
AIA Document B141

Standard Form of Agreement Between Owner and Architect

where the basis of payment is a
STIPULATED SUM

1987 EDITION

*THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH
AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.*

*The 1987 Edition of AIA Document A201, General Conditions of the Contract for Construction, is adopted
in this document by reference. Do not use with other general conditions unless this document is modified.*

This document has been approved and endorsed by The Associated General Contractors of America.

AGREEMENT

made as of the _____ day of _____ in the year of
Two Thousand and _____

BETWEEN the Owner:
(Name and address)

and the Architect:
(Name and address)

For the following Project:
(Include detailed description of Project, location, address and scope.)

The Owner and Architect agree as set forth below.

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TERMS AND CONDITIONS OF AGREEMENT BETWEEN OWNER AND ARCHITECT

ARTICLE 1

ARCHITECT'S RESPONSIBILITIES

1.1 ARCHITECT'S SERVICES

1.1.1 The Architect's services consist of those services performed by the Architect, Architect's employees and Architect's consultants as enumerated in Articles 2 and 3 of this Agreement and any other services included in Article 11.

1.1.2 Architect shall exercise a degree of care and diligence in the rendition of all services under this Agreement in accordance with the highest professional standards prevailing in the Central Florida area and all of the Architect's services under this Agreement shall be performed as expeditiously as is consistent with said standards. Upon request of the Owner, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner. Any adjustments to this schedule shall be of no force and effect until such adjustments are agreed to in writing by Owner and Architect.

1.1.3 The services covered by this Agreement are subject to the time limitations contained in Subparagraph 10.3.1.

ARTICLE 2

SCOPE OF ARCHITECT'S BASIC SERVICES

2.1 DEFINITION

2.1.1 The Architect's Basic Services consist of those described in Paragraphs 2.2 through 2.6 and any other services identified in Article 12 as part of Basic Services and include without limitations normal structural, mechanical and electrical engineering services necessary to produce a complete and

accurate set of Construction Documents, as described by and required in Paragraph 2.4.

2.2 SCHEMATIC DESIGN PHASE

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

2.2.2 The Architect shall provide a preliminary evaluation of the Owner's program schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Subparagraph 5.2.1.

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

2.2.4 Based on the mutually agreed-upon program, schedule and construction budget requirements, the Architect shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components. The Schematic Design Documents shall comply with all applicable laws, statutes, ordinances, codes, orders, rules and regulations, to the extent this Phase of services allows.

2.2.5 The Architect shall submit to Owner a Detailed Statement of Probable Construction Costs of the Project, which statement shall be based on the estimated cost per gross square foot for the Project and shall establish an elapsed time factor for the period of time from the commencement to the completion of the construction of the Project.

2.3 DESIGN DEVELOPMENT PHASE

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

and such other elements as may be appropriate. *The Design Development Documents shall comply with all applicable laws, statutes, ordinances, codes, orders, rules and regulations, to the extent this Phase of services allows.*

2.3.2 The Architect shall submit a further Detailed Statement of Probable Construction Costs of the Project as each phase of the Project based on area and volume and shall establish an elapsed time factor for the period of time from the commencement to the completion of the construction of the Project.

2.3.3 Design changes by the Owner can be made up to Phase III (50% completion) with no additional services being charged by the Architect.

2.3.4 Architect agrees to hire a Professional Cost Estimator who shall not be a member of the Architect's firm.

2.4 CONSTRUCTION DOCUMENTS PHASE

2.4.1 Based on the approved Design Development Documents and any further adjustments in the scope of quality of the Project or in the construction budget authorized by the Owner, the Architect shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project. The Construction Documents shall comply with all applicable laws, statutes, ordinances, codes, rules and regulations to the extent that Phase of services allows.

2.4.2 The Architect shall assist the Owner in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract and the form of Agreement between the Owner and Contractor.

2.4.3 The Architect shall advise the Owner of any adjustments to previous preliminary estimates of Construction Cost indicated by changes in requirements or general market conditions.

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

2.5 BIDDING OR NEGOTIATION PHASE

2.5.1 The Architect, following the Owner's approval of the Construction Documents and of the latest Detailed Statement of Probable Construction Cost,

which statement shall indicate the cost of each category of work involved in constructing the Project and shall establish an elapsed time factor for the period of time from the commencement to the completion of the construction of the Project shall assist the Owner in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction.

