

**STANDARD DESIGN PROFESSIONAL SERVICES AGREEMENT**

**BETWEEN**

**THE COLLEGE OF THE FLORIDA KEYS**

**AND**

**WILLIAM P. HORN ARCHITECT, PA.**

STANDARD DESIGN PROFESSIONAL SERVICES AGREEMENT

TABLE OF CONTENTS

Article 1. GENERAL DESCRIPTION OF SERVICES ..... 1

Article 2. DESIGN PROFESSIONAL’S RESPONSIBILITY ..... 4

Article 3. ADDITIONAL SERVICES OF DESIGN PROFESSIONAL ..... 8

Article 4. OWNER’S RESPONSIBILITIES ..... 9

Article 5. TERM; TIME..... 10

Article 6. COMPENSATION ..... 12

Article 7. OWNERSHIP AND LICENSE OF DOCUMENTS AND INTELLECTUAL PROPERTY . 12

Article 8. MAINTENANCE OF RECORDS..... 14

Article 9. INDEMNIFICATION..... 14

Article 10. INSURANCE..... 15

Article 11. SERVICES BY DESIGN PROFESSIONAL’S OWN STAFF ..... 17

Article 12. WAIVER OF CLAIMS ..... 17

Article 13. TERMINATION OR SUSPENSION ..... 17

Article 14. SECURING AGREEMENT/PUBLIC ENTITY CRIMES ..... 19

Article 15. CONFLICT OF INTEREST ..... 19

Article 16. MODIFICATION ..... 20

Article 17. NOTICES AND ADDRESS OF RECORD..... 20

Article 18. AUDIT RIGHTS..... 20

Article 19. MISCELLANEOUS ..... 21

Article 20. APPLICABLE LAW ..... 24

Article 21. EQUAL EMPLOYMENT OPPORTUNITY/NONDISCRIMINATION/MWBE/LDB .... 24

Article 22. DISPUTE RESOLUTION ..... 24

**TABLE OF SCHEDULES**

<b>Schedule A:</b>	<b>Scope of Services</b>	Page 27
<b>Schedule B:</b>	<b>Basis of Compensation</b>	Page 43
<b>Schedule C:</b>	<b>Design Schedule</b>	Page 46
<b>Schedule D:</b>	<b>Insurance Coverage</b>	Page 47
<b>Schedule E:</b>	<b>Staffing Schedule</b>	Page 49
<b>Schedule F:</b>	<b>Rate Schedule</b>	Page 50

**DESIGN PROFESSIONAL SERVICES AGREEMENT**

**THIS AGREEMENT** (the “Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023 (“Effective Date”), by and between THE COLLEGE OF THE FLORIDA KEYS (the “OWNER”), and \_\_\_\_\_, whose principal business address is [ ] with FEIN [ ] (the “DESIGN PROFESSIONAL”), which is authorized to do business in Florida.

**W I T N E S S E T H:**

**WHEREAS**, OWNER desires to obtain the professional continuing architectural and/or engineering services of DESIGN PROFESSIONAL (the “Project”). Said services shall be fully described in Schedule A, “Scope of Services”, which is attached hereto and incorporated herein; and

**WHEREAS**, DESIGN PROFESSIONAL has submitted a proposal for provision of those services;

**WHEREAS**, DESIGN PROFESSIONAL represents that it has expertise in the type of professional architectural and/or engineering services that will be required for the Project; and

**WHEREAS**, the projects implemented under this Agreement are limited to individual projects for which the estimated construction cost does not to exceed Four Million (\$4,000,000) Dollars, and planning/study activities not to exceed Five Hundred Thousand (\$500,000) Dollars in fees.

**NOW, THEREFORE**, in consideration of the mutual covenants and provisions contained herein, the parties hereto agree as follows:

**ARTICLE 1. GENERAL DESCRIPTION OF SERVICES**

- 1.1 DESIGN PROFESSIONAL’S “Services” consist of those services and obligations to be performed by DESIGN PROFESSIONAL and its employees and consultants under this Agreement, including the Basic Services (hereinafter defined), and any Additional Services (hereinafter defined). For the purposes of this Agreement, “Contract Documents” mean the construction agreement between Owner and Construction Contractor, the exhibits thereto and the other documents which are or shall be referred to in the construction agreement as the “Contract Documents”, including the Construction Documents. The term “Work” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by CONSTRUCTION CONTRACTOR to fulfill its obligations.
  
- 1.2 DESIGN PROFESSIONAL represents that it is thoroughly familiar with and understands the requirements of the Project scope and is experienced in the design, administration, and construction of building projects of the type and scope in accordance with the OWNER’S program and requirements for the Project.

- 1.3 DESIGN PROFESSIONAL agrees that, when the services to be provided hereunder relate to a professional service which, under Florida Statutes or other applicable laws or regulations, requires a license, certificate of authorization or other form of legal entitlement to practice such services, it shall employ and/or retain only qualified personnel which are certified and legally entitled to provide such services under applicable laws or regulations.
- 1.4 DESIGN PROFESSIONAL agrees to obtain and maintain throughout the period of this Agreement all such licenses as are required to do business in the State of Florida and in Monroe County, Florida, including, but not limited to, all licenses required by the respective state boards and other governmental agencies responsible for regulating and licensing the professional services to be provided and performed by DESIGN PROFESSIONAL pursuant to this Agreement. State Requirement for Educational Facilities (SREF) certification is preferred.
- 1.5 DESIGN PROFESSIONAL has employed or engaged and hereby designates \_\_\_\_\_ to serve as DESIGN PROFESSIONAL'S representative (hereinafter referred to as the "Representative"). The Representative is authorized and responsible to act on behalf of DESIGN PROFESSIONAL with respect to directing, coordinating, and administering all aspects of the services to be provided and performed under this Agreement, including directly handling communications with OWNER. By execution of this Agreement, DESIGN PROFESSIONAL acknowledges that the Representative has full authority to bind and obligate DESIGN PROFESSIONAL on all matters arising out of or relating to this Agreement. DESIGN PROFESSIONAL represents that the Representative is qualified and capable of performing the duties of Representative hereunder. DESIGN PROFESSIONAL agrees that the Representative shall devote whatever time is required to satisfactorily manage the services to be provided and performed by DESIGN PROFESSIONAL hereunder. Further, DESIGN PROFESSIONAL agrees that the Representative identified above shall not be removed by DESIGN PROFESSIONAL from the Project without OWNER'S prior approval, and if so removed must be immediately replaced with a person acceptable to OWNER. DESIGN PROFESSIONAL agrees to remove the Representative at the OWNER's request upon written notice to the DESIGN PROFESSIONAL and to immediately replace with a person acceptable to OWNER.
- 1.6 DESIGN PROFESSIONAL agrees that its senior staff, sub-consultants, and subcontractors who will perform any services for the Project are subject to OWNER'S reasonable approval. Attached hereto as Schedule E is a listing of DESIGN PROFESSIONAL'S senior staff who may be assigned to the Project, as well as the sub-consultants and subcontractors who will be used by DESIGN PROFESSIONAL on the Project. None of the senior staff, sub-consultants, and subcontractors identified in Schedule E shall be removed by DESIGN PROFESSIONAL from the Project without OWNER'S prior written approval (such approval not to be unreasonably withheld, conditioned, or delayed), and if so removed shall be immediately replaced with a person or firm reasonably acceptable to OWNER. DESIGN PROFESSIONAL further agrees, within fourteen (14) calendar days of receipt of a written request from the OWNER, to promptly remove and replace the Representative, or any other personnel employed or retained by DESIGN

PROFESSIONAL, or any sub-consultants or subcontractors or any personnel of any such sub-consultants or subcontractors engaged by DESIGN PROFESSIONAL to provide and perform services or work pursuant to the requirements of this Agreement, whom OWNER shall request in writing to be removed, which request may be made by the OWNER with or without cause.

- 1.7 DESIGN PROFESSIONAL shall (a) visit and properly inspect, consistent with the Standard of Care, the Project site and any structure(s) or other man-made features to be modified; (b) familiarize itself with any surveys provided by OWNER and with the location of all existing buildings, utilities, conditions, streets, equipment, components, and other attributes having or likely to have an impact on the Project; (c) familiarize itself with OWNER'S layout and design requirements, conceptual design objectives, and budget for the Project; (d) familiarize itself with pertinent Project dates and programming needs, including the Project design schedule, (e) review and analyze all Project geotechnical, Hazardous Substances (hereinafter defined), structural, chemical, electrical, mechanical, and construction materials tests, investigations, reports, and recommendations; and (f) gather any other information necessary for a thorough understanding of the Project. If the Project involves modifications to any existing structure(s), or other man-made feature(s) at the Project site, DESIGN PROFESSIONAL shall also review all as-built and record drawings, plans, and specifications of which DESIGN PROFESSIONAL has been informed by OWNER about and properly inspect, as is consistent with the Standard of Care, such existing structure(s) and man-made feature(s) to identify existing deficiencies and ascertain the specific locations of pertinent components, including structural components. OWNER does not warrant or guarantee the accuracy or completeness of any information supplied. DESIGN PROFESSIONAL uses any information provided at its own risk and is required to verify information contained therein. DESIGN PROFESSIONAL hereby waives any and all claims, including claims for additional time or compensation based on the use of any information provided by Owner.
- 1.8 DESIGN PROFESSIONAL agrees not to divulge, furnish or make available to any third person, firm or organization, without OWNER'S prior written consent, or unless incident to the proper performance of DESIGN PROFESSIONAL'S obligations hereunder, or in the course of judicial or legislative proceedings where such information is required to be produced, any non-public information concerning the services to be rendered by DESIGN PROFESSIONAL hereunder, and DESIGN PROFESSIONAL shall require all of its employees, agents, sub-consultants, and subcontractors to comply with the provisions of this paragraph.
- 1.9 DESIGN PROFESSIONAL acknowledges that the OWNER may be contracting with a construction manager or contractor who, if retained, shall be responsible for the construction of the Project (hereinafter referred to as "CONSTRUCTION CONTRACTOR"). If CONSTRUCTION CONTRACTOR is retained during the Schematic Design Phase or Design Development Phase, as defined herein. DESIGN PROFESSIONAL agrees to cooperate with CONSTRUCTION CONTRACTOR with respect to CONSTRUCTION CONTRACTOR'S delivery of services to OWNER. Also, in such event, DESIGN PROFESSIONAL agrees to incorporate, whenever practicable and consistent with prudent design, and provided OWNER has provided written approval for

same, all suggestions or recommendations timely made by CONSTRUCTION CONTRACTOR with respect to the Project design. For the purposes of this Agreement, "Contract Documents" mean the construction agreement between Owner and CONSTRUCTION CONTRACTOR, the exhibits thereto and the other documents which are or shall be referred to in the construction agreement as the "Contract Documents", including the Construction Documents.

- 1.10 DESIGN PROFESSIONAL certifies that its design, documents, and services shall conform to Applicable Laws, notwithstanding that a portion of the design, documents, and services may have been performed by one or more of DESIGN PROFESSIONAL'S consultants. This duty is non-delegable, and DESIGN PROFESSIONAL, by signing drawings or preparing drawings to submit for purposes of building permits shall be deemed to certify that it has taken necessary measures to ascertain the Applicable Laws. DESIGN PROFESSIONAL shall promptly correct any Services, documents or Work Product (hereinafter defined) prepared or furnished by DESIGN PROFESSIONAL or its consultants that contains errors, conflicts or omissions ("Errors and Omissions") at no additional cost to OWNER.
- 1.11 DESIGN PROFESSIONAL shall furnish the Services in accordance with professional standards currently practiced by similarly licensed professional firms on projects similar in size, complexity, and cost to the Project (the "Standard of Care").
- 1.12 DESIGN PROFESSIONAL shall participate in, and cooperate with, design-phase, construction-phase, and post-occupancy commissioning (including peer review), validation, and other third-party quality assurance and quality control processes that OWNER implements, if any.

## **ARTICLE 2. DESIGN PROFESSIONAL'S RESPONSIBILITY**

- 2.1 DESIGN PROFESSIONAL shall provide to OWNER professional architectural and/or engineering services in all phases of the Project to which this Agreement applies. All design services to be provided by DESIGN PROFESSIONAL pursuant to this Agreement shall be in conformance with the Scope of Services described in Schedule A. Any deviation from the Scope of Services must be brought to OWNER'S attention in writing by DESIGN PROFESSIONAL and all such deviations must be expressly approved by OWNER in writing.
- 2.2 The "Basic Services" to be performed by DESIGN PROFESSIONAL hereunder are set forth in the Scope of Services described in detail in Schedule A and include such other services as are necessary to perform or incidental to the performance of such Basic Services or are normally and generally provided as a part of such Basic Services, even if not specifically identified in attached Schedule A. The total compensation to be paid by OWNER to DESIGN PROFESSIONAL for all Basic Services is set forth in Article 6 and Schedule B.
- 2.3 DESIGN PROFESSIONAL Drawings shall be prepared in electronic AutoCAD format, and the Project Manual shall be prepared as an electronic Word document. DESIGN

PROFESSIONAL agrees that all Services to be provided by DESIGN PROFESSIONAL pursuant to this Agreement shall be subject to OWNER'S reasonable review and approval and shall be in accordance with all applicable laws, statutes, ordinances, codes, rules, regulations (including utility and Department of Education regulations), local and state fire marshal requirements, and the Florida Building Code, as well as the requirements of any governmental agencies which regulate or have jurisdiction over the Project or the services to be provided and performed by DESIGN PROFESSIONAL hereunder. In the event of any conflicts in these requirements, DESIGN PROFESSIONAL shall promptly notify OWNER of such conflict in writing and utilize its best professional judgment to resolve the conflict. OWNER'S approval of the design documents in no way relieves DESIGN PROFESSIONAL of its obligation to deliver complete and accurate documents necessary for successful construction of the Project.

