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**7.6 Continuing Performance.** Professional shall continue performing services and Owner shall continue paying undisputed amounts due Professional during the pendency of disputes; provided, however, nothing in this Paragraph shall be deemed to limit a Party's rights hereunder to terminate this Agreement.

## **ARTICLE 8 TERM, TERMINATION OR SUSPENSION**

**8.1 Term.** Unless sooner terminated as provided herein, this Agreement shall remain in effect until \_\_\_\_\_. This Agreement may be renewed at Owner's option for three (3) additional one year periods.

**8.2 Termination by Owner for Default.** If Professional defaults by failing to perform, in accordance with the terms of this Agreement, as reasonably determined by Owner, Owner may give written notice to Professional (a) terminating this Agreement effective seven (7) days from the date of notice; or (b) setting forth the nature of the default and requesting Professional initiate cure within seven (7) days from the date of notice. At any time thereafter, if Professional fails to initiate cure upon the request of Owner and diligently prosecute such cure until complete, Owner may give notice to Professional of immediate termination. If Owner terminates this Agreement pursuant to this Paragraph, and it is subsequently determined by a court of competent jurisdiction that Professional was not in default, then in such event said termination shall be deemed a termination for convenience as set forth in **Paragraph 7.3**.

**8.3 Termination by Professional for Default.** In the event of a material breach of this Agreement by Owner, Professional shall give Owner twenty-one (21) days prior written notice of Professional's intention to terminate or suspend provision of Services. Such notice shall specify in detail the grounds for the intended termination or suspension. If the material breach is not cured within such twenty-one (21) day period, Professional may terminate or suspend performance under this Agreement by subsequent written notice to Owner. Notwithstanding anything herein to the contrary, Professional will not terminate or suspend services as a result of Owner's non-payment if the non-payment is based on Owner's good faith dispute concerning the amount of or entitlement to a payment, provided that all of the following conditions are met: (a) Owner delivers written notice to Professional within the time frame provided in this Agreement for making the payment, specifically identifying the items or amounts Owner disputes, (b) Owner pays within the time frame required by this Agreement any undisputed amounts, and (c) Owner participates in good faith in communications directed at resolving the dispute.

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

**8.5 Termination Compensation.** If the Agreement is terminated by Owner pursuant to **Paragraph 7.1**, no further payment shall be made to Professional until completion of the Project. At such time, Professional's compensation shall, at Owner's option, be calculated: (a) on the basis of Services actually performed and expenses actually incurred prior to the effective termination date, or (b) on the basis of the payment terms set forth elsewhere herein. In either case, 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 Professional pursuant to **Paragraph 7.2**; (ii) terminated by Owner pursuant to **Paragraph 7.3**; or (iii) suspended more than ninety (90) days by Owner pursuant to **Paragraph 7.3**, 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.

**8.6 Refund of Prepaid Fees.** Notwithstanding anything herein to the contrary, in the event of termination of this Agreement, if Owner has made any deposits or paid in advance for any Services that have not been performed by Professional as of the date of termination, Professional shall promptly reimburse to Owner all amounts paid in advance with respect to such Services.

**8.7 Waiver of Consequential Damages.** Notwithstanding anything in this Agreement to the contrary, in no event shall Professional be entitled to receive termination expenses, unabsorbed overhead or lost profit or any other consequential, special, punitive or incidental damages, all of which are hereby expressly waived by Professional.

**8.8 Cooperation on Termination.** In the event of termination for any reason, Professional shall cooperate with Owner, all members of the Owner's Project team and any replacement architect or engineer so as to promote as smooth and seamless a transition as is feasible under the circumstances. Further, in the event of suspension or termination, Professional, upon request of Owner and payment of all undisputed fees and expenses due pursuant to this Agreement, shall deliver to Owner hard copies and digital copies (in accordance with the requirements of **Paragraph 5.5** of this Agreement) of all Work Product, whether completed or in progress on the date of suspension or termination.

## **ARTICLE 9 SCHEDULE OF SERVICES**

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

**9.2 Schedule of Services.** Within ten (10) days after the Effective Date, Professional shall prepare and deliver to Owner for Owner's review and approval a detailed schedule for the performance of the Services ("**Schedule of Services**"). The Schedule of Services shall be coordinated with the Project schedule and include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required (a) for Owner's review (b) for the performance of Owner's consultants, and (c) for approval of submissions by authorities having jurisdiction over the Project. Professional and Professional's consultants are bound by the Schedule of Services and will not deviate from such Schedule without prior written authorization by Owner. Whether or not changes in the Schedule of Services have been authorized by Owner, Professional shall update the Schedule of Services as necessary to reflect Owner-approved changes or unavoidable deviations and to indicate the probable impact of these deviations on the performance of Professional's Services and the Project. Time is of the essence as to Professional's performance of its obligations under this Agreement. Professional understands and acknowledges that time is of the essence in completion of the Project and Owner may incur damages if the Project is not completed on time. Professional shall at all times carry out its duties and responsibilities as expeditiously as possible, consistent with the Standard of Care and in accordance with the Schedule of Services most recently approved by Owner in writing, subject to extensions for delays not the fault of Professional or its consultants for which timely notice is delivered to Owner in accordance with **Paragraph 8.4** below.

**9.3 Impact of Schedule Changes on Standard of Care.** If changes in the Schedule of Services are requested by Owner during the course of the Project that would require Professional to perform with a lesser standard of care than the Standard of Care required by this Agreement in order to meet the changed schedule, Professional shall notify Owner in advance in writing that such deviation will be required and to provide Owner the specific basis for that opinion. Professional shall not deviate to a lesser standard of care in the absence of an express written authorization from Owner. No such authorization by Owner, however, shall be construed to authorize performance by Professional at a standard of care that is less than the standard of care that is required by Applicable Laws.