2.6 CONSTRUCTION PHASE ADMINISTRATION OF THE CONSTRUCTION CONTRACT

2.6.1 The Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the Contract for Construction and terminates at the earlier of the issuance to the Owner of the final Certificate for Payment or 60 days after the date of Substantial Completion of the Work.

2.6.2 The Architect shall provide administration of the Contract for Construction as set forth below and in the editions of AIA Documents A201, General Conditions of the Contract for Construction, current as of the date of this Agreement, unless otherwise provided in this Agreement.

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

2.6.4 The Architect shall be a representative of and shall advise and consult with the Owner (1) during construction until final payment to the Contractor is due, and (2) as an Additional Service at the Owner's direction from time to time during the correction period described in the Contract for Construction. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written instrument.

2.6.5 The Architect shall visit the site at *once-a-week* intervals appropriate to the stage of construction or as otherwise agreed by the Owner and Architect in writing to become familiar with the progress and quality of the Work completed and to determine in general if the Work is *proceeding in accordance with all the requirements of the Contract Documents*. *The Architect shall promptly submit to the Owner a detailed written report subsequent to each such on-site visit and shall within two (2) working days notify, in writing, the Owner of any observation of any person performing the Work failing to do so in accordance with the Contract*

Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work. The Architect will exercise the utmost care and diligence in discovering and promptly reporting to the Owner any defects or deficiencies in the work of the Contractor or any of its subcontractors, or their agents or employees, or any other person performing any of the Work in the construction of the Project. Any defective Plans or Specifications furnished by the Architect will be promptly corrected by the Architect at no cost to the Owner. The Owner's approval, acceptance, use of or payment for all or any part of the Architect's services hereunder or of the Project itself shall in no way alter the Architect's obligations or the Owner's rights hereunder.

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

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

2.6.8 Except as may otherwise be provided in the Contract Documents, the Owner and Contractor may communicate through the Architect notwithstanding anything to the contrary in this Agreement, the Owner has not relinquished its right to communicate with the Contractor directly, provided, however, the Owner shall notify Architect of all such significant communications and provide the Architect a copy of any such written communications. The Architect agrees to act as the representative of Owner in connection with any communication by or with the Contractor and/or Architect's consultants. Communications by and with the Architect's consultants shall be through the Architect.

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

2.6.10 The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's observations at the site as provided in

Subparagraph 2.6.5 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Architect.

2.6.11 The Architect shall have the responsibility and authority to reject Work, which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have the responsibility and 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 provided, however, the Architect must obtain the Owner's prior written approval of any such special inspection or testing. However, neither this authority of the Architect 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 Architect to the Contractor, Subcontractor, material and equipment suppliers, their agents or employees or other persons performing portions of the Work.

2.6.12 The Architect shall review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, for the purpose of determining whether or not the Work, when completed, will be in compliance with the requirements of the Contract Documents. The Architect's action shall be taken in accordance with the schedule submitted to Owner pursuant to Subparagraph 1.1.2 hereof so as to cause no delay in the Work or in the construction by the Owner or of separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional

certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

2.6.13 The Architect shall prepare Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary by the Architect as provided in Subparagraph 3.1.1, for the Owner's approval and execution in accordance with the Contract Documents, and may authorize minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the contract Time which are not inconsistent with the intent of the Contract Documents. The architect shall render a preliminary decision on all requests for adjustment to the Contract Sum, or for extension of the Contract time, within ten (10) calendar days of such request. The Architect shall attach to each proposed Change Order or Construction Change Directive, a complete explanation of the cause for such change, and the Architect's rationale for his recommendations.

2.6.14 On behalf of the Owner, the Architect shall conduct inspections, determine the date or dates of Substantial Completion and final completion and shall issue a Certificate of Substantial Completion and the Certificate of Final Inspection. The Architect will receive and review (and approve or disapprove, as the case may be) written warranties, guarantees and related documents required by the Contract Documents to be assembled by the Contractor and shall issue a final Certificate of Payment upon compliance with the requirements of the Contract Documents.

2.6.15 The Architect shall interpret and provide recommendations concerning performance of the Owner and Contractor and the requirements of the Contract Documents on written request of either the Owner or Contractor. The Architect shall also be the initial interpreter of the Contract Documents when necessary to clarify any term, provision or condition thereof. The Architect's response to such requests shall be made with reasonable promptness and within any time limits agreed upon.

2.6.16 Interpretations and decisions of the Architect 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 Architect 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 in the absence of negligence.