2.4 In addition to any other presentation or meeting requirements placed upon DESIGN PROFESSIONAL elsewhere in this Agreement, DESIGN PROFESSIONAL shall provide the following services with respect to presentations, meetings, and technical liaisons as part of its Basic Services and at no additional cost to OWNER:

2.4.1 Prior to the commencement of design activities, OWNER and DESIGN PROFESSIONAL shall conduct a pre-design conference for the purpose of discussing issues relative to the Project, plans preparation and submittal procedures, and to convey to DESIGN PROFESSIONAL such items to be provided by OWNER as may be available at that time.

2.4.1 DESIGN PROFESSIONAL shall make presentations to OWNER at any point in the Project development if issues should arise which make additional presentations, other than those listed elsewhere in this Agreement, desirable in OWNER's sole discretion. OWNER may require presentations for any reason.

2.4.3 DESIGN PROFESSIONAL shall submit to OWNER, not later than the tenth (10th) day of each month, a progress report. The progress report shall reflect Project design and construction status, conditions of the Project, and in particular, any deviations from schedule or requirements and reasons, therefore, if any, plus a recommendation of actions necessary for continuing satisfactory progress and construction.

2.4.4 DESIGN PROFESSIONAL shall participate in regular Project conferences with OWNER'S staff as noted in Schedule A. These meetings shall be scheduled by OWNER at a location in Monroe County, Florida, to be designated by OWNER from time to time.

2.4.5 DESIGN PROFESSIONAL shall attend, as technical advisor to or agent of OWNER, and as directed by OWNER, all meetings or hearings conducted by permitting agencies or public bodies in connection with any permit required for the construction of the Project.

2.4.6 DESIGN PROFESSIONAL shall assist OWNER in connection with OWNER'S responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.



2.4.7 DESIGN PROFESSIONAL shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, DESIGN PROFESSIONAL shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

2.4.8 DESIGN PROFESSIONAL shall keep accurate minutes of all meetings and distribute copies to all attending. All meetings shall be coordinated with OWNER'S staff. Meeting minutes shall be distributed within four (4) days of the meeting date.

2.4.9 DESIGN PROFESSIONAL shall coordinate all questions concerning design standards and codes with the appropriate offices and departments of OWNER, as identified by OWNER'S Project Manager. DESIGN PROFESSIONAL shall keep OWNER'S Project Manager informed of changes or requirements issued by any of those offices or departments within three (3) days of any such changes or requirements.

2.5 DESIGN PROFESSIONAL agrees, for both itself and all of its sub-consultants and subcontractors, to comply with all of OWNER's rules and regulations with respect to safety and security at the OWNER's facilities, including OWNER's drug program, as said rules and regulations may be modified and amended by OWNER from time to time.

2.5.1 DESIGN PROFESSIONAL expressly acknowledges and agrees that it is responsible for complying with all rules and regulations of the Jessica Lunsford Act. Further, DESIGN PROFESSIONAL shall comply with any rules or regulations implemented by OWNER in order to comply with the Jessica Lunsford Act.

2.5.2 DESIGN PROFESSIONAL certifies that no person or sub-consultant will be assigned to work on any work pursuant to this contract that poses any threat or risk of harm to the health, safety or welfare of any student, employee, guest, vendor or property of OWNER. Further, DESIGN PROFESSIONAL agrees to hold harmless OWNER and its officials and employees from any and all claims, suits, damages, costs, or attorney fees incurred as a result of any harm done to any student, employee, guest, vendor or property of OWNER by DESIGN PROFESSIONAL'S employees or sub-consultants assigned to do work pursuant to this Agreement.

2.5.3 DESIGN PROFESSIONAL represents that neither DESIGN PROFESSIONAL nor any of its sub-consultants or subcontractors is listed on the "Convicted Vendor List" as such term is defined in Section 287.133, Florida Statutes, and that DESIGN PROFESSIONAL'S entry into this agreement will not violate the terms of Section 287, Florida Statutes. DESIGN PROFESSIONAL will promptly notify OWNER if DESIGN PROFESSIONAL obtains actual knowledge that any sub-consultant or subcontractor is formally charged with an act defined as a "public entity crime" or has been placed on the Convicted Vendor List.

2.5.4 OWNER is an E-verify employer. DESIGN PROFESSIONAL must be enrolled in E-Verify with the federal Department of Homeland Security at the time of performance of

services under this Agreement. DESIGN PROFESSIONAL must provide proof of enrollment as a professional in E-verify at the time of OWNER'S award of this Agreement to DESIGN PROFESSIONAL. If not, then OWNER may terminate this Agreement immediately upon notice to DESIGN PROFESSIONAL for any violation of this provision. After enrollment in E-Verify, DESIGN PROFESSIONAL shall use E-Verify to initiate verification of employment eligibility of all new hires, including consultants, agents, or representatives of DESIGN PROFESSIONAL who are assigned to the Project or intended to perform work or services under this Agreement. DESIGN PROFESSIONAL shall complete the E-Verify of DESIGN PROFESSIONAL'S new hires within three (3) business days after the date of hire.

2.5.5 DESIGN PROFESSIONAL shall comply with Florida public records laws, including but not limited to Chapter 119, Florida Statutes and Section 24 of Article I of the Constitution of Florida (collectively, the "Public Records Laws") and shall allow and permit reasonable access to, and inspection of, all documents, records, papers, letters or other "public record" materials in its possession or under its control which are subject to the provisions of Chapter 119, Florida Statutes, and made or received by DESIGN PROFESSIONAL in conjunction with this Agreement and related to Agreement performance. Failure of DESIGN PROFESSIONAL to abide by the terms of this provision shall be deemed a material breach of this Agreement and OWNER may enforce the terms of this provision in the form of a court proceeding and shall, as a prevailing party, be entitled to reimbursement of all attorney's fees and costs associated with that proceeding. This provision shall survive any termination or expiration of the Agreement. DESIGN PROFESSIONAL is encouraged to consult with its advisors about Florida Public Records Law in order to comply with this provision. Pursuant to F.S. 119.0701, if and to the extent such provision of the Public Records Law is applicable to the Tenant in connection with Tenant's obligations under this Lease, the Tenant will be required to:

- (a) Keep and maintain public records that would be required by OWNER to perform the service.
- (b) Upon receipt from OWNER's custodian of records, provide OWNER with a copy of the requested public records or allow the public records, if any, to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement and following completion of the Agreement if DESIGN PROFESSIONAL does not transfer the records to OWNER.
- (d) Upon completion of the relationship between OWNER and DESIGN PROFESSIONAL, transfer, at no cost, to OWNER all public records (if any) in possession of DESIGN PROFESSIONAL or keep and maintain public records that would be required by the OWNER to perform the service. If DESIGN PROFESSIONAL transfers all public records to OWNER upon completion of the

Agreement, DESIGN PROFESSIONAL shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If DESIGN PROFESSIONAL keeps and maintains public records upon completion of the Agreement, DESIGN PROFESSIONAL shall meet all applicable requirements for retaining public records. All public records stored electronically must be provided to OWNER, upon request from OWNER's custodian of records, in a format that is compatible with the information technology systems of OWNER.

(e) A request to inspect or copy public records relating to this Agreement must be made directly to the OWNER, but if OWNER does not possess the requested records, OWNER shall immediately notify DESIGN PROFESSIONAL of the request, and DESIGN PROFESSIONAL must provide the records to OWNER or allow the records to be inspected or copied within a reasonable time. If DESIGN PROFESSIONAL does not comply with OWNER'S request for records, OWNER shall enforce the public records contract provisions in accordance with the Agreement. If DESIGN PROFESSIONAL fails to provide the public records to OWNER or pursuant to a valid public records request within a reasonable time, DESIGN PROFESSIONAL may be subject to penalties under section 119.10, Florida Statutes, if applicable. DESIGN PROFESSIONAL shall not transfer custody, release, alter, destroy or otherwise dispose of any public records unless or otherwise provided in this provision or as otherwise provided by law.

IF DESIGN PROFESSIONAL HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO DESIGN PROFESSIONAL'S DUTY TO PROVIDE PUBLIC RECORDS RELATED TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 809-3109, beren.lindenberg@CFK.edu, 5901 College Road, Key West, FL 33040 ATTN: Public Records

2.6 OWNER may have one or more representatives visit the site of the Project from time to time, or on a full-time basis, as the construction progresses, DESIGN PROFESSIONAL shall not interfere with the functions of said representatives and will cooperate and work with said representatives. No action or failure to act by a representative shall relieve DESIGN PROFESSIONAL from any of its duties or obligations hereunder.

### **ARTICLE 3. ADDITIONAL SERVICES OF DESIGN PROFESSIONAL**

If authorized in writing by OWNER, DESIGN PROFESSIONAL shall furnish or obtain from others Additional Services of the types listed in Article 3 herein. These services will be paid for by OWNER as indicated in Article 6 and Schedule B. The following services, if not otherwise specified in Schedule A as part of Basic Services, shall be Additional Services:

3.1 Preparation of applications and supporting documents (except those already to be furnished under this Agreement) for private or governmental grants, loans or advances in connection with the Project.

- 3.2 Services resulting from significant changes in the program, general scope, extent or character of the Project or its design including, but not limited to, changes in size, complexity, OWNER'S schedule or character of construction; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to and not reasonably anticipated prior to the preparation of such studies, reports or documents, or are due to any other causes beyond DESIGN PROFESSIONAL'S control.
- 3.3 Providing renderings or models for OWNER'S use.
- 3.4 The preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; and evaluating processes available for licensing and assisting OWNER in obtaining process licensing.
- 3.5 Furnishing services of independent professional associates and consultants for other than the contract services to be provided by DESIGN PROFESSIONAL hereunder.
- 3.6 Services which require travel by DESIGN PROFESSIONAL outside of Monroe County and are expressly directed by OWNER, other than visits to the Project site or OWNER'S offices which shall be part of Basic Services.
- 3.7 Assistance in connection with bid protests, rebidding (subject to the provisions of paragraph 2.4 above) or renegotiating contracts for construction, materials, equipment or services, except as otherwise provided for herein.
- 3.8 Providing any type of property surveys or related engineering services, and field surveys for design purposes and engineering surveys and staking to enable contractors to proceed with their work and providing other special field surveys.
- 3.9 Preparing to serve or serving as a consultant or witness for OWNER in any litigation, or other legal or administrative proceeding, involving the Project (except for assistance in consultations which are included as part of the Basic Services to be provided herein).
- 3.10 Additional services rendered by DESIGN PROFESSIONAL in connection with the Project, not otherwise provided for in this Agreement or not customarily furnished in accordance with generally accepted architectural and engineering practice.
- 3.11 Providing detailed construction cost estimates.

#### **ARTICLE 4. OWNER'S RESPONSIBILITIES**

- 4.1 OWNER shall designate in writing a project coordinator to act as OWNER'S representative with respect to the services to be rendered under this Agreement (hereinafter referred to as the "Project Manager"). The Project Manager shall have the authority to transmit instructions, receive information, interpret and define OWNER'S policies and decisions with respect to DESIGN PROFESSIONAL'S services for the Project. However, except as may be otherwise expressly authorized in writing by The College of the Florida Keys

College President of designee, neither the Project Manager nor any other party is authorized to issue any verbal or written orders or instructions to DESIGN PROFESSIONAL that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever the: (1) scope of services to be provided and performed by DESIGN PROFESSIONAL hereunder; (2) the time within which DESIGN PROFESSIONAL is obligated to complete all such services; or (3) the amount of compensation OWNER is obligated or committed to pay DESIGN PROFESSIONAL. Additional Services must be approved in writing in the form of a written and executed amendment to this Agreement prior to starting such services. OWNER will not be responsible for the costs of Additional Services commenced without its express prior written approval. Failure to obtain prior written approval for Additional Services waives DESIGN PROFESSIONAL'S claim that it performed Additional Services and instead such services will be deemed to be part of the Basic Services required of DESIGN PROFESSIONAL hereunder.

