

1 INDIANA UNIVERSITY  
2 AGREEMENT BETWEEN OWNER  
3 AND ENGINEER  
4 FOR PROJECTS OVER \$500,000  
5  
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7

8 AGREEMENT made as of the \_\_ day of \_\_\_\_\_, in the  
9 year of \_\_\_\_\_ between the:

10  
11  
12 **OWNER:** The Trustees of Indiana University  
13 1800 N. Range Road  
14 Bloomington, IN 47408  
15

16 and the:

17  
18  
19  
20 **ENGINEER:**  
21  
22  
23  
24  
25  
26  
27

28 (PROJECT DESCRIPTION)  
29 (project name & project number)  
30 (insert or attach project description)  
31  
32  
33  
34

35 **ARTICLE 1**

36 **ENGINEER'S RESPONSIBILITIES**

37 **1.1 ENGINEER'S SERVICES**

38  
39  
40 **1.1.1** The Engineer's services consist of those services  
41 performed by the Engineer, Engineer's employees and Engineer's  
42 Consultants as enumerated in this Agreement. The Engineer  
43 covenants with the Owner to use its effort, skill, judgment and  
44 abilities in providing its services under this Agreement,  
45 consistent with the standard of care exercised by qualified design  
46 professionals having experience with first class projects of  
47 similar scope and nature. The plans, specifications and other  
48 design documents provided by the Engineer shall conform to  
49 federal, state and local laws, rules, regulations and codes  
50 applicable to the Project.

51 **1.1.2** The Engineer's services shall be performed as  
52 expeditiously as is consistent with professional skill and care  
53 and the orderly progress of the Work. The Engineer shall submit  
54 for the Owner's approval a schedule (Project Schedule) for the  
55 performance of the Engineer's services which may be adjusted as  
56 the Project proceeds, and shall include allowances for periods of  
57 time required for the Owner's review and for approval of  
58 submissions by authorities having jurisdiction over the Project.  
59 Time limits established by the Project and as approved by the  
60 Owner are of the essence of this Agreement and shall not, except  
61 for reasonable cause, be exceeded by the Engineer. Before  
62 requesting any payment under this Agreement, and as a condition  
63 precedent to the enforceability of this Agreement by the Engineer,

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64 the Engineer shall have received the Owner's written acceptance of  
65 Engineer's Project Schedule setting out the dates on which the  
66 Engineer is to complete the Schematic Design Phase, Design  
67 Development Phase, Construction Documentation Phase, Bidding  
68 Phase, and estimated Construction Phase of the project. This  
69 schedule shall also set out the dates by which any actions,  
70 decisions, or information are required from the Owner in order to  
71 permit the Engineer to perform according to this schedule.

72 **1.1.3** The Engineer hereby represents to the Owner that the  
73 Engineer is financially solvent and possesses sufficient  
74 experience, licenses, authority, personnel and working capital to  
75 complete the services required hereunder; and that the Engineer  
76 has visited the site for the Project and thoroughly familiarized  
77 itself with the local conditions under which the Project is to  
78 proceed and the Engineer shall correlate its observations of same  
79 with the requirements of this Agreement and the Construction  
80 Contract Documents.

81 **1.1.4** All Consultants required by the Engineer to provide a  
82 complete project design shall be provided by the Engineer as Basic  
83 Services, unless specifically stated otherwise in this Agreement.

84 The Engineer's employees, its Consultants and their respective  
85 areas of responsibility as listed on Exhibit \_\_ attached hereto,  
86 and shall constitute the Engineer's Design Team with respect to  
87 the Project. The Owner and Engineer shall have the right to make  
88 mutually agreeable changes to the Design Team which are believed  
89 to be in the best interest of the Project, although no change in  
90 the Design Team will be made by the Engineer without the prior

91 written consent of the Owner. In the event that any member of the  
92 Design Team fails to provide or perform services in a satisfactory  
93 manner and as required by the terms of this Agreement, the  
94 Engineer shall, upon written request of the Owner, promptly  
95 replace such member of the Design Team with another acceptable to  
96 the Owner. The Owner shall not, however, be deemed to have any  
97 obligation to the Engineer's employees or Consultants under a  
98 direct contract, third party beneficiary or any other theory and  
99 the Owner shall not be obligated to pay or be liable for the non-  
100 payment of fees, costs and expenses of such employees or  
101 Consultants, as such fees, costs and expenses are the sole  
102 obligations of the Engineer.

103 **1.1.5** CSI Format. In order to provide uniformity in  
104 documents the project Engineer will provide specifications in the  
105 Construction Specification Institute format.

106 **1.1.6** Engineering Design Deliverables. Must comply with  
107 Engineering Consultant Design Deliverables as outlined on the  
108 following website <http://www.indiana.edu/~uao> under the Contracts  
109 section.

110 **1.1.7** Incidental Design. In some cases when approved by  
111 Indiana University, the Project Engineer may specify in the  
112 contract documents that the contractor is responsible for  
113 incidental design of specific items. The Project Engineer will  
114 present the University with a list of all proposal incidental  
115 design items for approval.

116

117 **ARTICLE 2**

118 **SCOPE OF ENGINEER'S BASIC SERVICES**

119 **2.1 DEFINITION**

120 **2.1.1** The Engineer's Basic Services consist of those  
121 described in Article 2 and any other services specifically  
122 designated as Basic Services in other sections of this Agreement.  
123 The Engineer's Basic Services encompass all design disciplines  
124 necessary to provide a first class state of the art facility,  
125 which shall, unless otherwise specifically stated in this  
126 Agreement, include but not necessarily be limited to, the  
127 following:

- 128 X Engineering Design
- 129 X Structural Engineering
- 130 X Mechanical Engineering
- 131 X Electrical Engineering
- 132 X Civil Engineering
- 133 X On-site and off-site Utilities
- 134 X Landscape Architecture/Site Lighting
- 135 X Parking/Other Site Improvements
- 136 X Compliance with Urban Planning/Master Planning
- 137 X Graphics/Signage
- 138 X Code Compliance
- 139 X Compliance with the American With Disabilities Act
- 140 X Fire Protection/Fire and Life Safety
- 141 X Communications/Data Wiring/Sound and Video
- 142 X Food Service/Waste Handling/Recycling
- 143 X Vertical Transportation

144  
145 **2.1.2** The Engineer will visit the Project site and will be  
146 responsible to document existing conditions of the areas of the  
147 site and/or buildings to be affected by the Project. Existing  
148 original and/or as-built drawings and any other information  
149 pertinent to the Project will be assembled for use during the

150 Project, with the assistance of the Owner who shall be responsible  
151 for making the Engineer aware of the availability of such  
152 pertinent information, but the Owner does not guarantee the  
153 accuracy or reliability of such information.

154 **2.1.3** Indiana University has developed a complete set of  
155 Architecture and Engineering standards located and described at  
156 <http://www.indiana.edu/~uao/> . These standards will be utilized  
157 in the design of this project. However, the use of these  
158 standards does not eliminate or lessen the Project Engineer's  
159 professional liability for the project. The standards are meant  
160 as a guideline. In no case should the Project Engineer violate  
161 applicable codes, regulations, or good building practices.  
162 Additional deliverable requirements for Building Information  
163 Modeling (BIM)/ Integrated Project Delivery (IPD) may be found in  
164 The Indiana University Building Information Modeling (BIM)  
165 Guidelines for Architects, Engineers, and Contractors. This  
166 document and other IU BIM templates and forms can be downloaded  
167 at: <http://www.indiana.edu/~uao/iubim.html>

168 **2.1.4** If the Owner decides, in its sole discretion, to  
169 utilize an Indiana University Web-based Project Collaboration  
170 System (like ProjectDox) for the project, the Engineer shall use  
171 this for all compatible services required under this Agreement.  
172 All costs for the Engineer's use of this Web-based Project  
173 Collaboration System shall be included in its Basic Services, and  
174 additional compensation shall not be permitted.

