

**MECHANICAL/ELECTRICAL/PLUMBING ENGINEERING AGREEMENT**

THIS AGREEMENT made this 1st day of December, 2009, by and between **THE DISTRICT BOARD OF TRUSTEES OF BROWARD COLLEGE**, 111 East Las Olas Boulevard, Fort Lauderdale, Florida 33301, (referred to as "OWNER"), and Johnson, Levinson, Ragan, Davila, Inc., located at 1450 Centrepark Boulevard, Suite 350, West Palm Beach, Florida 33401 hereinafter referred to as the "ENGINEER").

**WITNESSETH:**

WHEREAS, it is in the best interests of the BOARD to be able to obtain professional Mechanical, Electrical and Plumbing Engineering services expeditiously when a need arises in connection with a study, a partial, or complete College construction project; and

WHEREAS, Section 287.055, Florida Statutes (Consultant's Competitive Negotiation Act), makes provision for a "continuing contract" with a firm to provide professional services to the College for projects in which construction costs do not exceed \$1,000,000.00, for study activities when the fee for such professional services does not exceed \$50,000.00, or for work of a specified nature as may be outlined in the contract, and

WHEREAS, the BOARD has selected the Engineer in accordance with the provisions of Florida Statutes, who will provide professional Engineering services as directed by the OWNER on such projects and tasks as may be required from time to time by the Owner.

AGENDA ITEM             
VII-E  
DEC 1 2009  
3

NOW, THEREFORE, OWNER and ENGINEER have agreed as follows:

ENCLOSURE           

- A. The ENGINEER agrees to perform professional services for the OWNER as herein set forth relative to the Projects that arise during the term of this contract
- B. OWNER's engagement of the ENGINEER is based upon the ENGINEER's representations to the OWNER as follows:
  - 1. ENGINEER is an organization of experienced design professionals, authorized and licensed to do business in the State of Florida;
  - 2. ENGINEER is qualified, willing and able to perform Engineering services for the Projects;
  - 3. ENGINEER has the expertise and ability to provide design and Engineering services for the Project which will meet the OWNER's objectives and requirements.
- C. OWNER agrees to pay the ENGINEER for such services in accordance with the fees set forth in this AGREEMENT.
- D. OWNER will enter into an agreement with a Construction Management Firm to construct each Project under the principles of Construction Management at Risk. The Construction Manager will provide a Guaranteed Maximum Price (GMP) based on the

ENGINEER's submission of 100% Construction Documents. GMP shall be consistent with the OWNER'S Construction Budget, as indicated in each project proposal, and any budget modifications mutually agreed upon by the OWNER, ENGINEER, and Construction Manager; during the development of documents through previous design phases.

E. The parties further agree to the following conditions:

AGENDA ITEM VIII-E

ARTICLE 1

DEC 1 2009

**ENGINEER'S PROFESSIONAL SERVICES**

ENCLOSURE 3

The ENGINEER shall provide professional services for each Project in accordance with the Terms and Conditions of this AGREEMENT in compliance with good and acceptable Engineering standards and applicable building codes and regulations.

1.1 The ENGINEER shall furnish material testing, environmental services, cost estimates, landscaping, planning surveying, and any other service as required by OWNER. As well as services of any Sub-Consultants included as part of the Project Team on the ENGINEER's Professional Qualification Supplement. All services shall be performed by, or under the direct supervision of, professionals licensed in, and in accordance with professional standards consistent with those provided by Engineering firms in the State of Florida which customarily provide similar design services to the OWNER. The governing standards shall be those in effect at the time this AGREEMENT is fully executed. Codes, laws and regulations are referenced in the Florida Building Code, or otherwise listed in this AGREEMENT. In addition, all services shall be performed in compliance with any and all codes, laws, ordinances, and regulations which apply to or govern any particular Project.

1.1.1 The term of this contract shall be for three (3) years from date of approval by the DISTRICT BOARD OF TRUSTEES.

1.2 Engineer shall insure that all drawings, plans, specifications, or other documents or materials provided or prepared by the ENGINEER shall conform to the following standards:

1.2.1 Be sufficient, complete, accurate, adequate for bidding, negotiating, and for the purpose of constructing each Project;

1.2.2 Be consistent with the OWNER's budget requirements for each Project and each Project Schedule;

1.2.3 Meet the OWNER's aesthetic, functional, and operational objectives as expressed in each project Program or as amended by mutual agreement;

1.2.4 Comply with all laws, statutes, rules and regulations, building codes, LEED requirements, and OWNER's standards, guidelines and regulations, which apply to or govern each Project.

1.2.5 Florida Building Code latest edition and current amendments

- 3 The OWNER has computerized all aspects of their operation; therefore, all ENGINEER Design and Contract Documents shall be prepared in electronic media. Drawing documents shall be formatted in AutoCAD latest version and written documentation shall be formatted in Microsoft Word latest version. Organization of all contract documents and layering shall be as defined by the National CAD Standards
- 1.4 ENGINEER's services shall be performed as expeditiously as is consistent with the ordinary progress of Work. The ENGINEER shall submit for the OWNER's approval a schedule for the performance of the Engineering's services which may be adjusted by the Owner as the Project proceed, and shall include allowances or periods of time required for the OWNER's and Construction Manager's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by the schedule approved by the OWNER shall not, except for reasonable cause, be exceeded by the ENGINEER.
- 1.5 ENGINEER agrees that if each Project will be constructed in accordance with the ENGINEER's design, that the Project will be in compliance with Paragraph 1.2 above and meet OWNER'S programs' objective's.
- 1.6 All design and engineering services provided by consultants to the ENGINEER for the Project ("Sub-Consultants") shall comply with all standards referenced in Paragraphs 1.1 - 1.4 inclusive.
- 1.7 The OWNER, at its sole discretion, may direct the ENGINEER, at no additional cost to the OWNER, to promptly and satisfactorily correct any services provided pursuant to this AGREEMENT that are found to be defective or not in compliance with the requirements of this AGREEMENT or the requirements of any laws, statutes, rules, regulations, ordinances, regulations, building codes and OWNER's guidelines which apply to or govern each Projects' program at the time of execution of this AGREEMENT. OWNER's approval, acceptance or use or payment for all or any part of ENGINEER's services hereunder or of the Project itself shall in no way alter the ENGINEER's obligations to the OWNER pursuant to this AGREEMENT or the owner's right to demand correction of unsatisfactory services provided under this agreement.
- 1.8 The ENGINEER's services shall be performed in conjunction with those services and/or Work rendered by a Construction Manager (hereinafter collectively referred to as "Work"), as described in the AGREEMENT between OWNER and Construction Manager for each project.
- 1.9 In addition to hard copies of all documents required at each phase of design, the ENGINEER shall provide computerized copies in CD format.
- 1.10 The ENGINEER shall design each project in its totality and provide for the project to be constructed in a phased manner based upon the OWNER's requirements and/or construction budget.

