THE DISTRICT BOARD OF TRUSTEES FLORIDA SOUTHWESTERN STATE COLLEGE, FLORIDA

*AGREEMENT BETWEEN OWNER AND GENERAL CONTRACTOR*

**Project Name and Location:**  Campus, Building and description of work

**General Contractor:** Name and Address

**COOP # (If Applicable):** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**FORM OF AGREEMENT**

**BETWEEN OWNER AND GENERAL CONTRACTOR**

THIS AGREEMENT made on Click here to enter a date. between The District Board of Trustees, Florida SouthWestern State College, Florida, hereinafter called the “Owner”, and Name and Address**,** hereinafter called the “Contractor.”

1. **TERMS.** 
   1. Description and Terms of Contractor’s Work
      1. Contractor agrees to perform all construction services specified for the (project description), which is incorporated by reference into this Agreement;
      2. Contractor represents that it is a fully licensed General Contractor and all subcontractors which Contractor uses to perform all work in this Agreement are fully licensed and insured to perform the work in this Agreement. Contractor represents Contractor and its subcontractors are experienced and skilled in this type of project and are familiar with all applicable laws, regulations and guidelines pertaining to this type of work, and are fully informed of the conditions relating to construction and labor for the specific projects that will be performed;
      3. Contractor and its subcontractors agree to provide all services and all material according to the terms and conditions in said Attachments, and agrees to perform such services in accordance with the highest accepted standards of respective trades;
      4. Contractor shall complete the work specified in this Agreement upon the date and time set forth in the construction schedule established for Owner but in no event later than (date);
      5. Contractor warrants to Owner that materials and equipment furnished under the Agreement will be of good quality and new unless otherwise required or permitted by the Agreement Documents, that the work will be free from defects, and that the work will conform to the requirements of the Agreement documents. Work not conforming to these requirements, including but not limited to substitutions not properly approved and authorized may be considered defective. Contractor’s warranty excludes remedy for damage or defect caused by abuse, modifications not executed by Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Owner, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. These warranties shall survive the termination of this Agreement and the completion of the Work contemplated in this Agreement;
      6. Contractor warrants that Contractor and its subcontractors will at all times comply with all applicable environmental laws concerning the handling, transport, and disposing of materials, and with all other applicable federal, state, and local laws, rules or decisions respecting the construction to be affected hereunder. These warranties shall survive the termination of this Agreement and the completion of the work contemplated in this Agreement;
      7. Contractor shall cooperate with the Owner assuring the coordination of this project with other contractors and subcontractors involved with this work. Except as otherwise provided in the Agreement Documents or when direct communications have been specially authorized, Contractor shall communicate with Owner through the Owner’s Representative, whose name, title, phone number and email address are as follows:

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

FSW Facilities Department

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Phone Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

* 1. Term

This Agreement will become effective on [DATE, MONTH, AND YEAR] and will continue until [project description] is satisfactorily completed and Owner has signed off on its completion.

