

**AGREEMENT
FOR
PROFESSIONAL DESIGN SERVICES**

This Agreement for Professional Design Services (this "Agreement"), made as of _____ 20_____ by and between the University of Cincinnati (the "University") by the Division of Administration and Finance, whose contact person shall be the Project Manager designated below or successor, and _____ (the "Associate"), whose contact person and address are set forth below.

WHEREAS, the Board of Trustees having charge of said University desires to proceed with the Project.

WHEREAS, the University is operating under Chapters 3345, 3361 and 153 of the Ohio Revised Code and it is the intention of the University, in the exercise of its powers as set forth in Sections 153.65 through 153.71, both inclusive, of the Ohio Revised Code to obtain professional design services for the following project (the "Project"):

UC Project Name:
UC Project Number:

Project Manager:	(Name of Project Manager)
Address:	University of Cincinnati Division of Administration and Finance Facilities and Construction Services PO Box 210181 Cincinnati, Ohio 45221-0181

("Associate")
Associate:
Contact:
Address:
Tax Identification Number:

WHEREAS, the Ohio General Assembly has appropriated to the Owner funds for the Project more fully itemized in the applicable Controlling Board Request and the applicable Office of Budget and Management Encumbrance; and

WHEREAS, additional funds for the Project have been provided by _____; and

WHEREAS, additional funds for paying the Associate's fees have been provided by _____;

WHEREAS, unless adjusted as provided herein, all fees and reimbursable expenses payable to the Associate under this Agreement will not exceed _____ (\$_____); and

WHEREAS, the Associate desires, and is capable and licensed within the State of Ohio, to provide professional design services for the Project;

NOW, THEREFORE, in consideration of the mutual promises herein contained, the University and the Associate agree as follows:

ARTICLE I. RESPONSIBILITIES OF ASSOCIATE

1.1 Associate's Services

1.1.1 Scope of Services; Applicable Law. The Associate shall provide professional design services, including without limitation services customarily furnished in accordance with generally accepted architectural or engineering services, for the Project in accordance with the terms of this Agreement and the Standard Conditions of Contract for Construction for the Project. The Associate shall provide such services in accordance with the applicable Sections of the Ohio Revised Code and any applicable state rules and regulations, any applicable federal and local statutes, ordinances, rules and regulations, the applicable Announcement issued pursuant to Section 153.67 of the Ohio Revised Code (the "Announcement"), the approved Program of Requirements, the Associate's Technical Proposal for the Project (the "Technical Proposal") and the University's Design Guidelines and Standards Manual, inclusive of Sustainable Design and Commissioning requirements.

1.1.2 Construction Budget. The total amount available for the construction of the Project is _____ Dollars (\$_____) (the "Construction Budget"). The University shall provide written notice to the Associate of any change in the Construction Budget. It is recognized that the Associate and the University do not have control over the cost of labor, materials or equipment, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Associate cannot and does not warrant or represent that bids or negotiated prices will not vary from the Construction Budget or from any estimate of cost or evaluation prepared by or agreed to by the Associate.

1.1.3 Timeliness; Standard of Care. The Associate shall perform the Associate's services in accordance with professional standards of skill, care and diligence in a timely manner in accordance with the Project Schedule and so that the Project shall be completed as expeditiously and economically as possible within the Construction Budget and in the best interests of the University. The Associate's fee as set forth in Paragraph 5.3 is based on completion of the Construction Documents no later than _____ (_____) days following execution of this Agreement. If completion of the Construction Documents is not achieved within this time through no fault of the Associate, the Associate's fee shall be equitably adjusted.

1.1.4 Design Schedule. Within thirty (30) days after the execution hereof, the Associate shall submit for approval by the University a Design Schedule for the performance of the Associate's services which shall include allowances for reasonable periods of time required for the review and approval of items by the University and for approvals of governmental authorities having jurisdiction over the Project. Unless the University notifies the Associate of objections to the Design Schedule within thirty (30) days of receipt thereof, the University shall be deemed to have approved the Design Schedule. The Associate shall coordinate the Design Schedule with the Project Schedule.

1.1.5 Personnel. The identities of the principal persons, and the extent of their participation in, performing the Associate's services set forth as in the Technical Proposal shall not be altered without the written consent of the University.

1.1.6 Non-Discrimination. The Associate represents that the Associate is in compliance with all applicable equal employment opportunity requirements under law, if required by Section 153.59 of the Ohio Revised Code or any other applicable state or federal law.

1.1.7 Consultants. The Associate may provide services through one or more consultants employed by the Associate (the "Consultants"), provided, however, the Associate shall remain responsible to the University for all duties and obligations of the Associate under this Agreement. Unless waived or otherwise modified in writing by the University upon written request of the Associate, no Consultant shall be retained upon terms inconsistent with this Agreement. The identity of any Consultant, and the extent of such Consultant's participation in, performing the Associate's services set forth as in the Technical Proposal shall not be altered without the consent of the University.

1.1.8 Anti-Abuse of Drugs and Alcohol. The Associate shall make a good faith effort to ensure that no employee of the Associate will purchase, transfer, use or possess or be under the influence of alcohol or illegal drugs or abuse legally obtained drugs while on or about the Project. Except for the term "employee," terms in this Subparagraph are used as defined in Rule 123:1-76 of the Ohio Administrative Code.

1.1.9 Safety. The Associate and all Consultants shall be familiar with the University's safety requirements, and shall adhere to these requirements during all site visits, inspections, and investigations. Adherence to the requirements shall include the use of appropriate personal protective equipment. Any employee of the Associate or any Consultant not in compliance with the University's safety requirements will not be allowed access to the project site.

1.1.10 Ethics. The Associate represents that it is familiar with all applicable ethics law requirements, including without limitation Sections 102.04 and 3517.13 of the Ohio Revised Code, and certifies that it is in compliance with such requirements.

1.1.11 Ohio Services. Unless otherwise authorized, the Associate's services shall be performed within the State of Ohio.

1.1.12 Limitation of Authority. The Associate shall not have any authority to bind the University for the payment of any costs or expenses without the express written approval of the University, as applicable. The Associate shall have authority to act on behalf of the University only to the extent provided herein or in the Standard Conditions of Contract for Construction (the "Standard Conditions"). The Associate's authority to act on behalf of the University shall be modified only by an amendment in accordance with Subparagraph 9.5.2.

1.1.13 Approval or Disapproval of Associate's Work. The University shall have the right to reasonably disapprove any portion of the Associate's work on the Project, including, without limitation, any design work or documents or Drawings prepared by the Associate. In the event that any Phase of the Associate's work is disapproved by the University, the Associate shall proceed, when requested by the University, with revisions to the work, documents or Drawings prepared or performed for that Phase to attempt to satisfy the objections. The Associate acknowledges that any review or approval by the University of any work, documents or Drawings prepared or performed by the Associate pursuant to this Agreement shall not relieve the Associate of the Associate's responsibility to properly and timely perform such work and prepare such documents and Drawings.

1.1.14 Delays by Associate. If the progress or completion of the Project is delayed by reason of any error, inconsistency or omission of the Associate, the Associate shall compensate the University for and indemnify it against all costs, expenses, liabilities or damages which may accrue as a result of such delay, but only to the extent such costs, expenses, liabilities or damages exceed the percentage specified in Subparagraph 5.4.6. In addition, the Associate shall provide services at its own cost, including any overtime costs and expenses, required to make up time lost to the University because of such delay.

1.1.15. EDGE Business Development Program Participation. The Associate shall support the Encouraging Diversity Growth and Equity (EDGE) Business Development Program, (ref. Section 123.152 of the Ohio Revised Code, enacted by Am. H.B. 95, 125th General Assembly), by seeking and maintaining to the extent reasonable and appropriate, participation by properly certified EDGE Business Enterprise businesses for the project and within the Associate's agreement for the project.

1.1.15.1 Upon the University's request, the Associate shall provide its policy(ies) regarding its support of EDGE, and the procedures the Associates has used in good faith to obtain or attempted to obtain the EDGE-certified business participation goal percentage approved by the Director and indicated in the Request for Qualifications or the Request for Proposal, or both. In the absence of the University's request for the policy(ies) and procedures, the Associate shall provide them as a part of its response to the University's Request For Fee Proposal and they also shall become a part of this Agreement by attachment or by reference.

1.1.15.2 The Associate shall document and certify the actual percentage of the Associate's final fee, inclusive of all Basic Services, Additional Services, and Reimbursable Expenses, that it paid to certified EDGE Business Enterprises. The Associate shall submit such documentation and certification with its request for final payment and at other intervals as may be required by the University.

