

9-16-14

Replacement Exhibit 1

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**FLORIDA ATLANTIC UNIVERSITY  
PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement ("Agreement") is entered into as of \_\_\_\_\_ ("Effective Date"), by and between the Florida Atlantic University Board of Trustees, a public body corporate of the State of Florida, with an address of 777 Glades Road, Boca Raton, FL 33431 ("FAU" or "University" or "Contractor"), and The City of Ft. Lauderdale, a Florida municipality with a business address of 100 N. Andrews, Fort Lauderdale, Florida 33301, ("Client" or "City").

In consideration of the mutual covenants and stipulations set forth herein, the parties hereby agree as follows:

1. University agrees to provide and Client agrees to accept the services set forth in The Executive Certificate in Project Management Program attached hereto (the "Services") in accordance with the terms of this Agreement. University shall control the manner in which the Services are provided, giving due consideration to the requests of Client.

2. This Agreement is legally binding as of the Effective Date, and, unless terminated as provided herein or extended by mutual written agreement of the parties, shall continue until completion of services. Either party may terminate this Agreement for any reason upon forty-five (45) days written notice to the other party, in which case Client shall only be responsible to pay University a pro-rated fee for work completed up to the date of termination.

3. Client agrees to pay University for the Services during the term hereof in accordance with the rates and terms set forth in The Executive Certificate in Project Management Program attached hereto. Unless otherwise specified, payments shall be due within forty-five (45) days of receipt of a proper invoice. Late payments shall bear interest in accordance with the Florida Local Government Prompt Payment Act.

4. The performance of the University of the Services shall be subject to and contingent upon the availability of funds appropriated by the Client, or otherwise lawfully expendable for the purpose of the Services for the current and future periods.

5. All documents, papers, letters or other material made or received in conjunction with the Services shall be subject to the provisions of Chapter 119, Florida Statutes. University shall:

- ~~a) Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.~~
- ~~b) Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2014), as may be amended or revised, or as otherwise provided by law.~~
- ~~c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.~~

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~~(d) Meet all requirements for retaining public records and transfer, at no cost, to the City, all public records in possession of the Contractor upon termination of this contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.~~

6. Any renewals, amendments, alterations or modifications pertaining to the Services must be signed or initialed and approved by all parties.

7. The provision of the Services and the validity, construction and effect of this Agreement shall be governed by the laws of the State of Florida. The University and the Client, as public entities of the State of Florida, are entitled to the benefits of sovereign immunity coextensive therewith, including immunities from taxation.

8. Neither party may, without the advance written approval of the other party, assign any right or delegate any duties pertaining to the Services.

9. No default, delay or failure to perform shall be considered a default, delay or failure to perform otherwise chargeable, hereunder, if such default, delay or failure to perform is due to causes beyond either party's reasonable control including, but not limited to, strikes, lockouts or inactions of governmental authorities; epidemics; war; embargoes, fire; earthquake; acts of God; default of common carrier. In the event of such default, delay or failure to perform, any date or times by which a party is otherwise scheduled to perform shall be extended automatically for a period of time equal in duration to the time lost by reason of the excused default, delay or failure to perform.

10. The University makes no warranties of any kind, express or implied, pertaining to the Services, and to the maximum extent permitted by law, disclaims all warranties and conditions, either express or implied, pertaining to the Services.

11. To the maximum extent permitted by law, in no event shall University be liable for any special, incidental, indirect, or consequential damages whatsoever, pertaining to the Services (including, without limitation, damages for loss of business profits, business interruption, or any other pecuniary loss, including legal fees), whether for a breach of contract, failure of essential purpose, negligence or otherwise, even if the party has been advised of the possibility of such damages.

12. Neither party may use the other party's trade names, trademarks, service marks, logos or other designations except to the extent and in the manner which is expressly provided for in writing by the other party.

13. University reserves all rights with respect to the Services and materials provided by University or the work-product developed by University in connection with the Services. Nothing herein shall purport to grant or convey any interest or right to the University's services, materials or work-product or grant any exclusivity with respect thereto.

14. Unless otherwise mutually agreed, the Services shall be performed at Client's premises. If the parties agree that the Services shall be performed, in whole or in part, on University premises, Client agrees, only to the extent specified in and subject to the limitations specified in Section 768.28, Florida Statutes (2014), as may be amended or revised, to indemnify and hold

harmless, the University from and against actions at law to recover damages in tort for money damages for injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the City while acting within the scope of the employee's office or employment on the University's premises under circumstances in which the City, if a private person, would be liable to the claimant, in accordance with the general laws of the State of Florida. Nothing herein shall constitute a waiver of sovereign immunity beyond that permitted by Florida law.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed.

ATTEST:

CITY OF FORT LAUDERDALE

\_\_\_\_\_  
Jonda K. Joseph, City Clerk

By: \_\_\_\_\_  
John P. "Jack" Seiler, Mayor

By: \_\_\_\_\_  
LEE R. FELDMAN, City Manager

Approved as to form:

\_\_\_\_\_  
Senior Assistant City Attorney

ATTEST:

FLORIDA ATLANTIC UNIVERSITY BOARD OF TRUSTEES

By: \_\_\_\_\_  
Print Name:  
Corporate Secretary

By: \_\_\_\_\_  
Print Name:  
Chair

(CORPORATE SEAL)

STATE OF \_\_\_\_\_:  
COUNTY OF \_\_\_\_\_:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014, by \_\_\_\_\_ as chair for Florida Atlantic University Board of Trustees, a public body corporate of the State of Florida.

(SEAL)

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known \_\_\_\_OR Produced Identification \_\_\_\_

Type of Identification Produced \_\_\_\_\_