

**A/E PROFESSIONAL SERVICE AGREEMENT**

**THIS AGREEMENT** is entered into and dated this \_\_\_\_\_ day of \_\_\_\_\_, 2014, between Ramapo College of New Jersey (hereinafter referred to as "COLLEGE") and

Firm Name  
Firm Address

(hereinafter referred to as "A/E")

**WITNESSES THAT**

**I. EMPLOYMENT OF THE A/E**

- A. The COLLEGE employs the A/E and the A/E agrees to perform the professional services provided in this agreement in connection with the college's RFP dated \_\_\_\_\_ (RCNJ Project No. \_\_\_\_\_) as the A/E's proposal dated \_\_\_\_\_ (Exhibit \_\_\_\_\_).
  
- B. In the case the COLLEGE elects to engage the A/E beyond the initial project phase, the A/E agrees to perform such work required for design, bidding, construction contract administration and closeout in accordance with the terms and conditions of its proposal dated \_\_\_\_\_ (Exhibit \_\_\_\_\_) and this agreement.

**II. A/E SERVICES (GENERAL)**

The A/E shall perform in a good, skillful and prompt manner all A/E architectural, engineering, interior design, and equipment selection related to the \_\_\_\_\_ project. The A/E shall provide adequate documentation for review by the COLLEGE staff, its consultants, and regulatory authorities to assure the securing of all required building permits. The A/E's services if so authorized by COLLEGE shall extend to the bidding, award, construction and project closeout phases of the project to the satisfaction of the Contracting Officer as provided for in this agreement. To perform these services, the A/E shall employ or engage at its own expense the professional services of qualified consultants which may be required by reason of the scope of work. All such professionals shall be qualified and competent, and shall be approved by the Contracting Officer of the COLLEGE. Requests for the approval of consultants shall fully describe the scope of the work for which the consultants are being engaged. In addition to the services specified elsewhere in this agreement, the A/E and its consultants shall attend or be represented by the project manager at conferences with the COLLEGE, which may be required in connection with the services to be rendered for each phase of work.

Nothing contained in this agreement is intended to relieve the A/E of responsibility for endeavoring to guard the COLLEGE against defects and deficiencies in the work or any failure of the contractor(s) to comply with the agreement plans and specifications, and all applicable codes and standards. Notwithstanding any provisions in this agreement, the A/E shall not be relieved of liability to the COLLEGE as a result of any breach of this agreement by the A/E, and the COLLEGE may withhold any payments due to the A/E to satisfy any damages incurred because of the A/E, including damages not fully determined or liability for claims asserted against the COLLEGE. The acceptance, approval or payment of any of the plans, drawings, specifications or other work or services performed by the A/E under this agreement shall not constitute a release or waiver of any claim the COLLEGE has or may have for latent

defects or errors or other breaches of this agreement on the part of the A/E, or of any claims for breach of warranty or negligence.

### **III. INITIAL PHASE SCOPE OF WORK**

The scope of work for this phase shall include:

- A. Attendance at project kickoff meeting and progress meetings thereafter.
- B. Preparation of a work plan and schedule for the initial phase of work.
- C. Coordination of efforts with and incorporation of input of COLLEGE and Construction Management personnel.
- D. On-site examination of existing conditions.
- E. Analysis of documentation of existing conditions compiled to date.
- F. Assistance in the preparation of an Grant Applications.
- G. Program Documents: Program Documents shall be prepared in sufficient detail to outline the scope of the project and shall include the following where applicable:
  - 1. Narrative description of the project.
  - 2. Space analysis and narrative explanation.
  - 3. Analysis of existing utilities.
  - 4. Special features.
  - 5. A/E's revised estimate of probable cost of construction.

The A/E shall provide no less than ten (10) bound copies of the program documents to the College.

### **IV. SCHEMATIC DESIGN**

Schematic Design Documents shall be prepared based upon the approved Program Documents. They shall include the following where applicable:

- A. Outline of utility requirements.
- B. Site utility layouts.
- C. Diagrammatic sketches.
- D. Schematics of each building or facility (minimum 1/16" scale if possible).
- E. Space analysis if differing from program documents.
- F. Plans, elevations, sections.
- G. Outline specifications.
- H. Revised estimate of probable cost of construction.

The A/E shall provide no less than seven (7) full size bound copies and an electronic copy in pdf format of the Schematic Design Documents to the College.

