Owner in writing of which tests and surveys described in Article 4 should be conducted prior to development of plans and specifications.

2.2.4 The Architect/Engineer shall review with the Owner alternative approaches to design and construction of the Project. During the schematic design phase and the design development phase, the following individual, _____, has been designated by the Owner as the authorized representative to act on behalf of the Owner and is the only authorized representative to make decisions on behalf of the Owner regarding design issues.

2.2.5 Based on the approved program, schedule and construction budget requirements, the Architect/Engineer shall prepare several alternative design solutions. The Architect/Engineer shall present these alternatives to the Owner, submitting **six (6) sets** of studies, consisting of sketches and initial concepts. After receiving the Owner's comments, the Architect/Engineer shall prepare, for approval by the Owner, Conceptual Schematic Design Studies which shall represent a recommended solution. The submittal shall consist of **six (6) sets** of documents, including sketches, initial concepts, orientation, and relationships to existing and future programmed projects. Should the Architect/Engineer's construction project design exceed the budget established by the Owner, the Architect/Engineer shall make such changes in the design of the project to bring it within the budget limits, at no charge to the Owner.

2.2.6 Based upon the approved Conceptual Schematic Design Studies, the Architect/Engineer shall prepare, for approval by the Owner, Advanced Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components, energy conservation approach and equipment parameters. The Architect/Engineer shall submit to the Owner a preliminary estimate of Construction Cost based on current area, volume or other unit costs, and **six (6) sets** of Advanced Schematic Design Documents. The Life-Cycle Analysis shall be completed and submitted with the Advanced Schematic Design Documents. The Architect/Engineer shall prepare data, make the input and run the Trane Trace Ultra 600, Carrier HAP 3.0, or other Life-Cycle Cost Computer Program Analysis approved by the Owner. FLEET input forms are no longer acceptable. Before preparing the data, the Architect/Engineer shall discuss the energy-saving schemes proposed for the Project with the university Project Manager. When an agreement has been reached, the Architect/Engineer shall document the approved energy-saving schemes and obtain the university Project Manager's written concurrence. The Architect/Engineer shall make the input and run the computer program using the following economic factors: discount rate = 7%; Operating & Maintenance cost escalation = 0%; Energy Replacement costs escalation = 1%; Project Life = 25 years. The Architect/Engineer shall submit two sets of the following to the Owner: cover letter discussing the energy saving schemes considered, the computer results, the Architect/Engineer's recommendations and discussion of other energy-saving measures incorporated into the Project design, copy of the university Project Manager's written concurrence with the schemes, the complete computer run printout, and, the completed one-page summary form. The Owner will notify the Architect/Engineer of the approved scheme to incorporate into the project.

2.3 DESIGN DEVELOPMENT PHASE

2.3.1 Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, the Architect/Engineer shall prepare, for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. The Architect/Engineer shall submit **six (6) sets** of Design Development Documents to the Owner for review. Should the Architect/Engineer's construction project design exceed the budget established by the Owner, the Architect/Engineer shall make such changes in the design of the project to bring it within the budget limits, at no charge to the Owner.

2.3.2 During the schematic design phase and the design development phase, the following individual, **[REDACTED]**, has been designated by the Owner as the authorized representative to act on behalf of the Owner and is the only authorized representative to make decisions on behalf of the Owner regarding design issues.

2.4 CONSTRUCTION DOCUMENTS PHASE

2.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Architect/Engineer shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project. The Architect/Engineer shall submit **six (6) sets** of documents to the Owner for review at 50% completion, together with an estimate of Construction Cost; and **eight (8) sets** for review at 100% completion, (three shall be signed and sealed), together with an estimate of Construction Cost.

2.4.1.1 At the completion of the 50% Construction Document phase, the Construction Manager will prepare a Guaranteed Maximum Price proposal based on the 50% Construction Documents documents prepared by the Architect/Engineer. The Architect/Engineer shall resolve with the Owner any apparent discrepancy between the Estimates of Probable Construction Cost and the scope and requirements of the Owner. The Architect/Engineer shall assist the Owner in its negotiations with the Construction Manager in an effort to develop an acceptable Guaranteed Maximum Price. If the Owner does not accept the Construction Manager's Guaranteed Maximum Price proposal, the Architect/Engineer shall cooperate in value engineering with the Owner and the Construction Manager to revise the documents as necessary in order to reach an agreement. The Architect/Engineer shall analyze the final Guaranteed Maximum Price document, together with its supporting assumptions, and shall submit a written analysis

of the document to the Owner, pointing out any inaccuracies in the assumptions, including the assumptions of cost and length of time for construction.

