

Agreement between Owner and Architect

This AGREEMENT is made as of the _____ day of _____ in the year _____

BETWEEN the Owner: Drexel University
3141 Chestnut Street
Philadelphia, Pa 19104

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-

and the Architect: _____

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For the following Project: _____

The Owner and Architect agree as set forth below.

TERMS AND CONDITIONS OF AGREEMENT BETWEEN OWNER AND ARCHITECT

ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

1.1 ARCHITECT'S SERVICES

1.1.1 The Architect's services consist of those services performed by the Architect, Architect's employees and Architect's consultants as enumerated in Articles 1, 2 and 3 of this Agreement and any other services included in Article 12.

1.1.2 All services to be provided by the Architect under this Agreement shall be rendered using the highest degree of care and skill exercised by members of the same profession currently practicing under similar circumstances for the type and nature of the Project covered by this Agreement. The Architect's services shall be performed as expeditiously as possible consistent with professional skill and care and the orderly progress of the Project. Upon request of the Owner, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect.

1.1.3 In performing its services, the Architect shall review all applicable federal, state and local laws, codes and regulations, and the design of the Project shall comply with such laws, codes and regulations. The Architect shall also respond in the design of the Project to all requirements imposed by governmental authorities having jurisdiction over the Project.

1.1.4 The Architect hereunder is an independent contractor, and shall have no right to incur any indebtedness or make any commitment or contract on behalf of the Owner. The Architect represents itself as a highly qualified, experienced and competent organization, possessing ample professional and financial resources to complete this Project successfully. The Architect represents that the personnel whom it assigns to the Project shall be highly qualified in the services required and shall have had experience in providing these types of services on projects of a similar nature. All personnel assigned to the Project by the Architect shall be duly licensed in the jurisdiction where the Project is located to the extent required by law in such jurisdiction. The Architect and Owner understand and agree that the Owner does not purport to have architectural and engineering expertise of its own with regard to the Project, and that the Owner shall rely solely upon the professional qualifications and competence of the Architect.

1.1.5 The Architect shall designate a Project Architect and other key personnel, acceptable to the Owner, who shall not be replaced by the Architect without the prior written consent of

the Owner. The Project Architect and other key personnel shall be listed on Exhibit "B" to this Agreement, and shall not be changed without the Owner's prior written consent. If, at any time during the course of the Project, the Owner becomes dissatisfied with the performance of the Project Architect or any of the other key personnel, the Owner shall have the right to request a replacement, and the Architect will offer a candidate for approval by the Owner. The Project Architect shall have primary responsibility for coordination with the Owner regarding the Project, devoting such time and effort to the requirements of the Project as reasonably necessary and appropriate to the stated objectives of this Agreement. The Project Architect shall be authorized to provide and receive communications, and act on behalf of the Architect with respect to the Project. Each of the other professionals identified in the Architect's proposal shall perform the services described therein, and the services shall not be performed by other personnel without the advance written consent of the Owner.

1.1.6 All consultants retained by Architect are subject to Owner's prior written approval, both as to the identity of the consultant and the scope of work that Architect proposes to delegate to the consultant. The consultants shall be listed on Exhibit "B" to this Agreement, and shall not be changed without the Owner's prior written consent. The Architect shall be responsible to the Owner for acts and omissions of the Architect's consultants, and any other persons or entities performing any of the services required under this Agreement for or on behalf of Architect.

1.1.7 The Architect shall communicate with the Owner solely through the Owner's Project Manager. The Owner's Project Manager shall communicate with such other employees of Owner as appropriate or necessary in order to respond to communications from the Architect. The Architect shall not communicate with other employees of Owner (such as deans, vice-deans, administrators, faculty members, service personnel or others), unless such communications are approved in advance in writing by Owner for specific purposes, and in such event only for those specific purposes and only with Owner's Project Manager present for all verbal communications and copied on all written communications.

ARTICLE 2 SCOPE OF ARCHITECT'S BASIC SERVICES

2.1 DEFINITION

2.1.1 The Architect's Basic Services consist of those described in Paragraphs 2.2 through 2.6 and any other services identified in Article 12 as part of Basic Services, and include normal structural, mechanical and electrical engineering services. If any of the mechanical, electrical, fire protection, sprinkler, plumbing or other systems are to be provided by the Contractor on a design/build basis, then the design of such

systems shall be reviewed by Architect for coordination with Architect's design of the Project, in addition to the Architect's responsibilities for review of shop drawings, samples and other submittals with regard to such items during the Construction Phase of the Project.

2.1.2 The Architect shall review all information provided by the Owner with regard to the Owner's program requirements (i.e., prior studies, reports and the like relating to program requirements) and, prior to using such information for any purpose, shall advise the Owner if it has any questions or concerns relating to the accuracy or completeness of such information or such program requirements, and shall verify the appropriateness of such information or program requirements for the Project. In reviewing the appropriateness of such program requirements for this Project, the Architect shall also consider and advise the Owner with regard to the state of the art of any building components, systems, equipment or designs that should be considered, whether as alternatives or otherwise, with regard to Owner's program requirements.

2.1.3 The Architect shall (a) inspect the site and review all factual information provided by the Owner relating to existing conditions, including without limitation as-built drawings and other documents relating to existing improvements and existing furniture, fixtures or equipment, and (b) the Architect shall also review all factual information provided by the Owner relating to expected Owner-supplied furniture, fixtures or equipment. Prior to using any factual information provided by the Owner for any purpose (except for the land survey and soils information provided by Owner which is governed by Paragraphs 4.5 and 4.6 of this Agreement), the Architect shall advise the Owner if it has any questions or concerns relating to the accuracy or completeness of such information, and the Architect shall also evaluate the appropriateness of using such information for the Project prior to using it for any purpose.

2.2 SCHEMATIC DESIGN PHASE

2.2.1 The Architect shall review the program furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner.

2.2.2 The Architect shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Subparagraph 5.2. 1.

2.2.3 The Architect shall review with the Owner alternative approaches to design and construction of the Project.

2.2.4 Based on the mutually agreed-upon program, schedule and construction budget requirements, the Architect shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components, including without limitation architectural and engineering concepts, building systems required, general massing,

circulation patterns, site relationships, and a tabulation of designed versus programmed areas.

2.2.5 Upon completion of the Schematic Design Phase, the Architect shall submit to the Owner a Statement of Probable Construction Cost, based upon the Architect's understanding of the Owner's program requirements and criteria. If the Statement of Probable Construction Cost exceeds the Owner's construction budget, the Owner and Architect shall mutually agree to revisions to the program, the budget, or both. The revised program and construction budget shall become an integral part of the Owner's criteria as the Project progresses to subsequent phases.

2.2.6 The Architect shall investigate reasonably observable existing visible conditions and facilities at the site of the Project as required to evaluate (and also verify if so required by the Owner's Request for Proposal for Professional Services) the accuracy of drawings and other documentation furnished by the Owner.

2.2.7 If, in the opinion of the Architect, the documentation furnished by the Owner pertaining to existing structures is incomplete or inaccurate so as to prevent the Architect from properly providing the necessary professional services, the Architect shall submit to the Owner, in writing, a list describing the nature and extent of surveys, investigations, or tests that may be required for the successful performance of its professional services. The Architect shall specify the requirements for all Owner-supplied information sufficiently in advance so as not to impede the orderly progress of the Project. If the Architect believes its own efforts are being hindered or delayed by reason of failure by the Owner to supply necessary information or guidance, the Architect shall immediately advise the Owner in writing, specifying the requirements in detail.

2.2.8 The Architect shall prepare and distribute written minutes of all meetings conducted during the Schematic Design Phase and subsequent Design Development Phase and Construction Documents Phase of the Project.

2.2.9 The Architect shall agree to be guided by the following statement in designing the contemplated Work:

In the design of a new facility or major renovations to an existing structure, regardless of funding sources, the following principles will govern:

- .1** conceive the most practical design that is consistent with the general character of the University and compatible with the specified use;
- .2** economy of construction shall be compatible with material durability and the objective of obtaining the maximum usable space per construction dollar; and
- .3** economy of operation with the objective of reducing, as far as possible, the costs of maintenance, repairs, service utilities, heating, and air conditioning.

2.2.10 The Architect shall prepare area calculations, in a form acceptable to Owner, as required by Owner.

2.3 DESIGN DEVELOPMENT PHASE

2.3.1 Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, the Architect shall prepare, for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

2.3.2 The Architect shall advise the Owner of any adjustments to the preliminary estimate of Construction Cost. If the Architect's estimate exceeds the amount stipulated pursuant to Subparagraph 2.2.5, the design and/or specifications shall, at the request of the Owner, be modified by the Architect until the estimated cost is within the stipulated amount. The stipulated amount, including such increases, if any, authorized in writing by the Owner, shall constitute the basis for the Construction Documents Phase or revisions thereof.

2.3.3 Current editions of Drexel University's Design Standards shall apply to the extent that they are relevant to the Project, except where amended by this Agreement or otherwise agreed to by the Owner and the Architect. The current edition of such Design Standards shall be available to Architect on Drexel's website (or by hardcopy from Owner if Architect so requests), and Architect represents and agrees that it shall review the edition of such Design Standards current as of the commencement of, and prior to starting, the Design Development Phase and shall apply them to the extent they are relevant.

2.3.4 The Architect shall prepare area calculations, in a form acceptable to Owner, as required by Owner.

2.3.5 The Architect shall submit to the Owner a tabulation of designed versus programmed areas.

2.3.6 The Architect shall submit to the Owner an updated Project schedule.

2.4 CONSTRUCTION DOCUMENTS PHASE

2.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Architect shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project. The Construction Documents prepared by the Architect shall include, without limitation, all drawings, specifications, schedules, diagrams and other documents as are necessary for the construction of the Project, setting forth in detail the requirements for construction of the

Work. The Construction Documents shall provide all information as is reasonably necessary for the Contractor to perform the Work, and shall include all documents required for regulatory agency approvals. If Owner has elected to exclude the Design Development Phase, then the Basic Services required of the Architect under the Design Development Phase shall be consolidated into and performed as part of the Construction Documents Phase to the extent necessary to perform the services required under the Construction Documents Phase, with all such Basic Services included in the Fee for Basic Services for the Construction Documents Phase. Approval of the Construction Documents by Owner shall not relieve the Architect of any of its obligations or liabilities to Owner under this Agreement for furnishing adequate and proper Construction Documents for the construction of the Project, including without limitation its liability to Owner for errors or omissions in the Construction Documents.

2.4.2 The Architect shall prepare the Construction Documents in a form appropriate for bidding the Work. The Architect and Owner shall jointly prepare the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and Contractor in accordance with a schedule agreed upon by the Architect and Owner.