- 4.2 OWNER shall provide, if available, all criteria and information requested by DESIGN PROFESSIONAL as to OWNER'S requirements for the Project, including design objectives and constraints, space, Educational Specification, capacity and performance requirements, flexibility and expendability, and any budgetary limitations, which are not addressed within the Scope of Services.
- 4.3 Upon request from DESIGN PROFESSIONAL, OWNER will assist DESIGN PROFESSIONAL by making available to DESIGN PROFESSIONAL all reasonably available information in OWNER'S possession pertinent to the Project, including existing drawings, specifications, shop drawings, product literature, previous reports, and any other data relative to design or construction of the Project.
- 4.4 OWNER shall arrange for access to and make all provisions for DESIGN PROFESSIONAL to enter the Project sites to perform the services to be provided by DESIGN PROFESSIONAL under this Agreement. DESIGN PROFESSIONAL acknowledges that such access may be provided during times that are not the normal business hours of DESIGN PROFESSIONAL.
- 4.5 OWNER shall provide written notice to DESIGN PROFESSIONAL of any deficiencies or defects discovered by OWNER with respect to the services to be rendered by DESIGN PROFESSIONAL hereunder.
- 4.6 Wherever the terms of this Agreement refer to some action, consent, or approval (excluding approvals of Additional Services or changes to this Agreement) to be provided by OWNER or some notice, report or document is to be provided to OWNER, such reference to "OWNER" shall mean OWNER, OWNER'S staff, or OWNER'S designee, unless otherwise stated.

## **ARTICLE 5. TERM; TIME**

- 5.1 Unless sooner terminated as provided herein, this Agreement shall automatically renew for one (1) year increments for up to an additional three years unless terminated, with thirty (30) days written notice, by either party.

- 5.2 Services to be rendered by DESIGN PROFESSIONAL shall be commenced subsequent to the execution of this Agreement and upon written Notice of Authorization from OWNER for all or any designated portion of the Project and shall be performed and completed in accordance with the Design Schedule attached hereto and made a part hereof as Schedule C. Time is of the essence with respect to the performance of this Agreement.
- 5.3 Should DESIGN PROFESSIONAL be obstructed or delayed in the prosecution or completion of its services as a result of unforeseeable causes beyond the control of DESIGN PROFESSIONAL, including but not restricted to acts of God or of public enemy, acts of government or of OWNER, fires, floods, epidemics, quarantine regulations, strikes or lock-outs, then DESIGN PROFESSIONAL shall notify OWNER in writing within three (3) business days (unless OWNER expressly agrees in writing to a longer period of time) after receipt of notice of such delay, stating the cause or causes thereof, or be deemed to have waived any right which DESIGN PROFESSIONAL may have had to request a time extension
- 5.3.1 The term "business day" shall mean all days of the week excluding Saturdays and Sundays and all legal holidays observed by the OWNER.
- 5.4 No interruption, interference, inefficiency, suspension or delay in the commencement or progress of DESIGN PROFESSIONAL'S services from any cause whatsoever, including those for which OWNER may be responsible in whole or in part, shall relieve DESIGN PROFESSIONAL of its duty to perform or give rise to any right to damages or additional compensation from OWNER. DESIGN PROFESSIONAL expressly acknowledges and agrees that it shall receive no damages for delay. DESIGN 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. Provided, however, if through no fault and neglect of DESIGN PROFESSIONAL, the services to be provided hereunder have been delayed for a total of six months during the Schematic Design Phase or three months during the Construction Phase, DESIGN 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 DESIGN PROFESSIONAL, if any, as a result of such delays.
- 5.5 Should DESIGN PROFESSIONAL fail to commence, provide, perform or complete any of the services to be provided hereunder in a timely and diligent manner, in addition to any other rights or remedies available to OWNER hereunder, OWNER at its sole discretion and option may withhold any and all payments due and owing to DESIGN PROFESSIONAL until such time as DESIGN PROFESSIONAL resumes performance of its obligations hereunder in such a manner so as to establish to OWNER'S reasonable satisfaction that DESIGN PROFESSIONAL'S performance is or will shortly be back on schedule.

## **ARTICLE 6. COMPENSATION**

- 6.1 Compensation and the manner of payment of such compensation by OWNER for services rendered hereunder by DESIGN PROFESSIONAL shall be as prescribed in Schedule B, entitled “Basis of Compensation,” which is attached hereto and made a part hereof.

## **ARTICLE 7. OWNERSHIP AND LICENSE OF DOCUMENTS AND INTELLECTUAL PROPERTY**

- 7.1 All records, documents, drawings, notes, tracings, plans, computer-aided design (CAD) files, specifications, maps, models, presentations, evaluations, reports and other technical data, and schematics prepared or developed by or for DESIGN PROFESSIONAL, or otherwise provided to OWNER, pursuant to this Agreement shall be Project Documents.
- 7.2 DESIGN PROFESSIONAL shall grant, and hereby does grant, OWNER an unlimited, non-exclusive, worldwide, irrevocable, perpetual, fully-paid-up, license to reproduce, create derivatives of, distribute, perform, publish and otherwise use all Project Documents in which the DESIGN PROFESSIONAL has or may have any rights (i) as reasonably necessary for archival, safety, and disaster recovery purposes, (ii) for submission or distribution, as OWNER reasonably determines is prudent or proper, to meet official regulatory requirements, or for similar purposes, in connection with this Project, and (iii) for constructing, completing, reconstructing, repairing, renovating, altering, adding to, maintaining, occupying, and otherwise using the Project.
- 7.3 DESIGN PROFESSIONAL shall obtain from each of DESIGN PROFESSIONAL’S consultants, sub-consultants, contractors, subcontractors, and representatives (jointly DESIGN PROFESSIONAL’S “Consultants”) either an assignment from the Consultant to OWNER of all common law, statutory and other reserved rights, including copyrights and performance rights, in and to all Project Documents in which the Consultant has or may have such rights, or an unlimited, worldwide, perpetual, irrevocable, fully-paid-up license running from DESIGN PROFESSIONAL’S Consultant to OWNER, granting OWNER the right to reproduce, create derivatives of, distribute, and use all Project Documents in which the DESIGN PROFESSIONAL’S Consultant has or may have any rights (i) as reasonably necessary for archival, safety, and disaster recovery purposes, (ii) for submission or distribution, as OWNER reasonably determines prudent or proper, to meet official regulatory requirements, or for similar purposes, in connection with this Project, and/or (iii) for constructing, completing, reconstructing, repairing, renovating, altering, adding to, maintaining, occupying and otherwise using the Project.
- 7.4 DESIGN PROFESSIONAL shall grant, and hereby does grant, OWNER, an unlimited, worldwide, non-exclusive, irrevocable, perpetual, fully-paid-up license (i) to design, commission, and create architectural works that are derivatives of or substantially similar to the Project or any architectural work portrayed in any version of any Project Document, and (ii) to use, reproduce, make derivatives of, publish, perform, distribute copies of, and otherwise use any architectural or other works created, authored, or provided by DESIGN PROFESSIONAL or DESIGN PROFESSIONAL’S Consultants pursuant to this

Agreement, for marketing, promotional, advertising, ordinary business, and educational purposes, in any medium.

- 7.5 All licenses granted herein or pursuant to this Agreement are worldwide, perpetual, and irrevocable and shall continue beyond the duration of this Agreement and/or in the event this Agreement is terminated for any reason. In the event of any such termination, DESIGN PROFESSIONAL hereby consents to any use of any and all Project Documents by any replacement architects, contractors, engineers or other professionals retained by OWNER; provided, however, DESIGN PROFESSIONAL shall not be liable for any of the design work performed by such replacement architects, engineers or other professionals and OWNER agrees to indemnify and hold DESIGN PROFESSIONAL harmless from any such liability.
- 7.6 DESIGN PROFESSIONAL, upon reasonable request by OWNER, even if such request is made after the termination or expiration of this Agreement for any reason, shall take all steps reasonably required by OWNER to memorialize, perfect, substantiate, record, or evidence all licenses, assignments, and rights OWNER has, is due, or may have under or pursuant to this Agreement, and shall do so at no additional charge to OWNER.
- 7.7 DESIGN PROFESSIONAL shall, upon reasonable request by OWNER, even if such request is made after termination or expiration of this Agreement for any reason, or upon completion of the Project, provide to OWNER (i) reproducible copies of all Project Documents, (ii) written copies of all licenses and assignments obtained by DESIGN PROFESSIONAL from DESIGN PROFESSIONAL'S Consultants pursuant to section 6.3, and (iii) a written license from DESIGN PROFESSIONAL to OWNER pursuant to section 6.2, herein. Wherever practical, all such copies of the Project Documents shall be provided in both editable electronic form and in hard paper form. DESIGN PROFESSIONAL shall not be responsible for inadvertent errors caused by the electronic transmission of Project Documents unless it knew or reasonably should have known of such errors and failed to promptly notify the OWNER in writing. In the event of any discrepancies between any such electronic copies and hard paper copies issued by DESIGN PROFESSIONAL, the hard paper copy shall control.
- 7.8 OWNER shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein or pursuant to this Agreement to another party without the prior written agreement of the DESIGN PROFESSIONAL; provided, however, that OWNER may assign, encumber, or sublicense any license granted herein or pursuant to this Agreement to a lender, a tenant of the Project, or a subsequent owner of any portion the Project without DESIGN PROFESSIONAL'S prior consent. Further, OWNER shall be permitted to authorize contractors, engineers, subcontractors, sub-subcontractors, material or equipment suppliers, consultants, agents, and architects to reproduce applicable portions of the Project Documents as appropriate to and for use in connection with the completion of the Project or OWNER's exercise of any right or license granted herein or pursuant to this Agreement.
- 7.9 DESIGN PROFESSIONAL hereby represents and warrants that all Project Documents, architectural works, or other works developed, authored, or provided to the OWNER



pursuant to this Agreement shall be original in the DESIGN PROFESSIONAL or the DESIGN PROFESSIONAL'S Consultants, in the public domain, or developed, authored or provided pursuant to a valid, enforceable and appropriate license or assignment and shall not infringe any copyright, performance right, trademark, patent or other intellectual property right of any third party. Furthermore, to the fullest extent permitted by law, DESIGN PROFESSIONAL shall indemnify, protect, and hold harmless OWNER, its trustees, officers, directors, contractors, and employees of any of them (collectively "Indemnities") from and against all costs, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of, or resulting from, any claim by any third party asserting that any Project Document, architectural work, or other work developed or authored by DESIGN PROFESSIONAL or DESIGN PROFESSIONAL'S Consultants, or provided to the OWNER by DESIGN PROFESSIONAL, pursuant to this Agreement infringes any intellectual property right, including without limitation copyright, of any person or entity. This indemnification shall be deemed part of the Project specifications and is intended to and shall be deemed by both parties to fully comply with Section 725.06, Florida Statutes, including any amendments thereto, in all respects. If any word, clause or provision of this section 6.9 is determined not to be in compliance with Section 725.06, Florida Statutes, including any amendments thereto, it shall be stricken and the remaining words, clauses, and provisions shall remain in full force and effect. Furthermore, this indemnification is in addition to and not in lieu of any common law indemnification to which any of the Indemnities are entitled.

#### **ARTICLE 8. MAINTENANCE OF RECORDS**

- 8.1 DESIGN PROFESSIONAL shall keep adequate records and supporting documentation which concerns or reflect its services hereunder. The records and documentation shall be retained by DESIGN PROFESSIONAL for a minimum of four (4) years from the date of termination of this Agreement or the date the Project is completed, or such longer period of time as may be required by law or this Agreement, whichever is later. OWNER, or any duly authorized agents or representatives of OWNER, shall have the right to audit, inspect, and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the period noted above in which the records are to be retained; provided, however, such activity shall be conducted only during normal business hours.

#### **ARTICLE 9. INDEMNIFICATION**

- 9.1 To the maximum extent permitted by Florida law, DESIGN PROFESSIONAL shall defend, indemnify, and hold harmless OWNER, its trustees, directors, officers and employees from any and all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees and paralegals' fees, through any appeals, to the extent same are caused by the negligence, recklessness or intentionally wrongful conduct of DESIGN PROFESSIONAL or anyone employed or utilized by the DESIGN PROFESSIONAL in the performance of this Agreement. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available

to an indemnified party or person described in this paragraph 8.1. Nothing herein shall be deemed to affect the rights, privileges, and immunities of OWNER as set forth in Section 768.28, Florida Statutes.

## **ARTICLE 10. INSURANCE**

- 10.1 During the term of this Agreement DESIGN PROFESSIONAL shall provide, pay for, and maintain, with companies satisfactory to the OWNER, the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the State of Florida. Simultaneously with the execution and delivery of this Agreement by DESIGN PROFESSIONAL, DESIGN PROFESSIONAL has delivered to OWNER properly executed Certificates of Insurance evidencing the fact that DESIGN PROFESSIONAL has acquired and put in place the insurance coverages and limits required hereunder. In addition, certified, true and exact copies of all insurance policies required shall be provided to the OWNER, on a timely basis, if requested by OWNER. These Certificates and policies shall contain provisions that thirty (30) days written notice by registered or certified mail shall be given OWNER of any cancellation, intent not to renew, or reduction in the policies' coverages, except in the application of the Aggregate Limits Provisions. DESIGN PROFESSIONAL shall also notify OWNER, in a like manner, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverages or limits received by DESIGN PROFESSIONAL from its insurer, and nothing contained herein shall relieve DESIGN PROFESSIONAL of this requirement to provide notice. In the event of a reduction in the aggregate limit of any policy to be provided by it hereunder, DESIGN PROFESSIONAL shall immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy, and shall cause the aggregate limit reinstated as soon as practicable. All insurance coverages of DESIGN PROFESSIONAL shall be primary to any insurance or self-insurance program carried by OWNER applicable to this Project.
- 10.2 All insurance policies required by this Agreement shall include the following provisions and conditions by endorsement to the policies:
- 10.2.1 The term "The College of the Florida Keys" shall include The College of the Florida Keys Board of Trustees, a body corporate, The College of the Florida Keys System and all Authorities, Boards, Bureaus, Commissions, Divisions, Departments and offices thereof and individual members and employees thereof in their official capacity, and/or while acting on behalf of The College of the Florida Keys Board of Trustees.
- 10.2.2 All insurance policies, other than the Workers' Compensation policy, provided by DESIGN PROFESSIONAL to meet the requirements of this Agreement shall name The College of the Florida Keys, as that name is defined in 9.2.1, above, as an additional insured as to the operations of DESIGN PROFESSIONAL under the Agreement and each policy shall contain a severability of interests provision reasonably acceptable to OWNER.

