

**Agreement Between Architect/Engineer and the
University Hospital
For Architectural / Engineering Services
For the Emergency Department Expansion**

THIS AGREEMENT made as of the _____ day of XXXXX in the year of Two Thousand and Twenty Two by and between University Hospital, an independent instrumentality of the State of New Jersey, with offices at 150 Bergen Street, Newark, New Jersey 07103 (hereinafter ("Owner")) and XXXXXX an organization authorized to conduct business in the State of New Jersey with offices at XXXXXXXXX (hereinafter "Architect/Engineer"), to perform professional services for the following Project ("Project"):

Emergency Department Renovations in accordance with the Owner's Request for Proposal #UH-P22-012, dated XXXXXXX and all conditions stated therein ("RFP"), the Addendum #1 Dated XXXXXXX and the Architect/Engineer's response thereto dated XXXXXXX.

IN CONSIDERATION of the terms and conditions contained herein, the Owner and Architect/Engineer agree as follows:

**ARTICLE 1
Architect/Engineers Services and Responsibilities**

1.1 Basic Services

1.1.1 The Architect/Engineer, as the acknowledged specialized professional for the Owner, shall be responsible and obligated for taking the lead on the Project regarding the specialty design matter and for supplying all information necessary for the successful design and implementation for the Project so as to facilitate Project completion on schedule, within budget, and of good quality (fit and finish). The Architect/Engineer's Basic Services consist of the services described in this Agreement and include, but are not necessarily limited to, Request for Proposal #UH-P22-012 dated XXXXXXX and all conditions stated therein ("RFP"), Addendum #1 Dated XXXXXXX and the Architect/Engineer's response thereto dated XXXXXXX ('Architect/Engineer's Response), and in other reports supplied to the Architect/Engineer for commission of work all of which are

incorporated herein by reference as if attached and are made a part hereof and together with this Agreement are hereinafter collectively referred to as "Agreement". All services by the Architect/Engineer under this Agreement shall conform with applicable federal, state and local laws, regulations, rules, and codes as well as Factory Mutual Insurance loss prevention codes and standards and the requirements of the National Fire Protection Association.

1.1.2 The date of commencement of the services under this Agreement shall be the date of this Agreement.

1.1.3 The Architect/Engineer shall make the following personal appearances and contacts and shall perform the following related services as part of Basic Services:

1.1.3.1 Architect/Engineer shall attend all regular Project meetings as well as any special meetings with the Owner, the Owner's employees affected by or involved with the Project, the Owner's Committees or Board of Trustees, as the Owner determines to be necessary to facilitate Project completion, obtain required information or Project funding and approval.

Architect/Engineer shall have all its staff assigned to the Project attend all on-Site coordination meetings and any special meetings, as requested by Owner. Architect/Engineer shall prepare any exhibits or documents required for presentation at such meetings and shall act as a spokesperson, as required. The Architect/Engineer shall issue minutes of these meetings to the Owner within five (5) working days of the meeting. The Architect/Engineer shall follow-up on any requests, as necessary.

1.1.3.2 Architect/Engineer shall attend such governmental meetings as are necessary for approval of the Project and shall actively pursue with any governmental authority having jurisdiction over the Project, and with the Owner, any governmental requirements or request necessary to secure approvals, permits, temporary Certificates of Occupancy and a final Certificate of Occupancy. Architect/Engineer shall prepare any exhibits or documents required for presentation at such meetings and shall testify or act as a spokesperson, as required. Architect/Engineer shall issue minutes of these meetings to the Owner within five (5) working days of the meeting. The Architect/Engineer shall follow-up on any requests, as necessary.

1.1.4 The Architect/Engineer shall supply sufficient technical personnel to complete all responsibilities contained herein in accordance with the Project Schedule and to the complete satisfaction of the Owner. The Architect/Engineer shall provide to the Owner within five (5) Days after the date of this Agreement a list of all of its personnel assigned to this Project. The Architect/Engineer shall also furnish the Owner in writing the names, addresses and the office, home, mobile telephones and pager numbers of the members of its organization who can be contacted in the event of an after-hours emergency at the Project Site. Once Project personnel have been assigned by the Architect/Engineer and approved by the Owner, they shall not be removed from the Project without the Owner's prior consent unless they are terminated from employment by the Architect/Engineer.

1.1.5 The Architect/Engineer shall immediately remove from the Project, whenever requested to do so by the Owner; any employee, agent or Subcontractor of Architect/Engineer who is considered by the Owner to be incompetent or disposed to be disorderly or who for any other reason is not satisfactory to the Owner, and that person shall not again be employed on the Project without the consent of the Owner.