2.6.17 The Architect's decisions on matters relating to aesthetic effects shall be final if consistent with the intent expressed in the Contract Documents.

2.6.18 The Architect 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.

2.6.19 Architect hereby represents and warrants to the Owner the following:

(a) that Architect is financially solvent, able to pay his debts as they mature and possessed of sufficient working capital to complete the services required and perform his obligations hereunder;

(b) that Architect is able to furnish any of the tools, materials, supplies, equipment and labor required to complete the services required hereunder and perform all of his obligations hereunder and has sufficient experience and competence to do so;

(c) that Architect is authorized to do business in the State of Florida and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over him and the services required hereunder and the Project itself;

(d) that Architect's execution of this Agreement and his performance thereof is within his duly authorized powers; and

(e) that Architect's duly authorized representative has visited the Project site, familiarized himself with the local conditions under which the services required hereunder are to be performed and correlated his observations with all of the requirements of the Contract Documents.

Architect agrees said representations and warranties in this Subparagraph 2.6.19 shall survive the execution and delivery of this Agreement.

2.6.20 All plans shall be the following size - 30" x 42" and shall be drawn in 1/8" = 1" scale. The Architect shall provide the Owner with Phase I, Phase II, and Phase III documentation (as stated in the Florida Building Code in section 423.) drawn on latest version

of AutoCAD on a CD or DVD. In addition the Architect shall provide the Owner with five (5) sets of Plans and Specifications at each phase. In addition the Architect shall provide the Owner with ten (10) sets of Plans and Specifications subsequent to the bid.

At final closeout the construction drawings will be updated to reflect all changes by the Architect during the construction period. Prior to substantial completion provide a blue-line set to the owner & one to the construction manager. In addition provide a final AutoCAD set to both the owner & construction manager for their use in completion of the as-builts.

2.6.21 The Architect shall review and approve all "as-builts" prepared by or on behalf of the Contractor.

2.6.22 The Architect shall submit to the Owner exterior and interior color boards prior to the bid.

ARTICLE 3

ADDITIONAL SERVICES

3.1 GENERAL

3.1 The services described in this Article 3 are not included in Basic Services unless so identified in Article 11, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. The services described under Paragraphs 3.2, 3.3 and 3.4 shall only be provided if authorized or confirmed in writing by the Owner. Notwithstanding anything to the contrary in this Agreement, Owner shall not be responsible to pay and the Architect shall not be entitled to receive compensation for any Contingent Additional Services if such services were required due to the fault of the Architect or the Architect's failure to perform in accordance with the terms of 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 Architect 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 Architect, and the Architect shall be compensated therefore as agreed by

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

3.3 CONTINGENT ADDITIONAL SERVICES

3.3.1 Making significant 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. The services described in this Subparagraph 3.3.1 shall be deemed Additional services only if the Architect can demonstrate to Owner that a direct increase in the Architect's costs has been incurred.

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

3.3.3 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.

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

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

3.4 OPTIONAL ADDITIONAL SERVICES

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

3.4.2 Providing financial feasibility or other special studies.

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

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

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

3.4.6 Providing services to investigate existing conditions or facilities or to make measured drawings thereof.

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

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

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

3.4.10 Providing detailed estimates of Construction Costs except as otherwise provided herein.

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

3.4.12 Providing analyses of owning and operating costs.

3.4.13 Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.

3.4.14 Providing services for planning tenant or rental spaces.

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

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

3.4.17 Providing services after completion of the Construction Phase.

3.4.18 Providing services of consultants for other than architectural, structural, mechanical and electrical engineering portions of the Project provided as a part of Basic Services.

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

ARTICLE 4

OWNER'S RESPONSIBILITIES

4.1 The Owner shall consult with the Architect regarding requirements for the Project including the Owner's contemplated objectives, schedules, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

4.2 The Owner shall consult with the Architect, establish and update an overall budget for the Project, including the Construction Cost, the Owner's other

costs and reasonable contingencies related to all of these costs.

4.3 If requested by the Architect, 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 Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

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

4.6 The Owner shall furnish the services of geotechnical engineers when such services are requested by the Architect. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity test, including necessary operations for anticipating sub-soil conditions, with reports and appropriate professional recommendations. The Architect shall review the tests and information furnished to the Architect by or on behalf of the Owner pursuant to this Paragraph 4.6 and confirm in writing that the review has been made.