# Compensation of Contractor

* + 1. Owner shall pay Contractor for the performance of this Agreement, subject to any additions to and deductions from the work provided therein, the total sum of [CONTRACT PRICE] as follows:
       1. Payments on the Schedule of Values or as devised by Owner and Contractor, as is deemed appropriate and acceptable given the expected overall duration of the work. Based on that schedule, Contractor shall make Applications for Payment, and the Owner shall review and approve the amounts due Contractor, and Owner shall pay Contractor such amounts;
       2. Final payment shall not be made until successful completion of the work and acceptance thereof by the Owner and the completion of Contractor’s affidavit in accordance with Section 713.06, Florida Statutes, demonstrating to the satisfaction of the Owner that all work to be performed under the Agreement has been fully completed, and all lienors under the direct Agreement have been paid in full.
  1. Change Orders
     1. Within this Agreement, the parties have agreed to a stipulated sum for the Contract Price; therefore, when necessary the Owner may request a Change Order to accomplish changes in the work. Without invalidating the Agreement, the Owner may order changes in the work within the general scope of the Agreement consisting of additions, deletions or other revisions, with the Contract Price and Contract Time being adjusted accordingly. A written Change Order signed by the Owner and Contractor shall authorize such changes in the work.
     2. Adjustments in the Contract Price and Contract Time resulting from a change in the work shall be determined by agreement of the parties, but the Contractor’s cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit.
  2. Authority of Owner’s Representative
     1. The Owner or Owner’s Representative will conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion, will receive and forward to Owner for Owner’s review and records written warranties and related documents required by the Agreement and assembled by Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Agreed Documents;
     2. The Owner’s Representative will have authority to reject work which does not conform to the Agreement Documents whenever the Owner’s Representative considers it necessary or advisable for implementation of the intent of the Agreement documents. The Owner’s Representative will have authority to require additional inspection or testing of the work, whether or not such work is fabricated, installed or completed;
     3. The Owner’s Representative may authorize minor changes in the work.
  3. Contractor’s Obligations
     1. Contractor must comply with all purchasing requirements imposed by state, federal, and cooperative purchasing agreements under which this project is procured.
     2. Contractor shall carefully study and compare the Agreement Documents with each other and with information furnished by the Owner and shall at once report to the Owner’s Representative errors, inconsistencies or omissions discovered. Contractor shall not be liable to Owner’s for damage resulting from errors, inconsistencies or omissions in the Agreement Documents unless Contractor recognized or should reasonably have recognized such error, inconsistency or omission and knowingly failed to report it to the Owner’s Representative. If Contractor performs any construction activity knowing or reasonably should have known it involves an error, inconsistency or omission in the Agreement Documents without such notice to the Owner’s Representative, Contractor shall assume responsibility for such performance and shall bear an appropriate amount of the attributable costs for correct;
     3. If Contractor performs work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Owner’s Representative, Contractor shall assume full responsibility for such work and shall bear the attributable costs, including all equipment, material and labor to correct such work;
     4. Contractor agrees to meet with the Owner’s Representative or designees of Owner with regard to preparation of the construction schedule. Contractor shall commence work upon execution of the Agreement, establishment of the construction schedule and after issuance of Notice to Proceed;
     5. Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to Contractor with the Agreement Documents before commencing activities. Error, inconsistencies or omissions discovered shall be reported to the Owner’s Representative immediately;
     6. Contractor shall supervise and direct the work, using Contractor’s best professional effort, skill and attention. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the Agreement, unless Agreement Documents give other specific instructions concerning these matters;
     7. Contractor shall be responsible for inspection of portions of work already performed under this Agreement as well as existing work to determine that such portions are in proper condition to receive subsequent work;
     8. Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and as directed by the Owner’s Representative. The Contractor shall not unreasonably encumber the site with materials or equipment. Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Agreement. At completion of the work, Contractor shall remove from the project site(s) waste materials, rubbish, tools, construction equipment, machinery and surplus materials and return all areas affected by Contractor’s operations to pre-disturbance conditions. If Contractor fails to clean up or repair as provided in the Agreement documents, Owner may do so and the cost thereof shall be charged to Contractor;
     9. Neither the authority of the Owner’s Representative to test or inspect the work, nor a decision made in good faith to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner’s Representative to Contractor, subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the work. Contractor shall not be relieved of obligations to perform the work in accordance with the Agreement Documents either by activities or duties of the Owner’s Representative in the administration of the Agreement, or by tests, inspections or approvals required or performed by persons other than Contractor;