- 10.2.3 Companies issuing the insurance policy or policies shall have no recourse against OWNER for payment of premiums or assessments for any deductibles. Such payments shall be the sole responsibility of DESIGN PROFESSIONAL and at the sole risk of DESIGN PROFESSIONAL.
- 10.2.4 All insurance coverages of DESIGN PROFESSIONAL shall be primary to any insurance or self-insurance program carried by OWNER applicable to this Project, and the “Other Insurance” provisions of any policies obtained by DESIGN PROFESSIONAL shall not apply to any insurance or self-insurance program carried by OWNER applicable to the Project.
- 10.2.5 If an “ACCORD” Certificate of Liability Insurance form is used by the DESIGN PROFESSIONAL, the words “endeavor to” and “... however, failure to mail such notice shall impose no obligation or liability of any kind upon the firm, its agents or representatives” in the “cancellation” paragraph of the form shall be deleted.
- 10.3 The acceptance by OWNER of any Certificate of Insurance for this Project evidencing the insurance coverages and limits required in this Agreement does not constitute approval or agreement by OWNER that the insurance requirements have been met or that the insurance policies shown on the Certificates of Insurance are in compliance with the requirements of this Agreement.
- 10.4 Before starting and until completion of all services required hereunder, DESIGN PROFESSIONAL shall procure and maintain insurance of the types and to the limits specified in Schedule D, “Insurance Coverage,” which is attached hereto and made a part hereof. DESIGN PROFESSIONAL shall require each of its sub-consultants and subcontractors to procure and maintain, until the completion of that sub-consultant’s or subcontractor’s services, insurance of the types and to the limits specified in Schedule D, unless such insurance requirement for the sub-consultant or subcontractor is expressly waived in writing by OWNER prior to the start of sub-consultant’s or subcontractor’s services.
- 10.5 If any insurance provided pursuant to this Agreement shall expire prior to the completion of the services required hereunder, renewal Certificates of Insurance and, if requested by OWNER, certified, true copies of the renewal policies, shall be furnished to OWNER thirty (30) days prior to the date of expiration.
- 10.6 Should at any time DESIGN PROFESSIONAL not maintain the insurance coverages required in this Agreement, OWNER may cancel the Agreement, reserving all remedies available hereunder or otherwise in law or at equity, or, at its sole discretion, shall be authorized to purchase such coverages and charge DESIGN PROFESSIONAL for such coverages purchased. If DESIGN PROFESSIONAL fails to reimburse OWNER for such costs within thirty (30) days after receipt of demand for same from OWNER, OWNER has the right to offset these costs from any amount due to DESIGN PROFESSIONAL under this Agreement. OWNER shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company/companies

used. The decision of OWNER to purchase such insurance coverages shall in no way be construed to be a waiver of its rights under this Agreement.

10.7 DESIGN PROFESSIONAL, its sub-consultants, subcontractors, and OWNER shall waive all rights against each other for damages covered by insurance to the extent insurance proceeds are paid and received by OWNER, except such rights as they may have to the proceeds of such insurance held by any of them.

10.8 All insurance companies from whom DESIGN PROFESSIONAL obtains the insurance policies required hereunder must meet the following minimum requirements:

10.8.1 The insurance company must be duly licensed and authorized by the Office of Insurance Regulation of the State of Florida to transact the appropriate insurance business in the State of Florida.

10.8.2 The insurance company must have an A. M. Best policyholder rating of "A-" or higher.

10.8.3 The insurance company must have a current A. M. Best financial rating of "Class VI" or higher.

#### **ARTICLE 11. SERVICES BY DESIGN PROFESSIONAL'S OWN STAFF**

11.1 The services to be performed hereunder shall be performed by the staff, sub-consultants and subcontractors identified in Schedule E, unless otherwise prior authorized in writing by OWNER. The employment of, contract with, or use of the services of any other person or firm by DESIGN PROFESSIONAL, as an independent consultant or otherwise, shall be subject to the prior written approval of OWNER. No provision of this Agreement shall, however, be construed as constituting an agreement between OWNER and any such other person or firm, nor shall anything contained herein be deemed to give any such party or any third party any claim or right of action against OWNER.

#### **ARTICLE 12. WAIVER OF CLAIMS**

12.1 DESIGN PROFESSIONAL'S acceptance of final payment shall constitute a full waiver of any and all claims, by it against OWNER arising out of this Agreement or otherwise related to the Project, except those previously made in writing and identified by DESIGN PROFESSIONAL as unsettled at the time of the final payment. Neither the acceptance of DESIGN PROFESSIONAL'S services nor payment by OWNER shall be deemed to be a waiver of any of OWNER'S rights against DESIGN PROFESSIONAL under this Agreement.

#### **ARTICLE 13. TERMINATION OR SUSPENSION**

13.1 DESIGN PROFESSIONAL shall be considered in material default of this Agreement, and such default will be considered cause for OWNER to terminate this Agreement, in whole or in part, as further set forth herein, for any of the following reasons: (a) failure to begin

work under the Agreement within the times specified under the Notice(s) of Authorization, or (b) failure to properly and timely perform the services to be provided hereunder or as directed by OWNER, or (c) the bankruptcy or insolvency or a general assignment for the benefit of creditors by DESIGN PROFESSIONAL or by any of DESIGN PROFESSIONAL'S principals, partners, officers or directors, or (d) failure to obey laws, ordinances, regulations or other codes of conduct, or (e) otherwise materially breaching this Agreement. In the event of such a default, OWNER may terminate this Agreement, in whole or in part, by giving DESIGN PROFESSIONAL five (5) business days written notice of termination.

- 13.2 If, after notice of termination of this Agreement as provided for in paragraph 13.1 above, it is determined for any reason that DESIGN PROFESSIONAL was not in default, or that its default was excusable, or that OWNER otherwise was not entitled to the remedy against DESIGN PROFESSIONAL provided for in paragraph 13.1, then the notice of termination given pursuant to paragraph 13.1 shall be deemed to be the notice of termination provided for in paragraph 13.3 below and DESIGN PROFESSIONAL'S remedies against OWNER shall be the same as and limited to those afforded DESIGN PROFESSIONAL under paragraph 12.3 below.
- 13.3 OWNER shall have the right to terminate this Agreement, in whole or in part, without cause upon five (5) business days written notice to DESIGN PROFESSIONAL. In the event of such termination for convenience, DESIGN PROFESSIONAL'S recovery against OWNER shall be limited to that portion of DESIGN PROFESSIONAL'S compensation earned through the date of termination, together with any retainage withheld and any costs reasonably incurred by DESIGN PROFESSIONAL that are directly attributable to the termination, but DESIGN PROFESSIONAL shall not be entitled to any other or further recovery against OWNER, including, but not limited to, anticipated fees or profit on work not required to be performed.
- 13.4 DESIGN PROFESSIONAL shall have the right to terminate this Agreement, without cause, upon ninety (90) days written notice to OWNER. In the event of any dispute regarding or relating to performance pursuant to this Agreement, or payment hereunder, then in that event, DESIGN PROFESSIONAL is obligated to continue performance in accordance with the terms of this Agreement unless instructed by the OWNER to suspend or delay performance.
- 13.5 Upon termination, as set forth in paragraph 7.1 herein, DESIGN PROFESSIONAL shall deliver to OWNER all papers, records, documents, Auto CAD Files, drawings, calculations, models, and other materials in DESIGN PROFESSIONAL'S possession or control arising out of or relating to this Agreement.
- 13.6 OWNER shall have the authority to suspend all or any portions of the services to be provided by DESIGN PROFESSIONAL hereunder upon giving DESIGN PROFESSIONAL two (2) business days prior written a notice of such suspension. If all or any portion of the services to be rendered hereunder are so suspended, DESIGN PROFESSIONAL'S sole and exclusive remedy shall be to seek an extension of time to its

schedule subject to the procedures set forth in Article 5 and to the provisions of paragraph 5.4 herein.

- 13.7 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 DESIGN PROFESSIONAL as of the date of termination, DESIGN PROFESSIONAL shall promptly reimburse to OWNER all amounts paid in advance with respect to such Services.

#### **ARTICLE 14. SECURING AGREEMENT/PUBLIC ENTITY CRIMES**

- 14.1 DESIGN PROFESSIONAL warrants that DESIGN PROFESSIONAL has not employed or retained any company or person, other than a bona fide employee working solely for DESIGN PROFESSIONAL, to solicit or secure this Agreement and that DESIGN PROFESSIONAL has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for DESIGN PROFESSIONAL, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. DESIGN PROFESSIONAL'S compensation shall be adjusted to exclude any sums by which OWNER determines the compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.
- 14.2 By its execution of this Agreement, DESIGN PROFESSIONAL acknowledges that it has been informed by the OWNER of the terms of Section 287.133(2) (a) of the Florida Statutes which read as follows:

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

#### **ARTICLE 15. CONFLICT OF INTEREST**

- 15.1 DESIGN PROFESSIONAL represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. DESIGN PROFESSIONAL further represents that no persons having any such interest shall be employed to perform those services.

**ARTICLE 16. MODIFICATION**

16.1 No modification or change in 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.

**ARTICLE 17. NOTICES AND ADDRESS OF RECORD**

17.1 All notices required or made pursuant to this Agreement to be given by DESIGN PROFESSIONAL to OWNER shall be in writing and shall be delivered by hand or by United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following OWNER’S addresses of record:

The College of the Florida Keys  
5901 College Road  
Key West, Florida 33040

Attention: Director of Facilities

17.2 All notices required or made pursuant to this Agreement to be given by OWNER to DESIGN PROFESSIONAL shall be made in writing and shall be delivered by hand or by the United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following DESIGN PROFESSIONAL’S address of record:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
ATTENTION: \_\_\_\_\_

17.3 Either party may change its address of record by written notice to the other party given in accordance with requirements of this Article.

**ARTICLE 18. AUDIT RIGHTS**

18.1 OWNER may, upon reasonable notice, audit the records of the DESIGN PROFESSIONAL and its subcontractors and suppliers during regular business hours, during the term of this Agreement and for a period of five (5) years after final payment is made by OWNER to DESIGN PROFESSIONAL under this Agreement or longer, if required by law. Such audits may be performed by an OWNER'S representative or an outside representative engaged by OWNER. DESIGN PROFESSIONAL shall retain all records for the Project during performance of the Project and for at least five (5) years after final completion.

18.2 For purposes hereof, DESIGN 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, without limitation, 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.

- 18.3 OWNER'S authorized representative shall have reasonable access to the DESIGN PROFESSIONAL'S facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the Agreement, shall be provided adequate and appropriate workspace at DESIGN PROFESSIONAL'S 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.
- 18.4 If an audit discloses overpricing or overcharge, then DESIGN PROFESSIONAL shall refund the overpayment. If an audit discloses overpricing or overcharges of one percent (1%) of the total amount paid hereunder or \$200,000 whichever is less, in addition to making adjustments for the overcharges, the reasonable actual cost of the OWNER'S audit shall be reimbursed to the OWNER by the DESIGN PROFESSIONAL. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the DESIGN PROFESSIONAL'S invoices and/or records shall be made within ninety (90) calendar days from presentation of OWNER'S findings to DESIGN PROFESSIONAL.
- 18.5 DESIGN PROFESSIONAL shall ensure notice of OWNER'S audit rights is provided to its subcontractors, suppliers, and any other vendor providing services or materials for the Project and shall ensure that each agreement it enters into pursuant hereto includes the provisions of this Article 18.

#### ARTICLE 19. MISCELLANEOUS

- 19.1 **Fiduciary Duty.** DESIGN PROFESSIONAL, in representing OWNER, shall promote the best interest of OWNER and assume towards OWNER a fiduciary relationship of the highest trust, confidence, and fair dealing.
- 19.2 **Integration.** This Agreement represents the entire and integrated agreement between the OWNER and the DESIGN 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 the OWNER and the DESIGN PROFESSIONAL.
- 19.3 **Assignment.** This Agreement is not assignable, in whole or in part, by DESIGN PROFESSIONAL without the prior written consent of OWNER.