175 **2.2 SCHEMATIC DESIGN PHASE**

176 **2.2.1** The Engineer shall review and evaluate the program  
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177 furnished by the Owner ("Program") to ascertain the requirements  
178 of the Project and shall arrive at a mutual understanding of such  
179 requirements with the Owner. The Engineer shall develop a Project  
180 Cost Model for review and approval by the Owner, which shall  
181 include a preliminary estimate of construction cost appropriate to  
182 this phase of Project development, along with a preliminary  
183 estimate of other Project costs then identifiable. The Engineer  
184 shall also report to the Owner whether the Project Cost Model is  
185 consistent with any preliminary budget established by the Owner  
186 for the Project, compatible with the Program and Project Schedule  
187 and feasible as to special requirements, relationships, equipment,  
188 systems and site characteristics. The Engineer shall indicate the  
189 impact of any revision to the Program in an updated Project Cost  
190 Model and Project Schedule for review by the Owner. The Engineer  
191 and Owner shall jointly review the current approved Program,  
192 Project Cost Model and Project Schedule and shall arrive at a  
193 mutual understanding of the appropriate scope of the work before  
194 proceeding with schematic design. The Program, and any amendments  
195 thereto as approved by the Owner, shall establish the criteria and  
196 parameters for the Project and shall be the guide against which  
197 Schematic Design, Design Development, Construction Documents and  
198 subsequent modifications as developed, will be measured.

199 **2.2.2** The Engineer shall review with the Owner alternative  
200 approaches to design and construction of the Project.

201 **2.2.3** Based on the mutually agreed-upon Program, Project Cost  
202 Model and Project Schedule, the Engineer shall prepare, for  
203 approval by the Owner, Schematic Design Documents consisting of

204 drawings and other documents illustrating the scale and  
205 relationship of the Project components.

206 **2.2.4** The Engineer shall submit to the Owner a 50% and final  
207 set of Schematic Design Documents and an estimate of construction  
208 costs appropriate to this phase of Project development, along with  
209 a preliminary estimate of other Project costs indicated in the  
210 Project Cost Model for the Owner's review and approval prior to  
211 proceeding into the next phase of service. The Engineer shall  
212 recommend and the Owner shall review and approve adjustments, as  
213 necessary, to the scope of the Project in order to fit the Project  
214 Cost Model.

215 **2.2.5** During Schematic Design and Design Development,  
216 Architect shall furnish to the University Architect's office  
217 electronic CADD files of floor plans with area polylines and  
218 square footage calculations for use in programming analysis.  
219 Methods for drawing and calculating areas may be obtained from the  
220 I.U. Bureau of Facilities Programming and Utilization.

221 **2.2.6** The final set of Schematic Drawings submitted to the  
222 University will contain room numbers established by the Owner and  
223 will be used on Construction Documents.

224 **2.2.7 Preliminary Life-Cycle Cost Analysis**

225 During Schematic Design, the Engineer shall prepare and submit  
226 three design concepts for a Preliminary Life-Cycle Cost Analysis  
227 ("LCAA") to the Owner. Tools for performing Life-Cycle Cost  
228 Analysis can be found at:

229 [http://www.wbdg.org/tools/tools\\_cat.php?c=3](http://www.wbdg.org/tools/tools_cat.php?c=3)

230

231 **2.3 DESIGN DEVELOPMENT PHASE**

232 **2.3.1** Based on the approved Schematic Design Documents and  
233 any adjustments authorized by the Owner in the Program, Project  
234 Schedule or Project Cost Model, the Engineer shall prepare for  
235 approval by the Owner, Design Development Documents consisting of  
236 drawings and other documents to fix and describe the size and  
237 character of the Project as to architectural, structural,  
238 mechanical and electrical systems, materials, and such other  
239 elements as may be appropriate.

240 **2.3.2** The Engineer shall advise the Owner of any adjustments  
241 to the preliminary estimate of Construction Cost.

242 **2.3.3 Life-Cycle Cost Analysis**

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

245 **2.3.4** The Engineer shall submit to the Owner a Progress Set  
246 at 50% completion and a set of Design Development Documents at  
247 100% completion along with an updated estimate of construction  
248 costs appropriate to this phase of project development and updated  
249 estimates of other project costs indicated in the Project Cost  
250 Model. The Engineer shall also provide an updated Project  
251 Schedule for the Owner's review and approval prior to proceeding  
252 into the next phase of service. The Engineer shall recommend and  
253 the Owner shall review and approve adjustments, as necessary, to  
254 the scope of the project in order to fit the Project Cost Model.

255 **2.3.5** Each space shall be labeled by USE with net usable  
256 square footage indicated (face of wall to face of wall).

257 **2.4 CONSTRUCTION DOCUMENTS PHASE**

258 **2.4.1** The Engineer is responsible for the quality, technical  
259 accuracy, and the coordination of all designs, drawings,  
260 specifications, and other services furnished under the contract.  
261 The Owner will not undertake a detailed technical review of the  
262 work. It will be the responsibility of the Engineer, acting in a  
263 professional capacity, to ensure the accuracy, completeness and  
264 correctness of all design documentation, including the cost  
265 estimate, consistent with that degree of care and skill exercised  
266 by the Engineering profession. The Engineer acknowledges that the  
267 Owner is relying upon the Engineer's skill and knowledge to  
268 prepare Drawings, Specifications and other work product which  
269 conform to the applicable standard of care and the laws, rules,  
270 regulations and codes applicable to the Project. The Engineer's  
271 duties in such regard shall not in any way be diminished by reason  
272 of any approval by the Owner of the Drawings, Specifications or  
273 any other work product of the Engineer, nor shall the Engineer be  
274 released from any such liability by reason of such approval by the  
275 Owner.

276 **2.4.2** Based on the approved Design Development Documents and  
277 any further adjustments in the scope or quality of the Project or  
278 in the Project Cost Model authorized by the Owner, the Engineer  
279 shall prepare for approval by the Owner Construction Documents  
280 consisting of Drawings and Specifications setting forth in detail  
281 the requirements for the construction of the Project.

282 **2.4.3** Prior to the final submission of the Construction  
283 Documents, the Engineer shall perform a structured quality control  
284 review of all drawings and specifications. The review shall check

285 for technical accuracy, coordination of work within each  
286 discipline, coordination of work among disciplines, coordination  
287 of the Drawings and Specifications and verification with existing  
288 conditions.

289 **2.4.4** The Engineer shall advise the Owner of any adjustments  
290 to previous preliminary estimates of Construction Costs indicated  
291 due to changes in requirements or general market conditions.

292 **2.4.5** The Engineer shall assist the Owner in connection with  
293 the Owner's responsibility for filing documents required for the  
294 approval of governmental authorities having jurisdiction over the  
295 Project. The Owner will be responsible for reimbursing the  
296 Engineer for all filing fees.

297 **2.4.6** The Engineer shall submit to the Owner a Progress Set  
298 of construction documents at 70% completion and a Progress Set of  
299 Construction Documents at 95% completion, along with estimates of  
300 construction costs appropriate to this phase of project  
301 development and updated estimates of other project costs indicated  
302 in the Project Cost Model. The Engineer shall recommend and the  
303 Owner shall review and approve adjustments, as necessary, to the  
304 scope of the Project in order to fit the Project Cost Model. The  
305 Engineer's Final Construction Documents submitted to the Owner for  
306 review and approval shall be 100% complete and in a form  
307 appropriate for the bidding and award of contracts for  
308 construction in accordance with the bidding laws applicable to the  
309 Owner. The Engineer shall also provide an updated Project  
310 Schedule for the Owner's review and approval before proceeding to  
311 the next phase of service.

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312 **2.5 BIDDING OR NEGOTIATION PHASE**

313 **2.5.1** The Engineer, following the Owner's approval of the  
314 Construction Documents and of the latest estimate of Construction  
315 Cost, shall assist the Owner in obtaining bids or negotiated  
316 proposals and assist in awarding and preparing contracts for  
317 construction. During the bidding process, the Engineer shall  
318 specifically:

319 1. Assist the Owner in preparing and/or compiling the  
320 necessary invitations and notices, other bidding forms, the  
321 Conditions of the Contracts and the form of Agreement between  
322 the Owner and the Contractor;

323 2. Respond to questions from bidders and issue  
324 necessary and appropriate addenda;

325 3. Make recommendations as the qualification and  
326 experience criteria for bidders to be included in the bidding  
327 requirements for selected portions of the Work;

328 4. Attend pre-bid conferences to familiarize bidders  
329 with the bidding documents, the phasing, sequencing and  
330 interfacing of the Work and any special systems, materials or  
331 methods to be employed on the Project;

332 5. Receive and analyze all bids submitted; and

333 6. Make recommendations to the Owner regarding the  
334 acceptance or rejection of bids or award of Contracts.

