

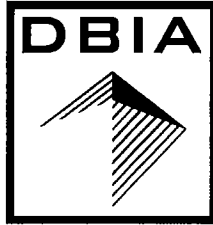


**Bridge Factors Factual Report Attachment 18 – Standard Form of Agreement between  
Design-Builder and Design Consultant, entered into by MCM and FIGG Bridge Engineers,  
Inc. dated April 28, 2016**

**Miami, FL**

**HWY18MH009**

**(35 pages)**



# Standard Form of Agreement Between Design-Builder and Design Consultant

*This document has important legal consequences. Consultation with an attorney is recommended with respect to its completion or modification.*

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This **AGREEMENT** is made as of the 20 day of April in the year of ~~2015~~<sup>2016</sup>, by and between the following parties, for services in connection with the Project identified below:

**DESIGN-BUILDER:**  
(Name and address) **Munilla Construction Management, LLC d/b/a MCM**  
6201 SW 70<sup>th</sup> Street, 2<sup>nd</sup> Floor  
Miami, Florida 33143  
Tel: 305.541.0000/Fax: 305.541.9771

**DESIGNER:**  
(Name and address) **FIGG Bridge Engineers, Inc.**  
**424 N. Calhoun St.**  
Tallahassee, Florida 32301  
Tel: 850.224.7400

**PROJECT:**  
(Include Project name and location as it will appear in the Contract Documents) **UniversityCity Prosperity Project, BT-904**  
**Florida International University**  
SW 109<sup>th</sup> Avenue & SW 6<sup>th</sup> Street  
**Miami-Dade County, FL**

**OWNER:**  
(Name and address) **Florida International University**  
11200 SW 8<sup>th</sup> Street  
Miami, Fl. 33199

In consideration of the mutual covenants and obligations contained herein, Design-Builder and Design Consultant agree as set forth herein.

## **Article 1**

### **General**

#### **1.1 Basic Purpose.**

**1.1.1** Design-Builder has contracted with Owner to provide the services of a licensed design professional to perform all necessary design services for the Project as set forth in the Design-Build Agreement between Owner and Design-Builder. Design Consultant, through itself and its Design Sub-Consultants, has agreed to provide such engineering, and other services required by this Agreement and the other Contract Documents. Design-Builder and Design Consultant further agree that to the extent applicable to the performance of the Services hereunder, Design Consultant shall have the same rights, responsibilities, and obligations as to Design-Builder as Design-Builder by the Design-Build Agreement has against and to Owner, except as may be modified herein. Notwithstanding the foregoing, if the Design-Builder and Owner have checked boxes indicating the selection of optional provisions from the Design-Build Agreement, those optional provisions are only passed through to the Design Consultant to the extent those provisions have been expressly set forth herein.

#### **1.2 Basic Definitions.**

**1.2.1** Terms used in this Agreement shall have the meanings set forth in the Design-Build Agreement between Owner and Design-Builder unless otherwise provided herein, with the following specific terms defined as follows:

**1.2.1.1** *Additional Services* are those services identified in Section 2.8 hereof.

**1.2.1.2** *Agreement* refers to this executed contract between Design-Builder and Design Consultant under DBIA Document 540, *Standard Form of Agreement Between Design-Builder and Design Consultant* (2010 Edition).

**1.2.1.3** *Basis of Design Documents* are the Owner's Project Criteria, Design-Builder's Proposal and the Deviation List, if any and or the Design-Build Agreement between Owner and Design-Builder .

**1.2.1.4** *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by Design Consultant consistent with the Basis of

Design Documents, unless a deviation from the Basis of Design Documents is specifically set forth in a Change Order.

**1.2.1.5** *Construction Phase Services* refers to those services identified in Section 2.7 hereof.

**1.2.1.6** *Day* or *Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

**1.2.1.7** *Design-Build Agreement* refers to the contract between Design-Builder and Owner for the design and construction of the Project and all exhibits, attachments, and other Contract Documents enumerated and incorporated therein.

**1.2.1.8** *Design Sub-Consultant* is a qualified, licensed design professional who is not an employee of Design Consultant, but is retained by Design Consultant or employed or retained by anyone under contract with Design Consultant, to furnish design services required under the Contract Documents.

**1.2.1.9** *Design Phase Services* refers to those services set forth in Sections 2.5 and 2.6 hereof.

**1.2.1.10** *Design Schedule* refers to the schedule setting forth the dates by which Design Consultant must perform the various Services required herein, consistent with the Project Schedule.

**1.2.1.11** *Design Consultant's Fee* shall refer to the compensation due Design Consultant for the performance of the Services as set forth herein.

**1.2.1.12** *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to any items identified in the punch list prepared under Section 6.6.1 of the General Conditions of Contract and the submission of all documents set forth in Section 6.7.2 of the General Conditions of Contract.

**1.2.1.13** *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

**1.2.1.14** *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the parties, the Project or Site, the practices involved in the Project or Site, or any Services.

**1.2.1.15** *Owner's Project Criteria* are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, design performance specifications, design specifications, and LEED® or other sustainable design criteria and other Project-specific technical materials and requirements.

**1.2.1.16** *Project Schedule* refers to the schedule setting forth the dates by which the various stages of both the design and construction of the Project must be performed so as to satisfy Design-Builder's obligations to Owner.

**1.2.1.17** *Services* shall include all Design Phase Services, Construction Phase Services and Additional Services required by the Contract Documents or as may be authorized in writing by Design-Builder except for those design services provided by others under Section 1.5.3 or by Owner's design consultants.

**1.2.1.18** *Site* is the land or premises on which the Project is located.

**1.2.1.19** *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the construction work for the Project and shall include materialmen and suppliers.

**1.2.1.20** *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of the Subcontractor's work and shall include materialmen and suppliers.

**1.2.1.21** *Substantial Completion* or *Substantially Complete* is the date on which the Project, or an agreed upon portion of the Project, is sufficiently complete so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

### **1.3 Contract Documents.**

**1.3.1** The Contract Documents are comprised of the following:

**1.3.1.1** All written modifications, amendments, minor changes and Change Orders to this Agreement;

**1.3.1.2** The Basis of Design Documents;

**1.3.1.3** This Agreement, including all exhibits and attachments, executed by Design-Builder and Design Consultant;

Exhibit A – Scope of Work

Exhibit B – Compensation Summary

Exhibit C – Design and Deliverable Schedule

Exhibit D – Design Schedule of Values

Exhibit E – Insurance Requirements

**1.3.1.4** Construction Documents; and

**1.3.1.5** The Design-Build Agreement, (excluding the Basis of Design Documents), but only to the extent the Design-Build Agreement relates to the Services and the terms and conditions under which the Services shall be performed.

### **1.4 Interpretation and Intent.**

**1.4.1** Design-Builder and Design Consultant, prior to execution of the Agreement, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents, for any conflicts or ambiguities. Design-Builder and Design Consultant will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

**1.4.2** The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, the parties shall attempt to resolve such ambiguities, conflicts or inconsistencies informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 1.3 hereof.

**1.4.3** If Owner's Project Criteria contain design specifications, Design Consultant shall

be entitled to reasonably rely on the accuracy of the information represented in such design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any performance specifications, to the same extent as Design-Builder is entitled to so rely in the Design-Build Agreement. If Design Consultant contends that its costs and/or time of performance have been adversely impacted by such inaccurate design specifications, then it shall proceed in accordance with Section 11.3.

### **1.5 Mutual Obligations and Acknowledgments.**

**1.5.1** Design-Builder and Design Consultant commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents. Design-Builder and Design Consultant shall perform their respective responsibilities, obligations and services in a timely manner to facilitate the other's timely and efficient performance and so as not to delay or interfere with the other's performance of its obligations under the Contract Documents.

**1.5.2** Design-Builder and Design Consultant acknowledge that they have cooperated with each other in the procurement of the Design-Build Agreement, and that Design-Builder and Design Consultant have met to review, discuss, and familiarize themselves with the Design-Build Agreement, including the Basis of Design Documents.

**1.5.3** Not Used.

**1.5.4** Design-Builder and Design Consultant mutually agree that time is of the essence with respect to the dates and times set forth in the Design Schedule, Project Schedule and Contract Documents. Each party agrees to provide the other party with information in a timely fashion and in the form and manner as reasonably required.

### **1.6 Entire Agreement.**

**1.6.1** Subject to the limitations in Section 1.3.1, the Contract Documents, all of which are incorporated by reference into this Agreement, form the entire agreement between Design-Builder and Design Consultant and are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

## **Article 2**


### **Design Consultant's Services and Responsibilities**

#### **2.1 General.**

**2.1.1** Design Consultant shall, consistent with applicable state licensing laws, provide the Services, including engineering and other professional services, required by the Contract Documents as per Exhibit A. Design Consultant agrees that such Services shall be provided through qualified, licensed professionals who are either (i) employed by Design Consultant or (ii) procured by Design Consultant from qualified, licensed Design Sub-Consultants.

