

**INDIANA UNIVERSITY
AGREEMENT BETWEEN OWNER
AND ENGINEER
FOR PROJECTS OVER \$500,000**

AGREEMENT made as of the ___ day of _____, in the year of _____
between the:

OWNER: **The Trustees of Indiana University
1800 N. Range Road
Bloomington, IN 47408**

and the:

ENGINEER:

(PROJECT DESCRIPTION)
(project name & project number)
(insert or attach project description)

ARTICLE 1

ENGINEER'S RESPONSIBILITIES

1.1 ENGINEER'S SERVICES

1.1.1 The Engineer's services consist of those services performed by the Engineer, Engineer's employees and Engineer's Consultants as enumerated in this Agreement. The Engineer covenants with the Owner to use its effort, skill, judgment and abilities in providing its services under this Agreement, consistent with the standard of care exercised by qualified design professionals having experience with first class projects of similar scope and nature. The plans, specifications and other design documents provided by the Engineer shall conform to federal, state and local laws, rules, regulations and codes applicable to the Project.

1.1.2 The Engineer's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. The Engineer shall submit for the Owner's approval a schedule (Project Schedule) for the performance of the Engineer'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 the Project and as approved by the Owner are of the essence of this Agreement and shall not, except for reasonable cause, be exceeded by the Engineer. Before requesting any payment under this Agreement, and as a condition precedent to the enforceability of this Agreement by the Engineer, the Engineer shall have received the Owner's written acceptance of Engineer's Project Schedule setting out the dates on which the Engineer is to complete the Schematic Design Phase, Design Development Phase,

Construction Documentation Phase, Bidding Phase, and estimated Construction Phase of the project. This schedule shall also set out the dates by which any actions, decisions, or information are required from the Owner in order to permit the Engineer to perform according to this schedule.

1.1.3 The Engineer hereby represents to the Owner that the Engineer is financially solvent and possesses sufficient experience, licenses, authority, personnel and working capital to complete the services required hereunder; and that the Engineer has visited the site for the Project and thoroughly familiarized itself with the local conditions under which the Project is to proceed and the Engineer shall correlate its observations of same with the requirements of this Agreement and the Construction Contract Documents.

1.1.4 All Consultants required by the Engineer to provide a complete project design shall be provided by the Engineer as Basic Services, unless specifically stated otherwise in this Agreement. The Engineer's employees, its Consultants and their respective areas of responsibility as listed on Exhibit __ attached hereto, and shall constitute the Engineer's Design Team with respect to the Project. The Owner and Engineer shall have the right to make mutually agreeable changes to the Design Team which are believed to be in the best interest of the Project, although no change in the Design Team will be made by the Engineer without the prior written consent of the Owner. In the event that any member of the Design Team fails to provide or perform services in a satisfactory manner and as required by the terms of this Agreement, the Engineer shall, upon written request of the Owner, promptly replace such member of the Design Team with another acceptable to the Owner. The Owner shall not, however, be deemed to have any obligation to the Engineer's employees or Consultants under a direct contract, third

party beneficiary or any other theory and the Owner shall not be obligated to pay or be liable for the non-payment of fees, costs and expenses of such employees or Consultants, as such fees, costs and expenses are the sole obligations of the Engineer.

1.1.5 CSI Format. In order to provide uniformity in documents the project Engineer will provide specifications in the Construction Specification Institute format.

1.1.6 Engineering Design Deliverables. Must comply with Engineering Consultant Design Deliverables as outlined on the following website <http://www.indiana.edu/~uao> under the Contracts section.

1.1.7 Incidental Design. In some cases when approved by Indiana University, the Project Engineer may specify in the contract documents that the contractor is responsible for incidental design of specific items. The Project Engineer will present the University with a list of all proposal incidental design items for approval.

ARTICLE 2

SCOPE OF ENGINEER'S BASIC SERVICES

2.1 DEFINITION

2.1.1 The Engineer's Basic Services consist of those described in Article 2 and any other services specifically designated as Basic Services in other sections of this Agreement. The Engineer's Basic Services encompass all design disciplines necessary to provide a first class state of the art facility, which shall, unless otherwise specifically stated in this Agreement, include but not necessarily be limited to, the following:

- Engineering Design
- Structural Engineering
- Mechanical Engineering
- Electrical Engineering

- Civil Engineering
- On-site and off-site Utilities
- Landscape Architecture/Site Lighting
- Parking/Other Site Improvements
- Compliance with Urban Planning/Master Planning
- Graphics/Signage
- Code Compliance
- Compliance with the American With Disabilities Act
- Fire Protection/Fire and Life Safety
- Communications/Data Wiring/Sound and Video
- Food Service/Waste Handling/Recycling
- Vertical Transportation

2.1.2 The Engineer will visit the Project site and will be responsible to document existing conditions of the areas of the site and/or buildings to be affected by the Project. Existing original and/or as-built drawings and any other information pertinent to the Project will be assembled for use during the Project, with the assistance of the Owner who shall be responsible for making the Engineer aware of the availability of such pertinent information, but the Owner does not guarantee the accuracy or reliability of such information.

2.1.3 Indiana University has developed a complete set of Architecture and Engineering standards located and described at <http://www.indiana.edu/~uao/> . These standards will be utilized in the design of this project. However, the use of these standards does not eliminate or lessen the Project Engineer's professional liability for the project. The standards are meant as a guideline. In no case should the Project Engineer violate applicable codes, regulations, or good building practices. Additional deliverable requirements for Building Information Modeling (BIM)/ Integrated Project Delivery (IPD) may be found in The Indiana University Building Information Modeling (BIM) Guidelines for Architects, Engineers, and Contractors. This document and other IU BIM templates and forms can be downloaded at: <http://www.indiana.edu/~uao/iubim.html>

2.1.4 If the Owner decides, in its sole discretion, to utilize an Indiana University Web-based Project Collaboration System (like ProjectDox) for the project, the Engineer shall use this for all compatible services required under this Agreement. All costs for the Engineer's use of this Web-based Project Collaboration System shall be included in its Basic Services, and additional compensation shall not be permitted.