1.1.6 In the event of a conflict of any laws, codes, ordinances, regulations and requirements, the stricter shall govern. Owner's approval of any of the services performed by Architect/Engineer under this Agreement shall not be construed as authority to violate, cancel, or set aside any provision of any applicable law, code, ordinance, regulation or requirement.

1.1.7 The Architect/Engineer shall provide six (6) sets of its reports to the Owner for approval.

1.1.8 The Architect/Engineer shall document the applicable requirements necessary for the various Project functions or operations.

1.1.9 The Architect/Engineer shall make investigations, survey, valuations, inventories or detailed appraisals of existing facilities, and other services required in connection with work performed or furnished by the Owner.

1.1.10 Architect/Engineer shall prepare and submit a certified statement to Owner stating that Architect/Engineer has visited the Project site, has made a thorough visual inspection of the site, paying particular attention to factors justifying the validity of its reports and has reviewed and verified and is

satisfied that all existing drawings and related data furnished by the Owner are accurate with regard to the existing conditions of the Project, and with regard to any other features that present unusual conditions that could adversely affect the design and construction cost of the Project.

1.1.11 Architect/Engineer shall complete the scope of work within the timeline provided in the Architect/Engineer's RFQ response.

ARTICLE 2

Additional Services

2.1 The Owner may at any time, issue additional instructions and require additional work or services not covered by this Agreement. In this event, the Architect/Engineer shall be entitled to additional compensation for the cost of the added work and expense; such additional compensation to be determined by mutual agreement between Owner and Architect/Engineer, or to be determined by the hourly fees submitted by the Architect/Engineer for additional services in Architect/Engineer's Response, or a combination of either of these methods as determined by the Owner. Unless the parties agree that the service is a part of the Project, the following services shall be provided by the Architect/Engineer, when authorized in writing by the Owner, and they shall be paid for by the Owner separately from and in addition to Basic Services, and as hereinafter provided. Any services not listed in this paragraph as "Additional Services" shall be considered Basic Services under this Agreement.

ARTICLE 3

Owner's Responsibilities

3.1 The Owner shall provide full information regarding the requirements for the Project. The Owner shall examine documents submitted by the Architect/Engineer and shall render decisions and advise the Owner pertaining thereto promptly to avoid unreasonable delay in the progress of the Architect/Engineer's services.

3.2 The Owner shall furnish, if available, geotechnical, chemical, mechanical, hazardous materials surveys, or other investigations and tests when required by the Architect/Engineer. If such data is required by the Architect/Engineer and is not available from the Owner, the Architect/Engineer shall contract directly for such services. The Architect/Engineer shall confirm the accuracy of such data.

3.3 It is agreed by and between the parties to this Agreement that whenever the approval or authorization by the Owner is required, such shall be in writing and shall be expeditiously given and shall not be unreasonably withheld.

3.4 All Contract Documents including drawings and specifications, any changes, revisions or amplifications thereof, shall be subject to the written approval of the Owner before the same shall be deemed accepted.

ARTICLE 4

Architect/Engineer Standards of Performance

4.1 Except as otherwise provided or by specific instructions from the Owner in writing, in performing the services under this Agreement the Architect/Engineer represents that it shall at all times perform hereunder in accordance with the professional standard of care and skill customarily exercised by sophisticated members of the specialty design profession in the United States who are experienced in the design and construction administration of buildings comparable to the Project, and Architect/Engineer shall make certain that the Project is completed to the fullest extent practicable consistent with the Owner's criteria for function and quality.

4.2 All services to be rendered by Architect/Engineer hereunder shall be rendered in a professional manner by, or under, the direct supervision of registered professionals authorized or licensed to practice in the State of New Jersey. Nothing contained in this Agreement is intended to relieve the Architect/Engineer of responsibility for maintaining adequate supervision over the design and also adequate observation or inspection of the construction work in order to guard the Owner against deficiencies in the design work and the work of the Contractors so that the Work is completed in compliance with Contract Documents. Whenever the term "inspect" or "inspection" is used in this Agreement, it shall mean the duty to inspect those aspects of the Work which

sophisticated members of the architectural profession in the United States who are experienced in the design and construction administration of projects comparable to the Project would consider critical aspects. Architect/Engineer shall have the duty to observe, not the duty to inspect, other aspects of the Work. Such inspections and observations shall be carried out in accordance with that standard of care and skill customarily exercised by such members of the architectural profession.