AGENDA ITEM VII-E

DEC 1 2009

ENCLOSURE 2

ARTICLE 2

AGENDA ITEM VII-E

**ENGINEER'S BASIC SERVICES**

DEC 1 2009

3

ENCLOSURE \_\_\_\_\_

2.1 SCHEMATIC DESIGN PHASE (PHASE I)

- 2.1.1 The ENGINEER shall consult with OWNER to ascertain the requirements of the Project, and shall confirm such requirements to the OWNER in writing.
- 2.1.2 The ENGINEER shall provide preliminary evaluation of the OWNER's program, schedule and construction budget requirements, each in terms of the other, subject to the limitations as set forward in Articles 8 and 9.
- 2.1.3 After reviewing the Project requirements, the ENGINEER shall advise the OWNER of which tests and surveys should be conducted prior to the development of plans and specifications.
- 2.1.4 The ENGINEER shall review with the OWNER and Construction Manager alternative approaches to design and construction of the Project.
- 2.1.5 Upon receipt of OWNER's written comments and approval to proceed, the ENGINEER shall prepare, Schematic Design Documents, for approval by the OWNER. Schematic Design shall be based on the approved concept, educational specifications and include all modifications required by OWNER. The OWNER will notify the ENGINEER in writing of the approved scheme to incorporate into the Project.
- 2.1.6 The ENGINEER shall submit ten (10) sets, as part of its services and at no additional cost, of 36"x24" minimum plus two (2) small 12"x18" sets for OWNER approval and Construction Manager review of the Schematic Design (Phase I) Documents and an Estimate of Probable Project Construction Cost based on current area, volume, or other applicable unit costs.

2.2 DESIGN DEVELOPMENT PHASE (PHASE II)

- 2.2.1 The ENGINEER shall prepare from the approved Schematic Design Document (Phase II) the Design Development Documents in accordance with the requirements of the Florida Building Code Latest Edition and its current amendments.
- 2.2.2 At intervals mutually agreeable to the OWNER, ENGINEER, and Construction Manager, the ENGINEER shall provide drawings and other documents which depict the current status of the design development for the OWNER's review and the Construction Manager's information.
- 2.2.3 The ENGINEER shall submit for OWNER's approval and Construction Manager's Review ten (10) copies of the Design Development Documents, two small 11"x17" sets, and an Estimate of Probable Project Construction Cost based on current area,

volume or other applicable unit costs. The OWNER will notify in writing the ENGINEER of the approved Design Development Phase (Phase II) before proceeding with Phase III.

## 2.3 CONSTRUCTION DOCUMENTS PHASE (PHASE III)

2.3.1 The ENGINEER shall prepare Construction Documents from the approved Design Development Documents, as described in Paragraph 2.2 and all subparagraphs above and shall include any additional information received from the OWNER to resolve all problems, conflicts, defects or deficiencies in the Design Development Documents. Construction Documents shall be based upon data and estimates prepared by the Construction Manager, and shall consist of Drawings and Specifications, which set forth in detail the requirements for construction of the entire Project, and which:

2.3.1.1 Are complete, accurate, and adequate for bidding, negotiating, and constructing the Project;

2.3.1.2 Take into account constructability, materials, and equipment necessary to complete the Project;

2.3.1.3 Meet the OWNER's documented aesthetic, programmatic, financial, functional and operational objectives;

2.3.1.4 Comply with requirements of the Florida Building Code Latest Edition and its current amendments, applicable laws, statutes, rules and regulations of the State of Florida and any Federal authority or agency, in effect at the time the Construction Documents are submitted to the OWNER.

2.3.1.5 The ENGINEER is responsible for permitting compliance and addressing any requirements made by the building code official and the Florida Department of Education.

2.3.2 The ENGINEER shall provide any information necessary to prepare OWNER's Bidding Documents, and assist the OWNER in the preparation of bidding forms.

2.3.3 The ENGINEER shall provide any information necessary to prepare Construction Manager's Bidding Documents for subcontractors and assist the OWNER and the Construction Manager in the preparation of bidding forms for Subcontractors, and selection of Subcontractors.

2.3.4 The ENGINEER shall assist the OWNER and Construction Manager in the preparation of the Conditions of the Contracts for subcontractors, and the form of AGREEMENT between the Construction Manager ("Contractor") and subcontractors

2.3.5 The ENGINEER shall submit for OWNER's approval and Construction Manager review ten (10) copies at 50% and 100% Construction Documents, two small 11"x17"

AGENDA ITEM 11-E

DEC 1 2009

ENCLOSURE

sets, and an Estimate of Probable Project Construction Cost based on current area, volume or other applicable unit costs.

2.3.6 The ENGINEER shall signify its responsibility for the Contract Documents prepared pursuant to this AGREEMENT by affixing its signature, date and seal to every page of the Contract Drawings and the Table of Contents page of the Project Manual, as required by Chapters 471 and 481, Florida Statutes.

2.3.6.1 The ENGINEER shall insert the following statement on each sheet required by Chapters 471 and 481, Florida Statutes, to be signed, sealed and dated by the ENGINEER of record:

"To the best of my knowledge, the plans, specifications and addenda comply with the applicable minimum building codes."