4.6.1 The Owner shall furnish the services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Architect provided that Owner shall retain such consultants only if such consultants are not retained by Architect as a part of Basic Services hereunder.

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 Constructor'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. The Architect shall review the information furnished to the Architect by or on behalf of the Owner pursuant to this Paragraph 4.8 and confirm in writing that the review has been made.

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 absent the negligence of Architect, the Architect shall be entitled to rely upon the accuracy and completeness thereof.

4.10 Prompt written notice shall be given by the Owner to the Architect if the Owner becomes aware of any fault or defects in the Project or nonconformance with the Contract Documents.

4.11 The proposed language of certificates or certifications requested of the Architect or Architect's consultants shall be submitted to the Architect for review and approval at least 7 days prior to execution. The Owner shall not request certifications that would require knowledge or services beyond the scope of this Agreement.

4.12 Notwithstanding anything to the contrary in Article 4, the Owner shall only furnish information or services described in this Article to the extent that any such information or service is reasonably required by the Architect to perform his services under this Agreement.

ARTICLE 5

CONSTRUCTION COSTS

5.1 DEFINITION

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

5.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished

by the Owner and equipment designed, specified, selected or specially provided for by the Architect, plus a reasonable allowance for the Contractor's overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work during construction.

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

5.2 RESPONSIBILITY FOR CONSTRUCTION COST

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

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

5.2.3 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect 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.

5.2.4 If a fixed limit of Construction Cost (adjusted as provided in Subparagraph 5.2.3) is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall:

- .1 give written approval of an increase in such fixed limit;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 if the Project is abandoned, terminate in accordance with Paragraph 7.3; or
- .4 cooperate in revising the Project scope and quality as required to reduce the Construction Cost.
- .5 If design exceeds budget, the Architect is to absorb the cost of the re-design.

5.2.5 If the Owner chooses to proceed under Clause 5.2.4.4, the Architect, without additional charge, shall modify the Construction Documents as necessary to comply with the fixed limit, if established as a condition of this Agreement. The modification of Contract Documents shall be the limit of the Architect's responsibility arising out of the establishment of a fixed limit. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

ARTICLE 6

USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

6.1 All Drawings and Specifications and other documents prepared by the Architect for the Project are and shall remain the property of the Owner, and Owner shall retain all common law, statutory and other reserved rights with respect thereto. Any reuse or adaptation without the Architect's professional involvement will be at the Owner's sole risk and without liability to the Architect.

6.2 Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be

construed as publication in derogation of the Architect's reserved rights.

ARTICLE 7

TERMINATION, SUSPENSION OR ABANDONMENT

7.1 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. In the event this Agreement is terminated due to the fault of the Owner, the Architect shall be entitled to receive compensation for the portion of his fee then earned and all substantiated Reimbursable Expenses incurred as of the date of termination, together with, as liquidated damages, an additional amount equal to 1/10th of the amount he would otherwise have been entitled to receive in fees under the Agreement. The Architect waives any other claims for damages against the Owner.

7.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, provided that the services required of the Architect hereunder cannot be substantially completed in accordance with the schedule described in Subparagraph 1.1.2, the Architect's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Architect's services.

7.3 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect in the event that the Project is permanently abandoned. If the Project is abandoned by the Owner for more than 90 consecutive days, either party may terminate this Agreement by giving written notice to the other party.

7.4 Persistent failure by the Owner to make payments to the Architect in accordance with Agreement or failure of the Owner to pay the Architect within 30 days of receipt of a statement for services properly performed shall be considered substantial nonperformance and cause for termination.

7.5 If the Owner fails to make payment when due for services and expenses properly performed, the Architect may, upon seven days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is for such

services and expenses that have been properly performed is received by the Architect 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 Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services.

7.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with the Reimbursable Expenses then due.

ARTICLE 8

MISCELLANEOUS PROVISIONS

8.1 Unless otherwise provided, this Agreement shall be governed by law of the site of the Project.

8.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

8.3 The Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, but only to the extent of actual recovery of any insurance proceeds. The Owner and Architect each shall require similar waivers from their contractors, consultants and agents.

8.4 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Architect shall assign this Agreement without the written consent of the other and the Architect shall not assign any moneys due or to become due under this Agreement without the Owner's prior written consent.

8.5 This Agreement represents the entire and integrated agreement between the Owner and Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

8.6 Nothing contained in this Agreement shall create a contractual relationship with or cause of action

in favor of a third party against either the Owner or Architect.