**9.4 Delays.** Should Professional be obstructed or delayed in the prosecution or completion of its Services as a result of unforeseeable causes beyond the control of Professional, and not due to any fault or neglect attributable to Professional, including acts of God or of public enemy, acts of government or of Owner, fires, floods, epidemics, quarantine regulations, strikes or lock-outs, then Professional shall notify Owner in writing within three (3) days after commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Professional may have had to request a time extension. If Professional delivers timely notice of a delay and Owner concurs that an extension of time for the performance of the Services or a portion thereof is appropriate, Owner may authorize an extension of time for the performance of the Services (or portion thereof). No interruption, interference, inefficiency, suspension or delay in the commencement or progress of Professional’s Services from any cause whatsoever, including those for which Owner may be responsible in whole or in part, shall relieve Professional of its duty to perform or give rise to any right to damages or additional compensation from Owner. Professional expressly acknowledges and agrees that it shall receive no damages for delay. Professional’s sole remedy, if any, against Owner will be the right to seek an extension of time to its schedule; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned “No Damage For Delay” provision. This Paragraph shall expressly apply to claims for early completion, as well as claims based on late completion. Notwithstanding the foregoing, if through no fault and neglect attributable to Professional, the Services to be provided hereunder have been delayed for a total of six (6) months during the design phases or three (3) months during the Construction Phase, Professional’s compensation shall be equitably adjusted, with respect to those Services that have not yet been performed, to reflect the incremental increase in costs experienced by Professional, if any, as a result of such delays.

**9.5 Days.** For purposes of this Agreement, “days” means consecutive calendar days unless a contrary intent is specifically indicated with regard to any reference to the word “days”.

**ARTICLE 10 COMPENSATION**

**10.1** Owner agrees to pay Professional as compensation for Professional's Services:

**10.1.1** For the Basic Services described in **Article 2**, a lump sum amount to be negotiated on a per project basis (the “**Basic Services Fee**”). The Basic Services Fee shall be based on the hourly rates set forth below and shall constitute Professional’s complete compensation for providing the Basic Services. The labor rates include hourly rates plus actual fringe benefit rate for each labor classification, and shall be used in pricing all projects under this Agreement. Unless otherwise specifically permitted **Subparagraph 9.1.5** below, there shall be no additional charges, such as overhead, including office supplies, use of equipment, secretarial support, overtime or holiday pay, insurance or the like, and Owner shall not be obligated to reimburse Professional for any such expenses.

**10.1.2** Basic Services Hourly Rates:

<u>Professional</u>	<u>Rate per hour</u>
Principal	\$
Draftsperson	\$
CAD Technician	\$
Clerical/Administrative	\$

	\$
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**10.2 Invoices.** Professional shall submit an invoice upon completion of the milestones described in each proposal presented to Owner and completion of any authorized Additional Services. Invoices during Construction Administration, if applicable, shall be submitted every 90 days throughout the Construction Phase. Invoices shall be on Owner’s form, shall include appropriate back-up documentation, and shall be prepared in accordance with the requirements set forth in the UCF Design and Professional Services Guide. In addition to all other required information and documentation, Professional shall submit with each invoice: (a) a current, itemized statement of amounts invoiced, amounts received, and all other funds sought from Owner and received by Professional, (b) waivers and releases of lien for payments received in form and substance acceptable to acceptable to Owner, and (c) such other information as Owner shall reasonably require to enable Owner to verify and evaluate the Services completed in accordance with the terms and conditions of this Agreement.

**10.3 Payments.** Undisputed payments owed shall be paid by Owner within thirty (30) days of receipt of a complete invoice accompanied by required supporting information and documentation. Where Owner specifies payment to cover a certain invoice or portion of an invoice, Professional shall apply the payment to the account as specified and shall so indicate that application on subsequent monthly statements. The acceptance by Professional of final payment shall constitute and operate as a release of Owner from all further obligations or liabilities of Owner. At Owner’s option, Owner may make payment, on Professional’s account, directly to any of Professional’s consultants, including by joint check payable to Professional and Professional’s consultant, in which case, the amount paid directly or by joint check to Professional’s consultant shall be deducted from any payment due. No direct or joint check payment by Owner shall create any liability or obligation on the part of Owner to make any further or ongoing payments to any Professional’s consultant.

**10.4 Withholding of Payment.** In addition to any other remedy of Owner under this Agreement, at law, or in equity, Owner may withhold payment from Professional on account of Services that Owner contends in good faith contain errors, omissions or are otherwise incomplete, inconsistent or do not conform to the requirements of this Agreement, or are contrary to written instructions of Owner, without prejudice to the Professional’s right to assert a claim for such disputed sums. Additionally, Owner shall have the right to offset against amounts otherwise due Professional for damages incurred, or for damages that Owner reasonably expects to incur, as a result of Services that Owner contends in good faith contain errors, omissions or are otherwise incomplete, inconsistent or do not conform to the requirements of this Agreement, or are contrary to written instructions of Owner, without prejudice to the Professional’s right to assert a claim for such disputed sums. Owner shall provide Professional with a written explanation of any such withholding or offset.