**2.1.2** Design Consultant shall not engage the services of any Design Sub-Consultant without first obtaining the approval of Design-Builder, which approval shall not be unreasonably withheld. Design Consultant agrees that each Design Sub-Consultant shall be fully bound to Design Consultant in the same manner as Design Consultant is bound to Design-Builder for all the requirements of the Contract Documents to the extent applicable to the Design Sub-Consultant's scope of services. Design Consultant shall at all times be responsible for the services performed by its Design Sub-Consultants, and shall coordinate the services of its Design Sub-Consultants to satisfy Design Consultant's obligations under the Contract Documents. Nothing in this Agreement shall relieve Design Consultant from responsibility for the services performed by its Design Sub-Consultants, or create any legal or contractual relationship between Design-Builder and any Design Sub-Consultant.

**2.1.3** If Design-Builder or Owner performs other work on the Project with separate design professionals under Design-Builder's or Owner's control, Design Consultant agrees to reasonably cooperate and coordinate its activities with those of such separate design professionals so that the Project can be completed in an orderly and coordinated manner and without disruption.

**2.1.4** Design Consultant shall only communicate with Owner, Subcontractor(s), or Sub-Subcontractors through Design-Builder unless the parties agree otherwise. Notwithstanding the preceding sentence, Design Consultant may communicate directly with the Owner (with written copy to Design-Builder on ).

matters of public health, safety, and welfare when required by applicable Legal Requirements or professional codes of ethics.

**2.1.5** Within seven (7) days after execution of this Agreement, Design-Builder and Design Consultant will meet to discuss issues affecting the administration of the Services and to implement the necessary procedures, including but not limited to those relating to the schedule for the Services, schedule updates, review of submittals, and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents and allow Design Consultant to meet its obligations to design the Project consistent with the Contract Documents, without compromising any professional obligations of Design Consultant.

## **2.2 Standard of Care.**

**2.2.1** The standard of care for all design professional services performed by Design Consultant and its Design Sub-Consultants pursuant to this Agreement shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project.

## **2.3 Legal Requirements.**

**2.3.1** Design Consultant agrees to perform the Services in accordance with all applicable Legal Requirements.

**2.3.2** Design Consultant's Fee and/or the Design Schedule shall be adjusted to compensate Design Consultant for the effects, if any, of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Services. Such effects may include, without limitation, revisions Design Consultant is required to make to the Construction Documents because of changes in Legal Requirements.

## **2.4 Design Consultant's Personnel.**

**2.4.1** Design Consultant agrees that the primary personnel assigned to perform the Services shall not change without Design-Builder's prior approval.

**2.4.2** Design Consultant's Representative shall be reasonably available to Design-Builder and shall have the necessary expertise and experience required to supervise the Services. Design Consultant's Representative shall communicate regularly with Design-Builder and

shall be vested with the authority to act on behalf of Design Consultant. Design Consultant shall replace its Representative upon the reasonable request of Design-Builder.

## **2.5 Government Approvals and Permits.**

**2.5.1** Design Consultant shall produce a permittable set of Construction Documents for the project. However, Design-Consultant shall not be responsible for the costs of permits nor permit expeditor.

**2.5.2** Design Consultant shall obtain any and all approvals necessary to obtain the permits required for the construction of the Project.

**2.5.3** Design Consultant shall make any revisions to the Construction Documents necessary to secure permits, approvals, and licenses, including those which have been denied for failure of the Construction Documents to meet Legal Requirements. If such revisions are necessary for reasons beyond the control of Design Consultant or its Design Sub-Consultants, Design Consultant shall be compensated for such revisions as a change to this Agreement.

## **2.6 Design Development Services.**

**2.6.1** In accordance with the times set forth in the Design Schedule, Design Consultant shall submit to Design-Builder all interim design submissions and revisions as required by the Contract Documents. Interim design submissions shall be consistent with the Basis of Design Documents, as the Basis of Design Documents may have been modified in accordance with the Contract Documents. Such interim design submissions shall be in the form and quantity called for in the Contract Documents and may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Design-Builder and Design Consultant agree that prior to the scheduled date for submitting all interim design submissions to Owner, Design-Builder and Design Consultant will hold meetings for the purpose of discussing and monitoring the design for consistency with the requirements of the Contract Documents.

**2.6.2** In accordance with the Contract Documents and with the times set forth in the Design Schedule, Design Consultant shall submit to Design-Builder Construction Documents setting forth in detail drawings and

specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting. Design Consultant shall provide the Construction Documents in the form and quantity called for in the Contract Documents. Design Consultant shall perform agreed upon revisions and submit revised Construction Documents to Design-Builder for Design-Builder's and Owner's approval.

**2.6.3** Design Consultant shall attend and participate in such meetings as are held between Owner and Design-Builder to discuss interim design submissions and the Construction Documents. Design Consultant shall identify during each such meeting, among other things, the evolution of the design and any changes or deviations from the Contract Documents, including the Basis of Design Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings between Design-Builder and Design Consultant, and Design-Builder and Owner, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Design Consultant shall review such minutes and provide notice of any objections thereto. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting and recorded in the meetings minutes.

**2.6.4** In addition to the interim design submissions and Construction Documents, Design Consultant shall, if requested by Design-Builder, prepare interim design submissions and Construction Documents required to permit commencement of construction on a portion of the Project before the entire Construction Documents for the Project are completed.

**2.6.5** Design-Builder's and Owner's review and/or approval of interim design submissions and the Construction Documents are for the purpose of mutually establishing a conformed set of Construction Documents compatible with the requirements of the Contract Documents. The review and/or approval by either Design-Builder or Owner of any interim design submission or the Construction Documents shall not be deemed to transfer any design liability

from Design Consultant to Design-Builder or Owner.

**2.6.6** Design Consultant will, at its own cost, revise any interim design submission or the Construction Documents to correct any of its errors, mistakes or omissions. Such revisions shall be performed timely and so as not to jeopardize the Design Schedule and/or the Project Schedule.

## **2.7 Construction Phase Services.**

**2.7.1** Design Consultant shall assist Design-Builder in preparing bidding documents for specified portions of the Project's construction, and clarifying and responding to questions involving the bidding documents.

**2.7.2** Design Consultant shall timely provide requested clarifications and interpretations of the Construction Documents, which shall be consistent with the intent of, and reasonably inferable from, the Contract Documents. Design Consultant shall make all revisions to the Construction Documents necessary for the proper construction of the Project.

**2.7.3** Design Consultant shall review and approve such submittals, including shop drawings, product data and samples, as may be required by the Design-Build Agreement or Design-Builder. Design Consultant shall expeditiously inform Design-Builder of any revisions that are necessary as a condition to Design Consultant's approval of submittals. The time within which Design Consultant shall review and respond to submittals will be as established at the meeting required by Section 2.1.5 hereof. Design Consultant's review and approval shall not relieve Design-Builder or Subcontractors of responsibility for construction means and methods or safety precautions.

**2.7.4** Design Consultant shall review, and if acceptable approve, any substitutions for materials or equipment proposed by Design-Builder.

**2.7.5** Design Consultant shall, if requested by Design-Builder, review any inspection reports or tests involving the construction of the Project and provide its comments to Design-Builder. Design Consultant is not responsible for the accuracy or completeness of the tests or inspections performed by others.

**2.7.6** Unless otherwise provided, Design Consultant is not providing full-time resident

services. Nevertheless, Design Consultant shall at appropriate intervals visit the Site to determine if the construction is proceeding in accordance with the Construction Documents. If Design-Builder and Design Consultant have agreed to a specific frequency of Design Consultant's Site visits, such frequency shall be set forth as an exhibit to this Agreement. Design Consultant shall promptly notify Design-Builder of any defects, deficiencies, deviations, omissions, or violations observed by Design Consultant in the construction of the Project, and make recommendations to Design-Builder on how to proceed.

**2.7.7** At the request of Design-Builder, Design Consultant shall attend meetings with Design-Builder and Owner and/or Subcontractor(s) and Sub-Subcontractors to discuss design issues which may arise during construction.

**2.7.8** Design Consultant shall, if requested by Design-Builder, provide such certifications as may be necessary relative to Substantial Completion, and if required by the Design-Build Agreement, Final Completion.

**2.7.9** Design Consultant's provision of the Construction Phase Services shall not be construed to make Design Consultant responsible for (i) the acts or omissions of Design-Builder, any Subcontractors, or any Sub-Subcontractors, (ii) the means, methods, sequences, and techniques of construction of the Project or (iii) safety precautions and programs in connection with the construction of the Project. Nothing in this Agreement shall create any legal or contractual relationship between Design Consultant and any Subcontractor or Sub-Subcontractor.

## **2.8 Additional Services.**

**2.8.1** Additional Services, if any, agreed upon by the parties shall be set forth in Exhibit A, and may include by way of example only, site visits in excess of those agreed upon by the parties, evaluating changes, including the preparation or revision of the Construction Documents, providing record drawings, and providing consultation concerning replacement of Work damaged by fire or other causes during construction.

## **Article 3**

### **Design-Builder's Services and Responsibilities**

#### **3.1 Timely Reviews, Approvals and Submittals.**

**3.1.1** Design-Builder shall provide timely reviews and approvals of all interim design submissions and Construction Documents consistent with the turnaround times set forth in the Design Schedule, or as agreed to by the parties at the meeting required under Section 2.1.5 hereof.

**3.1.2** Design-Builder shall timely submit to Design Consultant all submittals, including shop drawings, product data and samples, for Design Consultant's review and approval consistent with the Project Schedule, or as agreed to by the parties at the meeting required under Section 2.1.5 hereof.