2.2 SCHEMATIC DESIGN PHASE

2.2.1 The Engineer shall review and evaluate the program furnished by the Owner ("Program") to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner. The Engineer shall develop a Project Cost Model for review and approval by the Owner, which shall include a preliminary estimate of construction cost appropriate to this phase of Project development, along with a preliminary estimate of other Project costs then identifiable. The Engineer shall also report to the Owner whether the Project Cost Model is consistent with any preliminary budget established by the Owner for the Project, compatible with the Program and Project Schedule and feasible as to special requirements, relationships, equipment, systems and site characteristics. The Engineer shall indicate the impact of any revision to the Program in an updated Project Cost Model and Project Schedule for review by the Owner. The Engineer and Owner shall jointly review the current approved Program, Project Cost Model and Project Schedule and shall arrive at a mutual understanding of the appropriate scope of the work before proceeding with schematic design. The Program, and any amendments thereto as approved by the Owner, shall establish the criteria and parameters for the Project and shall be the guide against which

Schematic Design, Design Development, Construction Documents and subsequent modifications as developed, will be measured.

2.2.2 The Engineer shall review with the Owner alternative approaches to design and construction of the Project.

2.2.3 Based on the mutually agreed-upon Program, Project Cost Model and Project Schedule, the Engineer shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of the Project components.

2.2.4 The Engineer shall submit to the Owner a 50% and final set of Schematic Design Documents and an estimate of construction costs appropriate to this phase of Project development, along with a preliminary estimate of other Project costs indicated in the Project Cost Model for the Owner's review and approval prior to proceeding into the next phase of service. The Engineer shall recommend and the Owner shall review and approve adjustments, as necessary, to the scope of the Project in order to fit the Project Cost Model.

2.2.5 During Schematic Design and Design Development, Architect shall furnish to the University Architect's office electronic CADD files of floor plans with area polylines and square footage calculations for use in programming analysis. Methods for drawing and calculating areas may be obtained from the I.U. Bureau of Facilities Programming and Utilization.

2.2.6 The final set of Schematic Drawings submitted to the University will contain room numbers established by the Owner and will be used on Construction Documents.

2.2.7 Preliminary Life-Cycle Cost Analysis

During Schematic Design, the Engineer shall prepare and submit three design concepts for a Preliminary Life-Cycle Cost Analysis ("LCAA") to the Owner. Tools for performing Life-Cycle Cost Analysis can be found at: http://www.wbdg.org/tools/tools_cat.php?c=3

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, Project Schedule or Project Cost Model, the Engineer 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 Engineer shall advise the Owner of any adjustments to the preliminary estimate of Construction Cost.

2.3.3 Life-Cycle Cost Analysis

During Design Development, the Engineer shall prepare and submit three copies of a Life-Cycle Cost Analysis to the Owner.

2.3.4 The Engineer shall submit to the Owner a Progress Set at 50% completion and a set of Design Development Documents at 100% completion along with an updated estimate of construction costs appropriate to this phase of project development and updated estimates of other project costs indicated in the Project Cost Model. The Engineer shall also provide an updated Project Schedule for the Owner's review and approval prior to proceeding into the next phase of service. The Engineer shall recommend and the Owner shall review and approve adjustments, as necessary, to the

scope of the project in order to fit the Project Cost Model.

2.3.5 Each space shall be labeled by USE with net usable square footage indicated (face of wall to face of wall).

2.4 CONSTRUCTION DOCUMENTS PHASE

2.4.1 The Engineer is responsible for the quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished under the contract. The Owner will not undertake a detailed technical review of the work. It will be the responsibility of the Engineer, acting in a professional capacity, to ensure the accuracy, completeness and correctness of all design documentation, including the cost estimate, consistent with that degree of care and skill exercised by the Engineering profession. The Engineer acknowledges that the Owner is relying upon the Engineer's skill and knowledge to prepare Drawings, Specifications and other work product which conform to the applicable standard of care and the laws, rules, regulations and codes applicable to the Project. The Engineer's duties in such regard shall not in any way be diminished by reason of any approval by the Owner of the Drawings, Specifications or any other work product of the Engineer, nor shall the Engineer be released from any such liability by reason of such approval by the Owner.

2.4.2 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the Project Cost Model authorized by the Owner, the Engineer 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.

2.4.3 Prior to the final submission of the Construction Documents, the Engineer

shall perform a structured quality control review of all drawings and specifications. The review shall check for technical accuracy, coordination of work within each discipline, coordination of work among disciplines, coordination of the Drawings and Specifications and verification with existing conditions.

2.4.4 The Engineer shall advise the Owner of any adjustments to previous preliminary estimates of Construction Costs indicated due to changes in requirements or general market conditions.

2.4.5 The Engineer 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. The Owner will be responsible for reimbursing the Engineer for all filing fees.

2.4.6 The Engineer shall submit to the Owner a Progress Set of construction documents at 70% completion and a Progress Set of Construction Documents at 95% completion, along with estimates of construction costs appropriate to this phase of project development and updated estimates of other project costs indicated in the Project Cost Model. The Engineer shall recommend and the Owner shall review and approve adjustments, as necessary, to the scope of the Project in order to fit the Project Cost Model. The Engineer's Final Construction Documents submitted to the Owner for review and approval shall be 100% complete and in a form appropriate for the bidding and award of contracts for construction in accordance with the bidding laws applicable to the Owner. The Engineer shall also provide an updated Project Schedule for the Owner's review and approval before proceeding to the next phase of service.

2.5 BIDDING OR NEGOTIATION PHASE

2.5.1 The Engineer, following the Owner's approval of the Construction Documents and of the latest estimate of Construction Cost, shall assist the Owner in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction. During the bidding process, the Engineer shall specifically:

1. Assist the Owner in preparing and/or compiling the necessary invitations and notices, other bidding forms, the Conditions of the Contracts and the form of Agreement between the Owner and the Contractor;
2. Respond to questions from bidders and issue necessary and appropriate addenda;
3. Make recommendations as the qualification and experience criteria for bidders to be included in the bidding requirements for selected portions of the Work;
4. Attend pre-bid conferences to familiarize bidders with the bidding documents, the phasing, sequencing and interfacing of the Work and any special systems, materials or methods to be employed on the Project;
5. Receive and analyze all bids submitted; and
6. Make recommendations to the Owner regarding the acceptance or rejection of bids or award of Contracts.