**ARTICLE 11 BACKGROUND CHECKS, DRUG TESTING, E-VERIFY, CIVIL LITIGATION**

**11.1 Background Check.**

**11.1.1** Professional shall perform, at Professional’s expense, a criminal background screening for each employee, consultant, agent or representative (collectively “**Personnel**”) intended to perform work or services at a site owned or controlled by Owner, which criminal background screening will have been performed no more than ninety (90) days prior to the assignment of Professional’s employees to Owner’s site for work. Professional acknowledges that this obligation may require re-screening of previously screened Professional’s employees. Background screening shall require that Personnel shall not have been convicted of, found guilty of, regardless of adjudication, or have entered a plea of nolo contendere or guilty to any offense prohibited under Section 435.04(2), Fla. Stat. Professional shall not permit any person

to provide services or work under this Agreement who does not meet the criminal background screening requirements set forth herein.

**11.1.2** Professional shall conduct:

- a) a Level 1 background check through FDLE;
- b) a search of the on-line State of Florida Sex Offender/Predator lists; and
- c) a search of the National Sex Offender website.

**11.1.3** Professional's employees shall be rescreened annually; provided, however, in the event a Professional's employee previously screened ceases to provide work or services to Professional for more than ninety (90) days, Professional shall re-screen such Professional's employee prior to allowing such Professional's employee to again provide services or work at Owner's site.

**11.1.4** Professional shall maintain copies of the results of the criminal background checks for the term of this Agreement.

**11.1.5** In the event Professional obtains, or is provided, supplemental criminal background information, including police reports or arrest information, after execution of this Agreement, which potentially disqualifies a Professional's employee previously deemed eligible to provide work or services under this Agreement, Professional shall promptly notify owner of such matter. Professional shall take immediate action to review the matter; provided, however, during such review time until a determination of eligibility is made, Professional shall immediately cease allowing said Professional's employee to provide services or work under the Agreement. Additionally, Professional's employees shall be required to notify Professional within forty-eight (48) hours of any arrest which has occurred after a Professional's employee was deemed eligible to provide services or work under this Agreement.

**11.1.6** Professional shall submit to owner an affidavit, attached as **Exhibit A**, affirming the employees listed in the affidavit have completed the required background check and have been deemed eligible by Professional to provide services under this Agreement. Should there be a change in the employees listed on the affidavit, Professional shall immediately submit an updated affidavit specifically identifying new or removed Professional employees.

**11.1.7** Owner may terminate this Agreement immediately upon notice to Professional for any violation of this **Article 10**.

**11.2** **E-verify.** Owner is an E-verify employer. Professional must be enrolled in E-Verify with the federal Department of Homeland Security at the time of performance of services under this Agreement. Professional must provide proof of enrollment as a professional in E-verify at the time of Owner's award of this Agreement to Professional. If not, then Owner may terminate this Agreement immediately upon notice to Professional for any violation of this provision. After enrollment in E-Verify, Professional shall use E-Verify to initiate verification of employment eligibility of all new hires, including consultants, agents, or representatives of Professional who are assigned to the Project or intended to perform work or services under this Agreement. Professional shall complete the E-Verify of Professional's new hires within three (3) business days after the date of hire.

**11.3** **Drug Testing.** Owner's facilities, including the Project Site, are drug-free workplaces and school environments. Professional warrants that it has, or will have prior to performing work or services under this Agreement, a drug-testing program in place that complies with Applicable Laws.

**11.4 Civil Litigation.** Professional warrants that it is not plaintiff or defendant in any civil litigation currently pending in the United States and concerning the type of work/services to be performed under this Agreement that would materially impair its ability to perform its obligations under this Agreement. If Professional becomes either a plaintiff or defendant in such civil litigation during the term of this Agreement, Professional will inform Owner as soon as practicable. If Professional fails to inform Owner of such civil litigation, Owner may terminate this Agreement and Professional will be responsible for all costs and damages incurred by Owner as a result of said termination.

## **ARTICLE 12 AUDIT RIGHTS**

**12.1 Audits.** Owner or its designee may, upon reasonable notice, audit the records of the Professional and its consultants 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 Applicable Laws. Such audits may be performed by an Owner's representative or an outside representative engaged by Owner. Professional shall retain all records for the Project during performance of the Project and for at least three (3) years after Final Completion.

### **12.2 Records.**

**12.2.1** For purposes hereof, Professional's "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 books, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, written policies and procedures, time sheets, payroll registers, payroll records, cancelled payroll checks, subcontract files (e.g., including proposals of successful and unsuccessful bidders, bid recap), original estimates, estimating work sheets, correspondence, change order files (including documentation covering negotiated settlements), back-charge logs and supporting documentation, invoices and related payment documentation, general ledgers, records detailing cash and trade discounts earned, insurance rebates and dividends, superintendent reports, drawings, receipts, vouchers and memoranda.

**12.2.2** In addition to other record keeping requirements, Professional shall keep and maintain public records as defined under Chapter 119, Florida Statutes, that ordinarily and necessarily would be required by Owner in order to perform the Services. Professional shall provide the public with access to public records on the same terms and conditions that Owner would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. Professional shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law. Professional shall meet all requirements for retaining public records and transfer, at no cost, to Owner all public records in possession of Professional upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to Owner in a format that is compatible with the information technology systems of Owner. This Agreement may be terminated by Owner for refusal by Professional to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by Professional in conjunction with this Agreement.

**12.3 Access.** Owner's authorized representative shall have reasonable access to Professional's and its consultants' facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to this Agreement, and shall be provided adequate and appropriate work space at Professional's and its consultants' facilities, may count employees at the Project Site, may be present for the distribution of payroll and shall have such other rights of access as may be reasonably necessary to carry out an audit.