**V. DESIGN SERVICES - - DOCUMENTATION REQUIREMENTS FOR PRELIMINARY PLANS AND SPECIFICATIONS, DESIGN DEVELOPMENT, FIFTY-PERCENT (50%) CONSTRUCTION DOCUMENTS AND FINAL CONSTRUCTION AGREEMENT DOCUMENTS**

The A/E shall prepare and submit the following documents to the COLLEGE:

A. Preliminary Plans and Specifications (Design Development): Preliminary Plans and Specifications and related documents to fix and describe the size, character and details of the entire project including the structural, mechanical and electrical systems, materials, and other essentials as may be appropriate shall be prepared by the A/E based upon the approved Schematic Design Documents. The Preliminary Plans and Specifications shall include the following:

1. Site plans.
2. Utility distribution systems.
3. Design analysis sufficiently complete to permit review including:
  - a. Structural analysis.
  - b. Mechanical analysis with single line diagrams and utility room sections.
  - c. Electrical analysis with single line diagrams, load analysis and circuit calculation.
  - d. Special features.
4. Outline specifications.
5. Plans, elevations, sections and other details pertinent to the features of the design.
6. Phasing plans for construction.
7. Revised estimate of the probable cost of construction sufficient.
8. Proposed Supplementary Instructions to Bidders and General Conditions deemed appropriate by the A/E to supplement or modify the COLLEGE's current Instructions to Bidders and General Conditions for COLLEGE administered building construction projects.

The A/E shall provide no less than seven (7) full size bound copies and an electronic copy in .pdf format of the Preliminary Plans and Specifications to the COLLEGE.

B. Fifty Percent (50%) Construction Documents and Final Construction Agreement Documents

1. The A/E shall prepare Construction Agreement Documents, including Plans and Specifications, setting forth in detail the work and materials and other requirements needed to obtain bids and to complete the construction of the entire project, to be based upon the Preliminary Plans and Specifications and related documents approved by the COLLEGE. Once the Construction Agreement Documents are deemed fifty percent (50%) complete by the A/E, the A/E shall submit to the COLLEGE for review and comment:
  - a. Site plans.
  - b. Utility distribution systems.
  - c. Specifications.
  - d. Plans, elevations, sections and other details pertinent to the design.
  - e. Revised estimate of the probable cost of construction.

- f. Phasing plans for construction.
- g. A list of major equipment with manufacturer and model number.
- h. Finalized Supplementary Instructions to Bidders and General Conditions deemed appropriate by the A/E to supplement or modify the COLLEGE's current Instructions to Bidders and General Conditions for COLLEGE administered construction projects.
- i. Project schedule with construction sequence plans.

The A/E shall provide no less than three (3) full size bound copies, three (3) half sized bound copies and an electronic copy in .pdf format of the Fifty Percent (50%) Construction Documents to the COLLEGE.

Upon formal approval by the COLLEGE of the fifty percent (50%) Construction Documents submittal, the A/E shall proceed with completing the Final Construction Agreement Documents.

2. The Final Plans and Specifications shall set forth clearly all the work and materials and other requirements necessary to complete the construction of the project, including all facilities and aspects of the project, and shall include site development and utility plans, as required.
3. The Final Specifications shall include for each branch of the work, such as general construction, mechanical and electrical, a schedule identifying each paragraph of the specifications and item for which shop drawings and/or samples and/or permits and approvals and/or other submittals are to be submitted by the contractor(s) before or during the construction work, and also all items required to be submitted by the contractor(s) upon completion of the work such as certifications, warranties, guarantees, bonds, maintenance and operating manuals, replacement parts, record drawings, and permits and approvals.
4. The A/E shall prepare plans and specifications in accordance with the COLLEGE's current Instructions to Bidders and General Conditions and any supplementary Instructions to Bidders and General Conditions expressly approved by the Contracting Officer of the COLLEGE for the project, and these shall conform to all applicable or appropriate code requirements in effect. The A/E and the COLLEGE will mutually establish the codes applying. The A/E shall be responsible for submitting plans and specifications to the appropriate regulatory authority and securing all required code approvals.
5. All Final Plans shall be original, prepared in a digitized format on a machine-readable medium utilizing AutoCAD Release 14.0 or higher in accordance with sound drafting practice, and shall be presented on mylar sheets suitable for legible reproduction. Except as otherwise specified, sheets shall have overall dimensions of 30 inches by 42 inches (30" x 42") maximum and all lettering shall be legible and suitable for reproduction. Final Plan Documents shall make reference to the COLLEGE by incorporating the COLLEGE title logo as portrayed on the COLLEGE letterhead, in a separate block of the title strip.

The final bound specifications shall bear the same identification. In each case, the COLLEGE's identification may be inserted below the identification of the A/E of record.