2.5.2 The Engineer shall, within one month after the construction contract is awarded, provide the University Architect's Office with one set of electronic CAD files representing every sheet in the bid documents with all Addenda incorporated in a Construction Documents Deliverable. Each sheet is to have its own unique file and

comply with the current University Architect's CAD Standards**. Word Processing files (Word/WordPerfect) for all specifications shall also be included. Final payment to the Engineer for services rendered during the bidding phase is contingent upon approved acceptance of these documents. **Indiana University has adopted the National CAD Standards. You may purchase a copy of the National CAD Standards from this web site <http://www.nationalcadstandard.org/>. More information on Indiana University's adoption of this new standard may be found at the following web site: <http://www.indiana.edu/~uao>.

2.6 CONSTRUCTION ADMINISTRATION & PROJECT CLOSEOUT PHASES- ADMINISTRATION OF THE CONSTRUCTION CONTRACT

2.6.1 The Engineer's responsibility to provide Basic Services for the Construction Phase under this agreement commences with the award of the Contract for Construction and terminates sixty days after final completion of construction of the Project.

2.6.2 The Engineer shall provide administration of the Contract for Construction as set forth in AIA Document A201, General Conditions of the Contract for Construction (1997 edition as modified by Indiana University), together with, and as amended by, the Owner's Supplementary General Conditions and other documents included or incorporated into the Construction Contract. The Engineer's administration of the Contract for Construction as set forth in this Agreement shall be provided to further the interests of the Owner and shall in no manner excuse, relieve or discharge the obligations which the Contractor or other parties performing the Work owe to the Owner, nor shall any acts or omissions of the Engineer be deemed an acceptance by the Owner of Contractor's Work which is incomplete, defective or otherwise not in conformance with the Contract Documents.

2.6.3 Duties, responsibilities and limitations of authority of the Engineer shall not be restricted, modified or extended without written agreement of the Owner and Engineer with consent of the Contractor, which consent shall not be unreasonably withheld.

2.6.4 The Engineer shall be a representative of and shall advise and consult with the Owner during construction until final payment to the Contractor is due. 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.

2.6.5 The Engineer shall visit the site at intervals appropriate to the stage of construction or as otherwise agreed by the Owner and Engineer in writing to become generally familiar with the progress and quality of the Work completed and to determine in general if the Work is being performed in a manner indicating that the Work when completed will be in accordance with the Contract Documents. On the basis of on-site observations as an Engineer, the Engineer 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 the Work. The Engineer will visit the site twice monthly for the duration of the project to attend construction progress meetings. The Engineer shall chair the meetings and shall record, prepare and distribute meeting minutes to the participants. Additionally, the Engineer will visit the site on an as needed basis to keep the Project progress on schedule and answer questions related to Requests for Information (RFI's), Engineer's Supplemental Information (ESI's) and/or Construction Change Directives (CCD's). Site visits shall be coordinated with construction coordination meetings, which shall also occur twice monthly. The Engineer shall organize site visits for its various Consultants as necessary to the progress of the Project or as requested by the Owner.

The Engineer shall generate a monthly construction field report. The Engineer shall submit to the Owner copies of minutes to meetings, telephone conversations, inspections and discussions with the Owner.

2.6.6 The Engineer 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 Engineer shall not be responsible for the Contractor's schedules or failure to carry out the Work in accordance with the Contract Documents. The Engineer 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. However, if the Engineer knows, or in the exercise of reasonable care should have known, that a Contractor is not performing its Work in a proper and timely manner, then the Engineer shall immediately advise the Owner and Contractor, in writing, and shall demand on behalf of the Owner that appropriate remedial steps be immediately taken.

2.6.7 The Engineer 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 specifically authorized, the Owner and Contractor shall communicate through the Engineer. Communications by and with the Engineer's Consultants shall be through the Engineer.

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

Contractor.

2.6.10 The Engineer's certification for payment shall constitute a representation to the Owner, based on the Engineer's observations at the site as provided in Subparagraph 2.6.5 and on the data comprising the Contractor's Application for Payment, that, to the best of the Engineer's knowledge, information and belief, the Work has progressed to the point indicated and the quality of Work is in accordance with the Contract Documents. 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 Engineer 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) verified 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 Engineer shall have authority to reject Work, which does not conform to the Contract Documents. Whenever the Engineer considers it necessary or advisable for implementation of the intent of the Contract Documents, the Engineer will have authority to require additional 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. However, neither this authority of the Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Engineer to the Contractor, Subcontractors, material and equipment suppliers, their

agents or employees or other persons performing portions of the Work. The Engineer will provide the Owner with prior written notice before either rejecting Work or requiring additional inspection.

2.6.12 The Engineer shall review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Engineer'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 Engineer'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 Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Engineer, of construction means, methods, techniques, sequences or procedures. The Engineer'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 Engineer shall be entitled to rely upon qualified professional certifications to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

2.6.13 The Engineer shall prepare Change Orders or Construction Change

Directives, with necessary plans, specifications and other supporting documentation and data as provided in Subparagraphs 3.1.1 and 3.3.3, for the Owner's approval and execution in accordance with the Contract Documents. The Engineer 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. The Engineer shall also review, evaluate and report to the Owner as to changes recommended by the Contractor and price proposals/quotations submitted by the Contractor as to proposed changes under consideration.

2.6.14 The Engineer shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion. The Engineer shall issue a Certificate of Substantial Completion when appropriate and 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. The Engineer shall issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

2.6.15 Interpretations and decisions of the Engineer shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Engineer shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either and shall not be liable for results of interpretations or decisions so rendered in good faith.

2.6.16 The Engineer's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents and acceptable to

the Owner.

2.6.17 The Engineer shall render written decisions 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 as provided in the Contract Documents.

2.6.18 The Engineer's decisions on claims, disputes or other matters, including those in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in Subparagraph 2.6.16, shall be subject to dispute resolution/litigation as provided in this Agreement and in the Contract Documents.

2.6.19 The Engineer shall prepare/provide services in connection with evaluating substitutions proposed by the Contractor to the extent such substitutions are permitted by the Construction Documents.

2.6.20 The Engineer shall prepare/provide assistance in the initial utilization of equipment or systems such as testing, adjusting and balancing; preparation and/or delivery of operation and maintenance manuals; training of personnel for operation and maintenance; and consultation during operation. Included as a part of the foregoing, shall be services related to initial start-up of equipment and orientation of Owner's personnel (i.e. a start-up/orientation session). This applies to each major component of the project individually.

