



AGREEMENT FOR CONTINUING COST ESTIMATING SERVICES

This Agreement for Continuing Cost Estimating Services (the “**Agreement**”), effective as of the date last signed below, (the “**Effective Date**”), by and between The University of Central Florida Board of Trustees (“**Owner**”) and (Name of Firm, including legal status, address and FEIN), (“**Consultant**”), which is authorized to do business in Florida. Owner and Consultant shall from time to time hereinafter be referred to individually as a “**Party**” and together as the “**Parties.**”

RECITALS

WHEREAS, Owner requires professional construction Cost Estimating/Construction Scheduling services, where the total consulting fee for individual projects is \$500,000 or less; and

WHEREAS, Consultant has experience and expertise in such services; and

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

AGREEMENT

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

ARTICLE 1. CONSULTANT’S SERVICES

1.1 Representations. Consultant represents to Owner that Consultant has all necessary education, skill, knowledge and experience required for the Services. In addition, Consultant represents that it has all licenses required by the State of Florida to perform such Services.

1.2 Statement of Work. Each project will be defined in an individual Statement of Work (“**SOW**”) which will not exceed the maximum total consulting fee of \$500,000. Consultant may be requested to perform several SOWs concurrently. Any modifications to a SOW must be in writing and executed by an authorized representative of each party.

1.3 Scope. Prior to the commencement of work, Consultant and Owner will discuss the scope of Services, including but not limited to the milestones/phases for cost estimates, coordination with the Owner, architect, and contractor (if applicable), and the methodology that the Consultant will use to obtain accurate estimates inclusive of contingency and escalation. The scope of Services will be documented in a written proposal to the Owner.

1.4 Proposals. Consultant’s proposal shall contain either a lump sum or not to exceed fee, based on the hourly rates set forth herein. Additional services, if required, shall be based on the Consultant’s hourly rates set forth herein. Proposals should anticipate a reasonable amount of re-work of each deliverable based on Owner feedback.

1.5 Services.

1.5.1 The services that Consultant's may be asked to provide ("Services") include, but are not limited to: conceptual or detailed estimating, precedent analysis, cost management strategies, cost modeling, scheduling, value engineering, life cycle cost analysis, constructability analysis, alternative methods and materials analysis, workforce utilization studies, and subcontractor market outreach. Services may be required for all phases of project development including budgeting, programming, design, construction documents, construction, and project close out.

1.5.2 During each project, Consultant will:

- a. review all documents provided by Owner, architect, contractor, or other project team members, including, but not limited to, Owner Project Requirements, Basis of Design documents, drawings, specifications, and cut sheets.
- b. familiarize itself with Owner's processes that may affect cost, such as permitting and direct owner purchases.
- c. visit the project site, if requested by Owner, to discuss project details with the Owner and investigate any field conditions that may lead to added scope/cost.
- d. proactively ask scope questions, in order to eliminate any scope gaps that may cause added costs.
- e. include appropriate design contingency, construction contingency, and owner contingency amounts in all budgets. These amounts should be discussed and agreed with the Owner at the start of the project.
- f. provide construction cost and total project cost estimates at milestones requested by the Owner. The deliverable should clearly indicate any items that are excluded from the cost estimate.
- g. recommend alternates to isolate scope, where applicable. Alternate costs must be inclusive of all scope related to the alternate.

1.5.3 If a project is over Owner's budget, Consultant will analyze the project for cost reduction opportunities. Such opportunities must consider the total scope impact and shall be provided to Owner for consideration on a spreadsheet including:

- item number
- title
- detailed description of cost reduction scope
- any negative consequences of removing the item from scope
- the construction cost reduction and total project cost reduction

1.6 Construction Manager. If a construction manager has been retained by Owner to provide pre-construction services, Consultant will develop their own independent cost estimate of the project, and/or review the construction manager's estimate, as requested by Owner.