1.1.16. Declaration Regarding Material Assistance/Non-Assistance to a Terrorist Organization (DMA). The Associate shall complete the DMA form provided by the Department of Public Safety, (ref. Section 2909.33(C) of the Ohio Revised Code, enacted by Am. S.B. 9, 126th General Assembly), to certify that it does not provide material assistance to any organization on the United States Department of State's terrorist exclusion list. The certified form shall be submitted as an attachment to this Agreement for Professional Design Services.

ARTICLE II. SCOPE OF ASSOCIATE'S BASIC SERVICES

2.1 General

2.1.1 Basic Services to be provided by the Associate shall consist of the six (6) phases set forth in Paragraphs 2.1 through 2.7, both inclusive, and include, without limitation, normal architectural, civil, structural, mechanical, electrical, and landscape design and engineering services for the Project, any necessary signage and graphics and any services necessary to comply with the Percent for Arts Program under R.C. § 3379.10.

2.1.2 Special Electrical Systems. As part of Basic Services, the Associate shall have on staff or shall employ as a Consultant a Registered Communications Distribution Designer (RCDD) to design, coordinate, and commission the low voltage structured cabling for the project as further described in the "University Communication Standards". The low voltage structured cabling shall include, but is not necessarily limited to, voice, data, audio-visual, CCTV, fire alarm, security/access control, Code Blue help phones, and Bearcat One Card systems.

2.2 Predesign Phase (Program Validation)

2.2.1 Program of Requirements. The Associate shall provide a preliminary evaluation of the University's Program of Requirements, schedule and budget requirements, including the Construction Budget, each in terms of the other and in terms of the Technical Proposal.

2.2.2 Approved Program of Requirements and Revisions. The Associate shall prepare, date and sign a revised Program of Requirements, obtain the University's approval thereof and signature thereon and deliver a copy of the signed, approved revised Program of Requirements to the University (the "Approved Program of Requirements "). If any changes or adjustments to the Approved Program of Requirements are desired at any time after the Approved Program of Requirements has been delivered to the University, the Associate shall prepare a written amendment to the Approved Program of Requirements describing the changes or adjustments, obtain the University approval thereof and signature thereon and deliver the amendment to the University for review and consent. The Approved Program of Requirements, as amended from time to time, shall determine the Scope of the Project.

2.3 Schematic Design Phase (Preliminary Drawings)

2.3.1 Review and Consultation. The Associate shall provide any necessary further evaluation or refinement of the Approved Program of Requirements and the schedule and budget requirements, and shall identify and analyze requirements of governmental and University authorities having jurisdiction to approve design of the Project and participate in consultations with such authorities and shall, for renovation or remodeling, investigate existing conditions and verify the accuracy of information provided by the University about existing conditions, as reasonably necessary and practical.

2.3.2 Recommendations and Costs. The Associate shall review site use and improvements and alternative approaches to selection of materials, building systems and equipment with the University. The Associate shall provide recommendations on construction feasibility, availability of materials and labor, time requirements for construction and factors related to the cost of the Project including costs of alternative designs or materials, preliminary budgets and possible economies.

2.3.3 Preliminary Life Cycle Analysis. In accordance with Section 123.011 of the Ohio Revised Code and Rule 123:4 of the Ohio Administrative Code, the Associate shall prepare and submit three (3) copies of alternative design concepts for a Preliminary Life Cycle Analysis to the University unless a different number is provided in the Technical Proposal or by the University in writing.

2.3.4 Schematic Design Documents. Based upon the current Approved Program of Requirements and the schedule and budget requirements, the Associate shall prepare Schematic Design Documents consisting of architectural drawings and other documents illustrating the scale of the Project and of the relationship of components of the Project to one another and of the Project to surrounding properties. Upon completion of the Schematic Design Phase for each phase of the Project, the Associate shall submit for review and approval:

- (a) 1 set of archivable, reproducible Schematic Design Drawings
- (b) 1 set of Outline Specifications
- (c) 1 copy of Preliminary Project Schedule

The Associate shall revise the Schematic Design Documents to incorporate comments from the University.

2.3.5 Preliminary Cost and Schedule Estimates. Upon completion of the Schematic Design Phase for each phase of the Project or appropriate portion thereof, the Associate shall prepare and submit a Statement of Probable Construction Cost based on current area volume and other unit costs and a Preliminary Project Schedule, which shall incorporate the Design Schedule, for approval by the University. The Associate shall review any difference between the Construction Budget and the Statement of Probable Construction Cost, identify reasons for any difference and recommend means to eliminate the difference, if necessary. The Associate and the University shall agree upon the means to eliminate any difference between the Construction Budget and the Statement of Probable Construction Cost, and the Associate shall prepare a report describing the agreed upon means.

2.3.6 Sustainable Design. Upon completion of the Schematic Design Phase for each phase of the Project or appropriate portion thereof, the Associate shall submit to the University documentation and proof, in a format approved by the University, that the design has incorporated the concepts of sustainable design, as stated in the “University Design Guidelines and Standards”, consistent with LEED™ “_____” Certification Level.

2.3.7 Commissioning. Upon completion of the Schematic Design Phase for each phase of the Project or appropriate portion thereof, the Associate shall submit to the University documentation and proof, in a format approved by the University, that the commissioning requirements, as stated in the “University Design Guidelines and Standards” and/or other designated project documents, have been met for this phase.

2.3.8 Special Electrical Systems. Upon completion of the Schematic Design Phase for each phase of the project, or appropriate portion thereof, the Associate shall submit to the University documentation and proof, in a format approved by the University, that the special electrical system requirements, as stated in the “University Communication Standards” and/or other designated project documents, have been met for this phase.

2.4 Design Development Phase (Basic Drawings)

2.4.1 Life Cycle Analysis. In accordance with Section 123.011 of the Ohio Revised Code and Rule 123:4 of the Ohio Administrative Code, the Associate shall prepare and submit three (3) copies of a Life Cycle Cost Analysis to the University unless a different number is provided in the Technical Proposal or by the University in writing.

2.4.2 Design Development Documents. Based on the approved Schematic Design Documents, the current Approved Program of Requirements, the approved Statement of Probable Construction Cost and the approved Preliminary Project Schedule, the Associate shall prepare Design Development Documents consisting of drawings, outline specifications and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials, and such other essential elements as may be appropriate. Upon completion of the Design Development Phase for each phase of the Project, the Associate shall submit sets of the Design Development Documents to the University for review and written approval as described in sub-paragraph 2.3.4 unless a different number is provided in the Technical Proposal or by the University in writing. The Associate shall revise the Design Development Documents to incorporate comments from the University.

2.4.3 Cost Estimate and Project Schedule. Upon completion of the Design Development Phase for each phase of the Project or appropriate portion thereof, the Associate shall prepare and submit a Detailed Estimate of Construction Cost and a Project Schedule indicating milestone completion dates for approval by the University. In establishing the Detailed Estimate of Construction Cost, the Associate shall include reasonable contingencies for design, bidding and price escalation and determine in conjunction with the University the materials, equipment, component systems and types of construction to be included in the Contract Documents. The Associate shall review any difference between the Construction Budget or the Statement of Probable Construction Cost and the Detailed Estimate of Construction Cost, identify reasons for any difference and recommend means to eliminate the difference, if necessary. The Associate and the University shall agree upon the means to eliminate any difference between the Construction Budget and the Detailed Estimate of Construction Cost, and the Associate shall prepare a report describing the agreed upon means. The Associate shall review any differences between the Preliminary Project Schedule and the Project Schedule, identify reasons for the differences and recommend whether the differences should be eliminated and, if necessary, means to eliminate the differences. If the Associate and the University agree to eliminate any such differences, the Associate shall prepare a report describing the agreed upon means. The Associate and the University shall make any necessary amendments to the Approved Program of Requirements in accordance with Subparagraph 2.2.2.

2.4.4 Sustainable Design. Upon completion of the Design Development Phase for each phase of the Project or appropriate portion thereof, the Associate shall submit to the University documentation and proof, in a format approved by the University, that the design has incorporated the concepts of sustainable design, as stated in the “University Design Guidelines and Standards”, consistent with a LEED™ “_____” Certification Level.

2.4.5 Commissioning. Upon completion of the Design Development Phase for each phase of the Project or appropriate portion thereof, the Associate shall submit to the University documentation and proof, in a format approved by the University, that the commissioning requirements, as stated in the “University Design Guidelines and Standards” and/or other designated project documents, have been met for this phase.