Where this AGREEMENT provides for the OWNER's approval of the ENGINEER's design document submittals, suggestions and decisions, such approval shall not relieve the ENGINEER of any professional responsibility hereunder. However, such approvals shall evidence ENGINEER's compliance with the aesthetic and programming requirements of this contract.

2.3.7 The ENGINEER shall assist the OWNER and Construction Manager in filing the required documents for the approval of those government authorities having jurisdiction over the Project.

2.3.8 Construction Manager and OWNER's review and approval of the drawings, plans, specifications, calculations and other Design, Construction and Contract Documents shall not relieve the ENGINEER of any responsibility for their accuracy, adequacy and completeness or of any requirement to comply with any aspect of this AGREEMENT. However, such approvals shall evidence ENGINEER's compliance with the aesthetic and programming requirements of this contract.

## 2.4 BIDDING PHASE

2.4.1 The ENGINEER, following approval by the OWNER of the Construction Documents and the Final Estimate of Probable Project Construction Cost for each project, shall assist the OWNER and the Construction Manager ("Contractor") by responding to questions, responding to requests for information, including attending pre-bid meetings, preparation of addenda, attending the opening of bids, and recommending award of each construction contract. If the project budget is exceeded, the ENGINEER will assist in the formulation and evaluation of value engineering options and proposals to reduce the project cost.

## .5 CONSTRUCTION PHASE - ADMINISTRATION OF THE CONSTRUCTION CONTRACT

AGENDA ITEM VII-E

DEC 1 2009

ENCLOSURE 3

2.5.1 To the extent provided by the contract for each Project between the OWNER and the Contractor, the ENGINEER shall make recommendations on claims of the OWNER and Construction Manager (Contractor) and on other matters relating to the execution and progress of the Work or the interpretation of the Contract Documents. Recommendations on such claims shall be subject to the provisions of this AGREEMENT.

2.5.2 The ENGINEER shall review and determine whether samples, schedules, shop drawings, and other submittals are in conformance with the design concept of each Project and in compliance with each projects' Contract Documents.

2.5.3 The ENGINEER shall prepare construction change directives and change orders and assemble required warranties from Contractor for Owner's approval.

2.5.4 The ENGINEER and its respective sub-consultants shall attend all key construction events as necessary to ascertain the progress of the Project.

2.5.5 The ENGINEER shall visit the site at intervals appropriate to the stage of construction but not less than every two weeks.

2.5.6 The ENGINEER shall visit the site to:

AGENDA ITEM VII-E

2.5.6.1 Familiarize itself with the progress and quality of the Work;

DEC 1 2009 3

2.5.6.2 Observe Work to determine its compliance with the Contract Documents and Project Schedule;

ENCLOSURE

2.5.6.3 Prepare for and discuss the Work and Construction Documents with the OWNER and its representatives;

2.5.7 Consultants to the ENGINEER shall visit the site as required with no less than a minimum of at least every two weeks when their respective portion of the Work is in progress;

2.5.8 The ENGINEER will not be required, nor be responsible for the following:

2.5.8.1 To make exhaustive or continuous on-site inspections to check the quality or quantity of the Work;

2.5.8.2 Techniques or sequences of construction or the safety precautions incident thereto;

2.5.8.3 The Construction Manager's ("Contractor's") failure to perform the construction Work in accordance with the Contract Documents.

Notwithstanding the provisions of Paragraph 2.5.6 and Paragraphs 2.5.8 above inclusive, the ENGINEER shall not be relieved from its responsibility for the

Construction Manager's (Contractor's) failure to perform the construction Work in accordance with the Contract Documents if such failure was substantial and was / or should have been observed and timely brought to OWNER's attention by the ENGINEER based upon the standard of care governing the performance of services rendered pursuant to this AGREEMENT.

2.5.9 The ENGINEER will make its inspections, reviews and observations at critical times or during specific phases of the work and will endeavor to guard the Owner against defects and deficiencies in the work of the Contractor. This obligation is not reduced or limited by the fact that others are conducting inspections for or on behalf of the OWNER. On the basis of his observations as a qualified professional while at the site, and within forty-eight (48) hours after such visit the ENGINEER shall inform the Owner in writing of the progress, quality and/or deficiencies of the work.

2.5.10 Based on such observations as described in ARTICLE 2.5.6, and the Construction Manager's (Contractor's) Applications for Payment, the ENGINEER shall determine the amount owing to the Construction Manager (Contractor) and shall certify Construction Manager's Payment Applications in such amounts. This Certification shall constitute a representation to the OWNER, based on such observations, that the work actually performed has progressed to the point indicated in the Application for Payment. If the work has not proceeded as indicated, the ENGINEER will modify the Construction Manager's Payment Application and inform the Owner and the Construction Manager why the application was modified. By certifying Construction Manager's Payment Application, the ENGINEER shall also represent to the OWNER that, to the best of its knowledge, information and belief based on what its observations have revealed, the quality of the Work is substantially in accordance with the Contract Documents.

2.5.11 The ENGINEER shall conduct inspections to determine the dates of Substantial and Final Completion, and shall prepare a punch list for all work to be completed or corrected by the Contractor. Upon completion of all items and upon compliance with 2.5.12, the ENGINEER shall approve the Final Certification for Payment.

2.5.12 The ENGINEER shall furnish the Construction Manager (Contractor) a set of Contract Drawings for Contractor's preparation of final record documents in CD format.

2.5.12.1 The ENGINEER shall obtain from the Construction Manager (Contractor) a set of reproducible record documents showing any changes made during the construction of the Project, based on marked up prints, drawings, and other data, these information shall also be scanned and presented in CD format furnished to Owner.

AGENDA ITEM 1112

DEC 1 2009 3

ENCLOSURE 2.5.12.2

2.5.12.2 The ENGINEER shall review and approve Construction Manager (Contractor) submitted record documents. In approving record documents, the ENGINEER represents to the OWNER that, to the best of its knowledge, information and belief that the record documents accurately reflect the Work as built.