**3.1.3** Design-Builder shall provide timely notice to Design Consultant of any delays to the Project caused by Design Consultant.

#### **3.2 Design-Builder's Representative.**

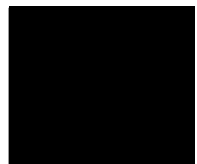
**3.2.1** Design-Builder's Representative shall be responsible for providing Design-Builder-supplied information and approvals in a timely manner to permit Design Consultant to fulfill its obligations under the Contract Documents.

#### **3.3 Furnishing of Services and Information.**

**3.3.1** Unless expressly stated to the contrary in the Contract Documents, and to the extent Design-Builder has received such items from Owner, Design-Builder shall provide for Design Consultant's information the items listed below.

Design-Builder does not warrant the accuracy or completeness of such items, provided, however, that Design Consultant is entitled to rely upon such items to the same extent Design-Builder is entitled to rely upon such items in the Design-Build Agreement:

**3.3.1.1** Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;





**3.3.1.2** Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

**3.3.1.3** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design Consultant to perform the Services;

**3.3.1.4** A legal description of the Site;

**3.3.1.5** Record drawings of any existing structures at the Site;

**3.3.1.6** Environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site;

**3.3.1.7** Owner's Project Criteria;

**3.3.1.8** All permits, approvals and licenses set forth in the Owner's Permit List attached as an exhibit to the Design-Build Agreement; and

**3.3.1.9** Test and inspection reports.

**3.3.2** Design Consultant has familiarized itself with the Design-Build Agreement, including all exhibits, attachments, and other Contract Documents enumerated and incorporated therein.

**3.3.3** Design-Builder shall provide all cost estimating and scheduling services related to the construction of the Project and shall be responsible for mistakes or miscalculations of market conditions that result in construction costs that are contrary to Design-Builder's budget and pricing assumptions. Nothing herein shall relieve Design Consultant from its obligation to prepare a design for the Project that is consistent with the Contract Documents.

**3.3.4** Upon Design Consultant's reasonable request, Design-Builder shall provide Design Consultant with information in Design-Builder's possession regarding Owner's financial ability to pay for the Services set forth in this Agreement.

**3.3.5** Design Consultant has been provided the Project Schedule and Design Builder shall provide appropriate updates thereto.

**3.3.6** Design-Builder shall provide administration of the Design-Build Agreement, and promptly forward any communications to

Owner from Design Consultant that may impact the Services.

**3.3.7** Design-Builder shall provide Design Consultant reasonable access to the Project and the Site.

#### **3.4 Notification of Errors.**

**3.4.1** Design-Builder shall notify Design Consultant of any errors, inconsistencies, or omissions Design-Builder discovers in the Services, including Basis for Design Documents, any interim design submissions, Construction Documents or other Services. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall relieve Design Consultant of responsibility for errors, inconsistencies, or omissions in the Services.

#### **3.5 Attendance at Design Meetings.**

**3.5.1** Design-Builder shall afford Design Consultant and its Design Sub-Consultants the opportunity to attend all necessary design meetings with Owner, Subcontractor(s) and/or Sub-Subcontractors.

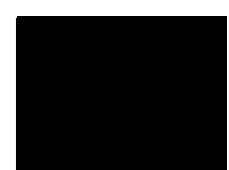
### **Article 4**

#### **Ownership of Work Product**

##### **4.1 Work Product.**

**4.1.1** All drawings, specifications and other documents and electronic data furnished by Design Consultant to Design-Builder under this Agreement ("Work Product") are deemed to be instruments of service and Design Consultant shall retain ownership and property interests therein provided, however, that Design

Consultant hereby grants Design-Builder, (for the purpose of allowing Design-Builder to grant to Owner) upon Design-Builder's payment to Design Consultant of amounts properly due under this Agreement, a limited license to use the Work Product in connection with completing this Project. Notwithstanding the preceding sentence, if the Design-Build Agreement grants ownership and/or property rights to Owner that conflict with the above, then Design Consultant hereby grants such rights to Design-Builder (for the purpose of allowing Design-Builder to grant to Owner) under the same terms and conditions that Design-Builder grants such rights to Owner.



## **4.2 Agreement to Grant Rights to Owner.**

**4.2.1** Design Consultant has reviewed the Design-Build Agreement and is fully aware of the ownership and property rights to use the Work Product which may be granted to Owner therein. Design Consultant accepts and agrees to Owner's ownership and property rights with respect to the Work Product contained in the Design-Build Agreement.

## **4.3 Indemnification for Use of Work Product.**

**4.3.1** If either Design-Builder or Design Consultant uses the Work Product on any other project, such party agrees that it shall do so at its sole risk and without liability or legal exposure to the other party, Owner, or anyone working through them. Such party further agrees that it shall defend, indemnify and hold harmless the other party and Owner from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from such use of the Work Product on another project.

## **4.4 Use of Work Product On Termination or Default.**

**4.4.1** If Design-Builder terminates this Agreement for its convenience as set forth in Section 7.1 hereof, Design Consultant, upon Design-Builder's payment in full of the amounts due Design Consultant under the Contract Documents, grants Design-Builder and Owner the same rights as set forth in Section 4.1.1 above to use the Work Product to complete the Project and subsequently occupy the Project, conditioned on the following:

**4.4.1.1** Use of the Work Product is at Design-Builder's sole risk without liability or legal exposure to Design Consultant or anyone working by or through Design Consultant, and on Design-Builder's obligation to provide the indemnity set forth in Section 4.3 herein, and

**4.4.1.2** If Design-Builder resumes the Project through its employees, agents, or third parties, this Agreement with Design Consultant will also be resumed, subject to equitable schedule and cost adjustment for disruption of the services.

**4.4.2** If this Agreement is terminated due to Design Consultant's default pursuant to Section 7.2 of this Agreement, then Design-Builder shall have the same rights as set forth in Section 4.1.1 above to use the Work Product to

complete the Project and subsequently occupy the Project, and Design-Builder and Owner shall thereafter have the same rights and obligations as set forth in Section 4.1.1 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design Consultant was not in default, Design-Builder shall be deemed to have terminated the Agreement for convenience, and Design Consultant shall be entitled to the rights and remedies set forth in Section 4.4.1 above.

## **Article 5**

### **Time of Performance**

#### **5.1 Date of Commencement.**

**5.1.1** The Services shall commence five (5) days after Design Consultant's receipt of Design-Builder's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

#### **5.2 Design Schedule.**

**5.2.1** Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time this Agreement is executed, Design Consultant shall prepare and submit for Design-Builder's review and acceptance, at least three (3) days prior to the meeting required by Section 2.1.5 hereof, a schedule for the execution of the Design Phase Services in accordance with the Contract Documents. The schedule shall indicate the dates for the start and completion of the various stages of the Design Phase Services, including the dates for the design monitoring and review meetings required herein, and the dates when Design-Builder and Owner information and approvals are required, and shall take into account Design-Builder's obligations to Owner under the Design-Build Agreement. Design-Builder and Design Consultant will jointly review Design Consultant's schedule to determine whether it permits Design-Builder to satisfy its obligations under the Project Schedule and the Design-Build Agreement. The accepted schedule (the "Design Schedule") shall be revised as required by conditions and progress of the Project, but such revisions shall not relieve Design Consultant of its obligations to perform the Services in accordance with the Contract Documents, subject to its rights under this Agreement. Design-Builder shall incorporate the Design Schedule into the Project Schedule.

### **5.3 Status Reports.**

**5.3.1** Design Consultant shall provide Design-Builder on a regular basis a status report detailing the progress of the Design Phase Services, including whether (i) the Design Phase Services are proceeding according to the Design Schedule, and (ii) items exist which require resolution so as not to jeopardize Design Consultant's ability to meet the dates set forth in the Design Schedule and Design-Builder's ability to meet the Project Schedule. The frequency of the status reports shall be established at the meeting required by Section 2.1.5 hereof.

### **5.4 Delays.**

**5.4.1** If Design Consultant's performance of the Services are delayed for any reason so as to impact the Design Schedule or the Project Schedule, Design Consultant shall promptly notify Design-Builder in writing of the cause(s) of such delay within sufficient time to permit Design-Builder to provide timely notice to Owner in accordance with the Design-Build Agreement. If the delay is due to any act, neglect, or omission on the part of Design Consultant, Design Sub-Consultants, or anyone for whom they are responsible, Design Consultant shall, subject to any limitations contained herein, compensate and indemnify Design-Builder for all costs, damages, and expenses arising from such delay, if any. If the delay is caused by Design-Builder, the Design Consultant's Fee and the Design Schedule shall be adjusted to compensate Design Consultant for the effects, if any, of the delay, subject to any limitations contained herein.

**5.4.2** Notwithstanding any other provision to the contrary, any delay and resulting damages that arise out of, or relate to, problems caused by Owner or for which Owner is responsible shall be resolved pursuant to Section 11.3 hereof.

## **Article 6**

### **Design Consultant's Compensation**

#### **6.1 Design Consultant's Fee.**

**6.1.1** Design Consultant's Fee shall be the compensation due Design Consultant for the performance of the Services, including all Design Phase Services, Construction Phase Services, and Additional Services, and for

Reimbursable Costs, all as set forth in Exhibit B of this Agreement. Unless otherwise provided in the Contract Documents, the Design Consultant's Fee is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

**6.1.2** Design Consultant will be compensated for the Design Phase Services, Construction Phase Services, Additional Services, if any, and Reimbursable Costs as set forth in Exhibit B.