4.3 Notwithstanding any other provisions contained herein, the Architect/Engineer shall not be relieved of liability to the Owner for actual damages sustained by the Owner, resulting from error, omission or any breach of this Agreement by the Architect/Engineer. The Owner, upon the discovery of any error, omission or breach, shall give written notification thereof to the Architect/Engineer. The Owner may withhold a portion of payments due to the Architect/Engineer not to exceed twice the amount of the deductible identified in the professional liability policy for the purpose of establishing a reserve until such time as the exact amount of such actual damages is determined. The Owner shall expeditiously initiate such proceedings as may be necessary to fairly determine the exact amount, if any, of the actual damages. Such moneys withheld by the Owner shall be retained until the negotiated value of said damages are paid by the Architect/Engineer and/or the Architect/Engineer's insurance carrier or any other party. The acceptance, approval or payment for any of the Drawings, Specifications or other work and services performed by the Architect/Engineer hereunder shall not constitute a release or waiver of any claim the Owner has or may have for latent defects, errors, omissions or other breach of this Agreement on the part of the Architect/Engineer.

ARTICLE 5

Reimbursable Expenses

5.1 Reimbursable expenses to the Architect/Engineer are in addition to the compensation for Basic and Additional Services and include actual expenditures made by the Architect/Engineer's technical employees and professional Architect/Engineers for the expenses listed in the following subparagraphs. No markup is

allowed on reimbursable expenses. Only reimbursable expenses accompanied by proper documentation will be reimbursed.

5.1.1 Out of state travel shall be reimbursed only when authorized by the Owner. No travel expenses shall be reimbursable between Architect/Engineer's office and any Owner site.

5.1.2 Models and renderings shall be reimbursed when not included in Basic Services and when authorized by the Owner.

5.1.3 Reimbursable expenses include the expense of reproduction of Drawings and Specifications, excluding those specifically required to be furnished in accordance with this Agreement and excluding any drawings required for the Architect/Engineer's use for coordination with its Architect/Engineers or for expenses for plotting of CADD files.

5.1.4 Reimbursable expenses include the expense of the premium portion of overtime work requiring higher than regular rates when authorized in writing by the Owner, except when overtime work is required for the Architect/Engineer to maintain Project Schedule.

5.1.5 Postage and express courier service are allowable reimbursable expenses.

ARTICLE 6

Payment to the Architect/Engineer

6.1 Owner shall pay Architect/Engineer a lump sum fee of \$XXXXXX (XXXXSXXX) which includes a Not To Exceed Amount of \$XXXXXXXX(XXXXXXXX) for reimbursables for the Basic Services (Paragraph 1.2) under this Agreement.

6.2 University Hospital's payment terms are net 45 (forty-five) days.

6.3 Final payment to the Architect/Engineer shall not relieve the Architect/Engineer of any contractual responsibilities.

6.4 Unless otherwise provided herein, the Architect/Engineer shall not be entitled to any additional payment for damages due to delay on the Project.

ARTICLE 7

Termination of Agreement; Suspension of Services

7.1 If for any reason the Project should be abandoned, suspended or postponed, the Owner may terminate this Agreement upon seven (7) Days written notice to the Architect/Engineer. Upon receipt of such notice, unless otherwise directed, the Architect/Engineer

shall immediately discontinue all work hereunder at that point. In the event of any termination pursuant to this Article, the Owner shall have the right to audit all of the Architect/Engineer's records pertaining to this Project. Upon such termination, the Architect/Engineer shall be paid in accordance with the following:

7.1.1 Where compensation is based on a stipulated sum, that proportion of the fee which the services actually and satisfactorily performed shall bear to the total services contemplated under this Agreement, less payments previously made.

7.1.2 If any compensation is based on a multiple of direct salary cost, the Architect/Engineer shall be paid based upon the full extent of services directed and satisfactorily rendered.

7.1.3 Payment under paragraph 7.1.1 and 7.1.2 shall include all reimbursable expenses and additional service compensation.

7.2 Upon seven (7) Days written notice to the Architect/Engineer, the Owner may terminate this Agreement for any reason, with or without cause or Owner may terminate this Agreement if, in its sole discretion and judgment, it deems the services of the Architect/Engineer to be unsatisfactory or in non-compliance with this Agreement. Upon receipt of such notice of termination, Architect/Engineer shall immediately discontinue all services hereunder and shall be entitled to compensation as provided in paragraph 7.1.

7.3 In the event of Architect/Engineer's death or disablement to an extent which would, as determined by Owner, prevent its satisfactory performance hereunder, the Owner may terminate this Agreement as provided in subparagraphs 7.3.1 and 7.3.2.

7.3.1 When Architect/Engineer is a sole proprietorship, upon seven (7) Days written notice to the firm.

7.3.2 When the Architect/Engineer is not a sole proprietorship, in the event of the death or disablement of one of the principals, upon seven (7) Days written notice to the surviving principals, Owner may either terminate this Agreement or authorize the surviving principals to assume full responsibility for the completion of this Agreement.