1.7 Entitlement to Fee. If the project is awarded or bid to a contractor within ninety (90) calendar days of the Consultant's estimate, and the scope has not significantly changed since the Consultant's most recent estimate, and the contractor's construction cost is greater than 10% of the Consultant's construction cost estimate, then the Consultant will forfeit its fee. If the project is awarded or bid to a contractor after ninety (90) calendar days of the Consultant's most recent estimate, or the scope has significantly changed, then Consultant's will be entitled to their full fee.

ARTICLE 2. PAYMENT

2.1 Hourly Rates. The Owner agrees to pay Consultant a fee based on the following hourly rates:

<u>Professional</u>	<u>Rate per hour</u>
Project Executive/Principal	\$
Sr. Cost Estimator	\$
Cost Estimator Engineer	\$
Clerical/Administrative	\$

Rates shall not be increased during the term of this Agreement, unless pre-approved in writing by Owner.

2.2 Invoicing. Consultant shall invoice Owner either monthly, at milestones, or at the conclusion of each project, as determined by Owner. Owner shall pay Consultant within thirty (30) days of receipt of a properly prepared invoice. However, if Owner objects to all or any portion of any invoice, Owner shall notify Consultant of the objection within fifteen (15) days from the date of the invoice, give reasons for the objection, and pay such portion of the invoice not in dispute.

2.3 Records. Consultant's accounting records for the Project shall be kept in accordance with generally accepted accounting principles and shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

ARTICLE 3. TERM, COMMENCEMENT, TERMINATION OR SUSPENSION

3.1 Term. Unless sooner terminated as provided herein, this Agreement shall remain in effect until _____, and may be renewed at Owner's option for four (4) additional one-year periods.

3.2 Commencement. Consultant shall commence the Work as of the date indicated on the project specific Purchase Order, and shall complete the Work by the date set forth in the SOW.

3.3 Termination by Owner for Default. If Consultant defaults by failing to perform, in accordance with the terms of this Agreement, as reasonably determined by Owner, Owner may give written notice to Consultant (a) terminating this Agreement effective seven (7) days from the date of notice; or (b) setting forth the nature of the default and requesting Consultant initiate cure within seven (7) days from the date of notice. At any time thereafter, if Consultant fails to initiate cure upon the request of Owner and diligently prosecute such cure until complete, Owner may give notice to Consultant of immediate termination. If Owner terminates this Agreement pursuant to this Paragraph, and it is subsequently determined by a court of competent jurisdiction that Consultant was not in default, then in such event said termination shall be deemed a termination for convenience as set forth in **Paragraph 3.5**.

3.4 Termination by Consultant for Default. In the event of a material breach of this Agreement by Owner, Consultant shall give Owner twenty-one (21) days prior written notice of Consultant'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, Consultant may terminate or suspend performance under this Agreement by subsequent written notice to Owner. Notwithstanding anything herein to the contrary, Consultant 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 Consultant 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.

3.5 Termination or Suspension by Owner for Convenience. Owner may at any time give written notice to Consultant 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, Consultant shall immediately reduce its staff, services and outstanding commitments in order to minimize the cost of termination or suspension.

3.6 Termination Compensation. If the Agreement is terminated by Owner pursuant to **Paragraph 3.3**, no further payment shall be made to Consultant until completion of the Project. At such time, Consultant'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, Consultant's compensation shall be reduced by all costs and damages incurred by Owner as a result of the default of Consultant. If the Agreement is (i) terminated by Consultant pursuant to **Paragraph 3.4**; (ii) terminated by Owner pursuant to **Paragraph 3.5**; or (iii) suspended more than ninety (90) days by Owner pursuant to **Paragraph 3.5**, Consultant's compensation shall be calculated on the basis of Services actually performed and expenses actually incurred prior to the effective termination or suspension date.

3.7 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 Consultant as of the date of termination, Consultant shall promptly reimburse to Owner all amounts paid in advance with respect to such Services.

3.8 Waiver of Consequential Damages. Notwithstanding anything in this Agreement to the contrary, in no event shall Consultant 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 Consultant.