2.4.3 The Architect shall design the Work, and prepare the Construction Documents, so that the Construction Cost, as defined in Paragraph 5.1, does not exceed the stipulated amount for the Construction Cost established between the Owner and Architect prior to the completion of the Design Development Phase. This limitation is of the essence of this Agreement, subject to the provisions herein.

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

2.4.5 Recognizing that the Owner may, in its sole discretion, require that the Project be constructed using a "fast-track" process which may not develop in accordance with all of the procedures described in this Agreement, and in order that the Project may develop in the manner most advantageous to the Owner, it is understood and agreed that the Construction Documents may not be prepared by the Architect, or the Project be bid, as a single entity if the Owner so requires. It is also recognized and agreed that by reason of the "fast-track" process, the various phases of the Architect's Basic Services may overlap. In these situations, the Owner and Architect agree to cooperate in making appropriate adjustments to the procedures set forth in this Agreement which are based or dependent upon commencing or completing a particular phase of the Work.

2.4.6 The Architect shall use the following formats for Drawings and Specifications which will become part of the Owner's final record:

.1 Record Drawings shall be provided by individual sheet as they appear in hard copy in the Construction Documents. Record Drawings shall be submitted in electronic format compatible with AutoCAD 2004 or higher.

.2 Record Specifications shall be prepared in CSI format and submitted in electronic format compatible with Microsoft Word 2003 or higher.

2.4.7 The Architect shall prepare area calculations, in a form acceptable to Owner, as required by Owner.

2.5 BIDDING OR NEGOTIATION PHASE

2.5.1 The Architect, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist the Owner in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction.

2.5.2 Some components of the Work may be bid separately and the Architect may be requested to prepare and release documents for such bidding at the discretion of the Owner. For this reason, each bid package may not contain all of the items needed to construct the Project, as covered by this Agreement. The Architect shall not be made responsible for additional costs associated with purchasing portions of the Work separately or out of sequence, subject to the provisions of Subparagraph 5.2.3.

2.5.3 If, during or after completion of all bid packages, it is determined that final design quantities or systems require additional modification to support the completed Project because of requirements that could not have been determined precisely from previously available information, such items shall be added to the Project scope and the Architect's fee adjusted to the extent provided in Subparagraph 5.2.5.

2.6 CONSTRUCTION PHASE-ADMINISTRATION OF THE CONSTRUCTION CONTRACT

2.6.1 The Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the Contract for Construction and terminates at the issuance to the Owner of the final Certificate for Payment.

2.6.2 The Architect shall provide administration of the Contract for Construction as set forth below and in the Drexel University General Conditions of the Contract for Construction, a copy of which has been provided to Architect, and which is incorporated herein by reference.

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

2.6.4 The Architect shall perform its services, including without limitation advising and consulting with the Owner, (1) during construction until final payment to the Contractor is due, and (2) as an Additional Service at the Owner's direction from time to time during the correction period described in the Contract for Construction. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written instrument.

2.6.5 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise agreed by the Owner and Architect, to become familiar with the progress and quality of the Work completed and to determine if the Work is proceeding in accordance with the Contract Documents. The Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work, unless otherwise agreed by the Owner and Architect. On the basis of on-site observations, the Architect shall keep the Owner informed of the progress and quality of the Work, and shall endeavor to guard the Owner against defects and deficiencies in work performed by the contractors. The Architect shall notify the Owner immediately following the discovery of any defects or deficiencies including noncompliance of applicable codes, laws, and ordinances observed by the Architect, and shall suggest to the Owner recommendations for remedial action.

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

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

2.6.8 Except as may otherwise be provided in the Contract Documents or when direct communications have been authorized by the Owner, the Owner and Contractor shall communicate through the Architect or shall inform the Architect of any direct communications. Communications by and with the Architect's consultants shall be through the Architect.

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

2.6.10 The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's observations at the site as provided in Subparagraph 2.6.5 and on the data comprising the Contractor's Application for Payment, that the Work has

progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

2.6.11 The Architect shall have authority to and shall reject Work, or shall recommend to Owner the rejection of Work, which does not conform to the Contract Documents. Whenever, in the Architect's reasonable professional opinion, it is necessary or advisable for the implementation of the intent of the Contract Documents, the Architect shall have the authority to require special inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed, but the Architect shall take such action only when specific approval has been obtained from the Owner.

2.6.12 The Architect shall review and approve or take other appropriate action upon Contractor's submittals, such as Shop Drawings, Product Data, and Samples, for the purpose of checking for conformance with information given and the design concept expressed in the Contract Documents, and with applicable laws, codes, ordinances, and regulations. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the construction of the Owner or of separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such 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 designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon such certification to

establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents. The Architect shall maintain a record of all of Contractor's submittals and its responses to them, and shall maintain copies of all such submittals and responses.

2.6.13 The Architect shall prepare Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary by the Architect as provided in Subparagraphs 3.1.1 and 3.3.3, for the Owner's approval and execution in accordance with the Contract Documents, and may authorize minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents and which do not involve aesthetics or appearance (as to which Owner approval is required).

2.6.14 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, shall receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

2.6.15 At the request of the Owner, the Architect shall be the initial interpreter of the requirements of the Contract Documents and shall provide advice as to performance thereunder by both the Owner and the Contractor. The Architect shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness and in accordance with time limits agreed upon.

2.6.16 Interpretations and advice of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents, and shall be in writing or in graphic form. In the capacity of interpreter, the Architect shall endeavor to secure faithful performance by both the Owner and Contractor.

2.6.17 The Architect's decisions on matters relating to aesthetic effect shall be consistent with the intent expressed in the Contract Documents and shall be subject to Owner's approval.

2.6.18 The Architect shall render written interpretations or advice within a reasonable time on all claims, disputes or other matters in question between the Owner and Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents. All interpretations or advice by the Architect shall be advisory only and subject to Owner's approval.

2.6.19 The Architect shall attend Project progress meetings during the Construction Phase at intervals appropriate to the stage of construction, or as otherwise agreed by the Owner and Architect, and shall review the minutes prepared and issued by the Contractor irrespective of whether the Architect was in

attendance. The Architect shall advise the Owner and Contractor in writing of any inaccuracies found in the minutes.

2.6.20 Upon substantial completion of the Project, or any discrete phase or component thereof previously agreed upon, the Contractor shall prepare within ten (10) days a punch list of work not completed or performed in accordance with the Construction Documents, and submit it to the Architect and Owner for review. Within ten (10) days, the Architect shall field-verify the content of the punch list, supplementing it as required, and shall establish a schedule for completion or correction of the work to be performed.

2.6.21 The Architect shall notify the Contractor in writing, within seven (7) days of receipt of a Contractor's Application for Payment, of the reason(s) for withholding a Certificate of Payment, or part(s) thereof; provided, however, that Contractor shall remain responsible to Owner for satisfying all of the contractual requirements for payment irrespective of whether Architect has listed all of the reasons why an Application for Payment may be deficient.

2.6.22 Upon completion of construction, and prior to the Owner's final payment to the Contractor, the Contractor shall deliver to the Architect on mylar or other reproducible material acceptable to the Owner, "as-built" drawings. These drawings shall show all changes, additions, and deletions, either by Change Order or field directive, made during construction. The "as-built" drawings shall be reviewed by the Architect for conformity with known or approved field changes. The Architect is not responsible for any errors or omissions in the information provided by contractors and subcontractors that is included into the "as-built" drawings, unless Architect knows of such errors or omissions.

2.6.23 Upon completion of construction, the Architect shall deliver to the Owner a report showing the room numbers alpha-numerically, floor area in square feet for each habitable room, corridors, and all other spaces within the physical scope of the Project.

2.6.24 The Architect shall provide reasonable assistance in the utilization of any equipment or systems installed as part of the Project. Such assistance shall pertain to, but not be limited to, initial start-up or testing, adjusting and balancing, preparation of operations and maintenance manuals by the Contractor, training Facilities Management Department personnel, and consultation during operation.

2.6.25 In order to avoid delays to the Project, if there is a disagreement between the Architect and the Owner as to whether any services constitute Basic Services or Additional Services, or if there is a disagreement as to the fee to be charged for any agreed Additional Services, then the Architect shall proceed to perform the services at the Owner's written direction, and shall not delay, slow down or refuse to perform the services pending the resolution of the disagreement; subject, however, to a reservation of rights by the Architect with regard to such disagreement provided that the Architect provides written notice to the Owner of its claim immediately

upon receipt of the Owner's written direction to perform the services.

ARTICLE 3 ADDITIONAL SERVICES

3.1 GENERAL

3.1.1 The services described in this Article 3 are not included in Basic Services unless so identified in Article 12, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services except as otherwise required in connection with the Architect's professional responsibilities as listed in Article 2, and not including such revisions as are reasonably incidental to the usual and customary performance of Basic Services for a project of similar type covered by this Agreement. The services described under Paragraphs 3.2 and 3.4 shall only be provided if authorized or confirmed in writing by the Owner. If services described under Contingent Additional Services in Paragraph 3.3 are required due to circumstances beyond the Architect's control, the Architect shall notify the Owner prior to commencing such services. If the Owner deems that such services described under Paragraph 3.3 are not required, the Owner shall give prompt written notice to the Architect. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, the Architect shall have no obligation to provide those services.

3.1.2 Notwithstanding any provision in this Agreement to the contrary, the Owner may refuse the Architect any fee or payment with respect to the cost of Construction Contract change orders or changes in the Project or corrections of deficiencies in the Project as shall have been due to omissions or errors on the part of the Architect.

3.1.3 Notwithstanding any provision in this Agreement to the contrary, and except to the extent provided in subparagraph 5.2.6 and Paragraph 8.4 hereof, no additional compensation shall be paid to or claimed by the Architect by reason of any changes in the Work to be performed by the Contractor, or any changes in any of their sequences, schedules or durations, or by reason of any delays or other events, irrespective of whether such changes, delays or other events are caused by Owner-directed changes, actions or omissions of the Contractor, actions or omissions of governmental authorities, acts of God, or any other causes or events whatsoever, unless the Architect is required to perform more services than it would otherwise have been required to perform under this Agreement as a direct result thereof (hereinafter "greater amount of services"), in which event the Architect may assert a claim for additional compensation solely for and exclusively limited to such greater amount of services, but only to the extent that the need for the greater amount of services was not caused or materially contributed to by any error, omission or improper act by the Architect.

3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES

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

3.2.2 Project Representatives of the Architect shall be selected, employed and directed by the Architect, and the Architect shall be compensated therefor as agreed by the Owner and Architect.

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

3.3 CONTINGENT ADDITIONAL SERVICES

3.3.1 Subject to Paragraph 3.1 above, making revisions in Drawings, Specifications or other documents when such revisions are:

- .1** inconsistent with approvals or instructions previously given in writing by the Owner, including revisions made necessary by adjustments in the Owner's program or Project budget;
- .2** required by the enactment or revision of codes, laws or regulations subsequent to the issuance of the Construction Documents that could not have reasonably been foreseen by Architect; or
- .3** due to changes required as a result of the Owner's failure to render decisions in a timely manner.