#### **6.2 Applications for Payment.**

**6.2.1** Beginning with the first month after the Date of Commencement, Design Consultant shall submit on the twentieth (20th) day of each month for Design-Builder's review and approval, Design Consultant's certified Application for Payment requesting payment for all Services performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.5 hereof. Once approved, Design-Builder will submit Design Consultant's Application for Payment to Owner with Design-Builder's application.

**6.2.2** The Application for Payment shall constitute Design Consultant's representation that (i) the Services have been performed consistent with the Contract Documents, (ii) the Services have progressed to the point indicated in the Application for Payment, (iii) Design Sub-Consultants have been paid all amounts previously received by Design Consultant on account of their services, and (iv) there are no claims, obligations or liens outstanding or unsatisfied for labor, services, taxes, or other items performed, furnished, or incurred for or in connection with the Services.

**6.2.3** Design-Builder shall make payment on Design Consultant's properly submitted and accurate Application for Payment within three (3) days after Design-Builder's receipt of payment from Owner on account of Design Consultant's monthly Application for Payment, but in each case less the total of payments previously made, and less amounts properly withheld hereunder.

#### **6.3 Retainage on Applications for Payment.**

**6.3.1** Design-Builder will not retain any funds from Design Consultant's Applications for Payment unless Owner is retaining funds from

Design-Builder's progress payments for the Services, and then only in the same amount or percentage retained from Design-Builder's progress payments as set forth in the Design-Build Agreement. Unless mutually agreed otherwise between the parties, retainage (if applicable) will be released to Design Consultant within three (3) days after Design-Builder's receipt of such retained amounts from Owner.

#### **6.4 Withholding of Payments.**

**6.4.1** If Design-Builder determines that Design Consultant is not entitled to all or part of an Application for Payment, it will notify Design Consultant in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Design-Builder intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design Consultant must take to rectify Design-Builder's concerns. Design-Builder and Design Consultant will attempt to resolve Design-Builder's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder shall pay Design Consultant the uncontested amount of the Application for Payment, and Design Consultant may pursue its rights under the Contract Documents, including those under Article 11 hereof.

#### **6.5 Final Payment.**

**6.5.1** At the time Design Consultant submits its final Application for Payment to Design-Builder, Design Consultant shall provide (i) all deliverables required by the Contract Documents; (ii) an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for or in connection with the Services which will in any way affect Design-Builder's or Owner's interests; (iii) a general release executed by Design Consultant waiving, upon receipt of final payment by Design Consultant, all claims, except those claims previously made in writing to Design-Builder and remaining unsettled at the time of final payment; and (iv) certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents. Design-Builder shall make payment on Design Consultant's properly submitted and accurate final Application for Payment within ten (10) days after Design-Builder's receipt of final payment from Owner on account of Design Consultant's final Application for Payment,

provided also that Design Consultant has satisfied the requirements for final payment set forth herein.

#### **6.6 Pay When Paid.**

**6.6.1** Design Consultant agrees that all payments to Design Consultant hereunder, whether progress or final payment, or for changes or delays to the Services, shall not be due until after Design-Builder actually receives payment on account of same from Owner. Notwithstanding the preceding sentence, Design-Builder shall pay Design-Consultant within ninety (90) days of the invoice date if it has not been paid by the Owner unless the Owner's failure to pay the Design-Builder is caused by the Design Consultant's failure to perform in accordance with this Agreement.

#### **6.7 Interest.**

**6.7.1** Payments due and unpaid under this Agreement shall bear interest commencing five (5) days after payment is due at the rate of Zero percent (0%) per annum.

#### **6.8 Design Consultant's Payment Obligations.**

**6.8.1** Design Consultant will pay Design Sub-Consultants, in accordance with its contractual obligations to such parties, all the amounts Design Consultant has received from Design-Builder on account of their services. Design Consultant will impose similar requirements on Design Sub-Consultants to pay those parties with whom they have contracted. Design Consultant will indemnify and defend Owner and Design-Builder against any claims for payment and mechanic's liens providing Design-Builder is not in breach of its contractual obligations to make payments to Design Consultant for its Services.

#### **6.9 Record Keeping and Finance Controls.**

**6.9.1** Design Consultant shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Services and for a period of three (3) years after final payment of the Services or such longer period as set forth in the Design-Build Agreement for the review of

Design-Builder's records, Design-Builder and Design-Builder's accountants shall be afforded access to and the right to audit from time-to-time, upon reasonable notice, to Design Consultant's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the cost of performing the Services, including changes in the Services, and reimbursable expenses all of which Design Consultant shall preserve for a period of three (3) years after final payment. Such inspection shall take place at Design Consultant's offices during normal business hours unless another location and time is agreed by the parties. Any fee (that is either a lump sum or percentage of construction cost), multipliers or markups agreed to by the Design-Builder and Design Consultant as part of this Agreement are only subject to audit to confirm that such fee, multiplier or markup has been charged in accordance with this Agreement, with the composition of such fee, multiplier or markup not being subject to audit.

## **Article 7**

### **Termination and Design Consultant's Right to Stop Services**

#### **7.1 Design-Builder's Right to Terminate for Convenience.**

**7.1.1** If Owner terminates Design-Builder for any reason, then Design-Builder may terminate this Agreement. In such event, Design-Builder shall pay Design Consultant only those amounts Design-Builder actually receives from Owner on behalf of Design Consultant. Notwithstanding the preceding sentence, in the event the Design-Builder does not receive any compensation from the Owner because the Design-Builder was terminated for default, the Design-Builder is obligated to pay the Design Consultant for all services performed by the Design Consultant prior to receiving notice of the termination, providing that the Design-Builder's default was not caused by the Design Consultant's failure to perform in accordance with its obligations.

#### **7.2 Design-Builder's Right to Terminate for Cause.**

**7.2.1** If Design Consultant persistently fails to (i) comply with applicable Legal Requirements, (ii) timely pay, without cause, its Design Sub-Consultants, (iii) prosecute the Services with promptness and diligence so that the Services

are completed by the times set forth in the Design Schedule or the Project Schedule, (iv) provide qualified, licensed design professionals, or (v) perform material obligations under the Contract Documents, then Design-Builder shall have the rights, in addition to any other rights and remedies provided in the Contract Documents or by law, set forth in Sections 7.2.2 and 7.2.3 below.

**7.2.2** Upon the occurrence of an event set forth in Section 7.2.1 above, Design-Builder may provide written notice to Design Consultant that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design Consultant's receipt of such notice. If Design Consultant fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Design Consultant of its intent to terminate within an additional seven (7) day period. If Design Consultant, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Design Consultant of such declaration.

**7.2.3** Upon declaring the Agreement terminated pursuant to Section 7.2.2 above, Design-Builder may complete the Services in whatever fashion it deems most efficient, and shall have the right to use the existing Work Product for purposes of completing the Project, subject to Section 4.4 above. To the extent Design-Builder has been adversely impacted by Design Consultant's default and termination, Design-Builder shall be entitled to recover against Design Consultant all of Design-Builder's costs. Such costs and expense shall include not only the cost of completing the Services, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Design-Builder in connection with the procurement and defense of claims arising from Design Consultant's default, subject to the waiver of consequential damages set forth in Section 11.7 hereof.

#### **7.3 Bankruptcy of Design-Builder or Design Consultant.**

**7.3.1** If either Design-Builder or Design Consultant institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt

Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

**7.3.1.1** The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

**7.3.1.2** The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action. If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 7.

**7.3.2** The rights and remedies under Section 7.3.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code.

## **Article 8**

### **Representatives of the Parties**

#### **8.1 Design-Builder's Representatives.**

**8.1.1** Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 11.4 hereof:

**Alexis Leal**  
**Director of Corporate Operations**  
**MCM**  
**6201 SW 70<sup>th</sup> Street, 2<sup>nd</sup> Floor**  
**Miami, FL 33143**  
[REDACTED]

**8.1.2** Design-Builder designates the individual listed below as its Design-Builder's

Representative, which individual has the authority and responsibility set forth in Section 3.2 hereof:

**Rodrigo Isaza**  
**Project Manager**  
**MCM**  
**6201 SW 70<sup>th</sup> Street, 2<sup>nd</sup> Floor**  
**Miami, FL 33143**  
[REDACTED]

#### **8.2 Design Consultant's Representatives.**

**8.2.1** Design Consultant designates the individual listed below as its Senior Representative ("Design Consultant's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 11.4 hereof:

**Linda Figg**  
**President/CEO**  
**FIGG Bridge Engineers, Inc.**  
**424 N. Calhoun St.**  
**Tallahassee, FL 32301**

**8.2.2** Design Consultant designates the individual listed below as its Design Consultant's Representative, which individual has the authority and responsibility set forth in Section 2.4.2 hereof:

**Dwight D. Dempsey**  
**Regional Director**  
**Southeastern Regional Office**  
**FIGG Bridge Engineers, Inc.**  
**424 N. Calhoun St.**  
**Tallahassee, FL 32301**

## **Article 9**

### **Insurance**

#### **9.1 Design Consultant's Insurance Requirements.**

**9.1.1** Design Consultant is responsible for procuring and maintaining, from insurance companies authorized to do business in the state in which the Project is located, the insurance coverages set forth in the Insurance Exhibit, with the minimum ratings set forth in said exhibit, for certain claims which may arise from or out of the performance of this Agreement and the obligations under the Contract Documents.