3.9 Cooperation on Termination. In the event of termination for any reason, Consultant 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, Consultant, upon request of Owner and payment of all undisputed fees and expenses due pursuant to this Agreement, shall deliver to Owner hard copies and/or 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 4. INSURANCE, BONDS, AND INDEMNIFICATION

4.1 Required Insurance. Consultant shall maintain all forms of insurance required by Applicable Laws. Consultant 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:

4.1.1 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 Consultant, its employees, agents or subcontractors), which shall provide a per occurrence coverage amount not less than One Million Dollars (\$1,000,000) and Two Million Dollars (\$2,000,000) in the aggregate;

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

4.1.3 Workers' Compensation insurance at statutory limits;

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

4.1.5 Professional Liability insurance to compensate Owner for all negligent acts, errors and omissions by Consultant and the Consultant 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. Consultant'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

4.1.6 Consultant 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.

4.2 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 Consultant 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 Consultant Liability policy) and all certificates of insurance, except that for the Consultant 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 Consultant 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 Consultant’s Consultant Liability insurance policy. Payment of any deductible or self-insured amounts shall be at Consultant’s sole cost and expense. It shall be the insurance company’s responsibility to seek reimbursement from the insured. Consultant 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 Consultant under this Agreement that Consultant or its insurers may have at any time against Indemnitees and Consultant 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 Consultant or such longer period as may be specified elsewhere herein. The insurance policies required of Consultant 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.

4.3 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, Consultant and Consultant’s consultants shall cause a certified copy of Consultant’s and Consultant’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 Consultant by Owner. Consultant shall deliver the required evidence of insurance to the following address:

University of Central Florida
ATTN: Gina Seabrook
P.O. 163020

4.4 Failure to Maintain Insurance. The failure of Consultant or any of Consultant'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 Consultant 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 Consultant'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 Consultant; in which case, Consultant 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 Consultant from any amount due to Consultant under this Agreement or under any other agreement between Owner and Consultant.

4.5 Insurance No Limitation. Insurance coverage required in this Agreement shall be additional security for the obligations assumed by Consultant 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 Consultant or in any way diminish its liability or obligations hereunder, by way of indemnity or otherwise.

4.6 Effect of Insurance. Compliance with insurance requirements shall not relieve Consultant 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 Consultant 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.

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

4.8 Indemnification. To the maximum extent permitted by law, Consultant 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 Consultant's performance of this Agreement to the extent caused by the negligent acts or omissions, recklessness, or intentional wrongful misconduct of Consultant or anyone for whose acts or

omissions Consultant may be liable. The provisions of this **Paragraph 4.8** 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. Consultant's indemnification obligations under this Agreement, including those specified in this **Paragraph 4.8**, 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 comply 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 Consultant's indemnification obligations comply fully with Section 725.06 and 725.08, Florida Statutes, as applicable, including any amendments, in all respects.

4.9 Claims Under Indemnity. In claims against Owner indemnified under this **Article 4** by an employee of Consultant, anyone directly or indirectly employed by Consultant or anyone for whose acts Consultant 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 Consultant 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.

4.10 Survival. Consultant's obligations under this **Article 4** shall survive the expiration or earlier termination of this Agreement and the completion of the Services.

ARTICLE 5. BACKGROUND CHECK, E-VERIFY, CIVIL LITIGATION

5.1 Background Check.

5.1.1 Consultant shall perform, at Consultant's expense, a criminal background screening for each employee, 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 Consultant's Personnel to Owner's site for work. Consultant acknowledges that this obligation may require re-screening of previously screened Personnel. 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. Consultant shall not permit any Personnel to provide services or work under this Agreement who does not meet the criminal background screening requirements set forth herein.