6. The Final Plans and Specifications and related agreement documents shall be complete and shall set forth the work and materials and other requirements necessary to complete the entire project, including necessary bidding information. The Final Specifications shall be bound in volume form and include an approved cover and title page, a table of contents, the COLLEGE's current Instructions to Bidders and General Conditions, the period of time specified for the construction of the project as approved by the Contracting Officer, supplementary Instructions to Bidders and General Conditions expressly approved by the Contracting Officer of the COLLEGE, the COLLEGE's current bid proposal and construction agreement forms, the payment and performance bond form in the form required by N.J.S.A. 18A:64-52 *et seq.*, and any supplementary information recommended by the A/E and approved by the Contracting Officer of the COLLEGE or requested by the Contracting Officer of the COLLEGE. The Final Construction documents shall divide the work into branches subject to the approval of the Contracting Officer of the COLLEGE, and as necessary in order to publicly solicit bids for the necessary construction work in accordance with N.J.S.A. 18A:64-52 *et seq.*
  7. The A/E shall also submit with the Final Construction Agreement Documents a colored rendering and photographs and negatives thereof.
  8. The A/E shall also submit with the Final Construction Agreement Documents an updated estimate of the probable cost of construction reflecting the final documents as approved, and the A/E shall also determine and report any changes in the statement which result from any changes in the Final Construction Agreement Documents.
- C. Documents Required for Project Funding: The A/E shall prepare and submit any documents required for project funding, whether from State, federal or other sources.
- D. Construction Cost: Construction Cost shall be all of the Contractor's supervision, labor, and materials, including that of its subcontractors and vendors, necessary to complete the work set forth in the bid construction documents. Equipment or furnishings not provided by the Contractor in the bid construction documents shall not be included in the Construction Cost, albeit included separately in the Total Project Cost, e.g. audio/visual equipment, security cameras, desktop computers, telephone handsets, office furniture.
- E. Construction Cost and Construction Cost Estimates: For the purpose of calculating the portion of the A/E fee based on a percentage of the Construction Cost Estimate, the estimate shall include:
1. All of the Contractor's supervision, labor and materials, including that of its subcontractors and vendors, necessary to complete the work that will be set forth in the bid construction documents.
  2. Fixtures and fixed equipment.
- F. Testing and Investigation: The COLLEGE may, when recommended by the A/E, furnish the A/E with a survey of the building site, giving the grades and lines of streets, pavements and adjoining

properties; the rights restrictions, easements, boundaries and contours of the building site, and information as to existing sewer, water, gas and electrical services. The COLLEGE, when recommended by the A/E, may also furnish borings, test pits and chemical, mechanical or other tests when required and agreed upon between the Contracting Officer and the A/E. The A/E shall not be held responsible for the basic accuracy of the surveys and the boring data prepared by others; however, the A/E is not relieved of the responsibility for verifying, when necessary, such information and calling apparent or obvious discrepancies and/or inconsistencies to the attention of the Contracting Officer. The A/E shall visually inspect the site in connection with its review of the information furnished and before utilizing the information in the performance of this agreement.

- G. Schedule of A/E's Design Service: Following the execution of this agreement, the A/E shall submit to the COLLEGE for approval a schedule showing proposed dates for submissions by the A/E, and the approval by the COLLEGE, of the initial phase of work, the Schematic Design Documents, the Preliminary Plans and Specifications (i.e. Design Development), the Fifty-Percent (50%) Construction Agreement Documents and the Final Construction Agreement Documents. The A/E shall take all necessary action to meet the approved schedules.
- H. Approvals by the COLLEGE: All documents, including plans and specifications, and any changes or revisions and all other submittals, including estimates of the probable cost of construction, shall be subject to the written approval of the Contracting Officer of the COLLEGE as a condition of their acceptance. Unless otherwise directed in writing by the Contracting Officer of the COLLEGE, the A/E shall not proceed with any phase of the design work until the documents for the prior phase have been approved by the COLLEGE and the A/E has been authorized to proceed.
- I. Changes: The Contracting Officer of the COLLEGE may at any time, by written order, issue additional instructions and require additional work or services not covered by this agreement. If design changes are requested by the COLLEGE after the Schematic Design Documents have been approved by the COLLEGE, or if changes are made in the scope of the work after approval by the COLLEGE of Preliminary Plans and Specifications and/or the Final Plans and Specifications, which changes require substantial reworking of such Plans and Specifications so as to cause the A/E to incur extra drafting or similar expenses, the A/E shall be entitled to compensation for the cost of the additional work and expenses on the basis of the application of the basic percentage applied to the cost of the change in an amount agreed to by the COLLEGE in writing. The A/E will not be reimbursed for any clarifications or revisions of any plans or specifications or other documents submitted which are attributed to its own errors or omissions.

## **VI. BIDDING OR NEGOTIATION PHASE REQUIREMENTS**

During the bidding of the project, the A/E shall assist the COLLEGE in preparing advertisements for bid, obtaining and evaluating bids, conducting pre-bid conferences, reviewing and tabulating bid proposals, and recommending award of the construction contract. If circumstances warrant and relevant statute permit negotiation of a construction contract, the A/E shall assist the COLLEGE in pursuing that option and participate in value engineering and finalizing terms and conditions that will enable award of a negotiated contract

Post-bid, the A/E shall also submit a revision of its estimate of the cost to construct the project, which takes into account the amounts of the construction agreements awarded for the construction of the project and any other factors as of the time of award of the construction agreements.