2.4.2 The Architect/Engineer shall assist the Owner in the preparation of the Owner-Construction Manager Agreement and the Conditions of the Contract. The Architect/Engineer shall furnish ten copies of the final Contract Documents, consisting of construction drawings, technical specifications, and the Project Manual.

2.4.3 After the Guaranteed Maximum Price has been accepted, the Architect/Engineer shall incorporate into the Construction Documents any revisions which are necessary due to inaccurate assumptions made in the development of the Guaranteed Maximum Price.

2.4.3.1 Within [REDACTED] days of the date of the Notice to Proceed, the Architect/Engineer shall submit 100% Construction Documents to the state fire marshall's office and the Construction Manager. The Construction Manager shall proceed with construction based on these drawings. Upon receipt of the fire marshall approved drawings, any changes required by the fire marshal that are deemed by the Architect/Engineer to be a change in the scope of the Work will become a change order to the Construction Manager. The Architect/Engineer shall have sole discretion in determining whether the changes by the fire marshall constitute a change in the scope of the Work, and shall have sole discretion in determining the value of such changes in the scope of the Work for the change order.

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

2.5 BIDDING OR NEGOTIATION PHASE

2.5.1 The Architect/Engineer following the Owner's approval of the Construction Documents, shall attend the pre-bid meetings as necessary, and shall be available to respond to questions regarding the Construction Documents.

2.5.2 For a threshold building, structural inspection plans shall accompany the Architect/Engineer's recommendation of award.

2.6 CONSTRUCTION PHASE-ADMINISTRATION OF THE CONSTRUCTION CONTRACT

2.6.1 The Architect/Engineer's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price. The Architect/Engineer may request an Additional Service Authorization for prolonged contract administration if the construction time specified for final completion is exceeded by more than 60 days due to no fault of the Architect/Engineer.

2.6.2 The Architect/Engineer shall provide administration of the Contract for Construction as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, as revised by the Owner, dated March 20, 2002, and the Supplementary General Conditions for Construction Management Contracts, (hereinafter referred to as the General Conditions of the Contract for Construction), unless otherwise provided in this Agreement. The General Conditions of the Contract for Construction, as revised by the Owner, are hereby incorporated into and made a part of this contract. The Architect/Engineer agrees to perform its duties and responsibilities which are set forth in the General Conditions of the Contract for Construction, including but not limited to, those listed in paragraph 4.2.10.1 of the General Conditions.

2.6.3 Duties, responsibilities and limitations of authority of the Architect/Engineer shall not be restricted, modified or extended without written agreement of the Owner and Architect/Engineer.

2.6.4 The Architect/Engineer shall be a representative of and shall advise and consult with the Owner (1) during construction until final payment to the Construction Manager is made, and (2) as an Additional Service at the Owner's direction during the period of prolonged contract administration as provided in Subparagraph 2.6.1. The Architect/Engineer shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written instrument.

2.6.5 The Architect/Engineer shall attend regularly scheduled construction meetings at the site and shall provide such representation as may be required to fulfill the intent and interpretation of their plans and specifications for the project. In any event, Architect/Engineer shall visit the site a minimum of once per week, or at more frequent intervals as appropriate to the stage of construction, or as otherwise agreed by the Owner and Architect/Engineer 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 Architect/Engineer 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 Architect/Engineer shall keep the Owner informed of the progress and quality of the Work, and shall guard the Owner against defects and deficiencies in the Work. (More extensive site representation may be agreed to as an Additional Service, as described in Paragraph 3.2.)