**12.4 Adjustments.** If an audit discloses overpricing or overcharge, then Professional shall refund the overpayment. If an audit discloses overpricing or overcharges of one percent (1%) of the total amount paid hereunder or Two Hundred Thousand Dollars (\$200,000), whichever is less, in addition to making adjustments for the overcharges, the reasonable actual cost of Owner's audit shall be reimbursed to Owner by Professional. Any adjustments and/or payments that must be made as a result of any such audit or inspection of Professional's invoices and/or records shall be made within ninety (90) days from presentation of Owner's findings to Professional.

## **ARTICLE 13 INSURANCE AND INDEMNIFICATION**

**13.1 Required Insurance.** Professional shall maintain all forms of insurance required by Applicable Laws. Professional shall also maintain the following insurance for the duration of this Agreement or such longer period of time as may be specified below or required by Applicable Laws:

**13.1.1** Commercial General Liability insurance coverage for commercial general liability (including loss or damage because of bodily injury, personal injury, sickness, disease or death of persons and injury to or destruction of property, as a result of the acts or omissions of Professional, its employees, agents or consultants), which shall provide a per occurrence coverage amount not less than One Million Dollars (\$1,000,000) and One Million Dollars (\$1,000,000) in the aggregate;

**13.1.2** Automobile Liability insurance covering owned and rented vehicles operated by Professional with policy limits of not less than One Million Dollars (\$1,000,000) combined single limit and aggregate for bodily injury and property damage;

**13.1.3** Workers' Compensation insurance at statutory limits;

**13.1.4** Employer's Liability insurance with a policy limit of not less than Five Hundred Thousand Dollars (\$500,000);

**13.1.5** Professional Liability insurance to compensate Owner for all negligent acts, errors and omissions by Professional and the Professional Team arising out of this Agreement, with limits of not less than Two Million Dollars (\$2,000,000) per claim and Two Million Dollars (\$2,000,000) in the aggregate. Professional's Professional Liability insurance policy shall: (a) be maintained for a period up to and including the date of the expiration of the applicable "statute of repose", (b) have a retroactive date prior to the performance of any Services to be provided under this Agreement, and (c) state that in the event of cancellation or non-renewal, the discovery period for insurance claims (tail coverage) shall be at least four (4) years; and

**13.1.6** Professional shall purchase valuable papers and records coverage for plans, specifications, drawings, reports, maps, books, blueprints, and other printed documents in an amount sufficient to cover the cost of recreating or reconstructing valuable papers or records utilized during the term of this Agreement.

**13.2 Insurance Requirements Generally.** All of the foregoing policies of insurance shall be: (a) issued by an insurance carrier approved in advance by Owner, with a rating from A.M. Best Company of not less than A/XII, and licensed to provide such coverage in the State of Florida, and (b) in a form satisfactory to Owner without unacceptable exclusions or exceptions to coverage. All policies and renewals thereof are to be written for not less than one (1) year. All policy numbers must be clearly identified. All liability policies must provide for claims to be made on an occurrence basis, except Professional Liability, which shall be written on a claims made basis. The insurance policies will name, and the certificates and endorsements will show, Indemnitees as additional insureds on the all liability policies (other than the Professional Liability policy) and all certificates of insurance, except that for the Professional Liability policy, shall include the following statement: "Indemnitees are added as additional insureds to the Commercial General Liability and Automobile



Liability policies. Additional Insured status applies on a primary/non-contributory basis. Commercial General Liability, Automobile Liability, and Worker's Compensation Waiver of Subrogation applies in favor of Indemnitees." All insurance policies required of Professional shall be primary and non-contributory to any other insurance or indemnity as may be available to any additional insured. Owner shall be named as "Certificate Holder" on the Certificate of Insurance for Professional's Professional Liability insurance policy. The deductibles or self-insured retentions on Professional's insurance policies shall not exceed Fifty Thousand Dollars (\$50,000) per occurrence, or the amount per claim set forth above in **Subparagraph 12.1.5** in the case of Professional's Professional Liability insurance; provided, however, payment of any such deductible or self-insured amounts shall be at Professional's sole cost and expense. It shall be the insurance company's responsibility to seek reimbursement from the insured. Professional for itself and on behalf of its insurance carriers, waives and releases any right of recovery or subrogation for any claim, damage, or loss covered or insured by any insurance policy required of Professional under this Agreement that Professional or its insurers may have at any time against Indemnitees and Professional shall cause its insurance policies to be so endorsed. The required insurance policies shall remain in effect for the benefit of Owner at least through any warranty period covering the Project but in no case for less than four (4) years after the date of issuance of the final Certificate for Payment by Professional or such longer period as may be specified elsewhere herein. The insurance policies required of Professional shall be endorsed to contain a provision requiring a written notice directly from the producer or insurer to Owner at least thirty (30) days prior to any cancellation, non-renewal or material modification of the policies, provided that only ten (10) days' prior written notice shall be required in the case of cancellation for non-payment of premium.

**13.3 Consultants' Insurance.** Professional shall ensure that any and all Professional's consultants engaged or employed by Professional also carry and maintain the above-specified policies of insurance meeting the requirements of **Sections 12.1** and **12.2** above and Professional shall include language in Professional's consultancy agreements binding Professional's consultants to the terms and conditions of this **Article 12**.

