

AGREEMENT BETWEEN OWNER AND COMMISSIONING AGENT

THIS CONSULTING AGREEMENT (the "Agreement") is made as of this _____ day of **Month Year**, ("Effective Date") by and between The University of Florida Board of Trustees ("Owner") and **Name of Commissioning Firm** ("Consultant"), **Address of Commissioning Firm**, Federal I.D. No. **Federal ID #**, which is authorized to do business in Florida.

WHEREAS, Owner solicited statements of qualifications for commissioning services for the project described on **Exhibit A** (the "Project"); and

WHEREAS, based on Consultant's interview, professional qualifications statement and related submissions, Owner has selected Consultant as the commissioning agent for the Project; and

WHEREAS, Owner and Consultant desire to enter into this Agreement.

NOW THEREFORE, for and in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner and Consultant agree as follows:

ARTICLE 1 CONSULTANT'S RESPONSIBILITIES

1.1. **Services.** Consultant is being engaged to perform commissioning services on the Project to ensure that particular building systems are planned, designed, installed, tested and capable of being operated and maintained to perform in conformity with (i) the design needs and other requirements of the Owner identified in Owner's program for the Project, (ii) the design professional's basis of design, and (iii) any additional requirements set forth on **Exhibit A**. The systems to be commissioned and scope of services to be performed are set forth on **Exhibit B**. It is understood and agreed that the Builder and Professional on the Project are responsible to Owner for reconciling all design and construction issues, based upon, or with, input from the Consultant.

1.2. **Scheduling of Services.** Consultant's services shall be performed as expeditiously as is consistent with professional skill and care. Consultant shall coordinate the Consultant's services with the Owner, the Professional designing, and Builder constructing, the Project, and any other consultants providing services on the Project. The Consultant shall develop a schedule to perform its services based on the schedule for the Project. The Consultant shall perform its services in accordance with the schedule approved by Owner subject to changes in the overall construction schedule for Project.

1.3. **Approval of Authorized Representative.** Consultant shall designate a representative authorized to act on the Consultant's behalf, who shall be subject to Owner's approval.

1.4. **Representations.** Consultant represents that it is thoroughly familiar with, and understands the requirements of, the Project and is experienced in commissioning. Consultant represents to Owner that Consultant has all necessary architectural and engineering education, skill, knowledge and experience required for the services being provided hereunder. In addition, Consultant represents that it has all licenses required by the State of Florida to perform such services.

ARTICLE 2 PAYMENT

- 2.1. Payments. The Owner agrees to pay the Consultant, as compensation for the Consultant's services, in the amount set forth on Exhibit A. Additional services, if required, shall be based on the rates set forth on Exhibit A.
- 2.2. Schedule for Payment. Consultant shall be paid based on the achievement of milestones, in accordance with Exhibit A, attached hereto and incorporated herein by reference. Upon achievement of each milestone, Consultant shall submit an Application for Payment with appropriate back-up documentation. Undisputed payments owed shall be paid by Owner within thirty (30) days of receipt of a complete Application for Payment. Applications for Payment shall be submitted in detail sufficient to allow a proper pre-audit and post-audit thereof.
- 2.3. Vendor Ombudsman. A Vendor Ombudsman has been established within the owner's office of Finance and Administration. The duties of this office include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from the owner. The Vendor Ombudsman may be contacted at 352-392-1241.
- 2.4. Records. Accounting records of the Consultant and any sub-consultants it may engage pursuant hereto pertaining to this Project shall be kept in accordance with generally accepted accounting principles and shall be available to the Owner or the Owner's authorized representative at mutually convenient times.
- 2.5. Reimbursable Expenses. Costs for travel, reproduction, and other miscellaneous needs shall be included in the lump sum fee and shall not be directly reimbursed.