2.6.6 The Architect/Engineer shall not have control over, or charge of, and shall not be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Construction Manager's responsibility under the Contract for Construction. The Architect/Engineer shall not be responsible for the Construction Manager's schedules or failure to carry out the Work in accordance with the Contract Documents, but shall be responsible to advise the Owner if the Construction Manager is meeting the current schedule and performing work in accordance with the Contract Documents. The Architect/Engineer shall not have control over or charge of acts or omissions of the Construction Manager, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

2.6.7 The Architect/Engineer shall at all times have access to the Work wherever it is in preparation or progress.

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

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

2.6.10 The Architect/Engineer's certification for payment shall constitute a representation to the Owner, based on the Architect/Engineer's observations at the site as provided in Subparagraph 2.6.5 and on the data comprising the Construction Manager's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect/Engineer's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Architect/Engineer. In reviewing and certifying the Construction Manager's Applications for Payment, the Architect/Engineer shall further verify that the percentage of work in place is in agreement with the percentage of work completed as listed in the payment application. The issuance of a Certificate for Payment shall further constitute a representation that the Construction Manager is entitled to payment in the amount certified.

2.6.11 The Architect/Engineer shall have authority to reject Work which in their opinion does not conform to the Contract Documents. Whenever the Architect/Engineer considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect/Engineer will have authority to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect/Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect/Engineer to the Construction Manager, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the Work.

2.6.12 The Architect/Engineer shall review and approve or take other appropriate action upon Construction Manager's submittals including but not limited to, Shop Drawings, Product Data and Samples, and Requests for Information, but only for the limited purpose of checking for conformance with information given and the design

concept expressed in the Contract Documents. The Architect/Engineer's action shall be taken within the review and processing time set forth on the attached Exhibit "A", so as to cause no delay in the Work, while allowing sufficient time in the Architect/Engineer's professional judgment to permit adequate review.

2.6.13 The Architect/Engineer shall prepare Change Orders and Construction Change Directives, with supporting documentation and data, if deemed necessary by the Architect/Engineer as provided in Subparagraph 3.1.1 and Paragraph 3.5, for the Owner's approval and execution in accordance with the Contract Documents, and may authorize minor changes in the Work upon approval by the Owner, involving neither an adjustment in the Contract Sum nor an extension of the Contract Time, which are not inconsistent with the intent of the Contract Documents.

2.6.14 The Architect/Engineer shall conduct inspections to determine the date or dates of Substantial Completion and the date of 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. The Architect/Engineer shall determine that the project is substantially complete, based upon the Architect/Engineer's best judgment, and the custom and practices in central Florida. The Architect/Engineer shall issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

2.6.15 The Architect/Engineer shall interpret and decide matters concerning performance of the Construction Manager under the requirements of the Contract Documents on written request of the Owner. The Architect/Engineer's preliminary response to such request shall be made within seven (7) days of receipt of such a request.

2.6.16 Interpretations and decisions of the Architect/Engineer shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect/Engineer shall endeavor to secure faithful performance by both Owner and Construction Manager, and shall not show partiality to either.

2.6.17 The Architect/Engineer's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents, and if concurred with by the Owner.

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

2.6.19 The Architect/Engineer's decisions on claims, disputes or other matters between the Owner and Construction Manager, except for those relating to aesthetic effect as provided in Subparagraph 2.6.17, shall be subject to resolution as provided in the Contract Documents.

2.6.20 As part of the project completion responsibilities and as a condition precedent to receiving payment from the Owner, the Architect/Engineer shall prepare a set of Mylar reproducible record drawings and record drawings on CADD disks showing significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Construction Manager to the Architect/Engineer. These drawings shall be provided to the Owner within thirty days after the project has achieved final completion.

2.6.21 During construction of the project, the Architect/Engineer agrees to provide a processing and review time for documentation, as identified in Exhibit "A" attached hereto.

2.7 RECORD DOCUMENTS

The Architect/Engineer shall submit **one (1) set of As-builts** (plus one set of mylar reproducibles) **and two (2) As-Built CD's**. See Exhibit 18 of the University of Central Florida Professional Services Guide dated July, 2003. Partial submissions of the required AS-BUILT documents and manuals will not be accepted. The AS-BUILT documents listed in Exhibit 18 are to be produced and are considered part of basic architectural services. Final payment for services will not be made until the entire AS-BUILT submission has been received and approved by the University.

2.8 ART-IN-STATE

Coordination with the Art-In-State program to include site selection advisement and the necessary engineering details related to the particular art piece.

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, 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 performance of the services.