**13.4 Evidence of Insurance.** Upon execution of this Agreement, and at every date for renewal of a required insurance policy and at such other times as Owner shall request, Professional and Professional's consultants shall cause a certified copy of Professional's and Professional's consultants' insurance policies or, at Owner's election, Certificates of Insurance, Declarations Pages and Additional Insured Endorsements, to be issued to Owner by an insurance agent licensed in the State of Florida. The maintenance in full current force and effect of the insurance coverage required by this Agreement and provision of a valid evidence of insurance that meets the requirements of this Agreement are conditions precedent to the payment of any amounts due Professional by Owner. Professional shall deliver the required evidence of insurance to the following address:

University of Central Florida  
EH&S Risk Management  
P.O. 163500  
Orlando FL 32816

**13.5 Failure to Maintain Insurance.** The failure of Professional or any of Professional's consultants to fully and strictly comply at all times with the insurance requirements set forth herein will be deemed a material breach of this Agreement. In the event that Professional shall fail or be unable to obtain or maintain coverage required pursuant to this Article, Owner, in addition to all other rights and remedies available to it and without waiving Professional's default, shall have the right (but not the obligation) to obtain and/or maintain coverage of the type and amount required hereunder on behalf of Professional; in which case, Professional shall furnish to Owner all necessary information and to reimburse Owner for the cost of such coverage. At Owner's option, Owner may deduct the costs and expenses of any coverage obtained by Owner on behalf of Professional from any amount due to Professional under this Agreement or under any other agreement between Owner and Professional.

**13.6 Insurance No Limitation.** Insurance coverage required in this Agreement shall be additional security for the obligations assumed by Professional and in no event shall the types or limits of coverage required be deemed to limit any obligations or liabilities assumed under this Agreement. The carrying of insurance shall not be deemed to release Professional or in any way diminish its liability or obligations hereunder, by way of indemnity or otherwise.

**13.7 Effect of Insurance.** Compliance with insurance requirements shall not relieve Professional of any responsibility to indemnify Owner for any liability to Owner as specified in any other provision of this Agreement, and Owner shall be entitled to pursue any remedy in law or equity if Professional fails to comply with the contractual provisions hereof. Indemnity obligations specified elsewhere herein shall not be negated or reduced by virtue of any insurance carrier's (i) denial of insurance coverage for the occurrence or event which is the subject matter of the claim; or (ii) refusal to defend any named insured.

**13.8 Owner's Right to Adjust Requirements.** Owner has the right to allow Professional deviate from any of the above insurance requirements, if Owner, at Owner's sole discretion decides to do so. If Owner decides to allow Professional to deviate from the above noted insurance requirements, Owner will inform Professional in writing in those particular circumstances. Unless Owner notifies Professional in writing that Owner is willing to allow Professional deviate from the insurance requirements noted above, all of the above insurance requirements shall apply to Professional.

**13.9 Indemnification.** To the maximum extent permitted by law, Professional shall indemnify and hold Owner, University of Central Florida Board of Trustees, and their respective officers, employees and trustees (collectively, "Indemnitees") harmless from and against any and all charges, complaints, actions, suits, proceedings, hearings, investigations, delays, claims, demands, judgments, awards, orders, decrees, stipulations, injunctions, damages, dues, penalties, fines, expenses, amounts paid in settlement, liabilities (whether known or unknown, whether absolute or contingent, whether liquidated or unliquidated, and whether due or to become due), obligations, taxes, liens, losses, fees and costs, including all attorneys' fees and all court and arbitration costs (at any level or of any type), (collectively, "Adverse Consequences") in connection with Professional's performance of this Agreement to the extent caused by the negligent acts or omissions, recklessness, or intentional wrongful misconduct of Professional or anyone for whose acts or omissions Professional may be liable. The provisions of this **Paragraph 12.9** shall be in addition to, and shall not be construed to negate, abridge, or reduce other rights or obligations of, any other indemnification right that may be available to Indemnitees under this Agreement or Applicable Laws. Professional's indemnification obligations under this Agreement, including those specified in this **Paragraph 12.9**, shall be deemed part of the Project specifications and to fully comply with Section 725.06 or 725.08, Florida Statutes, as applicable, including any amendments thereto, in all respects. If any word, clause or provision of any of the indemnification provisions of this Agreement is determined not to be in compliance with Section 725.06 or 725.08, Florida Statutes, as applicable, including any amendments thereto, it shall be stricken and the remaining words, clauses and provisions shall remain in full force and effect. It is the intent of the parties that Professional's indemnification obligations comply fully with Section 725.06 and 725.08, Florida Statutes, as applicable, including any amendments, in all respects.

**13.10 Claims Under Indemnity.** In claims against Owner indemnified under this Article by an employee of Professional, anyone directly or indirectly employed by Professional or anyone for whose acts Professional may be liable, the indemnification obligation under this Article shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Professional under workers' compensation acts, disability benefit acts or other employee benefit acts, nor shall the indemnification obligation be limited by the existence of any insurance policy.

**13.11 Survival.** Professional's obligations under this **Article 12** shall survive the expiration or earlier termination of this Agreement and the completion of the Services.

## **ARTICLE 14 GOVERNMENT REGULATIONS**

**14.1 Clean Air Act / Federal Water Pollution Control Act.** Professional certifies that it does, and shall, comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et.seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et.seq., as amended), and will include a provision in all consultancy agreements as required under Federal law.

**14.2 Executive Order 11246.** Professional certifies that it does, and shall, comply with Executive Order 11246, (Equal Employment Opportunity), as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60).

**14.3 “Anti-kickback” Act.** Professional certifies that it does, and shall, comply with the Copeland “Anti-kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR, Part 3). Professional shall report all suspected or reported violations to the Economic Development Administration.