8.7 Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos products, polychlorinated biphenyl (PCB) or other toxic substances provided, however, the Architect shall report to the Owner the presence and location of any hazardous material of which the Architect is aware or that an architect of similar skill and expertise should have noticed.

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

ARTICLE 9

PAYMENTS TO THE ARCHITECT

9.1 DIRECT PERSONNEL EXPENSE

9.1.1 Subject to the provisions of Subparagraph 10.1.2 hereof, the Owner shall make payments directly to the Architect within thirty (30) days after the Owner's receipt and approval of the Architect's monthly statement, lien waivers or releases, all in a form satisfactory to the Owner.

9.2 REIMBURSABLE EXPENSES

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

9.2.1.1 Fees paid for securing approval of authorities having jurisdiction over the Project.

9.2.1.2 Reasonable expense of reproductions necessary for the rendition of services hereunder,

which expense shall not include the expense of producing the sets of documents referred to in Subparagraphs 2.2.4, 2.3.1, 2.4.1 and 2.6.20 hereof since this expense is covered in Architect's compensation for Basic Services.

9.2.1.3 Expense of any sales, use, occupation or similar taxes applicable to this Agreement.

9.2.1.4 Expense associated with the use of outside computers when authorized in advance in writing by the Owner.

9.2.1.5 Expense of models, presentation materials and photographs when authorized in advance in writing by the Owner.

9.2.1.6 Expense of special consultants when authorized in advance in writing by the Owner.

9.2.1.7 Such other expenses incurred in connection with the Project when specifically authorized in advance in writing by the Owner.

9.3 PAYMENT WITHHELD

9.3.1 No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the work other than those for which the Architect has been found to be liable unless the Architect has not properly performed the services required in accordance with the terms of this Agreement. The Architect shall submit to Owner an invoice for any Additional Services performed hereunder within sixty (30) days of providing such services. If the Architect fails to timely submit invoices as required herein, within (60) days, the Architect shall be deemed to have waived his right to compensation for such services.

9.4 ARCHITECT'S ACCOUNTING RECORDS

9.4.1 Records of Architect's expenses and hours pertaining to this Project shall be kept in accordance with Generally Accepted Accounting Principles, which principles shall be consistently applied. Said records shall be available to the Owner or its authorized representative for inspection and copying during regular business hours for three (3) years after the date of the final Certificate of Payment.

ARTICLE 10

BASIS OF COMPENSATION

The Owner shall compensate the Architect as follows:

10.1 BASIC COMPENSATION

10.1.1 FOR BASIC SERVICES, as described in Article 2, and any other services included in Article 11 as part of the Basic Services. Basic Compensation shall be computed as follows:

(Insert basis of compensation, including stipulated sums, multiples or percentages, and identify phases to which particular methods of compensation apply, if necessary.)

10.1.2 Where compensation is based on a stipulated sum or percentage of Construction Costs, progress payments for Basic Services in each phase shall total the following percentages of the total Basic Compensation payable:

Schematic Design Phase:	Fifteen Percent	(15%)
Design Development Phase:	Twenty Percent	(20%)
Construction Documents Phase:	Forty Percent	(40%)
Bidding or Negotiations Phase:	Five Percent	(5%)
Construction Phase Through Substantial Completion*	Eighteen Percent	(18%)
Construction Phase Through Final Construction*	Two Percent	(2%)
<hr/>		
Total Basic Compensation	One Hundred Percent	(100%).

Construction Phase payments are contingent on sufficient appropriations by the Florida Legislature.

10.1.3 In the event of a material change in the scope of the Project or the Architect's services, the Architect shall continue to perform in accordance with the terms of this Agreement during the course of any renegotiation of the Architect's compensation hereunder.

10.2 COMPENSATION FOR ADDITIONAL SERVICES

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

10.2.2 FOR ADDITIONAL SERVICES OF THE ARCHITECT, as described in Articles 3 and 11, other than (1) Additional Project Representation, as described in Paragraph 3.2, and (2) services included in Article 11 as part of Additional Services, but excluding services of consultants, compensation shall be computed as follows:

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

10.3.2 FOR ADDITIONAL SERVICES OF CONSULTANTS, including additional structural, mechanical and electrical engineering services and those provided under Subparagraph 3.4.17 or identified in Article 11 as part of Additional Services, ten percent (10%) will be added to the amounts billed to the Architect for such services.