2.5.13 Duties, responsibilities and limitations of the authority of the ENGINEER shall not be restricted, modified, or extended without written agreement of the OWNER and ENGINEER.

2.5.14 The ENGINEER shall be a representative of and shall advise and consult with OWNER during construction until final payment to Construction Manager is made. The ENGINEER shall have authority to act on behalf of the OWNER, only to the extent provided in this AGREEMENT, unless otherwise modified by written instrument.

2.5.15 The ENGINEER shall have the authority to reject Work which does not conform to the Contract Documents. Whenever the ENGINEER considers it is necessary and advisable for implementation of the intent of the Contract Documents, the ENGINEER will have authority to require additional inspection and testing of the Work in accordance with the provisions of the Contract Documents, whether or not such work is fabricated, installed or completed.

2.5.16 The ENGINEER shall review and approve or take other appropriate action upon Construction Manager's submittals, such as Shop Drawings, Product Data Schedules, and Samples. The ENGINEER's action shall be taken with such reasonable promptness as to cause no delay to the Work, while allowing sufficient time in the ENGINEER's professional judgment to permit adequate review.

2.5.17 The ENGINEER shall review and advise on Change Orders, submitted by Construction Manager (Contractor), for the OWNER's approval and execution in accordance with the Contract Documents, and may authorize minor changes in the Work upon approval by the OWNER, involving neither an adjustment in the Contract Sum nor an extension of the Contract Time and which are consistent with the intent of the Contract Documents.

AGENDA ITEM VIII-E

**ARTICLE 3**

DEC 1 2009 3

**ENGINEER'S COMPENSATION**

ENCLOSURE \_\_\_\_\_

The OWNER shall compensate the ENGINEER in accordance with the Terms and Conditions of this AGREEMENT, as follows:

- 3.1 FOR THE ENGINEER'S BASIC SERVICES, as described in ARTICLE 2 above, a lump sum amount shall be presented in the form of a Project Proposal, as per the salary schedule attached hereto as Exhibit "A"..
- 3.2 FOR THE ENGINEER'S ADDITIONAL SERVICES, as described in ARTICLE 5 hereinafter, to be paid as prescribed in the Amendment.

OR THE ENGINEER'S ADDITIONAL SERVICES, as described in ARTICLE 5 hereinafter, if paid on an hourly basis as stated in Exhibit "A".

## ARTICLE 4

### **SUB-CONSULTANTS**

- 4.1 All services provided by Sub-Consultants shall be performed pursuant to written agreements between the ENGINEER and the Sub-Consultants. All such AGREEMENTs shall contain provisions that preserve and protect the rights of the OWNER under this agreement. The ENGINEER shall indemnify and hold OWNER harmless from any claim or cause of action raised from the negligent acts, errors or omissions of the Sub Consultant.
- 4.2 Nothing contained in this AGREEMENT shall create any contractual relationship between the OWNER and the Sub-Consultants. However, the ENGINEER is at all times liable for any and all negligent acts of omission or commission of its Sub-Consultants relating to or regarding this AGREEMENT or the Project which is the subject of this AGREEMENT.
- 4.3 The ENGINEER shall not replace any Sub-Consultant without prior written approval by the OWNER.

## ARTICLE 5

### **ADDITIONAL SERVICES OF THE ENGINEER**

- 5.1 THE ENGINEER will be paid extra compensation for the following additional services as may be authorized by the OWNER through Contract Amendment. Additional services is defined as:
- 5.1.1 Significant changes in general scope of the Project or its requirements including, but not limited to, changes in size, complexity, or character of construction.
- 5.1.2 Revising drawings or specifications previously approved by the OWNER to accomplish changes, after OWNER'S acceptance of 50% construction documents.
- 5.1.3 When required by the OWNER, preparing documents for Supplemental Work initiated after commencement of the construction phase.
- 5.1.4 Consultation concerning replacement of any Work damaged by fire or other cause during construction and furnishing professional services of the types set forth in ARTICLE 2 herein as may be required in connection with the replacement of such Work.
- 5.1.5 Providing prolonged contract administration and observation of construction should the Construction Contract Time be exceeded by more than 15% of the original approved time schedule due to no fault of the ENGINEER. The Construction Contract Time is the period of time allotted in the Construction Contract Documents for completion of the Work, including Substantial Completion and Final Completion.

AGENDA ITEM Vll-t

DEC 1 2009

ENCLOSURE 3

- 5.1.6 The Owner decision to use an additional or separate contractor(s) to perform the work or more than one construction contract, or separate contracts for different construction trades or material suppliers.
- 5.1.7 Items of the Project not otherwise provided for in this AGREEMENT or which are not reasonably connected or reasonably foreseeable as a result of the Scope of Work of this agreement.
- 5.1.8 Providing services required concerning remediation of any work not constructed in accordance with the Contract Documents. This may include, but not be limited to, preparing remedial sketches, reviewing Construction Manager's proposed solutions or substitutions, providing additional field observation to review replacement, revisions to or corrections to the work.
- 5.1.9 Providing assistance and services as required as a result of any claims and or litigation against the Owner by the Construction Manager or their sub-contractors for items not the fault of the Engineer.

AGENDA ITEM VII-E

**ARTICLE 6**

DEC 1 2009 B

**OWNER'S RESPONSIBILITIES**

ENCLOSURE \_\_\_\_\_

- 6.1 The OWNER will provide full information as to its requirements for each Project.
- 6.2 The OWNER'S representative authorized to act in its behalf with respect to the Project is BC's Vice President for Facilities and College Services or his authorized designee. The OWNER or its representative will examine documents submitted by the ENGINEER and will render decisions pertaining thereto in a timely manner, in order to avoid unreasonable delay in the orderly and sequential progress of the ENGINEER's services.
- 6.3 The OWNER will furnish a certified land survey of the site giving as applicable, grades and lines of streets, alleys, pavements and adjoining property, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and complete data pertaining to existing buildings, other improvements and trees; and information (to the extent that it exists) concerning available service and utility lines both public and private, above and below grade, including inverts and depths.
- 6.4 The OWNER will furnish the services of a geotechnical engineer or other consultants when such services are deemed necessary by the ENGINEER, including reports, test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity test and other necessary operations for determining subsoil, air and water conditions, with appropriate professional interpretations thereof.
- 6.5 The OWNER will furnish structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Contract Documents.