     10. Contractor shall enforce strict discipline and good order among Contractor’s employees and other persons carrying out the Agreement. Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.
     11. Unauthorized Aliens:
         1. The Owner shall consider the employment by the Contractor of unauthorized aliens a violation of the United States Immigration and Naturalization Act. Such violation shall be cause for unilateral cancellation of this Contract.
         2. Checks Through E-Verify. Pursuant to the State of Florida; Office of the Governor, Executive Order number 11-116, Contractor will utilize the US Department of Homeland Security’s E-Verify system to verify the employment eligibility of 1.) all persons employed during the term of the Contract by Contractor to perform employment duties under this contract within 3 business days after the date of hire; and 2.) all persons including subcontractors assigned by Contractor to perform work pursuant to the Contract.
     12. Personnel:
         1. Vendor shall comply with any Florida SouthWestern State College operating procedure requiring college operators, vendors, contractors and associates on any Florida SouthWestern State College campus to submit to a fingerprint-based state and federal criminal history check as set forth under Florida Statutes 1012.32, 1012.465 and 1012.467 or any other fingerprint identification check as deemed necessary and requested by Florida SouthWestern State College. Vendor shall, when so requested by Florida SouthWestern State College and at the Vendor’s sole cost and expense, pursuant to a Florida Statute 1012.32, 1012.465 and 1012.467 request, comply by filing with the Department of Law Enforcement a complete set of fingerprints and by providing any other documentation deemed necessary to comply with such state and federal criminal history check, of any vendor employees or agents working under the contract. Fingerprints shall be taken by an authorized law enforcement agency or other entity as permitted under Florida Statutes 1012.32, 1012.465 and 1012.467.
         2. Florida SouthWestern State College requests fingerprint identification for a background or criminal check for purposes other than compliance with Florida Statutes 1012.32, 1012.465 and 1012.467, vendor shall comply with such other request by submitting the requested documentation to the FSW Campus Police within twenty-four hours of this request. Failure to comply with either a fingerprint-based state and federal criminal history request based on Florida Statutes 1012.32, 1012.465 and 1012.467 or other fingerprint-based background or criminal history request within twenty-four hours may result in actions being taken against vendor such as requiring that the noncompliant employee not work on the campus, up to and including, the cancellation of contract for non-compliance. Vendor shall be responsible for all costs associated with either a request for a fingerprint-based state and federal criminal history check under Florida Statutes 1012.32, 1012.465 and 1012.467 or other request for fingerprint-based background or criminal check. Vendor employees performing services in or in the immediate vicinity of the FSW Collegiate High Schools located on any campus shall be background checked in accordance with Florida Statutes 1012.32, 1012.465 and 1012.467.
         3. At all times, upon completion of an employee’s initial employment screening or re-screening as required by Florida Statutes 1012.32, 1012.465, and 1012.467, the Vendor must immediately notify the College in the event that the results of the screening or re-screening of an employee, agent or contractor working at the College are not satisfactory or would change the status of such employee, agent or contractor. In the timeframe between re-screenings, the Vendor must immediately notify the College of conduct, which is known or should be known by the Vendor, of its employee, agent or contractor working at the College that does not satisfy or would change the status of such employee, agent or the Vendor's Level 2 screening results. The Vendor acknowledges that the College has a compelling interest in protecting the health and safety of the students, especially minors attending or taking classes on campus or enrolled in the College's Collegiate High School Programs. Therefore, annually on the anniversary date of this agreement, the Vendor must provide the Level 2 screening and rescreening results from the previous 12 months of its employees, agents, and contractors which are due at the frequency outlined in Florida Statutes 1012.32, 1012.465, and 1012.467. Additionally, upon request by the College, the Vendor shall immediately remove from the College’s premises any employee, agent or contractor who does not satisfy the Level 2 screening requirements or is otherwise deemed by the College, at the College's sole discretion, as a threat to the health and safety of the College’s students or personnel.
  4. Relationship between the Parties
     1. Contractor is an independent contractor of the Owner and not the agent or employee of the Owner. Nothing in this Agreement shall be deemed to make Owner and Contractor partners or to create a relation of principal and agent between them, nor shall either party be bound by any representation, act or omission of the other made contrary to the provisions of this Agreement;
     2. Neither Owner nor the Owner’s Representative shall have an obligation to pay or to see to the payment of money to a subcontractor except as may otherwise be required by law. Upon receiving payment from Owner, Contractor shall promptly pay each subcontractor furnishing materials or services, the amount to which said subcontractor is entitled, less any amounts actually retained from payments to Contractor on account of such subcontractor’s portion of the work. Contractor shall, by appropriate agreement with each subcontractor, require each subcontractor to make payments to sub-subcontractors in a similar manner.
  5. Severability and Savings Clause

