

REQUEST FOR QUALIFICATIONS
23-005
GARY C. WENDT
ENGINEERING BUILDING

Issue Date: JULY 13, 2022

Due Date: AUGUST 17, 2022

Responses must be delivered to the following address:

Florida Polytechnic University

Wellness Center

Office of Procurement

4550 Research Way

Lakeland, FL 33805

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1.0 Overview

1.1 Definitions

Addenda/Addendum – Written or graphic instruments issued prior to the date for opening of responses, which modify or interpret the response documents by additions, deletions, corrections or clarifications.

Authorized University Representative - University Procurement Department representative, or his/her designee, assigned to handle all Respondent/Vendor communications related to this competitive solicitation.

Contract Documents - means this solicitation, the Design/Build Agreement, Design Criteria Package, the Plans and Specifications and all exhibits and including contract general terms and conditions, special terms and conditions and all other documents related thereto or contemplated thereby, as well as all Addenda and Amendments related to each with respect to the Project and all changes to said documents issued by the University.

Design/Build Agreement - Official agreement, including contract general terms and conditions, special terms and conditions and all other documents related thereto and contract award resulting from the Successful Respondent's response to this solicitation.

Design Criteria Package - Shall mean the design/build specifications and criteria for the Project prepared by the University's hired professional engineer as required by state statute 287.055.

Request for Qualifications – Pre-qualification stage of the procurement process. Only those proponents who successfully respond to the RFQ and meet the qualification criteria will be included in the subsequent Request for Responses (RFP) solicitation process

Respondent– Anyone who submits a response in response to this solicitation or their duly authorized representative.

Response or Response - An executed offer submitted by a Respondent in response to a solicitation and intended to be used as a basis for negotiations for a contract.

Solicitation – Competitive procurement process such as, RFQ, RFP, ITN, ITB, governed by BOG Regulations.

Successful Respondent - The firms or individual who is the recommended recipient of the award of a contract under this solicitation and/or the individual or firm receiving the contract award.

University – Florida Polytechnic University, Florida Polytechnic University Board of Trustees is a public body corporate of the State of Florida.

1.2 University Environment and Background

Florida Polytechnic University is a public research institution with a mission to educate students emphasizing science, technology, engineering, and math (STEM) in an innovative, technology- rich, and interdisciplinary learning environment. The University collaborates with industry partners to offer students real-world problem-solving, work experience, applied research, and business leadership opportunities. Florida Poly is institutionally accredited, with several Accreditation Board for Engineering and Technology, Inc. (ABET)-accredited programs, and is ranked by U.S. News & World Report as the #1 public college in the south and the #26 engineering college (without a Ph.D.) in the nation.

The University is 100% STEM. Its current undergraduate degree offerings include Bachelor of Science programs in:

Applied Mathematics	Data Science
Business Analytics	Electrical Engineering
Computer Engineering	Engineering Physics
Computer Science	Environmental Engineering
Cybersecurity Engineering	Mechanical Engineering

The University currently has Master of Science programs in computer science (Computer Science and Data Science) and in engineering (Computer Engineering, Electrical Engineering, Mechanical Engineering, and Robotics). The University anticipates adding additional programs, including doctoral programs during the life of the Facility.

The University's website, <http://www.floridapoly.edu> provides additional information, which may be useful to the Respondent.

1.3 Objective

The Florida Polytechnic University Board of Trustees (the "University") is requesting responses from qualified firms to develop an on-campus state of the art Engineering Workshop Facility at its Lakeland, FL campus. The University desires to contract with a qualified Design/Build Firm to design and construct the project. The University intends to award the Design/Build Agreement to a qualified entity that the University determines to be in the best interest of and most advantageous to the University.

Through this solicitation process, the University is seeking to identify a Private Entity with appropriate qualifications, experience, financial capacity and a proven track record of executing similar projects. Following receipt of initial responses on qualifications, the University will establish a shortlist of the Private Entities ("Qualified Respondents") to continue in the RFP process and further develop the framework and structure for a design-build partnership with the University. A response to this Request for Qualifications is a prerequisite to participate in subsequent steps.

Joint Ventures

FLORIDA POLY is seeking one (1) Design/Build Team; therefore, firms applying as a joint venture will be disqualified. Notwithstanding the foregoing, the principal/lead firm shall be expected to assemble a Design Build team with expertise in state-of- the-art wet and dry laboratory sciences of higher education facilities.

Note: The consultant agreement will be between the Design/Builder Certified General Contractor (CM) and FLORIDA POLYTECHNIC UNIVERSITY.

1.4 Scope of Work and Deliverables

The University is interested in partnering with a qualified firm to develop an on-campus state of the art Engineering Workshop Facility at its Lakeland, FL campus.

The Student Body at Florida Poly continues to grow and the need for academic space to support new and growing programs continues. This building will support the Environmental Engineering degree program and the very closely aligned Florida Industrial and Phosphate Research Institute. The synergy between these two entities provides established research expertise and a long research track from FIPR with the “new blood” that a young degree program brings in its faculty. An area of emphasis for this in addition to the traditional beneficiation of ores, is a focus on water both as it relates to use and management within the phosphate industry and to water quality, transport of pollutants, cleanup, and water management in the overall environment. Each of the two entities stands to benefit greatly from this strategic collocation of resources and activity. The university will be looking at internal sources to enhance the program and will be partnering with the Florida Industrial and Phosphate Research Institute for development of the program. FIPR Institute provides an important launchpad for research beyond Environmental Engineering; the Mechanical and Industrial Shop will be immediately adjacent to the new Academic Research Center and will be designed for easy of people and material across the two buildings, thereby helping facilitate research over multiple degree programs.

Contingent upon approval, the new Engineering Shop Design/Building Project, should be comprised of approximately 40,000 gross square feet (gsf), and will be located south of the Applied Research Center (ARC) adjacent to Parking Lot 4 (refer to A4, on Figure 1.3 on the Campus Master Plan; <https://floridapoly.edu/facilities-safety-services/assets/campus-master-plan.pdf>). The proposed project will include design and construction of campus support spaces, research laboratories, research learning environments, and research support spaces.

The budget for this project is approximately \$13,125,257.00.

Please Note: There are two (2) Stages to this procurement process.

Stage One:

Request for Qualifications (RFQ): Qualifications Based Conceptual Stage – The Stage One process will assist in identifying interested parties that have the qualifications, experience, and financial capacity necessary to assume the responsibilities of the Private Entity. All responses submitted in response to Stage One will be evaluated based on the criteria identified. Following a review of Stage One responses, Florida Polytechnic University will establish a shortlist of the Private Entities (“Qualified Respondents”). FLORIDA POLY will select approximately three (3) – six (6) of the most qualified Respondents to participate in the Stage TWO RFP process. **A response to Stage One is a prerequisite to participate in subsequent stages.**

Stage Two:

Request for Proposal (RFP): Detailed information including the Design Criteria Package regarding the project, will be provided to the Qualified Respondents in Stage Two.

No contract or agreement will be entered into directly as a result of Stage One nor does Stage One commit the University to continue with the RFP. However, it is important to note that the University recognizes the time, effort, and expense in firms responding to Stage One and therefore, makes a Response to Stage One a requirement and prerequisite for further participation.

The Design – Build Agreement will be between the Successful Respondent and FLORIDA POLYTECHNIC UNIVERSITY.

All goods and services proposed must meet or exceed the specifications as of the date the Responses are due, unless specifically stated as otherwise in the RFP documents.

1.5 Schedule of Events

The anticipated schedule and deadlines for this solicitation are projected as follows:

1.5.1 Table: Schedule - Dates are subject to change

Activity – STAGE ONE	Date	Time (Eastern Time)
Issue RFQ	July 13, 2022	N/A
Mandatory Pre – Response meeting	July 22, 2022	9:00AM (ET)
Deadline for written questions	July 26, 2022	4:00 PM (ET)
University response to written questions	TBD	---
Submittal Due Date	August 17, 2022	2:00 PM (ET)
Qualified Respondents Selected/ Posted	TBD	---

Activity – STAGE TWO – PROJECTED DATES	Date	Time (Eastern Time)
Detailed Information issued to Qualified Respondents	August 25 2022	N/A
Deadline for written questions	September 7, 2022	4:00 PM (ET)
University response to written questions	TBD	---
Submittal Due Date	October 5, 2022	2:00 PM (ET)
Response Evaluation	TBD	---
Presentations/Interviews	TBD	---
Finalists Selected/Posted	TBD	---

The University may post notice of changes to any of the above dates and will provide advance notice of any pre-response meetings by posting the information on the University Procurement Department’s website, available here: <https://floridapoly.edu/procurement/solicitations/index.php>

Respondent is solely responsible for checking the website periodically for changes that have been made to the schedule or whether any meetings for informational purposes are scheduled.

The University has the sole discretion to schedule any meetings and the extent, if any, that those attending may participate in such meetings.

1.5.2 Mandatory Pre-Response Meeting

Consultants are required to attend a mandatory pre-submittal meeting in order to participate in this solicitation. The mandatory pre-response meeting will be held on July 22, 2022 at 9:00 a.m. Eastern Time in the Aula Magna of the Innovation, Science & Technology Building (IST 1000-1001) on the Florida Polytechnic University - JD Alexander Campus in Lakeland, FL. Submittals will be rejected from any firm not directly represented at the mandatory meeting by an employee or agent of the lead Design/Build firm.

1.6 Term of the Agreement

The term of the agreement resulting from this solicitation and the Successful Respondent’s Response shall be determined at time of award.

1.7 Minimum Requirements for Respondents

Respondents must satisfy the following minimum requirements in order to have their Responses evaluated.

By submitting a Response, this warrants and represents that it satisfies the following requirements:

- a) Respondent is pre-qualified to do business with the State of Florida pursuant to the requirements and procedures set forth in this solicitation.
- b) Respondent has relevant design-build experience; and a strong working knowledge of all applicable regulations



c) Respondent shall also ensure all staff, employees, subcontractors, vendors, material suppliers, and/or on-site personnel have relevant design-build experience.
All Architect-Engineer (“A-E”) Services required in this RFQ shall be performed by licensed Architects and Engineers registered in the State of Florida.

2.0 Response Instructions

2.1 Response - General Information

1. **Official Name.** Responses must be made in the official name of the firm or individual under which business is conducted and must be signed by a person duly authorized to legally bind the person, partnership, company, or corporation submitting the Response.
2. **Respondent Reputation and Experience.** Respondents must be of known reputation and have sufficient experience and qualified personnel to adequately perform the prescribed services.
3. **Response Preparation and Cost.** Each Respondent must organize its Response in accordance with the following Response- Required Tab Contents and Submission Instructions sections and must number and label all parts, pages, figures, and tables in its Response. Respondent should prepare its Response simply and economically, providing a straightforward, concise description of the Respondent's capability to satisfy the conditions and requirements of this competitive solicitation. (Fancy bindings, colored displays, and promotional material are not required). Respondent's emphasis should be on completeness and clarity of content. The University is not liable for any costs incurred by Respondents in responding to this solicitation including, without limitation, costs for any oral presentations requested by the University.
4. **Terms and Conditions.** By submitting a response, the Respondent agrees to be governed by the terms and conditions as set forth in this RFQ, to include all attachments and exhibits. Any Response containing variations from such terms and conditions may, at the sole discretion of the University, render such Response as nonresponsive.