**9.1.2** Design Consultant shall require its Design Sub-Consultants to procure and maintain, from insurance companies authorized to do business in the state in which the Project is located, the insurance coverages set forth in the Insurance Exhibit.

**9.1.3** Design Consultant's and its Design Sub-Consultants' insurance coverage set forth in the Insurance Exhibit shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

**9.1.4** To the extent Design-Builder requires Design Consultant to provide professional liability insurance for claims arising from the negligent performance of design services by Design Consultant or Design Sub-Consultants, the coverage limits, duration and other specifics of such insurance shall be set forth in the Insurance Exhibit. Such policies shall be provided prior to the commencement of any design services hereunder.

**9.1.5** Prior to commencing any services hereunder, Design Consultant shall provide Design-Builder with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Design-Builder.

**9.1.6** Except as otherwise stated in the Insurance Exhibit, the insurance policies required herein shall list Design-Builder, and all other entities required by the Contract Documents, if any, as an additional insured.

**9.1.7** If any of the foregoing insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment.

## **9.2 Waiver of Subrogation.**

**9.2.1** Design-Builder and Design Consultant waive against each other and Owner, Design Sub-Consultants, Owner's separate contractors, Subcontractors, Sub-Subcontractors, agents and employees of each and all of them, all damages covered by property insurance

provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Design Consultant shall, where appropriate, require similar waivers of subrogation from Design Sub-Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement.

## **Article 10**

### **Indemnification**

#### **10.1 Patent and Copyright Infringement.**

**10.1.1** Design Consultant shall defend any action or proceeding brought against Owner or Design-Builder based on any claim that the Project, or any part thereof, or the operation or use of the Project or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Design-Builder shall give prompt written notice to Design Consultant of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design Consultant shall indemnify and hold harmless Owner and Design-Builder from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design Consultant agrees to keep Design-Builder informed of all developments in the defense of such actions.

**10.1.2** If Owner is enjoined from the operation or use of the Project, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design Consultant shall at its sole expense take reasonable steps to procure the right to operate or use the Project, or applicable part thereof. If Design Consultant cannot so procure such right within a reasonable time, Design Consultant shall promptly, at Design Consultant's option and at Design Consultant's expense, (i) modify the Project, or applicable part thereof, so as to avoid infringement of any patents, or copyrights, or (ii) replace said work with work that does not infringe or violate any such patent or copyright, and is consistent with the Contract Documents.

**10.1.3** Sections 10.1.1 and 10.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner or Design-Builder and not offered or recommended by Design Consultant to Owner or Design-Builder; or (ii) arising from modifications to the Project by Owner or Design-Builder after acceptance of the Project. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Design-Builder shall defend, indemnify and hold harmless Design Consultant to the same extent Design Consultant is obligated to defend, indemnify and hold harmless Design-Builder in Section 10.1.1 above.

**10.1.4** The obligations set forth in this Section 10.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or copyright.

**10.2 Design Consultant's General Indemnification.**

**10.2.1** Design Consultant, to the fullest extent permitted by law, shall indemnify and hold harmless Owner, Design-Builder and their officers, directors, employees and agents from and against losses, and damages, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Design Consultant, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

**10.2.2** If an employee of Design Consultant, anyone employed directly or indirectly by Design Consultant or anyone for whose acts any of them may be liable has a claim against any party indemnified pursuant to Section 10.2.1 above, Design Consultant's indemnity obligation set forth in Section 10.2.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design Consultant, or other entity under any employee benefit acts, including workers' compensation or disability acts.

**10.3 Design-Builder's General Indemnification.**

**10.3.1** Design-Builder, to the fullest extent permitted by law, shall indemnify and hold harmless Design Consultant and its officers, directors, employees and agents from and against losses and damages, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Design-Builder, anyone employed directly or indirectly by Design-Builder or anyone for whose acts Design-Builder may be liable.

**10.3.2** If an employee of Design-Builder, anyone employed directly or indirectly by Design-Builder or anyone for whose acts Design-Builder may be liable has a claim against any party indemnified pursuant to Section 10.3.1 above, Design-Builder's indemnity obligation set forth in Section 10.3.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder or other entity under any employee benefit acts, including workers' compensation or disability acts.

**Article 11**

**Contract Adjustments and Disputes**

**11.1 Requests for Contract Adjustments and Relief.**

**11.1.1** If either Design Consultant or Design-Builder believes that it is entitled to relief against the other for any event arising out of or related to the Services or the Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall be in accordance with specific notice requirements contained in applicable sections of the Contract Documents and, if possible, be made prior to incurring any cost or expense. Design Consultant shall provide Design-Builder written notice of claims for which Owner may be responsible, including but not limited to changes in the Basis of Design Documents, in sufficient time for Design-Builder to meet its notice requirements to Owner set forth in the Contract Documents. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed ten (10) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is





later. Such notice shall be in accordance with the Contract Documents and shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request. Design Consultant shall comply with all documentation requirements set forth in the Design-Build Agreement when submitting its claim to Design-Builder.

## **11.2 Dispute Avoidance and Resolution.**

**11.2.1** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design Consultant and Design-Builder each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Services.

## **11.3 Disputes Involving Owner.**

**11.3.1** To the extent a claim, dispute or controversy arises out of, or relates to, problems caused by Owner or for which Owner is responsible ("Owner Disputes"), such Owner Disputes shall be resolved pursuant to the dispute resolution clause set forth in the Design-Build Agreement. Both Design-Builder and Design Consultant agree to cooperate in the presentation and prosecution or defense of Owner Disputes. If, after a request for an extension of time or additional compensation from Design Consultant, Design-Builder believes that the event causing the delay or additional compensation is the responsibility of Owner, then Design-Builder will cooperate with and assist Design Consultant in presenting a request for an extension of time or additional compensation to Owner. Notwithstanding the above, Design-Builder reserves the right not to submit a claim to Owner. In such cases, the claim shall be resolved pursuant to Section 11.4.

**11.3.2** Notwithstanding any other provisions herein to the contrary, Design-Builder and Design Consultant each agree to accept the relief as to a time extension or additional compensation obtained from Owner, if any, as well as all other aspects of the final decision following appeal or the expiration of the time for appeal, as full and final resolution of any Owner Dispute.

**11.3.3** If Design-Builder asserts a claim against Owner involving Design Consultant, each party shall bear its own costs for outside counsel and third-party consultants retained to prosecute claims against Owner and for any other litigation costs. Each party shall present its portion of the claim to Owner.

**11.3.4** If Owner contends that the Contract Documents have been breached, or otherwise asserts a claim or set-off against Design-Builder, the party determined to be responsible for the breach either by settlement or by the trier of fact shall be responsible for all costs occasioned by the breach, including counsel and litigation costs. If the trier of fact fails to determine the relative degrees of fault of Design-Builder and Design Consultant in connection with any claim by Owner, then Design-Builder and Design Consultant agree that the allocation of fault shall be determined pursuant to Section 11.4.

## **11.4 Disputes Not Involving Owner.**

**11.4.1** For any claim, dispute or controversy not arising out of, or relating to, problems caused by Owner or for which Owner is responsible, Design Consultant and Design-Builder will first attempt to resolve such claim, dispute or controversy at the field level through discussions between Design-Builder's Representative and Design Consultant's Representative.

**11.4.2** If a claim, dispute or controversy cannot be resolved through Section 11.4.1, Design-Builder's Senior Representative and Design Consultant's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such claim, dispute or controversy. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving the claim, dispute or controversy.

**11.4.3** If after meeting the Senior Representatives determine that the claim, dispute or controversy cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting by Senior Representatives the claim, dispute or controversy to non-binding mediation. The mediation shall be conducted by a mutually

agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by Design-Builder and Design Consultant and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute for mediation. Persons with authority to resolve the dispute shall be present at the mediation.

### **11.5 Arbitration**

**11.5.1** Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which has not been resolved in accordance with the procedures set forth in Section 11.4 above, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect, unless the parties mutually agree otherwise.

**11.5.2** The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.

**11.5.3** Design Consultant and Design-Builder expressly agree that any arbitration pursuant to this Section 11.5 may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy, or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Design-Builder and Design Consultant will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.

**11.5.4** The prevailing party in any arbitration, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party.

### **11.6 Duty to Continue Performance.**

**11.6.1** Unless provided to the contrary in the Contract Documents, Design Consultant shall continue to perform the Services and Design-

Builder shall continue to satisfy its payment obligations to Design Consultant, pending the final resolution of any dispute or disagreement between Design-Builder and Design Consultant.

### **11.7 CONSEQUENTIAL DAMAGES.**

**11.7.1** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 11.7.2 BELOW), NEITHER DESIGN-BUILDER NOR DESIGN CONSULTANT SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

**11.7.2** Notwithstanding Section 11.7.1 above, Design-Builder shall be entitled to recover against Design Consultant (i) any liquidated damages that Owner may assess against Design-Builder which are attributable to Design Consultant.