335 **2.5.2** The Engineer shall, within one month after the  
336 construction contract is awarded, provide the University  
337 Architect's Office with one set of electronic CAD files  
338 representing every sheet in the bid documents with all Addenda  
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339 incorporated in a Construction Documents Deliverable. Each sheet  
340 is to have its own unique file and comply with the current  
341 University Architect's CAD Standards\*\*. Word Processing files  
342 (Word/WordPerfect) for all specifications shall also be included.  
343 Final payment to the Engineer for services rendered during the  
344 bidding phase is contingent upon approved acceptance of these  
345 documents. \*\*Indiana University has adopted the National CAD  
346 Standards. You may purchase a copy of the National CAD Standards  
347 from this web site <http://www.nationalcadstandard.org/>. More  
348 information on Indiana University's adoption of this new standard  
349 may be found at the following web site:  
350 <http://www.indiana.edu/~uao>.

351 **2.6 CONSTRUCTION ADMINISTRATION & PROJECT CLOSEOUT PHASES -**  
352 **ADMINISTRATION OF THE CONSTRUCTION CONTRACT**

353 **2.6.1** The Engineer's responsibility to provide Basic Services  
354 for the Construction Phase under this agreement commences with the  
355 award of the Contract for Construction and terminates sixty days  
356 after final completion of construction of the Project.

357 **2.6.2** The Engineer shall provide administration of the  
358 Contract for Construction as set forth in AIA Document A201,  
359 General Conditions of the Contract for Construction (1997 edition  
360 as modified by Indiana University), together with, and as amended  
361 by, the Owner's Supplementary General Conditions and other  
362 documents included or incorporated into the Construction Contract.

363 The Engineer's administration of the Contract for Construction as  
364 set forth in this Agreement shall be provided to further the  
365 interests of the Owner and shall in no manner excuse, relieve or  
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366 discharge the obligations which the Contractor or other parties  
367 performing the Work owe to the Owner, nor shall any acts or  
368 omissions of the Engineer be deemed an acceptance by the Owner of  
369 Contractor's Work which is incomplete, defective or otherwise not  
370 in conformance with the Contract Documents.

371 **2.6.3** Duties, responsibilities and limitations of authority  
372 of the Engineer shall not be restricted, modified or extended  
373 without written agreement of the Owner and Engineer with consent  
374 of the Contractor, which consent shall not be unreasonably  
375 withheld.

376 **2.6.4** The Engineer shall be a representative of and shall  
377 advise and consult with the Owner during construction until final  
378 payment to the Contractor is due. The Engineer shall have  
379 authority to act on behalf of the Owner only to the extent  
380 provided in this Agreement unless otherwise modified by written  
381 instrument.

382 **2.6.5** The Engineer shall visit the site at intervals  
383 appropriate to the stage of construction or as otherwise agreed by  
384 the Owner and Engineer in writing to become generally familiar  
385 with the progress and quality of the Work completed and to  
386 determine in general if the Work is being performed in a manner  
387 indicating that the Work when completed will be in accordance with  
388 the Contract Documents. On the basis of on-site observations as an  
389 Engineer, the Engineer shall keep the Owner informed of the  
390 progress and quality of the Work, and shall endeavor to guard the  
391 Owner against defects and deficiencies in the Work. The Engineer  
392 will visit the site twice monthly for the duration of the project

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393 to attend construction progress meetings. The Engineer shall chair  
394 the meetings and shall record, prepare and distribute meeting  
395 minutes to the participants. Additionally, the Engineer will visit  
396 the site on an as needed basis to keep the Project progress on  
397 schedule and answer questions related to Requests for Information  
398 (RFI's), Engineer's Supplemental Information (ESI's) and/or  
399 Construction Change Directives (CCD's). Site visits shall be  
400 coordinated with construction coordination meetings, which shall  
401 also occur twice monthly. The Engineer shall organize site visits  
402 for its various Consultants as necessary to the progress of the  
403 Project or as requested by the Owner. The Engineer shall generate  
404 a monthly construction field report. The Engineer shall submit to  
405 the Owner copies of minutes to meetings, telephone conversations,  
406 inspections and discussions with the Owner.

407 **2.6.6** The Engineer shall not have control over or charge of,  
408 and shall not be responsible for construction means, methods,  
409 techniques, sequences or procedures, or for safety precautions and  
410 programs in connection with the Work, since these are solely the  
411 Contractor's responsibility under the Contract for Construction.  
412 The Engineer shall not be responsible for the Contractor's  
413 schedules or failure to carry out the Work in accordance with the  
414 Contract Documents. The Engineer shall not have control over or  
415 charge of acts or omissions of the Contractor, Subcontractors, or  
416 their agents or employees, or of any other persons performing  
417 portions of the Work. However, if the Engineer knows, or in the  
418 exercise of reasonable care should have known, that a Contractor  
419 is not performing its Work in a proper and timely manner, then the

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420 Engineer shall immediately advise the Owner and Contractor, in  
421 writing, and shall demand on behalf of the Owner that appropriate  
422 remedial steps be immediately taken.

423 **2.6.7** The Engineer shall at all times have access to the Work  
424 wherever it is in preparation or progress.

425 **2.6.8** Except as may otherwise be provided in the Contract  
426 Documents or when direct communications have been specifically  
427 authorized, the Owner and Contractor shall communicate through the  
428 Engineer. Communications by and with the Engineer's Consultants  
429 shall be through the Engineer.

430 **2.6.9** Based on the Engineer's observations and evaluations of  
431 the Contractor's Applications for Payment, the Engineer shall  
432 review and certify the amounts due the Contractor.

433 **2.6.10** The Engineer's certification for payment shall  
434 constitute a representation to the Owner, based on the Engineer's  
435 observations at the site as provided in Subparagraph 2.6.5 and on  
436 the data comprising the Contractor's Application for Payment,  
437 that, to the best of the Engineer's knowledge, information and  
438 belief, the Work has progressed to the point indicated and the  
439 quality of Work is in accordance with the Contract Documents. The  
440 issuance of a Certificate for Payment shall further constitute a  
441 representation that the Contractor is entitled to payment in the  
442 amount certified. However, the issuance of a Certificate for  
443 Payment shall not be a representation that the Engineer has (1)  
444 made exhaustive or continuous on-site inspections to check the  
445 quality or quantity of the Work, (2) reviewed construction means,  
446 methods, techniques, sequences or procedures, (3) verified  
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447 requisitions received from Subcontractors and material suppliers  
448 and other data requested by the Owner to substantiate the  
449 Contractor's right to payment or (4) ascertained how or for what  
450 purpose the Contractor has used money previously paid on account  
451 of the Contract Sum.

452 **2.6.11** The Engineer shall have authority to reject Work, which  
453 does not conform to the Contract Documents. Whenever the Engineer  
454 considers it necessary or advisable for implementation of the  
455 intent of the Contract Documents, the Engineer will have authority  
456 to require additional inspection or testing of the Work in  
457 accordance with the provisions of the Contract Documents, whether  
458 or not such Work is fabricated, installed or completed. However,  
459 neither this authority of the Engineer nor a decision made in good  
460 faith either to exercise or not to exercise such authority shall  
461 give rise to a duty or responsibility of the Engineer to the  
462 Contractor, Subcontractors, material and equipment suppliers,  
463 their agents or employees or other persons performing portions of  
464 the Work. The Engineer will provide the Owner with prior written  
465 notice before either rejecting Work or requiring additional  
466 inspection.

467 **2.6.12** The Engineer shall review and approve or take other  
468 appropriate action upon Contractor's submittals such as Shop  
469 Drawings, Product Data and Samples, but only for the limited  
470 purpose of checking for conformance with information given and the  
471 design concept expressed in the Contract Documents. The Engineer's  
472 action shall be taken with such reasonable promptness as to cause  
473 no delay in the Work or in the construction of the Owner or of  
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474 separate Contractors, while allowing sufficient time in the  
475 Engineer's professional judgment to permit adequate review. Review  
476 of such submittals is not conducted for the purpose of determining  
477 the accuracy and completeness of other details such as dimensions  
478 and quantities, or for substantiating instructions for  
479 installation or performance of equipment or systems designed by  
480 the Contractor, all of which remain the responsibility of the  
481 Contractor to the extent required by the Contract Documents. The  
482 Engineer's review shall not constitute approval of safety  
483 precautions or, unless otherwise specifically stated by the  
484 Engineer, of construction means, methods, techniques, sequences or  
485 procedures. The Engineer's approval of a specific item shall not  
486 indicate approval of an assembly of which the item is a component.  
487 When professional certification of performance characteristics of  
488 materials, systems or equipment is required by the Contract  
489 Documents, the Engineer shall be entitled to rely upon qualified  
490 professional certifications to establish that the materials,  
491 systems or equipment will meet the performance criteria required  
492 by the Contract Documents.