All of the provisions of this Agreement are intended to be reasonable and enforceable. It is the intent of both the Owner and the Contractor that all of the provisions of this Agreement shall be enforced to the fullest extent permitted by law and, only if a provision is finally adjudged to be invalid or unenforceable shall it not be given effect. In the event that any provision is finally adjudged to be invalid or unenforceable, whether on its face or as applied, it shall be deemed excised and such excision shall have no effect upon the remaining provisions hereof.

* 1. Permits and Licenses
     1. Unless otherwise provided in the Contract Documents, Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the work which are customarily secured after execution of the Agreement and which are legally required when bids are received or negotiations concluded.
     2. Contractor agrees to perform the services specified in this Agreement in such a manner as not to infringe upon any proprietary rights of any other person, whether patented, patentable, or otherwise. To the extent Contractor proposes to perform its services specified in the agreement in a manner which practices any such proprietary rights of any other person as aforesaid, Contractor represents and warrants to and for the benefit of Owner and its agents, employees, architects, engineers and consultants, that Contractor is duly licensed or authorized to practice such proprietary rights, and that any fee or consideration due to the owner of such proprietary rights with respect to their proposed practice by Contractor on the Project will be paid in full by contractor when the same become due.
  2. Indemnification
     1. To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner and Owner’s agents and employees of any of them from liabilities, damages, losses and costs, including but not limited to, reasonable attorney’s fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the Contractor, and persons employed or utilized by the Contractor in the performance of the Work, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this section. the Owner and the Contractor’s intend that the provisions of this section shall be fully enforceable in accordance with the provisions of Section 725.06, Florida Statutes to the extent any portion thereof is not enforceable pursuant to Section 725.06, the parties intend for this provision to remain enforceable to the extent it is consistent with Section 725.06. In addition, Contractor agrees to hold the Owner harmless from and against any claim against any claim against the Owner imposed upon or asserted against the Owner in connection with investigating or defending such claim, demand, liability or cause of action, relating to or arising out of:
        1. Any breach or default by Contractor with respect to its’ warranties, representations covenants and agreements set forth herein;
        2. Failure by Contractor or subcontractors utilized by Contractor, to provide for workers’ compensation to pay prevailing wages;
        3. Negligent or deliberate acts or omissions of Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, with respect to:
           1. Performance of the work under this agreement, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, to injury to or destruction of tangible property (other than work itself) including loss of use resulting there from; and,
           2. Environmental Liability
  3. Governing Law; Forum

This Agreement shall be governed by and construed under the laws of the State of Florida, which shall be the forum for any lawsuits arising from or incident to this Agreement. In addition, the exclusive venue for any lawsuit arising out of the Agreement shall be in Lee County, Florida.

* 1. Insurance

1. Contractor shall, at its own expense, obtain and maintain insurance to cover activities of Contractor and its subcontractors, agents, and/or employees. Contractor shall purchase and maintain, during the term of agreement, insurance policies described herein issued by companies licensed in Florida possessing a minimum A.M. Best Company rating of no less than A-VI. Certificates of Insurance (Form ACORD 25; 2016/03) and Occupational/Professional Licenses carried by the vendor shall be furnished to the College prior to commencement of work and annually thereafter as applicable. The vendor must be licensed or approved to do business within the State of Florida.
2. With the exception of Professional Liability (if applicable), Pollution Liability (if applicable) and Workers’ Compensation, all policies must name the District Board of Trustees of Florida SouthWestern State College, Florida, its trustees, employees, officers, and volunteers as “Additional Insured” (ISO Form CG 2010, 2004 Edition or equivalent).
3. The Certificate Holder and Additional Insured shall be known and identified on the ACORD Certificates as follows:

The District Board of Trustees of Florida SouthWestern State College, Florida, its Trustees, Employees, Officers, and Volunteers

ATTN: Risk Manager

8099 College Parkway

Fort Myers, Florida 33919

PLEASE NOTE: Submit via US postal service or when possible, electronically submit Certificates of Insurance to [COI@fsw.edu](mailto:COI@fsw.edu).

1. Should any of the policies required herein be canceled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. Failure to maintain the required insurance may result in termination of the agreement at the Certificate Holder’s option. By requiring this insurance, the College does not represent that coverage and limits will necessarily be adequate to protect the Insured and such coverage and limits shall not be deemed as a limitation of Insured’s liability under the terms of the agreement. Contractor shall insure that all subcontractors comply with the same insurance requirements that the vendor is required to meet.
2. Minimum Insurance Coverage and Requirements:

Prior to the commencement of work, the vendor must obtain and maintain the minimum insurance coverage set forth below. Dollar amounts may change in accordance with the Project. By requiring such minimum insurance, Florida SouthWestern State College shall not be deemed or construed to have assessed the risk that may be applicable to the vendor. The vendor shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. The vendor is not relieved of any liability or other obligations assumed or pursuant to the agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration or types. Unless otherwise approved by the College, all insurance coverage must be written on an occurrence basis with the exception of Professional Liability (if applicable) and Pollution Liability (if applicable).