7.3.3. Upon receipt of a notice of termination, Architect/Engineer shall immediately discontinue all services hereunder and shall be entitled to compensation as provided in paragraph 7.1.

7.4 The Architect/Engineer shall not be entitled to any damages, including lost profits and other incidental, consequential and special damages, due to termination pursuant to this Agreement.

7.5 The Owner may order that Work on the Project be suspended or postponed, upon five (5) Days written notice. The Architect/Engineer shall immediately cease all services hereunder, except as necessary to secure the Project and Architect/Engineer shall be entitled to compensation as provided in paragraph 7.1. If the Owner directs that the Work on the Project be resumed within one hundred eighty (180) Days of any notice to suspend or postpone, the Architect/Engineer shall be obligated to complete the Project for the fee provided for in this Agreement, plus any additional compensation that the Owner may approve in writing. If the Project is postponed or suspended for a period of more than one hundred eighty (180) Days, the Architect/Engineer's compensation may be subject to re-negotiation by mutual agreement.

ARTICLE 8

Ownership of Documents

8.1 Upon termination of this Agreement, any original drawings and CADD files translated into AUTOCAD 12, revised to reflect "Record" or "As-Built" conditions, shall be transmitted to the Owner and become the property of the Owner. The Architect/Engineer, for record purposes, may retain a set of prints or reproducibles of those drawings prior to transmittal to the Owner.

8.2 It is understood and agreed between the parties to this Agreement that all documents including Drawings and Specifications furnished by the Architect/Engineer pursuant to this Agreement are instruments of service in respect of this Project only. These documents are not intended or represented to be suitable for re-use by the Owner on other projects, for additions to this Project or completion of this Project by others unless the Architect/Engineer's services under this Agreement are terminated for any reason. Any re-use without specific written verification or adaptation by the Architect/Engineer will be at the Owner's sole risk and without liability or legal exposure to the Architect/Engineer by the Owner or to the Owner by the Architect/Engineer.

ARTICLE 9

Disputes/Claims/Litigation

9.1 If the parties to a dispute regarding this Agreement do not mutually agree to resolve the issues, the parties to the dispute agree to litigate the matter in a New Jersey courts of law in Essex County.

ARTICLE 10

Extent of Agreement

10.1 This Agreement including the documents listed in Appendix A, represents the entire and integrated agreement between the Owner and the Architect/Engineer. It supersedes all prior negotiations, representations or agreements, either written or oral. The terms, conditions and provisions of the Agreement cannot be modified or varied except by agreement between Architect/Engineer and the Owner.

10.2 Waiver of any part of this Agreement shall not be deemed a waiver of any other part.

ARTICLE 11

Notices

11.1 Any written notice intended to be given hereunder to the Architect/Engineer, or to the Owner respectively, shall be effective on the third Day after mailing and shall be deemed sufficiently served if addressed and mailed by U.S. Certified mail to the Architect/Engineer or Construction Manager at the addresses set forth hereinabove, or to the Owner at the Office of the Executive Director for Supply Chain Management, Suite 1218, 65 Bergen Street, Newark, New Jersey 07107-3001 with copies to the Office of the Executive Director of Support Services, Suite A217, 150 Bergen Street, Newark, New Jersey 07107-3001, or such other address as to which Architect/Engineer is given notice.

ARTICLE 12

Other Architect/Engineers or Services

12.1 Should the Owner and the Architect/Engineer determine that the unique nature of the Project requires the services of other Architect/Engineers (e.g. traffic, soils, electronic data programmers, automation and computerization Architect/Engineers, etc.), such Architect/Engineers shall be engaged by the Architect/Engineer. All such Architect/Engineers shall be qualified and competent and shall be selected by the

Architect/Engineer and shall be subject to the written approval of the Owner. Written requests for approval of Architect/Engineers shall fully describe the scope of the work for which Architect/Engineers are being engaged. Architect/Engineer shall be entitled to a payment from the Owner equal to 1.05 times the amount billed by the Architect/Engineer to the Architect/Engineer for such services.

12.2 Notwithstanding anything to the contrary in paragraph 12.1, if it is determined that the services of other Architect/Engineers are required for the Project, the Owner reserves the right to directly hire any such Architect/Engineer or to require bidding for the Architect/Engineer services. In the event that Owner exercises this right, upon request of the Owner, the Architect/Engineer shall assist Owner in such hiring or bidding at no additional cost to Owner.