**14.4 Contact Work Hours and Safety Standards Act.** Professional certifies that it does, and shall, comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5).

**14.5 Civil Rights Act of 1964.** Professional certifies that it does, and shall, comply with Title VI of the Civil Rights Act of 1964 (P.L.88-352).

**14.6 Education Amendments of 1972.** Professional certifies that it does, and shall, comply with Section 112 of P.L. 92-45 and Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686).

**14.7 Rehabilitation Act.** Professional certifies that it does, and shall, comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

**14.8 Age Discrimination Act.** Professional certifies that it does, and shall, comply with the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107).

**14.9 Drug Abuse Office and Treatment Act.** Professional certifies that it does, and shall, comply with the Drug Abuse Office and Treatment Act of 1972 (P.L. 93-255), as amended.

**14.10 Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act.** Professional certifies that it does, and shall, comply with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended.

**14.11 Public Health Service Act.** Professional certifies that it does, and shall, comply with Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290dd-3 and 290ee-3, as amended).

**14.12 Civil Rights Act of 1968.** Professional certifies that it does, and shall, comply with Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et.seq.), as amended.

## **ARTICLE 15 WARRANTY AGAINST WATER INTRUSION & MOLD**

**15.1 5 Year Warranty.** For five (5) years after the date of Substantial Completion of the Work, Professional shall warranty, repair, and remediate any incident of water intrusion or water damage caused by Professional’s improper design of the Project’s exterior systems, without additional

expense to Owner. This includes the improper specification of faulty or unproven products, and the improper/inadequate detailing of building systems.

**15.2 Notification.** If Professional becomes aware of a design flaw, building practice, material unreliability or any other reason that the completed Project could be subject to water intrusion, mold, fungus, or bacterial growth, Professional will notify Owner in writing within twenty-four (24) hours. Additionally, Professional shall be responsible for correcting the Work or repairing the damage caused by Professional's improper design without additional expense to Owner for a period of five (5) years.

**15.3 Remediation.** If, for a period of five (5) years after the date of Final Completion of the Work, water intrusion occurs for any of the reasons listed in **Paragraph 14.1** or **Paragraph 14.2** above, and said water intrusion causes mold, fungus, or bacterial growth or damage, Professional will be responsible for the cost of removing the mold, fungus, or bacterial growth and repairing any damage caused by Professional's improper design. Correction, repair, or replacement of warranted or guaranteed Work described in this Section 14, or found elsewhere in this Contract, shall be done without any additional expense to Owner during the warranty period. If correction or repair of the same Work fails to result in a permanent fix or solution on more than two (2) occasions during the warranty period, the Owner may at its sole discretion, demand replacement of the Work without any additional expense to Owner. Should Professional assert that the required warranty work is due to a construction flaw, and not design flaw, Owner shall retain an independent third party to make a determination as to the nature of the flaw. Should the third party determine that the flaw is design and not workmanship, Professional shall be responsible for all costs incurred in obtaining such third party determination.

## **ARTICLE 16 WARRANTIES**

### **16.1 Warranties to be Contained in Construction Documents.**

**16.1.1** Professional shall specify in the Construction Documents that there shall be a minimum two (2) year warranty on all building components. The minimum two (2) year warranty shall in no way limit, reduce or shorten any warranty guaranteed by law, issued by manufacturers, or accepted as a general contracting or construction practice.

**16.1.2** Professional shall also specify in the Construction Documents that the roof and its components shall be warranted against water intrusion, leaks, and defects for a period of twenty-five (25) years.

**16.2 Professional's Representations and Warranties.** In addition to all other representations and warranties of Professional in this Agreement, Professional represents and warrants to, and covenants with, Owner as follows:

**16.2.1 Qualifications.** Professional is a sophisticated person or business entity that possesses a high level of experience and expertise in business administration, construction, contract administration and superintendent of projects of similar or like size, complexity and nature as the Project. Professional acknowledges that Owner is relying on Professional's representation that it possesses sufficient skill, knowledge, experience and ability to fully perform the Services and its obligations under this Agreement and that it will assign to the Project similarly qualified individual professionals, managing those professionals as needed to guarantee that quality of performance.

**16.2.2 License.** Professional: (a) is licensed to practice architecture and/or engineering as required by Applicable Law, (b) Professional's consultants are all duly licensed to practice their respective professions as required by Applicable Laws, to the extent licensure is required to

comply with Applicable Laws, and (c) Professional and Professional's consultants shall maintain such licensure in good standing throughout the performance of the Services.

**16.2.3 Adequate Consideration.** Professional's fees specified in this Agreement are adequate and sufficient consideration for Professional's provision of all professional services (including those of Professional's consultants and other consulting engineers and consultants) necessary for Professional's complete performance of all Services.

**16.2.4 Solvency.** Professional is financially solvent, able to pay its debts as they mature and possesses sufficient working capital to complete the Services and perform its obligations under this Agreement and under the Contract Documents.

**16.2.5 Power and Authority.** Professional has the right, power and authority to execute and deliver this Agreement and to consummate the transactions contemplated by it; neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated by it nor the fulfillment of nor the compliance with the terms, conditions and provisions of this Agreement will conflict with or result in a violation or breach of any Applicable Laws, or any other instrument or agreement of any nature to which Professional is a party or by which it is bound or may be affected, or constitute (with or without the giving of notice or the passage of time) a default under such an instrument or agreement; no consent, approval, authorization or order of any person is required with respect to the consummation of the transactions contemplated by this Agreement.

