

MEMORANDUM OF UNDERSTANDING
Center for Wind Hazard and Infrastructure Performance (WHIP)

This Memorandum of Understanding ("MOU") is made this 20th day of June 2018, between Texas Tech University, a public institution of higher education of the state of Texas ("TTU") and The Florida International University Board of Trustees ("FIU" or "SITE"). Each may be referred to as "Party" or collectively as "Parties."

WHEREAS, TTU and FIU intend to join together in a cooperative effort to support the Center for Wind Hazard and Infrastructure Performance (hereinafter referred to as CENTER). Each university mentioned above shall be hereinafter referred to collectively as "INSTITUTIONS, or "Sites."

WHEREAS, the activities of CENTER are, or may be, funded by 1) the National Science Foundation (hereinafter referred to as "NSF"), 2) Industrial firms, 3) non-NSF Federal agencies, 4) Federal Research and Development organizations, 5) state or local government entities, 6) Government-owned, Contractor Operated laboratories, 7) the INSTITUTIONS, or 8) other funds that may be available or received from time to time.

WHEREAS, INSTITUTIONS desire to formalize certain agreements between them with respect to the subject matter contained herein.

NOW THEREFORE, for and in consideration of the mutual promises and covenants herein contained, INSTITUTIONS hereto agree as follows:

1. CENTER Governance

- a. The CENTER will be governed by a common set of Bylaws (a copy of which is attached as Attachment A). The Bylaws may be modified upon the mutual agreement of the INSTITUTIONS. The CENTER will share a common Industrial Advisory Board (hereinafter referred to as "IAB"), which recommends policy and project funding for the CENTER. The IAB shall be constituted as stated in the CENTER Bylaws.
- b. The Center Director, who will reside at TTU or FIU, provides overall management of the CENTER. The Center Director will be selected as stated in the CENTER Bylaws. The Center Director coordinates CENTER activities, facilitates the IAB Meetings, and oversees the CENTER marketing and recruitment operations. Each INSTITUTION shall have a Site Director. The Site Directors coordinate the CENTER funded research at their respective sites and interact with the IAB to identify key technology areas and establish long-range goals and short-range planning procedures necessary for an overall research program. Each Site Director shall provide to the Center Director regular reports of research activities and programmatic and fiscal matters associated with CENTER.
- c. TTU will be the LEAD INSTUTION. Each INSTITUTION will be responsible for negotiating Membership Agreements for MEMBERS at its CENTER site and for collecting and administering membership dues from those MEMBERS. Each INSTITUTION will be responsible for disbursing funds to projects that are approved by the IAB to be performed at the INSTITUTION, as outlined in Section 3 below. The LEAD INSTITUTION may be changed upon mutual agreement by INSTITUTIONS and a modification of this Agreement.

Each INSTITUTION will be responsible for complying with the NSF requirements for funds awarded with respect to grant administration, fiscal auditing, and reporting.

2. CENTER Funding

The IAB shall vote on the allocation of funds for each CENTER project as set forth in the CENTER Bylaws. Additional membership dues attributed to the addition of a new CENTER Site will be retained for projects at that site for a one-year period. With the exception of new CENTER Sites, all other CENTER sites will fund new projects in accordance with the annual selection by the IAB of research projects and those research projects shall be funded as set forth in section 3 below. The source of funds for those projects will come from the total of the membership fees collected by the INSTITUTIONS of the CENTER members at each INSTITUTION site.

3. Cross-Funding of Research

The research projects that are selected by the IAB shall be funded via subawards or other appropriate agreements, as needed, executed between the INSTITUTIONS that will perform the research projects. Any additional funding to be provided from SITE to the Center shall be set forth in a separate agreement executed by those parties.