3.1.2 For Additional Services being provided by firms not included on the Architect/Engineer's original Project team, which require no work on the part of the Architect/Engineer other than administering the work of the consultant (i.e., securing the services, approving the work, and invoicing on behalf of the consultant), the Architect/Engineer may request a 8% mark-up on the consultant's fee to cover the administrative costs.

3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES

3.2.1 If more extensive representation at the site than is described in Subparagraph 2.6.5 is required, with the written approval of the Owner, the Architect/Engineer shall provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities.

3.2.2 Project Representatives shall be selected, employed and directed by the Architect/Engineer (with the understanding that the number, identity, salaries, and length of service of such representatives shall be agreed to by the Owner), and the Architect/Engineer shall be compensated therefor as agreed by the Owner and Architect/Engineer. The duties, responsibilities and limitations of authority of Project Representatives shall be as described in the General Conditions of the Contract for Construction.

3.2.3 Through the observations by such Project Representatives, the Architect/Engineer shall endeavor to provide further protection for the Owner against defects and deficiencies in the Work, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Architect/Engineer as described elsewhere in this Agreement.

3.3 Written approval of the Owner is required prior to the commencement by the Architect/Engineer of any of the additional services listed below. Making revisions in Drawings, Specifications or other documents when such revisions are:

3.3.1 inconsistent with approvals or instructions previously given by the Owner; or

3.3.2 required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents.

3.4 Providing services required because of significant changes in the Project as agreed to in writing between the Owner and the Architect/Engineer.

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

- 3.6 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.
- 3.7 Providing services made necessary by the default of the Construction Manager, or by major defects or deficiencies in the Work of the Construction Manager, as determined by the Architect/Engineer.
- 3.8 Providing services in connection with a public hearing or legal proceeding except where the Architect/Engineer is party thereto.
- 3.9 When required by the Owner, preparing documents for alternate, separate or sequential bids.
- 3.10 Programming the requirements of the Project.
- 3.11 Providing planning surveys, site evaluations or comparative studies of prospective sites.
- 3.12 Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.
- 3.13 Providing services relative to future facilities, systems and equipment, when not specifically included in the original Project scope.
- 3.14 Making measured drawings of existing construction when required for planning additions or alterations thereto.
- 3.15 Providing coordination of construction performed by separate contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.
- 3.16 Providing detailed estimates of Construction Cost.
- 3.17 Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.
- 3.18 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.
- 3.19 Providing services after issuance by the Owner of the final payment to the Contractor, except for the post occupancy inspection as described in Paragraph 6.11 of the *"Professional Services Guide."*
- 3.20 When requested by the Owner, providing services of consultants for other than architectural, structural, mechanical and electrical engineering portions of the Project or other than any special consultants included as a part of the Project Team on the Architect/Engineer's Professional Qualification Supplement, which are provided as a part of Basic Services.
- 3.21 Providing site surveys, geotechnical testing services or other special tests, if required.
- 3.22 Providing special inspection on threshold buildings as defined in Chapter 553, Florida Statutes. All threshold reports shall be signed and sealed by the architect or engineer of record.
- 3.23 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 Architect/Engineer.

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 Architect/Engineer in order to avoid unreasonable delay in the orderly and sequential progress of the Architect/ Engineer's services.
- 4.4 The Owner shall review and approve or take other appropriate action on all work submittals of the Architect/Engineer **within seven (7) calendar days** of receipt for the Conceptual Schematic Design, Advanced Schematic Design, and 100% construction document phases; **within fourteen (14) calendar days** for the design development phase; and **within twenty-one (21) calendar days** for the 50% construction document phase. During construction of the project, the Owner shall review and approve or take other appropriate action on all work submittals of the Architect/Engineer within the processing and review time set forth on the attached Exhibit "A".
- 4.5 If required, the Owner shall furnish, or direct the Architect/Engineer to obtain at the Owner's expense, surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the 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 Architect/Engineer to obtain at the Owner's expense, the services of geotechnical engineers as necessary for the Project. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.
- 4.7 The Owner shall pay for structural, mechanical, chemical, air and water pollution tests; tests for hazardous materials; and, other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.
- 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 The services, information, surveys and reports required by Paragraphs 4.5 through 4.8 shall be furnished at the Owner's expense to the extent they are not covered in the scope of services set forth in the Architect/Engineer contract herein, and the Architect/Engineer shall be entitled to rely upon the accuracy and completeness thereof.
- 4.10 Prompt written notice shall be given by the Owner to the Architect/Engineer if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents. Prompt written notice shall be given by the Architect/Engineer to the Owner if the Architect/Engineer becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents.