Coverage:

Commercial General Liability – ISO CG 001 Form or equivalent; coverage to include:

* Premises and Operations
* Personal/Advertising Injury
* Products/Completed Operations
* Broad Form Property Damage
* Independent Contractors

Automobile Liability including all:

* Any Auto (owned, non-owned, hired)
* Personal Injury Protection (when applicable)

Workers’ Compensation:

* Statutory Limits as per Florida Statute 440 including Employer’s Liability

Excess/Umbrella Liability (as needed)

* Excess of Commercial General Liability, Automobile Liability and Employer’s Liability; Coverage should be as broad as primary

Required Limits: The following minimum limits of liability are required; however, the limits are subject to change based on the type and extent of project. The requirement for Professional Liability and Pollution Liability will be as applicable:

**COMMERCIAL GENERAL LIABILITY**

Each Occurrence Limit $1,000,000

General Aggregate $2,000,000

Personal/Advertising Injury $1,000,000

Products/Completed Operations Aggregate $2,000,000

Damage to Rental Premises $300,000

Medical Payments (Any One Person) $5,000

**AUTO LIABILITY**

Bodily Injury/Property Damage (Each Accident) $1,000,000

Personal Injury Protection Statutory

**WORKERS’ COMPENSATION**

Coverage A (Workers’ Compensation) Statutory

Coverage B (Employer’s Liability) $1,000,000

**UMBRELLA LIABILITY**

Each Occurrence Limit ($1-$5M) $1,000,000

**PROFESSIONAL LIABILITY (as applicable)**

Each Claim ($1-$3M) $1,000,000

Annual Policy Aggregate ($2-$5M) $2,000,000

**POLLUTION LIABILITY (as applicable)**

Per Claim $1,000,000

Annual Policy Aggregate $1,000,000

1. Additional Requirements:

a) Be on a primary basis, non-contributory with any other insurance coverage and/or self-insurance carried by the District Board of Trustees, Florida SouthWestern State College

b) Include a Waiver of Subrogation Clause that clearly states that the insurer paying any claim arising by reason of any operations under the agreement will not seek reimbursement from Florida SouthWestern State College

c) Include a Separation of Insured Clause (Cross Liability) for all liability policies

d) The College prefers advance written notice prior to policy non-renewal, cancellation or material change or alteration.

e) Provide uninterrupted Professional Liability (if applicable) for three (3) years after substantial completion of the project.

* 1. Non-Discrimination
     1. The Parties agree to comply with all federal, state, local, and Collegial laws, ordinances and rules applicable to Owner, and specifically agree not to unlawfully discriminate against any individual on the basis of race, creed, color, sex, religion, age, national origin, disability, status as a disabled veteran, or veteran of the Vietnam era, and to comply with all anti-discriminatory laws and policies that Owner promulgates and to which Owner is subject.
     2. Contractor further agrees that every subcontract or order given for the supplying of any goods or services rendered pursuant to this Agreement shall contain the provision set forth at section M.1. herein, requiring nondiscrimination in employment.
  2. Breach and Termination
     1. If any of the following occurs, it shall constitute a breach of contract and, after notification by the Owner, may result in default termination of the Agreement and implementation of such remedy deemed necessary by Owner, including but not limited to, those specifically authorized by law:
        1. Failure of Contractor to perform the work in accordance with the Agreement documents or failure to carry out the covenants and assurances set forth herein;
        2. Attempt by Contractor to transfer or assign its interest, or if there is an involuntary transfer of Contractor’s interest in this Agreement by operation of law; or
        3. In the event Owner has reasonable cause to believe Contractor is insolvent, or if any petition in bankruptcy is filed by or concerns Contractor;
        4. If the Contractor disregards the laws or regulations of any public body having jurisdiction.
     2. In the event any of the actions listed under section N (1) above do occur, Owner may terminate Contractor’s services, take possession of all Contractor’s material and construction equipment, and complete the work. Should the cost of completing the work be less than the unpaid balance of the contract price herein, Owner shall pay Contractor the excess. Should the cost of completing the work be greater than the unpaid balance of the contract price herein, Contractor shall pay the difference to the Owner.
     3. Owner may terminate this Agreement at any time, with liability only for payment for work or services performed or provided prior to the effective date of termination, upon 10 days’ work written notice, for:
        1. Lack of funding, it being understood that Owner is a public entity whose projects and expenditures are subject to the continued appropriation of sufficient funds by Owner’s appropriating authority, namely its governing board;
        2. The convenience of the Owner, by College President, whenever in the President’s sole discretion, that termination is deemed to be in the best interests of the Owner.
     4. Contractor may terminate this Agreement and recover from Owner payment for all work executed and any expense sustained if Owner has failed to make payment on any sum finally determined to be due.
  3. Subcontractors

The Contractor may utilize subcontractors in connection with providing the work upon giving notice to the Owner. Utilization by Contractor of, or the Owner’s approval of, any subcontractor shall in no way relieve Contractor of any of its obligations or liabilities under this Agreement. The Contractor shall require the subcontractor, to the extent of the work to be performed by the subcontractor, to be bound by the terms of this Agreement. Where appropriate, the Contractor shall require such subcontractor to enter into similar agreements with its subcontractors. Additionally, the Contractor’s subcontractor(s) must have successfully completed no less than two (2) projects of similar size and complexity within the last five (5) years.