2.6.21 Errors, omissions or deficiencies in the Engineer's performance shall be corrected or revised by the Engineer at no additional cost to the Owner. Additionally, design error, omissions or deficiencies resulting in damages or extra cost to the Owner will be evaluated for potential Engineer responsibility. If the University Architect's Office determines that the Engineer is financially responsible for a design deficiency, the

Engineer will be so advised by official correspondence. For expediency, and at the Owner's request, the Engineer shall negotiate directly with the Contractor in the interests of minimizing the cost impact to the Project of such deficiencies. The Engineer will review the results of these efforts with the Owner. If not satisfied with the result of the negotiation, the Owner reserves the right to pursue a claim against the Engineer for work that it believes is a result of negligent performance, per the terms of Article 7, Dispute Resolution.

2.6.22 When poor performance by the Engineer results in the need for a re-submission of design documents, the Engineer may be required to send representatives to IU to discuss the problems and to correct deficiencies at no additional cost to the Owner.

2.6.23 The Engineer shall prepare and submit clear and detailed meeting minutes within five (5) working days following meeting held with respect to the Project.

2.6.24 The Engineer shall revise the Construction Documents and related electronic files with information contained on the As-Built Field Data Documents submitted by each Contractor. The Engineer shall label the revised Construction Documents and related files as "Record Documents" shall reflect the date of the Engineer's incorporation of the As-Built Documents. The Record Documents, to the best of the Engineer's knowledge based upon the As-Built Documents delivered to the Engineer by the Contractors and the Engineer's observations of the Project, shall detail the actual construction of the Project and shall contain such annotations by the Engineer as may be necessary for someone unfamiliar with the Project to understand the changes that were made to the Bid Documents. Within thirty days of issuing Substantial

Completion, the Engineer shall furnish to the University Architect's Office one set of electronic CAD/BIM files representing the Record Documents, three sets of hardcopy drawings from these files, plus one set of pdf files from each sheet of the CAD/BIM Record Documents. Each sheet shall have its own unique file and comply with the then-current University Architect's CAD standards **.

** For a more detailed description of the IU As-Built CAD requirements, see the following link: http://www.indiana.edu/~uao/IU_as-built_cad_requirements.pdf

For those projects requiring a BIM As-Built Model deliverable, please refer to The Indiana University Building Information Modeling (BIM) Guidelines for Architects, Engineers, and Contractors. This document can be downloaded at:

<http://www.indiana.edu/~uao/iubim.html>

2.6.25 Before final payment pursuant to this Agreement, the Engineer shall submit to the Owner, on the Engineering firm's letterhead, a signed and dated copy of the following statement:

"I hereby certify that no asbestos-containing material was specified as a building material in any construction document for this Project."

2.6.26 Approximately two months prior to the end of the two year warranty period the Engineer shall, after notifying the Owner, visit the site and perform an "End of Warranty" punch list inspection. The Engineer will furnish the Owner and Contractors with a list of all items requiring correction.

2.6.27 On the date of Substantial Completion the Engineering Firm will submit to Indiana University a summary of all warranties. The summary shall include in part: Each

individual component of the building mechanical and electrical systems, site landscape, hardscape, and moveable and fixed equipment. The summary will include the name, address and telephone number of each firm warranting specific items. The time period covered by the warranty will be listed.

ARTICLE 3

ADDITIONAL SERVICES

3.1 GENERAL

3.1.1 The services described in this Article 3 are not included in Basic Services, unless specified in writing elsewhere in this Agreement, and if authorized and approved by the Owner such Additional Services shall be provided by the Engineer and paid for by the Owner as provided in this Agreement. It is expressly acknowledged and agreed, however, that Additional Services shall be provided by the Engineer and paid for by the Owner only if:

- (a) The Engineer gives prior written notice to the Owner of the need for the Additional Services and the estimated cost thereof; and
- (b) The Owner, in writing, authorizes and directs that the Additional Services be provided.

Failure of the Engineer to provide the prior written notice and to obtain the Owner's prior written approval shall constitute a waiver of any claim by the Engineer to be paid for such Additional Services. If the prior written notice is given and the approval obtained, the Additional Services shall be paid for by the Owner in accordance with the parties agreement concerning such services and as provided in this Agreement.

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 Engineer shall provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities.

3.2.2 Project Representatives shall be selected, employed and directed by the Engineer, and the Engineer shall be compensated therefor as agreed by the Owner and Engineer. The duties, responsibilities and limitations of authority of Project Representatives shall be as described in the edition of AIA Document B352 current as of the date of this Agreement, unless otherwise agreed.

3.2.3 Through the observations by such Project Representatives, the Engineer 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 Engineer as described elsewhere in this Agreement.

3.3 OTHER ADDITIONAL SERVICES

3.3.1 Making revisions in Drawings, Specifications or other documents when such revisions are:

1. inconsistent with approvals or instructions previously given 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 preparation of such documents; or

3. due to changes required as a result of the Owner's failure to render decisions in a timely manner.

3.3.2 Providing services required because of significant changes in the Project including, but not limited to changes in size, quality, complexity, the Project Schedule, or the method of bidding, negotiating and contracting for construction, unless such changes are required due to acts or omissions of the Engineer.

3.3.3 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.

3.3.4 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.

3.3.5 Providing services in evaluating an extensive number of claims submitted by the Contractor or others in connection with the Work, unless such claims arise out of the fault of the Engineer.

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

3.3.7 Providing financial feasibility or other special studies.

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

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

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

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

3.3.12 Providing analyses of owning and operating costs.

3.3.13 Providing services for planning tenant or rental spaces.

3.3.14 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities, except when the project involves remodeling of or renovation to existing facilities.

3.3.15 Providing services after the completion of the Construction Phase as defined by Paragraph 2.6.1.

3.3.16 Providing any other services not otherwise included in this Agreement as Basic Services or not customarily furnished in accordance with generally accepted Engineering practice.

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 preliminary objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

4.2 The Owner shall assist the Engineer in establishing, updating and reviewing the Project Cost Model and the Project Schedule.

4.3 If requested by the Engineer, the Owner shall furnish evidence that financial arrangements have been made to fulfill the Owner's obligations under 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 Engineer in order to avoid unreasonable delay in the orderly and sequential progress of the Engineer's services.

4.5 The Owner shall contract the Engineer to furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site when such services are requested by the Owner. 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, manhole and vault interior dimensions, pipe size, pipe material, electrical ductbank configuration, telecommunications ductbank configuration (and a designation of fiber optic and/or copper conductors), meter pits, valves, hydrants, light poles, transformers, power poles, and ownership of each utility. All the information on the survey shall be referenced to a Project benchmark and adhere to the University Landscape – Site Survey standards found at <http://www.indiana.edu/~uao/> . The original surveys in CAD format (in the required Indiana State Plane Coordinate system) shall be submitted to the University at the time of completion and before inclusion in Architectural or Engineering CAD project files.