## **VII. ADMINISTRATION OF THE CONSTRUCTION AGREEMENTS**

The construction phase will commence with the award of the first construction agreements and will terminate when Certificates of Final Acceptance are issued to the contractors or when final payment is made to the contractors, whichever occurs later. The A/E shall administer the execution of the construction agreements. In carrying out this responsibility it shall:

- A. Represent the COLLEGE on the site and advise the contractors of all of the COLLEGE's instructions through interpretation of the agreement documents, conferences, and/or written communications. The A/E shall have the authority to act on behalf of the COLLEGE to the extent provided in this agreement and in the construction agreements. However, the A/E shall not issue change orders or directions involving changes in scope or cost unless prior authorization has been received from the Contracting Officer of the COLLEGE in writing.
- B. The A/E shall at all times have access to the work whenever it is in progress or preparation and shall, consistent with stage of construction, visit the site to maintain familiarity with the conditions, progress and quality of the work, and shall determine if the work is proceeding in accordance with the agreement documents. On the basis of its on-site observations as an architect or engineer, as the case may be, it shall endeavor to guard the COLLEGE against defects and deficiencies in the contractors' work. The A/E shall have its consulting, structural, mechanical, electrical, sanitary and other engineers or other consultants visit the site periodically, as is deemed necessary by the nature of the work in progress or as required by the COLLEGE, to observe their respective phases of the work and to report their respective findings. Detailed reports of consulting engineers as to the status and quality of construction shall be submitted to the A/E and the COLLEGE on a periodic basis.
- C. The A/E, except where it may be directly involved or has failed to perform its duty to observe the work in progress, shall not be responsible for the acts, negligence or omissions of the contractors, or any subcontractors, or any of the contractors' or subcontractors' agents or employees, or any other person performing any of the work.
- D. The A/E shall review payment requests or invoices submitted by the contractors and the amounts requested, determine the amounts due under the terms of the construction agreements, and certify the amount due on each invoice. The A/E's certifications for payment shall constitute a representation by the A/E to the COLLEGE based upon the A/E's observations at the site, and upon its verification of the data comprising the application for payment, that the work has progressed to the point indicated, that to the best of the A/E's knowledge, information and belief, the quality of the work is in accordance with the agreement documents, and that the contractor is entitled to payment in the amount certified. The A/E's certification shall be subject to an evaluation of the work as a functioning whole upon completion. By issuing a certification for payment, the A/E shall not represent that it has made any examination to ascertain how and for what purpose a contractor has used the monies paid to it under the construction agreement. The A/E will document non-

performance by a contractor or its subcontractor and advise the COLLEGE of the probable effect of delay to the project and other contractors.

- E. The A/E shall be, in the first instance, the interpreter of the requirements of the agreement documents and the impartial judge of the performance there-under. The A/E shall respond to Requests for Information from the contractors within seven (7) calendar days after receipt. The A/E's decisions in matters relating to artistic effect shall be final if consistent with the intent of the agreement documents.
- F. The A/E shall make specific evaluations and recommendations concerning claims submitted by the contractors, the execution and/or progress of the work, and all matters or questions related thereto.
- G. The A/E, after award of the construction agreements, shall prepare and distribute a set of documents to all parties concerned after incorporating: addenda information issued during the bidding period; accepted alternates. The final drawings shall be identified by a revision titled "Conformed Construction Agreement Documents" in the revision title block. All revised or modified areas of the documents are to be circled in irregular outline and referenced by specific numbering or letters to numbers or letters repeated in the Revision Box. They shall be submitted to the COLLEGE, and with the COLLEGE's approval shall be issued for construction use within fourteen (14) calendar days after agreement award. These conformed Construction Agreement Documents shall include final drawings.
- H. The A/E shall reject work that does not conform to the agreement documents. The A/E shall recommend to the COLLEGE to stop the work wherever, in its reasonable opinion, it may be necessary for the proper performance of the agreement.
- I. The A/E shall conduct regular job site meetings with the contractors and interested parties and report on and make recommendations relative to the progress of the work. Job meetings shall be held at least every two weeks or more frequently if required by job progress, and the A/E shall prepare minutes of each meeting and distribute these to the contractors and the COLLEGE within five (5) days.
- J. The A/E shall check and report on contractor proposals in connection with agreement changes, and submit necessary documents for change orders or for supplemental work initiated after the commencement of the construction phase.
- K. The A/E shall check contractor's shop drawings, samples and other submittals for conformity and compliance with the agreement documents, and render interpretations of drawings and specifications in order that the intent and meaning of the agreement documents may be faithfully carried out and understood by the contractors, a copy of all "Approved" or "Approved-as-Noted" shop drawings and other submittals shall be furnished by the A/E to the COLLEGE at the completion of the project. The A/E must complete the review of submittals and return to the contractors within fourteen (14) calendar days after receipt.