493 **2.6.13** The Engineer shall prepare Change Orders or  
494 Construction Change Directives, with necessary plans,  
495 specifications and other supporting documentation and data as  
496 provided in Subparagraphs 3.1.1 and 3.3.3, for the Owner's  
497 approval and execution in accordance with the Contract Documents.  
498 The Engineer may authorize minor changes in the Work not involving  
499 an adjustment in the Contract Sum or an extension of the Contract  
500 time which are not inconsistent with the intent of the Contract

501 Documents. The Engineer shall also review, evaluate and report to  
502 the Owner as to changes recommended by the Contractor and price  
503 proposals/quotations submitted by the Contractor as to proposed  
504 changes under consideration.

505 **2.6.14** The Engineer shall conduct inspections to determine the  
506 date or dates of Substantial Completion and the date of final  
507 completion. The Engineer shall issue a Certificate of Substantial  
508 Completion when appropriate and shall receive and forward to the  
509 Owner, for the Owner's review and records, written warranties and  
510 related documents required by the Contract Documents and assembled  
511 by the Contractor. The Engineer shall issue a final Certificate  
512 for Payment upon compliance with the requirements of the Contract  
513 Documents.

514 **2.6.15** Interpretations and decisions of the Engineer shall be  
515 consistent with the intent of and reasonably inferable from the  
516 Contract Documents and shall be in writing or in the form of  
517 drawings. When making such interpretations and initial decisions,  
518 the Engineer shall endeavor to secure faithful performance by both  
519 Owner and Contractor, shall not show partiality to either and  
520 shall not be liable for results of interpretations or decisions so  
521 rendered in good faith.

522 **2.6.16** The Engineer's decisions on matters relating to  
523 aesthetic effect shall be final if consistent with the intent  
524 expressed in the Contract Documents and acceptable to the Owner.

525 **2.6.17** The Engineer shall render written decisions within a  
526 reasonable time on all claims, disputes or other matters in  
527 question between the Owner and Contractor relating to the  
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528 execution or progress of the Work as provided in the Contract  
529 Documents.

530 **2.6.18** The Engineer's decisions on claims, disputes or other  
531 matters, including those in question between the Owner and  
532 Contractor, except for those relating to aesthetic effect as  
533 provided in Subparagraph 2.6.16, shall be subject to dispute  
534 resolution/litigation as provided in this Agreement and in the  
535 Contract Documents.

536 **2.6.19** The Engineer shall prepare/provide services in  
537 connection with evaluating substitutions proposed by the  
538 Contractor to the extent such substitutions are permitted by the  
539 Construction Documents.

540 **2.6.20** The Engineer shall prepare/provide assistance in the  
541 initial utilization of equipment or systems such as testing,  
542 adjusting and balancing; preparation and/or delivery of operation  
543 and maintenance manuals; training of personnel for operation and  
544 maintenance; and consultation during operation. Included as a  
545 part of the foregoing, shall be services related to initial start-  
546 up of equipment and orientation of Owner's personnel (i.e. a  
547 start-up/orientation session). This applies to each major  
548 component of the project individually.

549 **2.6.21** Errors, omissions or deficiencies in the Engineer's  
550 performance shall be corrected or revised by the Engineer at no  
551 additional cost to the Owner. Additionally, design error,  
552 omissions or deficiencies resulting in damages or extra cost to  
553 the Owner will be evaluated for potential Engineer responsibility.

554 If the University Architect's Office determines that the Engineer  
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555 is financially responsible for a design deficiency, the Engineer  
556 will be so advised by official correspondence. For expediency, and  
557 at the Owner's request, the Engineer shall negotiate directly with  
558 the Contractor in the interests of minimizing the cost impact to  
559 the Project of such deficiencies. The Engineer will review the  
560 results of these efforts with the Owner. If not satisfied with the  
561 result of the negotiation, the Owner reserves the right to pursue  
562 a claim against the Engineer for work that it believes is a result  
563 of negligent performance, per the terms of Article 7, Dispute  
564 Resolution.

565 **2.6.22** When poor performance by the Engineer results in the  
566 need for a re-submission of design documents, the Engineer may be  
567 required to send representatives to IU to discuss the problems and  
568 to correct deficiencies at no additional cost to the Owner.

569 **2.6.23** The Engineer shall prepare and submit clear and  
570 detailed meeting minutes within five (5) working days following  
571 meeting held with respect to the Project.

572 **2.6.24** The Engineer shall revise the Construction Documents  
573 and related electronic files with information contained on the As-  
574 Built Field Data Documents submitted by each Contractor. The  
575 Engineer shall label the revised Construction Documents and  
576 related files as "Record Documents" shall reflect the date of the  
577 Engineer's incorporation of the As-Built Documents. The Record  
578 Documents, to the best of the Engineer's knowledge based upon the  
579 As-Built Documents delivered to the Engineer by the Contractors  
580 and the Engineer's observations of the Project, shall detail the  
581 actual construction of the Project and shall contain such

582 annotations by the Engineer as may be necessary for someone  
583 unfamiliar with the Project to understand the changes that were  
584 made to the Bid Documents. Within thirty days of issuing  
585 Substantial Completion, the Engineer shall furnish to the  
586 University Architect's Office one set of electronic CAD/BIM files  
587 representing the Record Documents, three sets of hardcopy drawings  
588 from these files, plus one set of pdf files from each sheet of  
589 the CAD/BIM Record Documents. Each sheet shall have its own  
590 unique file and comply with the then-current University  
591 Architect's CAD standards \*\*.

592 \*\* For a more detailed description of the IU As-Built CAD  
593 requirements, see the following link:

594 [http://www.indiana.edu/~uao/IU\\_as-built\\_cad\\_requirements.pdf](http://www.indiana.edu/~uao/IU_as-built_cad_requirements.pdf)

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

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

600 **2.6.25** Before final payment pursuant to this Agreement, the  
601 Engineer shall submit to the Owner, on the Engineering firm's  
602 letterhead, a signed and dated copy of the following statement:

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

606 **2.6.26** Approximately two months prior to the end of the two  
607 year warranty period the Engineer shall, after notifying the  
608 Owner, visit the site and perform an "End of Warranty" punch list

609 inspection. The Engineer will furnish the Owner and Contractors  
610 with a list of all items requiring correction.

611 **2.6.27** On the date of Substantial Completion the Engineering  
612 Firm will submit to Indiana University a summary of all  
613 warranties. The summary shall include in part: Each individual  
614 component of the building mechanical and electrical systems, site  
615 landscape, hardscape, and moveable and fixed equipment. The  
616 summary will include the name, address and telephone number of  
617 each firm warranting specific items. The time period covered by  
618 the warranty will be listed.

### 619 ARTICLE 3

#### 620 **ADDITIONAL SERVICES**

##### 621 **3.1 GENERAL**

622 **3.1.1** The services described in this Article 3 are not  
623 included in Basic Services, unless specified in writing elsewhere  
624 in this Agreement, and if authorized and approved by the Owner  
625 such Additional Services shall be provided by the Engineer and  
626 paid for by the Owner as provided in this Agreement. It is  
627 expressly acknowledged and agreed, however, that Additional  
628 Services shall be provided by the Engineer and paid for by the  
629 Owner only if:

630 (a) The Engineer gives prior written notice to the  
631 Owner of the need for the Additional Services and  
632 the estimated cost thereof; and

633 (b) The Owner, in writing, authorizes and directs that  
634 the Additional Services be provided.

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

642 **3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES**

643 **3.2.1** If more extensive representation at the site than is  
644 described in Subparagraph 2.6.5 is required, the Engineer shall  
645 provide one or more Project Representatives to assist in carrying  
646 out such additional on-site responsibilities.

647 **3.2.2** Project Representatives shall be selected, employed and  
648 directed by the Engineer, and the Engineer shall be compensated  
649 therefor as agreed by the Owner and Engineer. The duties,  
650 responsibilities and limitations of authority of Project  
651 Representatives shall be as described in the edition of AIA  
652 Document B352 current as of the date of this Agreement, unless  
653 otherwise agreed.