4.6 The Owner shall contract the Engineer to furnish services of

geotechnical engineers when such services are requested by the Engineer. 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 sub-soil conditions, with reports and appropriate professional recommendations.

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 Engineer shall be entitled to rely upon the accuracy and completeness thereof. However, if the Engineer observes or becomes aware of any fault or defect in the services, information, surveys and reports furnished by the Owner or its consultants, the Engineer shall give prompt written notice thereof to the Owner.

4.10 Prompt written notice shall be given by the Owner to the Engineer if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents. This obligation, however, arises only if the Owner obtains actual knowledge of a fault or defect in the Project or non-conformance with the Contract

Documents. The Owner is not obligated to the Engineer, the Contractors or other third parties to specifically review the design and/or the Work for the purpose of identifying or discovering any fault, defect or non-compliance of the work.

4.11 The proposed language of certificates or certifications requested of the Engineer or Engineer's consultants shall be submitted to the Engineer for review and approval at least 14 days prior to execution. The Owner shall not request certifications that would require knowledge or services beyond the scope of this Agreement.

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 Engineer.

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 Engineer, 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.

5.2 RESPONSIBILITY FOR CONSTRUCTION COST

5.2.1 A fixed limit of Construction Cost may be established by the Owner in writing, as a condition of this Agreement. In establishing such a fixed limit the Owner shall include appropriate contingencies for design, bidding and price escalation and alternates

approved by the Owner may be included in the Contract Documents to adjust the scope of work to the fixed limit of Construction Cost. Services in connection with revisions and inclusions of alternate bids as recommended for cost control purposes shall be part of Basic Services.

5.2.2 If the Bidding or Negotiation Phase has not commenced within 90 days after the Engineer submits the Construction Documents to the Owner, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the Owner and the date on which proposals are sought. If there is a material change in construction costs after the 90 day period, and exceeding the 90 day period is through no fault of the Engineer, then the Engineer reserves the right to request Additional Services for redesign if the lowest subsequent bid exceeds the new estimated Construction Cost.

5.2.3 If the lowest bona fide bid or negotiated proposal received exceeds, by 5% or more, the fixed limit of Construction Cost established by the Owner, in writing, or the estimate of Construction Cost presented by the Engineer and approved by the Owner at the end of the Contract Documents Phase, then the Owner retains the right to initiate one of the following remedies:

1. give written approval of an increase in Construction Cost and proceed with construction;
2. authorize rebidding or authorize the Engineer to renegotiate the Project within a reasonable time and amend documents as necessary at no cost to Owner;
3. abandon the Project and terminate in accordance with Paragraph 8.3;

4. require the Engineer to redesign or modify the Project to achieve budget goals at no cost to Owner and rebid the project.

5.2.4 Both parties recognize that neither the Owner nor the Engineer can predict with certainty the disposition of the construction industry at the time of bidding or negotiation. Therefore, if the Owner elects to proceed under Clause 5.2.3.4, the Engineer shall identify potential cost savings and shall modify the Construction Documents accordingly, without additional charge to the Owner, in such a way as to bring the lowest bona fide bid or negotiated proposal to within 5% of the construction budget. If these negotiations do not succeed in achieving the cost savings necessary, the Engineer shall redesign and modify the Construction Documents for re-bidding, also without additional charge to the Owner. If the applicable construction budget is attained, yet the Owner wishes to have the Project redesigned or modified to achieve further savings, such services shall constitute an Additional Service, compensation for which shall be determined by agreement between the Owner and the Engineer. In either instance, the Owner shall cooperate with the Engineer in determining revisions to the Project scope of work and/or quality as required to reduce Construction Costs.

ARTICLE 6

DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

6.1 The Engineer hereby assigns to the Owner all right, title and interest, including all copyrights, copyright registrations, copyright applications, renewals, extensions and all other proprietary or ownership rights, in all drawings/BIM models, specifications and other documents created by the Engineer, in whole or in part, or hereafter to be created by the Engineer in connection with the project, including, but not

limited to, all works based upon, derived from, or incorporating the drawings, specifications and other documents created by the Engineer in connection with the project.

6.2 In the event of termination, suspension, abandonment or completion of the project, the Engineer shall deliver to the Owner within seven (7) days all drawings/BIM models, specifications and other documents created by the Engineer in connection with the project and not previously delivered to the Owner during the course of the project. The Owner, as the holder of all right, title and interest, including all copyrights, in all drawings, specifications and other documents created by the Engineer, as provided in Article 3.1, shall have the right to use and reuse any and all such drawings/BIM models, specifications and other documents for any purpose in connection with the project, including, but not limited to, its completion, at the Owner's sole discretion and at no additional cost to the Owner.

6.3 The owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Engineer, its officers, directors, employees and subconsultants (collectively, Engineer) against damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way connected with the unauthorized reuse or modification of the construction documents by the Owner or any person or entity that acquires or obtains the construction documents from or through the Owner without the written authorization of the Engineer.

ARTICLE 7

DISPUTE RESOLUTION

7.1 In an effort to resolve any conflicts that arise during the design or Construction of the Project or following the completion of the Project, the Owner and Engineer agree that all disputes between them arising out of or relating to the Agreement shall be submitted to non-binding mediation unless the parties mutually agree otherwise. The parties further agree to include similar mediation provisions in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers, fabricators so retained, thereby providing for mediation as the primary (i.e. first) method of dispute resolution between all parties to those agreements. The parties involved with any conflict shall attempt to reach agreement as to the mediator to be selected and, failing to reach such agreement, any party may seek the appointment of a mediator in accordance with the Construction Industry Mediation Rules of the American Arbitration Association.

7.2 In the event that mediation is unsuccessful, such claims, disputes or other matters in conflict shall be resolved through litigation, with the parties hereto agreeing and acknowledging that the Circuit and/or Superior Courts of Monroe County, Indiana shall be the sole and exclusive venue for the filing and consideration of all claims, disputes or other matters in conflict arising out of or relating to the Work, the Project, this Agreement or the breach thereof.

ARTICLE 8

TERMINATION, SUSPENSION OR ABANDONMENT

8.1 This Agreement may be terminated by either party upon not less than seven day, 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 the termination.