5.1.2 Consultant 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.

- 5.1.3** Consultant's Personnel shall be rescreened annually; provided, however, in the event Personnel previously screened ceases to provide work or services to Consultant for more than ninety (90) days, Consultant shall re-screen such Personnel prior to allowing such Personnel to again provide services or work at Owner's site.
- 5.1.4** Consultant shall maintain copies of the results of the criminal background checks for the term of this Agreement.
- 5.1.5** In the event Consultant obtains, or is provided, supplemental criminal background information, including police reports or arrest information, after execution of this Agreement, which potentially disqualifies Consultant's Personnel previously deemed eligible to provide work or services under this Agreement, Consultant shall promptly notify owner of such matter. Consultant shall take immediate action to review the matter; provided, however, during such review time until a determination of eligibility is made, Consultant shall immediately cease allowing said Personnel to provide services or work under the Agreement. Additionally, Consultant's Personnel shall be required to notify Consultant within forty-eight (48) hours of any arrest which has occurred after such Personnel was deemed eligible to provide services or work under this Agreement.
- 5.1.6** Consultant shall submit to owner an affidavit, attached as **Exhibit A**, affirming the Personnel listed in the affidavit have completed the required background check and have been deemed eligible by Consultant to provide services under this Agreement. Within twenty-four (24) hours of a change in the Personnel listed on the affidavit, Consultant shall submit an updated affidavit specifically identifying new or removed Personnel.

5.2 **E-verify.** Owner is an E-verify employer. Consultant must be enrolled in E-Verify with the federal Department of Homeland Security at the time of performance of services under this Agreement. Consultant must provide proof of enrollment as a Consultant in E-verify at the time of Owner's award of this Agreement to Consultant. After enrollment in E-Verify, Consultant shall use E-Verify to initiate verification of employment eligibility of all new hires, including consultants, agents, or representatives of Consultant who are assigned to the Project or intended to perform work or services under this Agreement. Consultant shall complete the E-Verify of Consultant's new hires within three (3) business days after the date of hire.

5.3 **Civil Litigation.** Consultant 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 Consultant becomes either a plaintiff or defendant in such civil litigation during the term of this Agreement, Consultant will inform Owner as soon as practicable.

5.4 **Flow Through.** Consultant shall incorporate the substance of this **Article 5** in all subcontracts under this Agreement.

5.5 **Termination.** Owner may terminate this Agreement immediately upon notice to Consultant for violation of this **Article 5** and may pursue all remedies available under FL law.

ARTICLE 6. CLAIMS AND DISPUTES

6.1 Mediation. Except for claims in which injunctive relief is sought, as a condition precedent to either Party filing any action for a claim, dispute or other matter arising out of or related to this Agreement, the Parties shall submit the dispute to mediation pursuant to the American Arbitration Association Construction Industry Mediation Rules currently in effect. Either Party may file a written request for mediation with the American Arbitration Association and serve a copy on the other Party. The mediation shall be concluded within sixty (60) days of the request, unless otherwise agreed or ordered by the court. Any legal or equitable proceedings shall be stayed pending conclusion of the mediation. The Parties shall share the mediator's fee and other administrative costs of the mediation equally. The mediation shall be held in Orange County, Florida, unless the Parties agree upon another location. Agreements reached in mediation shall be enforceable in any court of competent jurisdiction as settlement agreements. To the extent permitted by law, the mediation proceedings shall be confidential and shall be privileged from disclosure in any subsequent proceedings as settlement discussions.

6.2 Dispute Resolution. For disputes not resolved by mediation in accordance with the preceding Paragraph, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction and, in that regard, each of the Parties hereby (a) irrevocably and unconditionally consents to submit itself to the sole and exclusive personal jurisdiction of any federal or state court located within Orange County, Florida, (the "**Applicable Courts**"), (b) waives any objection to the laying of venue of any such litigation in any of the Applicable Courts, (c) agrees not to plead or claim in any such court that such litigation brought therein has been brought in an inconvenient forum and agrees not otherwise to attempt to deny or defeat such personal jurisdiction or venue by motion or other request for leave from any such court, and (d) agrees that such Party will not bring any action, suit, or proceeding in connection with any dispute, claim, or controversy arising out of or relating to this Agreement or the Project in any court or other tribunal other than any of the Applicable Courts.