654 **3.2.3** Through the observations by such Project  
655 Representatives, the Engineer shall endeavor to provide further  
656 protection for the Owner against defects and deficiencies in the  
657 Work, but the furnishing of such project representation shall not  
658 modify the rights, responsibilities or obligations of the Engineer  
659 as described elsewhere in this Agreement.

660 **3.3 OTHER ADDITIONAL SERVICES**

661 **3.3.1** Making revisions in Drawings, Specifications or other  
662 documents when such revisions are:

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- 663 1. inconsistent with approvals or instructions  
664 previously given by the Owner, including revisions  
665 made necessary by adjustments in the Owner's  
666 program or Project budget;
- 667 2. required by the enactment or revision of codes,  
668 laws or regulations subsequent to the preparation  
669 of such documents; or
- 670 3. due to changes required as a result of the Owner's  
671 failure to render decisions in a timely manner.

672 **3.3.2** Providing services required because of significant  
673 changes in the Project including, but not limited to changes in  
674 size, quality, complexity, the Project Schedule, or the method of  
675 bidding, negotiating and contracting for construction, unless such  
676 changes are required due to acts or omissions of the Engineer.

677 **3.3.3** Providing consultation concerning replacement of Work  
678 damaged by fire or other cause during construction, and furnishing  
679 services required in connection with the replacement of such Work.

680 **3.3.4** Providing services made necessary by the default of the  
681 Contractor, by major defects or deficiencies in the Work of the  
682 Contractor, or by failure of performance of either the Owner or  
683 Contractor under the Contract for Construction.

684 **3.3.5** Providing services in evaluating an extensive number of  
685 claims submitted by the Contractor or others in connection with  
686 the Work, unless such claims arise out of the fault of the  
687 Engineer.

688 **3.3.6** Providing analyses of the Owner's needs and programming  
689 the requirements of the Project.

690 **3.3.7** Providing financial feasibility or other special  
691 studies.

692 **3.3.8** Providing planning surveys, site evaluations or  
693 comparative studies of prospective sites.

694 **3.3.9** Providing special surveys, environmental studies and  
695 submissions required for approvals of governmental authorities or  
696 others having jurisdiction over the Project.

697 **3.3.10** Providing services relative to future facilities,  
698 systems and equipment.

699 **3.3.11** Providing detailed quantity surveys or inventories of  
700 material, equipment and labor.

701 **3.3.12** Providing analyses of owning and operating costs.

702 **3.3.13** Providing services for planning tenant or rental  
703 spaces.

704 **3.3.14** Making investigations, inventories of materials or  
705 equipment, or valuations and detailed appraisals of existing  
706 facilities, except when the project involves remodeling of or  
707 renovation to existing facilities.

708 **3.3.15** Providing services after the completion of the  
709 Construction Phase as defined by Paragraph 2.6.1.

710 **3.3.16** Providing any other services not otherwise included in  
711 this Agreement as Basic Services or not customarily furnished in  
712 accordance with generally accepted Engineering practice.

713 **ARTICLE 4**

714 **OWNER'S RESPONSIBILITIES**

715 **4.1** The Owner shall provide full information regarding  
716 requirements for the Project, including a Program which shall set  
717 forth the Owner's preliminary objectives, schedule, constraints  
718 and criteria, including space requirements and relationships,  
719 flexibility, expandability, special equipment, systems and site  
720 requirements.

721 **4.2** The Owner shall assist the Engineer in establishing,  
722 updating and reviewing the Project Cost Model and the Project  
723 Schedule.

724 **4.3** If requested by the Engineer, the Owner shall furnish  
725 evidence that financial arrangements have been made to fulfill the  
726 Owner's obligations under this Agreement.

727 **4.4** The Owner shall designate a representative authorized  
728 to  
729 act on the Owner's behalf with respect to the Project. The Owner  
730 or such authorized representative shall render decisions in a  
731 timely manner pertaining to documents submitted by the Engineer in  
732 order to avoid unreasonable delay in the orderly and sequential  
733 progress of the Engineer's services.

734 **4.5** The Owner shall contract the Engineer to furnish  
735 surveys describing physical characteristics, legal limitations and  
736 utility locations for the site of the Project, and a written legal  
737 description of the site when such services are requested by the  
738 Owner. The surveys and legal information shall include, as  
739 applicable, grades and lines of streets, alleys, pavements and

740 adjoining property and structures; adjacent drainage; rights-of-  
741 way, restrictions, easements, encroachments, zoning, deed  
742 restrictions, boundaries and contours of the site; locations,  
743 dimensions and necessary data pertaining to existing buildings,  
744 other improvements and trees; and information concerning available  
745 utility services and lines, both public and private, above and  
746 below grade, including inverts and depths, manhole and vault  
747 interior dimensions, pipe size, pipe material, electrical ductbank  
748 configuration, telecommunications ductbank configuration (and a  
749 designation of fiber optic and/or copper conductors), meter pits,  
750 valves, hydrants, light poles, transformers, power poles, and  
751 ownership of each utility. All the information on the survey shall  
752 be referenced to a Project benchmark and adhere to the University  
753 Landscape - Site Survey standards found at  
754 <http://www.indiana.edu/~uao/>. The original surveys in CAD format  
755 (in the required Indiana State Plane Coordinate system) shall be  
756 submitted to the University at the time of completion and before  
757 inclusion in Architectural or Engineering CAD project files.

758 **4.6** The Owner shall contract the Engineer to furnish services of  
759 geotechnical engineers when such services are requested by the  
760 Engineer. Such services may include, but are not limited to, test  
761 borings, test pits, determinations of soil bearing values,  
762 percolation tests, evaluations of hazardous materials, ground  
763 corrosion and resistivity tests, including necessary operations  
764 for anticipating sub-soil conditions, with reports and appropriate  
765 professional recommendations.

766 **4.7** The Owner shall furnish structural, mechanical,  
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767 chemical, air and water pollution tests, tests for hazardous  
768 materials, and other laboratory and environmental tests,  
769 inspections and reports required by law or the Contract Documents.

770 **4.8** The Owner shall furnish all legal, accounting and  
771 insurance counseling services as may be necessary at any time for  
772 the Project, including auditing services the Owner may require to  
773 verify the Contractor's Applications for Payment or to ascertain  
774 how or for what purposes the Contractor has used the money paid by  
775 or on behalf of the Owner.

776 **4.9** The services, information, surveys and reports required  
777 by Paragraphs 4.5 through 4.8 shall be furnished at the Owner's  
778 expense, and the Engineer shall be entitled to rely upon the  
779 accuracy and completeness thereof. However, if the Engineer  
780 observes or becomes aware of any fault or defect in the services,  
781 information, surveys and reports furnished by the Owner or its  
782 consultants, the Engineer shall give prompt written notice thereof  
783 to the Owner.

784 **4.10** Prompt written notice shall be given by the Owner to  
785 the Engineer if the Owner becomes aware of any fault or defect in  
786 the Project or nonconformance with the Contract Documents. This  
787 obligation, however, arises only if the Owner obtains actual  
788 knowledge of a fault or defect in the Project or non-conformance  
789 with the Contract Documents. The Owner is not obligated to the  
790 Engineer, the Contractors or other third parties to specifically  
791 review the design and/or the Work for the purpose of identifying  
792 or discovering any fault, defect or non-compliance of the work.

793 **4.11** The proposed language of certificates or certifications  
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794 requested of the Engineer or Engineer's consultants shall be  
795 submitted to the Engineer for review and approval at least 14 days  
796 prior to execution. The Owner shall not request certifications  
797 that would require knowledge or services beyond the scope of this  
798 Agreement.

799 **ARTICLE 5**

800 **CONSTRUCTION COST**

801 **5.1 DEFINITION**

802 **5.1.1** The Construction Cost shall be the total cost or  
803 estimated cost to the Owner of all elements of the Project  
804 designed or specified by the Engineer.

805 **5.1.2** The Construction Cost shall include the cost at current  
806 market rates of labor and materials furnished by the Owner and  
807 equipment designed, specified, selected or specially provided for  
808 by the Engineer, plus a reasonable allowance for the Contractor's  
809 overhead and profit. In addition, a reasonable allowance for  
810 contingencies shall be included for market conditions at the time  
811 of bidding and for changes in the Work during construction.