8.2 In the event of the Owner termination, suspension or abandonment of the project, the Engineer shall be equitably compensated by the owner for services performed to the date of termination, suspension or abandonment.

8.3 This Agreement may be terminated with or without cause by the Owner upon not less than seven days' written notice to the Engineer in the event that the Project is permanently abandoned. If the Project is abandoned by the Owner for more than 90 consecutive days, the Engineer may terminate this Agreement by giving seven days prior written notice.

8.4 Failure of the Owner to make payments to the Engineer in accordance with this Agreement shall be considered substantial nonperformance and cause for termination.

8.5 If the Owner fails to make payment when due the Engineer for services and expenses, the Engineer may, upon seven days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Engineer within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Engineer shall have no liability to the Owner for delay or damage caused the Owner because of such

suspension of services.

8.6 If this Agreement is terminated by the Owner and not because of the fault of the Engineer, the Engineer shall be compensated for all services performed to the termination date, together with reimbursable expenses then due and all Termination Expenses directly attributable to termination for which the Engineer is not otherwise compensated.

8.7 In the event that the project is restarted by the owner following termination, suspension or abandonment, the Owner shall not be obligated to re-hire the Engineer for completion of the project.

ARTICLE 9

MISCELLANEOUS PROVISIONS

9.1 This agreement shall be governed by the laws of the State of Indiana.

9.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201, General Conditions of the Contract for Construction (1997 edition) as amended by the Owner's Supplementary General Conditions.

9.3 The Indiana statutes of limitation as interpreted by the Courts of the State of Indiana shall apply to all acts or omissions, claims, disputes or other matters in question arising out of or relating to the Work, the Project, this Agreement or any breach thereof.

9.4 The Owner and Engineer 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 edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this

Agreement. The Owner and Engineer each shall require similar waivers from their Contractors, Consultants and agents.

9.5 The Owner and Engineer, 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. Neither Owner nor Engineer shall assign this Agreement without the written consent of the other.

9.6 This Agreement and any attached addenda represent the entire and integrated agreement between the Owner and Engineer 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 Engineer.

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 Engineer.

9.8 Unless otherwise provided in this Agreement, the Engineer and Engineer'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. The Engineer shall, however, given immediate written notice to the Owner should it observe or suspect the existence of asbestos, PCB or other toxic substances within or around the Project and shall identify the areas where such substances have been encountered or are suspected and the areas of the Project where the Engineer recommends that Work be stopped or suspended while the substances are being analyzed.

9.9 The Engineer shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Engineer's promotional and professional materials. The Engineer's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Engineer, in writing, of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Engineer on the construction sign and in the promotional materials for the Project.

9.10 The Engineer will not engage in, or tolerate by its employees, Consultants or agents, sexual harassment as defined in this section. Harassment on the basis of sex is a violation of Section 703 of the Title VII of the Civil Rights Act of 1964.

a. Sexual harassment is defined as unwelcome sexual advances/requests for sexual favors and other verbal or physical conduct of a sexual nature when:

1. Submission of such conduct is made either explicitly for implicitly a term or condition of an individual's employment, or
2. Submission or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or
3. Such conduct has the effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating hostile or offensive working or learning environment.

b. The Engineer will ensure dissemination of this sexual harassment

policy to its employees, Consultants and agents.

- c. Additionally, the Engineer will ensure that its employees, Consultants and agents understand that sexual harassment includes, but is not limited to, actions taken towards Indiana University students, employees or guests which would constitute sexual harassment under definition (3) above.

9.11 During the course of the Project, the Engineer, its agents, employees, Consultants and anyone else with whom the Engineer contracts with respect to the Project shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, sex, religion, color, national origin, ancestry, age, handicap, disabled veteran status and/or Vietnam era status. The Engineer shall comply with the existing laws of the State of Indiana and the United States regarding prohibition of discrimination in employment practices, recognizes that the provisions of I.C. 5-16-6-1 are incorporated herein by reference and acknowledges that the breach of the non-discrimination provisions may be regarded as material breach of this Agreement.

ARTICLE 10

PAYMENTS TO THE ENGINEER

10.1 DIRECT PERSONNEL EXPENSE

10.1.1 Direct Personnel Expense is defined as the direct salaries of the Engineer'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

10.1.1.11

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 Engineer and Engineer's employees and Consultants in the interest of the Project, as identified in the following Clauses:

10.2.1.1 Consultants, Architects and Engineers will be reimbursed in the following manner:

- a. Receipts and other relevant records must be furnished for all reimbursable costs. Credit card statements are not acceptable records.
- b. Food. When Consultant is away from their home office for twenty-four hours they will be given a maximum food allowance of up to \$46.00 per day or current University per diem rate.
- c. Motel costs will be reimbursed at the single room rate. Telephone calls other than those related to University business, from motels will not be reimbursed.
- d. Rental car costs will be reimbursed when prior approval for car rental is granted by the University. The use of Economy Class vehicles is recommended.
- e. Airline Travel. When airline travel is approved by the University, Consultants shall contact University designated travel agents.

Consultants should travel "Coach Class" and should purchase tickets at least 14 days in advance of travel when possible.

- f. There will be no reimbursement for travel including mileage, lodging, meals or parking within the state of Indiana.
- g. Out of state vehicle travel will be reimbursed at the rate of .51 cents per mile, or current University mileage rate.
- h. Expense of filing fees for securing approval from governing authorities will be reimbursed.
- i. Expense of renderings or models or mock-ups requested by the Owner will be reimbursed.

Printing Costs

- a. All printing for pre-bid or Owner-required reviews ("review sets"), and renderings/presentations shall be produced and distributed by the approved Indiana University Centralized Printing Vendor ("Printing Vendor"). Any expenses associated with such drawing and specification printing shall be borne by Indiana University and shall not be a reimbursable item to the Owner. Consultants shall coordinate submission of either paper copies or electronic files of the review sets to the Printing Vendor along with instructions to the Printing Vendor for distribution of the review sets.
- b. All printing for project construction bid drawings, specifications, and addenda will be produced and distributed by the Printing Vendor. The Printing Vendor will also host an online web-based planroom that will list current and upcoming IU construction bid projects for information as well as bid set ordering. Consultants shall work with the Printing

Vendor to coordinate the direct upload or mailing of construction document files/originals.