2.2 Response- Required Tab Contents

2.2.1 Tab A: Essential Documents

Responses must include the following items in Tab A:

1. Completed **Certification Form** (Affidavit) (Attachment A).
2. Transmittal Letter- The Transmittal Letter accompanying the RFQ must be in the form of a standard business letter and be signed by an individual authorized to legally bind the Respondent. The transmittal letter must include:
 - a. A statement referencing all Addenda to this RFQ issued by the University and received by the Respondent. If no Addenda have been received, a statement to that effect should be included.
 - b. A statement that the Respondent's Response shall remain valid six (6) months after the due date.
 - c. A statement that the Respondent will accept financial responsibility for all travel expenses incurred for oral presentations (if required) and candidate interviews.



d. A statement that summarizes any requested deviations or exceptions to the solicitation requirements, including any Contract Terms and Conditions (**Attachment B, C, D**). Include a detailed justification for the deviation(s) or exception(s) as well as any proposed replacement language. For any suggested deviations and /or exceptions to any of the Contract Terms and Conditions (**Attachment B, C, D**) please complete (**Attachment G**).

Please Note: The University reserves the right to accept or reject any proposed changes or replacement contract language. The University may also lower Respondent's evaluation rating based on the number and severity of exceptions taken. Although some minor revisions and clarifications may be accepted, the University intends that the Successful Respondent will be required to execute the University's contract as written and attached. Respondents are warned against saving their objections to the various provisions until negotiations, as this may be cause for eliminating Respondent's response from further consideration. Any and all objections must be identified in Respondent's written response.

- e. A statement that discloses whether or not Respondent and/or any Team members have declared bankruptcy.
3. Proof of **licenses**, if required.
 4. Letter or certificate from Respondent's insurer that shows that Respondent meets the **insurance requirements** of this solicitation.
 5. Corporate **Governance Documents**, including Respondent's **W9 form** and a **Certificate of Good Standing** from Respondent's State of Incorporation, if other than Florida.
 6. A copy of all signed **Addenda**, if applicable.
 7. Completed and signed **E-Verify Certification (Attachment G)**.

2.2.2 Tab B: Qualifications

Complete qualifications forms (see **Exhibit 1** and **Exhibit 2**). The required qualifications forms may be downloaded from: <https://floridapoly.edu/procurement/solicitations/index.php>

2.2.3 Tab C: Design Build Team

- Provide basic information including the name of the firm; street, mailing and e-mail addresses; telephone and fax numbers; and a primary contact relative to this submittal.
- Provide the number of years the firm/s have been in business, form of ownership and the state of residency of incorporation.
- If the firm has multiple offices, primarily include information about the office that will provide the project services.
- Provide the firm's organization chart. Describe the history and growth of your firm as succinctly as possible; including the firm's current position in the consulting market, total billings past three calendar years, and detail the firm's core values and vision.
- Define the recent, current and projected workloads of the firm.

- Explain why your firm is interested in this project.

2.2.4 Tab D: Personnel/Experience of Design Building Team

- List by name and role the Design Build Team key staff and major discipline heads for the proposed team. For all individuals listed, note whether or not they are registered, the disciplines of registration/training, and the city of residence.
- Provide an organization chart or diagram if necessary to clearly explain lines of authority, duties and responsibilities, indicating continuity through design, pre-construction, construction, and post-occupancy (design team, pre-construction team, budget development and cost estimating team, schedule development, construction team, post-occupancy team, etc.). Identify other non-essential positions planned for the project that are not yet filled or named.
- Enclose resumes for all key staff and discipline heads tailored to demonstrate their experience as it relates to this project.
- Each respondent shall include the names and addresses of Design Building Team members, indicating who will perform the work, and provide references for key personnel assigned.
- The team proposed in this document must be available to provide the services for the project, and throughout the project. If the Respondent discovers prior to the interview that any part of the listed team (either individual key staff or consultants) will not be available, it shall notify the University's point of contact immediately. The evaluation committee will determine whether the change in the team would have affected the Respondent's shortlist score. If the change would lower the score, the Respondent may be removed from the shortlist. Once awarded the contract, the Respondent will not be permitted to alter its team without the Owner's written approval.
- Describe the member's specialization, expertise and reputation designing and constructing state-of-the-art laboratory sciences educational facilities.

2.2.5 Tab E: Approach to Design, Budget and Development of the Project

- Describe team's understanding of project, intent, goals, and objectives.
- Describe the team's approach for collaborative development of the design of the facility, and how the team plans to ensure the program is realized.
- Provide examples of the team's approach to preconstruction meetings with stakeholders. Indicate how those experiences will result in successfully budgeted and constructed projects.
- Describe how the Design/Build team will ensure estimates will remain within construction project budget constraints at each design phase.
- Describe the approach to pre-construction processes: scope development, vendor qualifications, bidding, and cost estimating.
- Describe and document ability to provide responsive service and keep schedules.

2.2.6 Tab F: Project Methodology, Construction, Quality Control, and Safety Program

- The Design/Build team shall describe the design and construction methodology to successfully construct an Engineering fabrication, research & development building. The new building/building spaces will result in enriched/complementary improvements to Florida Polytechnic's campus, both functionally and aesthetically to recruit and retain students and faculty.
- Provide description and examples of: vendor management and coordination, owner and design coordination, schedule updates, quality control standards and safety management programs.
- Describe the closeout and warranty process and methodology.
- Describe tools/resources used to facilitate weekly, and monthly project tracking for coordination across multiple stakeholders.
- Provide a description of the overall approach the firm proposes for development of the project along with an anticipated completion schedule, including a phased construction methodology to expedite construction completion.
- The University encourages and values the use of local- / Florida-based and minority or women owned firms as sub-contractors to complete this Project, and ask respondents to identify procedures proposed, and experience engaging firms alike.

2.2.7 Tab G: Sustainable Buildings and Energy Initiatives

- Describe the experience of the Design/Build team incorporating sustainable building practices into the design and construction of state buildings through the Florida Energy Conservation and Sustainable Buildings Act.
- Describe the experience of the team with using one or more of the sustainable rating systems approved in section 255.253, Florida Statutes. These rating systems are:
 - The Green Building Initiative's Green Globes rating system
 - The Florida Green Building Coalition rating system
 - The International Green Construction Code (IGCC)
 - The United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system

2.2.8 Tab H: Trade Secret Certification

If applicable, provide the **Affidavit of Trade Secret Certification (Attachment F)**, completed and signed by an authorized representative as to applicable trade secrets contained in the Respondent's documents. Respondent must segregate and clearly mark all documents certified as a trade secret and include the documents in this tab of Respondent's Response.

1. Segregate and separately label the document(s) claimed as trade secrets. Documents produced electronically should be produced on a separate jump drive and clearly labeled "Trade Secret" on the jump drive as well in the title of the electronic folder or file. Documents produced in hard copy should

be separated and each clearly labeled “Trade Secret.” Inserting the words “Confidential” and/or “Proprietary” to the front of or the footer of a document does not automatically entitle the document to be a trade secret under Florida law and thus is insufficient to comply with this requirement.

2. Provide a sworn affidavit (form is **Attachment F**), if applicable signed by a high-level officer of the Respondent to Florida Poly’s Procurement Department, certifying the following for each separate claimed trade secret document;
3. Identify with specificity the document(s) for which trade secrets protection is claimed;
4. Provide a description of the document sufficient to determine the application of the trade secret exemption; and
5. Explain in detail the specific element(s) or provision(s) of Florida Statutes Section 688.002(4) or Section 812.081(c) that render the document at issue a trade secret exempted from public records under applicable Florida law.
6. A Respondent’s failure to fully comply with the above and/or submit a sworn affidavit with its Response is an affirmation that none of Respondent’s documents are trade secrets

2.3 Submission Instructions

Please read these instructions carefully. Failure to comply with all instructions is grounds for rejection of Respondent’s Response without further evaluation. Respondents must submit their Response by following the instructions below.

1. **STAGE ONE** - Respondent must submit the following:
 - a. One **(1) original copy of Respondent’s Response** clearly marked as an original and containing an authorized representative’s signature, title, and date of signature.
 - b. One **(1) hard copy** of Respondent’s Response.
 - c. One **(1) electronic copy** of Respondent’s Response, preferably on a jump drive. Do not provide the Response via email.
 - d. The response (Tabs “B’ through “J”) is limited to fifty (50) double-sided sheets or one-hundred (100) pages, plus dividers. This is not inclusive of the Essential documents in Tab “A”. No pertinent data may be included on the dividers, and it will not be considered.
2. The items listed in **STAGE ONE** above must be delivered under sealed cover to the address indicated below and received prior to **August 17, 2022; 2:00 pm** :

FLORIDA POLYTECHNIC UNIVERSITY
Procurement Department
c/o Wellness Center Mail Room
4550 Research Way
Lakeland, Florida 33805-8531

Outer label MUST also include:
RFQ 23-005
GARY C. WENDT ENGINEERING BUILDING



Attn: Andrea Cashell
STAGE ONE DUE DATE:
AUGUST 17, 2022; 2:00 pm

3. Any information or required submittals that, due to size or binding cannot be incorporated into the proper tab, may be submitted separately but at the same time as Respondent's Response. The location of the information should be provided in the proper tab.
4. LATE RESPONSES, LATE MODIFICATIONS, AND LATE WITHDRAWALS - Responses received after the due date and time are late and will not be considered. Modifications received after the due date are also late and will not be considered unless solicited by FL POLY in writing. Letters of withdrawal received after the due date but prior to the expiration of 90 days after the due date (provided no award has been made) are late withdrawals and will not be considered

PLEASE NOTE: STAGE TWO submittal instructions will be included in the detailed information and provided to the shortlisted Respondents.

3.0 Process

3.1 Authorized University Representative

The Authorized University Representative and sole point of contact for this competitive solicitation is:

Andrea Cashell

Email: acashell@floridapoly.edu

Phone: 863-874-8428

Web address: <https://www.floridapoly.edu/procurement/index.php>

3.2 Respondent Communications and Questions/ Inquiries

Questions regarding this solicitation must be submitted via email only to the Authorized University Representative. Questions should identify the relevant Section(s), Subsection(s), Paragraph(s) and page number(s) of the solicitation, if applicable.

The University will consider only those communications and/or inquiries submitted via email and received by the Authorized University Representative on or before the Deadline for Written Questions specified in **Section 1.3, "Schedule of Events."** Unless the Authorized University Representative specifically requests Respondent to provide additional communications, University will not accept or consider any of Respondent's written or other communications and/or inquiries (except solicitation responses) received between the Deadline for Written Questions regarding the solicitation and the posting of an award, if any, under this competitive solicitation.

To the extent University determines, in its sole discretion, to respond to any communications, inquiries, or requests for clarification, University's response (as applicable) will be made in an addendum to this competitive solicitation and posted on the Website.

Only those communications that are in writing from the Authorized University Representative will be considered as duly authorized expressions on behalf of the University.

3.3 Restricted Respondent Communications

From the date of issuance of this solicitation until the University takes final action, the Respondent must not communicate with any University employees or Evaluation/Negotiation Committee members regarding this solicitation or Respondent's Response except as provided herein or as expressly requested by the Authorized University Representative. Violation of this restriction may result in rejection of the Respondent's Response.