No revisions to the Drawings, Specifications, or other documents shall be considered an Additional Service, even if included otherwise under this Subparagraph, unless the Owner has specifically authorized the revisions as an Additional Service, or the Architect has given written notice to the Owner in advance of performing the work, advising the Owner that the revisions will constitute an Additional Service, and the Owner has given the Architect specific authorization to proceed.

3.3.2 Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for construction, except for services required under Subparagraph 5.2.5.

3.3.3 Preparing Drawings, Specifications and other documentation and supporting data, evaluating Contractor's proposals, and providing other services in connection with Change Orders and Construction Change Directives except to the extent otherwise provided in Subparagraphs 2.4.3, 5.2.3, and 5.2.4.

3.3.4 Providing services in connection with evaluating substitutions proposed by the Contractor and making subsequent revisions to Drawings, Specifications and other documentation resulting therefrom.

3.3.5 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

3.3.6 Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.

3.3.7 Providing services in evaluating an extensive number-of claims submitted by the Contractor or others in connection with the Work.

3.3.8 Providing services in connection with a public hearing, arbitration proceeding or legal proceeding except where the Architect is party thereto.

3.3.9 Preparing documents for alternate, separate or sequential bids or providing services in connection with bidding, negotiation or construction prior to the completion of the Construction Documents Phase.

3.4 OPTIONAL ADDITIONAL SERVICES

3.4.1 Providing analyses of the Owner's needs and programming the requirements of the Project.

3.4.2 Providing financial feasibility or other special studies.

3.4.3 Providing planning surveys, site evaluations or comparative studies of prospective sites.

3.4.4 Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.

3.4.5 Providing services relative to future facilities, systems and equipment.

3.4.6 Providing services to make exhaustive surveys of existing conditions or facilities or to make measured drawings thereof.

3.4.7 Providing services to verify the accuracy of drawings or other information furnished by the Owner.

3.4.8 Providing coordination of construction performed by separate contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.

3.4.9 Providing services in connection with the work of a construction manager or separate consultants retained by the

Owner unless such services are reasonably incidental to the usual and customary performance of Basic Services.

3.4.10 Providing detailed quantity surveys or inventories of material, equipment and labor.

3.4.11 Providing analyses of owning and operating costs.

3.4.12 Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment unless such services are specifically included in the Owner's Request for Proposal or the Architect's Proposal to provide Professional Services.

3.4.13 Providing services for planning tenant or rental spaces.

3.4.14 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.

3.4.15 Not used (see Subparagraph 2.6.22).

3.4.16 Providing assistance, beyond that required under Subparagraph 2.6.24, in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

3.4.17 Providing services to Owner after the issuance of the final Certificate for Payment.

3.4.18 Providing services of consultants other than consultants performing services provided as part of Basic Services.

3.4.19 Providing any other services not otherwise included in this Agreement and not customarily furnished in accordance with generally accepted architectural practice for similar projects.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 The Owner shall provide full information regarding requirements for the Project, including a program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Information furnished by the Owner shall be provided in accordance with Subparagraph 2.2.7 of Paragraph 2.2.

4.2 The Owner shall establish and update an overall budget for the Project, including the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.

4.3 Information supplied by Owner shall be subject to Architect's review to the extent set forth in Subparagraphs 2.1.2 and 2.1.3 of this Agreement, in addition to any other requirements of this Agreement.

4.4 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

4.5 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a project benchmark.

4.6 The Owner shall furnish the services of geotechnical engineers when such services are requested by the Architect. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

4.6.1 The Owner shall furnish the services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Architect.

4.7 The Owner shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

4.8 The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services the Owner may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the Owner.

4.9 The services, information, surveys and reports required by Paragraphs 4.5 through 4.8 shall be furnished at the Owner's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof, except that the Architect shall review the survey and the soils information provided by Owner for manifest error, prior to using such survey or soils information for any purpose. If the Architect

discovers any discrepancy, fault, or inaccuracy in any items furnished by the Owner (whether the survey, the soils information or other items), or any variance between them and actual conditions, the Architect shall bring the discovery to the attention of the Owner immediately.

4.10 Prompt written notice shall be given by the Owner to the Architect if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents. However, the Owner shall have no expressed or implied obligation to inspect or monitor the Project for faults or defects or nonconformance with the Contract Documents, nor shall this Paragraph in any way limit the Architect's duties and responsibilities under this Agreement.

4.11 The proposed language of certificates or certifications requested of the Architect or Architect's consultants shall be submitted to the Architect for review and approval at least 14 days prior to execution.

ARTICLE 5 CONSTRUCTION COST

5.1 DEFINITION

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

5.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, plus a reasonable allowance for the Contractor's overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work during construction.

5.1.3 Construction Cost does not include the compensation of the Architect and Architect's consultants, the costs of the land, rights-of-way, financing or other costs which are the responsibility of the Owner as provided in Article 4.

5.2 RESPONSIBILITY FOR CONSTRUCTION COST

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

5.2.2 No fixed limit of Construction Cost shall be established as a condition of this Agreement by the furnishing, proposal or establishment of a Project budget, unless such fixed limit has been agreed upon in writing and signed by the parties hereto. If such a fixed limit has been established, the Architect shall be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids to adjust the Construction Cost to the fixed limit. Fixed limits, if any, shall be increased in the amount of an increase in the Contract Sum occurring after execution of the Contract for Construction.

5.2.3 If bids are not received within the time scheduled when the amount stipulated under Subparagraph 2.3.2 for Construction Cost was established, due to causes beyond the Architect's control as described in Subparagraph 5.2.6, any fixed limit of Construction Cost established as a condition of this Agreement shall be adjusted to reflect changes in the general level of prices in the construction industry between the originally scheduled date and the date on which bids are received.

5.2.4 If the lowest bona fide bid or negotiated proposal for construction of the Project exceeds the Construction Cost established under Subparagraph 2.4.3 by more than five percent (5%) for new construction and ten percent (10%) for renovations, the Owner shall have, as an option, the following rights:

.1 to give written approval of an increase in the Construction Cost with no increase in compensation to the Architect except as described in Subparagraph 5.2.5;

.2 to authorize re-bidding or re-negotiation of the Project or portions of the Project after which these provisions shall apply again; and

.3 to require the Architect to revise design of the Project, subject to Owner's approval of all revisions, so as to reduce the Construction Cost to within the amount established under Subparagraph 2.4.3.

Revision of the Project design shall be made solely at the Architect's expense. No additional compensation or reimbursement of expenses shall be payable to the Architect except when the Construction Cost is exceeded due to causes beyond the Architect's control as described in Subparagraph 5.2.6. To the maximum extent possible, any revision shall be consistent with the established level of quality of the Project. No revision shall be undertaken without consultation with and approval from the Owner.

5.2.5 The Architect's compensation for Basic Services (described more fully in Paragraph 11.2 as Basic Compensation) shall be either a fixed amount, or a fixed percentage of the stipulated amount for the Construction Cost established during the Design Development Phase as set forth

in Subparagraph 2.3.2. Regardless of the Project's actual construction cost, and whether such construction cost is less than or greater than the Construction Cost established in Subparagraph 2.3.2, Basic Compensation shall not be adjusted except in the case of a "Significant Scope Change." As used herein, a "Significant Scope Change" shall mean a modification by the Architect involving more than twenty (20) man-hours of additional time for any single effort necessary to revise previously approved Drawings or Specifications, or which involves the addition or deletion of major systems or components, or a material change in the size of the Project. Without limiting the preceding, a Significant Scope Change shall not include substitution or minor reconfiguration of materials, finishes, equipment, and other features of the Project. The Architect's fee for a Significant Scope Change shall be subject to adjustment pursuant to Subparagraph 11.3.2.

5.2.6 Causes beyond the Architect's control shall include the following:

- .1 receipt of fewer than three (3) bid responses for each total bid or bid component requested;
- .2 delay by the Owner in inviting bids beyond three (3) months after approval of final Construction Documents; and
- .3 restriction on specified materials imposed by governmental agencies.

ARTICLE 6 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

6.1 All documentation, including without limitation all studies, schematics, drawings, specifications and other documents, are the exclusive and absolute property of the Owner, including all right, title and interest (including copyright) therein. To the extent the documents are copyrightable, the Architect's services in producing these documents have been engaged and rendered on a work-for-hire basis for copyright purposes in favor of Owner, with the documents prepared by the Architect commissioned specifically for Owner for this Project, so that Owner owns the copyright therein. To the extent any of the documents are not copyrightable, the Architect hereby irrevocably assigns all right, title and interest in the documents to Owner. In the event of termination of the services of the Architect or the abandonment of all or any part of the Project pursuant to this Agreement, all documentation (including, without limitation, all studies, schematics, drawings, specifications and other documents) shall be delivered by the Architect to the Owner. Upon completion of its services, the Architect shall deliver to the Owner all said documentation. If the Owner re-uses the documentation from this Project on a project other than the Project, and if the Architect has not been engaged for such work, then the Architect shall have no liability for, and the Owner shall indemnify and hold harmless the Architect

against, any claims arising out of the re-use of said documentation on such other project. Re-use shall not be deemed to include use of the Architect's work product as a basis for further developing the plans and related documentation for the building(s) or other improvement(s) that are the subject of this Agreement or in connection with repairs, renovations or other modifications to any such building(s) or improvement(s).

6.2 Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the Owner's or Architect's reserved rights.

ARTICLE 7 MEDIATION AND LITIGATION

7.1 If a dispute, claim, or other matter in controversy arises out of or relates to this Agreement, or to the Project, and if it cannot be resolved through negotiation, then, within ten (10) days of written notice from one party to the other, Architect and Owner agree to proceed with formal mediation pursuant to paragraph 7.2 below, and to attempt in good faith to settle the dispute, claim or other matter in controversy through formal mediation, before resorting and as a condition precedent to litigation.

7.2 Mediation shall be conducted by a mediator selected by agreement of the Owner and Architect, with the cost and fees of the mediator to be equally shared by the Owner and Architect. The mediator shall be selected by agreement of Owner and Architect within thirty (30) days of a demand for mediation by either party. If the Owner and Architect are unable to select a mediator by agreement within the thirty (30) day period set forth above, then the Owner and Architect, or either of them, shall apply to the American Arbitration Association ("AAA") for a list of qualified mediators with experience in construction disputes, and the Owner and Architect shall select the mediator from the AAA list through the AAA. If the Owner and Architect cannot select a mediator, from the AAA list within thirty (30) days, then the AAA shall select the mediator and the Owner and Architect hereby agree to proceed with the mediator. Information disclosed to the mediator by the Owner and the Architect, or by witnesses, in the course of the mediation shall be confidential, and shall not be divulged by the mediator. The Owner and Architect shall maintain the confidentiality of the mediation and shall not rely upon or attempt to introduce as evidence in any judicial or other proceeding, any admissions made by the other in the course of the mediation proceedings, any proposals made or views expressed by the mediator, any proposals made or views expressed by any party to the mediation, or the fact that any party to the mediation had or had not expressed a willingness to accept a proposal for settlement made by the mediator.