ARTICLE 13

Errors and Omissions

13.1 During Construction, the Owner shall be responsible for the cost of changes to the Work except for changes due to the errors or omissions of the Architect/Engineer in the Construction Documents. The Architect/Engineer shall be liable and responsible for the cost of any changes to the Work necessitated by its errors and omissions. The Architect/Engineer shall pay the Owner any such costs within thirty (30) Days of receipt of an invoice from the Owner for such costs. Such invoice shall not be made until the change has been performed and incorporated into the Project. In the event that Architect/Engineer fails to make payment within thirty days, in addition to other rights in law or equity, Owner may deduct such costs from payments owed to Architect/Engineer.

ARTICLE 14

State Contract Laws

14.1 This Agreement and the rights of the parties shall be governed by the constitution and laws of the State of New Jersey, including the New Jersey Contractual Liability Act N.J.S.A. 59:13-1 et seq. and the New Jersey Tort Claims Act N.J.S.A. 59:1-1 et seq. and any cause of action between the parties shall have jurisdiction and venue only in the courts of the State of New Jersey in and for the County of Essex.

ARTICLE 15

Auditing

15.1 Upon five (5) Days' notice of Owner's request, Architect/Engineer shall permit Owner or its designee to inspect, audit and photocopy all books, payrolls, ledgers, registers, receipts, subcontracts, overhead, cost, accounting and other data and records (collectively referred to as the "records") of the Architect/Engineer relating to its performance and that of its subArchitect/Engineers and designees, if any, under this Agreement, from the effective date hereof through and until the expiration of ten (10) years after completion of and final payment to the Architect/Engineer for its Project services.

15.2 Architect/Engineer shall maintain such records in accordance with generally accepted accounting principles, which specifically identify the Project and all labor and materials, costs and expenses, whether direct or indirect. Architect/Engineer's failure to maintain or produce such records shall preclude the recovery of any claim for Project costs related to the missing records.

15.3 The Architect/Engineer further agrees to include in all its subcontracts hereunder a provision to the effect that the subArchitect/Engineer agrees that Owner, and any of its duly authorized designees, shall, until the expiration of ten (10) years after final payment to the Architect/Engineer under the subcontract, have access to and the right to examine any records related to the subArchitect/Engineer's performance under the subcontract and that the failure of the subArchitect/Engineer to maintain or produce such records shall preclude recovery from the Owner for any claim for Project costs related to the missing records.

15.4 If any unsubstantiated payments or overpayments are discovered as a result of any audit conducted by the Owner, or its designee, Architect/Engineer shall be notified by Owner in writing. Architect/Engineer agrees to repay Owner for any unsubstantiated payment or overpayment within thirty (30) Days of such notice or, if Architect/Engineer fails to make such payment, Owner, in addition to other rights in law or equity, may deduct such unsubstantiated payment or overpayment from any payments owned to Architect/Engineer. Further, if the Owner undertakes an audit of the records and such audit results in a finding of excessive profit due to improper statement of hourly rates,

overhead, time required or other estimated cost data upon which this Agreement was negotiated, Architect/Engineer authorizes Owner to reduce the lump sum fee to an amount Owner considers to be commensurate with the actual scope of services or to seek repayment, as provided in this subparagraph, of any excessive amounts already paid by Owner.

ARTICLE 16

Insurance

16.1 The Architect/Engineer shall assume all responsibility for its actions and those of its employees, agents, servants and Architect/Engineers while engaged in any activity connected with this Agreement. The Architect/Engineer shall procure and maintain at Architect/Engineer's sole expense, sufficient insurance to protect the Architect/Engineer and Owner from any loss, damage, expense, property damage or bodily injury claims arising out of the performance of this Agreement. Architect/Engineer must procure insurance from insurance companies licensed to do business in the State of New Jersey. Evidence of current insurance coverage shall be provided in the form of a Certificate of Insurance which shall be submitted before commencement of services. Except for Workman's Compensation and Professional Liability, Owner shall be named an additional insured. The insurance shall provide for thirty (30) Days' notice in writing to the Owner prior to cancellation, expiration or non-renewal of the insurance coverage.

16.1.1 Workers Compensation Insurance applicable to the laws of the State of New Jersey and Employer's Liability Insurance as required by applicable State and Federal Law.

16.1.2 Comprehensive General Liability Policy as broad as the standard coverage form currently in use in the State of New Jersey which shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall include an endorsement (broad form) for contractual liability and completed operations. Limits of liability shall not be less than \$1,000,000.00 per person and \$1,000,000.00 per occurrence for bodily injury and not less than \$500,000.00 per occurrence for property damage liability.

16.1.3 Comprehensive Automobile Liability Policy covering owned, non-owned and hired vehicles with not less than \$1,000,000 for bodily injury and property damage.