- L. The construction work may be programmed for C.P.M. monitoring or scheduling, and in such event the cost of such C.P.M. shall be borne by the COLLEGE or other parties. The A/E shall not delay the construction work and shall assist in coordinating and integrating the construction work in accordance with the schedule. Where no C.P.M. schedule is provided, the A/E shall perform its duties and administer the work in accordance with the approved schedule developed by the contractors and approved by the COLLEGE as required by the agreement documents. In either event, the A/E in performing its responsibilities in connection with the administration of the construction work shall make full use of the C.P.M. if provided and the A/E shall conform to the schedule.
- M. The A/E shall conduct inspections to determine the dates of substantial completion and final completion for each contractor and the project, shall prepare punch lists as required, shall obtain written guarantees and all other documents and items required to be submitted by the contractors as a condition of final completion, and shall certify that the contractors are entitled to the issuance of Final Acceptance Certificates and final payment under their agreements. The A/E shall also determine that the necessary documents are submitted to the COLLEGE in appropriate form in accordance with the agreements.
- N. The A/E shall provide to the COLLEGE drawings titled "As-Built Construction Documents" representing as-built field conditions, both in hard copy as well as in digitized format utilizing AUTOCAD Release 14.0 or higher.
- O. The A/E, or its designated consultants, will assist the COLLEGE in commissioning project-related equipment and systems and providing training to COLLEGE personnel in equipment/system operation.

## **VIII. COMPENSATION**

The COLLEGE shall pay the A/E as full compensation for all the services required under, or in connection with this agreement, irrespective of time duration of any of the design and/or construction contract administration phases, a fee in accordance with the following:

- A. Fixed Fee – Programming: For the preparation of program documents as defined in Paragraph III above (Phase I – Initial Phase Scope of Work), a fixed fee of \$\_\_\_\_\_.
- B. Basic Service Fee: The COLLEGE shall pay the A/E for the work required by this agreement, including all the work required during the remaining design phases, the bidding phase, the construction phase, and closeout phase, a fee totaling \_\_\_\_\_% of the approved construction budget (not including contingencies) established after the schematic design phase. This fee shall be paid as follows:
  - 1. Upon completion and acceptance of an amount equal to forty percent (40%) of the Preliminary Plans and Specifications (Design Development) and related documents, of the total basic services fee.

2. Upon the completion and acceptance of the Final Construction Agreement Documents, an additional sum, which, together with all payments previously made, shall equal seventy percent (70%) of the total basic services fee
  3. Upon the completion of the Bidding Phase, an additional sum, which, together with all payments previously made, shall equal seventy-five percent (75%) of the total basic services fee.
  4. For performance of Construction Administration required in connection with the construction phase, the A/E shall receive an additional sum, which, together with all payments previously made, shall equal ninety percent (90%) of the total basic services fee.
  5. For provision by the A/E to the COLLEGE of all required closeout documents and as-built drawings in AUTOCAD format, an additional sum which, together with all payments previously made, shall equal one hundred percent (100%) of the total basic services fee
- C. The COLLEGE reserves the right to require that it can secure agreements for the completion of the project, which together with other costs, enable it to complete the project within the approved program cost. If the final estimate of construction costs exceeds this amount, or if the amounts of the lowest acceptable bids exceed this amount, the A/E shall do any necessary redesign work and make all appropriate changes in the plans required to construct the project within the program costs or approved final cost estimate, or to establish approved alternates to aid in securing bids compatible with the program estimate. Any such design work and changes shall be undertaken by the A/E at no cost to the COLLEGE.
- D. The A/E shall submit with each invoice a certification that all associated A/E's, Engineers, Consultants, etc. have been paid a proportionate share of any previous payments made under this agreement, to the extent that they are entitled (Exhibit B).
- E. The final balance of the fee due under this agreement shall be paid not later than thirty (30) days from the date of acceptance by the COLLEGE of the completed construction under each agreement relating to the project.
- F. No deduction shall be made from the A/E's fee for any penalty or liquidated damages charged to any contractor.
- G. If the A/E is required to provide consultation concerning the replacement of any work damaged by fire or other cause beyond its control during construction or to furnish professional services in connection with the replacement of such work, or if the A/E is required to provide professional services made necessary by the default of a contractor in the performance of a construction agreement, the A/E shall be compensated for its actual costs, but only in accordance with a written supplemental agreement entered into in advance of the work.
- H. All payments to be made by the COLLEGE to the A/E under this agreement shall be subject to the availability of appropriations.

## **IX. TERMINATION OR POSTPONEMENT OF PROJECT**

- A. Termination: The COLLEGE retains the right to terminate the project for any reason. If for any reason the COLLEGE terminates the agreement, it will terminate this agreement upon seven (7) calendar days' written notice to the A/E. Upon receipt of the notice of termination, unless otherwise directed, the A/E shall immediately discontinue all work hereunder. Upon such termination, the A/E shall be paid a proportion of the fee which the services actually and satisfactorily performed by him shall bear to the total services contemplated under this agreement, less payments previously made.
- B. Postponement: The COLLEGE shall retain the right to postpone work on a project or to stop work temporarily. The COLLEGE may order that the work on the project be postponed, meaning not beginning or stopping work with no date certain for restart, or may order the work stopped temporarily with a date or event certain for restart. When work is postponed or stopped temporarily, the COLLEGE will give seven (7) calendar days written notice to the A/E where after the A/E shall cease all work on the project except as necessary to properly secure the project. If the COLLEGE directs that the work on the project resume within, twelve (12) months, the parties shall renegotiate this agreement under similar terms and conditions to the original.