(Identify specific types of consultants in Article 1)

10.4 REIMBURSABLE EXPENSES

10.4.1 FOR REIMBURSABLE EXPENSES, as described in Paragraph 9.2, and any other items included in Article 11 as Reimbursable Expenses, ten percent (10%) will be added to the expenses incurred by the Architect, the Architect's employees and consultants in the interest of the Project.

10.5 ADDITIONAL PROVISIONS

10.5.1 IF THE BASIC SERVICES covered by this Agreement have not been completed within Thirty-Six (36) months of the date hereof, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Subparagraph 10.3.2.

10.5.2 Payments are due and payable _____ () days from the date of the Architect's invoice. Amounts unpaid _____ () days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

(Insert rate of interest agreed upon.)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

ARTICLE 11

OTHER CONDITIONS OR SERVICES

(Insert descriptions of other services, identify Additional Services included within Basic Compensation and modifications to the payment and compensation terms included in this Agreement.)

11.1 Notwithstanding anything to the contrary in this Agreement, it is understood and agreed that the Owner shall have the right to assign this Agreement and the Drawings and Specifications, if required, to an institutional lender for the purpose of obtaining financing for the construction and/or completion of the Project, and the Architect agrees to (i) acknowledge such assignment allowing the financial institution, in the event of default, to rely upon the Drawings and Specifications and this Agreement, and (ii) acknowledge, where same is true, that the Owner is in good standing pursuant to this Agreement.

11.2 Architect agrees that it shall assign _____ ("Approved Project Representative") as its Project Representative for this Project, and that the Project Representative will devote his time as necessary to the Project as may be appropriate to and consistent with full and timely performance of this Agreement by Architect. Architect agrees that Approved Project Representative shall not be removed from their responsibilities on this Project without the written consent of Owner, except in the event of their death, disability or departure from the employ of Architect. In the event, however, that Approved Project Representative should become unavailable to serve as Project Representative, any subsequent Project Representative selected by the Architect for this Project must be approved by the Owner."

11.3 Architect shall insure specifically the indemnity contained in Paragraph 11.6 of this Agreement, and shall include the Indemnities as additional insured by causing amendatory riders or endorsements to be attached to the insurance policy described below in Paragraph 11.4 (b). The insurance coverage afforded under these policies shall be primary to any insurance carried independently by the Indemnities. The amendatory riders or endorsements shall indicate that as respects the Indemnities, there shall be severability of interests under said insurance policies for all coverage's provided under said insurance policies.

11.4 Architect shall maintain, at his own expense, the following insurance coverage's, insuring the Architect, his employees, agents and designees and the Indemnities as required herein, which insurance shall: (1) be placed with insurance companies rated at least Class A VI by Best's Key Rating Guide; and (2) shall incorporate a provision requiring the giving of written notice to Owner at least thirty (30) days prior to the cancellation, non-renewal or material modification of any such policies as evidenced by return receipt of United States certified mail:

(a) Architect's Professional Liability Insurance in limits not less than One Million Dollars (\$1,000,000)(including contractual liability coverage with all coverage retroactive to the earlier of the date of this Agreement and the commencement of Architect's services in relation to the Project), with a per occurrence deductible not to exceed \$5,000, covering errors, omissions, negligence, personal injury, bodily injury and property damages, said coverage to be maintained for a period of three (3) years after the date of final payment hereunder. If such insurance is based on a "claims made" policy, Architect shall provide to the Owner, before any fees are paid under this Agreement, satisfactory proof that Supplemental Extended Reporting Period ("tail") coverage is available if Architect should change insurance companies or policies within three (3) years after the date of final payment hereunder. The Architect may elect to provide a \$7,500 per occurrence deductible plus a \$2,500 interest bearing escrow account to be maintained by the Owner. This amount shall remain in said escrow account for a period of three (3) years after the date of final payment hereunder. Assuming that no claims have been filed against the Architect, at the end of the three (3) year period, the \$2,500 and accrued interest shall be returned to the Architect or his representative."

(b) Commercial Comprehensive Liability Insurance (including blanket contractual liability and completed operations, explosion, collapse and underground hazards) in limits of not less than One Million Dollars (\$1,000,000), with no deductible, covering personal injury, bodily injury and property damage.

(c) Comprehensive Automobile Liability Insurance, (including hired and non-owned vehicles, if any) in limits of not less than One Million Dollars (\$1,000,000) covering personal injury, bodily injury and property damage.