3.4 Addenda

The University Department of Procurement will post any Addenda to this solicitation on the website. The Respondent's authorized representative must sign and date the Addenda Acknowledgment Form(s), if any, and include the form(s) in the Respondent's Response. All Respondents, including known interested private parties, are solely responsible for checking the website periodically to verify whether any such Addenda and forms were issued.

3.5 Opening of Responses

The Department of Procurement will open and record the names of all timely submitted responses and review each response for accuracy.

3.6 Responsive Determination

Each Response will be reviewed by the Department of Procurement to determine whether it is responsive. The response must include the following:

- a. Followed the requirements of this solicitation,
- b. Includes all required documentation and information,
- c. Was submitted in the format outlined in this solicitation,
- d. Was submitted prior to the due date and time, and
- e. Has the appropriate signatures as required on each document.

Failure to comply with these requirements may put Respondent's Response at risk of being rejected as "non-responsive".

3.7 University Rejection of Response

The University reserves the right and sole discretion to reject any response at any time on grounds that include, but are not limited to:

1. Response is nonresponsive, incomplete, or irregular in any way; or
2. Response is not in University's best interest.

The University may waive informalities and minor irregularities in Responses.

3.8 Withdrawal of Response

A Respondent wishing to cancel their response prior to the submittal date (i.e., Respondent has submitted a response and the response received in response to the solicitation has not yet been reviewed, the Respondent no longer wants to participate in the process and would like their response cancelled), may do so by submitting a written request to the authorized University Official. The written request must contain: the name of the Respondent; the name, title and contact information of the person making the request; the solicitation name and number; the date of the request; and a statement that the person making the

request is authorized by the Respondent to cancel the response. In accordance with Florida law, the submitted Response will not be returned to the Respondent.

3.9 Protest

Any Respondent/interested person who is disputing the specifications or is adversely affected by a decision or intended decision concerning this competitive solicitation or contract award and who wants to protest such specifications, decision, or intended decision must file a protest in compliance the Florida Board of Governors' regulations. Failure to file a protest in accordance with Florida Board of Governors' regulation 18.002, or failure to post the bond or other security as required in BOG regulations 18.002 and 18.003 will constitute a waiver of protest proceedings.

The University's decisions, if any, will be posted on the website for review by interested parties, and will remain posted for a period of at least seventy-two (72) hours; excluding weekends, federal holidays, and University holidays. Failure to file a protest in accordance with the above stated regulations will constitute a waiver of protest proceedings.

4.0 Selection Process

4.1 Evaluation Criteria

Responses will be evaluated based on the following criteria and points:

Criteria	Tabs	Maximum Points Available
Technical expertise and strength of Design/Build team with higher education research laboratory projects and demonstrated relevant project experience with similar facilities. Current and projected workloads, volume of work, and location	B, C, D	25
Suitability of the lead Design/Build team to provide high quality design and pre-construction services for this project, including past design / build experience	E	35
Suitability of the lead Design/Build team to provide construction and supervisory services for this project, quality control, ability to control the schedule and budget	F	25
Experience of Design/Build team with Sustainable Buildings and Energy Initiatives, including awards	G	5
Experience and proficiency of Design/Build team with involvement of local, small, minority, veteran, and women's business enterprises.	F	10
Total Points Available		100

4.2 Evaluation Process and Evaluation Committee

Responses fulfilling the basic requirements are referred to an Evaluation Committee for review and further consideration. The Responses will be independently evaluated by an Evaluation Committee. The Evaluation Committee will consider Responses, presentations, and additional written information as requested. If determined to be necessary, the Evaluation Committee will conduct additional oral interviews. Internal staff analysis and presentations, outside consultants, and any other resources may be utilized to assist the University in evaluating.

The Evaluation Committee will recommend that three (3) to six (6) Respondents be invited to participate in the RFP process – deemed “**Shortlisted Respondents**”.

The University reserves the right to award a Contract without negotiations with the Respondent. Respondent's Proposal should contain the Respondent's best terms from a cost or price and technical standpoint.

4.3 Determining Preferences

The Department of Procurement will review Responses to determine if any preferences should be applied. The University will provide preferences to eligible Respondents in accordance with Board of Governors regulation 18.001, Sections 287.084, 287.087, and 287.092, Florida Statutes, as applicable.

4.4 Negotiation Team – Stage Two

If a Negotiation Team has been assigned, the Negotiation Team will evaluate each Shortlisted Respondent's complete response to this solicitation. The Negotiation Team may enter into negotiations with multiple Shortlisted Respondents in order to achieve the contract that most supports the University's missions and objectives.

Prior to the Respondent's first meeting with the University's Negotiation Team, Respondent must submit written authorization attesting that at least one of Respondent's representatives is Respondent's lead negotiator and is authorized to bind Respondent to the terms and conditions agreed to during negotiations. The University reserves the right to immediately terminate negotiations with any Respondent whose representatives are not empowered to, or who will not, make decisions during a negotiation session.

Negotiations with Shortlisted Respondents may involve presentations, site visits, oral interviews, additional written information, internal staff analysis and presentations, feedback from outside consultants, discussions with the Shortlisted Respondents about their capabilities and plans for design and construction of the Facility, and/or any other information deemed helpful.

4.5 Contract Award – Stage Two

The recommendation of the Negotiation Team will be submitted to the Director of Procurement for review and approval, and if approved, the Director will forward the recommendation to the appropriate University Official, or their designee, for a final decision regarding the award of the RFP.

The University Official considers the recommendations and makes a final decision regarding the award. If due to the value or nature of the contract being awarded approvals from the Board of Trustees or its designees are required, such approval must be obtained before the contract can be awarded.

The University reserves the right to select, and subsequently recommend for award, the Final Response(s) (the Successful Respondent's Response or if requested, Best and Final Offer, whichever is later) that best

meet the University's required needs, quality levels, and budget constraints. University may reject all Responses if such action is in the University's best interest. University is not obligated to make an award under this solicitation and may make multiple awards if it, in its sole discretion, deems it is in the University's best interest to do so.

All provisions of this solicitation and the Successful Respondent's Response or if requested, Best and Final Offer, whichever is later, (referred to as "Final Response") provide the specifications for, and obligations of both parties to be executed by any duly authorized representative(s). The following constitute the Contract:

- a. The University solicitation document,
- b. All addenda issued pursuant thereto,
- c. The Respondent's Final Response, and
- d. Terms in the University contract to include all clarifications and negotiated modifications to the solicitation, addenda, and Respondent's response.

If the University determines that the Respondent awarded a contract based on this solicitation does not honor all agreements reached during the negotiations and place the Respondent on the University's suspended Vendor list.

Please note: No contract or agreement will be entered into directly as a result of this RFQ (Stage One) nor does this RFQ commit the University to continue with the solicitation. However, it is important to note that the University recognizes the time, effort, and expense in firms responding to this RFQ and therefore, makes a Response to this RFQ (Stage One) a requirement and prerequisite for further participation.

4.6 Commencement of Work

Respondent will not provide any commodities or services or take any action, even if such is as a result of any discussions with any the University employee, prior to the Contract being signed by both parties. If Respondent provides services or commodities or takes any action prior to a Contract being signed by both parties, the Respondent/Successful Respondent does so at Respondent's sole risk and expense.

5.0 Terms and Conditions -Competitive Solicitation Process

The following terms and conditions apply to all Respondents. By participating in this competitive solicitation process, Respondents agree to be bound by the following terms and conditions:

1. **Actions of Respondent.** The University is not bound by the actions of any Respondent with respect to third parties.
2. **Collusion Prohibited.** Respondent's collusion with other Respondents, other Respondents' employees, or any employee of the University is prohibited and may result in rescission or cancellation of solicitation (or contract) without liability to the University.
3. **Conflict of Interest.** The award of this solicitation is subject to the provisions of Chapter 112, Florida Statutes, and any other laws, regulations and/or policies concerning conflicts of interest in dealing with entities of the State of Florida (collectively, "Conflicts of Interest Rules").
 - a. Submission of a Response, and acceptance of a Contract/lease resulting from this solicitation, will require certification that Respondent is aware of and has complied with the requirements of the Conflicts of Interests Rules, including any requirement to file appropriate disclosures with the State of Florida Commission of Ethics prior to submission of a solicitation response.
 - b. Solely by way of example, Respondent must disclose in its Response the name of any officer, director, or agent of the Respondent who is also an employee or public officer of Florida Poly, the State of Florida or of any of its agencies. Further, Respondent must disclose in its Response the name of any Florida Poly or State employee or public officer (or his or her spouse or child) who owns, directly or indirectly, an interest of five (5%) or more of the Respondent's company or any of its affiliates or branches.
 - c. In addition, in accordance with Section 112.3185, Florida Statutes, by submitting a Response, the Respondent certifies that no individual employed by the Respondent or subcontracted by the Respondent has an immediate relationship to any Florida Poly employee or public officer who was or is directly or indirectly involved in any way in the drafting, evaluating, or awarding of this solicitation.
 - d. Failure to disclose the required information or violation of the Conflicts of Interest Rules will be grounds for rejection of Respondent's Response, cancellation of an intent to award, and/or cancellation of any Contract/Lease with the Respondent.
4. **Covenant against Commissions, or Brokerage and Contingent Fees.** By submitting a Response, the Respondent warrants that the Respondent has not employed or retained any person or entity, other than a bona fide employee working solely for the Respondent, to solicit or secure any award, agreement, or any other advantage related to this solicitation. By signing an agreement with the University, the awarded Respondent warrants that it has not paid or agreed to pay any individual or company (other than a bona fide employee working solely for the awarded Respondent), any fee,



commission, percentage, gift, or other consideration (contingent fee) upon or resulting from the award or making of the agreement. In the event of the awarded Respondent's breach of this warranty, the University has the right to rescind any agreement with the awarded Respondent resulting from this solicitation, without liability, and to deduct from any amounts otherwise payable to the awarded Respondent under the agreement the full amount of contingent fee(s) and to pursue any other remedy available to the University.

5. **Disposition of Responses.** All Responses become the property of the University, and the University has the right to use all ideas, and/or adaptations of those ideas, contained in any response received in response to this solicitation. The University's selection or rejection of a Response does not affect this provision.