## **Article 12**

### **Miscellaneous**

#### **12.1 Assignment.**

**12.1.1** Neither Design Consultant nor Design-Builder shall, without the written consent of the other, assign, transfer or sublet any portion or part of the Services or the obligations required by the Contract Documents.

#### **12.2 Successorship.**

**12.2.1** Design-Builder and Design Consultant intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

#### **12.3 Governing Law.**

**12.3.1** The Agreement and all Contract Documents shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles.

#### **12.4 Severability.**

**12.4.1** If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements or Court A

order, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

#### **12.5 No Waiver.**

**12.5.1** The failure of either Design-Builder or Design Consultant to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

#### **12.6 Headings.**

**12.6.1** The headings used in this Agreement, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

#### **12.7 Notice.**

**12.7.1** Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement, or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the number of the intended recipient.

#### **12.8 Amendments.**

**12.8.1** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

#### **12.9 Survival.**

**12.9.1** Design Consultant's obligations under this Agreement shall not be released, and shall specifically survive, the completion of all Services hereunder, final payment to Design Consultant, and the termination of this Agreement for any reason.

## **Article 13**

### **Electronic Data**

#### **13.1 Electronic Data.**

**13.1.1** The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Design-Builder, Design Consultant and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

#### **13.2 Transmission of Electronic Data.**

**13.2.1** Design-Builder shall determine, after consultation with Design Consultant, the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

**13.2.2** Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

**13.2.3** By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

#### **13.3 Electronic Data Protocol.**

**13.3.1** The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of

Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Sub-Consultants to agree, to the following protocols, terms and conditions set forth in this Section 13.3.

**13.3.2** Electronic Data will be transmitted in the format determined in Section 13.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

**13.3.3** The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information if such information changes prior to Final Completion of the Project.

**13.3.4** The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

**13.4** In the event the Design-Build Agreement contains a provision governing Electronic Data, and there is a conflict between the provision in the Design-Build Agreement and this Article 13, the provision in the Design-Build Agreement takes precedence notwithstanding the order of precedence set forth in Section 1.4.2.

## **Article 14**

### **Confidential Information**

#### **14.1 Confidential and/or Proprietary Information.**

**14.1.1** Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.

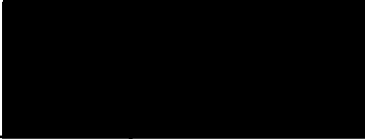
**14.1.2** Design Consultant may receive information from Design-Builder that is either confidential or proprietary to either Design-Builder or to Owner. Such information shall be labeled as confidential and/or proprietary. Design Consultant agrees to maintain the confidential nature of such information and to execute any such additional agreements as may be required by Owner or Design-Builder with respect to such information.

**14.1.3** In the event the Design-Build Agreement contains a provision governing Confidential Information, and there is a conflict between the provision in the Design-Build Agreement and this Article 14, the provision in the Design-Build Agreement takes precedence notwithstanding the order of precedence set forth in Section 1.4.2.

In executing this Agreement, Design-Builder and Design Consultant each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the Services described herein.

**DESIGN BUILDER:**

**MCM**



\_\_\_\_\_  
(Signature)

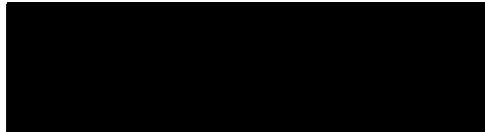
Alexis Leal/Director of Corporate Operations

(Name & Title)

Date: 4-20-16

**DESIGN CONSULTANT:**

**FIGG Bridge Engineers, Inc.**



\_\_\_\_\_  
(Signature)

Linda Figg/President/CEO

(Name & Title)

Date: April 26, 2016



**EXHIBIT A  
TO  
AGREEMENT**

**SCOPE OF WORK**

**GENERAL**

FIGG Bridge Engineers, Inc. (FIGG) will provide professional design and engineering services to Munilla Construction Management (MCM) for bridge engineering associated with the Pedestrian Bridge Design-Build Project for Florida International University (FIU). FIGG will act as the lead partner for the Design Team and be responsible for the coordination of all team members and is the single point of contact with MCM.

FIU has provided conceptual design drawings for the new bridge, landing areas, rail, elevator structures and coordination of the general civil design items. FIGG will provide final design, construction drawings and specifications associated with the new FIU Pedestrian Bridge. FIGG will develop the design for MCM with all information necessary to construct the project as a complete and fully operational system in accordance with the provided FIU requirements and contract documents.

**PROJECT TEAM RESPONSIBILITIES**

The general contractor is MCM. As a consultant to MCM, FIGG will be responsible for managing the design team, coordinating between the design team and contractor, and performing final design.

**Prime:**

**FIGG Bridge Engineers, Inc. (FIGG)** – Design Team Management, Bridge Design

**Subconsultants:**

**A&P Consulting Transportation Engineers, Corp. (APCTE)** – Roadway, Drainage, Utility Coordination, Maintenance of Traffic, Environmental/Permitting, Signing and Pavement Marking, Signalization

**Miller Legg** – Landscape and Hardscape Design

**Manuel G. Vera & Associates, Inc. (MGV)** - Survey

**GEOSOL, Inc. (GEOSOL)** – Geotechnical Engineering

**SGM Engineering, Inc. (SGM)** – Mechanical and Electrical Design

**Randy Burkett Lighting Design, Inc. (RBLDI)** – Bridge and Landscape Lighting

**PROJECT DESCRIPTION**

The Project consists of an innovative package of technology, streetscape, and transit improvements to develop an urban connection between the City of Sweetwater and FIU. The Design-Build team is tasked to design and build an innovative signature bridge that will become a respected and valued design landmark in Miami. Design-Build services include only the Urban Design & Infrastructure component of the project. These infrastructure improvements consist of: 1) A signature pedestrian-oriented shared-use bridge across US 41(S.W. 8th Street) that as a major arterial roadway located between Sweetwater and the FIU

Modesto Maidique Campus (MMC) obstructs pedestrian movements between Sweetwater and MMC; 2) A pedestrian plaza at both the bridge landing on the FIU MMC and the landing within Sweetwater; 3) Pedestrian-oriented streetscape enhancements to be created by narrowing 109th Avenue between SW 7th Terrace and SW 6th Street reducing the existing 3 traffic lanes to 2 traffic lanes. The enhancements will include upgraded sidewalk paving materials, enhanced shade trees, appropriate upgrades to street furniture, street signage, street lighting and landscaping; 4) Improvements on the FIU MMC will include new pedestrian walkways, plazas, pavilions, bike paths, landscaping, and 5) Advanced Intermodal & Multimodal Station (AIMS) elements on the North side of FIU's MMC. As part of these improvements the following engineering design services are included in the scope:

- Bridges Structure – Signature Pedestrian Bridge crossing S.W. 8<sup>th</sup> Street
- Roadway – reconstruction, and milling, resurfacing, and widening of S.W. 109<sup>th</sup> Avenue
- Drainage/Storm water management
- Miscellaneous Structures – Bulkhead wall
- Signing and Pavement Markings
- Signals
- Lighting
- Utility relocation
- Landscaping/Hardscaping
- Additive Alternative 1 (PENDING AWARD) – On Campus improvement from northeast corner of PG-4 to Green Library

**DESIGN MANAGEMENT AND GENERAL TASKS (FIGG):**

1. Prepare and update design schedule, including monthly updates and two-week look-ahead
2. Prepare and submit Design Quality Management Plan (DQMP)
3. Coordination with Contractor, including:
  - Conference call update meetings once a week, and face to face once a month during design only
  - Responding to calls/correspondence (e-mails)
  - Maintaining an Open Issues Log
  - Maintaining project correspondence and submittals on project FTP site
4. Design Team Coordination
  - Conduct weekly conference call team meetings and monthly face to face meetings during design only
  - Provide general oversight of FIGG staff (manage resources)
  - Respond to calls/correspondence (e-mails)
  - Maintain project design files (Microstation) on project FTP site.
5. Project Manager (PM) Coordination with Discipline Leads
  - FIU and FDOT PM's once a month during design phase only.
  - Meet with FDOT District 6 for SW 8<sup>th</sup> Street
  - Meet with City of Sweetwater for SW 109<sup>th</sup> Avenue
  - Coordinate with adjacent projects in MDC and on FIU Campus

6. Quality Assurance
  - Perform QA/QC of plans, calculations, and documents
  - QA review subconsultants submittals for compliance with QC
  - Interdisciplinary review meetings (2 max)
  - Constructability reviews to be performed by MCM staff
  - Maintain QA/QC documents and check prints
  - Review and respond to FIU's and FDOT's review (Electronic Review Comment (ERC))
  - Attend review meetings for initial (Technical Proposal), 30% Page Turn Meeting with Owners, 90% Design, 100% Design, and Construction Set submittals
7. Contract Administration
  - Review expenditures vs. deliverables/progress
  - Review invoices from subconsultants
  - Prepare FIGG invoices that include invoices from subs
  - Provide notices for out-of-scope work
8. Documentation
  - Prepare minutes for all design related meetings
  - Document critical design decisions
9. Public Involvement
  - FIGG will supply support data and plans as needed. Public Involvement activities to be led by MCM.
10. Specification Package and Technical Special Provisions (TSPs)
  - Submit package with Final Phase (100%) submittal for review and final for signed and sealed with Construction (RFC) Set.