- 19.4 **Waiver.** No provision of this Agreement may be waived except by written agreement of the parties. A 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.
- 19.5 **Third-Party Beneficiaries.** This Agreement shall inure solely to the benefit of the parties hereto 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 the Owner or the DESIGN PROFESSIONAL.
- 19.6 **No Contingency Fee.** DESIGN PROFESSIONAL represents that it has not employed or retained any company or person, other than a bona fide employee working solely for DESIGN 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 DESIGN 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 DESIGN PROFESSIONAL'S fee, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration, and to disqualify the firm from future contracts with the OWNER for a period of up to five (5) years.
- 19.7 **No Bribes or Kickbacks.** The DESIGN 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 nor accept any bribes or kick-backs in connection with the Project from or to any individual or entity, including any of its trade contractors, subcontractors, consultants, suppliers or manufacturers of Project goods and materials; or
  - (iii) without the express written permission of the OWNER, call for or by exclusion require or recommend the use of any subcontractor, consultant, product, material, equipment, system, process or procedure in which the DESIGN PROFESSIONAL has a direct or indirect proprietary or other pecuniary interest.
- 19.5 **Headings.** The headings of the Articles, Sections, Schedules and Attachments as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions in such Articles, Sections, Schedules, and Attachments.
- 19.6 **Incorporation.** This Agreement, including any Addenda and referenced Schedules and Attachments hereto, which are hereby deemed to be incorporated herein and to be a material part of this Agreement, constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings,

written or oral, relating to the matter set forth herein, and any such prior agreements or understanding shall have no force or effect whatever on this Agreement.

- 19.7 **Construction.** Unless the content of the Agreement otherwise clearly requires, references to the plural include the singular, the term “including” is not limiting and 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. Additionally, the parties hereto acknowledge that they have carefully reviewed this Agreement and have been advised by counsel of their choosing with respect thereto, and that they understand its contents and agree that this Agreement should not be construed more strongly against any party hereto, regardless of who is responsible for its preparation.
- 19.8 **Survival.** All representations and covenants of the parties shall survive the expiration of this Agreement.
- 19.9 **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.
- 19.9 **Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- 19.10 **Waiver of Immunity.** Notwithstanding the provisions of Sec. 768.28, Florida Statutes, the participation of the parties to this Agreement and the acquisition of any liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by OWNER be required to contain any provision for waiver.
- 19.11 **Sovereign Immunity.** DESIGN PROFESSIONAL acknowledges and agrees that nothing contained herein shall be construed or interpreted as (i) denying to OWNER any remedy or defense available to it under the laws of the State of Florida; (ii) the consent of the OWNER or the State of Florida or their agents and agencies to be sued; or (iii) a waiver of sovereign immunity of the OWNER or of the State of Florida beyond the limited waiver provided in section 768.28, Florida Statutes.
- 19.11 **Schedules.** The following Schedules are incorporated herein by reference:
- 19.11.1 Schedule A - Scope of Services.
  - 19.11.2 Schedule B - Basis of Compensation.
  - 19.11.3 Schedule C - Design Schedule.
  - 19.11.4 Schedule D - Insurance Coverage.
  - 19.11.5 Schedule E – Staffing Schedule

19.11.6 Schedule F – Rate Schedule.

**ARTICLE 20. APPLICABLE LAW**

- 20.1 Unless otherwise specified, this Agreement shall be governed by the laws, rules, and regulations of the State of Florida, and by the laws, rules, and regulations of the United States when providing services funded by the United States government.

**ARTICLE 21. EQUAL EMPLOYMENT OPPORTUNITY/NONDISCRIMINATION/MWBE/LDB**

- 21.1 In performing all services to be provided hereunder, DESIGN PROFESSIONAL shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. DESIGN 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. DESIGN PROFESSIONAL shall post in conspicuous places, available to employees and applicants for employment notices setting forth the terms of this Equal Employment Opportunity/Nondiscrimination/MWBE/LDB Clause and stating that all qualified candidates will receive consideration for employment without regard to race, color, religion, sex, or national origin. DESIGN PROFESSIONAL shall comply with the OWNER'S current MWBE and LDB policies and procedures.

**ARTICLE 22. DISPUTE RESOLUTION**

- 22.1 Prior to the initiation of any action or proceeding permitted by this Agreement to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation. The negotiation shall be attended by representatives of DESIGN PROFESSIONAL with full decision-making authority and by OWNER'S staff person who would make the presentation of any settlement reached during negotiations to OWNER'S board for approval. Failing resolution, and prior to the commencement of depositions in any litigation between the parties arising out of this Agreement, the parties shall attempt to resolve the dispute through Mediation before an agreed-upon Circuit Court Mediator certified by the State of Florida. The mediation shall be attended by representatives of DESIGN PROFESSIONAL with full decision-making authority and by OWNER'S staff person who would make the presentation of any settlement reached at mediation to OWNER for approval, and shall occur in Monroe County, Florida. Should either party fail to submit to mediation as required hereunder, the other party may obtain a court order requiring mediation under Florida Statutes section 44.102.
- 22.2 Any litigation between the parties hereto, whether arising out of any claim or arising out of this Agreement or any breach thereof, shall be brought, maintained and pursued only in the

appropriate State courts of the State of Florida; and OWNER and DESIGN PROFESSIONAL each hereby waives and renounces any and all rights and options which they, or either of them, have or might have to bring to maintain any such litigation or action in the Federal Court system of the United States. Venue of any such litigation between the parties hereto shall lie and be only in the appropriate State courts of the State of Florida's Sixteenth Judicial Circuit in and for Monroe County, Florida, and the parties consent and submit to the jurisdiction of any such court. This Agreement is entered into by the parties hereby in Monroe County, Florida. **IN ADDITION, THE PARTIES EXPRESSLY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY LITIGATION INVOLVING THE PROJECT OR THIS AGREEMENT.**

- 22.3 In the event of any claim or dispute arising out of this Agreement, the prevailing Party shall be entitled to recover from the non-prevailing Party its reasonable attorneys' fees and court costs, at all levels, including at trial, in arbitration, on appeal, in bankruptcy and in post-judgment proceedings.

[Signature page follows]

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement the day and year first written above.

**OWNER:**

The College of the Florida Keys

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

**DESIGN PROFESSIONAL:**

\_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
\_\_\_\_\_

Date:

[SEAL]

**SCHEDULE A**  
**SCOPE OF SERVICES**

MISCELLANEOUS ARCHITECTURAL PROJECT- CONTINUING CONTRACT

DESIGN PROFESSIONAL shall provide continuing Architectural/Engineering services on miscellaneous projects to OWNER in which the estimated construction cost of each individual project under the contract does not exceed Four Million (\$4,000,000) Dollars and for a study activity if the fee for professional services for each individual study under the contract does not exceed Five Hundred Thousand (\$500,000) Dollars. A general description of the scope of professional services required may include but not be limited to the following:

1. Review of existing site conditions.
2. Preparation of a scope of work statement and preliminary cost estimate.
3. Coordination with appropriate government agencies.
4. To produce design drawings, construction drawings and specifications that incorporate the necessary sub consultant's disciplines such as environmental, architectural, engineering, structural, surveying, and any other disciplines required. The documents will set forth in detail the requirements for construction of the project.
5. Assist in the bid process and evaluation of the construction contract.
6. Administrative review and observation during the construction phase, review of the submittals and shop drawings, review of the project close out documents and the 11-month warranty review.
7. Manage all architectural processes related to Construction Contracts and/or Construction Contractor at Risk projects (Schedule A, Section 1.1 -9.10.)

**CONSTRUCTION CONTRACTS / CM @ RISK PROJECTS**

1 PROGRAM VERIFICATION:

1.1 DESIGN PROFESSIONAL may assist OWNER with respect to OWNER'S selection of a CONSTRUCTION CONTRACTOR for the Project upon request of OWNER. That assistance shall include, but not be limited to, reviewing and commenting upon proposed candidates, attending meetings and interview sessions with respect to the selection of a CONSTRUCTION CONTRACTOR and assisting in the development and award of any contracts between OWNER and CONSTRUCTION CONTRACTOR.

- 1.2 During the Schematic Design Phase and Design Development Phase of this Agreement, CONSTRUCTION CONTRACTOR will provide OWNER with value engineering and other services with respect to DESIGN PROFESSIONAL'S design. Those services shall include but are not limited to the preparation of cost estimates and comments concerning the constructability of the design. DESIGN PROFESSIONAL agrees to incorporate all suggestions or recommendations made by CONSTRUCTION CONTRACTOR with respect to the Project design whenever practicable and consistent with good design and after OWNER'S written approval.
- 1.3 DESIGN PROFESSIONAL shall review the OWNER's program documents, including the Educational Specification and the Guidelines, to ascertain the requirements of the Project, and shall either meet the design requirements set forth therein or DESIGN PROFESSIONAL shall submit a written request for variance, identifying specific exceptions. OWNER may, at its discretion, accept or reject the request for variance. DESIGN PROFESSIONAL shall prepare and submit a report on the program for OWNER'S review and approval.
- 1.4 DESIGN PROFESSIONAL shall review the Owner's budget and any applicable cost estimates as compared to the OWNER's program documents. The DESIGN PROFESSIONAL shall confirm in writing to the OWNER whether the Project can be designed and successfully constructed within the limits of the OWNER's budget and program constraints.

## 2 PHASE I - SCHEMATIC DESIGN:

- 2.1 Based upon the mutually agreed-upon Project program, schedule and budget by OWNER and DESIGN PROFESSIONAL, and after taking into consideration the comments and recommendations from CONSTRUCTION CONTRACTOR, DESIGN PROFESSIONAL shall prepare, Phase I - Schematic Design Documents in compliance with the Guidelines for approval by OWNER. OWNER'S acceptance of Phase I - Schematic Design Documents in no way relieves DESIGN PROFESSIONAL of its obligation to deliver complete and accurate documents necessary for successful construction of the Project.
- 2.2 DESIGN PROFESSIONAL shall work with the Project Manager, Maintenance Department, and other users of the Project to meet design requirements and identify the areas within the facility design, which offer the greatest potential for the elimination of unnecessary costs. OWNER'S design criteria Guidelines shall not be eliminated as value engineering items.
- 2.3 DESIGN PROFESSIONAL shall prepare a master site plan that identifies future program changes impacting site development and physical expansion with particular emphasis on curriculum, accessibility (including all ADA requirements), growth trends, traffic separation, safety, facility improvements, community joint-use and potential placement of portables.
- 2.4 DESIGN PROFESSIONAL'S final Phase I - Schematic Design submittal and presentation shall include, but not be limited to, the Phase I requirements found in the Guidelines.

- 2.5 DESIGN PROFESSIONAL shall consult with CONSTRUCTION CONTRACTOR with respect to (1) CONSTRUCTION CONTRACTOR'S development of Project construction cost estimates, (2) CONSTRUCTION CONTRACTOR'S development of an overall Project schedule and (3) CONSTRUCTION CONTRACTOR'S comments and recommendations concerning the Project design. DESIGN PROFESSIONAL shall approve or provide written comments within ten (10) business days of receipt of CONSTRUCTION CONTRACTOR'S comments and recommendations.
- 2.6 If the Project is at an existing facility, the DESIGN PROFESSIONAL shall prepare a minimum of three (3) phasing options, with input from the OWNER and CONSTRUCTION CONTRACTOR and as part of Phase I – Schematic Design Phase. This approach to design and construction shall be phased during continued operation of the facility while identifying the best schedule and optimal cost for construction.
- 2.7 DESIGN PROFESSIONAL shall conduct a pre-submittal document review meeting with the OWNER'S Project Manager prior to submission of Phase I - Schematic Design Documents. DESIGN PROFESSIONAL shall be required to conduct at least one formal presentation at the completion of this phase to demonstrate how OWNER'S previously submitted comments have been incorporated into the design documents.
- 2.8 All Phase I - Schematic Design Documents prepared by or for DESIGN PROFESSIONAL are subject to OWNER'S review and approval. At the completion of the Schematic Design Phase, DESIGN PROFESSIONAL, shall submit the Phase I Schematic Design Documents to the Project Manager for review and comment. DESIGN PROFESSIONAL shall respond in writing to the review comments within 14 calendar days of receipt. Responses shall be forwarded directly to the OWNER'S Project Manager. DESIGN PROFESSIONAL shall revise the Phase I - Schematic Design Documents as required by OWNER in order to obtain the OWNER'S written approval and authorization to proceed to the Phase II - Design Development Phase.
- 2.9 As part of Basic Services, DESIGN PROFESSIONAL will be required to provide OWNER with a cost estimate as part of Phase I - Schematic Design Documents, together with a written explanation for all variances between that cost estimate and OWNER'S approved Project construction budget. The cost estimate format shall be subject to OWNER'S approval and may require electronic submission of cost estimate information. If DESIGN PROFESSIONAL'S cost estimate or any other estimate prepared by or for Owner based upon the Phase I - Schematic Design Documents indicate that construction costs will exceed OWNER'S approved Project construction budget, DESIGN PROFESSIONAL shall revise the Phase I - Schematic Design Documents to bring them within OWNER'S approved Project construction budget. DESIGN PROFESSIONAL shall be solely responsible for all costs and expenses which it may incur in revising the Phase I - Schematic Design Documents to bring them within OWNER'S approved Project construction budget. If OWNER requires a detailed construction



cost estimate from DESIGN PROFESSIONAL, such estimate shall be provided as an Additional Service.