6. **Public Records Laws; Trade Secret Certification.** As a public body corporate of the State of the Florida, Florida Poly is subject to Chapter 119 of Florida Statutes, commonly known as the Florida Public Records Law. This solicitation is a public record. Any documents Respondent submits to Florida Poly in response to this solicitation will also become a public record, which will similarly be subject to the Florida Public Records Law. As required by law, Florida Poly will respond to public records requests without providing Respondents whose documents have been requested any notice.
 - a. Should Respondents seek to assert trade secret protection for any document the Respondent submits in response to this competitive solicitation under sections 119.0715, Florida Statutes Section 688.002(4), 812.081(1)(c), 815.04(3), and/or 815.045, Florida Statutes for each document that trade secret protection is claimed, Respondent must comply with the instructions for **Tab H**.
 - b. If a Respondent properly complies and submits a sworn affidavit with its Solicitation Response and Florida Poly later receives a public records request for a document or information that is marked and certified with an affidavit to be a trade secret, Florida Poly will provide the requestor a copy of the Respondent's sworn affidavit. Any challenge to the affidavit and the application of the trade secret exemption will be rebutted, if at all, only by the Respondent; Florida Poly's only obligation will be to provide Respondent notice that such a challenge has been received. The notice will serve as formal notice to the Respondent that such Respondent has thirty (30) calendar days following receipt of such notice from Florida Poly to file an action with a court of competent jurisdiction seeking an order barring public disclosure of the document(s). If Respondent files an action within thirty (30) calendar days after receipt of notice of a challenge to its trade secret certification, Florida Poly will not release the documents at issue pending the outcome of the legal action. The failure to file an action within thirty (30) calendar days constitutes a waiver of any claim of confidentiality, and Florida Poly will release the document as requested.
 - c. Any parts of a response, and any other material(s) submitted to the University with the response that are copyrighted or expressly marked as "confidential," "proprietary," "trade secret," or similar marking, (proprietary designation) will be exempt from the public records disclosure requirements of chapter 119, Florida Statutes, only to the extent expressly authorized by Florida law. The mere



use of a propriety designation, while necessary, by a Respondent does not itself ensure that such materials will be exempt from disclosure. In the absence of a specific Florida statute exempting material from the public records law, the University is legally obligated to produce all public records produced or received in the course of conducting university business, irrespective of any proprietary designation by the Respondent. The University, or potentially a court, will make the ultimate determination of whether a Respondent's claim of a proprietary designation will support an exemption from disclosure.

d. If the instructions listed above conflict with Florida law, Florida law controls.

- 7. Public Entity Crimes.** In accordance with Section 287.133(2)(a), Florida Statutes, a person or entity who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a Response; may not perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity, including The University; and may not transact business with the University in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date being placed on the convicted vendor list. By submitting a Response, Respondent is certifying that Respondent is not on the convicted vendor list maintained by the Florida Department of Management Services, and Respondent is also certifying that any subcontractor listed in Respondent's solicitation response is not on the convicted vendor list.
- 8. Subcontractors.** If Respondent anticipates using subcontractors, as a further condition of award of a contract, the Respondent must certify in writing that its subcontractors are appropriately licensed and are registered with the State of Florida in accordance with Chapters 607 or 620, Florida Statutes, and such statement will include any subcontractors' corporate charter numbers. The subcontractors and the amount of the subcontracts must be identified in the Respondent's solicitation response.
- 9. Small Business Minority Enterprise (SMBE).** It is the University's desire (consistent with state and federal law), to optimize opportunities for business contracting with small, minority and disadvantaged business enterprises in the areas of commodities, construction, contractual services, and architectural and engineering services. Respondents are likewise encouraged to use the small, minority and disadvantaged business enterprises and to have a business diversity program in place.

 - a. For more information on becoming a State of Florida Certified Minority Business (CMBE), to request certification or to locate CMBEs, please contact the Office of Supplier Diversity, Department of Management Services at (850) 487-0915.
- 10. Prohibitions.** Unless expressly and specifically authorized in writing by the University in advance, Respondent is prohibited from engaging in any of the following:

 - a. Incurring any debt or obligation on behalf of the University;



- b. Entering into any contract, arrangement, or transaction that binds the University to any extent or creates any obligation on UNIVERSITY; and/or
- c. Utilizing the University's name, credit, reputation, good-will, resources, and/or assets for any purpose without the prior and explicit written approval of the University.

6.0 Additional Requirements

Minimum Insurance Coverage and Requirements

The Design/Builder shall obtain and maintain the minimum insurance coverage set forth below. By requiring such minimum insurance, Florida Polytechnic University (FL Poly) shall not be deemed or construed to have assessed the risk that may be applicable to the Construction Manager. The Design/Builder shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. The Design/Builder is not relieved of any liability or other obligations assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

COVERAGES

1. Commercial General Liability–ISO CG 001 Form or equivalent. Coverage to include:
 - a. Premises and Operations, Personal/Advertising Injury, Products/Completed Operations, Broad Form Property Damage, Independent Contractors
2. Automobile Liability including all:
 - a. Any Auto, Owned Auto, Non-owned Auto, Hired Auto
 - b. Personal Injury Protection (when applicable)
3. Workers' Compensation, Statutory Benefits (Coverage A), Employers Liability (Coverage B)
4. Excess/Umbrella Liability
 - a. Excess of Commercial General Liability, Automobile Liability and Employers Liability. Coverage should be as broad as primary.
5. Payment and Performance Bond
 - a. Payment and performance bond shall be maintained for the total of the Contract GMP amount throughout the time schedule of the construction project.

LIMITS REQUIRED

The Design/Builder shall carry the following limits of liability as required below: Dollar amounts may change in accordance with the event or project. Construction requirements may also include Builders Risk and Pollution Liability.

Commercial General Liability	
General Aggregate	\$ 2,000,000
Products/Completed Operations	\$ 2,000,000
Each Occurrence Limit	\$ 1,000,000
Personal/Advertising Injury	\$ 1,000,000
Fire Damage (Any One Fire)	\$ 50,000
Medical Payments (Any One)	\$ 5,000
Automobile Liability	
Bodily Injury/Property Damage	\$ 1,000,000
Personal Injury Protection	Statutory



Workers' Compensation	
Coverage A (Workers' Compensation)	Statutory
Coverage B (Employers Liability)	\$100,000 \$500,000 \$1,000,000
Umbrella Liability	
Each Occurrence Limit	\$ 1,000,000
General Aggregate Limit	\$ 1,000,000
Products/Completed Operations	\$ 1,000,000
Professional Liability	
Each Claim	\$1,000,000
Annual Policy Aggregate	\$2,000,000
Pollution Liability (when applicable)	
Per Claim	\$100,000
Annual Policy Aggregate	\$100,000
Payment and Performance Bond	
GMP amount	TBD

ADDITIONAL REQUIREMENTS

The Design/Builder shall meet the following requirements:

1. Be licensed or approved to do business within the State of Florida.
2. Insurer possesses a minimum A.M. Best's Insurance Guide rating of no less than "B+".
3. Unless otherwise approved by the University, all insurance coverage must be written on an occurrence basis with the exception of professional liability and pollution liability (if applicable).
4. With the exception of Professional Liability, Workers Compensation and Pollution Liability (if applicable) all policies must name the State of Florida, Florida Board of Governors, Florida Polytechnic University Board of Trustees, and Florida Polytechnic University, its officers, employees, agents, and volunteers as "Additional Insured". (ISO Form CG 2010, 1997 Edition or equivalent).
5. Include an Additional Insured Endorsement form as the "Additional Insured" on Commercial General Liability, Automobile Liability, Umbrella/Excess Liability, Environmental Liability and other as specified by the contract.
6. Be on a primary basis, non-contributory with any other insurance coverage and/or self-insurance carried by FLORIDA POLY.
7. Include a Waiver of Subrogation Clause that clearly states that the insurer paying any claim arising by reason of any operations under the contract will not seek reimbursement from FLORIDA POLY.
8. Include a Separation of Insured Clause (Cross Liability) for all liability policies.
9. University prefers thirty (30) days advance written notice prior to policy non-renewal, cancellation or materially change or alteration. Renewal certificates and endorsements are to be provided to FLORIDA POLY at least 30 days prior to expiration.

10. Insurance certificates and written endorsement must be provided directly by the insurance agency or carrier.
11. The Design/Builder shall provide uninterrupted liability coverage for three years after contract expiration date.
12. The Design/Builder is responsible for ensuring that any sub-contractors or sub-consultants maintain equivalent insurance coverage.

7.0 SUPPLEMENTAL -ATTACHMENTS, APPENDICES, AND EXHIBITS

Attachment A- RFQ Certification Form (Affidavit)

Florida Polytechnic University
RFQ 23-005
GARY C WENDT ENGINEERING BUILDING
Submission Deadline: AUGUST 17, 2022; 2:00 PM (ET)
Publish Date: JULY 13, 2022

Respondent Information:

RESPONDENT - COMPANY	Responsible Individual Name
Federal Employer Identification Number	Responsible Individual Title
Phone Number	Email Address
ADDRESS RESPONDENT	

Government Classifications. Check all that apply

- | | | |
|--|---|--|
| <input type="checkbox"/> African American | <input type="checkbox"/> American Woman | <input type="checkbox"/> Asian-Hawaiian |
| <input type="checkbox"/> Government Agency | <input type="checkbox"/> Hispanic | <input type="checkbox"/> MBE Federal |
| <input type="checkbox"/> Native American | <input type="checkbox"/> Non-Minority | <input type="checkbox"/> Non-Profit Organization |
| <input type="checkbox"/> PRIDE | <input type="checkbox"/> Small Business Federal | <input type="checkbox"/> Small Business State |

Bid Protest. Response tabulations with intended award(s) will be posted for review by interested parties on the Procurement Department solicitation webpage and will remain posted for a period of 72 hours. Failure to timely file a protest or failure to timely deliver the required bond or other security in accordance with the Board of Governors’ Regulations 18.002 and 18.003 is a waiver of protest proceedings.

Addenda. Please check one:

- Respondent has received all Addenda issued by the University and has signed Addenda Acknowledgement Form(s) in Tab A of the Response.
- Respondent has not received any Addenda.

Required Disclosure- Employment/Ownership. List below the names of Respondent or Respondent employees having an employment relationship with the University, State of Florida, or any Florida State Agencies, and any University or State employee(s) owning an interest of 5% or more of Respondent’s company or its affiliates or branches and describe the nature of such relationship or ownership interest. Add an additional page if needed.

Name: Relationship/Ownership Interest:
Name: Relationship/Ownership Interest:
Name: Relationship/Ownership Interest:

Required Disclosure- Bankruptcy/Insolvency/Delinquency Judgement.

If Respondent and/or Team Member has declared bankruptcy, otherwise been declared insolvent, has had a delinquency judgement issued against it in any court of competent jurisdiction, been placed in receivership, or any litigation that could significantly impact your financial operating results or financial position, provide the information below. If not, leave this section blank.

Date: _____ Court jurisdiction: _____
 Trustee/ Receiver Name: _____ Phone Number: _____
 Amount of Liabilities: _____
 Amount of Assets: _____
 Current Status: _____

Required Disclosure- Damages/Penalties/Liens/Judgments/Defaults/Cancellations/Termination.

If Respondent and/or Team members has had any projects within the last three years where liquidated damages, penalties, liens, judgments, defaults, cancellations of contract or termination of contract were

imposed, sought to be imposed, threatened, or filed against the Respondent or any Team Member, provide a description below. If not, leave this section blank

SIGNATURE REQUIRED – I do hereby swear under the penalty of perjury:

1. That I am the Respondent (if the Respondent is an individual), a partner (if the Respondent is a partnership), or an Officer or employee of the bidding corporation with authority to sign on its behalf (if the Respondent is a corporation).
2. That this response is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a Response for the same materials, supplies, equipment, or services and is in all respects fair and without collusion or fraud.
3. That the Respondent is legally entitled to enter into contracts with the Florida Polytechnic University Board of Trustees and is not in violation of any prohibited conflict of interest.
4. To abide by all conditions of this Response and that the Respondent is in compliance with all requirements of the solicitation, including but not limited to, certification requirements.
5. In submitting a Response to an agency for the State of Florida, the Respondent offers and agrees that if the Response is accepted, the Respondent will convey, sell, assign, or transfer to the State of Florida all rights, title and interest in and to all causes of action it may now or hereafter acquire under the Anti-trust laws of the United States and the State of Florida for price fixing relating to the particular commodities or services purchased or acquired by the state of Florida. At the State's discretion, such assignment becomes effective at the time the procurement agency tenders final payment to the Respondent.
6. That Respondent's Response remains valid for six (6) months after the due date.
7. That Respondent is responsible for all travel expenses incurred for oral presentation and candidate interviews, if optional or required.