7.3 ARCHITECT AND OWNER EACH HEREBY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY

WITH REGARD TO ANY AND ALL DISPUTES, CLAIMS OR OTHER MATTERS IN CONTROVERSY THAT ARISE OUT OF OR RELATE TO THIS AGREEMENT OR THAT ARISE OUT OF OR RELATE IN ANY MANNER TO THE PROJECT, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE; AND ARCHITECT AND OWNER EACH ACKNOWLEDGE AND AGREE THAT THIS WAIVER OF THE RIGHT TO TRIAL BY JURY SHALL BE ENFORCEABLE IN ALL FORUMS AND JURISDICTIONS.

7.4 Architect and Owner hereby agree that any litigation commenced by either of them against the other with regard to any and all disputes, claims or other matters in controversy that arise out of or relate to this Agreement, or that otherwise arise out of or relate in any manner to the Project, whether sounding in contract, tort or otherwise, shall be filed in, and only in, the Court of Common Pleas for Philadelphia County, Pennsylvania, and not in any other jurisdiction. Architect and Owner hereby consent to personal jurisdiction in the forum set forth above.

ARTICLE 8 TERMINATION, SUSPENSION OR ABANDONMENT

8.1 This Agreement may be terminated by either party upon not less than twenty (20) days written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating termination, provided that the party receiving notice shall have the right to cure prior to expiration of the twenty (20) day period and, upon effectuation of a cure, this Agreement shall continue in full force and effect.

8.2 This Agreement may also be terminated by the Owner, at any time with or without cause, upon ten (10) days prior written notice to the Architect.

8.3 In the case of any claimed nonpayment on the part of the Owner, and in the event the Owner contests or disputes any charge claimed by the Architect to be due, the Architect shall not take action to terminate or suspend services under this Agreement and shall continue to perform as required, so long as the Owner maintains its contest in good faith and pays the Architect any fees, compensation, or payments which are not in dispute.

8.4 If the Project is suspended or abandoned by Owner, in whole or in part, for more than three (3) months, the Architect shall be compensated for all services performed prior to receipt of written notice from the Owner of such suspension or abandonment, together with Reimbursable Expenses then due and all Termination Expenses as described in Paragraph 8.6. If the Project is resumed after three (3) months, the Architect's compensation shall be equitably adjusted, unless the Architect was the primary cause of the suspension. Adjustment of the Architect's compensation shall apply only to the extent that the services required of the Architect cannot be substantially completed in accordance with the agreed upon construction

schedule, and only to the extent that additional effort is required on the part of the Architect by reason of the suspension or abandonment.

8.5 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Paragraph 8.6.

8.6 Termination Expenses consist of all expenses reasonably incurred by the Architect which are directly attributable to termination for which the Architect is not compensated otherwise and which cannot reasonably be eliminated or reduced by Architect, including compensation to cover commitments made to the Architect's staff and to third parties in furtherance of the Project. Termination Expenses shall not, however, include lost profits, or incidental or consequential damages, or attorneys' fees.

8.7 In the event the Owner contests in good faith a charge claimed to be due to the Architect, both parties shall endeavor to resolve the dispute promptly and in accordance with the procedures described in Paragraph 9.10 of this Agreement.

8.8 Upon termination of this Agreement for any reason, the Architect shall promptly turn over to the Owner all drawings, specifications, and all other documentation prepared for the Project and not previously delivered to the Owner, all without prejudice to the Architect's right to payment of any sums then due in accordance with the terms of this Agreement.

8.9 If Owner exercises its right to terminate this Agreement, with or without cause, then Architect agrees that Owner has the right to retain other architects for this Project and to use, in furtherance of the Project, all designs, documents and/or other information prepared or produced by Architect for this Project, without additional compensation to Architect, subject to Architect's right to be paid by Owner for all services rendered prior to its termination in conformity with and subject to the terms and conditions of this Agreement and subject to the provisions of Article 6 of this Agreement.

ARTICLE 9 MISCELLANEOUS PROVISIONS

9.1 This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

9.2 Terms in this Agreement shall have the same meaning as those in Drexel University's General Conditions of the Contract for Construction.

9.3 The Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, but only to the extent covered by property insurance during construction, except such rights as they may have to the proceeds of such insurance as set forth in the Drexel University General Conditions of the

Contract for Construction. These waivers of rights do not apply to damages in excess of the amounts covered by the property insurance or to damages within the deductibles of such property insurance. The Owner and Architect each shall require similar waivers from their contractors, consultants and agents.

9.4 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement; provided, however, that Architect shall not assign this Agreement without the prior written consent of the Owner.

9.5 The Architect shall not subcontract or delegate any of its responsibilities hereunder, or assign any sum to become due hereunder, except to authorized engineers and consultants as permitted by the terms of this Agreement and subject in all instances to the prior consent of Owner.

9.6 This Agreement, including all Exhibits attached hereto and all documents expressly incorporated herein by reference, represents the entire and integrated agreement between the Owner and Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

9.7 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect. No person, firm, or corporation that is not a party to this Agreement shall have any right, title, interest in, or connection with, the Agreement.

9.8 Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances. In the event that the Architect or any other party encounters asbestos or hazardous or toxic materials at the Project site, or should it become known in any way that hazardous or toxic materials may be present at the Project site or any adjacent areas that may affect the performance of the Architect's services, the Architect shall immediately stop work and provide written notice to the Owner of the suspected substance, including the location, description, and nature of the toxic materials, and allow the Owner fourteen (14) days to confirm the presence of hazardous or toxic materials at the Project site. The Owner shall retain the services of a licensed laboratory or similar expert to verify the presence or absence of hazardous material and, if found to be present by this expert, to verify that it has been rendered harmless. As soon as the hazardous material or substance is rendered harmless, then work at the Project site shall resume, even if prior to the expiration of the fourteen (14) day period. The Architect and Owner agree to extend the

contract performance time by the length of the delay, if any, and allow for the reasonable costs for shutdown, delay, or start up caused by compliance with this Paragraph only. Nothing in this Paragraph shall prevent the Owner from seeking reimbursement for these increased costs from any party, individual, or entity responsible for causing or contributing to the presence of the hazardous or toxic materials at the Project site.

9.9 The Architect shall not, without first obtaining the written consent of the Owner, advertise or publish the fact that the Owner has contracted with the Architect. The Architect shall not use the Owner's name, logo, or trademark in any publicity, advertisement, or publication. The Architect agrees, for itself and all persons retained or employed to perform services under this Agreement both during and after the term of the Agreement, not to use or disclose to others but to hold in strictest confidence, any proprietary or confidential information regarding the Owner, the Owner's divisions, affiliates, and any other parties to which the Owner is under an obligation of confidentiality. Exceptions are (i) when the Owner specifically authorizes the Architect in writing to use or disclose proprietary or confidential information to others; (ii) when the proprietary or confidential information becomes publicly available through a properly authorized source; or (iii) when a release is required by a binding court order or decree. Proprietary information includes any trade secrets, confidential matters, or other information not generally known to the public, as well as any other information expressly marked, identified, or annotated as proprietary, limited, restricted, confidential, or similarly designated. All consultants retained by the Architect shall agree in writing to these confidentiality provisions.

9.10 Any dispute arising under this Agreement shall first be discussed by the representatives of the Owner and the Architect directly involved. If the dispute cannot be resolved at this level, it shall be referred to the Owner's Director of Planning, Design and Construction and the firm principal at the Architect's office in charge of the Project. If still unresolved, the dispute shall proceed in accordance with Article 7 of this Agreement. The Architect shall continue providing the Services during any dispute, unless otherwise requested by the Owner. If the dispute arises from any claimed nonpayment on the part of the Owner, and in the event the Owner contests or disputes any charge claimed by the Architect to be due, the Architect shall not delay, suspend or terminate its Services under this Agreement, and shall continue to perform all of its Services as required by this Agreement, so long as the Owner pays the Architect any fees, compensation or payments which are not in dispute, pending the resolution of the amounts in dispute.

9.11 In the event that any claim, suit, or other legal proceeding arising out of any matter relating to this Agreement is made or instituted against the Owner by the Contractor or any other person or entity, the Architect shall provide the Owner with all reasonable information and assistance in the defense or other disposition thereof.

**ARTICLE 10
PAYMENTS TO THE ARCHITECT**

10.1 DIRECT PERSONNEL EXPENSE

10.1.1 Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on 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, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

10.2 REIMBURSABLE EXPENSES

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

10.2.1.1 Expense of transportation and living expenses when traveling in connection with the Project, but only when travel distance between the Architect's office and the actual business destination exceeds one hundred (100) miles each way; long distance communications, including telephone company charges for long distance facsimile transmissions, but excluding charges for materials used for all facsimile transmissions; and fees paid for securing approval of authorities having jurisdiction over the Project.

10.2.1.2 Expense of reproductions, postage and handling of Drawings, Specifications and other documents (exclusive of reproductions made in-house for office use of Architect).

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

10.2.1.4 Expense of renderings, models and mock-ups requested by the Owner (exclusive of study models and graphic representations necessary for Architect to design the Project and to present the design to Owner).

10.2.1.5 Expense of any additional insurance coverage or limits requested by the Owner, including professional liability insurance, in excess of the coverages or limits required by the terms of this Agreement.

10.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES

10.3.1 An initial payment as set forth in Paragraph 11.1 is the minimum payment under this Agreement.

10.3.2 Payments for Basic Services shall be in proportion to services performed within each phase of services on the basis set forth in Subparagraph 11.2.2. The Owner shall make payments directly to the Architect within thirty (30) days after receiving the Architect's monthly invoice. All invoices shall

be submitted by the first day of the month and shall specify the percentage of work completed in accordance with the provisions of this Agreement. All invoices shall include proper supporting details, including bills or invoices, for all reimbursable expenses and costs for consultants' services.

10.3.3 If and to the extent that the time initially established in Subparagraph 11.5.1 of this Agreement is exceeded or extended through no fault of the Architect, compensation for any services rendered during the additional period of time shall be computed in the manner set forth in Subparagraph 11.3.2, but only to the extent that the additional time period requires more services than would have otherwise been required.

10.3.4 When compensation is based on a percentage of Construction Cost and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Subparagraph 11.2.2, based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent preliminary estimate of Construction Cost or detailed estimate of Construction Cost for such portions of the Project.