- 6.6 The OWNER will furnish such legal, accounting and insurance counseling services as may be necessary for the Project, and such auditing services as may be required for the Florida State Department of Education.
- 6.7 The services, information, surveys, and reports required by Paragraphs 6.3 through 6.6 above, will be furnished at the OWNER's expense, and the ENGINEER shall be entitled to rely upon the accuracy and completeness of the information thereof.
- 6.8 If the OWNER's representative observes or otherwise becomes aware of any discrepancies or defects in the Project, he will give prompt notice thereof to the ENGINEER for correction.

**ARTICLE 7**

**ENGINEER'S REIMBURSABLE EXPENSES**

- 7.1 REIMBURSABLE EXPENSES include actual expenditures in accordance to Section 112.061 of the Florida Statutes made by the ENGINEER in the interest of the Project for the following incidental expenses. All reimbursable expenses require prior written authorization from the OWNER.
- 7.2 Expense of transportation and living of principals and employees when traveling outside the tri-county area of Dade, Broward and Palm Beach Counties in connection with services other than those defined in ARTICLE 2 herein.
- 7.3 Reproduction of drawings and specifications, excluding copies for use by ENGINEER, and multiple sets as stipulated in ARTICLE 2 herein, for each phase submission of the Project to the OWNER.
- 7.4 Renderings or models for the OWNER's use.
- 7.5 Fees of special consultants, and fees for estimating consultants making detailed cost estimates.
- 7.6 Fees paid for securing approval of authorities having jurisdiction over the Project.

AGENDA ITEM VII-E

DEC 1 2009 3

**ARTICLE 8**

ENCLOSURE \_\_\_\_\_

**PROJECT CONSTRUCTION COST**

- 1 PROJECT CONSTRUCTION COST shall be based upon one of the following sources with precedence in the order listed:

- 8.1.1 The guaranteed maximum price ("GMP") for constructing the Project negotiated between the OWNER and the Construction Manager (Contractor).
- 8.1.2 Lowest acceptable bona fide Contractor's bid or proposal received for any or all portions of the Project.
- 8.1.3 Detailed Estimate of Project Construction Cost as authorized by the OWNER.
- 8.1.4 The ENGINEER's latest Estimate of Probable Project Construction Cost based on current area, volume or other unit costs.
- 8.2 From time to time at its discretion the OWNER shall be able to directly buy materials or equipments using the "Direct Purchase Program." When materials or equipments are furnished by the OWNER the cost shall be included in the Project Construction at current market cost.
- 8.3 Project Construction Cost does not include the fees of the ENGINEER and it's consultants, change order, contingencies that may be set aside by the OWNER, the cost of the land, rights-of-way, or other costs which are the responsibility of the OWNER as provided in ARTICLE 6 hereinabove, or the cost of movable furnishings and equipment.

**ARTICLE 9**

**STATEMENTS OF PROJECT COSTS**

~~AGENDA ITEM~~ VII-E  
 DEC 1 2009  
 ENCLOSURE 3

**9.1 OWNER'S CONSTRUCTION BUDGET:**

9.1.1 The OWNER'S Construction Budget is the amount budgeted for the construction award of the Project, including connections to utilities but is exclusive of cost of land, change order contingencies, movable furnishings and equipment, and professional fees.

**9.2 ENGINEER'S ESTIMATES:**

9.2.1 Since the ENGINEER does not have control over the cost of labor and materials, or over competitive bidding and market conditions, the estimates of construction cost provided for herein are to be made on the basis of the ENGINEER's experience and qualifications, but the ENGINEER does not guarantee the accuracy of its estimates of probable cost as compared to the Construction Manager's (or Contractor's) bids. However, the ENGINEER shall conform to the following provisions in its attempt to keep the Project cost within the OWNER's Construction Budget.

9.2.1.1 By fifty (50%) percent completion of the Construction Documents Phase, the ENGINEER shall resolve with the OWNER and the Construction Manager (Contractor) any apparent discrepancy between its Estimates of Probable Project Construction Cost and the scope and requirements of the OWNER. The ENGINEER will be permitted to include acceptable alternates in the

Contract Documents for the purpose of providing a finished and acceptable facility within the OWNER's Construction Budget.

9.2.1.2 Inability of the OWNER to negotiate an acceptable guaranteed maximum price (GMP) with the Construction Manager (Contractor), or award an acceptable construction contract because the lowest acceptable bid is greater than the OWNER's Construction Budget, the ENGINEER will revise the Project as described in 9.2.2 below.

9.2.2 If the ENGINEER advises the OWNER in writing before Construction Documents are fifty (50%) percent complete that, in its opinion, the scope of the work which the OWNER has established, and insists upon, will cause the Construction Cost to exceed the OWNER's Construction Budget, and if resolution thereafter of this discrepancy fails; or if the OWNER increases the Probable Project Construction Cost during the Construction Document Phase by adding to the scope and/or requirements, and the ENGINEER so notifies the OWNER in writing of the probable increase in cost, and the OWNER orders the ENGINEER to proceed notwithstanding; or if the detailed estimates of construction cost provided by the Owner's Construction Manager (Contractor) and relied upon by the ENGINEER during the phases of the Project were inaccurate, incomplete or deficient, then the ENGINEER shall not be responsible for the OWNER not being able to award a Construction Contract within the OWNER's Construction Budget. Under such conditions, the extra work of the ENGINEER, as required to include in the Bidding Documents alternates as requested by the OWNER or to redesign and redraft the Contract Documents, shall be considered an "additional service" and payment for such extra Work shall be as provided for under ARTICLE 5 hereinabove.

9.3 If an award of the Construction Contract is delayed more than four (4) months following the completion and approval of the Construction Documents, the ENGINEER will be permitted to revise its estimates in accordance with recognized published changes in Construction Costs, or if significant changes in the local market occur due to natural disasters.