* 1. Non-Waiver

The failure of either party to exercise any of its rights under this Agreement for a breach thereof shall not be deemed to be a waiver of such rights, and no waiver by either party, whether written or oral, express or implied, of any rights under or arising from the Agreement shall be binding on any subsequent occasion; and no concession by either party shall be treated as an implied modification of the Agreement unless specifically agreed in writing.

* 1. Entire Agreement; Modification

This Agreement contains all the terms between the parties and may be amended only in writing signed by both parties.

* 1. Miscellaneous
     1. Public Record. In the event Contractor acts on behalf of the Owner in the performance of any services to be provided under this agreement as provided under Section 119.011(2), Florida Statutes, then Contractor agrees to comply with Florida Public Record law and specifically to comply with the requirements of Section 119.0701(2), Florida Statutes.
        1. Contractor, while acting on behalf of the Owner, shall keep and maintain public records required by the public agency, the Owner, to perform the service.
        2. Upon request from the Owner’s custodian of public records, Contractor shall provide the College with a copy of the requested records or allow access to public records to be inspected or copied with a reasonable time at a cost that does not exceed the cost provided under Chapter 199, Florida Statutes or as otherwise provided by law.
        3. In the event of a public records request pertaining to records in Contractor’s possession or control:
           1. The Contractor shall promptly provide the public agency, the Owner, copies of all records created or maintained in the course of performance under this contract or all such records to be inspected and copied within a reasonable amount of time.
           2. If the Contractor fails to supply such records or make the records available within a reasonable amount of time, then the Owner may apply to a state court of competent jurisdiction for an order compelling the production of such records. In the event the Owner seeks mandatory injunctive relief, Contractor waives the requirement that the Owner must first prove: (a) its lack of an adequate remedy at law (b) the irreparable harm absent entry of the injunctions, or (c) that injunctive relief will serve the public interest.
        4. Upon completion of the contract, the Contractor shall:
           1. Transfer, at no cost, to the Owner all public records in possession of the vendor and shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements; or,
           2. Keep and maintain public records required by the public agency to perform the service and shall meet all applicable requirements for retaining public records
        5. All records stored electronically must be provided to the public agency, upon request form the public agency’s custodian of public records, in a format that is compatible with the information technology systems of the public agency
        6. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the public agency
        7. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239.489.9070, [Carl.Coleman@fsw.edu](mailto:Cal.Coleman@fsw.edu), FLORIDA SOUTHWESTERN STATE COLLEGE, 8099 COLLEGE PARKWAY, FORT MYERS, FLORIDA 33919-5566
     2. Ambiguity. This Contract is the result of negotiations between the Owner and Contractor, and accordingly, the rule of contract construction of construing ambiguous provisions against the drafter shall not apply, and no ambiguity or lack of clarity shall be construed against the Owner or Contractor.
  2. Notice

Any notice to either party hereunder must be in writing signed by the party giving it, and shall be

served either personally or by U.S. First Class, registered or certified mail, or by overnight or expedited

delivery service, addressed as follows:

To College:

Jason Dudley

Vice President IT & Digital Strategies/Chief lnformation Officer

8099 College Parkway

Fort Myers, FL 33919

To Contractor:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Or to such other addressee as may be hereafter designated by written notice; all such notices shall

be effective only when received by the addressee.

Time of the Essence

It is acknowledged and understood that time is of the essence in the performance and completion of

this Agreement. Failure to complete the work embodied in this Agreement shall cause substantial

disruption and expense to College.

IN WITNESS WHEREOF, the parties have hereunto executed this Agreement on this\_Choose an item. day of \_\_\_\_\_\_\_, 20\_\_ by and through their duly authorized representatives as set forth below.

COLLEGE: CONTRACTOR:

Florida SouthWestern State College \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Full legal name of contracting party)

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(signature) (signature)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(printed name) (printed name)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(title) (title)

ATTACHMENT A

OWNER’S PROJECT SPECIFICATIONS

ATTACHMENT B

(CONTRACTOR’S LINE ITEM PROPOSAL PER \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ COOPERATIVE CONTRACT # \_\_\_\_\_\_\_\_\_\_\_\_)