10.3.5 Notwithstanding anything to the contrary in this Agreement or the Architect's Proposal, payments for the Construction Phase shall be made no more frequently than monthly, and each payment shall constitute no more than the percentage of the total services for such Phase completed during each pay period; and provided, however, the total amount payable to the Architect upon Substantial Completion by the Contractor of all of the Work shall be no more than eighty percent (80%) of the portion of the Architect's Fee for Basic Services for the Construction Phase. Upon completion by the Contractor of all punch list items and all other requirements for Final Completion of the Work by the Contractor to Owner's satisfaction, and completion by the Architect of all services required under this Agreement, the Architect shall be entitled to the balance of the portion of the Architect's Fee for the Construction Phase.

10.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

10.4.1 Payments on account of the Architect's Additional Services as described in Article 3, and for Reimbursable Expenses as described in Article 10, shall be made within thirty (30) days after presentation of the Architect's statement of services rendered or expenses incurred. Requests for payment shall include proper supporting details, including bills or invoices, for all reimbursable expenses and costs for consultants' services.

10.5 PAYMENTS WITHHELD

10.5.1 No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on

account of the cost of changes in the Work, other than those for which the Owner has a claim or offset against the Architect.

10.6 ARCHITECT'S ACCOUNTING RECORDS

10.6.1 The Architect shall maintain records of the calculation and basis of the Architect's Fee, including without limitation the portions of such Fee which are based on the charges of its consultants, and records of the amounts charged by such consultants (including also copies of its contracts with its consultants), and records of its Direct Personnel Expense to the extent the Owner was charged for any services on such basis, and records of its Reimbursable Expenses; and the Architect shall also maintain the same records with regard to all Additional Services performed on the Project. The Architect shall also require its personnel rendering services for the Project, and whose time is billed to the Owner on an hourly basis, as well as personnel of any consultants whose fees are based upon time spent on the Project, to keep daily time records of services performed. All such records shall be kept on a generally recognized accounting basis, and all such records (including contracts) shall be made available to the Owner or its authorized representatives for review upon

request, during regular business hours, both during the Project and for a period of four (4) years after final payment. The Architect shall require that its consultants maintain the same records with regard to their services and charges for this Project, and shall require that its consultants provide such back-up documentation in their invoices to the Architect. Owner shall have the right to audit all such records of the Architect and its consultants and, in the event that any such audit discloses that the Architect has misstated or miscalculated the compensation paid or the expenses reimbursed to it by Owner, then the Architect shall immediately refund any excess payment it has received to the Owner and shall reimburse the Owner for the reasonable expenses incurred by Owner in conducting such audit. Further, if any federal, state or local government or governmental agency provides any funds for the Project, then the Architect shall maintain such records as are required by such governmental entity, and shall permit such audits of its records as are required by such governmental entity. If the Architect is requested by any such governmental entity to disclose any records relating to this Project for the purpose of an audit or investigation, the Architect shall notify Owner of the request and shall make available to Owner, upon request, all such records.

**ARTICLE 11
BASIS OF COMPENSATION**

The Owner shall compensate the Architect as follows:

11.1 AN INITIAL PAYMENT of _____ Dollars (\$ _____) shall be made upon execution of this Agreement and credited to the Owner's account at final payment.

11.2 BASIC COMPENSATION

11.2.1 FOR BASIC SERVICES, as described in Article 2, and any other services included Article 12 as part of Basic Services, Basic Compensation shall be computed as follows: *(Insert basis of compensation, including stipulated sums, multiples or percentages, and identify phases to which particular methods of compensation apply, if necessary.)*

11.2.2 Where compensation is based on a stipulated sum or percentage of Construction Cost, progress payments for Basic Services in each phase shall total the following percentages of the total Basic Compensation payable: *(Insert additional phases as appropriate.)*

| | |
|--------------------------------|-----------------------------------|
| Schematic Design Phase: | _____percent (____%) |
| Design Development Phase: | _____percent (____%) |
| Construction Documents Phase: | _____percent (____%) |
| Bidding or Negotiation Phase: | _____percent (____%) |
| Construction Phase: | _____percent (____%) |
| <hr/> Total Basic Compensation | <hr/> one hundred percent (100 %) |

11.3 COMPENSATION FOR ADDITIONAL SERVICES

11.3.1 FOR PROJECT REPRESENTATION BEYOND BASIC SERVICES, as described in Paragraph 3.2, compensation shall be computed as follows:

11.3.2 FOR ADDITIONAL SERVICES OF THE ARCHITECT, as described in Articles 3 and 12, other than (1) Additional Project Representation, as described in Paragraph 3.2, and (2) services included in Article 12 as part of Basic Services, but excluding services of consultants, compensation shall be computed as follows:

(Insert basis of compensation, including rates and/or multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply, if necessary.)

11.3.3 FOR ADDITIONAL SERVICES OF CONSULTANTS, including additional structural, mechanical and electrical engineering services and those provided under Subparagraph 3.4.19 or identified in Article 12 as part of Additional Services, a multiple of _____ (_____) times the amounts billed to the Architect for such services.

(Identify specific types of consultants in Article 12, if required.)

11.4 REIMBURSABLE EXPENSES

11.4.1 FOR REIMBURSABLE EXPENSES, as described in Paragraph 10.2, and any other items included in Article 12 as Reimbursable Expenses, a multiple of _____ (_____) times the expenses incurred by the Architect, the Architect's employees and consultants in the interest of the Project, or as otherwise set forth on an exhibit to this Agreement.

11.5 ADDITIONAL PROVISIONS

11.5.1 If the services covered by this Agreement have not been completed within _____ (_____) months of the commencement of construction due to delays or other causes that are within the reasonable control of the Owner, and the delays or other causes are not attributable to the fault of the Architect, and if the Architect was required to expend additional effort, thus incurring greater costs, solely as a result of the delays or other causes, then these costs shall be treated as Additional Services.

11.5.2 Payments are due and payable thirty (30) days from the date of the Architect's invoice (including all required supporting documentation). Payments due and unpaid shall bear interest, commencing one hundred and twenty (120) days after the date on which payment is due, at one percent per annum (1.0% per year).

11.5.3 Wherever referenced under this Agreement, the Architect's hourly rates shall be based on the current "Hourly Rate Schedule" published on January 1 of each year, unless other hourly rates are agreed upon by the Owner and Architect.

11.5.4 The anticipated completion date of the Project may be extended by reason of mutually agreed upon changes in the Drawings, Specifications, or other aspects or conditions of the Project. If, through no fault of the Architect, the Project is extended beyond the time frame set forth in Paragraph 11.5.1, then in such event Architect's compensation shall be equitably adjusted to the extent that Architect performs Services or incurs costs in addition to the Services or costs that it would otherwise have performed and incurred to perform all of its Services within the time frame in Paragraph 11.5.1.

ARTICLE 12 OTHER CONDITIONS OR SERVICES

12.1 INDEMNITY AND HOLD HARMLESS AGREEMENT

12.1.1 The Architect, for itself and its officers, employees and agents, agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Owner, its trustees, officers, faculty, employees, students, agents, servants and assigns from and against any and all judgments, settlements, claims, demands, causes of action, losses, damages, liabilities, civil penalties, costs and expenses (including attorneys' fees), of any nature or kind whatsoever, incurred as a result of or in connection with, in whole or in part, the Architect's negligence, intentional wrongdoing, or failure to perform its services under this Agreement, regardless of whether or not any such judgment, settlement, claim, demand, cause of action, loss, damage, liability, civil penalty, cost or expense (including attorneys' fees) is caused in part by Owner or any other party indemnified hereunder.

12.1.2 In addition to any other indemnity obligations under this Agreement, the Architect, for itself and its officers, employees and agents, also agrees, to the fullest extent permitted by law and notwithstanding any limitations in the Pennsylvania or any other state's Workers' Compensation Act, to indemnify and hold harmless the Owner, and its trustees, officers, faculty, employees, students, agents, servants and assigns, from and against any and all judgments, settlements, claims, demands, causes of action, losses, damages, liabilities, civil penalties, costs and expenses (including attorneys' fees), of any nature or kind whatsoever, incurred as a result

of or in connection with any claims against the Owner or any of its trustees, officers, faculty, employees, students, agents, servants and assigns, by any employee of the Architect, its subcontractors, consultants, and anyone directly or indirectly employed by it or them or anyone for whose acts it or they may be liable, in the event of injury or death to such employee incurred as a result of or in connection with, in whole or in part, the negligent or intentional acts or omissions of the Architect, its subcontractors, consultants, or anyone directly or indirectly employed by it or them or anyone for whose acts it or they may be liable, regardless of whether such injury or death is caused in part by Owner or any other party indemnified hereunder.

12.2 INSURANCE

12.2.1 The Architect shall provide evidence to the Owner, in the form of a Certificate of Insurance or other documentation as Owner may require, that insurance as set forth below is maintained by the Architect during, and beyond as required, the term of this Agreement. Architect shall provide and maintain the required insurance.

12.2.2 Worker's Compensation Insurance, covering all officers, employees, and agents, shall comply with the provisions of the Worker's Compensation and Occupational Disease Acts of the Commonwealth of Pennsylvania, and any supplements and amendments thereto. Coverage shall not be less than statutorily required.

12.2.3 Employer's Liability Insurance - minimum limit of One Million Dollars (\$1,000,000).

12.2.4 Comprehensive General Liability Insurance - minimum limits and coverage:

- .1** One Million Dollars (\$1,000,000) Each Occurrence; Two Million Dollars (\$2,000,000) General Aggregate Limit; One Million Dollars (\$1,000,000) Personal and Advertising Injury Limit; and Two Million Dollars (\$2,000,000) Products and Completed Operations Aggregate Limit. The policy shall contain a per project/per jobsite General Aggregate.
- .2** Coverage for Premises/Operations, Independent Contractors, Broad Form Contractual Liability, Products-Completed Operations, Personal Injury and Advertising Injury, and including liability assumed under an insured contract. All coverages written on an occurrence form.

12.2.5 Comprehensive Automobile Liability Insurance - minimum limit of Two Million Dollars (\$2,000,000) Combined Single Limit Bodily Injury and Property Damage, each accident, covering third party coverage for owned, hired and non-owned vehicles.

12.2.6 Excess (Umbrella) Liability Insurance – minimum limit of Ten Million Dollars (\$10,000,000) each occurrence for Bodily Injury and Property Damage, and minimum Ten Million Dollars (\$10,000,000) policy aggregate. This insurance is to be written on a “following form” basis over underlying insurance policies.

12.2.7.1 Architect's and Engineer's Professional Liability Insurance - per claim and aggregate limit of not less than Two Million Dollars (\$2,000,000), unless the Owner's Request for Proposals requires a higher or lower amount, and with no self-insured retention in excess of \$50,000. The Architect's professional liability insurance shall include the contractual indemnities of the Architect under this Agreement.