- c. Any expenses associated with reports or documentation above the standard incidental printing, approved by I.U. in advance, shall be borne by Indiana University and not as a reimbursable item to the Owner.

Testing Costs

All project testing required by the project specifications, and not designated the responsibility of the contractor, will be contracted by the A/E and billed to the University as a reimbursable expense.

miscellaneous expenses, shall be part of Basic Services.

10.2.2 Miscellaneous Expenses: There will be no reimbursement for miscellaneous expenses. These include: telefax, incidental printing and copying, office supplies, computer discs, couriers, federal express, postage, mail services, and local and long distance telephone service charges, supplies and other miscellaneous expenses are to be considered as part of the cost of doing business, and as such, are not reimburseable. They are a part of basic services.

10.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES

10.3.1 Payments for Basic Services shall be made monthly or at end of each phase, in accordance with a schedule of invoices for each phase of the Project prepared by the Engineer and approved by the Owner.

10.3.2 Payments for Basic Services shall be made monthly or at end of each phase, in

accordance with a schedule of invoices for each phase of the Project prepared by the Architect and approved by the Owner.

10.4 PAYMENT ON ACCOUNT OF ADDITIONAL SERVICES

10.4.1 Payments on account of the Engineer's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Engineer's statement of Additional Services rendered or Reimbursable Expenses incurred.

10.5 PAYMENTS WITHHELD

10.5.1 No deductions shall be made from the Engineer'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 Engineer has been found to be liable.

10.6 ENGINEER'S ACCOUNTING RECORDS

10.6.1 Records of Reimbursable Expenses, expenses pertaining to Additional Services and services performed on the basis of a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

10.6.2 Until such time as all close out documents are submitted to the Owner, in form and substance reasonably satisfactory to the Owner, including Punch-List items and all required As-Builts, Record Documents and, if applicable, As-Built BIM Models, the Owner will withhold from the Engineer's payment invoice an amount equal to the entire amount of the Closeout Phase fee. This is meant as a fair value of the Engineer's work remaining to review and produce the close out documents.

ARTICLE 11

BASIS OF COMPENSATION

The Owner shall compensate the Engineer as follows:

11.1 BASIC COMPENSATION

11.1.1.1 FOR BASIC SERVICES, as described in Article 2, and any other services defined in this Agreement as Basic Services, Basic Compensation shall be computed as follows: A fixed fee calculated as a stipulated percentage of the probable construction costs. Any additional fees for substantial changes of scope must be negotiated and an addendum added to this contract or with prior agreement of the parties the fee may be established as "NOT TO EXCEED" amount. If the average of the project bids come in 15% or more under the estimate provided by the Architect at the initiation of this contract, a deduct addendum may be requested to adjust the fees. Reduction to project scope does not allow the Architect additional fees.

11.1.2 Where compensation is based on a stipulated sum or percentage of Construction Cost, progress payments for Basic Services in each phase shall total the percentages of the total Basic Compensation payable as listed on the Project Cost Model that is attached.

11.2 COMPENSATION FOR ADDITIONAL SERVICES

11.2.1 FOR PROJECT REPRESENTATION BEYOND BASIC SERVICES, as described in Paragraph 3.2, compensation shall be computed as agreed by Owner and Engineer in writing.

11.2.2 FOR ADDITIONAL SERVICES OF THE ENGINEER, as described in Articles 3 and 12, other than (1) Additional Project Representation, as described in

10.1.1.11

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 agreed by Owner and Engineer, in writing.

11.2.3 FOR ADDITIONAL SERVICES OF CONSULTANTS, compensation shall be computed at a multiple of 1.1 times the actual amounts billed to the Engineer for such services.

11.3 REIMBURSABLE EXPENSES

11.3.1 FOR REIMBURSABLE EXPENSES, as described in Paragraph 10.2, and any other items included in Article 12 as Reimbursable Expenses, a multiple of 1.1 times the expenses incurred by the Engineer, the Engineer's employees and Consultants in the interest of the Project.

11.4 ADDITIONAL PROVISIONS

11.4.1 IF THE BASIC SERVICES covered by this Agreement have not been completed within sixty days of the final completion of construction of the Project, through no fault of the Engineer, extension of the Engineer's services beyond that time shall be compensated as provided in Subparagraph 11.2.2. If in the event that the period of construction substantially exceeds the Engineer's estimated construction period the University will consider the Engineer's request for additional fees.

11.4.2 Payments are due and payable forty-five (45) days from the date of the Engineer's invoice. Amounts unpaid forty-five (45) days after the invoice date shall bear interest at the then current prime rate.

ARTICLE 12

INDIANA UNIVERSITY MINIMUM INSURANCE REQUIREMENTS FOR CONSTRUCTION, NON-CONSTRUCTION AND PROFESSIONAL DESIGN CONTRACTS

Obligations of Contractors and Consultants

Contractors and Consultants (whether corporation, sole proprietorship or partnership) shall procure and maintain during the term of the contract and until final acceptance of the completed work under the contract, insurance of the types of coverages and minimum limits as identified here and shall provide the Owner with Certificate(s) of Insurance evidencing these coverages prior to beginning work. Contractors and Consultants shall be referred to herein as "Contractor," irrespective of their area of expertise.

- ◆ It is the responsibility of the Contractor and Subcontractors to become familiar with Owner's insurance requirements and to ensure that they can meet these requirements prior to submitting a bid to perform the work. **Please provide this exhibit to your insurance agent so the correct certificate can be issued without delay.**
- ◆ No Contractor or Subcontractor of any tier shall be on the jobsite or proceed with work, and shall not be paid for any work performed, until proper certificate(s) of insurance have been submitted to and approved by the Owner. All required insurance policies shall be written by a company(s) authorized to do business in Indiana. The Owner shall not be liable to any person for the failure of the Contractor or any Subcontractor to carry specified insurance.
- ◆ It is the responsibility of all Contractors to ensure that all of its Subcontractors also meet these insurance requirements.
- ◆ If any part of any coverage includes a deductible, self insurance, a captive insurance company or a fronting arrangement, the amount so covered must be disclosed on the certificate or in a separate letter from the Contractor. Owner reserves the right to approve of this coverage.
- ◆ NOTE: Contractor is required to meet the insurance specifications during the time of construction *and* during the warranty period, usually two years after the project is accepted by Owner.