SWORN TO AND SUBSCRIBED TO ME, A NOTARY
PUBLIC, THIS ____ DAY OF _____, _____

FOR AND ON BEHALF OF THE
RESPONDENT DESIGN/BUILDER:

Signature

Printed or typed name

Title

(SEAL)

NO RESPONSE – If not responding to this solicitation, please advise reason and return via email to bids@floridapoly.edu with reason for NO RESPONSE

Attachment B- Design Build Contract

**AGREEMENT FOR DESIGN/BUILD SERVICES
WITH GUARANTEED MAXIMUM PRICE**

THIS AGREEMENT FOR DESIGN/BUILD SERVICES (the “Agreement”) is made and entered into this Numerical Date day of Month, Year, by and between **The Florida Polytechnic University Board of Trustees** (“Owner”), and D/B Name, D/B address, with Federal I.D. No. FEIN# (“Design/Builder”), which is authorized to do business in Florida.

WITNESSETH:

WHEREAS, Owner solicited statements of qualifications from interested design/builders for the provision of design and construction services related to the project described in **Exhibit A** (the “Project”), and;

WHEREAS, based on Design/Builder’s interview, qualifications statement, and related submissions, Owner has selected Design/Builder for the Project, and;

WHEREAS, Owner and Design/Builder desire to enter into this Agreement regarding the design and construction of the Project.

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

ARTICLE 1. GENERAL DESCRIPTION OF SERVICES

- 1.1 The Services.** The Design/Builder agrees to furnish or arrange for the architectural, engineering and construction services set forth herein and required for completion of the Project on a Guaranteed Maximum Price (hereinafter defined) basis. Design/Builder represents that it is thoroughly familiar with and understands the requirements of the Project scope and is experienced in the design, administration and construction of building projects of the type and scope contemplated by the Owner’s Facilities Program for the Project. Design/Builder represents to Owner that Design/Builder has all necessary architectural, engineering and construction education, skill, knowledge and experience required for the Project, and will maintain at all times during the term of this Agreement such personnel on its staff to provide the services contemplated hereby within the time periods required hereby. In addition, Design/Builder represents that it or Owner-approved subcontractors performing services under this Agreement have all applicable licenses required by the State of Florida to perform such services.
- 1.2 Project Schedule / Time of the Essence.** Design/Builder has provided Owner with a preliminary overall Project schedule covering the planning, design and construction of the Project, which schedule is attached hereto as **Exhibit B**. This preliminary schedule shall serve as the framework for the subsequent development of all detailed construction schedules described in the Design/Build General Terms and Conditions. The Design/Builder shall at all times carry out its duties and responsibilities as expeditiously as possible and in accordance with the Project schedule, subject to delays in the schedule not the fault of Design/Builder or its consultants. Time is of the essence in the performance of this Agreement.
- 1.3 Cooperation.** The Design/Builder shall endeavor to develop, implement and maintain, a spirit of cooperation, collegiality, and open communication with Owner so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and, upon completion, the Project is deemed a success by all parties.
- 1.4 Preparation/Sufficiency of Site.** Before commencing the design and construction work, the Design/Builder shall:

- (a) visit and thoroughly inspect the Project Site and any structure(s) or other man-made features to be modified and become familiar with local conditions under which the Project will be constructed and operated;
- (b) familiarize itself with the survey, including the location of all existing buildings, utilities, conditions, streets, equipment, components and other attributes having or likely to have an impact on the Project;
- (c) familiarize itself with the Owner's layout and design requirements, conceptual design objectives, and budget for the Project;
- (d) familiarize itself with pertinent Project dates and programming needs, including the Project schedule,
- (e) review and analyze all Project geotechnical, Hazardous Substances structural, chemical, electrical, mechanical and construction materials tests, investigations and recommendations, and;
- (f) gather any other information necessary for a thorough understanding of the Project.

If the Project involves modifications to any existing structure(s) or other man-made feature(s) on the Project site, the Design/Builder shall also review all as-built and record drawings, plans and specifications of which Design/Builder has been informed by Owner about and thoroughly inspect the existing structure(s) and man-made feature(s) to identify existing deficiencies and ascertain the specific locations of pertinent structural components. Claims by Design/Builder resulting from Design/Builder's failure to familiarize itself with the Site or pertinent documents shall be deemed waived.

- 1.5 Project Team.** Design/Builder will use the Project Team identified in **Exhibit C**. Design/Builder will not remove or replace any members of the Project Team except with the written approval of Owner based upon good cause shown or as directed by Owner as provided hereunder. Further, if any member of the Project Team discontinues service on the Project for any reason whatsoever, Design/Builder shall promptly replace such team member with a qualified individual approved by Owner, in writing, which approval will not be unreasonably withheld.
- 1.6 Contract for Design/Build Construction.** The "Contract for Design/Build Construction," which constitutes the entire agreement between Owner and Design/Builder, consists of: this Agreement and all exhibits hereto; the Design/Build General Terms and Conditions; special conditions, if any; proposal(s) submitted by Design/Builder and accepted by Owner, if any; the Construction Documents; any amendments or addenda executed by the Owner and the Design/Builder hereafter; Owner-approved change order(s) or field orders; and the additional documents listed in **Exhibit A**, if any. Documents not included or expressly contemplated in this Section 1.6 do not, and shall not, form any part of the Contract for Design/Build Construction. Without limiting the generality of the foregoing, shop drawings and other submittals from the Design/Builder or its subcontractors and suppliers do not constitute a part of the Contract for Design/Build Construction.
- 1.7 Commissioning.** The Design/Builder shall participate in, and cooperate with, design-phase, construction-phase, and post-occupancy commissioning (including peer review), validation, and other third-party quality assurance and quality control processes that Owner implements, if any.

ARTICLE 2. OWNER'S DUTIES, OBLIGATIONS AND RESPONSIBILITIES

- 2.1 Project Information.** Design/Builder acknowledges that Owner has provided Design/Builder with information regarding Owner's requirements for the Project as set forth in the Facilities Program.

- 2.2 **Owner's Budget.** The Owner shall establish and update an overall budget for the Project, including amounts allocated for design and construction, the Owner's other costs and reasonable contingencies related to these costs as appropriate.
- 2.3 **Owner's Representative.** The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project.
- 2.4 **Time for Performance.** The Owner shall review and approve or take other appropriate action on all design submittals of the Design/Builder within the timeframes set forth in **Exhibit B**.
- 2.5 **Property Survey.** If required, the Owner shall furnish, or direct the Design/Builder to obtain, at the Owner's expense, surveys describing physical characteristics, legal limitations and utility locations for the Project site, and a written legal description of the Project site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths.
- 2.6 **Geotechnical Testing.** If required, the Owner shall furnish, or direct the Design/Builder to obtain, at the Owner's expense, the services of geotechnical engineers as necessary for the Project. Such services may include, but are not limited to, test borings, test pits, sub-surface imaging, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate Design/Builder recommendations.
- 2.7 **Purpose of Owner's Review.** Owner's review, inspection, or approval of any Work, Design Documents, Applications for Payment or other submittals shall be solely for the purpose of determining whether the same are generally consistent with Owner's Facilities Program, standards, policies and requirements. No review, inspection, or approval by Owner of such Work or documents shall relieve Design/Builder of its responsibility for the performance of its obligations under the Contract for Design/Build Construction or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Work. Approval by any governmental or other regulatory agency or other governing body of any Work, Design Document, or the Construction Documents shall not relieve Design/Builder of responsibility for the performance of its obligations under this Agreement. Payment by Owner pursuant to the Contract for Design/Build Construction shall not constitute a waiver of any of Owner's rights under the Contract for Design/Build Construction or at law, and Design/Builder expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by Owner. Notwithstanding the foregoing, prompt written notice shall be given by the Owner to the Design/Builder if the Owner becomes aware of any fault or defect in the Project or non-conformance with the Contract for Design/Build Construction.
- 2.8 **Status Of Owner.** The Owner shall not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Design/Builder, for any of the foregoing purposes, be deemed the agent of the Owner.
- 2.9 **Owner's Utilities.** The Design/Builder shall be responsible to provide and pay for consumption of, and connections to, utilities required for temporary service and construction.

ARTICLE 3. DESIGN SERVICES REQUIREMENTS AND STANDARDS

- 3.1 Quality Of Design Services.** Design/Builder shall be responsible for the quality, completeness, accuracy, and coordination of Design and Construction Documents. Design/Builder shall provide Design Services that meet all environmental and regulatory requirements. Design/Builder shall provide for all testing and inspections required by sound architectural and engineering practices and by governmental authorities having jurisdiction over the Project.
- 3.2 Errors and Omissions.** The Design/Builder shall, at no additional cost to the Owner, immediately make additions, changes and corrections to any documents prepared by Design/Builder necessitated by errors and omissions in the Design/Builder's performance of its services. In addition, Design/Builder shall not be entitled to any compensation or adjustment in the Guaranteed Maximum Price ("GMP") for additional work required as a result thereof, provided, upon Owner's written approval, Design/Builder may use contingency funds to pay for Work not included in the Construction Documents which add value to the Project (but expressly excluding any demolition or other costs related to the substitution of such Work for previously installed Work and associated design fees). The foregoing shall not relieve Design/Builder for liability to Owner for any damages, including costs incurred by Owner after termination in whole or in part of this Agreement, resulting from any error or omissions by Design/Builder in the course of its duties under this Agreement.
- 3.3 Legal Standard.** The Design/Builder shall furnish design/build services in accordance with design/build standards currently practiced by design/builders on projects similar in size, complexity and cost to the Project.
- 3.4 Design Standards.** The Design/Builder shall perform all services in accordance with requirements of governmental agencies having jurisdiction over the Project, the Florida Polytechnic University Design and Commissioning Services Guide, Owner's policies and project management guides, and any other guidelines described in **Exhibit A**. In addition, the Design/Builder's design shall comply with all applicable building codes, accessibility laws and regulations, Florida Polytechnic University Design and Construction Standards, Florida Polytechnic University Telecommunications Standards, and other standards in effect at the time of the design work. To the extent Owner's standards exceed applicable legal requirements, such standards shall be met unless Design/Builder obtains a variance from Owner in writing.
- 3.5 Permits.** Design/Builder shall be responsible for obtaining all necessary permits and other governmental approvals necessary for the development of the Project and shall obtain the same at the times necessary to meet the Project schedule.
- 3.6 Design Software.** The design and construction drawings shall be developed using Building Information Modeling (BIM) software - latest Owner-approved version; see **Exhibit A**.
- 3.7 Notice of Non-Compliance with Law.** If Design/Builder believes or is advised by another design professional retained to provide services on the Project that implementation of any instruction received from Owner would cause a violation of any applicable law, Design/Builder shall promptly so notify Owner in writing.

ARTICLE 4. BASIC DESIGN AND PRE-CONSTRUCTION SERVICES

- 4.1 Project Requirements.** The Design/Builder shall meet with the Owner to ascertain the requirements of the Project. The approved Facilities Program shall serve as the basic planning document for the development of plans and specifications.
- 4.2 Program Evaluation.** The Design/Builder shall provide a preliminary evaluation of the Owner's Facilities Program, schedule and construction budget requirements, each in terms of the other.