2.4.6 Special Electrical Systems. Upon completion of the Design Development Phase for each phase of the project, or appropriate portion thereof, the Associate shall submit to the University documentation and proof, in a format approved by the University, that the special electrical system requirements, as stated in the “University Communication Standards” and/or other designated project documents, have been met for this phase.

2.5 Construction Documents Phase (Construction Drawings and Specifications)

2.5.1 Drawings and Specifications. Based on the current, approved Design Development Documents, approved Detailed Estimate of Construction Cost and approved Project Schedule and any further revisions to the Approved Program of Requirements the Associate shall prepare, for approval by the University, Drawings and Specifications setting forth in detail the requirements for the construction of the Project. With the consent of the University, the Associate shall include Alternates in the Contract Documents. The Drawings and Specifications shall encourage competition, shall provide for construction by multiple prime contractors and shall be reasonably complete and unambiguous and in accordance with all applicable codes, ordinances, statutes, laws, regulations in effect as of the date of this Agreement, except to the extent stated otherwise in writing by the Associate for necessary variances and waivers at the time of submission thereof by the Associate to the University for approval and to any Contractor for bidding or negotiation, as applicable. In preparing the Drawings and Specifications, the Associate shall consider general market conditions. The Associate shall not amend the Standard Conditions except by Special Conditions approved by the University in writing. From time to time, the Associate shall make any necessary revisions to the Drawings and Specifications. Upon completion of design for each phase of the Project, the Associate shall submit sets of the Construction Documents to the University for review and written approval as described in sub-paragraph 2.3.4 unless a different number is provided in the Technical Proposal or by the University in writing. The Associate shall revise the Drawings and Specifications to incorporate comments from the University.

2.5.2 Revisions to Cost Estimate and Project Schedule. The Associate shall inform the University of the need for any changes in Project requirements or in construction materials, systems or equipment as the Drawings and Specifications are developed and of the need for any adjustments in the Detailed Estimate of Construction Cost and the Project Schedule. Upon approval by the University of any such changes or adjustments, the Associate shall prepare a revised Detailed Estimate of Construction Cost or a revised Project Schedule, as applicable, incorporating such changes or adjustments.

2.5.3 Bidding Documents. The Associate shall assist the University in the preparation of documents necessary for bidding of Contracts, including without limitation bidding information and instructions, estimates of cost, Notices to Bidders, Bid Forms and Special Conditions.

2.5.4 Government Approvals. The Associate shall submit to the Division of Code Compliance of the Department of Commerce of the State (the "Division"), such sets of the Drawings and Specifications as the Division may require for approval, together with any necessary completed applications and all required fees. The Associate, with the University's Environmental Health & Safety approval, shall secure any necessary National Pollution Discharge Elimination System Storm Water General Permit by submitting a notice of intent application form to the Ohio Environmental Protection Agency at least forty-five (45) days prior to the commencement of the Construction Phase, shall prepare and certify a storm water pollution prevention plan to provide sediment and erosion controls at the Project and shall prepare and process the required notice of termination prior to Contract Completion. In addition, the Associate shall assist the University, including without limitation, by provision of technical criteria, provision of written descriptions and design data and consultations with appropriate officials in connection with filing of documents required for the approval of governmental authorities having jurisdiction over the Project.

2.5.5 Additional Filings. Upon Department of Commerce/Division of Construction Compliance's approval of the Construction Document Drawings and Specifications, the Associate shall obtain four (4) sets of corrected copies of the Drawings and Specifications bearing approval stamps of the Division. The Associate shall distribute such corrected copies as follows:

- (a) Two sets to the University
- (b) One set to the Lead Contractor or Construction Manager when determined
- (c) One set retained by the Associate
- (d) Electronic copies as requested by the University for internal use (UCit, Facilities Management, Public Safety)

In addition, the Associate shall file any Drawings and Specifications necessary for the approval of any other governmental authority which has jurisdiction over the Project.

2.5.6 Sustainable Design. Upon completion of the Construction Document Phase for each phase of the Project or appropriate portion thereof, the Associate shall submit to the University documentation and proof, in a format approved by the University, that the design has incorporated the concepts of sustainable design, as stated in the "University Design Guidelines and Standards", consistent with a LEED™ " _____ " Certification Level.

2.5.7 Commissioning. Upon completion of the Construction Document Phase for each phase of the Project or appropriate portion thereof, the Associate shall submit to the University documentation and proof, in a format approved by the University, that the commissioning requirements, as stated in the "University Design Guidelines and Standards" and/or other designated project documents, have been met for this phase.

2.5.8 Special Electrical Systems. Upon completion of the Construction Document Phase for each phase of the project, or appropriate portion thereof, the Associate shall submit to the University documentation and proof, in a format approved by the University, that the special electrical system requirements, as stated in the "University Communication Standards" and/or other designated project documents, have been met for this phase.

2.6 Bidding and Award Phase (Bidding Assistance and Recommendation)

2.6.1 Obtaining Bids. The Associate shall render interpretations and clarifications of the Contract Documents in Addenda.

2.6.2 Prebid Conferences. The Associate shall conduct prebid conferences with prospective Bidders to familiarize Bidders with the Contract Documents, any special requirements of the Contract Documents and equal employment opportunity, prevailing wage, EDGE Program, Drug Free Workplace Program, and any requirements as necessary. The Associate shall respond to all questions at prebid conference(s) by issuing one or more written Addendum which may include minutes of the prebid conferences.

2.6.3 Bid Packages. The Associate shall obtain all necessary prevailing wage determinations and shall include them in packages of the Contract Documents. The Associate shall assemble the Contract Documents into appropriate packages and shall provide one set of original, archivable, reproducible Contract Documents to the University. The University shall distribute copies of the Contract Documents to prospective Bidders, including without limitation any applicable local or regional plan room organizations.

2.6.4 Bid Review. The Associate shall review all bids received for responsiveness, participate in investigating the responsibility of Bidders and deliver a written recommendation to the University about the award of, or rejection of, any bid or bids for each Contract for the Project in accordance with applicable law. In making the recommendation, the Associate shall evaluate all applicable Alternates referenced in the Contract Documents.

2.6.5 Bid Substitutions. Unapproved Substitutions contained in the bid of any Bidder shall not be considered by the Associate in recommending the award of any Contract.

2.6.6 Pre-award Conferences. The Associate shall gather documentation for contract execution from apparently successful Bidders which may occur at pre-award conferences with such Bidders. Upon the failure of a Bidder to provide such documentation in a timely manner, the Associate shall assist the University in considering whether an extension of time for submitting such documentation is appropriate.

2.6.7 Subcontractor and Material Supplier Review. The Associate, based upon review of the Contract Documents, any past experience and reasonable inquiry, shall participate in investigating any Subcontractor or Material Supplier proposed by any Contractor and recommend approval or disapproval in accordance with the Standard Conditions.

2.6.8 Over Budget Options. If the Construction Budget is exceeded by the total of the lowest responsive and responsible bids and any legally negotiated prices for the Project, the University shall, at its option (1) approve in writing an increase in the Construction Budget; (2) authorize rebidding or renegotiation for some or all parts of the Project within a reasonable time without an increase in the Construction Budget; (3) abandon the Project, in whole or in part, and terminate this Agreement in accordance with Subparagraph 8.1.2 or Subparagraph 8.1.4, as applicable; and/or (4) cooperate in the revision of the Scope of the Project as defined in Subparagraph 2.2.2 to reduce the actual cost of construction to the Construction Budget. If the University adopts option (1), no additional compensation will be granted to the Associate. If the University adopts options (2), (3) and/or (4), the Associate shall modify the Approved Program of Requirements, the Project Schedule and the Contract Documents and cooperate in any necessary bidding or negotiation without additional charge.

2.6.9 Further Revisions to Cost Estimate and Project Schedule. If necessary, the Associate shall inform the University of the need for any adjustments in the Detailed Estimate of Construction Cost and the Project Schedule. Upon approval of the University of any such adjustments, the Associate shall prepare a revised Detailed Estimate of Construction Cost or a revised Project Schedule, as applicable, incorporating such adjustments, and deliver to the University.

2.6.10 Conformed Construction Documents Required. During the entire phase, the Associate shall incorporate all Addenda information into the Construction Documents; and, between date that the University issues a Notice of Intent to Award for the first construction contract for the project and the effective date of the first construction contract Notice to Proceed, the Associate shall provide updated construction documents that conform in every regard to the documents originally issued for bidding purposes plus all of the information in all project addenda (e.g., Conformed Construction Documents) and issue the Conformed Construction Documents to the successful bidder(s) upon award of their respective contracts.