### 3 PHASE II - DESIGN DEVELOPMENT PHASE:

After OWNER'S review and approval of Phase I - Schematic Design Documents and issuance of OWNER'S written authorization to proceed, DESIGN PROFESSIONAL shall commence the Phase II - Design Development services and perform the following:

- 3.1 Develop design documents to a level of definitiveness and detail to fix and describe the size and character of the various Project components and each Project discipline and system as may be appropriate for this stage of development, including long lead and special order materials and equipment.
- 3.2 Continue developing the architectural, civil, structural, mechanical, electrical, security, and other discipline's responsibilities that establish the final scope and details for that discipline's work.
- 3.3 Perform materials research and prepare specifications specific to Project requirements in draft form.
- 3.4 Identify and properly coordinate the requirements of the various utility services that have an impact upon the Project Design. Drainage investigations and drainage designs shall be coordinated with stormwater management district having jurisdiction on the site.
- 3.5 Consult with CONSTRUCTION CONTRACTOR with respect to (i) CONSTRUCTION CONTRACTOR'S development of Project construction cost estimates, (ii) CONSTRUCTION CONTRACTOR'S development of an overall Project schedule and (iii) CONSTRUCTION CONTRACTOR'S comments and recommendations concerning the Project design. DESIGN PROFESSIONAL shall approve or provide written comments within ten (10) business days of receipt of the CONSTRUCTION CONTRACTOR'S comments and recommendations.
- 3.6 Work with the OWNER'S Project Manager, Maintenance Department, and other users of the Project to meet design requirements and identify the areas within the facility design, which offer the greatest potential for the elimination of unnecessary costs. OWNER'S Guidelines shall not be eliminated as value engineering items.
- 3.7 Working in concert with the CONSTRUCTION CONTRACTOR, generate alternative ideas through Value Engineering Workshops with the OWNER to provide the identified primary function for the Project.
- 3.8 Evaluate alternative ideas in terms of their feasibility to construct, time, and cost.
- 3.9 Develop selected alternative ideas in detail with emphasis on their technical durability, constructability, and life cycle cost.

3.10 DESIGN PROFESSIONAL'S final Phase II - Design Development submittal and presentation shall include, but not be limited to, the Phase II requirements found in the Guidelines, except those as may be listed below:

**[List the items that WILL NOT be included in Phase II from the list of items in the Design Phase Submittal Requirements]**

3.11 DESIGN PROFESSIONAL shall prepare and submit with Phase II – Design Development Documents a quality assurance/quality control (QA/QC) itemized checklist such as “*RediCheck*” interdisciplinary review system or similar, confirming that the Phase II – Design Development Documents submittal is in compliance with the OWNER'S program submission requirements and that all project design disciplines have been coordinated.

3.12 DESIGN PROFESSIONAL shall conduct a pre-submittal document review meeting with the OWNER'S Project Manager prior to submission of Phase II - Design Development Documents. DESIGN PROFESSIONAL may be required, to conduct at least one presentation at the completion of this phase to demonstrate how OWNER'S previously submitted comments were incorporated into the design documents.

3.13 All Phase II - Design Development Documents prepared by or for DESIGN PROFESSIONAL are subject to OWNER's review and approval. At the completion of the Design Development Phase, DESIGN PROFESSIONAL shall submit the Phase II - Design Development Documents to the Project Manager for review and comment. DESIGN PROFESSIONAL shall respond in writing to the review comments within fourteen (14) calendar days of receipt. Responses shall be forwarded directly to the OWNER'S Project Manager. DESIGN PROFESSIONAL shall revise the Phase II – Design Development Documents as required by OWNER in order to obtain the OWNER's written approval and authorization to proceed to the Phase III- Construction Documents Phase.

3.14 As part of Basic Services, DESIGN PROFESSIONAL will be required to further develop and update the cost estimate as part of Phase II – Design Development Documents and bring to OWNER'S attention in writing any variances between that updated cost estimate and OWNER'S approved Project construction budget. Cost estimate format shall be subject to OWNER's approval and may require electronic submission of cost estimate information. If DESIGN PROFESSIONAL'S updated cost estimate or any other estimate prepared by or for OWNER based upon the Phase II - Design Development Documents indicate that construction costs will exceed the OWNER'S approved Project construction budget, OWNER may elect to modify its budget and/or require DESIGN PROFESSIONAL to revise the Phase II - Design Development Documents to bring them within OWNER'S approved Project construction budget. DESIGN PROFESSIONAL shall be solely responsible for all costs and expenses which it may incur in revising the Phase II – Design Development Documents to bring them within OWNER'S approved Project construction budget.

#### 4 PHASE III - CONSTRUCTION DOCUMENTS:

After OWNER'S review and approval of Phase II - Design Development Documents and issuance of OWNER'S written authorization to proceed, DESIGN PROFESSIONAL shall commence the Phase III - Construction Documents services and perform the following:

- 4.1 Prepare final calculations, Construction Documents setting forth in detail each discipline's requirements into a cohesive whole based upon the approved Phase II -
- 4.2 Design Development Documents, consultations with CONSTRUCTION CONTRACTOR, and OWNER'S Project Manager.
- 4.3 Prepare final quality assurance/quality control (QA/QC) itemized checklist such as "RediCheck" interdisciplinary review system or similar, confirming that the Phase III – Construction Documents submission is in compliance with the OWNER'S program submission requirements and that all project design disciplines have been coordinated.
- 4.4 Complete the Project Manual in accordance with the Guidelines.
- 4.5 Consult with CONSTRUCTION CONTRACTOR with respect to (1) CONSTRUCTION CONTRACTOR'S development of Project construction cost estimates, (2) CONSTRUCTION CONTRACTOR'S development of an overall Project schedule and (3) CONSTRUCTION CONTRACTOR'S comments and recommendations concerning the Project design. DESIGN PROFESSIONAL shall approve or provide written comments within fourteen (14) calendar days of receipt of the CONSTRUCTION CONTRACTOR'S comments and recommendations.
- 4.6 Prepare and file all applications, data, and documents required to obtain the approval of all authorities having jurisdiction over the Project, including but not limited to County and City governments, State and Federal entities, utility providers, special districts, and State and local fire marshals, as applicable. This shall be accomplished at the appropriate time, but not later than the ninety percent (90%) completion point of this phase. To ensure the timely approval of all permits necessary for the construction of the Project, including all environmental permits, DESIGN PROFESSIONAL shall advise OWNER and schedule the necessary contacts and liaise with all authorities having permit jurisdiction over the Project, and shall furnish, on a timely basis, such as plans, data and information as may be necessary to secure approval of the required permits. DESIGN PROFESSIONAL shall, at no additional cost to OWNER, make all reasonable and necessary revisions to the Construction Documents required to obtain the necessary permit approvals for construction of the Project.
- 4.7 DESIGN PROFESSIONAL shall update the campus Master Plan drawings to reflect the current as-built condition related to the overall Master Plan goals.
- 4.8 All Phase III - Construction Documents prepared by or for DESIGN PROFESSIONAL are subject to OWNER's review and approval. At the completion of the Construction

Documents Phase, DESIGN PROFESSIONAL shall submit the Phase III - Construction Documents to the Project Manager for review and comment. DESIGN PROFESSIONAL shall respond in writing to the review comments within 14 calendar days of receipt. Responses shall be forwarded directly to the OWNER'S Project Manager. DESIGN PROFESSIONAL shall revise the Phase III-Construction Documents as required by OWNER to obtain OWNER's written approval of such documents.

4.9 As part of Basic Services, DESIGN PROFESSIONAL will be required to further develop and update its cost estimate as part of the Phase III – Construction Documents, and notify OWNER in writing of any variances between that updated cost estimate and OWNER'S approved Project construction budget. If DESIGN PROFESSIONAL'S updated budget estimate or any other estimate prepared by or for OWNER based upon the Phase III - Construction Documents indicate that construction costs will exceed OWNER'S approved Project construction budget, OWNER may elect to modify its budget and/or require DESIGN PROFESSIONAL to revise the Phase III - Construction Documents to bring them within OWNER'S approved Project construction budget. DESIGN PROFESSIONAL shall be solely responsible for all costs and expenses which it may incur in revising the Phase III - Construction Documents to bring them within OWNER'S approved Project construction budget.

4.10 As used herein, the term "Construction Documents" refers to all documents to be prepared by and for DESIGN PROFESSIONAL pursuant to this Agreement with respect to the construction of the Project, including, but not limited to, all drawings, specifications, bid documents, Project Manual, contract conditions, and Addenda.

## 5 BUILDING PERMIT PHASE

5.1 DESIGN PROFESSIONAL is responsible for cooperating with and providing assistance to the OWNER and CONSTRUCTION CONTRACTOR with respect to the applicable building permit application process and the issuance of all necessary and required permits for the Project.

5.2 As part of the building permit application package, the DESIGN PROFESSIONAL shall provide the applicable building permit office with the number of complete sets of signed and sealed Construction Documents and all other bidding documents prepared by the DESIGN PROFESSIONAL as indicated in the Deliverable Schedule set forth in the Guidelines. Each of the drawings and the cover sheet of the Project Manual shall be signed, sealed, and dated by the DESIGN PROFESSIONAL per Florida Statutes.

5.3 As part of the building permit application process, the Building Code Compliance Official ("BCCO") shall review and provide comments to the DESIGN PROFESSIONAL on the submitted Construction Documents. DESIGN PROFESSIONAL shall revise the Construction Documents by incorporating necessary

revisions to address mandatory inclusions made by Facilities Services Design, the Project Manager and the office of the BCCO. The revised final Construction Documents shall be signed and sealed by the DESIGN PROFESSIONAL and re-submitted to the Project Manager in the quantities indicated in the Deliverable Schedule. Once this revised set of Construction Documents is approved by the OWNER, it will be deemed to be the final approved set of Construction Documents upon which the construction of the Project is to be based.

## 6 BIDDING PHASE

It is anticipated that the Bidding Phase will commence prior to the completion of one-hundred percent (100%) of the Construction Documents. Accordingly, DESIGN PROFESSIONAL shall cooperate with and assist the OWNER and CONSTRUCTION CONTRACTOR during the Bidding Phase as hereafter provided:

6.1 DESIGN PROFESSIONAL shall provide the OWNER'S Project Manager with one electronic copy of the Construction Documents and all other bidding documents prepared by or for DESIGN PROFESSIONAL. Dependent upon the Project schedule, the Bidding Phase may take place prior to or concurrently with review and approval of the Construction Documents by applicable regulatory authorities for purposes of Building Permit issuance. Accordingly, DESIGN PROFESSIONAL may be required, as directed by OWNER, to provide CONSTRUCTION CONTRACTOR with design documents and other bidding documents prior to the finalization of one-hundred percent (100%) of approved Construction Documents.

6.2 DESIGN PROFESSIONAL shall assist the OWNER in reviewing, evaluating and advising OWNER regarding subcontractor bids and CONSTRUCTION CONTRACTOR'S final Project schedule and Guaranteed Maximum Price proposal. DESIGN PROFESSIONAL shall attend the pre-bid conferences and shall be responsible for developing and providing to OWNER any addenda to the Contract Documents that are desirable to OWNER as a result of information obtained from those conferences or the overall bid process. The DESIGN PROFESSIONAL shall make a written recommendation to the OWNER with respect to the OWNER entering an agreement with the CONSTRUCTION CONTRACTOR at the amount of the proposed Guaranteed Maximum Price.

6.3 DESIGN PROFESSIONAL shall prepare any required addenda to the Construction Documents, submit addenda for Building Permit approval through CONSTRUCTION CONTRACTOR, and distribute all required copies to all necessary parties as determined by the OWNER. DESIGN PROFESSIONAL shall respond only to questions or requests for clarifications concerning the Construction Documents submitted in writing by the OWNER or CONSTRUCTION CONTRACTOR. Written questions by bidders and subcontractors during bidding shall be answered by the DESIGN PROFESSIONAL through the issuance of an Addenda through the CONSTRUCTION CONTRACTOR, at the direction of OWNER.

## 7 CONSTRUCTION PHASE:

7.1 DESIGN PROFESSIONAL shall keep OWNER apprised of all contacts and/or communications between DESIGN PROFESSIONAL and CONSTRUCTION CONTRACTOR. OWNER shall be copied on all correspondence between DESIGN PROFESSIONAL and CONSTRUCTION CONTRACTOR. All contacts and/or communications between DESIGN PROFESSIONAL and the various trade subcontractors shall be routed through CONSTRUCTION CONTRACTOR.

7.2 During the Construction Phase, DESIGN PROFESSIONAL shall provide the following services:

7.2.1 Prepare a list of required submittals for shop drawings, product data, samples, warranties, and other submittals required by Contract Documents, in tabular form which will indicate specification section number and section name (CSI Format) per Project Manual Table of Contents.

7.2.2 Process, review, respond to and distribute shop drawings, product data, samples, substitutions, and other submittals required by the Construction Documents within five (5) business days.

7.2.3 Maintain a master file of all submittals, including a submittal register, made to DESIGN PROFESSIONAL, with duplicates for OWNER. OWNER'S copy shall be in electronic/CD format and submitted to OWNER by DESIGN PROFESSIONAL at the time of Substantial Completion.