12.2.7.2 The Architect shall also require all of its consultants (including without limitation any structural, mechanical and electrical consultants), with the exception of cost estimating consultants, to maintain professional liability insurance with the same limits of liability as set forth above for the Architect (unless Owner agrees in writing to lower amounts for a specific consultant), with no self-insured retention in excess of \$50,000 (unless Owner agrees in writing to a greater self-insured retention for a specific consultant), all in accordance with the same terms and conditions as required of the Architect as set forth above.

12.2.8 All insurance shall be written with a company or companies of recognized responsibility authorized to provide general and professional liability and workers' compensation insurance in the Commonwealth of Pennsylvania, and be rated A VIII or better under the A.M.Best Guide. The Architect shall provide to the Owner, prior to commencement of this Agreement and from time to time thereafter as the Owner may request, a certificate showing proof of the required insurance and, prior to any policy expiring, a certificate showing evidence of policy renewal or replacement. All policies, with the exception of Worker's Compensation Insurance, shall contain a provision that they can not be canceled or changed without at least thirty (30) days prior written notice to the Owner. The Architect's Comprehensive General Liability Insurance, Comprehensive Automobile Liability Insurance and Umbrella Liability Insurance policies shall name the Owner as an additional insured entity as its interest may appear. Coverages on all policies shall be written to apply on a primary and non-contributory basis.

12.2.9 Upon completion of the Project, the Architect shall continue to provide Certificates of Insurance to the Owner showing proof that the required professional liability insurance described in Subparagraph 12.2.7 is continually maintained for at least five (5) years after the date of Substantial Completion of the Project.

12.2.10 The purchase or maintenance of any type or amount of insurance by Architect, whether required by this Agreement or otherwise, shall not limit Architect's liability to Owner to the amount of such insurance; and the purchase or maintenance of any type or amount of insurance by Owner or Contractor, whether required by this Agreement or otherwise, shall not waive, discharge, limit or release any claims or other rights of Owner against Architect for damages, losses, liabilities, costs or expenses covered (in whole or in part) by any such insurance, unless such a waiver, discharge, limit or release is expressly stated in this Agreement.

12.3 EQUAL EMPLOYMENT OPPORTUNITY

12.3.1 In connection with the performance of its services under this Contract, the Architect agrees as follows:

.1 The Architect will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, national origin, disability, or because he or she is a disabled veteran or a veteran of the Vietnam Era. The Architect will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, national origin, disability, or because he or she is a disabled veteran or veteran of the Vietnam Era. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Architect agrees to post in conspicuous places, available to employees or applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

.2 The Architect will, in all solicitations or advertisements for employees placed by or on behalf of the Architect, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, national origin, disability, or because he or she is a disabled veteran or veteran of the Vietnam Era.

.3 The Architect will send to each representative of workers (whether labor union or otherwise), if any, with which it has a contract or understanding (whether a collective bargaining agreement or otherwise), if the Architect is a party to any such agreement, contract or understanding, a notice to be provided advising the said workers' representative (or labor union) of the Architect's commitments under this subparagraph and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

.4 The Architect will comply with all provisions of Executive Order 11246, as amended, with both Section 503 of the Rehabilitation Act of 1973 as amended and Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 as these articles make reference to Executive Order 11246, and with the rules, regulations, and relevant orders of the Secretary of Labor.

.5 The Architect will furnish all information and reports required by Executive Order 11246, as amended, by both Section 503 of the Rehabilitation Act of 1973 as amended and Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 as these articles make reference to Executive Order 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the administering or compliance agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

.6 In the event of the Architect's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated or suspended, in whole or in part and the Architect may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

.7 The Architect will include the provisions of subparagraphs 12.3.1.1 through 12.3.1.7, in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246, as amended, or to Section 503 of the Rehabilitation Act of 1973 as amended and Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 as these articles make reference to Executive Order 11246, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Architect will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance provided, however, that in the event the Architect becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Architect may request the United States to enter into such litigation to protect the interests of the United States.

.8 Anything herein elsewhere contained to the contrary notwithstanding, disputes, claims and questions concerning alleged violations of the terms of this Agreement relating to discrimination or of the President's Executive Order No. 11246, as amended, shall be submitted to one of the following for arbitration:

- .1 Philadelphia Human Relations Commission
34 South 11th Street
Philadelphia, Pennsylvania 19107
- .2 Pennsylvania Human Relations Commission
711 State Office Building
1400 Spring Garden Street
Philadelphia, Pennsylvania 19130
- .3 Secretary of Labor
U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue NW
Washington, DC. 20210

or any such individual arbitrators as shall have been designated for the purpose by such agency or body.

.9 In construing this Paragraph 12.3, the term "compliance agency" shall mean any governmental agency or agencies administering grant funds for the Project.

12.4 NOTICES

12.4.1 Notices required to be made under this Agreement shall be effective when deposited in the United States Mail by certified mail with return receipt requested, or forwarded by overnight courier to the addresses below:

- .1 Owner: _____
_____ (Owner address)
_____ (City, State, Zipcode)
Att'n: _____ (Owner Officer and Title)
- .2 Architect: _____ (Firm Name)
_____ (Firm Address)
_____ (City, State, Zipcode)
(Att'n: _____ (Firm Representative).

Either party is authorized to change its respective address above upon ten (10) days written prior notice.

12.5 SEVERABILITY

12.5.1 If, for any reason, a provision of this Agreement, or the application of such provision to a particular circumstance, is held or declared to be invalid, illegal, or unenforceable, the holding or declaration shall not affect the validity or enforceability of any other provision of this Agreement, or the application of such provision to different circumstances.

12.6 COMPLIANCE WITH LAWS

12.6.1 Any employee, agent, consultant, or representative of the Architect shall abide by all applicable policies of the Owner, such as identification, smoking, and safety policies, while on the Owner's premises.

12.6.2 The Architect shall comply, at its own expense, with the provisions of all federal, state, county, and municipal laws, ordinances, regulations, and orders pertaining to the performance and provision of its services under this Agreement, and all rules, regulations, and orders of the local Board of Fire Underwriters or similar agency.

12.7 CONFLICT OF INTEREST

12.7.1 The Architect confirms, to the best of its knowledge, that no actual or potential conflict exists between the Architect's employees, business or financial interests, and the services to be performed by the Architect under this Agreement. Additionally, the Architect confirms, to the best of its knowledge, that it has not, within the previous five (5) years, entered into an agreement to provide remuneration, or already provided remuneration to, any employee or faculty member of Drexel University. The Architect further confirms no current engagement in negotiations with any employee or faculty member regarding the Architect providing remuneration to that employee or faculty member pursuant to a future arrangement.

12.7.2 The Architect shall provide written notification to the Owner after execution of this Agreement of any change occurring with respect to either private interest or service of the Architect which may lead to, or has resulted in, actual or potential conflict of interest or payment to any employee or faculty member of Drexel University. The notification shall describe in detail the nature of the actual or potential conflict or payment.

12.8 WAIVER OF DEFAULT

12.8.1 Failure by either the Architect or Owner to enforce any provisions of this Agreement at any time, or for any period of time, shall not be construed to be a waiver of such provisions nor of the right of either party to enforce each and every provision of this Agreement.

12.9 RIGHT TO INCUR INDEBTEDNESS

12.9.1 The Architect has no right to incur indebtedness on behalf of the Owner, except as expressly set forth in this Agreement.

12.10 WAIVER OF LIENS

12.10.1 Prior to commencement of its Services under this Agreement, the Architect, to the extent permissible in the State where the project is located, agrees to waive and relinquish any and all mechanic's and materialmen's liens that it may acquire or otherwise be entitled to in connection with the provision of the Services. The Architect will, from time to time, execute and deliver any instruments or other documents required by Owner to effectuate the provisions of this paragraph.

12.10.2 In addition to any other requirements set forth in this Agreement, Architect shall execute and deliver to Owner a Progress Payment Affidavit, Release, and Waiver of Liens (hereinafter "Affidavit") simultaneously with each request for a progress payment, in the form attached hereto as Exhibit "D-1". Architect shall also require all of its consultants, subcontractors and suppliers to provide a Progress Payment Affidavit, Release, and Waiver Of Liens, in the form attached hereto as Exhibit "D-2", simultaneously with each request for a progress payment by said consultants, subcontractors and suppliers to Architect, unless such requirement is waived in writing by Owner as to any particular consultant, subcontractor or supplier.. With each payment request after the first payment request, Architect shall provide Owner with a certified list of its payments to all of its consultants, subcontractors and suppliers to date, and executed Affidavits in the form attached hereto as Exhibit "D-2" by all consultants, subcontractors and suppliers for disbursements previously made by Owner to Architect for work, services, materials or equipment provided by said consultants, subcontractors and suppliers. Should Architect fail or be unable to provide such an Affidavit from a consultant, subcontractor or supplier, then Owner may withhold payment from Architect in such amounts as Owner may determine are necessary to protect Owner against claims or liens by such consultant, subcontractor or supplier, subject to Architect's right to provide Owner with a bond (from a surety company, and in form and substance, acceptable to Owner) to cover such claims or liens. The Architect will also, from time to time, execute and deliver any instruments or other documents required by Owner to effectuate the provisions of this paragraph.

12.10.3 The Architect shall execute, and deliver to Owner, the Final Payment Affidavit, Release, and Waiver of Liens attached hereto as Exhibit "D-3" at the time of, and as a condition to, final payment. The Architect shall also require all of its consultants, subcontractors and suppliers to provide a Final Payment Affidavit, Release, and Waiver of Liens, in the form attached hereto as Exhibit "D-4", at the time of, and as a condition to, final payment. Should Architect fail or be unable to provide such an Affidavit from a consultant, subcontractor or supplier, then Owner may withhold payment from Architect in such amounts as Owner may determine are necessary to protect Owner against claims or liens by such consultant, subcontractor or supplier, subject to Architect's right to provide Owner with a bond (from a surety company, and in form and substance, acceptable to Owner) to cover such claims or liens.

12.11 DOCUMENTS AS PART OF THIS AGREEMENT

12.11.1 Each of the documents identified below is an integral part of the Contract between the Owner and Architect with respect to the Project, and is listed in order of importance, from highest to lowest. In the event of a conflict exists between the terms and conditions contained in any two or more of these documents, those terms and conditions contained in documents with higher importance shall

govern and control those of lesser importance; except that in the event of conflict or variance between two or more requirements in any of the documents, the requirement that is more stringent upon the Architect and more beneficial to the Owner shall always govern in all instances unless the Architect's proposal, to the extent accepted and attached as an exhibit to this Agreement (or any other exhibit to this Agreement), expressly provides for the exclusion of any specific scope of services:

- .1 this Agreement;
- .2 the Owner's Request for Proposal for Professional Services, including all documents attached thereto or expressly incorporated therein by reference; and
- .3 the Architect's Proposal for Professional Services as attached hereto as Exhibit "A", to the extent accepted by the Owner and with modifications approved by the Owner.