AGENDA ITEM VIII F

**ARTICLE 10**

DEC 1 2009 3

**PERIOD OF SERVICE**

ENCLOSURE \_\_\_\_\_

10.1 THE PERIOD OF SERVICE for a specific project or task authorized by Project Agreement under this continuing contract shall be as indicated in each Project Proposal.

10.2 Upon written authorization from the OWNER, the ENGINEER shall proceed with the performance of the services called for in each Project Proposal and for services called for in the Design Development Phase of each Agreement.

10.3 After acceptance by the OWNER of the Design Development Documents and Revised Estimate of Probable Project Construction Cost, indicating any specific modifications or changes in scope desired by the OWNER and upon written authorization from the OWNER, the ENGINEER shall proceed with the performance of the services called for in the

Construction Documents Phase of this AGREEMENT. The ENGINEER shall submit copies as required under ARTICLE 2 herein of the fifty (50%) percent Contract Documents and further Revised Estimates of Probable Project Construction Cost within sixty (60) calendar days following authorization for the ENGINEER to proceed with the Construction Documents Phase. The ENGINEER shall submit copies as required under ARTICLE 2 herein of one hundred (100%) percent Contract Documents and further Revised Estimates of Probable Project Construction Cost within a time agreed by the ENGINEER and College Project Manager to proceed with each of the Construction Phases.

10.4 Unless sooner terminated as provided in ARTICLE 13 herein, this AGREEMENT shall remain in force in accordance with one or the other of the following provisions:

10.4.1 For a period which may reasonably be required for the design, reviews, award of contracts and completed construction of the Project, including extra work phasing of the construction and any required extension thereto, and completion of the warranty inspection.

10.4.2 For a period of twelve (12) months after the completion of the services called for in that phase of the Work last authorized, if construction is not commenced during that twelve (12) month period.

10.5 The ENGINEER acknowledges that its failure to timely perform services pursuant to this AGREEMENT may cause OWNER to sustain loss and damages that if proven to be the responsibility of the ENGINEER shall be recoverable by the owner from the ENGINEER.

10.6 Extensions of time for completion of various phases contemplated by this AGREEMENT may be granted by the OWNER in the event of a delay on the part of the OWNER in fulfilling its obligations pursuant to this AGREEMENT. Extensions of time shall serve as the ENGINEER's sole and exclusive remedy. Granting of an extension of time shall not be a basis or a cause for any claims or causes of action by the ENGINEER for additional or extra compensation. Under no circumstances except insofar as provided pursuant to Paragraph 5.1.6, shall the ENGINEER be entitled to additional compensation or payment as a result of or relating to delays that occur with respect to the Project.

AGENDA ITEM VII-E

ARTICLE 11

DEC 1 2009 3

**PAYMENTS TO THE ENGINEER**

ENCLOSURE \_\_\_\_\_

11.1 Payments on account of the ENGINEER's services shall be as follows unless specifically indicated otherwise in the project agreement:

11.1.1 For Basic Services, payments shall be made on at the completion of each phase of the work as follows in accordance with fees negotiated for each project.

**SCHEMATIC DESIGN PHASE (PHASE I)**

Fifty Percent (50%) Upon Submittal of Documents

Fifty Percent (50%) Upon Approval of Documents

DESIGN DEVELOPMENT PHASE (PHASE II)

Fifty Percent (50%) Upon Submittal of Documents

Fifty Percent (50%) Upon Approval of Documents

CONSTRUCTION DOCUMENTS PHASE (PHASE III)

Fifty Percent (50%) Upon Submittal of 100% Documents

Fifty Percent (50%) Upon Approval of 100% Documents

AGENDA ITEM VIII

BIDDING PHASE

Receipt of Bids\*

DEC 1 2009

ENCLOSURE 3

CONSTRUCTION PHASE

Monthly increments in proportion to construction progress.

**\*BIDDING/GMP NEGOTIATION PHASE WILL BE PAID IN INCREMENTS BASED ON ACTUAL BID PACKAGES. THESE BID PACKAGES WILL BE DEVELOPED AFTER THE PROJECT HAS PROGRESSED. THE PAYMENT SCHEDULE FOR THE BIDDING/NEGOTIATION PHASE WILL BE DETERMINED AT THAT TIME.**

11.1.2 In the event Design Development Phase II approvals are made by the OWNER containing Mandatories, Provisos, or similar conditions, ten (10%) percent of the ENGINEER's document approval payment may be withheld by the OWNER until such Mandatories, Provisos, or similar conditional remarks have been satisfactorily resolved with the OWNER by the ENGINEER.

11.1.3 Payments for Additional Services of the ENGINEER, as defined in ARTICLE 5 herein, and for Reimbursable Expenses as defined in ARTICLE 7 hereinabove will be made monthly upon presentation of a detailed invoice with supporting documentation.

11.1.4 If any Work designed or specified by the ENGINEER during any phase of service is abandoned or suspended in whole or in part, the ENGINEER is to be paid for the service performed on account of it prior to receipt of written notice from the OWNER of such abandonment or suspension, together with reimbursements then due resulting from abandonment or suspension for more than three (3) months.

ARTICLE 12

**ENGINEER'S ACCOUNTING RECORDS AND RIGHT TO AUDIT**

2.1 The ENGINEER's records which shall include but not be limited to accounting records, written policies and procedures, Sub-Consultants files (includes proposals of successful and unsuccessful Sub-Consultants), original estimates, estimating worksheets, computer records,

disks and software, videos, photography, correspondence, change order files (including documentation covering negotiated settlements), and any other supporting evidence necessary to substantiate charges related to this AGREEMENT (all the foregoing hereinafter collectively referred to as "records") shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by OWNER's agent or its authorized representative to extent necessary to evaluate and verify any invoices, payments or claims submitted by ENGINEER or any of its payees relative to each Project. Records subject to examination shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocation), fees, reimbursable services, etc as they may apply to costs, matters or items associated with this AGREEMENT. ENGINEER is responsible for and will work with OWNER to respond to a properly submitted request for information to the extent such information is in his care, custody, and control and is subject to an applicable Freedom of Information Act and Sunshine Law.