2.6.10.1 The Contractor(s) shall remain responsible to provide all labor, materials and services required by the Conformed Construction Documents.

2.7 Construction Phase (Administration of Construction)

2.7.1 Duration; Extent, Access. The Construction Phase will commence with the award of a Contract for the Project to a Contractor and will terminate upon Final Acceptance of the Project by the University. The Associate shall provide its services during the Construction Phase in accordance with the Standard Conditions as in effect as of the date of this Agreement. The Associate shall at all times have access to the Project whenever any Work is in preparation or in progress.

2.7.2 Interpretations. The Associate shall render interpretations necessary for the proper execution or progress of the Work on the Project. All interpretations shall be in writing, shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be delivered to the University and each applicable Contractor within the time frame stipulated in the Standard Conditions.

2.7.3 Investigation of Conditions for Renovation or Remodeling. For renovation and remodeling, the Associate shall, as portions of the Project become accessible and as reasonably necessary, investigate existing conditions and verify the accuracy of information contained in the Contract Documents about existing conditions.

2.7.4 Site Visits. The Associate and appropriate Consultants shall visit the Project at appropriate intervals, or at such intervals as the Associate and the University agree, to review the Work of each Contractor for Defective Work, to become familiar with the progress and quality of the Work on the Project and to determine if the Work is proceeding in conformity with the Contract Documents. Such visits shall specifically include, without limitation, those listed in the Technical Proposal, observation of large excavations, observation of footings during placement of concrete and observation of masonry work, structural steel erection, roofing work and interior finishes. In all events, the Associate and appropriate Consultants shall be on the site of the Project for such purposes not less than (_____) hours per week whenever any Work is in preparation or progress, unless otherwise expressly provided in writing by the University. If the Associate shall become aware, either through such visits or otherwise of any Defective Work on the Project, the Associate shall report all Defective Work to University together with recommendations for the correction thereof, and shall notify any applicable Contractor to correct such Defective Work.

2.7.5 Progress. The Associate shall record the progress of the Project and provide written reports to the University on a monthly basis unless otherwise agreed in writing. Such reports shall include, without limitation, information on each Contractor's Work, as well as completion status on the entire Project, showing percentages of completion. This Subparagraph shall not be deemed to require the Associate to undertake any of the Contractor's Responsibilities as set forth in Subparagraph 2.7.17.

2.7.6 Construction Schedule. The Associate shall review and approve for conformance with the Contract Documents the Construction Schedule, provide a copy of the Construction Schedule and schedule of submittals to the University and incorporate the Construction Schedule and schedule of submittals into the Project Schedule. The Associate shall periodically inform the University of the need to update the Project Schedule as required to show current conditions, including without limitation, to conform to the Construction Schedule, as updated from time to time. If such conditions indicate that milestone completion dates shown on the Project Schedule may not be met, the Associate shall recommend corrective action to the University and carry out the directions of the University so that the milestone completion dates may be met, unless the University agrees in writing to revise the milestone completion dates. Whenever the Project Schedule is revised or updated as provided in this Subparagraph, the Associate shall prepare a revised Project Schedule, obtain the University's signature thereon.

2.7.7 Meetings. The Associate shall schedule, conduct and participate in preconstruction, progress, quality control and special meetings with the University, appropriate Consultants, the Contractors and any other parties involved in the Project to discuss such matters as procedures, progress, problems and scheduling. The Associate shall prepare and distribute minutes of all such meetings to the University, the Contractors and any other parties involved. The Associate shall participate in partnering meetings with the University, appropriate Consultants, the Contractors and other parties involved in the Project.

2.7.8 Tests; Inspections. The Associate shall advise and consult with the University during the Construction Phase as to the need for any special testing, inspections or approval of Work on the Project. The Associate shall notify the appropriate Contractor in writing to order any necessary special testing, inspections or approval of Work on the Project, or the Associate may make the arrangements for same. The Associate shall report to the University any failure of the Contractor to provide such testing, inspections or approval within thirty (30) days of the notice to the Contractor. The Associate must arrange for reimbursement from the Contractor in case the Contractor is ultimately responsible to pay the costs of such testing, inspections or approval as provided in the Standard Conditions. If the Contractor is not ultimately responsible to pay such costs, the Associate shall be reimbursed for such costs in accordance with Section 5.2.

2.7.9 Submittal Review. As provided in the Standard Conditions, the Associate shall review and approve or take other appropriate action upon Contractor submittals such as Shop Drawings, Product Data and Samples, for conformity with the Contract Documents and shall review drawings, calculations and designs required of Contractors and provided with such submittals (except calculations and designs of manufacturers of original equipment and systems to be installed in the Project and except calculations and designs which the Contract Documents expressly make the sole responsibility of one or more Contractors, Subcontractors, Material Suppliers or other persons). The Associate will send informational copies of all submittals, including a final approved copy to the University.

2.7.10 Bulletins; Certain Change Orders. The Associate shall prepare Bulletins and other necessary documentation seeking Proposals from Contractors for potential and proposed changes in the Work. The Associate shall keep a log of all Requests for Information, Field Work Orders, Bulletins, Contractor Proposals and Change Orders. The Associate shall prepare Bulletins, Field Work Orders, Change Orders and any necessary Drawings, Specifications and other documents and supporting data for Change Orders which result from an error or omission of the Associate or a Consultant as shown by the Change Order form or which relate to the addition of an Alternate to the Work of one or more Contractors or the settlement of a dispute with one or more Contractors as shown by the Change Order form.

2.7.11 Project Costs. The Associate shall monitor Project cost accounting records on Work performed by Contractors under unit costs, actual costs for labor and materials, or other appropriate basis and afford the University access to these records at all times.

2.7.12 Contractor Payments. Based upon the Associate's review of the applicable Work and evaluations of the applicable Contractor's Applications for Payment, the Associate shall review and approve, modify or reject the amounts shown on such Applications as being due to the applicable Contractor in accordance with the Contract Documents. Each Application for Payment shall be signed by the Associate and delivered to the University.

2.7.13 Partial Occupancy. The Associate shall assist the University in determining dates of Partial Occupancy of the Work or portions thereof designated by the University and shall assist in obtaining any necessary certificate from any applicable government authority. The Associate shall prepare lists of incomplete or unsatisfactory Work and schedules for the completion or correction thereof for each Contract.

2.7.14 Contract Closeout. Upon receipt of a Contractor's Punch List, the Associate shall provide written notice to the University that the Work is ready for Final Inspection, notify the Contractor of acceptance or rejection of the request for Final Inspection, conduct the Final Inspection, prepare an Associate's Punch List, if applicable, and prepare and process a Certificate of Contract Completion in accordance with the Standard Conditions. Upon Contract Completion, the Associate shall receive, review for conformity with the requirements of the Contract Documents and transmit to the University any affidavits and turn over to the University any keys, manuals and the originals of any guarantees, warranties, releases, bonds and waivers. The Associate shall transmit a copy of any guarantees, warranties, releases, bonds and waivers to the University.

2.7.15 Contractor Claims. The Associate shall review Contractor claims for equitable adjustment, and shall deliver a written recommendation to the University about each claim and attend any dispute resolution meetings convened by the University related to each claim.

2.7.16 Record Documents. Based on as-built data and documentation for the project, the Associate shall furnish to the University three (3) sets of all Contract Documents. These documents shall indicate all as-built conditions documented by Contractors, field observations made by the Associate and shall include all annotations documenting changes to the original drawings. These documents shall consist of Record Drawings, Record Specifications and Record Data for the project. The requirements of these documents are the following:

- (a) Record Drawings (hard copy) – Furnish one (1) set of mylar transparencies of all contract drawings.
- (b) Record Drawings (electronic) – Furnish electronic media as directed in the current University CAD Standards.
- (c) Record Drawings (scanned) – Furnish one (1) set of electronic files of all contract drawings on CD-ROMs scanned in “TIF” format.
- (d) Record Specifications (hard copy) – Furnish two (2) bound sets of all contract specifications.
- (e) Record Specifications (electronic) – Furnish one (1) set of all electronic specification files on CD-ROMs in a format compatible with Microsoft® Word.
- (f) Record Data (hard copy) – Furnish two (2) sets of binders containing all contract data. This shall include all pre-construction documentation, existing site photos, shop drawings, product literature, technical data, safety data, start-up/operational information, maintenance information and commissioning reports as required.
- (g) Record Data (electronic) – Furnish one (1) set of all electronic data files on CD-ROMs scanned in “TIF” format. This shall include the same information as the hard copy data.