ARTICLE 3 TERMINATION

- 3.1 Termination/Default by Consultant. If the Consultant defaults by failing to substantially perform, in accordance with the terms of this Agreement, as reasonably determined by Owner, the Owner may give written notice to the Consultant (i) terminating this Agreement effective seven (7) calendar days from the date of notice; or (ii) setting forth the nature of the default and requesting the Consultant initiate cure within seven (7) calendar days from the date of notice. At any time thereafter, if the Consultant fails to initiate cure upon the request of the Owner and continue such cure until complete, the Owner may give notice to the Consultant of immediate termination. If the Owner terminates this Agreement pursuant to this section, and it is subsequently determined by a court of competent jurisdiction that the Consultant was not in default, then in such even said termination shall be deemed a termination for convenience as set forth in Section 3.3.
- 3.2 Termination/Default by Owner. If the Owner defaults by failing to substantially perform in accordance with the terms of this Agreement, the Consultant shall give written notice to the Owner setting forth the nature of the default and requesting cure within seven (7) calendar days from the date of notice. If the Owner fails to cure within seven (7) calendar days from the date of notice Consultant may give notice to the Owner of immediate termination.
- 3.3 Other Termination or Suspension by Owner. The Owner may at any time give written notice to the Consultant terminating this Agreement or suspending the Project, in whole or in part, for the Owner's convenience and without cause. If the Owner terminates this Agreement or suspends the Project, the Consultant shall immediately reduce its staff, services and outstanding commitment in order to minimize the cost of termination or suspension.

3.4 Payment After Termination/Suspension. If the Agreement is terminated by the Owner pursuant to Section 3.1, no further payment shall be made to the Consultant until completion of the Project. At such time, the Consultant's compensation shall, at Owner's option, be calculated on the basis of services actually performed and expenses actually incurred prior to the effective termination date, or (ii) on the basis of the payment terms set forth elsewhere herein. In either case, the Consultant's compensation shall be reduced by all costs and damages incurred by Owner as a result of the default of Consultant. If the Agreement is (i) terminated by the Consultant pursuant to Section 3.2; (ii) terminated by the Owner pursuant to Section 3.3; or (iii) suspended more than ninety (90) days by the Owner pursuant to Section 3.3, the Consultant's compensation shall be calculated on the basis of services actually performed and expenses actually incurred prior to the effective termination or suspension date and reasonable costs associated with the termination or suspension.

ARTICLE 4 INDEMNITY

4.1 To the extent permitted by law, Consultant shall indemnify and hold Owner and its officers, employees and trustees harmless from any and all claims, liability, damages, loss, cost and expense of every type whatsoever including, without limitation, attorneys' fees and expenses, in connection with Consultant's performance of this Agreement to the extent caused by the negligent acts or omissions, recklessness, or intentional wrongful misconduct of Consultant or anyone for whose acts or omissions Consultant may be liable. This indemnification shall survive the expiration or earlier termination of this Agreement.

ARTICLE 5 DISPUTES

5.1 As a condition precedent to any party filing legal or equitable action for a claim arising out of or related to this Agreement, the parties shall submit the dispute to mediation pursuant to the American Arbitration Association Construction Industry Mediation Rules currently in effect. Either party may file a written request for mediation with the American Arbitration Association and serve a copy on the other party. The mediation shall be concluded within sixty (60) days of the request, unless otherwise agreed or ordered by the court. Any legal or equitable proceedings shall be stayed pending conclusion of the mediation. The parties shall share the mediator's fee and other administrative costs of the mediation equally. The mediation shall be held in Alachua County, Florida, unless the parties agree upon another location. Agreements reached in mediation shall be enforceable in any court of competent jurisdiction as settlement agreements. To the extent permitted by law, the mediation proceedings shall be confidential and privileged from disclosure in any subsequent proceedings as settlement discussions.

ARTICLE 6 OWNERSHIP OF DOCUMENTS

6.1 The plans, specifications and other documents prepared by the Consultant for this Project are instruments of the Consultant's service for use solely with respect to this Project, except as may be expressly permitted herein. The Consultant shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including the copyright. The Owner shall be permitted to retain copies, including any electronic format and reproducible copies, of the Consultant's plan, Specifications and other documents and may use the same, without compensation to the Consultant, as may be necessary or desirable in the operation, maintenance, construction and renovation of the Project and the remainder of Owner's campus, including, without limitation, additions or renovations to this Project and submittals or distribution of the same to meet official regulatory requirements or other similar requirements, provided in no event may the Owner use the Consultant's plan, Specifications or other documents in the construction of a new facility unless agreed to in writing by the Consultant. The Consultant may only use documents or other materials it prepares in connection with this Agreement in

advertising or promotional materials (other than proprietary or confidential information) with Owner's written consent.

ARTICLE 7 MISCELLANEOUS

7.1. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without regard to its choice of laws provisions and venue shall lie in the courts in Alachua County, Florida.

7.2. Successors & Assigns. The Owner and Consultant, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Consultant shall not assign this Agreement without the written consent of Owner.