CERTIFICATE HOLDER:
The Trustees of Indiana University
1800 N. Range Road
Bloomington, In. 47405-2206

Insurance Requirements

1. General Liability

• **Construction Contracts**

- Each occurrence: \$1 million
- General aggregate: \$2 million
- Products and Completed Operations: \$1 million
- The "COMMERCIAL GENERAL LIABILITY" box must be checked
- The "OCCUR" box must be checked
- Per Project box must be checked

• **Design/Consultant Contracts**

- Each occurrence: \$1 million
- General aggregate: \$2 million
- The "COMMERCIAL GENERAL LIABILITY" box must be checked
- The "OCCUR" box must be checked

2. Automobile Liability

- The box(es) that is/are checked must include a check in the box for Any Auto *or* All Owned, Hired and Non-Owned Autos
- Combined Single Limit coverage: \$1 million.
- If separate Bodily Injury and Property Damage limits are purchased, each must be \$1 million.

3. Excess/Umbrella

- Excess coverage *per se* is not required. However, any of the dollar amount requirements can be met by a combination of primary and excess coverage.
- Excess/umbrella coverage must be *per occurrence* coverage.

4. Professional Liability

Any type of design or consulting contract requires Professional Liability coverage of at least \$1 million.

Owner reserves the right to require increased limits of coverage if, in the opinion of the Owner, project is hazardous in nature or poses a higher than usual risk.

5. Worker's Compensation

The Contractor shall procure and maintain a Workers' Compensation policy to cover its obligation under the applicable laws of any state or federal government to its employees employed on the jobsite or elsewhere on this project, including its liability as an employer under common law (commonly known as Employer's Liability Coverage "B") with limits of not less than that listed below. Before commencing work, Contractor shall submit to the Owner a valid State Form 41321 (Certificate of Compliance – Worker's Compensation and Occupational Diseases) or a facsimile thereof at Owner's option. **If the Contractor has no employees** (i.e., a one-person shop) then a Certificate of Exception must be obtained from the State.

<u>Worker's Compensation:</u>	Statutory
<u>Employer's Liability:</u>	\$ 500,000 each accident or disease
	\$ 500,000 policy limit
	\$ 500,000 each employee

6. Builder's Risk Insurance

The Owner shall maintain during the course of construction Builder's Risk Insurance in an amount of not less than one hundred percent (100%) of the insurable value of the completed work, including materials, equipment, and supplies on the site and to become a part of the completed work, subject to a \$25,000 deductible. The Contractor shall bear responsibility for that deductible.

The insured shall be the Owner and the Contractor(s) as their respective interests may appear. The Contractor's loss, if any, is to be adjusted with and payable to the Contractor upon written request to the Owner. The Contractor shall be responsible for and shall insure, if required by the Owner, all materials, equipment, supplies not on the site and to become a part of the completed work, Contractor's equipment, tools, scaffolding, staging, towers, forms and temporary buildings, and other materials, equipment and supplies not intended to become a part of the completed work.

This provision shall not release the Contractor from its obligation to complete, according to plans and specifications, the work covered by the Contract and the Contractor and its Surety shall be obligated to the full performance of the Contractor's undertaking.

Insurance Policy Endorsements

All insurance policies must provide the following endorsements to the policy and must be noted on the certificate(s):¹

1. Additional Insured Endorsement (CG2010 10 01 and CG2037) or equivalent form required on General Liability, Automobile Liability and Excess/Umbrella Liability policies naming the Owner and/or Other Parties as defined in Owner's Contract and including coverage for completed operations. Owner shall be identified as: "The Trustees of Indiana University, its officers, agents and employees." *If additional insured status is automatically granted by the insurance form "where required by written contract" then it is sufficient to note that on the certificate with a reference to the form number. This must include information about the Excess/Umbrella coverage, e.g., "Excess coverage is following form."*
2. Aggregate Per-Project Endorsement (CG2503) to the General Liability Policy indicating that the general aggregate applies separately to each project.
3. Waiver of Subrogation on General Liability, Automobile Liability, and Employer's Liability/Workers' Compensation Policies in favor of the Owner.
4. All insurance policies shall be primary and non-contributing with respect to any insurance carried by the Owner, and shall contain a severability of interests clause in respect to liability, protecting each insured as though a separate policy had been issued to each.
5. All policies shall contain a covenant requiring (30) days written notice by the insurer to the Indiana University Office of Risk Management before cancellation, reduction or other modifications of coverage for any reason, *whenever possible*.

Certificate Details

Description of Operations

The DOO must include the Indiana University project name and project number to which this coverage applies.

Insurance Companies

¹ An addendum to the COI can be used if additional space is needed.
10.1.11

All insurance carriers selected by contractor must be rated “A-” or above in the most recent edition of the “A.M. Best’s Key Rating Guide.”

Hold Harmless Agreement

Contractor shall indemnify and save harmless the Owner from any and all losses, costs, damages, liability and expenses, including reasonable attorney fees, arising out of or in conjunction with claims or suits for damage to any property not included in the scope of work and/or injury to persons, including Contractor’s employees and all Subcontractor’s employees of any tier, including death, alleged or claimed to have been caused by or through the performance of the work or operations incidental to the work by the Contractor, its agents or employees, or by its Subcontractors of any tier, their agents or employees, whether through negligence or willful act; and Contractor shall, at the request of Owner, undertake to investigate and defend any and all such claims or suits against Owner.

ARTICLE 13

OTHER CONDITIONS OR SERVICES

The following provisions supplement, modify, change, delete from, and add to, the Standard Form of Agreement between Owner and Engineer dated _____, and shall supersede any inconsistent printed provisions. When any portion of any paragraph (herein the term "paragraph", with an identifying number, includes sub-paragraph and sub-subparagraph as appropriate) or clause thereof is modified or deleted by these terms, the unaltered provisions of the standard form shall remain in effect.

THIS AGREEMENT entered into as of the day and year first written above.

OWNER

ENGINEER

(Signature)

(Signature)

(Printed name and title)

(Printed name and title)

ENGINEER ASBESTOS CERTIFICATION

TO: INDIANA UNIVERSITY

The Engineer certifies that:

Adequate research and review of product information will be undertaken and, to the best of my knowledge, no asbestos containing materials will be specified for the project indicated below.

Asbestos containing materials include any building material with markings on the packaging or material itself with the following or similar wording: "May contain mineral fibers", originating from Canada.

IU Project Name and Number: _____

Engineering Firm: _____

Engineer of Record- Name: _____

Engineer of Record- Signature: _____

Date _____