4. Ownership and Administration of Intellectual Property

- a. Inventions and patents issuing thereon, made during the course of a research project funded by the CENTER by a single investigator or multiple investigators from one INSTITUTION will be owned solely by the investigators' home INSTITUTION.
- b. The ownership of inventions and patents issuing thereon, made during the course of a research project funded by the CENTER by multiple investigators from different INSTITUTIONS will be jointly owned by the home INSTITUTIONS of the respective investigators.
- c. Inventions made with support from the National Science Foundation shall be subject to the provisions of 37 CFR, Part 401 and the obligations of the NSF award document.
- d. Investigators who make an invention, discovery or improvement, or develop software during the course of a project funded by the CENTER shall disclose promptly such invention to the Site Director and the Center Director and/or the appropriate policy committee of the INSTITUTION with which the Investigator is affiliated. In the case of an invention owned solely by one Institution, that INSTITUTION shall be responsible for managing the invention. In the case of inventions owned jointly by two or more INSTITUTIONS, once an invention disclosure concerning a jointly owned invention is filed, the participating INSTITUTIONS will decide on a case-by-case basis which INSTITUTION will manage the technology, including patent filing, marketing and negotiation of all relevant agreements.
- e. Taking into account any preexisting obligations, all intellectual property, including invention disclosures, filed and assigned patents, as well as copyrights, (excluding copyrights in academic works of authorship such as publications, theses, dissertations) will be marketed to industry. Intellectual property rights and administration for Industrial MEMBERS of the CENTER will be pursuant to the I/UCRC Membership Agreement for

Industry Partners between each Industrial MEMBER and the Center for Wind Hazard and Infrastructure Performance.

- f. Funds for filing patents will come from the inventing INSTITUTION(S) as agreed upon between them for joint inventions and according to policies applicable to the INSTITUTION(S).
- g. Separate agreements will be developed, on a case-by-case basis, to cover CENTER-funded project inventions conceived jointly between INSTITUTIONS and inventors from other (non-CENTER) universities, federal agencies, industry or other organizations.
- h. Publication of results of the research conducted under the auspices of the CENTER is encouraged and will not be delayed other than as reasonably necessary to timely file a patent application.

5. Publicity, Release of Information

The parties agree to coordinate the review and release of information. Any consideration of release of information to the public regarding activities carried out under the terms of this MOU will be discussed and mutually agreed upon by the appropriate management officials, or their designees. Notwithstanding the foregoing, the parties agree that each party may use factual information regarding this MOU to satisfy any reporting obligations of a party, or as required by applicable law. The parties shall ensure that any NSF branding requirements shall be included in any release of information.

6. Term and Termination

The term of this MOU begins on the Effective Date and continues for a period of five (5) years unless terminated earlier as provided below. Either Party may terminate this MOU, without cause and at any time, by giving written notice to the other Party specifying a termination date that is at least ninety (90) days after the date of the written notice. Termination of this MOU shall not impact the continued validity of any existing projects between the Parties, and each Party shall remain obligated to perform their respective responsibilities and obligations, if any, as set forth in an existing project agreements and as required by this MOU.

7. Confidentiality

a) Except as otherwise agreed in writing by the Parties, each Party shall hold all data and other information provided or otherwise disclosed by the other Party (or by other participants in connection with discussions regarding a potential Project), whether written or oral, as well as the terms of this MOU (collectively, the "Confidential Information"), in strict confidence, shall use the Confidential Information only for purposes of this MOU and shall not disclose, distribute or disseminate the Confidential Information, or documents or information derived from it, in any way to any other person or entity (other than to the recipient Party's accountants, attorneys and other consultants retained for purposes of this MOU and which have been advised of these confidentiality requirements and the requirement to comply therewith) or use the Confidential Information for its own benefit or the benefit of others. Each Party agrees to use the same means it uses to protect its own confidential information, but in any event not less than reasonable means, to prevent the disclosure of the Confidential Information to outside persons or entities.