2.7.17 Contractor Responsibilities. The Associate shall not be responsible for and shall not have control or charge of construction means, methods, techniques, sequences, procedures or scheduling used by a Contractor to comply with the Contractor's obligations under its Contract for the Project or for safety precautions and programs in connection with the Work on the Project. The Associate shall not be responsible for or have control or charge over the acts or omissions of Contractors or Subcontractors or any of their agents or employees, or any other persons performing any Work on the Project.

ARTICLE III. ADDITIONAL SERVICES

3.1 General

3.1.1 The following services are not included in Basic Services and shall be provided only if identified in the Technical Proposal and approved by the University or otherwise authorized in writing by the University. The following services shall be paid for as provided in this Agreement in addition to the compensation for Basic Services; provided, however, the Associate shall not be compensated for any of the following services made necessary by the act or omission of the Associate or any Consultant to the Associate. Unless waived by the University in writing, authorization to provide Additional Services must be obtained prior to providing the Additional Services.

3.1.2 Specialized Services. Providing specialized design and engineering services, including services for acoustics, fixtures, furnishings and equipment but not limited to services for acoustical analysis or design, computer services, communication consultant services, design or specification of unusual or large volumes of fixtures, furnishings and equipment.

3.1.3 Additional On-Site Services. Providing administration or observation of construction beyond those services to be provided as Basic Services pursuant to Subparagraph 2.7.4.

3.1.4 Change Orders. Preparing Drawings, Specifications and other documents and supporting data in connection with Change Orders beyond those services to be provided as Basic Services pursuant to Subparagraph 2.7.10.

3.1.5 Partnering and Scheduling Consultant. Serving as a partnering or construction scheduling consultant or providing such consulting services.

3.1.6 Perspectives, Models, Renderings. Preparing professional perspectives, models or renderings which are not otherwise useful or necessary to the Associate in the provision of Basic Services hereunder at the written request of the University.

3.1.7 Grant Applications. Preparing applications and supporting documents for governmental grants, loans or advances.

3.1.8 Special Studies. Providing planning, site evaluations, environmental studies, or comparative studies of prospective sites, and preparing special surveys, studies and submissions required for approval of governmental authorities or others having jurisdiction over the Project.

- 3.1.9 Surveys. Providing surveying services including land surveys and rights-of-way studies.
- 3.1.10 Investigation of Conditions for New Construction. Providing services for new construction to investigate existing conditions or facilities or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by the University.
- 3.1.11 Constructability and Cost Analyses. Preparing analyses of the construction feasibility of the Project or of owning and operating costs or preparing detailed quantity surveys or inventories of material, equipment and labor beyond those services to be provided as Basic Services.
- 3.1.12 Off-Site Services. Providing planning or design services for off-site utilities which are not adjacent to the Project, building connections or roadways.
- 3.1.13 Certain Revisions. Making revisions in Drawings, Specifications or other Contract Documents when such revisions are inconsistent with written approvals or instructions previously given or are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents.
- 3.1.14 Replacement Work. Providing consultation concerning replacement of any Work on the Project damaged by fire, casualty or other cause not due to negligence of the Associate or any Consultant and furnishing services as may be required in connection with the replacement of such Work.
- 3.1.15 Contractor Default. Providing services made necessary by the default of a Contractor.
- 3.1.16 Additional Documents. Preparing more than the sets of Contract Documents required as Basic Services pursuant to Subparagraphs 2.5.1, 2.6.3 and 2.6.8.

3.2 Special Inspections Required by Ohio Building Code.

- 3.2.1 The Special Inspections indicated in Chapter 1704 of the Ohio Building Code, 2005 edition and later as modified by proper authority, are not included as Basic Services; however, the Associate shall provide the Special Inspections and be paid for such as Additional Services in the event such Special Inspections are required as a condition of the Plans Approval issued by the Building Authority having jurisdiction for the project.
- 3.2.2 The Associate shall include in its Proposal the name or names of the Consultants it intends to use for all Special Inspections that would be reasonably anticipated for the project and shall provide a Schedule of Fees for Typical Services for each Consultant. The Associate may include a negotiated markup for the Consultant services used.
- 3.2.3 The Associate shall employ a Consultant properly licensed to perform the required Special Inspections and all related testing services. The Consultant shall provide to the University at the address requested, one copy, issued concurrently, of all reports and recommendations provided to or for the Associate and the Building Official.
- 3.2.4 The Associate shall not be compensated for any such services made necessary by the act or omission of the Associate or any Consultant of the Associate.

3.3 Quality Assurance (QA) Testing.

3.3.1 The following services are not included as Basic Services, however, the Associate shall provide such Services when so incorporated as a part of the Associate's Proposal attached and made a part of this Agreement.

3.3.2 Such services shall be paid under the Agreement as Additional Services as specified in Section 5.3.2; however, the Associate shall not be compensated for any services made necessary by the act or omission of the Associate or any Consultant of the Associate. The Associate shall include in its Proposal the name or names of the Consultants it intends to use for all Special Inspections and all Quality Assurance Testing that would be reasonably anticipated for the project and shall provide a Schedule of Fees for Typical Services for each Consultant. The Associate may include a negotiated markup for the Consultant services used.

3.3.3 The Associate shall employ a Consultant properly licensed to provide the required testing and inspections and all related services. The Consultant shall provide to the University at the address requested, one copy, issued concurrently, of all reports and recommendations provided to or for the Associate.

3.3.4 Examples of QA Testing and Reporting

3.3.4.1 Geotechnical Analysis

Sampling and analysis of soils and hydrologies, and subsequent reporting and recommendations, upon which architectural and engineering designs may be based. Applicable to Construction Phase observation, testing, and reporting of soils conditions, including testing for types and quality of fill material and its installation, compaction, soil density testing, caisson borings inspections, cut and fill monitoring, etc.

3.3.4.2 Environmental Testing and Analysis

Sampling and analysis of existing conditions or materials for any of a variety of environmental materials, including hazardous materials and suspected hazardous materials, and subsequent reporting.

3.3.4.3 Concrete

Test for general quality, such as: slump, air entrainment, cylinder test, core test, swiss hammer.

3.3.4.4 Masonry

Includes such testing as prism tests, mortar cube, grout tests, water infiltration.

3.3.4.5 Structural Steel, Reinforcing Steel, Welding, Bolts and Connections.

Includes any testing and reporting of any type of steel, including those listed above.

3.3.4.6 HVAC Systems and Controls

Includes testing and balancing of any or all HVAC components including controls systems.

3.3.4.7 Plumbing and Piping

Includes testing and water, waste, and vent piping and process piping and associated reporting.

3.3.4.8 Air and Water Testing and Balancing

Includes testing and balancing of various pneumatic and hydronic piping and associated reporting.

3.3.4.9 High Voltage testing (feeders, switch gear, motors, transformers, etc.)

3.3.4.10 Other (i.e., Medical Gases testing, Lead Shielding, etc.)

ARTICLE IV. RESPONSIBILITIES OF THE UNIVERSITY

4.1 Required Actions. The University shall review, approve or take such actions as are required of it by this Agreement, the Contract Documents and applicable law in a reasonable and timely manner.

4.2 Instructions to Contractors. All instructions of the University to Contractors shall be through, or in consultation with, the Associate.

4.3 University's Requirements. The University shall provide full information regarding its requirements for the Project including without limitation the Program of Requirements, design and construction standards and work rules which shall set forth the University's use, design, time and financial objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability, time constraints imposed by fiscal and budgetary considerations, special equipment and systems and site requirements.

4.4 University's Representative. The University shall designate a Project Manager, i.e. a person authorized to act on the University's behalf with respect to the Project to the extent provided in the Contract Documents.

4.5 Site Description. If reasonably requested by the Associate as necessary for the Project, the University shall furnish a legal description and a certified land survey of the site, giving, as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and data pertaining to existing building(s) location, other improvements and trees; subsoil conditions and full information concerning available service and utility lines both public and private, above and below grade, including inverts and depths. The Associate shall be entitled to rely upon the accuracy and completeness of information provided by the University under this Paragraph.

4.6 Notice to Associate. If the University observes or otherwise becomes aware of any Defective Work or other fault or defect in the Project, prompt notice thereof shall be given to the Associate.