## **X. AGREEMENT FOR PERSONAL SERVICES**

This agreement contemplates personal services by the A/E and the A/E shall not assign or transfer its obligations or rights under this agreement without the written consent of the COLLEGE. If the A/E is a sole proprietorship, in the event of its decease or disablement to the extent which would prevent the satisfactory performance on its part of the terms of this agreement, in the opinion of the Contracting Officer, the COLLEGE may terminate this agreement on five (5) calendar days' written notice to the A/E. When the A/E is an association of two or more A/Es, then, upon the decease or disablement of one of the partners of the association whose decease or disablement would impair the satisfactory performance of this agreement as determined by the Contracting Officer of the COLLEGE, the COLLEGE may terminate this agreement upon five (5) calendar days' written notice to the A/E. If the agreement is not so terminated by the COLLEGE, the association formed by the surviving partners shall assume full responsibility for the performance and completion of this agreement. Upon a termination of the agreement under this paragraph, the A/E shall be entitled to receive as full compensation for services rendered to the date of disability that portion of the fee which the services actually and satisfactorily performed by him shall bear to the total services contemplated under this agreement, less payments previously made.

## **XI. PUBLICITY**

Publicity and/or public announcements pertaining to the project shall be approved by the COLLEGE prior to release.

**XII. NOTIFICATIONS:**

Written notices required under this agreement shall be validly and sufficiently served by the COLLEGE upon the A/E if addressed and mailed by Certified Mail to the A/E at:

Name  
Firm Name  
Firm Address

Written notices from the A/E to the COLLEGE should be mailed by Certified Mail to:

Richard M. Roberts  
Associate Vice President for Administration and Finance, Contracting Officer  
RAMAPO COLLEGE OF NEW JERSEY  
505 Ramapo Valley Road  
Mahwah, NJ 07430-1680

**XIII. WORK DONE BY THE COLLEGE OR ITS AGENTS**

The COLLEGE reserves the right to either perform or hire consultants, such as a construction manager, to perform work, which may duplicate the work of the A/E. Doing this shall not relieve the A/E of its responsibilities under this agreement.

**XIV. RESPONSIBILITY OF A/E**

The acceptance, approval or payment of any of the plans, drawings, specifications or other work or services performed by the A/E under this agreement shall not constitute a release or waiver of any claim the COLLEGE has or may have for latent defects or errors or other breaches of this agreement on the part of the A/E, or of any claims for breach of warranty or negligence.

**XV. COMPLIANCE WITH PROCUREMENT STATUTES**

The A/E warrants and represents that this agreement has not been solicited or secured, directly or indirectly, in a manner contrary to the laws of the State of New Jersey, and in particular, the provisions of N.J.S.A. 52:34-15, N.J.S.A. 52:34-19 and N.J.S.A. 18A:64-52 et seq., and that the A/E has not and shall not violate the laws of New Jersey relating to the procurement of or the performance of this agreement by any conduct, including the paying of any gratuity of any kind, directly or indirectly, to any COLLEGE employee or officer. Any violation of this provision shall be cause for the COLLEGE to terminate this agreement, to retain all unpaid and/or unearned fees, and to recover all fees paid. The A/E shall make known to the Contracting Officer any interest in, or association with, any contractor, subcontractor, material supplier, consultant, or manufacturers, or other party, which has any interest in this project.

**XVI. COST RECORDS**

The A/E agrees to maintain and retain weekly payroll, overhead, cost and accounting records for services performed on the project, including expenses pertaining to additional services required by the COLLEGE on the project. Such records shall be maintained and available for all aspects of the work, whether performed by the A/E or any independent firms. These records shall be kept in accordance with general accepted accounting principles and practices, and all such records shall be made available to the COLLEGE for the inspection for a period of three (3) years after final payment is received by the A/E under this agreement. Any failure to maintain or produce such records shall preclude the recovery of any claim for such costs.

**XVII. CLAIMS**

The parties agree that claims asserted against the COLLEGE by the A/E shall be subject to the New Jersey Contractual Liability Act, N.J.S.A. 59.13, *et seq.* The A/E shall not be entitled to recover from the COLLEGE any compensation beyond that provided for in this agreement by reason of the acts or omissions of any third parties.

**XVIII. INDEMNITY/LIABILITY TO THIRD PARTIES**

The A/E agrees to defend, indemnify, protect and save harmless the COLLEGE and its officers, agents, servants and employees from and against any and all suits, demands, claims, losses and damages of any kind arising out of, or claimed to have arisen out of, any negligent act, error, or omission of the A/E, its officers, agents, servants, employees, consultants or subcontractors, or any breach of the same's obligations under this Agreement. If any judgment shall be rendered against the COLLEGE or any of its officers, servants or employees, for which indemnification is provided under this paragraph, the A/E shall, at its own expense, satisfy and discharge the same. The COLLEGE shall, as soon as practicable after a claim has been made against it, give written notice thereof to the A/E, along with full and complete particulars of the claim. If suit is brought against the COLLEGE or any of its officers, agents, servants or employees, the COLLEGE shall expeditiously forward, or have forwarded, to the A/E every demand, complaint, notice, summons, pleading or other process received by the COLLEGE or its representatives. The A/E shall not cause damages or injuries to other parties such as contractors by the improper or untimely performance of its obligations in connection with this agreement, and if he does do he shall be directly responsible to those parties.