16.1.4 Professional Liability Policy with minimum limits of \$1,000,000.00 and with deductible or self-insured retention not greater than \$100,000.00.

16.2 Any insurance policies which are written on a "claims-made" basis shall include an "extended reporting period" provision of not less than five (5) years following completion of the services covered by this Agreement.

16.3 The insurance coverages required under this Agreement are the minimum amount and types required and shall not in any way limit Architect/Engineer's liability under this Agreement in excess of such coverage, nor shall it preclude the Owner from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law or equity. The Owner's interests shall not be limited, abridged or restricted in any manner or form.

16.4 The Owner shall have the right to terminate this Agreement for cause if the Architect/Engineer fails to maintain the insurance as specified herein.

ARTICLE 17

Indemnification

17.1 The Architect/Engineer shall defend, indemnify, protect and save harmless the Owner and its agents, servants and employees from and against any and all suits, claims, demands, awards, losses, expenses or damages of whatsoever kind or nature arising out of any negligent act, error or omission of the Architect/Engineer, its agent, servants, employees and retainees, in the performance of professional services or pertaining to materials supplied under this Agreement, including, but not limited to, reasonable expenditures for and costs of investigation, hiring of expert witnesses, court costs, counsel fees, settlements, judgments or awards.

17.2 The Architect/Engineer agrees and understands that the Attorney General of the State of New Jersey represents the Owner and will participate in any action involving the Owner which relates to the subject matter of the claim indemnified by the Architect/Engineer under this Article and nothing contained herein shall be construed to prevent such participation; and provided further that the Attorney General of New Jersey shall retain sole control, at the Architect/Engineer's sole expense, of the defense of any such claim and negotiations for its settlement or compromise

to the extent that the Attorney General solely and exclusively determines that such claim implicates the public policy of the State of New Jersey including, without limitation, the constitutionality, the validity of statutory administrative or decisional law, the appropriateness of State action or the propriety of the conduct of State officers, employees or agents.

17.3 The Architect/Engineer shall be liable to the Owner for any reasonable costs incurred by the Owner to correct, modify or redesign any drawings submitted by the Architect/Engineer that are found to be defective or not in accordance with the provisions of this Agreement as a result of negligent act, error or omission on the part of the Architect/Engineer, its agents, servants or employees. The Architect/Engineer shall be given reasonable opportunity to correct any deficiencies.

17.4 The Architect/Engineer agrees that any approval by the Owner of the services rendered by the Architect/Engineer shall not operate to limit the obligations of the Architect/Engineer assumed in this Agreement. Furthermore, the Architect/Engineer agrees that the provisions of this indemnification shall in no way limit the Architect/Engineer's obligations assumed in this Agreement, nor preclude the Owner from taking any other actions available under any other provisions of this Agreement or otherwise at law or in equity.

17.5 The Architect/Engineer's obligation to defend, indemnify and hold harmless hereunder shall survive the termination and term of this Agreement.

17.6 The Architect/Engineer shall give prompt notice to the Owner of all losses, damages or injuries to persons or property of the Owner, Architect/Engineer or third persons in any way related to this Agreement or for which a claim might be made against the Owner and shall promptly report to the Owner all such claims of which the Architect/Engineer has notice, whether relating to matters insured or uninsured. No settlement or payment of any claim for loss, injury or damage or other matter as to which the Owner may be charged shall be made in a manner which may leave Owner at risk of any future liability for the claim, loss, injury or damage for which a settlement or payment is made.

ARTICLE 18

Non-Discrimination; Affirmative Action; New Jersey Prevailing Wage Act

18.1 Non-Discrimination. Architect/Engineer shall not discriminate against any employee or subcontractor who is employed by Architect/Engineer for the performance of any services covered by this Agreement or against any applicant for such employment because of race, color, religion, sex, national origin, creed, ancestry, age, disability, marital status, familial status, affectional or sexual orientation, atypical hereditary cellular or blood trait, liability for service in the Armed Forces of the United States and as set forth in the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., the Civil Rights Act of 1964, Title VII, 42 U.C.S.A. 2000e et seq., the Age Discrimination in Employment Act, 29 U.S.C.A. 621 et seq., the Americans with Disabilities Act, 42 U.S.C.A. 12101 et seq. and all other federal laws guaranteeing equal employment. The Architect/Engineer will comply with the non-discrimination requirements set forth in Paragraph 13.11 of the General Conditions appended hereto as Exhibit 1 and shall take affirmative action to ensure that applicants are employed, and employees are treated, without regard to such characteristics as set forth in Paragraph 13.11.