4.7 Legal Representation. The University shall not be responsible to provide, or pay for, any legal representation of the Associate.

4.8 Delays by University. If the Associate is delayed in the performance of its services by any act or omission of the University, or by changes ordered by the University which are due to causes beyond the Associate's control, or by a delay authorized by the University pending dispute resolution, then the time allotted in the Project Schedule for the Associate's services shall be extended for the period of such delay or the University shall authorize the Associate to work overtime to make up such lost time, and the Associate's compensation shall be equitably adjusted.

ARTICLE V. COMPENSATION

5.1 Direct Personnel Expense. Direct Personnel Expense shall mean the portion of direct salaries and wages of all personnel of the Associate or any Consultants, as applicable, including professional, technical, management, administrative and clerical employees, and principals engaged on the Project related to their time devoted to the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto such as employment taxes and other statutory employee benefits, social security contributions, insurance, sick leave, holidays, vacations, pensions, profit sharing and similar benefits related to their time devoted to the Project.

5.2 Reimbursable Expenses

5.2.1 Definition. Reimbursable Expenses means actual expenditures incurred by the Associate or its Consultants in the interest of the Project approved by the University for building permits, soil or other testing or special inspections and, if requested by the University Project Professional Liability Insurance and reformatting Project Record Submittals to a computer medium different than a computer medium used by the Associate. No other expenditures shall be Reimbursable Expenses unless so provided in an amendment in accordance with Subparagraph 9.5.2.

5.2.2 Limits. The Associate shall use its best efforts to minimize Reimbursable Expenses. In all events, total Reimbursable Expenses shall not exceed _____ Dollars (\$_____), without the written approval of the University and an amendment in accordance with Subparagraph 9.5.2. Reimbursable Expenses for the following items shall not exceed the respective amounts:

<u>Item</u>	<u>Amount</u>
(BOLD)	

5.3 Basis of Compensation

5.3.1 Basic Fee. For Basic Services provided by the Associate and all Consultants, the University shall pay the Associate a Basic Fee in accordance with Paragraph 5.4 hereof in the amount of _____ Dollars (\$_____). A change in the Basic Fee may be made only by an amendment in accordance with Subparagraph 9.5.2.

5.3.2 Additional Fees. The University shall pay the Associate the respective Additional Fees for the following Additional Services:

<u>Additional Service</u>	<u>Additional Fee</u>
---------------------------	-----------------------

For other Additional Services provided by the Associate and any Consultants in accordance with Article III, the University shall pay the Associate Additional Fees in an amount negotiated to the mutual reasonable satisfaction of the University and the Associate, but in all events, such Additional Fees shall not exceed two and one-half (2.5) times the Direct Personnel Expense incurred by the Associate and any applicable Consultant in providing those Additional Services. Except for the Additional Services and Additional Fees listed above, Additional Services and any Additional Fees may be approved only by an amendment in accordance with Subparagraph 9.5.2. The Associate, with the prior written consent of the University may provide Additional Services through one or more Consultants.

5.3.3 Extent of Basic Fee. The Associate's Basic Fee includes all compensation for Basic Services, including without limitation, for salaries or other compensation of the Associate's employees at the principal office, branch offices and the field office, general operating expenses of the Associate's principal office, branch offices and the field office, any part of the Associate's capital expenses, including interest on the Associate's capital employed for the Project, overhead or expenses of any kind, except Reimbursable Expenses, any costs incurred due to the negligence of the Associate, the Associate's general advertising, federal, state or local income, sales or other taxes, state franchise taxes and qualification fees, and membership in trade, business or professional organizations.

5.4 Method and Terms of Payment

5.4.1 Basic Fee. Payment of the Basic Fee shall be made monthly in proportion to services performed in each Phase in accordance with the following percentages of the Basic Fee:

Predesign Phase	\$ _____	5%
Schematic Design Phase	\$ _____	15%
Design Development Phase	\$ _____	15%
Construction Documents Phase	\$ _____	30%
Bidding and Award Phase	\$ _____	5%-7%
Construction Phase	\$ _____	25%
Project Closeout	\$ _____	3%-5%

The Bidding and Award Phase or the Project Closeout Phase shall include approximately 2% of the fee and identified in the Associate's Fee Proposal for preparation of the conformed construction documents prepared by the Associate in the Bidding and Award Phase (refer to Article 2.6).

Any balance of the final 5% of the Basic Fee shall be paid upon Project Closeout as follows: one-half after preparation of all Punch-Lists and one-half after completion of all Punch-List items to the reasonable satisfaction of the University and receipt of Project Record Submittals by the University as provided in this Agreement. The University may waive the withholding of any final balance or part thereof, if Associate has performed to the reasonable satisfaction of the University. Payment of

the last twenty percent (20%) of the Basic Fee for the Predesign Phase, the Schematic Design Phase, the Design Development Phase, the Construction Documents Phase, and the Bidding or Negotiation Phase shall be made only after all documents and Drawings required for the respective Phase have been submitted to the University, as applicable, in form and substance reasonably satisfactory to the University. The Basic Fee, including without limitation the final 5% thereof, shall be subject to all setoffs in favor of the University for claims against the Associate. Payments for Basic Services shall be based upon a properly completed Application Certificate for Payment – Professional Services (ACPPS) and shall be made within the applicable time limits provided by Section 126.30 of the Ohio Revised Code.

5.4.2 Additional Fees, Reimbursable Expenses. Payments of Additional Fees for Additional Services in accordance with Article III and Subparagraph 5.3.2 and for Reimbursable Expenses as set forth in Paragraph 5.2 shall be made monthly based upon services performed or expenses incurred, as applicable, and as shown by a properly completed ACPPS.

5.4.3 Payments by Associate. Within ten (10) business days of receipt of payment made pursuant to this Agreement, the Associate shall pay all portions thereof due to Consultants and to persons who provided items the expenses of which are Reimbursable Expenses.

5.4.4 Compensation for Extension of Project Time. If the Associate notifies the University not less than thirty (30) days prior to the time for completion of the Project set by the Project Schedule approved pursuant to Subparagraphs 2.4.3, 2.5.2, and 2.6.9 that such time for completion is reasonably expected to be exceeded by more than ten percent (10%) through no fault of the Associate, the compensation, if any, for Basic Services to be rendered during such extended period shall be negotiated to the mutual reasonable satisfaction of the University and the Associate. If, as a result of such negotiation, the University agrees that the Associate shall be paid additional compensation, an amendment to that effect shall be executed in accordance with Subparagraph 9.5.2 before the Associate renders any services made necessary by such extension of the time of completion, unless otherwise agreed in writing by the University.

5.4.5 Compensation for Change of Scope of Project. The Scope of the Project is defined by the Approved Program of Requirements as provided in Subparagraph 2.2.2. If the University materially changes the Scope of the Project after the Schematic Design Phase at any time after the execution of this Agreement through no fault of the Associate, any necessary adjustment in the compensation of the Associate shall be negotiated to the mutual reasonable satisfaction of the University and the Associate. If, as the result of such negotiation, the University agrees that the Associate shall be paid additional compensation, an amendment to that effect shall be executed in accordance with Subparagraph 9.5.2 before the Associate renders any services made necessary by such change in the Scope of the Project unless otherwise agreed in writing by University.

5.4.6 Compensation Setoffs. The Associate shall be responsible to the University for the costs of any errors or omissions (Subparagraph 2.7.10) or delays (Subparagraphs 1.1.3 and 1.1.13) of the Associate, or of Consultants retained by the Associate, to the extent that such costs exceed _____ % in the aggregate of the Associate's basic fee.

ARTICLE VI.

INSURANCE AND INDEMNIFICATION

6.1 Insurance

6.1.1 Casualty Insurance. Except when a modification is requested in writing by the Associate and approved in writing by the University, the Associate shall carry and maintain at the Associate's cost, with companies authorized to do business in Ohio, all necessary liability insurance (which shall include as a minimum the requirements set forth below) during the term of this Agreement:

- a. Workers' Compensation and employer's liability insurance to the full extent as required by applicable law;
- b. Commercial general liability coverage for bodily injury and property damage, including limited contractual liability coverage, in not less than the following amounts:
 - i. General Aggregate Limit:
\$2,000,000 each occurrence;
 - ii. Each Occurrence Limit:
\$1,000,000 each occurrence; and
- c. Commercial automobile liability coverage, including non-owned and hired, in an amount not less than \$1,000,000.
- d. Each policy of insurance required to be purchased and maintained by the Associate shall name the University as an additional insured.