**DESIGN GENERAL CONSIDERATIONS:**

Bridge will be designed using the following design criteria:

1. AASHTO LRFD 7<sup>th</sup> edition, with 2015 interims
2. FDOT Structures Design Manual, January 2015
3. AASHTO LRFD Guide Specifications for Design of Pedestrian Bridges, 2th edition (2009).

Work on this project including calculations, plans, specifications, and estimates will be produced with English units. Deliverables for the project will be provided in both hardcopy and the following FIU compatible electronic formats:

- Text documents will be developed in Microsoft Word (.doc) format and submitted as electronically scanned Adobe Acrobat (.pdf) format files.
- Spreadsheets will be developed in Microsoft Excel (.xls) format and submitted as electronically scanned Adobe Acrobat (.pdf) format files.
- Project CADD drawings will be developed in Microstation (.dgn) format and submitted as electronically scanned files in the Adobe Acrobat (.pdf) format as well as dgn format to MCM.



### **FINAL BRIDGE DESIGN (FIGG):**

FIGG will perform the final structural design and contract document preparation for the new FIU Pedestrian Bridge, including analysis and design of the bridge superstructure, substructure, and foundations related to preparation of final construction contract documents. This work includes:

1. Coordinating the final bridge design, with a focus on ensuring timely submittals consistent with the project construction schedule, and coordination between design disciplines, to ensure the integration of individual components into the overall project. FIGG will participate in sixteen (16) design progress meetings with MCM for this coordination.
2. Design of the pedestrian bridge which includes foundations, piers, pylon and superstructure.
3. Design of landing areas including the elevator structures.
4. Application of design loads under scour conditions for two cases: 100-year scour and 500 year scour.
5. Analysis and design the structure for anticipated construction loads after finalizing necessary construction phasing in coordination with MCM. The bridge construction transport system and temporary falsework system are not included in FIGG's scope of work.
6. Preparation of construction drawings for the bridge components such that shop drawings will not be required. The Construction Drawing deliverable will include dimensions, reinforcement, bar bending diagrams, post-tensioning and other embedded items.
7. Preparation of construction schematics illustrating the stages and design loads of the construction for which the structure has been designed.
8. Design quality control and quality assurance in accordance with the project Professional Service Quality Control Plan, including independent design check of bridge.
9. Shop drawing review associated with the temporary support system.
10. Participation in twelve (12) review meetings with FDOT and FIU during the review of the 90% and 100% drawing submittals.

### **CONSTRUCTION PHASE SERVICES (FIGG):**

1. FIGG will provide design office support services including response to Request for information (RFI's), minor Notice of Design Changes (NDC's), non-conformance reports (NCR's) and other routine assistance as needed.
2. FIGG will prepare an erection manual detailing step-by-step construction coordinated with MCM to represent their proposed means and methods. The manual will include each step of the superstructure erection.

3. FIGG design support engineers will make site trips for field reviews. These trips are for the purpose of attending construction meetings, discussing the design, general construction related communications, advice related to special construction operations and procedures, and evaluating unexpected issues that may arise during construction. Twelve (12) such trips are included in this scope.
4. Technical support related to design during construction of the project to answer questions from the field related to the design.
5. Review of shop drawings for concrete formwork, elevators, expansion joints, bearings, railings, post-tensioning systems and stay cable tubes for conformance with the design intent.
6. Coordination with the Geotechnical Engineer (GEOSOL) during construction including review and evaluation of load testing results for foundations. Consultation will be provided by the geotechnical subconsultant as required to interpret the testing results and suggest changes to foundations depths, as may be required to develop the foundation design capacities.
7. Production of as-built drawings for the bridge main structures and landing areas based on records maintained by MCM during construction.

**OTHER ENGINEERING SERVICES:**

Scope of Services for engineering subconsultants are included in the Attachment to this Exhibit A.

**EXCLUSIONS:**

The following activities are excluded from this scope of work:

1. Geometry control for the bridge construction will be performed by others and is not be part of this scope.
2. The design of any erection equipment and falsework is not included in this scope.
3. Subsurface utility engineering (SUE) services are not included in this scope of work.
4. Geotechnical construction phase services are not included in this scope of work, such as:
  - Spread footing inspection services during the spread footing construction
  - Drilled shaft/driven pile inspection services during the installation of the foundations
  - CSL testing at each drilled shaft foundation location
  - Foundation certification reports

**SCHEDULE FOR FINAL DESIGN**

Engineering services described by this Scope of Work are based on a design phase duration of eight (8) months starting immediately upon receipt of the information noted herein and formal

Notice-to-Proceed from MCM. The formal FIU Notice-to-Proceed was received on January 21, 2016.

The schedule for Final Design is included as Exhibit C.

**SCHEDULE OF VALUES FOR FINAL DESIGN**

The schedule of values for Final Design is included as Exhibit D.

**EXHIBIT B  
TO  
AGREEMENT**

**COMPENSATION SUMMARY  
Professional Engineering Services**

<b>Final Design and Construction Phase Services</b>	<b>Total (BASE BID)</b>	<b>\$830,000.00 LUMP SUM</b>
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<b>Final Design and Construction Phase Services</b>	<b>Total (ALTERNATIVE 1 – PENDING AWARD)</b>	<b>\$75,000.00 LUMP SUM</b>
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<b>GRAND TOTAL</b>	<b>\$905,000.00 LUMP SUM</b>
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**EXHIBIT C  
TO  
AGREEMENT**

**DESIGN AND DELIVERABLE SCHEDULE**

Below are estimated bridge design deliverables. These dates are based on concurrent review by FDOT and FIU of 20 days for bridge submittals and 15 days for all other submittals (excluding weekends and Owner observed holidays).

Design Quality Management Plan	2/9/2016
DP-1 (Foundations)	
90% Design Submittal	5/2/2016
Final Design Submittal	6/21/2016
RFC Design Plans	7/20/2016
DP-2 (Roadway/Walls/MOT)	
90% Design Submittal	5/12/2016
Final Design Submittal	6/24/2016
RFC Design Plans	7/19/2016
DP-3 (Substructure)	
90% Design Submittal	6/10/2016
Final Design Submittal	8/1/2016
RFC Design Plans	8/30/2016
DP-4 (Signing/Pvmnt Marking/Signals/Landscape/Streetscape)	
90% Design Submittal	8/22/2016
Final Design Submittal	10/6/2016
RFC Design Plans	10/28/2016
DP-5 (Superstructure)	
90% Design Submittal	8/22/2016

Final Design Submittal	10/12/2016
RFC Design Plans	11/10/2016
DP-6 (Lighting/MEP)	
90% Design Submittal	10/6/2016
Final Design Submittal	11/23/2016
RFC Design Plans	12/15/2016

EXHIBIT D  
TO  
AGREEMENT

FIU - UniversityCity Prosperity Project  
Miami, Florida  
Design Schedule of Values

FIGG Project No. 2262.03  
ALTERNATIVE 1 IS PENDING AWARD

Task	Task Value
<b><u>PUBLIC INFORMATION MANAGEMENT</u></b>	
<u>Public Information Activities</u>	\$ 5,000.00
<b><u>DESIGN SERVICES</u></b>	
<u>Preliminary Design</u>	\$ 30,000.00
<u>Design Quality Management Plan</u>	\$ 4,000.00
<u>Survey for Design Activities</u>	
Survey for Design Activities (Base Bid)	\$ 41,000.00
Survey for Design Activities (Alternative 1)	\$ 25,000.00
Task Total	\$ 66,000.00
<u>Foundation Design / Piles, Drilled Shafts</u>	
90% Foundation Design	\$ 72,000.00
RFC Foundation Design	\$ 9,000.00
Task Total	\$ 81,000.00
<u>Substructure Design</u>	
90% Substructure Design	\$ 92,000.00
RFC Substructure Design	\$ 11,000.00
Task Total	\$ 103,000.00
<u>Superstructure Design (Includes Elevator Tower)</u>	
90% Superstructure Design	\$ 121,000.00
RFC Superstructure Design	\$ 14,000.00
Task Total	\$ 135,000.00
<u>Bridge Load Rating</u>	\$ 6,000.00
<u>Roadway Analysis</u>	
Typical Section Package	\$ 7,000.00
Permits	\$ 3,000.00
Pavement Design Package	\$ 5,000.00
Task Total	\$ 15,000.00