6.3 Waiver of Jury Trial. To the extent allowed by applicable law, Owner and Consultant expressly covenant and agree to waive the right to trial by jury in connection with any litigation or judicial proceeding related to or concerning, directly or indirectly, this Agreement, or the conduct, omission, action, obligation, duty, right benefit, privilege or liability of a Party. This waiver of right to trial by jury is separately given and is knowingly, intentionally and voluntarily made by the Parties, and both acknowledge that separate and good and valuable consideration has been provided by each for this waiver. The Parties have had an opportunity to seek legal counsel concerning this waiver. This waiver is intended to and does encompass each instance and each issue as to which the right to a jury trial would otherwise accrue. The Parties further certify and represent to each other that no employee, representative or agent of Consultant or Owner (including their respective counsel) has represented, expressly or otherwise, to Consultant or Owner or to any agent or representative of Consultant or Owner (including their respective counsel) that they will not seek to enforce this waiver of right to jury trial. This waiver shall apply to this Agreement and any future amendments, supplements or modifications hereto.

6.4 Joinder. In the event the dispute resolution procedure applicable to another dispute between Owner and another party regarding the Project is different from the procedure specified in this Agreement, then Consultant hereby consents, if requested by Owner, to its joinder in such dispute resolution proceeding,

provided that the dispute resolution proceeding involves substantially common questions of law or fact. Consultant shall include a substantially similar provision in its agreements with Consultant's consultants.

6.5 Chapter 558, Florida Statutes. In any claims between Owner and Consultant or Consultant's consultants, the Parties expressly opt out of the provisions of Chapter 558, Florida Statutes. Consultant shall include a substantially similar provision in its agreements with Consultant's consultants.

6.6 Continuing Performance. Consultant shall continue performing services and Owner shall continue paying undisputed amounts due Consultant 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 7. GOVERNMENT REGULATIONS

7.1 Clean Air Act / Federal Water Pollution Control Act. Consultant 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 subcontracts as required under Federal law.

7.2 Executive Order 11246. Consultant 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).

7.3 "Anti-kickback" Act. Consultant 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). Consultant shall report all suspected or reported violations to the Economic Development Administration.

7.4 Contract Work Hours and Safety Standards Act. Consultant 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).

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

7.6 Education Amendments of 1972. Consultant 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).

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

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

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

7.10 Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act. Consultant 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.

7.11 Public Health Service Act. Consultant 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).

7.12 Civil Rights Act of 1968. Consultant 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 8 MISCELLANEOUS PROVISIONS

8.1 Governing Law. This Agreement shall be governed by, and construed under, the laws of the State of Florida, without regard to its choices of law provisions.

8.2 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.

8.3 Waiver. The failure of Owner to enforce at any time or for any period of time any one or more of the provisions of this Agreement shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision. Further, the failure of Owner to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance. Waiver by Owner of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement. No approval, consent or waiver by Owner shall be effective unless it is in writing and then only to the extent specifically stated.

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

8.5 Successors and Assigns. Owner and Consultant, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other Party to this Agreement and to the partners, successors and permitted assigns of such other Party with respect to all covenants of this Agreement. Consultant 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 Consultant makes a permitted assignment in accordance with this provision, Consultant shall nevertheless remain legally responsible for all obligations arising under the Agreement, unless otherwise agreed by Owner.

8.6 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 Consultant

8.7 Annual Appropriations. Owner's performance and obligation to pay hereunder is contingent upon an annual appropriation by the Legislature.

8.8 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 Consultant has a direct or indirect proprietary or other pecuniary interest.

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

8.10 Equal Employment Opportunity. 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. Consultant shall use good faith efforts to ensure opportunities are available to small businesses, including women and minority-owned businesses, on the Project.

8.11 Survival. All of Consultant'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 Consultant's Services or termination or completion of this Agreement or termination of the Services of the Professional.

8.12 Remedies Cumulative. Except as may be expressly stated herein, 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.