**16.2.6 No Contingency Fee.** Professional warrants that Professional has not employed or retained any company or person, other than a bona fide employee working solely for Professional, to solicit or secure this Agreement and that Professional has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Professional, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, Owner shall have the right to terminate the Agreement without liability and, at its discretion, to deduct from the Professional's fee, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration. Professional's compensation shall be adjusted to exclude any significant sums by which Owner determines the compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments must be made within one (1) year following the completion of the Services or the earlier termination of this Agreement.

**16.2.7 Convicted Vendor List.** 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. Professional further represents and warrants that it will neither utilize the services of, nor contract with, any supplier, or consultant for an amount in excess of Fifteen Thousand Dollars (\$15,000) in connection with this Project if such supplier or consultant has been placed on the convicted vendor list within the past thirty-six (36) months. Professional must notify Owner within thirty (30) days after a conviction of a public entity crime applicable to Professional or to an affiliate of Professional.

**16.2.8 Conflict of Interest.** Professional presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of the Services and Professional shall employ no persons having any such interest to perform any portion of the Services.

## **ARTICLE 17 ENERGY EFFICIENT COMMERCIAL BUILDING TAX DEDUCTION**

### **17.1 Energy Efficiency.**

**17.1.1** Owner reserves the right to designate any eligible entity as the "Designer" of the energy efficient improvements incorporated in the Project for the purposes of allocating accelerated depreciation benefits pursuant to Section 179D of the Internal Revenue Code of 1986, as amended (the "**Code**");

**17.1.2** if Owner determines that Professional shall receive accelerated depreciation benefits as a "Designer" for the purposes of Section 179D of the Code or that Professional shall otherwise benefit financially from the monetization of the accelerated depreciation benefit, Professional shall agree to discount its fee or provide a cash rebate to Owner (the determination of rebate versus discount to be determined by Owner in its sole discretion) in an amount equal to no less than fifty percent (50%) of the incremental financial benefit realized by Professional as a result of the accelerated depreciation benefit or the monetization thereof, such actual percentage to be negotiated in good faith by Owner at the time the financial benefit to Professional becomes ascertainable;

**17.1.3** Owner reserves the right to retain a third-party consultant ("**Energy Efficiency Consultant**") to manage and administer the process of obtaining and monetizing the accelerated depreciation benefit derived from the Project and to designate the Energy Efficiency Consultant as the "Designer" of the energy efficient improvements for the purposes of Section 179D of the Code; and

**17.1.4** Professional shall cooperate in all reasonable respects with the Energy Efficiency Consultant's efforts to obtain and monetize any such benefits derived from the Project on behalf of Owner.

## **ARTICLE 18** **MISCELLANEOUS**

**18.1** **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without regard to its choice of law provisions.

**18.2** **Integration.** This Agreement represents the entire and integrated agreement between Owner and Professional, and supersedes all prior negotiations, representations or agreements, either written or oral, for the Project. This Agreement may be amended only by written instruments signed by both Owner and Professional. To the extent Professional has performed services for the Project within the scope of the Agreement before execution of this Agreement, all rights and liabilities of the Parties for performance of the prior services are merged and included within and shall be governed by the terms and conditions of this Agreement.

**18.3** **Severability.** If any provision of this Agreement, or the application thereof, is determined to be invalid or unenforceable, the remainder of that provision and all other provisions shall remain valid and enforceable.

**18.4** **Waiver.** No provision of this Agreement may be waived except by written agreement of the Parties waiver of any provision on one occasion shall not be deemed a waiver of that provision on any subsequent occasion, unless specifically stated in writing. A waiver of any provision shall not affect or alter the remaining provisions of this Agreement.

**18.5** **Strict Compliance.** No failure of Owner to insist upon strict compliance by Professional with any provision of this Agreement shall operate to release, discharge, modify, change or affect any of Professional's obligations.

**18.6** **Successors and Assigns.** 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 and assigns of such other Party with respect to all covenants of this Agreement. Professional shall not assign (whether partially or wholly) this Agreement whether by

operation of law or otherwise, without the prior written consent of Owner, which Owner may grant or withhold in its sole and absolute discretion. Any attempted assignment in violation of the foregoing prohibition shall be void *ab initio* and, at Owner's election, a breach of this Agreement. If Professional makes a permitted assignment in accordance with this provision, Professional shall nevertheless remain legally responsible for all obligations arising under the Agreement, unless otherwise agreed by Owner.

**18.7 Third-Party Beneficiaries.** This Agreement shall inure solely to the benefit of the Parties and their successors and assigns, and, except as otherwise specifically provided in this Agreement, nothing contained in this Agreement is intended to or shall create a contractual relationship with, or any rights or cause of action in favor of, any third-party against either Owner or Professional.

**18.8 Annual Appropriations.** Owner's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

**18.9 No Bribes or Kickbacks.** Professional shall not by any means:

- (i) induce any person or entity employed in the construction of the Project to give up any part of the compensation to which that person or entity is entitled;
- (ii) offer to accept any bribes or kick-backs in connection with the Project from or to any individual or entity, including any of its consultants; or
- (iii) without the express written permission of Owner, call for or by exclusion require or recommend the use of any consultant, product, material equipment, system, process or procedure in which Professional has a direct or indirect proprietary or other pecuniary interest.

**18.10 Independent Contractor.** Professional is an independent contractor to Owner. Owner shall not in any manner be responsible or accountable for: (a) any violation by Professional or the Professional Team of any Applicable Laws, or (b) for any injury, loss or damage arising from or out of any act or omission of Professional or the Professional Team.