- 4.3 **Recommended Testing and Surveys.** After reviewing the Project requirements, the Design/Builder shall advise the Owner of the tests and surveys that should be conducted prior to the development of plans and specifications.
- 4.4 **Project Alternatives.** The Design/Builder shall review with the Owner alternative approaches to design and construction of the Project.
- 4.5 **Submittal Requirements.** When the Design/Builder makes submittals to the Owner at the various phases of design, the Design/Builder shall comply with the requirements for such submittals set forth on **Exhibit D**.
- 4.6 **On-Site Program and Budget Verification.**
- 4.6.1 During the design phases, Design/Builder agrees to provide, as part of Basic Services, on-site program and budget verification, development and review workshops necessary or desirable to develop a design, acceptable to Owner and its user groups, which is within Owner's budget. Such workshop(s) will be conducted with representatives of Owner's user groups and the University Review Committees with jurisdiction over the Project, utilizing the charrette format. Without limitation of the foregoing, at the Concept Schematic Design, Advanced Schematic Design and Design Development phases, the Design/Builder shall support and attend presentations and shall include drawings, models, renderings, animations, and other tools as necessary to illustrate and convey information on particulars of the design intent. This shall include site plans with building footprint, landscape and tree removal plans, building elevations, "fly-through" digitized renderings, and architectural details as needed. At such presentation the Design/Builder shall also address all issues and concerns previously identified but not yet addressed by the Design/Builder to the University Review Committees' satisfaction.
- 4.6.2 In accordance with Owner's policies and Design and Commissioning Services Guide, the Design/Builder shall develop a Basis of Design document (BOD). The BOD shall be developed initially during the first phase of the design, updated during each subsequent design phase and finalized on or before Substantial Completion. The BOD shall include detail appropriate to each respective phase of the design.
- 4.7 **Quality Control Programs.** The Design/Builder shall establish and submit for Owner review within thirty (30) calendar days of the Owner's execution of this Agreement:
- (a) Project reporting procedures;
 - (b) Quality Control and Testing Program; and
 - (c) Safety program.
- 4.8 **Jobsite Management & Logistics Plan.** The Design/Builder shall develop a comprehensive jobsite management and logistics plan for the Owner's review. This plan shall be submitted no later than the date set forth in **Exhibit E**.
- 4.9 **Conceptual Schematic Design (CSD).** Based on the approved Facilities Program, schedule and construction budget requirements, the Design/Builder shall prepare several alternative design solutions. The Design/Builder shall present these alternatives to the Owner, making submittals of studies, consisting of sketches and initial concepts in accordance with schedule requirements. After receiving the Owner's comments, the Design/Builder shall prepare, for approval by the Owner, Conceptual Schematic Design Studies which shall represent one or more recommended solutions. The submittal shall consist of documents, including sketches, initial concepts, orientation, and relationships to existing and future programmed projects.

- 4.10 Advanced Schematic Design (ASD).** Based upon the approved Conceptual Schematic Design studies, the Design/Builder shall prepare, for approval by the Owner, Advanced Schematic Design Documents consisting of drawings, 3-dimensional renderings and other documents illustrating the scale and relationship of Project components, energy conservation approach and building systems parameters. The Design/Builder shall submit to the Owner the Advanced Schematic Design Documents for review in accordance with schedule requirements.
- 4.11 Design Development Phase (DD).** Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the Facilities Program, schedule or construction budget, the Design/Builder shall prepare, for approval by the Owner, Design Development Documents consisting of drawings, three dimensional renderings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical, plumbing, fire protection and electrical systems, materials and such other elements as may be appropriate. The Design/Builder shall submit the Design Development Documents to the Owner for review in accordance with schedule requirements.
- 4.11.1 If a life-cycle cost computer analysis is authorized by Owner under **Exhibit C** or by Additional Services Authorization, the necessary documentation will be submitted with the Advanced Schematic Design Documents in accordance with **Exhibit D**. The Design/Builder shall prepare data, make the input and run a life-cycle cost computer program analysis approved by the Owner. Before preparing the data, the Design/Builder shall discuss the energy-saving schemes proposed for the Project with the Owner's project manager. When an agreement has been reached, the Design/Builder shall document the approved energy-saving schemes and obtain the written concurrence of the Owner's project manager. The Design/Builder shall make the input and run the computer program using the following economic factors:
- (a) Discount rate = 7%;
 - (b) Operating & Maintenance cost escalation = 0%;
 - (c) Energy Replacement costs escalation = 1%;
 - (d) Project Life = 25 years.
- 4.12 Construction Documents Phase (CDs).** Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Design/Builder shall prepare and submit to Owner Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project. Construction Documents shall be provided to Owner at the 60% stage and when 100% in accordance with schedule requirements. In the event Owner elects to fast-track the design of certain portions of the Project, Design/Builder shall submit only 100% Construction Documents for such fast-tracked portions (such portions being described on **Exhibit E** and hereinafter referred to as "Phase 1"), and 60% and 100% Construction Documents for the remainder of the Project (such portion hereinafter referred to as "Phase 2"). Any fees associated with fast-tracking Phase 1 of the Project are included in the fee schedule.
- 4.12.1 For a threshold building as defined in Chapter 553, Florida Statutes, a structural inspection plan shall be included in the Construction Documents.
- 4.13 Construction Reports.** At each phase of preliminary design, the Design/Builder shall provide, in addition to design drawings, a report detailing construction issues and concerns relating to the design, in light of Owner's goals and the Facilities Program for the Project, with detail appropriate to the level of design. Without limitation of the foregoing, the construction report shall:

- 4.13.1 include an estimate of overall construction cost, with Design/Builder's contingency associated with the Cost of the Work no greater than the percentages set forth on **Exhibit E**;
- 4.13.2 identify conceptual decisions that were made or will need to be made which are necessary to prepare accurate cost reports with the fewest assumptions, qualifications and exclusions;
- 4.13.3 provide an analysis and evaluation of jobsite management, site logistics, budget and schedule considerations considered in preparation of the design drawings;
- 4.13.4 provide an analysis and evaluation of the constructability issues which were addressed in preparing the design drawings or which need to be addressed during future design phases, and;
- 4.13.5 provide an analysis and evaluation of each of the design drawings in regard to the completeness of intended bid categories, conflicts or overlaps in the divisions of the Work, design details affecting construction, value engineering, identification of long-lead materials affecting the Construction Schedule, availability of labor and other factors affecting construction.

4.14 Construction Schedules.

Design/Builder shall submit an initial Construction Schedule by the date set forth on **Exhibit E**; a final Construction Schedule with the Guaranteed Maximum Price proposal; and revised Construction Schedules in accordance with the Design/Build General Terms and Conditions.

4.15 GMP Proposal.

- 4.15.1 At the time set forth on **Exhibit E**, the Design/Builder shall prepare and deliver to the Owner, a Guaranteed Maximum Price ("GMP") proposal. The Design/Builder shall, at a minimum, include in the GMP proposal:
 - (a) a recital of the specific Construction Documents, including drawings, specifications, and all addenda thereto, used in preparation of the GMP proposal;
 - (b) the five (5) elements of the Guaranteed Maximum Price:
 - (i) Guaranteed Maximum Cost of the Work (hereinafter defined), detailed by each subcontract, trade, or bid division;
 - (ii) the Design/Builder's Contingency for the Work;
 - (iii) Guaranteed Maximum Design/Builder's Staffing Cost (hereinafter defined), detailed by expense category;
 - (iv) Guaranteed Maximum General Conditions Cost (includes bond & insurance costs) (hereinafter defined), detailed by expense category; and
 - (v) Guaranteed Maximum for Design/Builder's Overhead and Profit.
 - (c) a draft schedule of values;
 - (d) a description of all other inclusions to, or exclusions from, the GMP;
 - (e) all assumptions and clarifications; and
 - (f) the final Construction Schedule.

- 4.15.2 The Design/Builder acknowledges that the Construction Documents may be incomplete at the time the Design/Builder delivers the GMP proposal, and that the Construction Documents may not be completed until after commencement of the Work. Nevertheless, the GMP proposal shall include all costs for the Work required by the completed Construction Documents, and if the GMP proposal is accepted by the Owner, the Design/Builder shall be entitled to no increase in the GMP if the Work required by the completed Construction Documents (i) is required by the Contract for Design/Build Construction, (ii) is reasonably inferable from the incomplete documents, (iii) is consistent with the Owner's programmatic goals and objectives, (iv) is consistent with the Owner's Design and Construction Standards and the general industry standards for completion of the Work, (v) is not a substantial enlargement of the scope of Work or (vi) substantially conforms to the nature, type, kind or quality of Work depicted in the incomplete documents.
- 4.15.3 If the GMP proposal is unacceptable to the Owner, the Owner shall promptly notify the Design/Builder in writing. Within fourteen (14) calendar days of such notification, the Owner, and Design/Builder shall meet to discuss and resolve any differences, inconsistencies, or misunderstandings and to negotiate recommended adjustments to the Work and/or to the GMP.
- 4.15.4 The Owner may, at its sole discretion and based upon its sole judgment, (i) indicate its acceptance of a GMP proposal; (ii) reject a GMP proposal; (iii) terminate the Project; or (iv) proceed to construct the Project using a party or parties other than the Design/Builder.
- 4.15.5 If the Owner rejects a GMP proposal, neither party shall have any further obligation pursuant to this Agreement.
- 4.15.6 If the Owner accepts a GMP proposal, the parties shall complete and execute **Exhibit F**, and the Owner shall issue a written Notice to Proceed to the Design/Builder establishing the date construction is to commence (the "Commencement Date"). The Design/Builder shall not expend any monies for construction prior to receipt of such Notice to Proceed without the written approval of the Owner.
- 4.15.7 Price Guarantees.
- (a) Upon execution of **Exhibit F** the Design/Builder guarantees that the sum of the actual Cost of the Work, (i) Design/Builder's Contingency, (ii) Design/Builder's Staffing Costs, (iii) General Conditions Cost, and (iv) Design/Builder's Overhead and Profit, shall not exceed the amount set forth in the agreed upon GMP. All costs or expenses that would cause this sum to exceed the GMP shall be borne by the Design/Builder unless adjusted by Owner approved change order.
- (b) Upon execution of **Exhibit F** the Design/Builder guarantees that the actual Cost of the Work, Design/Builder's Staffing Costs, General Conditions Cost and Design/Builder's Overhead and Profit shall not exceed the guaranteed maximum for each such category and that all costs or expenses that would cause any of these individual categories to exceed the guaranteed maximum for each such category in the agreed upon GMP shall be borne by the Design/Builder unless adjusted by Owner approved change order.

- (c) Upon execution of **Exhibit F** the Design/Builder certifies that all factual unit costs supporting the GMP proposal are accurate, complete and current at the time of negotiations; and that any other factual unit costs that may be furnished to the Owner in the future to support any additional amounts that may be authorized will also be accurate and complete. Payments to the Design/Builder shall be reduced if the Owner determines such amounts were originally included due to materially inaccurate, incomplete, or non-current factual unit costs.
- (d) Upon execution of **Exhibit F** the Design/Builder guarantees that to the extent the accepted GMP includes contingency, use of contingency shall be approved by Owner by change order prior to expenditure by the Design/Builder.