7.2.4 Provide construction field observation services consisting of visits to the Project site as frequently as necessary, as reasonably determined by OWNER, but not less than once every week, to become generally familiar with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Construction Documents. When DESIGN PROFESSIONAL discovers portions of the Work which do not conform to the Construction Documents, DESIGN PROFESSIONAL, shall have the authority and duty to reject such Work. Provide a written report of each visit, within five (5) business days from the DESIGN PROFESSIONAL'S site visit, to the OWNER'S Project Manager. This field observation requirement shall apply to any sub-consultants or subcontractors of DESIGN PROFESSIONAL at appropriate construction points.

7.2.5 DESIGN PROFESSIONAL, as representative of OWNER during construction, shall advise and consult with OWNER. Through its onsite observations of the Work in progress and field checks of materials and equipment, DESIGN PROFESSIONAL shall endeavor to provide protection for OWNER against defects and deficiencies in the Work of CONSTRUCTION CONTRACTOR and the various trade subcontractors of CONSTRUCTION CONTRACTOR.

- 7.2.6 Prior to the first Application for Payment, the DESIGN PROFESSIONAL shall review the CONSTRUCTION CONTRACTOR'S Schedule of Values and recommend adjustments. Based on such observations at the site and the Applications for Payment submitted by the CONSTRUCTION CONTRACTOR, DESIGN PROFESSIONAL shall recommend the amount owing to CONSTRUCTION CONTRACTOR and shall acknowledge the Certificates of Payment initially completed by the CONSTRUCTION CONTRACTOR for such amounts. The issuance of Certificate of Payment shall constitute a representation by DESIGN PROFESSIONAL to OWNER that: (i) the Work has progressed to the point indicated; that to the best of DESIGN PROFESSIONAL'S knowledge, information, and belief, the quality of the Work is in accordance with the Construction Documents subject to minor deviations from the Construction Documents correctable prior to completion, and to any specific qualifications stated in the Certificate of Payment; and CONSTRUCTION CONTRACTOR is entitled to payment in the amount certified.
- 7.2.7 DESIGN PROFESSIONAL shall review claims for extra compensation, or extensions of time from CONSTRUCTION CONTRACTOR, make written recommendations to OWNER within five (5) business days concerning the validity of such claims, and prepare responses to be provided by OWNER to CONSTRUCTION CONTRACTOR.
- 7.2.8 DESIGN PROFESSIONAL shall be, in the first instance, the interpreter of the requirements of the Construction Documents. DESIGN PROFESSIONAL shall render opinions on all claims of CONSTRUCTION CONTRACTOR relating to the execution and progress of the Work and on all other matters or questions related thereto. DESIGN PROFESSIONAL'S decisions in matters relating to artistic effect shall be final if consistent with the intent of the Construction Documents, subject to OWNER'S agreement. DESIGN PROFESSIONAL shall review for comment or approval any and all proposal requests, supplemental drawings and information, substitutions, value engineering suggestions, and change orders.
- 7.2.9 Prepare, reproduce and distribute supplemental drawings, specifications, and interpretations in response to requests for clarification by CONSTRUCTION CONTRACTOR or OWNER as required by construction exigencies. DESIGN PROFESSIONAL'S response to any such request must be received by OWNER and CONSTRUCTION CONTRACTOR within five (5) business days of receipt of a written request for clarification. DESIGN PROFESSIONAL will review and respond to all submittals from CONSTRUCTION CONTRACTOR, including but not limited to shop drawings, within a reasonable period of time so as not to delay the progress of the Work, but in no event, more than five (5) business days after receipt, unless OWNER expressly agrees otherwise in writing. Review of CONSTRUCTION CONTRACTOR'S submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities, or for

substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of CONSTRUCTION CONTRACTOR as required by the Contract Documents. DESIGN PROFESSIONAL'S review shall not constitute approval of safety precautions or, unless otherwise specifically stated by DESIGN PROFESSIONAL, of any construction means, methods, techniques, sequences or procedures. DESIGN PROFESSIONAL'S approval of a specific item shall not indicate approval of an assembly of which the item is a component.

- 7.2.10 DESIGN PROFESSIONAL shall have authority to reject Work which does not conform to the Construction Documents. Whenever, in its reasonable opinion, DESIGN PROFESSIONAL considers it necessary or advisable to ensure the proper implementation or the intent of the Construction Documents, subject to OWNER'S prior written approval, DESIGN PROFESSIONAL will have authority to require special inspection or testing of any Work in accordance with the provisions of the Construction Documents whether or not such Work be then fabricated, installed or completed.
- 7.2.11 DESIGN PROFESSIONAL shall review and provide written comment upon all Change Order requests by the CONSTRUCTION CONTRACTOR, as well as any cost estimate associated with a Change Order request, prepared by the CONSTRUCTION CONTRACTOR. Upon agreement by the OWNER, the DESIGN PROFESSIONAL shall prepare and provide Change Orders or Construction Change Directives to the OWNER for approval and issuance to the CONSTRUCTION CONTRACTOR, and revise the Construction Documents accordingly.
- 7.2.12 DESIGN PROFESSIONAL shall submit to the applicable building permit office the number of sets of drawings and/or documents reflecting the approved changes in the Work as may be required by that office. Code compliance issues must be approved by the applicable building permit office prior to inspection of the subject Work. DESIGN PROFESSIONAL, in coordination with OWNER, shall arrange for any such necessary inspections.
- 7.2.13 DESIGN PROFESSIONAL shall review the Project schedule, subcontractor construction schedule(s), schedule(s) of shop drawing submittals and schedule(s) of values prepared by CONSTRUCTION CONTRACTOR and advise and/or recommend in writing to OWNER concerning their acceptability.
- 7.2.14 DESIGN PROFESSIONAL shall attend meetings with the CONSTRUCTION CONTRACTOR, such as preconstruction conferences, progress meetings, job conferences, pre-closeout meetings, and other Project-related meetings, and take and provide the official meeting minutes for these meetings to OWNER within five (5) days of any such meeting. The DESIGN PROFESSIONAL'S official meeting minutes will be in addition to any meeting agenda, or meeting minutes prepared by the CONSTRUCTION CONTRACTOR.



- 7.2.15 Receive notice from the CONSTRUCTION CONTRACTOR if other work related to the Project by OWNER'S own forces, by utility owners, or by other direct contractors will involve additional expense to CONSTRUCTION CONTRACTOR or require additional time and advise the OWNER.
- 7.2.16 Receive notice from the CONSTRUCTION CONTRACTOR if other work related to the Project by OWNER'S own forces, by utility owners, or by other direct contractors will involve additional expense to CONSTRUCTION CONTRACTOR or require additional time and advise the OWNER.
- 7.2.17 Receive copies of all accident reports submitted by CONSTRUCTION CONTRACTOR and advise OWNER.
- 7.2.18 Timely advise OWNER of facts known to DESIGN PROFESSIONAL which may constitute an event of default on the part of the CONSTRUCTION CONTRACTOR under the Contract Documents, and advise and make recommendations to the OWNER with respect to the remedies available to the OWNER under the Contract Documents.
- 7.2.19 Review and comment upon, without assuming any liability for, CONSTRUCTION CONTRACTOR'S quality control program.
- 7.2.20 Review the Work to confirm that the plans and facility comply with the current Florida Building Code, and maintain a copy of the current Florida Building Code at its office for review by CONSTRUCTION CONTRACTOR. Report any discrepancies observed or noted to OWNER. The applicable building permit office will prepare and issue the Certificate of Occupancy at the appropriate time to the CONSTRUCTION CONTRACTOR.
- 7.2.21 DESIGN PROFESSIONAL shall manage the OWNER'S Project closeout process. Upon notice from the CONSTRUCTION CONTRACTOR, and with the assistance of the OWNER, DESIGN PROFESSIONAL shall conduct the Substantial Completion inspection and if appropriate issue the Certificate of Substantial Completion on the form attached as Schedule I. DESIGN PROFESSIONAL shall review and comment upon, and supplement as appropriate, the punch lists to be prepared by CONSTRUCTION CONTRACTOR, and shall notify CONSTRUCTION CONTRACTOR in writing of work not complete or requiring correction by providing the final punch list to CONSTRUCTION CONTRACTOR within seven (7) calendar days after CONSTRUCTION CONTRACTOR has achieved Substantial Completion.
- 7.2.22 DESIGN PROFESSIONAL shall, upon notice from CONSTRUCTION CONTRACTOR, conduct final inspections and assist OWNER in final acceptance of Project. If appropriate, issue the Certificate of Final Inspection.

- 7.2.23 Evaluate all testing results and make recommendations to the OWNER.
- 7.2.24 Assist OWNER in the establishment of programs of operation and maintenance of the physical plant and equipment.
- 7.2.25 Assist OWNER and CONSTRUCTION CONTRACTOR in the training of the facility operation and maintenance personnel with respect to the proper operations, schedules, procedures and inventory controls for the various Project equipment and systems. Such assistance shall include assisting the OWNER in arranging for and coordinating the instruction and training on operations and maintenance of the Project's equipment and systems in conjunction with the various manufacturer representatives. Further, DESIGN PROFESSIONAL is to attend all such training sessions, unless otherwise consented to by OWNER in writing.
- 7.2.26 Review for compliance with the CONSTRUCTION CONTRACTOR'S obligation under the Contract Documents, all operation and maintenance manual submittals, prior to submittal to OWNER.
- 7.2.27 Schedule, in coordination with OWNER and CONSTRUCTION CONTRACTOR, and visit with OWNER and CONSTRUCTION CONTRACTOR the facility at initial occupancy and six (6) and eleven (11) months after issuance of the Certificate of Substantial Completion. During each facility visit, DESIGN PROFESSIONAL shall observe, troubleshoot and advise in the operation of building systems. This shall not relieve DESIGN PROFESSIONAL of its obligation to make other visits to the facility based on need should specific issues arise.
- 7.2.28 After CONSTRUCTION CONTRACTOR provides DESIGN PROFESSIONAL with its marked-up "As-Built" drawings and specifications, DESIGN PROFESSIONAL will revise the final approved Construction Documents to incorporate all "As-Built" information contained in the CONSTRUCTION CONTRACTOR'S marked-up "As-Built" drawings and specifications, as well as to reflect all addenda, contract changes and field changes (sometimes referred to herein as the "Record Documents"). DESIGN PROFESSIONAL shall provide OWNER with one (1) electronic copy on compact disk (CD) of the Record Documents, two sets of the conformed, signed and sealed drawings and prints, and two sets of the conformed Project Manual/Specifications signed and sealed.
- 7.2.29 The electronic copy on CD of the Record Documents shall be provided in AutoCAD.dwg format, "purged and bound," and compatible with OWNER'S system.
- 7.2.30 Throughout the Construction Phase, DESIGN PROFESSIONAL shall review CONSTRUCTION CONTRACTOR'S marked-up "As-Built" drawings and Project Manual/Specifications, on a regular basis, and at least monthly, prior to certification of CONSTRUCTION CONTRACTOR'S monthly payment application.

- 7.2.31 Consult with, and recommend solutions to, OWNER during the duration of warranties in connection with the inadequate performance of equipment, materials or systems under warranty.
- 7.2.32 Submit a facility and equipment review schedule to OWNER at the time of Substantial Completion. Perform reviews of facilities and equipment prior to the expiration of warranty period(s) to ascertain the adequacy of performance, materials, systems, and equipment. Submit a written report to the OWNER.
- 7.2.33 Document noted defects or deficiencies and prepare and provide instructions to CONSTRUCTION CONTRACTOR for correction of noted defects.
- 7.2.34 DESIGN PROFESSIONAL, upon final acceptance of the Project, shall issue and sign the Certificate of Final Inspection.

## 8 DELIVERABLES:

DESIGN PROFESSIONAL shall furnish documents in type, format, version, and quantities indicated in the Guidelines.

## 9 SERVICES RELATING TO ALL PHASES:

9.1. The DESIGN PROFESSIONAL shall assist in the preparation of data as required by the Florida Department of Education (“DOE” ). Specifically, the DESIGN PROFESSIONAL shall:

9.1.1. Satisfactorily complete DOE form OEF 208a for the Project.

9.1.2. Provide analysis of existing documents, field verifications of existing conditions and create new standardized drawings as may be required.

9.1.3. Field verification includes building count, room-by-room verification of design codes, room size, and shape, finish adequacy of lighting, heating, and ventilation as well as other miscellaneous items to the extent same are required by DOE regulations.

9.1.4. All submittals required by DOE shall be in the format required by DOE.

9.2. DESIGN PROFESSIONAL’S design documents shall be consistent with the OWNER’S program (including Education Specifications and Guidelines) at all phases of design unless expressly authorized otherwise in writing by OWNER.

9.3. DESIGN PROFESSIONAL shall submit to OWNER design notes and computations to document the design conclusions reached during the development of the Project design as reasonably requested by OWNER.