(d) Worker's Compensation Insurance in compliance with Chapter 440, Florida Statutes, with employer's liability coverage of not less than One Million Dollars (\$1,000,000).

(e) Valuable papers and records insurance in an amount of not less than One Hundred Thousand Dollars (\$100,000), with no deductible, to assure the substantial restoration of any plans, drawings, or other similar data related to the Architects serviced which are in the care, custody, or control of the Architect.

11.5 Architect shall submit valid certificates in form and substance satisfactory to Owner evidencing the effectiveness of the foregoing insurance policies along with original copies of the amendatory riders to any such policies to Owner for Owner's approval before Architect commences the rendition of any services hereunder and renewal or substitute certificates so long as the insurance is required under this Agreement.

11.6 The Architect hereby agrees to indemnify, defend and hold the Owner, and any subsidiary, parent or affiliate corporations of the Owner, or other persons or entities designated by the Owner, and their directors, trustees, officers, agents, employees and designees (collectively, the "Indemnitees") harmless from all losses, claims, liabilities, injuries, damages and expenses, including Attorneys' fees, that the Indemnitees may incur by reason of any injury or damage sustained to any person or property (including, but not limited to any one or more of the Indemnitees) arising out of or occurring in connection with Architect or the Architect's consultants errors, omissions or negligent acts.

11.7 The Architect hereby agrees to maintain the insurance described in Paragraph 11.3 hereof during the term hereof. If the Architect fails to furnish and maintain the insurance required by Paragraph 11.3, the Owner may purchase such insurance on behalf of the Architect, and the Architect shall pay the cost thereof to the Owner upon demand and shall furnish to the Owner any information needed to obtain such insurance.

11.8 Architect shall require the consultants to maintain in full force and effect professional liability insurance satisfactory to the Architect covering errors, omissions, negligence, personal injury, bodily injury and property damage, with a per occurrence deductible not to exceed \$5,000, in amounts not less than: (a) for structural engineers \$1,000,000; (b) for mechanical engineers, electrical engineers, civil engineers, \$250,000; and (c) for all others \$100,000. The Consultant may elect to provide a \$7,500 per occurrence deductible plus a \$2,500 interest bearing escrow account to be maintained by the Architect. This amount shall remain in said escrow account for a period of three (3) years after the date of final payment hereunder. Assuming that no claims have been filed against the Consultant, at the end of the three (3) year period, the \$2,500 and accrued interest shall be returned to the Consultant or his representative."

11.9 The Architect and Owner will meet on the job site with the Contractor on the eleventh (11th) month following final completion of the project. This site visit is for the purpose of inspecting the project prior to warranty expiration dates. Any deficiencies, problems, design flaws shall be corrected not less than thirty (30) days by the Contractor.

11.10 All notices or other communications hereunder to either party shall be (i) in writing and if mailed, shall be deemed to have been given on the earlier or actual receipt by the intended recipient or on the second business day after the date when deposited in the United States mail by registered or certified mail, postage prepaid, addressed as hereinafter, and (ii) addressed:

If to Owner: Daytona State College
 P.O. Box 2811
 Daytona Beach, FL 32120-2811

Attn: Mr. Steven Eckman
 Assoc. Director, Facilities Planning
 Fax No. (386) 506-3180

If to Architect:

Attn:
Phone No. ()
Fax No. ()

or to either party at such other address as such party may designate, in a notice to the other party, as its address for receipt of notices hereunder.

11.11 The parties waive any entitlement to federal jurisdiction in the courts of the United States of America, based on diversity of citizenship, and they agree that the venue of any civil action related to this Agreement shall be properly laid solely in Volusia County, Florida."

11.12 The parties shall, upon the filing of a civil action by one party against the other, immediately move for mediation pursuant to Chapter 44, Florida Statutes, which mediation shall be held within sixty (60) days of the filing of the civil action. If the civil action is settled at such mediation, each party shall bear their own fees and costs. If the civil actions not settled at such mediation the prevailing party in any civil action shall be entitled to recover from the non-prevailing party all of the prevailing party's litigation expenses (including, without limitation, attorney's fees in the trial and appellate courts, expert witness fees, and investigation expenses) reasonably incurred.

This Agreement entered into as of the day and year first above written.

EXECUTED FOR IDENTIFICATION this _____ day of _____, 20____.

OWNER:
DAYTONA STATE COLLEGE

By: _____,

Title: D. Kent Sharples, President

ARCHITECT:

By: _____,

Title: _____