ARTICLE 5

CONSTRUCTION COST

5.1 DEFINITION

5.1.1 The Construction Cost shall be the total cost to the Owner of all elements of the Project designed or specified by the Architect/Engineer and approved by the Owner.

5.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect/Engineer, including all utilities and metering and connections to all utilities, plus a contractual allowance for the Contractor's overhead and profit. The Architect/Engineer shall be responsible for providing the design for all utilities including the metering and connections.

5.1.2 The Construction Cost does not include the compensation of the Architect/Engineer and the Architect/Engineer's consultants, the costs of the land, rights-of-way, furnishings, contingencies or other costs which are the responsibility of the Owner as provided in Article 4. For this Project, Construction Costs shall not exceed the Guaranteed Maximum Price or the fixed contract price.

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 Architect/Engineer, represent the Architect/Engineer's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect/Engineer nor the Owner has control over the cost of labor, materials or equipment, over the Construction Manager's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect/Engineer cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the Architect/Engineer.

ARTICLE 6

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

6.1 The Drawings, Specifications and other documents prepared by the Architect/Engineer for this Project are instruments of the Architect/ Engineer's service for use solely with respect to this Project and, unless otherwise provided, the Architect/Engineer shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including the copyright. The Owner shall be permitted to retain copies, including reproducible copies, of the Architect/Engineer's Drawings, Specifications and other documents for information and reference in connection with the Owner's use and occupancy of the Project. 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.

6.2 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 7

CLAIMS AND DISPUTES

7.1 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 determined under the judiciary system of the State of Florida. In the event litigation arising out of or relating to this contract, venue shall be proper in Orange County, Florida, for claims under state law, and in the Middle District of Florida for any claims which are justiciable in federal court.

ARTICLE 8

TERMINATION, SUSPENSION OR ABANDONMENT

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

8.2 If the Project is suspended by the Owner for more than 60 consecutive days, the Architect/Engineer shall be compensated for services performed prior to notice of such suspension. If the Project is suspended for more than one year, then the Architect/Engineer's compensation shall be equitably adjusted to provide for reasonable expenses incurred in the interruption and resumption of the Architect/Engineer's services when the Project is resumed.

8.3 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect/Engineer in the event that the Project is permanently abandoned. If the Project is suspended by the Owner for more than 90 consecutive days, the Architect/Engineer may terminate this Agreement by giving written notice.

8.4 In the event of termination not the fault of the Architect/ Engineer, the Architect/Engineer shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Paragraph 8.5.

8.5 Termination Expenses are in addition to compensation for Basic and Additional Services, and include expenses which are directly attributable to termination. Termination Expenses shall be computed as a percentage of the total compensation for Basic Services earned to the time of termination, as follows:

- .1 Twenty percent of the total compensation for Basic Services earned to date if termination occurs during the Schematic Design Phases;
- .2 Ten percent of the total compensation for Basic Services earned to date if termination occurs during the Design Development Phase; or
- .3 Five percent of the total compensation for Basic Services earned to date if termination occurs during any phase following Design Development.

8.6 This Agreement may be terminated by the Owner in its sole discretion upon seven days' written notice to the Architect/Engineer.

ARTICLE 9

PERIOD OF SERVICE

9.1 The services called for in the Conceptual Schematic Design Phase of this Project shall be completed and submitted **within fifty-two (52) calendar days** following the Owner's authorization for the Architect/Engineer to proceed.

9.2 Upon issuance of the Notice to Proceed from the Owner, the Architect/Engineer shall proceed with the performance of the services called for in the Advanced Schematic Design Phase of this Project and shall submit Advanced Schematic Design Documents and Estimates of Probable Construction Cost **within thirty-two (32) calendar days** following authorization for the Architect/ Engineer to proceed.

9.3 Upon written authorization from the Owner, the Architect/Engineer shall proceed with the performance of the services called for in the Design Development Phase of this Project and shall submit Design Development Documents and Estimates of Probable Construction Cost **within fifty-six (56) calendar days** following authorization for the Architect/Engineer to proceed.