18.2 Affirmative Action, Procurement, Professional and Service Contracts. During the performance of this Agreement, the Architect/Engineer agrees as follows:

18.2.1 The Architect/Engineer and its subcontractors, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Except with respect to affectional or sexual orientation, the Architect/Engineer will take affirmative action to ensure such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Architect/Engineer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

18.2.2 The Architect/Engineer and its subcontractors, where applicable, will in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation.

18.2.3 The Architect/Engineer and its subcontractors, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Agency Contracting Officer advising the labor union or workers representative of the contractor's commitments under the New Jersey Law Against Discrimination, P.L. 1975, c127 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

18.2.4 The Architect/Engineer and its subcontractors, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to P.L. 1975, C. 127, as amended and supplemented from time to time.

18.2.5 The Architect/Engineer and its subcontractors agree to attempt in good faith to employee minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the New Jersey State Treasurer pursuant to P.L. 1975, C. 127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2 promulgated by the New Jersey State Treasurer pursuant to P.L. 1975, C. 127, as amended and supplemented from time to time.

18.2.6 The Architect/Engineer and its subcontractors agrees to inform in writing all appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

18.2.7 The Architect/Engineer and its subcontractors agrees to revise any of its testing procedures, if necessary, to assure all personnel testing conforms with the principles of job related testing, as established by the statues and court decisions

of the State of New Jersey and as established by applicable federal laws and applicable federal court decisions.

18.2.8 The Architect/Engineer and its subcontractors agrees to revise all procedures relating to transfer, upgrading, downgrading, and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and agrees to conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable federal law and applicable federal court decisions.

18.2.9 The Architect/Engineer and its subcontractors shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).

18.2.10 Provisions of paragraphs 18.2.4, 18.2.5, 18.2.6, 18.2.7 or 18.2.8 are not required for subcontractors with four (4) or fewer employees or for subcontractors or Architect/Engineer if it has presented evidence of a federally approved or sanctioned Affirmative Action Program.

18.2.11 The Architect/Engineer agrees that, except as noted above, all subcontracts negotiated by Architect/Engineer shall include the provisions in this Paragraph 18.2, as required by PL 1975, c. 127.

18.3 New Jersey Prevailing Wage Act. Architect/Engineer shall comply with the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq.

ARTICLE 19

Time of Performance; Liquidated Damages

19.1 It is mutually agreed between Architect/Engineer and Owner that time is an essential element of this Agreement and that all time limits set forth in this Agreement, including any milestone dates set forth in the Project Schedule described in Subparagraph 1.1.10, are reasonable and of the essence.

19.1.1 If the Architect/Engineer falls behind in meeting any of said milestone dates the Architect/Engineer shall prepare and submit to the Owner its corrective action plan for applying additional resources to the Project, at its own expense, to make

up the time lost by the Architect/Engineer to meet the next milestone date.

19.1.2 Failure of the Architect/Engineer to meet any of the time limits set forth in this Agreement, including said milestone dates, or failure by the Architect/Engineer to take corrective action or apply additional resources to the Project to meet milestone dates in accordance with its corrective plan shall constitute a breach of this Agreement and shall entitle the Owner to seek damages resulting therefrom, including liquidated damages described in this paragraph, or to pursue any other legal or equitable remedies.

19.2 In the event that the Architect/Engineer neglects, refuses or otherwise fails to complete its services within the time periods specified herein, the Architect/Engineer shall be liable to the Owner for the sum of **[Not applicable to this contract.]** per day for each day that the services remain incomplete.

19.3 Architect/Engineer and owner agree that it would be difficult to calculate actual damages and that the sum stated in Subparagraph 19.2 is intended as a substitute therefore and shall be paid to the Owner as liquidated damages and not as a penalty as a reasonable forecast of loss to the Owner, recognizing losses due to administrative, inspection, interest and other costs resulting from such delay as well as for the loss to the Owner of the use of the Project in a completed state of construction. The liquidated damages set forth herein shall be in addition to other consequential losses or damages that the Owner may incur because of such delay, including, without limitation, added costs of the Project and the costs of furnishing temporary services, if any.

19.4 Any sums payable from Architect/Engineer to Owner as liquidated damages may be deducted by the Owner from any sums due or to become due to the Architect/Engineer.

ARTICLE 20

No Damages for Delay

20.1 If the Architect/Engineer is delayed in the completion of its services by any act, neglect or default of the Owner, Construction Manager or any other Architect/Engineer or contractor employed by Owner, or any changes ordered in the Work, or by strikes, lockouts, fire, unusual delay by common carrier, unavoidable casualties, or any case beyond the

Architect/Engineer's control, or by any cause which the Owner determines to justify the delay, Architect/Engineer shall be allowed one additional day to the performance time specified in this Agreement for each day that the delay causes in the completion of the services, as determined by the Owner.