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

7.4. No Third Party Relationships. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Consultant.

7.5. Contingency Fees. The Consultant represents and warrants that the Consultant has not employed or retained any entity or person (other than a bona fide employee working solely for the Consultant) to solicit or secure this Agreement, and that the Consultant has not paid or agreed to pay any entity or person (other than a bona fide employee working solely for the Consultant) any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

7.6. Factual Unit Costs. Pursuant to 287.055(5)(a), Florida Statutes, the Consultant certifies that all factual unit costs supporting the fees specified in this Agreement are accurate, complete and current at the time of negotiations; and that any other factual unit costs that may be furnished the Owner in the future to support any additional fees that may be authorized will also be accurate and complete. The fees specified in this Agreement and any additional fees that may be authorized in the future shall be adjusted to exclude any significant sums if the Owner determines such amounts were originally included due to inaccurate, incomplete, or non-current factual unit costs.

7.7. Public Records. This Agreement may be unilaterally canceled by the Owner if the Consultant or any sub-consultants refuse to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, which are made or received by the Consultant or its consultants in conjunction with this Agreement.

7.8. Appropriations. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

7.9. Convicted Vendor List. Consultant represents and warrants that it is not on the convicted vendor list for a public entity crime committed within the past thirty six (36) months. The Consultant further represents and warrants that it will neither utilize the services of, nor contract with, any supplier, subcontractor, or consultant for an amount in excess of \$15,000.00 in connection with this Project if such supplier, subcontractor or consultant is on the convicted vendor list for a public entity crime committed within the past thirty six (36) months.

7.10 No Waiver. Owner's review or approval of any submittals by Consultant shall be solely for the purpose of determining whether the same are generally consistent with Owner's requirements. No such review, inspection, or approval by Owner shall relieve Consultant of its responsibility for the performance of its obligations under this Agreement. Payment by Owner pursuant hereto shall not constitute a waiver of any of Owner's rights under this Agreement or at law, and Consultant expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by Owner.

7.11 Exhibits. All exhibits referenced herein are attached hereto and incorporated herein by reference.

7.12. Insurance. Throughout the Project, the Consultant shall carry, at the Consultant's own expense, blanket professional liability insurance with a coverage amount of One Million and No/100 Dollars (\$1,000,000.00). An insurance certificate shall be provided to the Owner within ten (10) calendar days of the full execution date of this Agreement. The insurance certificate shall provide that such insurance policy shall not be canceled terminated, non-renewed, or materially change, including without limitation, any reduction in the aggregate coverage provided by such policy, without thirty (30) days prior written notice to the Owner.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, the parties have affixed their signatures, effective on the date first written above.

FOR THE CONSULTANT:

ATTEST:

Name of Firm

(NAME, TITLE AND CORPORATE SEAL)

BY: _____
NAME, TITLE:

AS WITNESSED BY:

DATE: _____

FOR THE OWNER:

THE UNIVERSITY OF FLORIDA BOARD OF TRUSTEES

AS WITNESSED BY:

BY: _____
Ed Poppell, Vice President
Business Affairs
University of Florida

DATE: _____

APPROVED AS TO FORM AND LEGALITY

APPROVED

BY: _____
M. Kristina Raattama
Associate General Counsel
University of Florida

BY: _____
Carol J. Walker, Assistant Vice-President
Facilities Planning & Construction
University of Florida

DATE: _____

DATE: _____

EXHIBIT A

**PROJECT INFORMATION, ADDITIONAL REQUIREMENTS, PAYMENT SCHEDULE,
ADDITIONAL SERVICES RATES**

General Project Information

UF Project No.: **UF-xxx**

UF Project Name: **full project title**

Location / Address: **(main campus of the University of Florida)**

Program: **(approved facilities program dated xxxxx)**

Estimated construction cost: \$ xx,xxx,xxx

Estimated total gross square feet: xx,xxx GSF

Schedule: Design Phase from Month & Year to Month & Year
Construction Phase from Month & Year to Month & Year

Section 1.1: Additional Requirements:

Describe or write "NONE"

Section 2.1 and 2.2: Payment Amount: \$ xxx,xxx.xx

PHASE	FEE
Pre-Design Phase	\$ xx,xxx
Concept Schematic Design	\$ xx,xxx
Advanced Schematic Design	\$ xx,xxx
Design Development	\$ xx,xxx
60% Construction Documents	\$ xx,xxx
100% Construction Documents	\$ xx,xxx
Construction & Acceptance Phase	\$ xx,xxx
Cx Plan	xx,xxx
Envelope C.A.	xx,xxx
MEP Pre-Functional Checklists	xx,xxx
MEP Functional Performance Tests	xx,xxx
MEP Acceptance Phase	xx,xxx
Post-Occupancy ¹	\$ xx,xxx
TOTAL FEES (LUMP SUM)	\$ xxx,xxx

1. Post-Occupancy payments to be paid every three months, in arrears, for the year commencing on the Substantial Completion Date.