It is expressly agreed and understood that any approval by the COLLEGE of the work performed and/or reports, plans or specifications provided by the A/E shall not operate to limit the obligations of the A/E assumed in this Agreement. It is further understood and agreed that the COLLEGE assumes no obligation to indemnify or save harmless the A/E, its agents, servants, employees or subcontractors for any claim which may arise out of their performance of this Agreement. Furthermore, the A/E expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the A/E's obligations assumed in this Agreement, nor shall they be construed to relieve the A/E from any liability, nor preclude the COLLEGE from taking other actions available to it under any other provisions of this Agreement or otherwise at law. The A/E will be liable to the COLLEGE for any reasonable costs incurred by the COLLEGE to correct, modify or redesign any technical information submitted by the

A/E that is found to be defective or not in accordance with the provisions of this Agreement as a result of a negligent act, error or omission on the part of the A/E, its officers, agents, servants, employees, consultants or subcontractors. The A/E shall be given reasonable opportunity to correct any deficiency.

**XIX. AFFIRMATIVE ACTION**

The A/E, and any consultants engaged by it, shall comply with N.J.S.A. 10:2-1 through 10:2-4 which prohibit discrimination in the employment on public agreements. The statute and the rules and regulations promulgated thereunder shall be considered to be part of this agreement and binding upon the A/E and its consultants. During the performance of this agreement, the A/E agrees that:

- A. A/E shall not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The A/E shall take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include, but not limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. The A/E agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this non-discrimination clause.
- B. The A/E shall, in all solicitations or advertisements for employees, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation.
- C. The A/E shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other agreement or understanding a notice advising the labor union or workers' representative of the A/E's commitment under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

In addition, as required by N.J.S.A. 10:5-4.1, any unlawful discrimination against any person because of a physical handicap, or any unlawful employment practice against such a person is prohibited unless the nature and the extent of the handicap necessarily precludes the performance of the particular employment.

The A/E shall comply with Public Law P.L. 1975, Chapter 127, of the New Jersey Statutes, as set forth in the Manual for Affirmative Action Regulations.

Exhibit A from the Manual is appended to and is made a part of this Agreement as Exhibit A.

**XX. INSURANCE**

- A. The A/E shall secure and maintain in force for the term of the Contract plus two years following the final acceptance of the work, insurance coverage provided herein. All insurance coverage is subject

to the approval of the COLLEGE and shall be issued by an insurance company authorized to do business in the State of New Jersey and which maintains an A.M. Best rating of A- (VII) or better.

B. The A/E shall provide the COLLEGE with current Certificates of Insurance for all coverage and renewals thereof. The policies shall include provision for thirty (30) days' written notice to the COLLEGE in event of cancellation, except that ten (10) days' notice shall apply in the event of cancellation due to non-payment of premium. For policy renewals, the A/E shall provide the COLLEGE with evidence that the insurance policy has been renewed and the premium paid thirty (30) or more days in advance of the renewal date. All insurance required herein shall contain a waiver of subrogation in favor of the COLLEGE. All insurance required herein, except Workers' Compensation and Professional Liability, shall name Ramapo College, the State of New Jersey, and the New Jersey Educational Facilities Authority as additional insured's.

C. Required insurance coverage is as follows:

1. Commercial General Liability insurance written on an occurrence form including independent contractor liability, products/completed operations liability, and contractual liability. If the form is other than the standard ISO CG0001 form, and/or language in the standard form has been amended to add endorsements or restrict or reduce coverage, those changes shall be reflected in the insurance certificate. The minimum limits of liability shall not be less than a combined single limit of one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate, and two million dollars (\$2,000,000) product/completed operations aggregate. A "per project aggregate" endorsement shall be included, so that the general aggregate limit applies separately to the project that is the subject of this contract.
2. Comprehensive Automobile Liability covering owned, non-owned, and hired vehicles. The limits of liability shall not be less than a combined single limit of one million dollars (\$1,000,000) per occurrence.
3. Workers' Compensation Insurance applicable to the laws of the State of New Jersey and other State or Federal jurisdiction required to protect the employees of the Contractor and any Subcontractor who will be engaged in the performance of this Contract. The certificate must so indicate that no proprietor, partner, executive officer or member is excluded. This insurance shall include Employers' Liability Protection with a limit of liability not less than one million dollars (\$1,000,000) bodily injury, each occurrence, one million dollars (\$1,000,000) disease, each employee, and one million dollars (\$1,000,000) disease, aggregate limit.
4. Professional liability with minimum limits of liability that shall not be less than a combined single limit of five million dollars (\$5,000,000) per claim or event, five million dollars (\$5,000,000) general aggregate. The professional liability insurance shall be maintained for a period of not less than two years following the actual completion and acceptance of the project by the Contracting Officer. During the term of the project, the A/E shall be obligated to provide immediate notice to the COLLEGE each and every time a claim is filed against their

professional liability policy that may erode the limits available to the COLLEGE. In the event the COLLEGE determines that sufficient claims have been filed against the A/E's professional liability policy so that the protection available to the COLLEGE is diminished, the A/E shall at their own expense procure additional coverage to restore the limits available to the COLLEGE or shall make other financial arrangements acceptable to the COLLEGE to protect the COLLEGE's interest.