20.2 As a condition precedent to the grant of such an extension of time, Architect/Engineer must give Owner written notice within five (5) Days of the first day of the delay, and shall include in such notice the causes for the delay and a request for an extension of time for such delay providing an estimate of the probable effect of such delay on the completion of its services. If Architect/Engineer fails to give such notice within the five (5) Day time period, Architect/Engineer shall not be entitled to any extension of time.

20.3 Apart from an extension of time, no payment or compensation of any kind shall be made from the Owner to the Architect/Engineer for damages caused by any delay, whether the delay be avoidable or unavoidable.

ARTICLE 21

Miscellaneous Provisions

21.1 Non-Waiver. The failure of any party at any time to require the performance by the other party of any provision of this Agreement shall not be construed as a waiver and shall in no way affect the right to require such performance at any later time.

21.2 Severability. Invalidation of any one of the provisions of this Agreement, by judgment or court order, shall in no way affect any other provision contained herein and all such other provisions shall remain in full force and effect.

21.3 Third Party Beneficiaries. Nothing in this Agreement shall be construed to give any rights or benefits under this Agreement to anyone other than the Owner or Architect/Engineer.

21.4 Interpretation. The titles to paragraphs of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify or aid in the interpretation of the terms of this Agreement.

21.5 Successors and Assigns. The Owner and the Architect/Engineer bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and the partners, successors, assigns and legal

representatives of such other party with respect to all covenants to this Agreement.

21.6 Assignment. This Agreement contemplates personal services by the Architect/Engineer. Architect/Engineer shall not assign, subcontract or transfer its corporate interest herein without the written approval of the Owner.

21.7 Publicity. Publicity and/or public announcements pertaining to the Project shall be cleared by the Owner in writing prior to release.

21.8 Statute of Limitation. As between the parties to this Agreement, as to all acts or failures to act by the Architect/Engineer, any applicable Statute of Limitations shall be governed by N.J.S.A. 2A:14-1.2 et seq.

21.9 Provision Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is incorrectly inserted, then upon notice by either party, this Agreement shall forthwith be physically amended to make such insertion.

21.10 Non-Collusion. Both parties agree that no fee, commission, compensation, gift or gratuity was paid or received in regard to the solicitation of this Agreement, in contravention to N.J.S.A. 52:d-13 et seq. In addition, the Architect/Engineer and its Subcontractor(s) agree to be bound by the provisions of paragraph 3(a) through 3(f) of Executive Order No. 189 (Kean) (1988), set forth below, which prohibits conflicts of interest on the part of vendors providing services to State agencies:

3. Prohibitions on vendor activities, the violation of which shall render vendor liable to debarment in the public interest, pursuant to the procedures established by Executive Order No. 34 (Byrne) (1976) by any Executive department or agency, are as follows:

- a. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, gift, gratuity, or other thing of value of any kind to any State office or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and c., in the Department of Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any

member of the immediate family, as defined by N.J.S.A. 53:13D-13i., of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.

- b. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.

- c. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest with the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality, or appearance of a conflict of interest.

- d. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.

- e. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.
- f. The provisions cited above in paragraph 3a. through 3e. shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 3g.

21.11 Limitation of Liability. There shall be no limits on the liability of the Architect/Engineer for its responsibilities under this Agreement. Architect/Engineer shall be liable for all damages, including direct, indirect, general, consequential, special and incidental, arising out of this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

FOR
 (ARCHITECT/ENGINEER) :

FOR UNIVERSITY HOSPITAL
 (OWNER) :

 Title: _____

 Robert C. Iannaccone, MBA, JD_____
 Title: Executive Vice President
 University Hospital

Date: _____

Date: _____

MAD/kjc

APPENDIX A

The documents which form a part of and are incorporated in this Agreement as if attached or repeated herein are the following:

1. Any modifications or amendments to this Agreement.
2. Any addenda to the RFP #UH-P22-012.
3. Agreement Between Architect/Engineer and the University Hospital For Architectural / Engineering Services for the Emergency Department Expansion.
4. Owner's Request For Proposal (RFP) for Architectural / Engineering Services for the Emergency Department Expansion.
5. Reports supplied by Owner to the Architect/Engineer for the Project.
6. Architect/Engineer's Response to the Owner's RFP.
7. General Conditions of RFP #UH-P22-012.

In the event of a conflict among the terms and conditions of this Agreement and any of the above listed documents, the first document listed shall have the highest priority or supersede all others. The others shall have priority corresponding to their position on the above stated list with the last having the least priority.