Section 2.1: Additional Services shall be based on the following hourly rates:

STAFF	HOURLY RATE
Principal Architects/Engineers (Project Director)	\$ 0.00
Registered Architects/Engineers (Project Manager)	\$ 0.00
Graduate Architects/Engineers (Project Designer)	\$ 0.00
CAD Operators/Drafting (Project Technicians)	\$ 0.00

Clerical Support	\$ 0.00
Other	\$ 0.00

EXHIBIT B

BUILDING SYSTEMS TO BE COMMISSIONED AND SCOPE OF SERVICES

PM: Check 'Y' or 'N' as applicable, add services as needed, note consultants, and delete this note

		SYSTEM	CONSULTANT
Yes	No	Mechanical ¹	(name of firm)
Yes	No	Plumbing ⁴	(name of firm)
Yes	No	Fire Protection	(name of firm)
Yes	No	Electrical ²	(name of firm)
Yes	No	Envelope (including roofing, water and vapor barriers, flashings, glazing, and other exterior "skin" products)	(name of firm)
Yes	No	Building Automation Systems (including all controls, and monitoring & reporting systems)	(name of firm)
Yes	No	Security and Access Control	(name of firm)
Yes	No	Process Systems ³	(name of firm)
Yes	No	Cleanroom (Certification)	(name of firm)
Yes	No	Cleanroom (Validation)	(name of firm)
Yes	No	other	(name of firm)

PM: Edit / augment footnotes as needed

Systems Notes

1. Including steam/condensate and/or heating hot water systems, air handling systems, energy recovery devices and other energy-efficient equipment, and related support equipment (drives, pumps, terminal units, etc.)
2. Including lighting and lighting controls, emergency power and grounding systems, system components, such as transformers, main switchgear, motors, and drives
3. Including RO/DI water, process vacuum, clean dry air, process cooling water, acid waste neutralization, solvent waste collection, gaseous nitrogen, etc.
4. Domestic hot water

COMMISSIONING SERVICES

The Consultant's responsibility is to review the design concept and design criteria prepared by the professional on the Project and advise Owner of any concerns, as enumerated in Section 1.1 of this Agreement; it being understood and agreed that the professional is ultimately responsible to Owner for the same. The Consultant shall specifically provide:

DESIGN PHASE

1. Review and confirmation of the Owner's facilities program and the Professional's (A/E's) Basis of Design as expressed in programming and design submittals produced prior to and following selection of the Commissioning (Cx) Consultant;
2. Development of a formal "Owner's Project Requirements" (OPR) document that complies with the requirements of LEED using the Owner's facilities program (with draft/template OPR provided), the UF Design & Construction Standards, and narratives, concepts, and drawings from design submittals produced prior to and following selection of the Cx Consultant.
3. Continuous maintenance of the OPR as required by ASHRAE Guideline 0-2005, throughout the design, construction, acceptance, and warranty phases.
4. At each phase of design, review of, and written commentary on, all narratives, reports, plans, specifications, and other deliverables related to the systems being commissioned for compliance with the Basis of Design, UF

Design and Construction Standards, industry standard for the facility type, coordination & constructability, and minimum **Silver** LEED Certification (version **2.2**);

5. Review of other A/E work products (such as the Energy Model and/or Life Cycle Cost Analysis) related to the systems being commissioned;
6. “Value Engineering” suggestions for improved functionality, efficiency, and/or cost savings (or review of such suggestions proposed by others);
7. Participation in up to (insert #) reconciliation conferences with A/E and Owner as needed during design to clarify & resolve review comments;
8. Production of the General Commissioning Requirements Specification, using the Owner’s template, for inclusion in 60% and 100% Construction Documents, tailored as needed to the project, the design intent, local standards, etc.;
9. Assistance with Owner’s development of a facility management plan, including recommendations on
 - a. Longterm maintenance and life cycle cost strategies,
 - b. Owner participation during construction,
 - c. Owner training,
 - d. O&M information,
 - e. Systems manual as required for LEED-NC,
 - f. Owner stock items, and
 - g. Other closeout/turnover items and procedures to be required by the specifications.