12.11.2 If the Architect's Proposal or other submission is attached to this Agreement (or referred to herein), it is to describe the scope of the Architect's Services. No legal provisions contained in the Architect's Proposal or other submission (including without limitation any terms or conditions relating to limits of liability, payment, interest, indemnity, dispute resolution or otherwise) shall apply, and all such provisions are void and of no effect, and are superseded in their entirety by this Agreement.

12.12 BACKGROUND AND REFERENCE CHECKS

12.12.1 The Architect shall ensure that federal, state and county of residence criminal background checks are conducted on all employees of the Architect and its consultants performing services at the Project location, and shall exclude from the Project location any dishonest, dangerous or otherwise unqualified persons. The Architect shall comply with all applicable laws, rules and regulations including, but not limited to the Fair Credit Reporting Act and/or any equal opportunity laws, rules, regulations or ordinances. The Architect agrees that it shall make available to Owner, within one week after Owner's request, a list of all employees of the Architect and its consultants then engaged in performing services at the Project location together with copies of all background checks for those employees

12.13 CONFIDENTIALITY

12.13.1 The terms of this Agreement, and all information provided by or on behalf of Owner to the Architect for this Project (other than information already in the public domain), is confidential and proprietary information of Owner, and shall not be disclosed by the Architect to anyone, except to its consultants and others performing services on this Project, and then only to the extent necessary for such consultants or others to perform their services on the Project. No other information shall be disclosed by the Architect, other than that Owner is a client of the Architect (without any reference to any particular projects), except with the written consent of Owner in its sole discretion.

12.14 EXHIBITS

Exhibit "A" – Scope of Services

Exhibit "B" – Architect's Project Architect and other key personnel assigned to Project.

Exhibit "C" – Architect's Consultants

Exhibits "D-1" to "D-4" – Architect and Consultant Monthly and Final Affidavit, Release and Waiver of Liens

12.15 INTEGRATED AGREEMENT AND EFFECTIVE DATE

12.15.1 This Agreement is entered into, and is effective, as of the day and year first written above. This is an integrated Agreement, and if Architect has started performing its Services based on verbal agreements and correspondence before this Agreement was executed, then Owner and Architect agree that this Agreement covers all such Services, whether performed before or after the execution of this Agreement, and this Agreement supersedes all such prior verbal agreements and correspondence.

OWNER: _____

ARCHITECT: _____

By: _____

By: _____

Name:

Title: _____
Date: _____

Name: _____
Title: _____
Date: _____

EXHIBIT A – SCOPE OF SERVICES

If the Architect's Proposal or other submission is attached to this Agreement as Exhibit A (or referred to herein), it is solely for the purpose of describing the scope of the Architect's Services, and any legal provisions included in the Proposal are void and of no force or effect. See section 12.11.2 of the Agreement.

EXHIBIT "B" – PROJECT ARCHITECT AND OTHER KEY PERSONNEL

EXHIBIT "C" – LIST OF ARCHITECT'S CONSULTANTS

Exhibit D-1

ARCHITECT PROGRESS PAYMENT AFFIDAVIT, RELEASE, AND WAIVER OF LIENS

TO OWNER: Name: _____

Address: _____

FROM ARCHITECT: Name _____

Address: _____

PROJECT: _____

CONTRACT DATE: _____, _____

Payment Request No.: _____

Period From: _____

To: _____ (hereinafter the "Partial Completion Date")

Payment Request Amount:\$ _____

1. **CERTIFICATIONS, AFFIRMATIONS AND WARRANTIES.** The undersigned Architect (hereinafter "the Undersigned"), to support its entitlement to the requested payment, and for and in consideration of payments made by Owner to the Undersigned, or to a consultant, subcontractor, materialman or supplier of the Undersigned, for work, services, materials or equipment provided or performed for the above-referenced Project, hereby affirms, certifies and warrants as follows:

- (a) The Payment Request Amount set forth above represents the actual value of work performed for the above payment request period for which payment is due under the terms of the Contract (and all authorized changes thereto) between the Undersigned and the Owner relating to the Project, including (i) all labor expended or furnished in the design or construction of the Project, (ii) all materials and equipment delivered to the site and either incorporated or to be incorporated in the Project; (iii) all materials, fixtures and equipment for the Project stored off-site to the extent authorized by Owner and for which payment therefor is permitted by the Contract, (iv) all services furnished or performed in the design or construction of the Project, and (v) all equipment used, or provided for use, in the construction of the Project. All of items (i) through (v) above are hereafter collectively referred to as "work performed for the Project."
- (b) Subject to receipt of payment for the Payment Request Amount set forth above, the Undersigned certifies that it has received payment in full, less retainage, for all work performed for the Project through the date set forth above (hereinafter the "Partial Completion Date"), and, except for retainage, the Undersigned has no claims, on its own behalf or on behalf of others, against Owner, and/or its lenders, or the Project, based upon or relating to work performed for the Project through the Partial Completion Date, except for outstanding written requests for change orders previously submitted by Architect to Owner in writing and in conformity with the terms of the Agreement between Owner and Architect.
- (c) The Undersigned has not assigned to anyone any claim, any lien, or any right to file or perfect a lien, against Owner, Owner's lenders, or the Project.

- (d) The Undersigned has paid in full all laborers, and, subject to retainage no greater than the percentage retainage held by Owner, all consultants, subcontractors, suppliers, materialman and others with respect to all work performed through and including the last application for payment for which Owner has paid Architect.
- (e) The Undersigned has not given or executed any security interests for or in connection with any materials, equipment, appliances, machines, fixtures or furnishings which have been or are to be installed as part of the Project, and is conveying good title to the same to Owner.

2. **WAIVER AND RELEASE.** Subject to receipt of payment for the Payment Request Amount set forth above, the Undersigned does hereby forever waive and release in favor of Owner, Owner's lenders, the Project, and the title company or companies examining and/or insuring title to the Project, and any and all successors and assigns of the above, all rights that presently exist or hereafter may accrue to the Undersigned, by reason of work performed for the Project through the Partial Completion Date, (i) to assert a lien upon the land and/or improvements comprising the Project (whether under the lien statute of any jurisdiction or otherwise), and (ii) to assert or bring, subject to paragraph 1(b) above, any causes of actions, claims, suits and/or demands which the Undersigned ever had or now has against Owner, Owner's lenders, or the Project. Subject to paragraph 1(b) above, the Undersigned hereby releases, acquits and forever discharges Owner and Owner's lenders, and their representative partners, directors, officers, employees, agents, successors and assigns, from all claims, liabilities, obligations, causes of action and demands whatsoever, whether known or unknown, arising now or in the future, relating to or arising from the Project, based upon any cause, matter or thing whatsoever, from the beginning of the world through the date of this Release.

3. **INDEMNIFICATION.** The Undersigned hereby agrees to indemnify, defend and hold harmless Owner, Owner's lenders, and their respective successors and assigns, from and against any and all damages, costs, judgments, liabilities, demands, suits and expenses (including reasonable attorney's fees) directly or indirectly relating to any cause of action, claim or lien filed by any person or entity with respect to (i) any work performed for the Project through the Partial Completion Date, (ii) any rights waived or released herein, and (iii) any misrepresentation or breach of any certification, affirmation or warranty made by the Undersigned in this document. Upon the request of Owner, the Undersigned will undertake to defend such causes of actions, claims or liens at its sole cost and expense, and will bond off any liens.

Date: _____, _____

ARCHITECT: _____

By: _____

Name:

Title:

SWORN TO AND SUBSCRIBED
BEFORE ME THIS _____ DAY
OF _____, _____

Notary Public

Exhibit D-2

CONSULTANT PROGRESS PAYMENT AFFIDAVIT, RELEASE, AND WAIVER OF LIENS

TO ARCHITECT: Name: _____

Address: _____

FROM CONSULTANT Name: _____

Address: _____

PROJECT: _____

OWNER: _____

SUBCONTRACT DATE: _____, _____

Consultant Payment Request No.: _____

Period From: _____

To: _____ (hereinafter the "Partial Completion Date")

Cross Reference Architect Application for Payment No.: _____

Consultant Payment Request Amount: \$ _____

1. **CERTIFICATIONS, AFFIRMATIONS AND WARRANTIES.** The undersigned Consultant (hereinafter "the Undersigned"), to support its entitlement to the requested payment, and for and in consideration of payments made by Architect to the Undersigned, or to a subcontractor, materialman or supplier of the Undersigned, for work, services, materials or equipment provided or performed for the above-referenced Project, hereby affirms, certifies and warrants as follows:

- (a) The Consultant Payment Request Amount set forth above represents the actual value of work performed for the above payment request period for which payment is due under the terms of the Subcontract (and all authorized changes thereto) between the Undersigned and the Architect relating to the Project, including (i) all labor expended or furnished in the design or construction of the Project, (ii) all materials and equipment delivered to the site and either incorporated or to be incorporated in the Project; (iii) all materials, fixtures and equipment for the Project stored off-site to the extent authorized by Architect and for which payment therefor is permitted by the Subcontract, (iv) all services furnished or performed in the design or construction of the Project, and (v) all equipment used, or provided for use, in the construction of the Project. All of items (i) through (v) above are hereafter collectively referred to as "work performed for the Project."
- (b) Except for the Consultant Payment Request Amount set forth above, the Undersigned certifies that it has already received payment in full, less retainage, (i) for all prior Consultant Payment Requests and (ii) for all work performed for the Project through the date set forth above (the "Partial Completion Date"); and, except for retainage, the Undersigned has no claims, on its own behalf or on behalf of others, against Architect, Owner or the Project, based upon or relating to work performed for the Project through the Partial Completion Date, except for outstanding written requests for change orders previously submitted by Consultant to Architect and by Architect to Owner in writing and in conformity with the terms of the Subcontract

between Subcontractor and Architect and the terms of the Agreement between Architect and Owner..

- (c) The Undersigned has not assigned to anyone any claim, any lien, or any right to file or perfect a lien, against Architect, Owner, or the Project.
- (d) Except for the Consultant Payment Request Amount set forth above, the Undersigned certifies that it has paid in full all laborers, and, subject to retainage no greater than the percentage retainage held by Architect, all subcontractors, suppliers, materialman and others with respect to all work performed for the Project through the Partial Completion Date.
- (e) The Undersigned has not given or executed any security interests for or in connection with any materials, equipment, appliances, machines, fixtures or furnishings which have been or are to be installed as part of the Project, and is conveying good title to the same to Architect.