- D. The A/E shall require all its consultants/subcontractors to comply with all of the insurance requirements described above. The A/E shall be responsible for obtaining certificates of insurance for all coverage and renewals thereof for each consultant/subcontractor prior to the consultant/subcontractor's beginning work on the project. The A/E shall provide copies of all consultant/subcontractor certificates of insurance to the COLLEGE upon request.

## **XXI. OWNERSHIP OF DOCUMENTS**

The plans and specifications and other documents submitted under this agreement, revised to reflect "Record" conditions, shall be transmitted to the COLLEGE and shall become the property of the COLLEGE. The A/E for its own record purposes may produce a set of prints or reproduction of plans and specifications prior to their transmittal to the COLLEGE. It is understood and agreed between the parties to this agreement that all documents, including drawings and specifications furnished by the A/E pursuant to this agreement are works for hire. The COLLEGE retains the copyright in all the unique features of the building's plans and specifications. The COLLEGE shall have the exclusive worldwide right to photograph, create derivative works and reproduce any and all parts of the design and the unique design features. The A/E, at its own risk and for any purpose, shall be allowed to utilize any detail component information and/or building system component information developed by the A/E in the preparation of the documents, so long as this information is not utilized in aggregate with other component information to replicate the design prepared under this agreement. It is understood that these plans are not intended or represented to be suitable for reuse by the COLLEGE or by others for additions to this project. Any reuse by the COLLEGE or others of the plans for construction purposes will be without liability or legal exposure to the A/E.

## **XXII. ASBESTOS**

The A/E shall not be responsible and, therefore, has no duty to detect or quantify the presence or existence of asbestos at the project site or for developing and monitoring the abatement program should asbestos be present or exist. If in the process of performing its services under this Agreement the A/E, through observation, suspects that asbestos is present or exists at the project site, the A/E shall immediately notify the COLLEGE, who shall be fully responsible for verifying its presence or existence and for developing and implementing an abatement program.

## **XXIII. PCB's**

The A/E shall not be responsible to detect or quantify the presence or existence of PCB's in any piece of equipment, material, etc. at the project site or for decontaminating or removing them below E. P. A. standards. If in the process of performing its services under this Agreement the A/E suspects that PCB's



may be present, the A/E shall immediately notify the COLLEGE, who shall be fully responsible for verifying its existence and for developing and implementing a removal or decontamination program.

**XXIV. EXPENSES**

A. The A/E's fee shall include the following non-reimbursable expenses:

1. Travel to and from the COLLEGE.
2. Expenses of transportation and living in connection with out-of-town travel unless specifically authorized in advance by the COLLEGE.
3. Telecommunications, including telephone, facsimile, and e-mail, etc.
4. Postage and delivery services.
5. Plottings, CAD, photography renderings, models, drawings, and other presentation media sufficient to convey the design to COLLEGE staff, faculty, trustees, students, and other consultants.
6. Overtime work.
7. Photocopies and other reproductions.
8. Study models to advance design.
9. One (1) presentation quality rendering as and when requested by COLLEGE.

B. The COLLEGE shall provide and/or pay for:

1. Fees for DCA and other regulatory agencies' plan reviews and permit applications.
2. Legal notices relating to the project.
3. Environmental Impact Studies or Assessments.
4. All bid package plans and specifications.
5. Any additional presentation quality renderings beyond that required in paragraph XXIV A9 above.

**XXV. AGREEMENT TERMS, CHANGES AND SUCCESSORS**

This written instrument constitutes the entire agreement between the COLLEGE and the A/E. The agreement consists of this Agreement Document together with Enclosures \_\_\_\_\_).

In case of any conflict or ambiguity, the provisions of this Agreement Document shall prevail over any rider except as to any provisions in the basic Agreement Document, which is expressly, by reference, modified, by a rider incorporated into the agreement. The terms and conditions of this agreement may not be modified or changed except by a writing signed by the A/E and the Contracting Officer of the COLLEGE. This agreement shall be binding upon the heirs, representatives and successors of the A/E.

**IN WITNESS WHEREOF**, Ramapo College of New Jersey and the A/E have executed this agreement on this \_\_\_\_\_ day of, March 2014.

A/E Firm Representative:

BY: \_\_\_\_\_

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
(Print Name)

Title:

\_\_\_\_\_  
(Print Name)

Ramapo College of New Jersey:

BY: \_\_\_\_\_

\_\_\_\_\_  
WITNESS

Richard M. Roberts

(Print Name)

Title: AVP/Contracting Officer

Debra M. Elezovic

(Print Name)