- 12.2 For the purpose of such audits, inspections, examinations and evaluations, the OWNER's agent or authorized representative shall have access to said records from the effective date of this AGREEMENT, for the duration of the work, and until five (5) years after the date of final payment by OWNER to ENGINEER pursuant to this AGREEMENT.
- 12.3 OWNER's agent or its authorized representative shall have access to all necessary records, and shall be provided with adequate and appropriate work space at the ENGINEER's facility, in order to conduct audits in compliance with this Article. OWNER's agent or its authorized representative shall provide auditees reasonable advance notice of its intent to perform an audit.
- 12.4 The ENGINEER shall require all Sub-Consultants to comply with the provisions in this Article by insertion of the requirements hereof in any written contract agreement relative to this Project. Failure to obtain such written contracts which include such provisions shall be reason to exclude some or all of the related costs from amounts payable to the ENGINEER pursuant to this AGREEMENT.
- 12.5 If an audit inspection or examination conducted in accordance with this Article, discloses overcharges (of any nature) by the ENGINEER to the OWNER, the ENGINEER shall return the overpaid monies, including any prevailing interest that may have been accrued, within ten (10) days of notification. If the overpayments are in excess of Five Percent (5%) of the total Contract billings to the date of the audit, the actual cost of the OWNER's audit shall be paid by the ENGINEER.

AGENDA ITEM VII-E

ARTICLE 13

DEC 1 2009 3

**TERMINATION OF AGREEMENT**

ENCLOSURE \_\_\_\_\_

- 13.1 The OWNER has the right to terminate this and each project AGREEMENT for its own convenience on seven (7) days written notice. Upon termination of this AGREEMENT, the ENGINEER shall be paid for services rendered and approved expenses incurred up to the time of termination. To receive payment, all charts, sketches, studies, drawings, and other

documents or other materials related to the Work authorized under this AGREEMENT, whether finished or not, must be furnished to the OWNER.

- 13.2 The ENGINEER may terminate this AGREEMENT only for a material breach of the AGREEMENT and provided that the ENGINEER has provided the OWNER with written notice of the material breach and ten (10) days to cure that breach. Except in the event of a dispute concerning the payment of fees or reimbursable expenses to ENGINEER or except in the event of a request that ENGINEER perform work or provide services which the ENGINEER contends to be contrary to applicable codes, or contrary to acceptable design practices, statutes or other legal requirements, the ENGINEER shall be obligated to continue performance in accordance with the terms of this AGREEMENT, unless instructed by the OWNER to suspend or delay performance.
- 13.3 OWNER may terminate this AGREEMENT for cause, which shall include, but not be limited to, failure of ENGINEER to comply with any of its material obligations under this AGREEMENT. In such event, ENGINEER shall not be entitled to any additional payments and may be liable to OWNER for any damages or losses incurred or suffered as a result of ENGINEER's failure to properly perform pursuant to the terms of this AGREEMENT. In the event it is later determined that the OWNER was not justified in terminating this AGREEMENT for cause, then it shall be deemed as a termination for convenience pursuant to Article 13.1 above, and the ENGINEER's sole and exclusive remedy shall consist only of the compensation referenced in that paragraph.
- 3.4 In the event this AGREEMENT is terminated for cause, ENGINEER shall be liable to OWNER for any damage or loss resulting from such failure or violation by ENGINEER, including, but not limited to reasonable costs in addition to those agreed to herein for arranging for and acquiring professional services to achieve completion of the Project and any delay damages paid by or incurred by OWNER, that are determined to be the responsibility of the ENGINEER. The rights and remedies of OWNER provided by this paragraph are cumulative with and in addition to any other rights and remedies provided by law or this AGREEMENT.

#### ARTICLE 14

##### RE-USE OF DOCUMENTS

- 14.1 DOCUMENTS prepared pursuant to this AGREEMENT will not be used on or for construction of other projects for the ENGINEER except by written agreement of the parties. The documents become the property of the OWNER upon conclusion of this project and may be used by the OWNER without any written consent from the ENGINEER. However, ENGINEER will not assume or incur any liability for the reuse or modifications of any of the documents by OWNER or anyone acting on OWNER'S behalf.

AGENDA ITEM VII-E

DEC 1 2009 3

#### ARTICLE 15

ENCLOSURE \_\_\_\_\_

## SUCCESSORS AND ASSIGNS

15.1 OWNER and ENGINEER each binds itself, its 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 in respect of all covenants of this AGREEMENT. Neither the OWNER nor the ENGINEER shall assign, sublet or transfer its interest in this AGREEMENT without the written consent of the other.

## ARTICLE 16

### CLAIMS AND DISPUTES

16.1 UNDER THE TERMS OF THIS AGREEMENT, the ENGINEER shall not have any right to compensation other than that provided by this AGREEMENT. To satisfy any claim of any kind whatsoever the ENGINEER must deliver its claim to the OWNER within ninety (90) calendar days from the date of which the act or event constituting the basis of such claim occurs. Failure to present any claim arising under this AGREEMENT within the ninety (90) calendar day time period specified above shall constitute waiver and abandonment of claimant's right to said claims.

16.1.1 All such claims shall be set forth in a petition addressed to the OWNER stating the following:

- (A) The ENGINEER's name and business address;
- (B) A concise statement of the ultimate facts, including a statement of all disputed issues of material fact, upon which the claim is based;
- (C) A concise statement of the provisions of the AGREEMENT, together with any Federal, State and local laws, ordinances or code requirements or customary practices and usages in the trade or profession asserted to be applicable to the questions presented by the claim;
- (D) A demand for the specific relief which the ENGINEER deems itself entitled.

16.1.2 Within a reasonable period of time from the receipt of any petition setting forth the claim, the OWNER shall provide the ENGINEER its written response stating OWNER'S position with respect to each claim asserted.