2. **WAIVER AND RELEASE.** Subject to receipt of payment for the Consultant Payment Request Amount set forth above, the Undersigned does hereby forever waive and release in favor of Architect, Owner, the Project, and the title company or companies examining and/or insuring title to the Project, and any and all successors and assigns of the above, all rights that presently exist or hereafter may accrue to the Undersigned, by reason of work performed for the Project through the Partial Completion Date, (i) to assert a lien upon the land and/or improvements comprising the Project (whether under the lien statute of any jurisdiction or otherwise), and (ii) to assert or bring, subject to paragraph 1(b) above, any causes of actions, claims, suits and/or demands which the Undersigned ever had or now has against Architect, Owner, or the Project. Subject to paragraph 1(b) above, the Undersigned hereby releases, acquits and forever discharges Owner and Owner’s lenders, and their representative partners, directors, officers, employees, agents, successors and assigns, from all claims, liabilities, obligations, causes of action and demands whatsoever, whether known or unknown, arising now or in the future, relating to or arising from the Project, based upon any cause, matter or thing whatsoever, from the beginning of the world through the date of this Release.

3. **INDEMNIFICATION.** The Undersigned hereby agrees to indemnify, defend and hold harmless Architect, Owner, and their respective successors and assigns, from and against any and all damages, costs, judgments, liabilities, demands, suits and expenses (including reasonable attorney's fees) directly or indirectly relating to any cause of action, claim or lien filed by any person or entity with respect to (i) any work performed by or on behalf of the Undersigned for the Project through the Partial Completion Date, (ii) any rights waived or released herein, and (iii) any misrepresentation or breach of any certification, affirmation or warranty made by the Undersigned in this document. Upon the request of Architect, the Undersigned will undertake to defend such causes of actions, claims or liens at its sole cost and expense.

Date: _____, _____

CONSULTANT: _____

By: _____

Name:

Title:

SWORN TO AND SUBSCRIBED
BEFORE ME THIS _____ DAY
OF _____, _____

Notary Public

Exhibit D-3

ARCHITECT FINAL PAYMENT AFFIDAVIT, RELEASE, AND WAIVER OF LIENS

TO OWNER: Name:

Address: _____

FROM ARCHITECT:

Name: _____

Address: _____

PROJECT:

CONTRACT DATE:

_____, _____

Payment Request No.: _____ (Final Payment)

Period From: _____

To: _____ (hereinafter the "Final Completion Date")

Final Payment Request Amount: \$ _____

1. **CERTIFICATIONS, AFFIRMATIONS AND WARRANTIES.** The undersigned Architect (hereinafter "the Undersigned"), to support its entitlement to the requested final payment, and for and in consideration of payments made by Owner to the Undersigned, or to a consultant, subcontractor, materialman or supplier of the Undersigned, for work, services, materials or equipment provided or performed for the above-referenced Project, hereby affirms, certifies and warrants as follows:

- (a) The Undersigned has completed all of its work on the Project, and has achieved Final Completion of the Project.
- (b) The Final Payment Request Amount set forth above represents the actual value of work performed through Final Completion and for which final payment is due under the terms of the Contract (and all authorized changes thereto) between the Undersigned and the Owner relating to the Project, including (i) all labor expended or furnished in the design or construction of the Project, (ii) all materials and equipment delivered to the site and either incorporated or to be incorporated in the Project; (iii) all materials, fixtures and equipment for the Project stored off-site to the extent authorized by Owner and for which payment therefor is permitted by the Contract, (iv) all services furnished or performed in the design or construction of the Project, and (v) all equipment used, or provided for use, in the construction of the Project. All of items (i) through (v) above are hereafter collectively referred to as "work performed for the Project."
- (c) Subject to receipt of the Final Payment Request Amount set forth above, the Undersigned certifies that it has received payment in full, including all retainage, for all work performed through Final Completion of the Project; and the Undersigned certifies that no further payments are or will be due to it on this Project; and the Undersigned further certifies that it has no claims, on its own behalf or on behalf of others, against Owner, and/or its lenders, or the Project, based upon or relating to work performed for the Project or otherwise relating to or arising from the Project, whether for labor, materials, equipment or otherwise relating to the Project.
- (d) The Undersigned has not assigned to anyone any claim, any lien, or any right to file or perfect a lien, against Owner, Owner's lenders, or the Project.

- (e) The Undersigned has paid in full all laborers, consultants, subcontractors, suppliers, materialman and others with respect to all work performed for the Project through Final Completion.
- (f) The Undersigned has not given or executed any security interests for or in connection with any materials, equipment, appliances, machines, fixtures or furnishings which have been or are to be installed as part of the Project, and is conveying good title to the same to Owner.

2. **WAIVER AND RELEASE.** The Undersigned does hereby forever waive and release in favor of Owner, Owner's lenders, the Project, and the title company or companies examining and/or insuring title to the Project, and any and all successors and assigns of the above, all rights that presently exist or hereafter may accrue to the Undersigned, by reason of work performed for the Project or by reason of any other cause, matter or thing relating to the Project, (i) to assert a lien upon the land and/or improvements comprising the Project (whether under the lien statute of any jurisdiction or otherwise), and (ii) to assert or bring any causes of actions, claims, suits and/or demands which the Undersigned ever had or now has against Owner, Owner's lenders, or the Project. The Undersigned hereby releases, acquits and forever discharges Owner and Owner's lenders, and their representative partners, directors, officers, employees, agents, successors and assigns, from all claims, liabilities, obligations, causes of action and demands whatsoever, whether known or unknown, arising now or in the future, relating to or arising from the Project, based upon any cause, matter or thing whatsoever, from the beginning of the world through the date of this Release.

3 **INDEMNIFICATION.** The Undersigned hereby agrees to indemnify, defend and hold harmless Owner, Owner's lenders, and their respective successors and assigns, from and against any and all damages, costs, judgments, liabilities, demands, suits and expenses (including reasonable attorney's fees) directly or indirectly relating to any cause of action, claim or lien filed by any person or entity with respect to (i) any work performed for the Project, (ii) any rights waived or released herein, and (iii) any misrepresentation or breach of any certification, affirmation or warranty made by the Undersigned in this document. Upon the request of Owner, the Undersigned will undertake to defend such causes of actions, claims or liens at its sole cost and expense, and will bond off any liens.

Date: _____, _____

ARCHITECT: _____

By: _____

Name:

Title:

SWORN TO AND SUBSCRIBED
BEFORE ME THIS _____ DAY
OF _____, _____

Notary Public

Exhibit D-4

CONSULTANT FINAL PAYMENT AFFIDAVIT, RELEASE, AND WAIVER OF LIENS

TO ARCHITECT: Name: _____

Address: _____

FROM CONSULTANT: Name: _____

Address: _____

PROJECT: _____

OWNER: _____

SUBCONTRACT DATE: _____, _____

Consultant Payment Request No.: _____ (Final Payment)

Period From: _____

To: _____

Cross Reference Architect Application for Payment No. _____

Consultant Final Payment Request Amount: \$ _____

1. **CERTIFICATIONS, AFFIRMATIONS AND WARRANTIES.** The undersigned Consultant (hereinafter "the Undersigned"), to support its entitlement to the requested final payment, and for and in consideration of payments made by Architect to the Undersigned, or to a subcontractor, materialman or supplier of the Undersigned, for work, services, materials or equipment provided or performed for the above-referenced Project, hereby affirms, certifies and warrants as follows:

- (a) The Undersigned has completed all of its work on the Project.
- (b) The Consultant Final Payment Request Amount set forth above represents the actual value of work performed through Final Completion of the Project and for which final payment is due under the terms of the Subcontract (and all authorized changes thereto) between the Undersigned and the Architect relating to the Project, including (i) all labor expended or furnished in the design or construction of the Project, (ii) all materials and equipment delivered to the site and either incorporated or to be incorporated in the Project; (iii) all materials, fixtures and equipment for the Project stored off-site to the extent authorized by Architect and for which payment therefor is permitted by the Subcontract, (iv) all services furnished or performed in the design or construction of the Project, and (v) all equipment used, or provided for use, in the construction of the Project. All of items (i) through (v) above are hereafter collectively referred to as "work performed for the Project."
- (c) Subject to receipt of the Consultant Final Payment Request Amount set forth above, the Undersigned certifies that it has received payment in full, including all retainage, for all work performed through Final Completion of the Project; and the Undersigned certifies that no further payments are or will be due to it on this Project; and the Undersigned further certifies that it has no claims, on its own behalf or on behalf of others, against Architect, Owner, or the Project, based upon or relating to work performed for the Project or otherwise relating to or arising from the Project, whether for labor, materials, equipment or otherwise relating to the Project.

- (d) The Undersigned has not assigned to anyone any claim, any lien, or any right to file or perfect a lien, against Owner, Owner's lenders, or the Project.
- (e) The Undersigned has paid in full all laborers, subcontractors, suppliers, materialman and others with respect to all work performed for the Project through Final Completion.
- (f) The Undersigned has not given or executed any security interests for or in connection with any materials, equipment, appliances, machines, fixtures or furnishings which have been or are to be installed as part of the Project, and is conveying good title to the same to Architect.

2. **WAIVER AND RELEASE.** The Undersigned does hereby forever waive and release in favor of Architect, Owner, and the Project, and the title company or companies examining and/or insuring title to the Project, and any and all successors and assigns of the above, all rights that presently exist or hereafter may accrue to the Undersigned, by reason of work performed for the Project or by reason of any other cause, matter or thing relating to the Project, (i) to assert a lien upon the land and/or improvements comprising the Project (whether under the lien statute of any jurisdiction or otherwise), and (ii) to assert or bring any causes of actions, claims, suits and/or demands which the Undersigned ever had or now has against Architect, Owner, or the Project. The Undersigned hereby releases, acquits and forever discharges Architect and Owner, and their representative partners, directors, officers, employees, agents, successors and assigns, from all claims, liabilities, obligations, causes of action and demands whatsoever, whether known or unknown, arising now or in the future, relating to or arising from the Project, based upon any cause, matter or thing whatsoever, from the beginning of the world through the date of this Release.

3 **INDEMNIFICATION.** The Undersigned hereby agrees to indemnify, defend and hold harmless Architect and Owner, and their respective successors and assigns, from and against any and all damages, costs, judgments, liabilities, demands, suits and expenses (including reasonable attorney's fees) directly or indirectly relating to any cause of action, claim or lien filed by any person or entity with respect to (i) any work performed by or on behalf of the Undersigned for the Project, (ii) any rights waived or released herein, and (iii) any misrepresentation or breach of any certification, affirmation or warranty made by the Undersigned in this document. Upon the request of Architect the Undersigned will undertake to defend such causes of actions, claims or liens at its sole cost and expense.

Date: _____, _____

CONSULTANT: _____

By: _____
 Name:
 Title:

SWORN TO AND SUBSCRIBED
 BEFORE ME THIS _____ DAY
 OF _____, _____

 Notary Public