6.1.2 Project Professional Liability Insurance. For all Projects with a Construction Budget of \$5,000,000 or more, the Associate shall, in consultation with the University obtain proposals for project specific professional liability insurance to cover the Associate, any Consultants and Construction Manager ("Project Professional Liability Insurance") in an amount of not less than \$2,000,000. The term of coverage of such insurance will include the design period, the construction period and a period of no less than two (2) years after the Contract Completion.

6.1.3 Professional Liability Insurance. When the University does not elect to procure Project Professional Liability Insurance, and subject to the University's waiver or modification of Professional Liability Insurance upon written request of the Associate, the Associate shall maintain insurance to protect against claims arising from the performance of the Associate's services caused by any negligent acts, errors or omissions for which the Associate is legally liable ("Professional Liability Insurance"). Except when a waiver is approved by the University upon written request of the Associate, such Professional Liability Insurance shall be in an amount not less than \$1,000,000 per claim and in the annual aggregate. The Associate shall endeavor to keep such insurance in effect for so long as the Associate may be held liable for its performance of services for the Project. If the Professional Liability Insurance is written on a claims-made basis, such insurance shall have a retroactive date no later than the date on which the Associate commenced to perform services relating to the Project. The insurance company issuing the Professional Liability Insurance policy must be authorized to do business in Ohio and have a rating of at least A status as noted in the most recent edition of the Best's Insurance Reports.

6.1.4 Certificates. The Associate shall provide the University prior to execution of this agreement, certificates of insurance evidencing the required coverages and amounts, including without limitation any certificates of renewal of insurance. The certificates of insurance shall contain a provision that the policy or policies will not be canceled without thirty-(30) days' prior written notice to the University.

6.2 Indemnification

6.2.1 Indemnification by Associate Generally. To the fullest extent permitted by law, the Associate shall and does agree to indemnify and hold harmless the University and its members, officers, employees and representatives from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including attorney's fees and other costs of defense), of any nature, kind or description, which (a) arise out of, are caused by or result from performance of the Associate's services hereunder and (b) are attributable to bodily injury, personal injury, sickness, disease or death of any person, or to damage to or destruction of property, including the loss of use and consequential damages resulting therefrom, but (c) only to the extent they are caused by any negligent acts, errors or omissions of the Associate, anyone directly or indirectly employed by the Associate or anyone for whose acts the Associate is legally liable. This Subparagraph is intended to be, and shall be construed as consistent with, and not in conflict with, Section 2305.31 of the Ohio Revised Code.

6.2.2 Intellectual Property Indemnification. To the fullest extent permitted by law, the Associate shall and does agree to indemnify and hold harmless the University and its members, officers, employees and representatives from and against all claims, damages, losses, liens, causes of action, suits, judgements and expenses (including attorney's fees and other costs of defense), of any nature, kind or description, which result from any claimed infringement of any copyright, patent or other intangible property right caused by the Associate, anyone directly or indirectly employed by the Associate or anyone for whose acts the Associate is legally liable. The Associate shall not be required to indemnify and hold harmless such persons for such matters when the claimed infringement occurs in materials provided by the University.

ARTICLE VII. DISPUTE RESOLUTION PROVISIONS

7.1 Mediation. Instead of, or in addition to, the procedures set forth below, the University and the Associate may, by written agreement, submit any claims, requests, disputes or matters in question between or among them to mediation upon such terms as shall be mutually reasonably agreeable.

7.2 Notice and Filing of Requests. Any request by the Associate for additional fees or expenses shall be made in writing to the University and filed prior to payment of the final 5% of the Basic Fee. Failure of the Associate to timely make such a request shall constitute a waiver by the Associate of any request for such fees and expenses.

7.3 Request Information. In every written request filed pursuant to Paragraph 7.2, the Associate shall provide the nature and amount of the request; identification of persons, entities and events responsible for the request; activities on the Project Schedule affected by the request or new activities created by any delay and the relationship with existing activities; anticipated duration of any delay; and recommended action to avoid or minimize any future delay.

7.4 Meeting with Project Manager. If the Associate files a written request with the University pursuant to Paragraph 7.2, the Project Manager shall, within thirty (30) days of receipt of the request, schedule a meeting in an effort to resolve the request and render a decision on the request promptly thereafter or render a decision on the request without a meeting, unless a mutual agreement is made to extend such time limit. The meeting scheduled by the Project Manager shall be attended by persons expressly and fully authorized to resolve the request on behalf of the Associate.

7.5 Appeal to the Division of Administration and Finance If the efforts of the Project Manager do not lead to resolution of the request, the Associate may appeal to the Division of Administration and Finance by notice in writing. Within thirty (30) days of receipt of the notice, the Division of Administration and Finance shall schedule a meeting and render a decision on the appeal promptly thereafter or render a decision on the appeal without a meeting, unless a mutual agreement is made to extend such time limit. The purpose of such a meeting shall be to settle the matters in dispute and shall be attended by persons expressly and fully authorized to resolve the matters on behalf of the Associate. Chapter 119 of the Ohio Revised Code, shall not be applicable to any proceedings of the Division of Administration and Finance. The decision of the Division of Administration and Finance shall be the final and conclusive determination of the University.

7.6 Delegation. No provision of this Paragraph shall prevent the Division of Administration and Finance from delegating the duties or authorities of the Division of Administration and Finance to any other person selected at the discretion of the Division of Administration and Finance.

7.7 Performance. The Associate shall proceed with the Associate's performance of this Agreement during any dispute resolution process, unless otherwise agreed by the Associate and the University in writing. The University shall continue to make payment, in accordance with this Agreement, of any amounts not in dispute pending final resolution of any dispute in accordance with this Paragraph.

ARTICLE VIII. TERMINATION AND REMEDIES

8.1 Termination of Agreement

8.1.1 **Means of Termination.** This Agreement may be terminated by either party upon seven (7) days written notice should the other party fail to perform in accordance with the terms of this Agreement; provided, however, the Associate shall not terminate this Agreement for non-payment if the University initiates the payment process by preparing, executing and submitting a voucher for all reasonably undisputed amounts due to the Associate within ten (10) days of receipt of the Associate's written notice to terminate. This Agreement may be terminated by the University without cause upon fifteen (15) days written notices to the Associate. This Agreement may be terminated at any time upon the mutual consent of the University and the Associate.

8.1.2 Associate's Remedies Upon Termination by University Without Cause or Termination by Associate. In the event of a termination which is not due to the failure of the Associate to perform in accordance with the terms of this Agreement, the Associate shall be compensated for all Basic Services of a completed Phase performed prior to the termination date in accordance with the percentages set forth in Subparagraph 5.4.1, together with Reimbursable Expenses incurred prior to the termination date. In such event, for services rendered prior to the termination date in an uncompleted Phase and for Additional Services, the Associate shall receive compensation based on the percentages of completion of that Phase or those Additional Services, as applicable, and as reasonably determined by the University together with Reimbursable Expenses incurred prior to the termination date.

8.1.3 Associate's Remedies Upon Termination by University for Cause. In the event of a termination which is due to the failure of the Associate to perform in accordance with the terms of this Agreement, the Associate shall be compensated only for Basic Services performed and paid for prior to the termination date in accordance with the percentages set forth in Subparagraph 5.4.1, together with Additional Services completely performed prior to the termination date. In such event, the Associate shall be reimbursed only for Reimbursable Expenses incurred prior to the date of the notice of termination, unless the University consents in writing to the payment of Reimbursable Expenses incurred after that date.

8.1.4 Associate's Remedies Upon Termination by Mutual Consent. In the event of a termination upon the mutual consent of the University and the Associate, any compensation for Basic Services or for Additional Services or payment of Reimbursable Expenses shall be negotiated and set forth in an amendment to this Agreement in accordance with Subparagraph 9.5.2 prior to such termination.

8.1.5 Post-Termination Matters. If the University and the Associate agree that any services are to be performed for the Project by the Associate after any termination date, the amount of any compensation and the method and terms of payment of such compensation or any Reimbursable Expenses related to such services shall be negotiated and set forth in an amendment to this Agreement in accordance with Subparagraph 9.5.2 prior to the commencement of such services. Such amendment and any relevant provisions of this Agreement shall survive termination of this Agreement.