16.2 The ENGINEER shall interpret and decide matters concerning performance of the OWNER and Construction Manager (Contractor) under the requirements of the Contract Documents on written request of either the OWNER or Construction Manager (Contractor). The ENGINEER's preliminary response to such request shall be made within ten (10) business days of receipt of such a request.

AGENDA ITEM VII-E

DEC 1 2009

ENCLOSURE 3

24.2 This indemnification shall survive both the termination of this AGREEMENT and/or completion of the Project.

## ARTICLE 25

### INSURANCE

25.1 The ENGINEER shall provide, pay for, and maintain in force at all times during the services to be performed, such insurance, including Worker's Compensation, Comprehensive General Liability Insurance, and Professional Liability Insurance, as more particularly described below. The Comprehensive General Liability and Professional Liability policies shall provide coverage for the indemnification provisions of Article 24 above and the general liability policy shall specifically reference the OWNER as additional insured. The insurance referenced herein shall be obtained in order to pay damages for claims arising out of or relating to the services performed by the ENGINEER or any person employed or acting on the ENGINEER's behalf (including but not limited to sub-consultants) in connection with this AGREEMENT. The ENGINEER acknowledges that the policies of insurance currently maintained by the ENGINEER comply with the requirements of this paragraph and Article 24, with respect to insuring the indemnity obligation. Proof of insurance must be provided and approved by the OWNER. Insurer must agree to notify OWNER thirty (30) days prior to expiration or termination of coverage

25.1.1 PROFESSIONAL LIABILITY INSURANCE: The ENGINEER shall provide Professional Liability Insurance. Professional Liability Insurance Policy shall be no less than ONE MILLION DOLLARS (\$1,000,000.00) specific and exclusive per project agreement. ENGINEER agrees to keep insurance policy in place for three (3) years after completion of the project provided that is reasonably available. All premiums, costs and expenses for the requirement of professional liability insurance coverage shall be paid for by the ENGINEER.

25.1.2 COMPREHENSIVE GENERAL LIABILITY INSURANCE: The limits of liability provided by such policy shall be no less than ONE MILLION DOLLARS (\$1,000,000.00) per project agreement. Such insurance coverage shall include, but not be limited to, the following:

AGENDA ITEM VII-E  
DEC 1 2009 }  
ENCLOSURE \_\_\_\_\_

25.1.2.1 BODILY INJURY LIABILITY INSURANCE shall protect the OWNER, ENGINEER, its agents and employees from claims for damages for bodily injury, including accidental or wrongful death, as well as, property damage which arise from performance of services under this AGREEMENT. The limits of liability provided by such policy or policies shall be no less than ONE MILLION DOLLARS (\$1,000,000.00) for injuries, including wrongful death, to any one person, and subject to the same limit for each person an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) for any one occurrence.

25.1.2.2 PROPERTY DAMAGE INSURANCE shall carry liability limits of at least ONE MILLION DOLLARS (\$1,000,000.00) for damages for any one

occurrence, and ONE MILLION DOLLARS (\$1,000,000.00) for damages for all occurrences.

25.1.2.3 AUTOMOBILE INSURANCE shall carry liability limits of at least ONE MILLION DOLLARS (\$1,000,000.00) for damages for any one occurrence, and ONE MILLION DOLLARS (\$1,000,000.00) for damages for all occurrences.

25.1.2.4 The ENGINEER shall maintain worker's compensation insurance in compliance with Florida Statutes Chapter 440.

25.2 Such insurance policy or policies shall be issued by United States Treasury or approved companies authorized to do business in the State of Florida, and having agents upon whom service of process may be made in the State of Florida. The ENGINEER shall specifically protect the OWNER by naming the OWNER as a named insured under the Comprehensive General Liability Insurance policy hereinafter described. The Professional Liability policy shall reference each Project by endorsement, which is satisfied by the project name being listed on the insurance certificate.

25.3 Unless otherwise stated above, all policies and coverages required hereinabove shall remain in effect until all services covered under this AGREEMENT have been performed by the ENGINEER and accepted by the OWNER, including the respective tail provisions described herein.

25.4 The ENGINEER shall provide the OWNER a Certificate of Insurance listing all coverages required hereinabove prior to the execution of this AGREEMENT. All policies and certificates shall state that the OWNER shall be provided with thirty (30) calendar days written notice prior to any material changes, expiration or cancellation of the policy of insurance furnished pursuant to this AGREEMENT.

## ARTICLE 26 TRUTH-IN-NEGOTIATION CERTIFICATE

26.1 In compliance with the Consultant's Competitive Negotiation Act, the ENGINEER shall furnish certification that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of contracting, and the original Contract Price and any additions thereto shall be adjusted to exclude any significant sums where the OWNER determines the Contract Price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the Final Completion of the Project.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the 1st of December, 2009, each of which shall without proof or accounting for the other counterpart, be deemed an original Contract.

AGENDA ITEM VII-E

DEC 1 2009 3

ENCLOSURE \_\_\_\_\_

**\*\*\* MECHANICAL/ELECTRICAL/PLUMBING ENGINEER \*\*\***

Attest:

Johnson, Levinson, Ragan, Davila, Inc.

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

By: \_\_\_\_\_

Title: \_\_\_\_\_

As Witnessed by:


\_\_\_\_\_

Date: \_\_\_\_\_

**\*\*\*\*\* OWNER \*\*\*\*\***


BROWARD COLLEGE

By: \_\_\_\_\_  
COLLEGE PRESIDENT

Date: \_\_\_\_\_ 

STRICT BOARD OF TRUSTEES BROWARD COLLEGE

By: \_\_\_\_\_  
CHAIRPERSON

Date: \_\_\_\_\_ 

Signature of Witness: \_\_\_\_\_

Printed Name of Witness: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

AGENDA ITEM VII-E  
DEC 1 2009 3  
ENCLOSURE \_\_\_\_\_

APPROVED AS TO FORM  
AND LEGALITY:

  
\_\_\_\_\_  
KEVIN FERNANDER  
COLLEGE ATTORNEY