9.4 After acceptance by the Owner of the Design Development Documents and revised Estimates of Probable Cost indicating any specific modifications or changes in scope desired by the Owner, and upon written authorization from the Owner, the Architect/Engineer shall proceed with the performance of the services called for in the Construction Documents Phase of this Project and shall submit 50% Construction Documents and Estimates of Probable Cost to the Owner for approval **within forty-one (41) calendar days**. Upon approval by the Owner of the 50% Construction Documents, the Architect/Engineer shall proceed and shall submit 100% Construction Documents, and an Estimate of Probable Construction Cost, ready for taking bids **within forty-three (43) calendar days** thereafter.

9.5 Unless sooner terminated, as provided in Article 8, this Agreement shall remain in force: (1) for a period which may reasonably be required for the design, award of contracts and construction of the Project, including extra work and any required extension thereto; or (2) in case construction is not commenced, for a period of 12 months after the completion of the services called for in that phase of the work last authorized, unless otherwise agreed to in writing.

ARTICLE 10

PAYMENTS TO THE ARCHITECT/ENGINEER

10.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect/ Engineer and Architect/Engineer's employees and consultants in the interest of the Project, as identified in the following Subparagraphs.

10.1.1 Expense of transportation and living of principals and employees when traveling in connection with services other than those defined in Article 2 hereinabove when authorized by the Owner in writing, at rates not to exceed those paid to public employees for per diem and mileage as provided in Section 112.061, F.S. and further in accordance with the provisions of Section 112.061, F.S; reproduction of drawings and specifications, excluding copies for Architect/Engineer's office use, sets required at each phase for the Owner's review and approval, and sets furnished under Subparagraph 2.4.3; and fees paid for securing approval of authorities having jurisdiction over the Project, including fees paid to the State Fire Marshal. Fees paid to the Fire Marshal will be reimbursed as a direct reimbursable, and do not require prior written authorization from the Owner.

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

10.1.3 Expense of renderings, models and mock-ups requested by the Owner in writing.

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

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

10.2.1 For the Basic Services described in Article 2, the **lump sum of \$**. This amount shall be subject to renegotiation if construction documents are not completed within 18 months from the date of Notice to Proceed due to no fault of the Architect/Engineer.

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

10.2.3 For Additional Services defined in Article 3 to be paid as a multiple of direct salary amounts, the compensation shall be determined by applying a multiple of 3.0, which covers all related overhead and expenses, to the direct salary amount. The multiple applicable to a Project Representative as described in Paragraph 3.2 shall be 2.25. If more than one Project Representative is approved by the Owner, the applicable multiple shall be 1.5 for each additional representative.

10.2.4 Reimbursable expense as defined in Article 10.1, to the amount expended, only when authorized in advance by way of an Additional Services Authorization from the Owner.

ARTICLE 11

BASIS OF COMPENSATION

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

11.1.1 For the Architect/Engineer's Basic Services, payments shall be made upon approval of each phase of work for services performed as follows:

Program Verification Phase (If Necessary)	\$
Conceptual Schematics	
Advanced Schematics	
Life-Cycle Analysis	
Design Development	
50% Construction Documents	
100% Construction Documents	
Bidding/Negotiation*	
Construction Phase (to be paid in monthly increments in proportion to payments made to Contractor)	
Post Occupancy	
Total	\$

**Bidding/Negotiation Phase will be paid in increments based on actual bid packages. These bid packages will be developed after the project has progressed, and the payment schedule for Bidding/Negotiation will be determined at that time.*

11.1.2 For Additional Services as defined in Article 3 above, and for Reimbursable Expense as defined in Article 10 above, payments shall be made according to the terms of the Authorization upon presentation of a detailed invoice.

11.1.3 Invoices shall be submitted in detail sufficient to allow a proper preaudit and postaudit thereof.

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

11.3 If any Work designed or specified by the Architect/Engineer during any phase of service is abandoned or suspended in whole or in part, the Architect/Engineer is to be paid for the service performed on account of it prior to

receipt of written notice from the Owner of such abandonment or suspension, together with authorized reimbursements then due and any remaining expense due as provided in Article 8.