**18.11 Exhibits.** All exhibits referenced herein and attached hereto are incorporated herein by reference.

**18.12 Small Businesses.** Owner is an equal opportunity institution and as such, encourages the use of small businesses including women and minority-owned small businesses in the provision of construction related services. Small businesses should have a fair and equal opportunity to compete for dollars spent by Owner to procure construction-related services. Competition ensures that prices are competitive and a broad vendor base is available. Professional shall use good faith efforts to ensure opportunities are available to small businesses, including women and minority-owned businesses, on the Project.

**18.13 Equal Opportunity / Nondiscrimination.** In performing all Services, Professional shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Professional shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: (i) employment, upgrading, demotion or transfer; (ii) recruitment or recruitment advertising; (iii) layoff or termination; (iv) rates of pay or other forms of compensation; and (v) selection for training, including apprenticeship. Professional shall post in conspicuous places, available to all employees and applicants for employment notices setting forth the terms of this Equal Employment Opportunity/ Nondiscrimination Clause and stating that all qualified candidates will receive consideration for employment without regard to race, color, religion, sex, or national origin.

**18.14 Survival.** All of Professional’s representations, warranties and indemnities made in, required by, or given in accordance with this Agreement, as well as all continuing obligations of the Parties indicated in this Agreement, will survive final payment, completion, and acceptance of Professional’s Services or termination or completion of this Agreement or termination of the Services of the Professional.

**18.15 Remedies Cumulative.** The remedies granted to Owner in this Agreement are cumulative and not in limitation of any other rights and remedies of Owner at law or in equity.

**18.16 Construction.** This Agreement has been negotiated by the Parties with the advice of counsel. Therefore, this Agreement shall not be interpreted more strictly against one Party than the other, including by virtue of one Party having drafted some or all of this Agreement. The singular shall include the plural, the plural the singular, and the use of any gender shall include all genders. Whenever the word “including”, “include” or “includes” is used in this Agreement it shall be deemed to be followed by the words “without limitation” Caption headings are included for ease of use only and shall not be utilized for purposes of interpreting the provisions of this Agreement. All Paragraph and Article references in this Agreement are to Articles and Paragraphs of this Agreement unless expressly stated otherwise.

**18.17 Flow Through.** Professional shall incorporate the terms of this Agreement in all agreements with its consultants for this Project.

**18.18 Conflicts.** In the event of a conflict between the terms and conditions of any of the numbered Articles or Paragraphs of this Agreement and the terms and conditions of any exhibit hereto, then the provision granting the greater rights or remedies to Owner, or imposing the greater duty, standard, responsibility or obligation on Professional, each as determined by Owner, in its sole discretion, shall govern.

**18.19 Notices.** Any notice pursuant to this Agreement shall be given in writing by (a) personal delivery, (b) reputable overnight delivery service with proof of delivery, or (c) legible facsimile or email transmission, sent to the intended addressee at the address set forth beneath the Parties’ signature blocks below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given upon receipt or refusal to accept delivery, or, in the case of facsimile or email transmission, as of the date of the facsimile or email transmission.

**18.20 Sufficiency of Services.** Nothing in this Agreement is intended or shall be construed to require Owner to determine the adequacy, accuracy or sufficiency of the design, Professional’s Work Product or Professional’s Services and nothing in this Agreement shall impose upon Owner a duty to third-parties to assure that Professional, Professional’s consultants, Construction Manager, subcontractors or others are adhering to Applicable Laws. Further, Owner’s review of, inspection of, acceptance of, or payment for any of Professional’s Services shall not constitute acceptance of, or a waiver of any of Owner’s rights or remedies relating to, Services that fail to conform to the requirements of this Agreement, unless Owner expressly accepts such non-conforming Services in writing.

[SIGNATURES ON FOLLOWING PAGE]



IN WITNESS WHEREOF, a duly authorized and validly authorized representative of each Party has affixed his or her respective signature hereto.

**FOR THE PROFESSIONAL: FIRM**

ATTEST:

\_\_\_\_\_  
(Name, Title, & Corporate Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

On this \_\_\_\_ day of \_\_\_\_\_, 2017

As Witnessed By:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

On this \_\_\_\_ day of \_\_\_\_\_, 2017

**FOR OWNER: THE UNIVERSITY OF CENTRAL FLORIDA BOARD OF TRUSTEES**

\_\_\_\_\_



**EXHIBIT A**

**AFFIDAVIT OF CRIMINAL BACKGROUND, E-VERIFY AND DRUG SCREENING**

AGREEMENT: \_\_\_\_\_

PROFESSIONAL NAME: \_\_\_\_\_ DATE: \_\_\_\_\_

By signing this form, I am swearing or affirming that all individuals providing work or services to University of Central Florida (“**Owner**”) under the above-referenced Agreement, on any Owner owned or leased property: (i) have been background screened in accordance with requirements set forth in the Agreement; (ii) have been deemed eligible by Professional to provide work or services to Owner based on the results of such screening; (iii) have passed drug screening; and (iv) are legally eligible to work in Florida.

The information contained herein is current, as of the date this Affidavit is furnished to Owner. All individuals providing work of services to Owner under the above-referenced Agreement are listed below.

Each individual is identified by name, date of birth and shall fall into one (1) of the following categories:

- Previously screened and deemed eligible.  
[Attach list of individuals]
- New individuals screened and deemed eligible.  
[Attach list of individuals]
- Individuals no longer providing services for Professional under the Agreement  
[Attach list of individuals]

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA  
Sworn to and subscribed before me this \_\_ day of \_\_\_\_\_, 2017.  
My commission expires