**EXHIBIT D  
TO  
AGREEMENT**

**FIU - UniversityCity Prosperity Project  
Miami, Florida  
Design Schedule of Values**

FIGG Project No. 2262.03  
ALTERNATIVE 1 IS PENDING AWARD

Task	Task Value
<b><u>Roadway Plans</u></b>	
90% Roadway Plans	\$ 26,000.00
<u>RFC Roadway Plans</u>	\$ 3,000.00
<b>Task Total</b>	<b>\$ 29,000.00</b>
<b><u>Signalization Plans</u></b>	
90% Signalization Plans	\$ 3,000.00
<u>RFC Signalization Plans</u>	\$ 1,000.00
<b>Task Total</b>	<b>\$ 4,000.00</b>
<b><u>Signing and Pavement Marking Plans</u></b>	
90% Signing and Pavement Marking Plans	\$ 6,000.00
<u>RFC Signing and Pavement Marking Plans</u>	\$ 1,000.00
<b>Task Total</b>	<b>\$ 7,000.00</b>
<b><u>Bulkhead Wall/Temporary Critical Wall Plans</u></b>	
90% Bulkhead/Temp. Critical Wall Plans	\$ 17,000.00
<u>RFC Bulkhead/Temp. Critical Wall Plans</u>	\$ 2,000.00
<b>Task Total</b>	<b>\$ 19,000.00</b>
<b><u>Utility Coordination</u></b>	
	<b>\$ 7,000.00</b>
<b><u>Drainage</u></b>	
Drainage Report	\$ 13,000.00
<u>Bridge Hydraulic Report</u>	\$ 10,000.00
<b>Task Total</b>	<b>\$ 23,000.00</b>
<b><u>Traffic Control</u></b>	
90% Traffic Control Plans	\$ 15,000.00
<u>RFC Traffic Control Plan</u>	\$ 2,000.00
<b>Task Total</b>	<b>\$ 17,000.00</b>
<b><u>Landscape Architecture/Hardscaping Plans</u></b>	
90% Landscape Architecture/Hardscaping Plans (Base Bid)	\$ 89,000.00
90% Landscape Architecture/Hardscaping Plans (Alternative 1)	\$ 18,000.00
RFC Landscape Architecture/Hardscaping Plans (Base Bid)	\$ 10,000.00
<u>RFC Landscape Architecture/Hardscaping Plans (Alternative 1)</u>	\$ 3,000.00
<b>Task Total</b>	<b>\$ 120,000.00</b>



**EXHIBIT D  
TO  
AGREEMENT**

**FIU - UniversityCity Prosperity Project  
Miami, Florida  
Design Schedule of Values**

FIGG Project No. 2262.03  
ALTERNATIVE 1 IS PENDING AWARD

Task			Task Value
<b><u>Aesthetic Lighting Concept Plans</u></b>			
90% Aesthetic Lighting Concept Plans (Base Bid)	\$		18,000.00
90% Aesthetic Lighting Concept Plans (Alternative 1)	\$		10,000.00
Final Aesthetic Lighting Concept Plans (Base Bid)	\$		2,000.00
Final Aesthetic Lighting Concept Plans (Alternative 1)	\$		1,000.00
<b>Task Total</b>	<b>\$</b>		<b>31,000.00</b>
 <b><u>MEP Plans</u></b>			
90% MEP Plans (Base Bid)	\$		33,000.00
90% MEP Plans (Alternative 1)	\$		2,000.00
RFC MEP Plans (Base Bid)	\$		4,000.00
RFC MEP Plans (Alternative 1)	\$		1,000.00
<b>Task Total</b>	<b>\$</b>		<b>40,000.00</b>
 <b><u>GEOTECHNICAL</u></b>			
Borings - Pedestrian Bridge/Bulkhead Walls	\$		34,000.00
Report - Pedestrian Bridge/Bulkhead Walls	\$		14,000.00
<b>Task Total</b>	<b>\$</b>		<b>48,000.00</b>
 <b><u>Construction Phase Support Services</u></b>			
Construction Phase Support Services (Base Bid)	\$		100,000.00
Construction Phase Support Services (Alternative 1)	\$		15,000.00
	<b>\$</b>		<b>115,000.00</b>
 <b>TOTAL (BASE BID) \$ 830,000.00</b>			
 <b>TOTAL (ALTERNATIVE 1, PENDING AWARD) \$ 75,000.00</b>			
 <b>GRAND TOTAL \$ 905,000.00</b>			

**EXHIBIT E  
TO  
AGREEMENT**



FLORIDA  
INTERNATIONAL  
UNIVERSITY

**INSURANCE REQUIREMENTS**

**FIU STANDARD INSURANCE REQUIREMENTS FOR ALL ARCHITECT/ENGINEER'S WORKING ON FIU CONSTRUCTION PROJECTS (POSTED ON FIU'S WEBSITE UNDER "STANDARD INSURANCE REQUIREMENTS FOR ARCHITECT/ENGINEERS")**

The Architect/Engineer shall be required to procure and maintain throughout the Project the following insurance policies on the terms outlined below with an insurer acceptable to Owner.

**A. Types/Amounts of Insurance Required**

- (i) Commercial General Liability insurance (occurrence form) including products/completed operations and contractual liability providing coverage in the minimum amount of:
  - (a) For a major project or continuing services projects where the aggregate Construction Price is greater than \$2,000,000: A \$5,000,000 per occurrence liability limit and a \$5,000,000 aggregate limit with a deductible not to exceed \$25,000 per occurrence is required;
  - (b) For a major project or continuing services projects where the aggregate Construction Price is \$2,000,000 or less: A \$2,000,000 per occurrence liability limit and a \$2,000,000 aggregate limit with a deductible not to exceed \$25,000 per occurrence is required;
  - (c) These limits may be met by a combination of primary and excess coverage.
  - (d) The insurance certificate(s) shall indicate that the Commercial General Liability policy carries an endorsement (no more restrictive than CG 20 10) which names The Florida International University Board of Trustees, Florida International University, the State of Florida, The Florida Board of Governors, and their respective trustees, directors, officers, employees and agents, as additional insureds. The Architect/Engineer's policy(ies) shall be primary and any insurance carried by Owner (FIU) shall be noncontributing with respect thereto. In addition, the policy shall cover: "XCU" (explosion, collapse, underground damage) for those classifications excluded under the policy and contractual liability.
- (ii) Workers' Compensation insurance which complies with the requirements of Chapter 440, Florida Statutes; and
- (iii) Professional Liability Insurance (Occurrence Form) or if the insurance is written on a claims-made form, it shall continue for five (5) years following the completion of the performance or the attempted performance of the provisions of this agreement. The insurance shall have a retroactive date of placement prior to or coinciding with the effective date of this agreement. If the coverage is canceled or non-renewed and not replaced with another claims-made policy form with a retroactive date prior to the effective date or coinciding with the effective date of this agreement the Architect/Engineer must purchase Extended Reporting ("Tail") coverage for a minimum of five (5) years following the completion of the performance or the attempted performance of the provisions of this agreement, providing coverage in the amount of:
  - (a) For a major project or continuing services projects where the aggregate Construction Price is greater than \$2,000,000: A \$5,000,000 per claim and aggregate liability limit is required;
  - (b) For a major project or continuing services projects where the aggregate Construction Price is \$2,000,000 or less: A \$2,000,000 per claim and aggregate liability limit is

required.

**B. Requirements Pertaining to all Insurance Required**

- (i) All insurance policies shall be issued and countersigned by duly authorized representatives of such companies and, except for Professional Liability, shall be written on ISO standard forms or their equivalent. Additionally, all insurance under this Section must be issued by an insurance company authorized to do business in the State of Florida and have an AM Best rating of A-, VII or higher. The insurance certificate(s) shall provide that any such insurance policy(ies) shall not be canceled, terminated, non-renewed, or materially changed without thirty (30) days' prior written notice to the Owner. In addition, the insurance company and/or the Architect/Engineer must provide thirty (30) days prior written notice to the Owner of any reduction in any of the policy limits. The Architect/Engineer shall require all subcontractors, consultants, and agents ("consultants" for purposes of this provision) providing services on the Project to carry any and all insurance coverage that adequately covers each consultant's exposure based on the type of services they are providing in connection with the Project. In addition, the Architect/Engineer shall notify the Owner, in writing, of any reduction in the aggregate coverage provided by the Architect/Engineer's insurance within (30) days after each such revision in coverage. In the event the Architect/Engineer or its consultants fail to maintain the insurance required hereby, the Owner may, at its discretion, pay any premium necessary to maintain the coverage required hereby and deduct such premium costs from the Architect/Engineer's fees under this Agreement.
- (ii) The Architect/Engineer shall release and discharge the Owner and the Owner's Related Parties of and from all liability to the Architect/Engineer, and to anyone claiming by, through or under the Architect/Engineer, by subrogation or otherwise, on account of any loss or damage to tools, machinery, and equipment or other property, however caused.
- (iii) Architect/Engineer must provide the Owner with a Certificate(s) of Insurance(s) reflecting all of the insurance coverages satisfying the above requirements not later than ten (10) calendar days after the Effective Date of this Agreement and prior to commencement of any operations or activities hereunder. Additionally, the insurance required under this Agreement shall be carried by the Architect/Engineer at least until the Project reaches Final Completion and is accepted by the Owner.
- (iv) The absence of a demand for any type of insurance certificates or policy or insurance condition, or for higher coverage limits shall not be construed as a waiver of the Architect/Engineer's obligations to carry and maintain the appropriate types of insurances at limits that are appropriate to the liability exposure associated with this Agreement. FIU does not represent that coverage and the limits specified herein will necessarily be adequate to cover Architect/Engineer's liability.

**C. Effect of Insurance.**

- (i) Compliance with insurance requirements shall not relieve the Architect/Engineer of any responsibility to indemnify the Owner for any liability to the Owner as specified in any other provision of this Contract, and the Owner shall be entitled to pursue any remedy in law or equity if the Architect/Engineer fails to comply with the contractual provisions of this Contract. Indemnity obligations specified elsewhere in this Contract shall not be negated or reduced by virtue of any insurance carrier's (i) denial of insurance coverage for the occurrence or event which is the subject matter of the claim; or (ii) refusal to defend any named insured.