812 **5.2 RESPONSIBILITY FOR CONSTRUCTION COST**

813 **5.2.1** A fixed limit of Construction Cost may be established  
814 by the Owner in writing, as a condition of this Agreement. In  
815 establishing such a fixed limit the Owner shall include  
816 appropriate contingencies for design, bidding and price escalation  
817 and alternates approved by the Owner may be included in the  
818 Contract Documents to adjust the scope of work to the fixed limit  
819 of Construction Cost. Services in connection with revisions and  
820 inclusions of alternate bids as recommended for cost control

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821 purposes shall be part of Basic Services.

822 **5.2.2** If the Bidding or Negotiation Phase has not commenced  
823 within 90 days after the Engineer submits the Construction  
824 Documents to the Owner, any Project budget or fixed limit of  
825 Construction Cost shall be adjusted to reflect changes in the  
826 general level of prices in the construction industry between the  
827 date of submission of the Construction Documents to the Owner and  
828 the date on which proposals are sought. If there is a material  
829 change in construction costs after the 90 day period, and  
830 exceeding the 90 day period is through no fault of the Engineer,  
831 then the Engineer reserves the right to request Additional  
832 Services for redesign if the lowest subsequent bid exceeds the new  
833 estimated Construction Cost.

834 **5.2.3** If the lowest bona fide bid or negotiated proposal  
835 received exceeds, by 5% or more, the fixed limit of Construction  
836 Cost established by the Owner, in writing, or the estimate of  
837 Construction Cost presented by the Engineer and approved by the  
838 Owner at the end of the Contract Documents Phase, then the Owner  
839 retains the right to initiate one of the following remedies:

- 840 1. give written approval of an increase in Construction  
841 Cost and proceed with construction;
- 842 2. authorize rebidding or authorize the Engineer to  
843 renegotiate the Project within a reasonable time and amend  
844 documents as necessary at no cost to Owner;
- 845 3. abandon the Project and terminate in accordance with  
846 Paragraph 8.3;
- 847 4. require the Engineer to redesign or modify the Project

848 to achieve budget goals at no cost to Owner and rebid the  
849 project.

850 **5.2.4** Both parties recognize that neither the Owner nor the  
851 Engineer can predict with certainty the disposition of the  
852 construction industry at the time of bidding or negotiation.  
853 Therefore, if the Owner elects to proceed under Clause 5.2.3.4,  
854 the Engineer shall identify potential cost savings and shall  
855 modify the Construction Documents accordingly, without additional  
856 charge to the Owner, in such a way as to bring the lowest bona  
857 fide bid or negotiated proposal to within 5% of the construction  
858 budget. If these negotiations do not succeed in achieving the cost  
859 savings necessary, the Engineer shall redesign and modify the  
860 Construction Documents for re-bidding, also without additional  
861 charge to the Owner. If the applicable construction budget is  
862 attained, yet the Owner wishes to have the Project redesigned or  
863 modified to achieve further savings, such services shall  
864 constitute an Additional Service, compensation for which shall be  
865 determined by agreement between the Owner and the Engineer. In  
866 either instance, the Owner shall cooperate with the Engineer in  
867 determining revisions to the Project scope of work and/or quality  
868 as required to reduce Construction Costs.

869 **ARTICLE 6**

870 **DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS**

871 **6.1** The Engineer hereby assigns to the Owner all right, title and  
872 interest, including all copyrights, copyright registrations,  
873 copyright applications, renewals, extensions and all other  
874 proprietary or ownership rights, in all drawings/BIM models,  
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875 specifications and other documents created by the Engineer, in  
876 whole or in part, or hereafter to be created by the Engineer in  
877 connection with the project, including, but not limited to, all  
878 works based upon, derived from, or incorporating the drawings,  
879 specifications and other documents created by the Engineer in  
880 connection with the project.

881 **6.2** In the event of termination, suspension, abandonment or  
882 completion of the project, the Engineer shall deliver to the Owner  
883 within seven (7) days all drawings/BIM models, specifications and  
884 other documents created by the Engineer in connection with the  
885 project and not previously delivered to the Owner during the  
886 course of the project. The Owner, as the holder of all right,  
887 title and interest, including all copyrights, in all drawings,  
888 specifications and other documents created by the Engineer, as  
889 provided in Article 3.1, shall have the right to use and reuse any  
890 and all such drawings/BIM models, specifications and other  
891 documents for any purpose in connection with the project,  
892 including, but not limited to, its completion, at the Owner's sole  
893 discretion and at no additional cost to the Owner.

894 **6.3** The owner agrees, to the fullest extent permitted by law, to  
895 indemnify and hold harmless the Engineer, its officers, directors,  
896 employees and subconsultants (collectively, Engineer) against  
897 damages, liabilities or costs, including reasonable attorneys'  
898 fees and defense costs, arising from or allegedly arising from or  
899 in any way connected with the unauthorized reuse or modification  
900 of the construction documents by the Owner or any person or entity  
901 that acquires or obtains the construction documents from or

902 through the Owner without the written authorization of the  
903 Engineer.

904

905

## ARTICLE 7

906

### DISPUTE RESOLUTION

907 **7.1** In an effort to resolve any conflicts that arise during  
908 the design or Construction of the Project or following the  
909 completion of the Project, the Owner and Engineer agree that all  
910 disputes between them arising out of or relating to the Agreement  
911 shall be submitted to non-binding mediation unless the parties  
912 mutually agree otherwise. The parties further agree to include  
913 similar mediation provisions in all agreements with independent  
914 contractors and consultants retained for the Project and to  
915 require all independent contractors and consultants also to  
916 include a similar mediation provision in all agreements with  
917 subcontractors, subconsultants, suppliers, fabricators so  
918 retained, thereby providing for mediation as the primary (i.e.  
919 first) method of dispute resolution between all parties to those  
920 agreements. The parties involved with any conflict shall attempt  
921 to reach agreement as to the mediator to be selected and, failing  
922 to reach such agreement, any party may seek the appointment of a  
923 mediator in accordance with the Construction Industry Mediation  
924 Rules of the American Arbitration Association.

925 **7.2** In the event that mediation is unsuccessful, such  
926 claims, disputes or other matters in conflict shall be resolved  
927 through litigation, with the parties hereto agreeing and  
928 acknowledging that the Circuit and/or Superior Courts of Monroe

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929 County, Indiana shall be the sole and exclusive venue for the  
930 filing and consideration of all claims, disputes or other matters  
931 in conflict arising out of or relating to the Work, the Project,  
932 this Agreement or the breach thereof.

933 **ARTICLE 8**

934 **TERMINATION, SUSPENSION OR ABANDONMENT**

935 **8.1** This Agreement may be terminated by either party upon  
936 not less than seven day, written notice, should the other party  
937 fail substantially to perform in accordance with the terms of this  
938 Agreement through no fault of the party initiating the  
939 termination.

940 **8.2** In the event of the Owner termination, suspension or  
941 abandonment of the project, the Engineer shall be equitably  
942 compensated by the owner for services performed to the date of  
943 termination, suspension or abandonment.

944 **8.3** This Agreement may be terminated with or without cause  
945 by the Owner upon not less than seven days' written notice to the  
946 Engineer in the event that the Project is permanently abandoned.  
947 If the Project is abandoned by the Owner for more than 90  
948 consecutive days, the Engineer may terminate this Agreement by  
949 giving seven days prior written notice.

950 **8.4** Failure of the Owner to make payments to the Engineer  
951 in accordance with this Agreement shall be considered substantial  
952 nonperformance and cause for termination.

953 **8.5** If the Owner fails to make payment when due the  
954 Engineer for services and expenses, the Engineer may, upon seven  
955 days' written notice to the Owner, suspend performance of services

956 under this Agreement. Unless payment in full is received by the  
957 Engineer within seven days of the date of the notice, the  
958 suspension shall take effect without further notice. In the event  
959 of a suspension of services, the Engineer shall have no liability  
960 to the Owner for delay or damage caused the Owner because of such  
961 suspension of services.

962 **8.6** If this Agreement is terminated by the Owner and not  
963 because of the fault of the Engineer, the Engineer shall be  
964 compensated for all services performed to the termination date,  
965 together with reimbursable expenses then due and all Termination  
966 Expenses directly attributable to termination for which the  
967 Engineer is not otherwise compensated.

968 **8.7** In the event that the project is restarted by the owner  
969 following termination, suspension or abandonment, the Owner shall  
970 not be obligated to re-hire the Engineer for completion of the  
971 project.