8.2 Remedies

8.2.1 Cumulative Remedies. No remedy conferred upon University by the terms of this Agreement is intended to be exclusive of any other remedy provided at law or in equity. Each and every remedy of the University shall be cumulative and shall be in addition to any other remedy given to the University hereunder or now or hereafter existing. Except as otherwise provided in this Agreement, no remedy conferred upon the Associate by the terms of this Agreement is intended to be exclusive of any other remedy provided at law or in equity. Except as otherwise provided in this Agreement, each and every remedy of the Associate shall be cumulative and shall be in addition to any other remedy given to the Associate hereunder or now or hereafter existing.

8.2.2 Remedies Not Waived. No delay, omission or forbearance to exercise any right, power or remedy accruing to the University or the Associate hereunder shall impair any such right, power or remedy or shall be construed to be a waiver of any breach hereof or default hereunder. Every such right, power or remedy may be exercised from time to time and as often as deemed expedient.

ARTICLE IX.

MISCELLANEOUS PROVISIONS

9.1 Ownership and Use of Documents

9.1.1 Property of University. Drawings, Specifications and other documents prepared by, or with the cooperation of, the Associate or any Consultant pursuant to this Agreement are the property of the University whether or not the Project for which they are prepared is commenced or completed. The Associate or Consultant, as applicable, may retain copies, including reproducible copies of such Drawings, Specifications and other documents for information and reference. Such Drawings, Specifications or other documents may be used by the University or others employed by the University for reference in any completion, correction, remodeling, renovation, reconstruction, alteration, modification of or addition to the Project, without compensation to the Associate or Consultant. Unless the Project is a prototype, such Drawings, Specifications or other documents shall not be used by the University, or be given or sold by the University to be used by others, on other projects except by agreement in writing and with agreed upon appropriate compensation to the Associate or Consultant, as applicable. If an event occurs for which the Associate or Consultant may be liable, the University shall notify the Associate or Consultant of such event as soon as practical after such event and shall provide access to the Project to the Associate or Consultant and their representatives. This Subparagraph shall survive termination of this Agreement.

9.1.2 Associate's Intellectual Property. All inventions, patents, design patents and computer programs acquired or developed by the Associate in connection with or relation to the Project shall remain the property of the Associate and shall be protected by the University from use by others except by agreement in writing with appropriate and agreed upon compensation to the Associate.

9.2 Public Relations. Prior to completion of the Project, any public relations or publicity about the Project shall be solely within the control and with the consent of the University.

9.3 Records. The records of all of the Associate's Direct Personnel Costs, Reimbursable Expenses and payments to Consultants pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to the University at all times and shall be maintained for seven (7) years after Final Acceptance of the Project by the University. All other records kept by the Associate related to the Project shall be available to the University at all times and shall be maintained for six (6) years after Final Acceptance of the Project by the University.

9.4 Successors and Assigns. The University and the Associate, each bind themselves, their successors, assigns and legal representatives, to the other party to this Agreement and to the successors, assigns and legal representatives of the other party with respect to all terms of this Agreement. The Associate shall not assign, or transfer any right, title or interest in this Agreement without the prior written consent of the University.

9.5 Extent of Agreement

9.5.1 Entire Agreement. This Agreement and the Contract Documents represent the entire and integrated agreement between the University and the Associate and supersede all prior negotiations, representations or agreements, either written or oral.

9.5.2 Amendments. This Agreement may be amended only by an amendment prepared by the University and signed by both the Associate and the University.

9.5.3 Multiple Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

9.5.4 Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections hereof.

9.5.5 Precedence. If there are any inconsistencies between the provisions of the Contract Documents and the provisions of the Announcement, the Technical Proposal or this Agreement, the provisions of the Contract Documents shall prevail. In addition, the Associate should refer to the University's Design Guidelines and Standards Manual.

9.5.6 Conditions of Validity (when State Appropriated Funding is involved). None of the rights, duties and obligations contained in this Agreement shall be binding on any party until all legal requirements have been complied with, including without limitation that the Director of Budget and Management of the State first certifies that there is a balance in the appropriation not already obligated to pay existing obligations, as required by Section 126.07, Ohio Revised Code, all necessary funds are available from the applicable state agencies or instrumentalities and, when required, the expenditure of such funds is approved by the Controlling Board of the State of Ohio or other applicable approving body. In addition, if federal funds are to be used to pay fees and expenses under this Agreement, none of the rights, duties and obligations contained in this Agreement shall be binding on any party until the University notifies the Associate in writing that such funds are available from the University's source.

9.6 Governing Law

9.6.1 Law of Ohio. This Agreement shall be governed by the law of the State of Ohio to the exclusion of the law of any other jurisdiction and the State of Ohio shall have jurisdiction over any action hereunder or related to the Project to the exclusion of any other forum.

9.6.2 Capitalized Terms. Capitalized terms in this Agreement shall have the same meaning as those in the Standard Conditions, unless otherwise defined herein or unless another meaning is indicated by the context.

9.7 Assignment of Antitrust Claims. Each party to this Agreement recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser of goods and services; in this instance the ultimate purchaser is the University. Therefore, the following assignment is made:

Intending to be legally bound, the Associate, acting herein by and through the person signing this Agreement on its behalf as a duly authorized agent, hereby assigns, sells, conveys and transfers to the University any and all right, title and interest in and to any and all claims and causes of action which the Associate may now have or hereafter acquire under the antitrust laws of the United States of America or the State, PROVIDED that the claims or causes of action relate to the particular goods, products, commodities, intangibles, or services purchased, procured, or acquired by, or rendered to, the

University pursuant to this Agreement, and EXCEPT as to any claims or causes of action which result from antitrust violations commencing after the price is established under this Agreement and which are not passed on to the University by any means. In addition, the Associate warrants and represents that it will require any and all of its Consultants and suppliers to assign any and all federal and State antitrust claims and causes of action to the University, subject to the provision and exception stated above. The provisions of this Subparagraph shall become effective at the time the University executes its concurrence to this Agreement without further acknowledgement by any of the parties.

9.8 Notices

9.8.1 Addresses. All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be given if delivered in person to the individual or to a member of the company or organization for whom the notice is intended, or if delivered at or mailed by registered or certified mail, postage prepaid, to the appropriate following address:

If to the University:

University of Cincinnati
Division of Administration and Finance
Facilities and Construction Services
PO Box 210181
Cincinnati, Ohio 45221-0181
Attention: (Project Manager)

If to the Associate:

(Insert the Associate' Mailing Address (**Bold**))

9.8.2 Facsimiles and Electronic Mail. For convenience of communication only, notices, certificates, requests or other communications hereunder of fewer than ten (10) pages, except requests for payment, may be sent by facsimile transmission to University at 513/556-4885 or by electronic mail. Notices, certificates, requests or other communications sent by facsimile transmission or electronic mail shall not be deemed to be given unless a counterpart is received or mailed in accordance with Subparagraph 9.8.1. Requests for payment may be sent to the University by facsimile transmission or electronic mail only upon specific direction from the University.

9.8.3 Emergencies. In the event of an emergency involving the Project, including, without limitation, a fatality, serious injury, fire, collapse, flood, utility or power loss to occupied facilities, explosion, or environmental damage, the Associate shall immediately notify the University by telephone.

9.8.4 Change of Address. The University or the Associate may, by notice given hereunder, designate any further or different addresses, telephone numbers or facsimile numbers to which subsequent notices, certificates, requests or communications shall be sent.

Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if such invalid or unenforceable provision were not contained herein. Such invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

9.9 The Associate shall specify the exclusive use of domestically produced steel, as defined in Section 153.011 of the Ohio Revised Code, for all projects, however funded. The University reserves the right to reject any item or material installed on the project in violation of this requirement. The appropriate technical specification sections shall require that certifications be placed on the front cover of, or on the initial sheet of each steel fabrication shop drawing, and that each certification be signed and dated by an official authorized by the company prior to beginning of fabrication.

9.10 O.R.C. 9.24 Warranty. The Associate warrants that it is not subject to any “unresolved” findings for recovery under O.R.C. 9.24. If the warranty is deemed to be false, the Agreement is void *ab initio* and the Associate must immediately repay to the University any funds paid under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

("Associate"- type in "**Bold**")

By: _____

Title: _____

Associate's Federal TIN: _____

Date: _____

UNIVERSITY OF CINCINNATI

By: _____

Name: _____

Title: _____

Date: _____

This Agreement has been reviewed and approved as to form pursuant to Section 153.01 of the Ohio Revised Code to determine whether sufficient funds have been encumbered and released, and to determine to whether the Associate maintains a current Workers' Compensation Certificate.

MARC DANN
Attorney General of Ohio

By: _____
Assistant Attorney General

Print Name: _____

Date: _____