11.4 As provided by Section 215.422, Florida Statutes, if a warrant in payment of an invoice is not mailed by the Owner within 40 days after receipt of the invoice and receipt, inspection and approval of the services, the Owner shall pay to the Architect/Engineer in addition to the amount of the invoice, interest at 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 Department of Banking and Finance. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (904) 488-2924 or by calling the State Comptroller's Hotline, (800) 848-3792.

11.5 Architect/Engineer's Account Records. Records of the Architect/ Engineer's Consultants and Reimbursable Expense pertaining to this Project shall be kept on a generally recognized accounting basis and shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

ARTICLE 12

SPECIAL PROVISIONS

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

12.2 Terms in this Agreement shall have the same meaning as those in the General Conditions of the Contract for Construction.

12.3 The procedures and requirements as set forth in the "*State University System Professional Services Guide*," dated December, 1998 will be enforced and will be strictly adhered to and all submittals shall be completed as specified.

12.4 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.

12.5 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.

12.6 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.

12.7 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.

12.8 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.

12.9 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.

12.10 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, papers, letters, or other material subject to the provisions of Chapter 119 and made or received by the Architect/Engineer in conjunction with the contract.

12.11 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.

12.12 The Architect/Engineer shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Architect/Engineer's promotional and professional materials. The Architect/Engineer's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect/Engineer in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect/Engineer on the construction sign.

12.13 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.

12.14 As required by Section 287.133, Florida Statutes, the Architect/Engineer warrants that it is not on the convicted vendor list for a public entity crime committed within the past 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 \$15,000.00 in connection with this Project for a period of 36 months from the date of their being placed on the convicted vendor list.

12.15 Throughout the Project, the Architect/Engineer shall carry, at the Architect/Engineer's own expense, blanket professional liability **insurance with a coverage amount of \$1,000,000**. An insurance certificate shall be provided to the Owner within 45 calendar days of the contract date. The Architect/Engineer shall notify the Owner in the event of cancellation, termination, nonrenewal, or material change in the policy, including, but not limited to, any reduction in the aggregate coverage provided by the policy.

12.16 To the fullest extent permitted by Florida law, the Architect/Engineer shall indemnify and hold harmless the Owner, its officers, agents, and employees from and against liabilities, claims, damages, losses and expenses, including but not limited to attorneys' fees and court costs, arising out of or resulting from the performance or non-performance of this agreement by the Architect/Engineer or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 3.18. Indemnification provided under this paragraph shall not be in violation of Florida Statutes section 725.08. Notwithstanding the foregoing, should any portion of the indemnification under this paragraph be found to be in violation of Florida law, it shall be reduced to provide valid indemnification to the fullest extent permitted by Florida law. The Architect/Engineer acknowledges receipt of the sum of **\$0.00** paid as part of the contract price, in consideration for the undertaking of the indemnity obligations.

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

ARCHITECT'S NAME

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

Attest:

Architects

By: _____

By: _____

(Name, Title and Corporate Seal)

Title: _____

Date: _____

As Witnessed by:

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

UNIVERSITY OF CENTRAL FLORIDA

As Witnessed By:

John C. Hitt, President

Date: _____

APPROVED AS TO FORM AND LEGALITY

Scott Cole, General Counsel

Date: _____

Exhibit “A”

Owner’s processing and review time during construction

During construction of the project, the Owner shall review and approve or take other appropriate action on all work submittals of the Architect/Engineer within the designated time from receipt, as set forth below:

Potential Change Orders:

Owner will review and approve or deny within days of receipt from Architect/Engineer.

Architect/Engineer’s processing and review time during construction

During construction of the project, the Architect/Engineer shall review and approve or take other appropriate action upon Contractor’s submittals within the designated time from receipt, as set forth below:

Shop Drawings:

Architect/Engineer shall review and approve or deny within days of receipt from Construction Manager.

Product Data and Samples:

Architect/Engineer shall review and approve or deny within days of receipt from Construction Manager.

Requests for Information:

Architect/Engineer shall review and approve or deny within days of receipt from Construction Manager.

Failure to meet the review and processing times set forth above may constitute a breach of this contract. In the event that claims are made against the Owner for damages arising out of the Architect/Engineer’s delay in reviewing and

processing any submittals from the Construction Manager as set forth above, the Architect/Engineer shall be responsible for such damages and shall indemnify and hold the Owner harmless from such claims and for such damages to the extent caused by the Architect/Engineer.