9.3.1. The design notes and calculations shall include, but not be limited to, the following data:

- 1 Design criteria used for the Project.
- 2 Lighting calculations.
- 3 Structural calculations.
- 4 Drainage calculations.
- 5 Acoustical calculations.
- 6 HVAC calculations.
- 7 Security and communications calculations.
- 8 Calculations as required by provisions of Florida Energy Conservation Standards Act (Department of Community Affairs), latest revision; Thermal Efficiency Standards (Florida Energy Efficiency Code for Building Construction, Department of Community Affairs, F.S. 552.900)
- 9 Life Cycle Costs (Florida Administrative Code and F.S. 235.26)
- 10 Calculations showing probable cost comparisons of various alternatives considered.
- 11 Documentation of decisions reached resulting from meetings, telephone conversations or site visits; and
- 12 Other Project related correspondence as appropriate.

9.4. All drawing documents for the Project shall be accurate, legible, complete in design, suitable for bidding purposes and in conformance to OWNER'S CAD Standards found in the Guidelines. Documents shall be furnished in accordance with the Deliverable Schedule.

9.5. At the time this Agreement is executed, DESIGN PROFESSIONAL has reviewed the form of contract to be entered into between OWNER and CONSTRUCTION CONTRACTOR. In addition to all other Basic Services to be provided by DESIGN PROFESSIONAL hereunder, DESIGN PROFESSIONAL agrees that any other services noted within the contract between OWNER and CONSTRUCTION CONTRACTOR to be provided by DESIGN PROFESSIONAL are hereby incorporated by reference into the Basic Services to be provided by DESIGN PROFESSIONAL hereunder. Any changes to the form of contract between OWNER and CONSTRUCTION CONTRACTOR from that reviewed by DESIGN PROFESSIONAL, which would increase the scope of Basic Services otherwise required of DESIGN PROFESSIONAL, will entitle the DESIGN PROFESSIONAL to an equitable adjustment to the Agreement for such Additional Services, if DESIGN PROFESSIONAL requests such adjustment in accordance with the requirements of this Agreement.

9.6. OWNER in no way obligates itself to check DESIGN PROFESSIONAL'S work, and further, is not responsible for maintaining the Design Schedule.

9.7. OWNER'S approval or acceptance of any service in any phase does not relieve DESIGN PROFESSIONAL of any of its duties, obligations or responsibilities under this Agreement.

9.8. DESIGN PROFESSIONAL'S attendance at any partnering sessions with CONSTRUCTION CONTRACTOR is mandatory and included within Basic Services.

9.9. DESIGN PROFESSIONAL acknowledges that OWNER has established a construction budget amount not to exceed an amount of Four Million (\$4,000,000) Dollars, which may be subject to adjustments, as approved by OWNER in writing. DESIGN PROFESSIONAL agrees to perform professional services for the Project, in accordance with the terms and conditions set forth herein, for the design of the Project at a total construction cost to OWNER which does not exceed the above-noted OWNER'S budget. Evaluations of the Project budget and any estimates of construction cost prepared, reviewed or agreed to by DESIGN PROFESSIONAL represent DESIGN PROFESSIONAL'S best judgment as a design professional familiar with the construction industry. DESIGN PROFESSIONAL cannot and does not guarantee that bids or negotiated prices will not vary from any estimate of construction cost or evaluation prepared, reviewed or agreed to by DESIGN PROFESSIONAL. Notwithstanding anything herein to the contrary, DESIGN PROFESSIONAL shall revise and modify the Construction Documents and assist in the rebidding of any portion of the Work at no additional cost to OWNER, if CONSTRUCTION CONTRACTOR'S Guaranteed Maximum Price proposal exceeds OWNER'S construction budget, as said budget may be modified by OWNER, as provided for herein. All such revisions and modifications of the Construction Documents shall be subject to the review and approval of the OWNER.

9.10. DESIGN PROFESSIONAL shall be responsible for obtaining and reviewing all geological reports obtained by OWNER with respect to the Project. DESIGN PROFESSIONAL'S design documents shall be consistent and coordinated with the information set forth in all such geological reports. In the event DESIGN PROFESSIONAL has any questions or concerns about the contents of any such reports, DESIGN PROFESSIONAL shall notify OWNER in writing within ten (10) days of DESIGN PROFESSIONAL'S receipt of any such geological reports. DESIGN PROFESSIONAL and OWNER will attempt to mutually resolve any such questions or concerns.

## SCHEDULE B

### 1. BASIS OF COMPENSATION

1.1 For the BASIC SERVICES provided for in this Agreement, an amount equal to eight percent (8%) of the actual construction cost on a per project basis (the “Basic Service Fee”). The Basic Service Fee payments are intended to be made in accordance with the following Schedule; however, the payment of any particular line item noted below shall not be due until all services associated with any such line item have been completed to OWNER’s reasonable satisfaction. This Basic Service Fee includes standard consultant’s fees for structural, mechanical, electrical and plumbing as needed, but does not include costs for surveys, civil engineering, or other specialized engineering, which if needed would be billed as a reimbursable.

	<u>Breakdown of the fee for billing:</u>	<u>Percent of Total Fee</u>
1.	Schematic Design Phase	15%
	Design Development Phase	20%
2.	Construction Documents Phase	40%
3.	Bidding and Negotiation Phase	5%
4.	Construction Administration Phase	20%

1.2 For the Additional Services provided for under Article 3 of the Agreement, OWNER agrees to pay DESIGN PROFESSIONAL a negotiated total fee based on the services to be provided. The negotiated fee shall be calculated using the billable rates specified in Schedule F. There shall be no overtime pay on Additional Services without OWNER’S prior written approval. OWNER will transfer the Contract Price to the CONSTRUCTION CONTRACTOR upon satisfactory completion of the work due by each phase under this Agreement.

1.3 The compensation provided for under Sections 1.1 of this Schedule B, shall be the total and complete amount payable to DESIGN PROFESSIONAL for the services to be performed under the provisions of this Agreement and shall include the cost of all materials, equipment, supplies and out-of-pocket expenses incurred in the performance of all services.

1.4 In addition to any other remedy of OWNER under this Agreement, at law, or in equity, OWNER may withhold payment from DESIGN 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 DESIGN PROFESSIONAL’S right to assert a claim for such disputed sums. Additionally, OWNER shall have the right to offset against

amounts otherwise due DESIGN 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 DESIGN PROFESSIONAL'S right to assert a claim for such disputed sums. OWNER shall provide DESIGN PROFESSIONAL with a written explanation of any such withholding or offset.

## **2. SCHEDULE OF PAYMENTS:**

- 2.1 DESIGN PROFESSIONAL shall submit, with each of the monthly status reports an invoice for fees earned in the performance of Basic Services and Additional Services. Notwithstanding anything herein to the contrary, the DESIGN PROFESSIONAL shall submit no more than one invoice per month for all fees earned that month for both Basic Services and Additional Services.
- 2.2 Invoices not properly prepared (mathematical errors, billing not reflecting actual work done, no signature, etc.) shall be returned to DESIGN PROFESSIONAL for correction. Invoices must indicate the Agreement Number, the Purchase Order Number, the Project Site description (School Name), and include the dates of Services. All invoices shall consist of one original and one copy and contain the DESIGN PROFESSIONAL'S Federal Employer Identification Number.
- 2.3 In the event modifications to the Construction Documents are required in order to obtain any necessary permit or approval, ten percent (10%) of DESIGN PROFESSIONAL'S Construction Documents Approval payment will be withheld by OWNER until all mandates, stipulations, or similar conditional remarks have been satisfactorily incorporated and the Construction Documents are fully approved.
- 2.4 Payments for Additional Services of DESIGN PROFESSIONAL as a multiple of direct personnel expense, and for reimbursable expenses will be made monthly upon presentation of a detailed invoice with supporting documentation.
- 2.5 DESIGN PROFESSIONAL agrees that, with respect to any sub-consultant or subcontractor to be utilized by DESIGN PROFESSIONAL, DESIGN PROFESSIONAL shall be limited to a maximum markup of five percent (5%) on the fees and expenses associated with such sub-consultants and subcontractors.
- 2.5.1 Reimbursable Expenses shall consist only of the following items:
- 2.5.1.1 Cost for reproducing documents that exceed the number of documents described in this Agreement.
  - 2.5.1.2 Mileage outside of Monroe County approving in writing by OWNER.
  - 2.5.1.3 Permit Fees required by the Project.

2.5.1.4 Other items on request and approved in writing by the OWNER, at OWNER's sole and exclusive discretion.



## SCHEDULE C

**(Submit Schedule C to the College for prior approval for each project)**

### DESIGN SCHEDULE

1. Upon Notice of Authorization issued by OWNER, Program Verification Phase submittals shall be submitted to OWNER within \_\_\_\_\_ days.
2. Upon authorization by OWNER to commence the Phase I – Schematic Design service, the Schematic Design Documents shall be submitted to the OWNER within \_\_\_\_\_ days.
3. Upon authorization by OWNER to commence the Phase II – Design Development service, the Design Development Documents shall be submitted to the OWNER within \_\_\_\_\_ days.
4. Upon authorization by OWNER to commence the Phase III – Construction Document service, the Construction Documents will be submitted to the OWNER in two phases. First, the Construction Documents from authorization to proceed until fifty percent (50%) approval shall be submitted to the OWNER within \_\_\_\_\_ days. Second, the Construction Documents after fifty percent (50%) approval to one hundred percent (100%) approval shall be submitted to OWNER within \_\_\_\_\_ days.

## SCHEDULE D

### INSURANCE COVERAGE

During the performance of the services under this Agreement, the DESIGN PROFESSIONAL shall maintain the below listed types of insurance reflecting at least the minimum amounts and conditions. If DESIGN PROFESSIONAL has any self-insured retentions or deductibles under any of the below-listed minimum required coverages, DESIGN PROFESSIONAL must identify on the Certificate of Insurance the nature and amount of such self-insured retentions or deductibles and provide satisfactory evidence of financial responsibility for such obligations. Deductible amounts shall not exceed five (5%) percent of the total amount of required insurance in each category. Should any policy contain any unusual exclusion, said, exclusions shall be so indicated on the Certificate(s) of Insurance. All self-insured retentions or deductibles will be DESIGN PROFESSIONAL'S sole responsibility.

1. General Liability Insurance with all the following:
  - a. Bodily injury limits of not less than \$1,000,000 Dollars for each occurrence/  
\$2,000,000 Dollars aggregate.
  - b. Property damage limits of not less than \$1,000,000 Dollars for each occurrence/  
\$2,000,000 Dollars aggregate.
  
2. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this Agreement with the following amounts:
  - a. Bodily Injury, including Death limits of not less than \$500,000 for each person
  - b. Limit of not less than \$500,000 for each incident
  - c. Property damage Liability limits of not less than \$500,000 for each accident
  
3. Workers' Compensation Insurance shall be maintained by DESIGN PROFESSIONAL during the term of this Agreement for all employees engaged in the work under this Agreement, in accordance with the laws of the State of Florida. The amount of such insurance shall not be less than:
  - a. Workers' Compensation - Florida Statutory Requirements
  - b. Employers Liability - \$100,000.00 Limit Each Accident  
\$100,000.00 Limit Disease Each Employee  
\$500,000.00 Limit Aggregate
  
4. Professional Liability Insurance shall be maintained by DESIGN PROFESSIONAL insuring its legal liability arising out of the performance of professional services under this Agreement. Such insurance shall have limits on not less than One Million (\$1,000,000) Dollars per occurrence and not less than Two Million (\$2,000,000) Dollars aggregate. The DESIGN PROFESSIONAL waives its right of recovery against the OWNER as to any claims under this insurance. Any deductible or self-insured retention applicable to any claim shall be the sole responsibility of DESIGN PROFESSIONAL and shall not be greater than \$25,000.00 each claim. DESIGN PROFESSIONAL must continue this coverage for a period of not less than five (5) years after completion of its services to the OWNER. The policy retroactive date will always be prior to the date services were first performed by DESIGN PROFESSIONAL for

OWNER, and the date will not be moved forward during the term of this Agreement and for five years thereafter.

**SCHEDULE E**

**(Submit Schedule E to the College for prior approval for each project)**

**STAFFING SCHEDULE**

## SCHEDULE F

### RATE SCHEDULE

#### **Hourly rates for additional services are:**

##### William P. Horn Architect, PA

Principal	\$250.00/hour
Architect	\$175.00/hour
Intern Architect	\$150.00/hour
Draftsperson	\$95.00/hour

##### Civil Engineering

Principal	\$220.00/hour
Senior Engineer	\$170.00/hour
Project Engineer	\$135.00/hour
Design Engineer	\$110.00/hour
CAD Designer	\$90.00/hour

##### MEP Engineering

Engineer	\$200.00/hour
Draftsperson	\$80.00/hour

##### Structural Engineers

Principal	\$225.00/hour
Senior Engineer	\$190.00/hour
Project Engineer	\$165.00/hour
Engineer	\$155.00/hour
Cad/Bim Technician	\$120.00/hour
Administrative	\$80.00/hour

##### Planning

Principal	\$400.00/hour
Senior Associate	\$225.00/hour
Associate	\$185.00/hour
Planning Tech	\$125.00/hour
Technical/Clerical	\$90.00/hour

##### Landscape Architect

Landscape Architect	\$275.00/hour
Landscape Designer	\$200.00/hour
Draftsperson	\$150.00/hour
Clerical	\$75.00/hour

Sustainability Consultant

Principal	\$250.00/hour
Senior Associate	\$175.00/hour
Office	\$75.00/hour