4.16 Corrected/Conformance Document Set (CCD). The Design/Builder shall submit to the Owner a Corrected/Conformance Document Set incorporating all design review comments, revisions or suggestions elicited during development of the Guaranteed Maximum Price Proposal, pre-bid inquiries, and other modifications made after the 100% complete Construction Documents have been submitted to the Owner in accordance with schedule requirements.

4.17 Sustainable Building and Energy Initiatives. The Design/Builder shall work with Owner to pursue Owner's goal, for the Project, at the level set forth on **Exhibit E to utilize a sustainable rating system approved in section 255.53 Florida Statutes.**

ARTICLE 5. ADDITIONAL DESIGN SERVICES

5.1 Additional Services. If the services described in this Article 5 are not included in Basic Services or reasonably inferable therefrom, they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. The Additional Services shall be performed only if authorized in writing by the Owner prior to their performance. Providing additional design services made necessary by defects or deficiencies in the Work by Design/Builder shall not entitle Design/Builder to compensation.

5.2 Additional Services Mark-up. For Additional Services being provided by consultants not included on the original Project Team, which require no work on the part of the Design/Builder other than administering the work thereof (i.e., securing the services, approving the work, and invoicing on behalf of the consultant), the Design/Builder may request a mark-up not to exceed six percent (6%) on the consultant's fee to cover the Design/Builder's administrative costs. This mark-up will be based on the complexity and time spent.

5.3 Fees. For Additional Services described in this Article 5, a lump sum or not-to-exceed amount which is satisfactory to both parties shall be negotiated on each occasion of activating a specific additional services authorization. The Design/Builder's staff costs associated therewith shall be based on the hourly rates set forth on **Exhibit G.**

5.4 Certain Traditional Additional Services Considered Basic Services. If Owner has determined that Owner requires certain services which are traditionally considered Additional Services for the purpose of calculating the Design/Builder's fees, such services are described on **Exhibit C** and compensation for such services is included in the schedule set forth on **Exhibit G.** For purposes of this Agreement, such services constitute Basic Services.

5.5 Additional Design Services

5.5.1 Design professional representation at the Project site more extensive than that described in Article 6.

5.5.2 Making revisions in Drawings, Specifications or other documents but if, and only if, such revisions are:

- 5.5.2.1 inconsistent with approvals or instructions previously given by the Owner; or
- 5.5.2.2 required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents and not reasonably foreseeable at the time of the preparation of such documents.
- 5.5.3 Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity and the Owner's schedule.
- 5.5.4 Preparing Drawings, Specifications and other documentation and supporting data in connection with Change Orders which require design or redesign, and which are not required to correct the Construction Documents or which are not due to oversights of the Design/Builder.
- 5.5.5 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work not covered by Design/Builder's insurance.
- 5.5.6 Providing services in connection with a public hearing or legal proceeding except where the Design/Builder is party thereto.
- 5.5.7 When required by the Owner, preparing documents for alternate, separate or sequential bids, except issuing early bid packages in support of fast-track construction delivery process.
- 5.5.8 Programming the requirements of the Project.
- 5.5.9 Providing planning surveys, site evaluations or comparative studies of prospective sites.
- 5.5.10 Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.
- 5.5.11 Providing services relative to future facilities, systems and equipment, when not specifically included in the original Facilities Program for the Project.
- 5.5.12 Making measured drawings of existing construction when required for planning additions or alterations thereto.
- 5.5.13 Providing coordination of construction performed by separate contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.
- 5.5.14 Providing interior design and other similar services required for, or in connection with, the selection, procurement or installation of furniture, furnishings and related equipment.
- 5.5.15 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.
- 5.5.16 Preparing Mylar reproducible record drawings.
- 5.5.17 Providing design services after issuance by the Owner of the final payment to the Design/Builder, except for those services described in Article 6.
- 5.5.18 Providing services of consultants other than those described in Exhibit C.
- 5.5.19 Preparing data, making the input, and running energy modeling and/or life-cycle cost analysis programs.
- 5.5.20 Providing site surveys, geotechnical testing services or other special tests.

- 5.5.21 Providing special inspection on threshold buildings as defined in Chapter 553, Florida Statutes.
 - 5.5.22 Providing prolonged contract administration and construction observation should the construction time specified for final completion be exceeded by more than 60 days through no fault of Design/Builder.
 - 5.5.23 Providing services relating to LEED certification if such services are in addition to services otherwise being provided and are required solely for the LEED certification.
 - 5.5.24 Providing any other services not otherwise included in this Agreement.
- 5.6 Notwithstanding anything to the contrary herein, Design/Builder shall not be entitled to additional design fees if the same are necessitated by the fault of Design/Builder.

ARTICLE 6. CONSTRUCTION PHASE SERVICES

- 6.1 **General Intent.** Design/Builder shall perform all Work and construction administration services necessary to construct the Project in accordance with the Contract for Design/Build Construction and to render the Project and all of its components operational and functionally and legally usable.
- 6.2 **Trade Contractor Selection Bidding and Negotiation.**
- 6.2.1 Design/Builder shall prepare and assemble document packets for use in bidding the subcontracts. Such packaging of the Work shall be broken down to maximize both competition and the involvement of small businesses.
 - 6.2.2 The Design/Builder shall develop subcontractor and supplier interest for each division of the Work. The Design/Builder shall pre-qualify proposed subcontractors using a pre-qualification form approved by the Owner, which shall include, at a minimum, proof of licensure where applicable. A design professional on the Project Team shall attend all pre-bid meetings with potential subcontractors and be available to respond to questions regarding the Construction Documents.
 - 6.2.3 The Design/Builder shall competitively bid each trade category or, if approved by Owner, negotiate for the performance of a particular trade category.
 - 6.2.4 The Design/Builder shall use its best efforts to obtain bids which are less than the final GMP estimates.
 - 6.2.5 The Design/Builder shall conduct bid openings in the presence of the Owner's Representative. The Design/Builder shall provide the Owner with a copy of its preliminary bid tabulation and a copy of all bids.
 - 6.2.6 The Design/Builder shall, for each subcontract, trade or bid division:
 - (a) determine the final bid amounts, having reviewed and clarified the scope of Work in detail with the apparent low responsive bidders to determine that their bids are complete but do not include duplicate scope items;
 - (b) prepare and furnish to the Owner a final bid tabulation summary which includes by subcontract, trade and/or bid division, the applicable final GMP estimate and the related final bid amount and the details of all scope clarifications for Owner's review and approval;
 - (c) if requested by Owner, provide a list of all potential Direct Purchase Materials (hereinafter defined);

- (d) identify to the Owner in writing the subcontractors to which the Design/Builder recommends award of subcontracts, and;
 - (e) award and enter into a subcontract between itself and each subcontractor which it has recommended in accordance with this Agreement unless otherwise notified by the Owner.
- 6.2.7 No portion of the Work may be performed by the Design/Builder or its affiliates except with Owner's approval.
- 6.2.8 The Design/Builder shall buy out Trade Contracts representing ninety percent (90%) of the Cost of the Work or more, within the timeframe outlined in **Exhibit F**.

6.3 Design Professional's Role During and After Construction. Although the design and construction of the Project are being provided through a design/build delivery method, because no additional design professionals have been retained by Owner to provide oversight during construction and warranty phase services, the lead design professionals on the Project Team shall be responsible for providing the services described herein. Such services shall be provided by the lead design professionals without regard to the conflict of interests associated with the design/build delivery method.

- 6.3.1 The design professionals shall carry out the Construction Administration services set forth herein and in the Florida Polytechnic University Design and Commissioning Services Guide. To the extent the terms of this Agreement, the Design and Commissioning Services Guide, and the Design/Build General Terms and Conditions are inconsistent, the terms of this Agreement shall govern.
- 6.3.2 The design professionals shall be a representative of, and shall advise and consult with, the Owner during construction until final payment is made. The Design/Builder shall have authority to act on behalf of the Owner only to the extent provided in this Agreement.
- 6.3.3 The design professionals on the Project Team shall attend regularly scheduled construction meetings at the Site and shall provide such representation as may be required to fulfill the intent and interpretation of the plans and specifications for the Project. In any event, the design professionals shall visit the site the minimum number of times required in **Exhibit E** or at more frequent intervals appropriate to the stage of construction, or as otherwise agreed by the Owner and Design/Builder, in writing, to become familiar with the progress and quality of the Work completed and to determine if the Work is being performed in a manner indicating that the Work when completed will be in accordance with the Construction Documents. On the basis of on-site observations as an architect or as an engineer, the design professional shall keep the Owner informed of the progress and quality of the Work and shall guard the Owner against defects and deficiencies in the Work.

- 6.3.4 Based on the design professionals' observations and evaluations of the Design/Builder's Applications for Payment, the design professional shall review and certify the amounts due the Design/Builder. The design professional's certification for payment shall constitute a representation to the Owner, based on the design professional's observations at the Project site and on the data comprising the Design/Builder's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the design professional's knowledge, information and belief, the quality of the Work is in accordance with the Construction Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Construction Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Construction Documents correctable prior to completion and to specific qualifications expressed by the design professional. The issuance of a Certificate for Payment shall further constitute a representation that the Design/Builder is entitled to payment in the amount certified.
- 6.3.5 The design professional shall reject Work which does not conform to the Construction Documents. Whenever the design professional considers it necessary or advisable for implementation of the intent of the Construction Documents, the design professional will have authority to require additional inspection or testing of the Work in accordance with the provisions of the Design/Build Contract for Construction, whether or not such Work is fabricated, installed or completed.
- 6.3.6 The design professional shall review, approve, reject or take other appropriate action of construction-related inquiries and submittals, such as shop drawings, product data and samples. The design professional shall not approve any such submittals unless such submittals conform with:
- (a) the Facilities Program and design concept;
 - (b) the Construction Documents;
 - (c) the Owner's total budgeted Construction Cost;
 - (d) the Florida Polytechnic University Design and Construction Standards, and;
 - (e) governing codes and authorities having jurisdiction.
- In the event the Florida Polytechnic University Design and Construction Standards exceed applicable legal requirements, those Florida Polytechnic University standards shall govern. The design professional's review shall be completed so that all Work can be performed without delay and all products or materials may be ordered or fabricated with sufficient time to meet the Project schedule.
- 6.3.7 The design professional shall prepare Change Orders, with supporting documentation and data, if the design professional determines the same is necessary for the Owner's approval and execution in accordance with the Design/Build Contract for Construction.
- 6.3.8 Interpretations and decisions of the design professionals shall be consistent with the intent of, and reasonably inferable from, the Construction Documents and shall be in writing or in the form of drawings.
- 6.3.9 The design professionals' decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Construction Documents, and if concurred with by the Owner.

- 6.3.10 The design professionals shall conduct inspections to determine the dates of Substantial Completion and Final Completion, shall receive and forward to the Owner for the Owner's review and records, written warranties and related documents required by the Design/Build Contract for Construction and assembled by Design/Builder, and shall issue a final Certificate for Payment upon compliance by the Design/Builder with the requirements of the Design/Build Contract for Construction. The design professionals shall perform all services relating to Substantial Completion and Final Completion in accordance with Florida Polytechnic University policies and procedures.
- 6.3.11 As-Built Drawings. The Design/Builder shall prepare "As-Built" or record drawings at Project completion in accordance with the requirements set forth on **Exhibit A** and **Exhibit D**. These drawings shall include changes made to the Project by Change Orders, Addenda to the Construction Documents, Architect's Supplemental Information, field orders, field reports, Requests For Information, shop drawings, other directives and submittals and information provided by the Design/Builder.
- 6.3.12 The design professionals shall respond to Owner's requests to review design and construction issues during the construction warranty period; coordinate and participate in the end of the warranty period inspection in accordance with the Florida Polytechnic University Design and Commissioning Services Guide; and produce a summary report documenting deficiencies, problems, or other outstanding items.