8.13 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". The terms "hereof", "herein", "hereunder", and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement, unless stated otherwise. Caption headings are included for ease of use only and shall not be utilized for purposes of interpreting the provisions of this Agreement. All Section and Article references in this Agreement are to Articles and Sections of this Agreement unless expressly stated otherwise.

8.14 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 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. Either Party may change its address by giving written notice to the other Party in accordance with the requirements of this Section.

Owner:

University of Central Florida
Facilities Planning and Construction
3528 North Perseus Loop
Orlando, Florida 32816-3020
Attention: Mr. Bill Martin
Email: Bill.Martin@ucf.edu

Consultant:

Attention: _____
Email: _____

8.15 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 Work or Consultant’s services and nothing in this Agreement shall impose upon Owner a duty to third-parties to assure that Consultant or its Personnel, Professional or others are adhering to Applicable Laws. Further, Owner’s review of, inspection of, acceptance of, or payment for any of the Work or Consultant’s services shall not constitute acceptance of, or a waiver of any of Owner’s rights or remedies relating to, Work or services that fail to conform to the requirements of this Agreement, unless Owner expressly accepts such non-conforming Work or services in writing.

8.16 Amendment. No modification or amendment to this Agreement shall be valid or binding upon the Parties unless in writing and executed by the Party or Parties intended to be bound by it.

8.17 Time of the Essence. Time is of the essence in the performance of Consultant’s duties in this Agreement. For purposes of this Agreement, the term “days” means consecutive calendar days unless a contrary intent is specifically indicated with regard to any reference to the word “days” and the term “business day” shall mean all days of the week excluding Saturdays, Sundays and all legal holidays observed by Owner.

8.18 No Contingency Fee. Consultant represents and warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for Consultant) to solicit or secure

this Agreement, and that is has not paid or agreed to pay any person, company, corporation, individual or firm (other than a bona fide employee working solely for Consultant) any fee, commission, percentage, or gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

8.19 Public Records. This Agreement may be canceled by Owner for refusal by Consultant to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by Professional in conjunction herewith.

8.20 Convicted Vendor List. Consultant 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 warrants that it will neither utilize the services of, not contract with, any supplier, subcontractor, or consultant for an amount in excess of Fifteen Thousand Dollars (\$15,000) in connection with this Project if the supplier, subcontractor or consultant has been placed on the convicted vendor list within the past thirty-six (36) months.

8.21 Counterparts. This Agreement may be executed and delivered in counterparts, each of which shall be deemed to be an original and all of which, taken together, shall be deemed to be one agreement. For purposes of executing this Agreement, a document signed and transmitted by facsimile or by emailed PDF scan shall be treated as an original document. The signature of either Party on a faxed or emailed PDF scanned version of this Agreement shall be considered as an original signature and the document transmitted shall be considered to have the same binding legal effect as if it were originally signed. At the request of either Party, any facsimile or PDF scanned document shall be re-executed by all Parties in original form. Neither Party may raise the use of facsimile, emailed PDF scan or the fact that any signature was transmitted by facsimile or email as a defense to the enforcement of this Agreement or any amendment executed in compliance with this Section.

-Signature page to follow-

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

FOR THE CONSULTANT: _____

(Signature)

(Print Name)

(Title)

On this _____ day _____, 2022

FOR OWNER: THE UNIVERSITY OF CENTRAL FLORIDA BOARD OF TRUSTEES

EXHIBIT A

AFFIDAVIT OF CRIMINAL BACKGROUND AND E-VERIFY

CONTRACT: _____

CONSULTANT’S 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: (a) have been background screened in accordance with requirements set forth in the Agreement; (b) have been deemed eligible by Consultant to provide work or services to Owner based on the results of such screening; and (c) 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 Consultant under the Agreement
[Attach list of individuals]

Signature of Affiant

NOTARY PUBLIC, STATE OF FLORIDA

Sworn to and subscribed before me this _____ day of _____, 2022.
My commission expires