The Parties obligations under this paragraph will continue for five years from the date Confidential Information is disclosed.

b) Nothing in this MOU prevents either Party from disclosing information which belongs to it or is (i) already known by it without an obligation of confidentiality other than pursuant to this MOU, (ii) publicly known or becomes publicly known other than through its unauthorized act, (iii) rightfully received by it from a third party, (iv) independently developed by it without use of the Confidential Information or (v) approved in writing by the other Party for disclosure. In addition, a Party may disclose Confidential Information pursuant to applicable law, including, but not limited to statutes, subpoena, judicial action or governmental regulations or requirements; provided that the Party so disclosing notifies the other Party of the need for the disclosure within a reasonable time given the circumstances so that the other Party, at its sole cost and expense, may, as it deems appropriate, seek to challenge the required disclosure or seek a protective order.

c) Except as agreed in writing by the Parties, neither Party shall (i) have any obligation to provide or otherwise disclose any particular information to the other Party or any other person or entity, (ii) be deemed to have made any warranty, express or implied, with respect to any information provided or otherwise disclosed by such Party or (iii) have any responsibility for any expenses, losses or actions incurred or undertaken by the other Party as a result of such other Party's receipt or use of information provided or otherwise disclosed thereto. Confidential Information shall be and remain the property of the disclosing Party and, upon termination of this MOU, each Party shall surrender any Confidential Information transmitted to it by the other Party or certify that such Confidential Information has been destroyed, except that one copy may be retained for archival purposes only (and copies may also be retained as reasonably required in connection with the enforcement of rights and/or the performance of responsibilities and obligations pursuant to any Project Documents).

8. Notice

Any notice required under this MOU shall be in writing, shall reference this MOU and shall be deemed given when (i) delivered personally, (ii) sent by confirmed facsimile or electronic mail, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid or (iv) one (1) day after deposit with a commercial overnight carrier, with written verification of receipt. The notice shall be sent to the addresses and persons set forth below. A Party may change the address and persons designated by a Party by written notice to the other Party.

If to TTU:

Daan Liang, Professor
Texas Tech University
Civil, Environmental, and Construction
Engineering
1900 Canton Ave.
Lubbock, TX 79409
(806) 834-0384
Daan.Liang@ttu.edu

With a copy to:

Amy Cook, Managing Director
Texas Tech University
Office of Research Services
2625 Memorial Circle-Admin 349
PO Box 41035
Lubbock, TX 79409-1035
(806) 742-3884
ors@ttu.edu

If to FIU:

Ioannis Zisis, Ph.D.
Assistant Professor, Dept. of Civil &
Environ. Engineering
Florida International University
FIU-Engineering Center, EC 3608
10555 West Flagler Street
Miami, Florida 33174
305-348-4869
izisis@fiu.edu

With a copy to:

Roberto M. Gutierrez, M.S.
Assistant Vice President for Research
Florida International University
Office of Research and Economic Development
11200 SW 8th St. (MARC - 430)
Miami, FL 33199
Tel. (305) 348-8312
e-mail: gutierr@fiu.edu

9. No Fiscal Obligation or Restriction on Other Relationships

a) This MOU, on its own terms, is neither a fiscal nor a funds obligation document, and nothing in this MOU obligates either Party to expend, exchange, reimburse funds, or to purchase services or supplies, or to transfer, receive or commit anything of value. Each party will bear its own costs, risks and liabilities arising out of its obligations and efforts under this MOU during the period it is in effect.

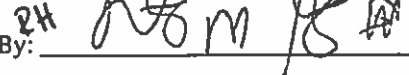
b) This MOU in no way restricts either of the parties from participating in any activity with other public or private agencies, organizations or individuals.

10. Entire Agreement

This MOU is the entire understanding between the Parties with respect to the subject matter described. No modification, alteration or amendment of or to this MOU shall be effective unless it is in a writing executed by both Parties.

SIGNATURE BLOCKS TO FOLLOW

The Florida International University
Board of Trustees


By: 

Name: Robert Gutierrez

Title: Assistant VP for Research

Date: 6/20/18

Texas Tech University

By: 

Name: Amy Cook

Title: Managing Director, ORS

Date: 6/20/18

Read and acknowledged:



Name: Ioannis Zisis
Title: Assistant Professor
Date: 6/19/2018