Such recommendations shall include discussions as needed with User Group and UF Physical Plant Division representatives to ensure that such training and deliverables are tailored specifically to the needs of the facility;

10. Development and coordination of trend parameters with the respective discipline design engineers that shall be incorporated into the construction documents as minimum requirements included by the building automation system contractor;
11. Coordination and integration of commissioning activities into the project construction schedule with the assistance of the Builder; and
12. Participation in the pre-bid and bidding process to clarify Cx requirements.

CONSTRUCTION AND ACCEPTANCE PHASE

1. Concurrent review of contractor submittals, shop drawings, and coordination drawings and coordination/reconciliation of comments with A/E and Owner prior to dissemination to the Builder;
2. Development of the Commissioning Plan(s), Pre-Functional Checklists, and Functional Performance Test procedures;
3. Production of a spreadsheet itemization of all products and equipment that comprise the systems being Commissioned, including governing specification section and location by room number or column lines;
4. Attendance at one weekly jobsite meeting per month – maximum total of insert # – for discussion of Cx and LEED certification issues;
5. Participation in coordination meetings during construction to clarify Cx procedures, including such meetings prior to roofing, envelope systems, and HVAC startup – maximum total of insert #;
6. Coordinating of efforts with other quality control measures such as IEQ CX, HVAC Test-And-Balance, materials testing, and other;_
7. For envelope systems: Field visits, inspections, and oversight of the work at no less than the following frequencies:

Waterproofing: insert # site visits

Wall Systems, including Masonry: insert # site visits

Glazing Systems: insert # site visits

Roofing Systems: insert # site visits

8. Field visits, inspections, and oversight of tests to measure discrete operations (Pre-Functional and Functional Testing) and the interoperability of systems and components (Performance Testing) to confirm compliance with the OPR, Basis of Design, plans & specifications, and Cx Plan;

NOTE: Re-testing shall incur additional services to be payable directly by the Builder.

9. Recommendations of acceptance or rejection based on Functional Performance Test results;
10. Documentation of deficiencies and action items stemming from Functional Performance Tests, plus field inspection reports for building envelope observations;
11. Amendment of the Commissioning Plan to reflect changes made to systems and equipment during construction;
12. Troubleshooting and diagnostic assistance to the contractor;
13. Confirmation that air-side and water-side systems within variable-controlled HVAC schemes have been optimized;
14. Review and confirmation of the Measurement & Verification plan as required for LEED-NC certification;
15. Review of final contractor training plans, Operation & Maintenance Manuals, Test-And-Balance reports, IAQ tests, LEED certification documents, as-built drawings, finalized products & equipment spreadsheet, and other “closeout” documents related to the systems being commissioned;
16. Production and distribution of Draft Commissioning Report (at Substantial Completion); and
17. Consolidation and turnover of Cx documents, including the Basis of Design and final OPR, narrative report(s), itemization of products and equipment comprising the systems being commissioned, checklists and field observation reports, FPT results, deficiency log(s), and training-related documents.
18. The consultant shall conduct a half-day Owner training and orientation session prior to Substantial Completion to review with the Owner the OPR, Basis of Design, all “as built” commissioned building systems, general operation & maintenance, troubleshooting guidelines, emergency procedures, energy efficiency measures, Measurement & Verification plan, and lessons learned during the Construction & Acceptance phases of commissioning.

WARRANTY PHASE

1. Quarterly inspections and/or testing of commissioned building systems during the year following Substantial Completion, including but not limited to “off-season” performance tests of the HVAC system;
2. Analysis of building performance parameters – such as HVAC trending data – compared to the OPR, Basis of Design, end of construction state, and energy model baseline and projections;
3. Interviews with Owner’s operation and maintenance staff to confirm operation & maintenance and discover or fully understand concerns or difficulties with commissioned building systems;
4. Tracking of warranty issues for all commissioned building systems at the 10-month milestone through resolution; and
5. Production and distribution of Final Commissioning Report at conclusion of warranty phase to document the results of Commissioning.

PM: Edit / augment exclusions as needed

Services Exclusions

- a. Code compliance design review by Owner (UF EH&S).
- b. Code compliance adherence during construction by Owner (UF EH&S) and State Fire Marshal.

- c. Indoor Air Quality (IAQ or IEQ) testing by Owner.
- d. Voice/data cabling “commissioning” by contractor and Owner (UF OIT or HealthNet).
- e. Collection of documentation for LEED certification by Owner.
- f. Energy Model and/or Life Cycle Cost Analysis by Professional (A/E).
- g. Threshold inspection – if required – by others.
- h. Materials testing by contractor.
- i. *Add other exclusions as needed*

EXHIBIT C
MODIFICATIONS

Insert modifications or state "NONE"