972 **ARTICLE 9**

973 **MISCELLANEOUS PROVISIONS**

974 **9.1** This agreement shall be governed by the laws of the  
975 State of Indiana.

976 **9.2** Terms in this Agreement shall have the same meaning as  
977 those in AIA Document A201, General Conditions of the Contract for  
978 Construction (1997 edition) as amended by the Owner's  
979 Supplementary General Conditions.

980 **9.3** The Indiana statutes of limitation as interpreted by  
981 the Courts of the State of Indiana shall apply to all acts or  
982 omissions, claims, disputes or other matters in question arising

983 out of or relating to the Work, the Project, this Agreement or any  
984 breach thereof.

985 **9.4** The Owner and Engineer waive all rights against each  
986 other and against the Contractors, Consultants, agents and  
987 employees of the other for damages, but only to the extent covered  
988 by property insurance during construction, except such rights as  
989 they may have to the proceeds of such insurance as set forth in  
990 the edition of AIA Document A201, General Conditions of the  
991 Contract for Construction, current as of the date of this  
992 Agreement. The Owner and Engineer each shall require similar  
993 waivers from their Contractors, Consultants and agents.

994 **9.5** The Owner and Engineer, respectively, bind themselves,  
995 their partners, successors, assigns and legal representatives to  
996 the other party to this Agreement and to the partners, successors,  
997 assigns and legal representatives of such other party with respect  
998 to all covenants of this Agreement. Neither Owner nor Engineer  
999 shall assign this Agreement without the written consent of the  
1000 other.

1001 **9.6** This Agreement and any attached addenda represent the  
1002 entire and integrated agreement between the Owner and Engineer and  
1003 supersedes all prior negotiations, representations or agreements,  
1004 either written or oral. This Agreement may be amended only by  
1005 written instrument signed by both Owner and Engineer.

1006 **9.7** Nothing contained in this Agreement shall create a  
1007 contractual relationship with or a cause of action in favor of a  
1008 third party against either the Owner or Engineer.

1009 **9.8** Unless otherwise provided in this Agreement, the  
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1010 Engineer and Engineer's Consultants shall have no responsibility  
1011 for the discovery, presence, handling, removal or disposal of or  
1012 exposure of persons to hazardous materials in any form at the  
1013 Project site, including but not limited to asbestos, asbestos  
1014 products, polychlorinated biphenyl (PCB) or other toxic  
1015 substances. The Engineer shall, however, given immediate written  
1016 notice to the Owner should it observe or suspect the existence of  
1017 asbestos, PCB or other toxic substances within or around the  
1018 Project and shall identify the areas where such substances have  
1019 been encountered or are suspected and the areas of the Project  
1020 where the Engineer recommends that Work be stopped or suspended  
1021 while the substances are being analyzed.

1022 **9.9** The Engineer shall have the right to include  
1023 representations of the design of the Project, including  
1024 photographs of the exterior and interior, among the Engineer's  
1025 promotional and professional materials. The Engineer's materials  
1026 shall not include the Owner's confidential or proprietary  
1027 information if the Owner has previously advised the Engineer, in  
1028 writing, of the specific information considered by the Owner to be  
1029 confidential or proprietary. The Owner shall provide professional  
1030 credit for the Engineer on the construction sign and in the  
1031 promotional materials for the Project.

1032 **9.10** The Engineer shall maintain throughout the period  
1033 of this Project and for a period of three years thereafter, a  
1034 standard form of professional liability insurance issued by an  
1035 insurance company approved by the Owner and in forms and amounts  
1036 satisfactory to the Owner. The Engineer shall also maintain



1068 contemplated, the Engineer shall provide the Owner with thirty  
1069 (30) days written notice of such changes. All approved insurance  
1070 policies shall incorporate a provision requiring that the  
1071 insurance carrier notify the Owner, in writing, thirty (30) days  
1072 prior to cancellation, non-renewal or material modification to the  
1073 policies.

1074 **9.11** The Engineer will not engage in, or tolerate by its  
1075 employees, Consultants or agents, sexual harassment as defined in  
1076 this section. Harassment on the basis of sex is a violation of  
1077 Section 703 of the Title VII of the Civil Rights Act of 1964.

1078 a. Sexual harassment is defined as unwelcome sexual  
1079 advances/requests for sexual favors and other  
1080 verbal or physical conduct of a sexual nature  
1081 when:

1082 1. Submission of such conduct is made either  
1083 explicitly for implicitly a term or condition  
1084 of an individual's employment, or

1085 2. Submission or rejection of such conduct by an  
1086 individual is used as the basis for  
1087 employment decisions affecting such  
1088 individual, or

1089 3. Such conduct has the effect of unreasonably  
1090 interfering with an individual's work or  
1091 academic performance or creating an  
1092 intimidating hostile or offensive working or  
1093 learning environment.

1094 b. The Engineer will ensure dissemination of this

1095 sexual harassment policy to its employees,  
1096 Consultants and agents.

1097 c. Additionally, the Engineer will ensure that its  
1098 employees, Consultants and agents understand that  
1099 sexual harassment includes, but is not limited to,  
1100 actions taken towards Indiana University students,  
1101 employees or guests which would constitute sexual  
1102 harassment under definition (3) above.

1103 **9.12** During the course of the Project, the Engineer, its  
1104 agents, employees, Consultants and anyone else with whom the  
1105 Engineer contracts with respect to the Project shall not  
1106 discriminate against any employee or applicant for employment with  
1107 respect to hire, tenure, terms, conditions or privileges of  
1108 employment, or any matter directly or indirectly related to  
1109 employment, because of race, sex, religion, color, national  
1110 origin, ancestry, age, handicap, disabled veteran status and/or  
1111 Vietnam era status. The Engineer shall comply with the existing  
1112 laws of the State of Indiana and the United States regarding  
1113 prohibition of discrimination in employment practices, recognizes  
1114 that the provisions of I.C. 5-16-6-1 are incorporated herein by  
1115 reference and acknowledges that the breach of the non-  
1116 discrimination provisions may be regarded as material breach of  
1117 this Agreement.

## 1118 ARTICLE 10

### 1119 PAYMENTS TO THE ENGINEER

#### 1120 **10.1 DIRECT PERSONNEL EXPENSE**

1121 **10.1.1** Direct Personnel Expense is defined as the direct  
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1122 salaries of the Engineer's personnel engaged on the Project and  
1123 the portion of the cost of their mandatory and customary  
1124 contributions and benefits related thereto, such as employment  
1125 taxes and other statutory employee benefits, insurance, sick  
1126 leave, holidays, vacations, pensions and similar contributions and  
1127 benefits.

1128 **10.2 REIMBURSABLE EXPENSES**

1129 **10.2.1** Reimbursable Expenses are in addition to compensation  
1130 for Basic and Additional Services and include expenses incurred by  
1131 the Engineer and Engineer's employees and Consultants in the  
1132 interest of the Project, as identified in the following Clauses:

1133 **10.2.1.1** Consultants, Architects and Engineers will be reimbursed  
1134 in the following manner:

- 1135 a. Receipts and other relevant records must be  
1136 furnished for all reimbursable costs. Credit card  
1137 statements are not acceptable records.
- 1138 b. Food. When Consultant is away from their home  
1139 office for twenty-four hours they will be given a  
1140 maximum food allowance of up to \$38.00 per day or  
1141 current University per diem rate.
- 1142 c. Motel costs will be reimbursed at the single room  
1143 rate. Telephone calls other than those related to  
1144 University business, from motels will not be  
1145 reimbursed.
- 1146 d. Rental car costs will be reimbursed when prior  
1147 approval for car rental is granted by the  
1148 University. The use of Economy Class vehicles is

- 1149 recommended.
- 1150 e. Airline Travel. When airline travel is approved  
1151 by the University, Consultants shall contact  
1152 University designated travel agents. Consultants  
1153 should travel "Coach Class" and should purchase  
1154 tickets at least 14 days in advance of travel when  
1155 possible.
- 1156 f. There will be no reimbursement for travel  
1157 including mileage, lodging, meals or parking  
1158 within the state of Indiana.
- 1159 g. Out of state vehicle travel will be reimbursed at  
1160 the rate of 40.5 cents per mile, or current  
1161 University mileage rate.
- 1162 h. Expense of filing fees for securing approval from  
1163 governing authorities will be reimbursed.
- 1164 i. Expense of renderings or models or mock-ups  
1165 requested by the Owner will be reimbursed.

1166 **Printing Costs**

- 1167 a. All printing for pre-bid or Owner-required reviews  
1168 ("review sets"), and renderings/presentations shall  
1169 be produced and distributed by the approved  
1170 Indiana University Centralized Printing Vendor  
1171 ("Printing Vendor"). Any expenses associated with  
1172 such drawing and specification printing shall be  
1173 borne by Indiana University and shall not be a  
1174 reimbursable item to the Owner. Consultants shall  
1175 coordinate submission of either paper copies or  
1176 electronic files of the review sets to the  
1177 Printing Vendor along with instructions to the

1178 Printing Vendor for distribution of the review  
1179 sets.

1180  
1181 b. All printing for project construction bid drawings,  
1182 specifications, and addenda will be produced and  
1183 distributed by the Printing Vendor. The Printing  
1184 Vendor will also host an online web-based planroom  
1185 that will list current and upcoming IU construction  
1186 bid projects for information as well as bid set  
1187 ordering. Consultants shall work with the Printing  
1188 Vendor to coordinate the direct upload or mailing of  
1189 construction document files/originals.

1190  
1191 c. Any expenses associated with reports or documentation  
1192 above the standard incidental printing, approved by  
1193 I.U. in advance, shall be borne by Indiana University  
1194 and not as a reimbursable item to the Owner.  
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1200 **Testing Costs**

1201 All project testing required by the project specifications, and  
1202 not designated the responsibility of the contractor, will be  
1203 contracted by the A/E and billed to the University as a  
1204 reimbursable expense.

1205 miscellaneous expenses, shall be part of Basic Services.

1206 **10.2.2** Miscellaneous Expenses: There will be no  
1207 reimbursement for miscellaneous expenses. These include: telefax,  
1208 incidental printing and copying, office supplies, computer discs,  
1209 couriers, federal express, postage, mail services, and local and  
1210 long distance telephone service charges, supplies and other  
1211 miscellaneous expenses are to be considered as part of the cost of

1212 doing business, and as such, are not reimburseable. They are a  
1213 part of basic services.

1214 **10.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES**

1215 **10.3.1** Payments for Basic Services shall be made monthly or at  
1216 end of each phase, in accordance with a schedule of invoices for  
1217 each phase of the Project prepared by the Engineer and approved by  
1218 the Owner.

1219 **10.3.2** Payments for Basic Services shall be made monthly or at  
1220 end of each phase, in accordance with a schedule of invoices for  
1221 each phase of the Project prepared by the Architect and approved  
1222 by the Owner.

1223 **10.4 PAYMENT ON ACCOUNT OF ADDITIONAL SERVICES**

1224 **10.4.1** Payments on account of the Engineer's Additional  
1225 Services and for Reimbursable Expenses shall be made monthly upon  
1226 presentation of the Engineer's statement of Additional Services  
1227 rendered or Reimbursable Expenses incurred.

1228 **10.5 PAYMENTS WITHHELD**

1229 **10.5.1** No deductions shall be made from the Engineer's  
1230 compensation on account of penalty, liquidated damages or other  
1231 sums withheld from payments to Contractors, or on account of the  
1232 cost of changes in the Work, other than those for which the  
1233 Engineer has been found to be liable.

1234 **10.5.2 10.6 ENGINEER'S ACCOUNTING RECORDS**

1235 **10.6.1** Records of Reimbursable Expenses, expenses pertaining  
1236 to Additional Services and services performed on the  
1237 basis of a multiple of Direct Personnel Expense shall  
1238 be available to the Owner or the Owner's authorized

1239 representative at mutually convenient times.  
1240 **10.6.2** Until such time as all close out documents are  
1241 submitted to the Owner, in form and substance  
1242 reasonably satisfactory to the Owner, including Punch-  
1243 List items and all required As-Builts, Record Documents  
1244 and, if applicable, As-Built BIM Models, the Owner will  
1245 withhold from the Engineer's payment invoice an amount  
1246 equal to the entire amount of the Closeout Phase fee.  
1247 This is meant as a fair value of the Engineer's work  
1248 remaining to review and produce the close out  
1249 documents.

## 1250 ARTICLE 11

### 1251 **BASIS OF COMPENSATION**

1252 The Owner shall compensate the Engineer as follows:

#### 1253 **11.1 BASIC COMPENSATION**

1254 **11.1.1** FOR BASIC SERVICES, as described in Article 2, and any  
1255 other services defined in this Agreement as Basic  
1256 Services, Basic Compensation shall be computed as  
1257 follows: A fixed fee calculated as a stipulated  
1258 percentage of the probable construction costs. Any  
1259 additional fees for substantial changes of scope must  
1260 be negotiated and an addendum added to this contract or  
1261 with prior agreement of the parties the fee may be  
1262 established as "NOT TO EXCEED" amount. If the average  
1263 of the project bids come in 15% or more under the  
1264 estimate provided by the Architect at the initiation of  
1265 this contract, a deduct addendum may be requested to  
1266 adjust the fees. Reduction to project scope does not  
1267 allow the Architect additional fees.  
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1276 **11.1.2** Where compensation is based on a stipulated sum or

10/1/09

1277 percentage of Construction Cost, progress payments for Basic  
1278 Services in each phase shall total the percentages of the total  
1279 Basic Compensation payable as listed on the Project Cost Model  
1280 that is attached.

1281 **11.2 COMPENSATION FOR ADDITIONAL SERVICES**

1282 **11.2.1** FOR PROJECT REPRESENTATION BEYOND BASIC SERVICES, as  
1283 described in Paragraph 3.2, compensation shall be computed as  
1284 agreed by Owner and Engineer in writing.

1285 **11.2.2** FOR ADDITIONAL SERVICES OF THE ENGINEER, as described  
1286 in Articles 3 and 12, other than (1) Additional Project  
1287 Representation, as described in Paragraph 3.2 and (2) services  
1288 included in Article 12 as part of Basic Services, but excluding  
1289 services of Consultants, compensation shall be computed as agreed  
1290 by Owner and Engineer, in writing.

1291 **11.2.3** FOR ADDITIONAL SERVICES OF CONSULTANTS, compensation  
1292 shall be computed at a multiple of 1.1 times the actual amounts  
1293 billed to the Engineer for such services.

1294 **11.3 REIMBURSABLE EXPENSES**

1295 **11.3.1** FOR REIMBURSABLE EXPENSES, as described in Paragraph  
1296 10.2, and any other items included in Article 12 as Reimbursable  
1297 Expenses, a multiple of 1.1 times the expenses incurred by the  
1298 Engineer, the Engineer's employees and Consultants in the interest  
1299 of the Project.

1300 **11.4 ADDITIONAL PROVISIONS**

1301 **11.4.1** IF THE BASIC SERVICES covered by this Agreement have  
1302 not been completed within sixty days of the final completion of  
1303 construction of the Project, through no fault of the Engineer,  
10/1/09

1304 extension of the Engineer's services beyond that time shall be  
1305 compensated as provided in Subparagraph 11.2.2. If in the event  
1306 that the period of construction substantially exceeds the  
1307 Engineer's estimated construction period the University will  
1308 consider the Engineer's request for additional fees.

1309 **11.4.2** Payments are due and payable forty-five (45) days from  
1310 the date of the Engineer's invoice. Amounts unpaid forty-five (45)  
1311 days after the invoice date shall bear interest at the then  
1312 current prime rate.

1313 **ARTICLE 12**

1314 **OTHER CONDITIONS OR SERVICES**

1315 The following provisions supplement, modify, change, delete  
1316 from, and add to, the Standard Form of Agreement between Owner and  
1317 Engineer dated \_\_\_\_\_, and shall supersede any  
1318 inconsistent printed provisions. When any portion of any paragraph  
1319 (herein the term "paragraph", with an identifying number, includes  
1320 sub-paragraph and sub-subparagraph as appropriate) or clause  
1321 thereof is modified or deleted by these terms, the unaltered  
1322 provisions of the standard form shall remain in effect.

1323 THIS AGREEMENT entered into as of the day and year first  
1324 written above.

1325

1326	OWNER	ENGINEER
1327		
1328	_____	_____
1329	(Signature)	(Signature)
1330		
1331	_____	_____
1332	(Printed name and title)	(Printed name and title)
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**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 \_\_\_\_\_