6.4 Construction Supervision.

- 6.4.1 Commencing with the award of the first subcontract and terminating on the date of Final Completion, the Design/Builder shall provide the services described herein.
- 6.4.2 The Design/Builder shall, as the Owner's construction representative during construction, advise and consult with the Owner, and provide administration of the Construction Documents.
- 6.4.3 The Design/Builder shall supervise and direct the Work at the Site. The Design/Builder shall, at a minimum, staff the Project Site with personnel who shall:
- (a) supervise and coordinate the Design/Builder's personnel and act as its primary liaison with the Owner;
 - (b) coordinate trade contractors and suppliers, and supervise Site construction management services;
 - (c) be familiar with all trade divisions and trade contractors' scopes of Work, all applicable building codes and standards, and the Contract for Design/Build Construction;
 - (d) check, review, coordinate and distribute shop drawings and check and review materials delivered to the Site, regularly review the Work to determine its compliance with the Construction Documents and this Agreement, confer with the appropriate Owner's consultant(s) as necessary to assure acceptable levels of quality;
 - (e) prepare and maintain Project records and process documents;
 - (f) schedule and conduct weekly progress meetings with subcontractors to review such matters as jobsite safety, job procedures, construction progress, schedule, shop drawing status and other information as necessary and provide notification of, and minutes from, such meetings to Owner;

- (g) schedule and conduct weekly progress meetings with the Owner to review such matters as construction progress, schedule, shop drawing status, and other information as necessary, and;
- (h) make provision for Project security to protect the Project site and materials stored off-site against theft, vandalism, fire and accidents as required by the Design/Build General Terms and Conditions.

6.5 Direct Purchase Program. The Owner may elect to implement a direct purchase program whereby it may purchase materials and equipment included in any Subcontractor's bid for a portion of the Work directly from the supplier of such materials or equipment in order to achieve sales tax savings. Such materials and equipment are referred to as "Direct Purchase Materials". If Owner elects to implement a direct purchase program, it shall so notify Design/Builder in writing, and the terms of this paragraph shall govern, along with any Owner policy on Direct Purchase Materials. Design/Builder shall obtain Design/Builder's risk insurance on the Direct Purchase Materials naming Owner as the insured or an additional insured, provided Owner shall reimburse Design/Builder for the cost of such insurance as provided by this Agreement. Design/Builder shall act as Owner's agent and be responsible for safeguarding all Direct Purchase Materials.

6.6 Reporting. The Design/Builder shall provide a monthly report in searchable PDF format summarizing the progress of the Project to the Owner and Owner's user group representatives including information on the subcontractors' Work, percentage of completion of the Work, current estimating, subcontract buyouts, computerized updated monthly Critical Path Method scheduling and Project accounting reports, including projected time to completion and estimated cost to complete the Work, progress photographs; project directory, logs for Requests for Information, submittals and shop drawings, Change Orders, cost change proposals, field directives, safety meetings, deficiencies, weather conditions and meeting minutes.

6.7 Energy Rebate Program. Design/Builder shall gather product data and other information as needed to assist Owner with its application for energy rebates based on the materials and products installed in the facility.

ARTICLE 7. COMPENSATION

7.1 Project Budget. Owner shall pay Design/Builder for the performance of the Design Services, Pre-Construction Services, the Work and the Reimbursable Expenses permitted hereunder an amount not to exceed Project Budget which shall in no event exceed the amount set forth on **Exhibit A**, Owner's budget for the design and construction of the Project, subject to adjustments permitted hereunder. There shall be no re-allocation of amounts among such categories, without Owner's written consent. The Project Budget shall be comprehensive in scope in that all costs of the Design/Builder necessary for the proper execution of the Design Services and the Work shall be clearly identified and no other cost shall be allowed, subject to adjustments permitted hereunder. In the event that upon full completion of the Design Services and Work for the Project, the actual cost thereof is less than the Project Budget, Owner shall be entitled to such difference.

- 7.2 **Payment for Design Services.** The amount of the Project Budget allocated to Basic Design Services shall be paid based on Design/Builder's achievement of each of the design milestones described on **Exhibit G**. Upon achievement of each such milestone, Design/Builder shall submit an Application for Payment with appropriate back-up documentation. If Owner's budget for the Project increases or Owner's Facilities Program for the Project changes and Owner requests additional design services in connection therewith, then Design/Builder shall be compensated by Owner for such additional design services pursuant to an agreement to be entered into by Owner and Design/Builder at the time Owner requests such additional design services pursuant to Article 5. Except as permitted in the foregoing sentence, the fees for basic Design Services shall not increase as a result of increases in Owner's budget or changes in Owner's Facilities Program for the Project.
- 7.2.1 **Reimbursable Expenses.** Design/Builder shall be entitled to compensation for the following reimbursable expenses as authorized by this Agreement in **Exhibit G** or by way of an Additional Services Authorization:
- 7.2.1.1 Expenses of transportation, meals and lodging of principals and employees, when traveling in connection with services and duties specifically related to this Project – other than those services and duties defined in Articles 4 and 6 – and when authorized in writing by the Owner. Rates for transportation and meals are as set forth in §112.061, Florida Statutes, on the effective date of this Agreement. Rates for lodging are as set forth by the General Services Administration (GSA) on the effective date of this Agreement. See **Exhibit E**.
- 7.2.1.2 Expenses associated with reproduction of Drawings and Specifications, excluding copies for Design/Builder's office use and sets required at each phase for the Owner's review and approval as set forth on **Exhibit D**.
- 7.2.1.3 If authorized in advance by the Owner in writing, the actual expense of overtime work requiring higher than regular rates.
- 7.2.1.4 If authorized in advance by the Owner in writing, the additional expense of renderings, models, and mock-ups more extensive than those required as part of Basic Services.
- 7.2.1.5 Fees paid for securing approval of authorities having jurisdiction over the Project, if any.
- 7.2.2 **Additional Design Services.** Payments for Additional Services shall be made according to the terms of the authorization upon presentation of a detailed invoice prepared in accordance with requirements set forth in the Florida Polytechnic University Design and Commissioning Services Guide.
- 7.2.3 **Timeliness of Payments.** Undisputed payments owed shall be paid by Owner within thirty (30) days of receipt of a payment request which meets the requirements of this subsection.
- 7.3 **Payment for Pre-Construction Services.** The amount of the Project Budget allocated to pre-construction services shall be paid based on the schedule attached hereto and incorporated herein by reference as **Exhibit G**. Design/Builder shall submit an Application for Payment with appropriate back- up documentation.
- 7.4 **Payment for Construction Services.** The Owner shall pay, and the Design/Builder shall accept, as full and complete payment for the Construction Services, only the sum of the following items, which sum shall not exceed the GMP for the Work:

- (a) the aggregate net cost directly paid by the Design/Builder to subcontractors pursuant to written subcontracts to perform the Work (CSI Divisions 2-17) (the “Cost of the Work”), not to exceed the guaranteed maximum set forth on **Exhibit F**;
- (b) the compensation for the Design/Builder’s provision of management services (the “Design/Builder’s Staffing Costs”), not to exceed the guaranteed maximum set forth on **Exhibit F**;
- (c) the aggregate net cost of the Design/Builder’s General Conditions (the “General Conditions Cost”), not to exceed the guaranteed maximum set forth on **Exhibit F**; and
- (d) Design/Builder’s Overhead and Profit, not to exceed the guaranteed maximum set forth on **Exhibit F**.

7.4.2 Staffing Costs. Design/Builder’s Staffing Costs include and are limited to actual expenditures or negotiated amounts for the following items as authorized in the GMP Proposal approved by Owner:

- (a) The cost of its supervisory, technical, administrative and clerical personnel engaged in supervision and management of the Work on the Project site;
- (b) the cost of periodic site visits for supervisory, inspection, oversight, or management of the Project by specific “home office” personnel as agreed upon and identified in the GMP proposal;
- (c) direct costs incurred in the Work with the exception of those specifically enumerated compensable as a General Conditions Cost or a Cost of the Work;
- (d) reasonable expenses of the Design/Builder’s personnel incurred while traveling in discharge of duties directly connected with the Work;
- (e) expenses incurred for relocation and temporary living allowances of personnel required for the Work, if required by the Project; and
- (f) any costs or expenses incurred by the Design/Builder, not included in the General Conditions Cost, for provision of management services necessary to complete the Project in an expeditious and economical manner consistent with this Agreement and the best interests of Owner.

7.4.3 General Conditions Cost. General Condition costs include and are limited to actual expenditures or negotiated amounts for the following items as authorized in the GMP Proposal approved by Owner:

- (a) costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Design/Builder at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Design/Builder. Cost for items previously used by the Design/Builder shall mean fair market value;
- (b) costs incurred to provide site safety;
- (c) costs of removal of debris from the site;

- (d) costs of document reproduction including bid sets, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office;
- (e) that portion of insurance and bond premiums directly attributable to this Contract for Design/Build Construction. Premiums shall be net of trade discounts, volume discounts, dividends and other adjustments;
- (f) sales, use or similar taxes imposed by a governmental authority and paid by the Design/Builder, and directly related to the Work;
- (g) fees and assessments for the building permit and for other permits, licenses and inspections for which the Design/Builder is required by this Agreement to pay, including deposits lost for causes other than Design/Builder's fault, but expressly excluding any legal costs and expenses, including attorneys' fees and costs associated with the Project;
- (h) the cost of obtaining and using all utility services required for the Work;
- (i) the cost of crossing or protecting any public utility, if required, and as directed by the Owner;
- (j) all reasonable costs and expenditures necessary for the operation of the Site office, such as stationary, supplies, furniture, fixtures, office equipment and field computer services provided that quantity and rates are subject to Owner's prior written approval;
- (k) the cost of secure off-site storage space or facilities approved in advance by Owner;
- (l) printing and reproduction of the Construction Documents;
- (m) rental charges for temporary facilities, and for machinery, equipment, and tools not customarily owned by construction workers; however any rental charge shall not exceed the purchase price of such facilities, machinery, equipment or tools;
- (n) cost of surveys, measurements and layout work reasonably required for the execution of the Work or by the Construction Documents; and
- (o) other expenses or charges properly incurred and paid in the prosecution of the Work, with the prior written approval of the Owner, but specifically excluding legal costs, including attorneys' fees and court costs.

7.4.4 Design/Builder's Overhead and Profit. The Design/Builder's Overhead and Profit is a fixed percentage of the:

- (a) Guaranteed Maximum Cost of the Work;
- (b) Design/Builder's Contingency;
- (c) Guaranteed Maximum Design/Builder Staffing Costs, and;
- (d) Guaranteed Maximum General Conditions Cost (excluding bond and insurance costs), as agreed upon in **Exhibit E**.

- (e) Overhead and Profit covers the costs of all of Design/Builder's overhead and expenses related to the Work, including home or branch office employees or consultants not at the Project site (except those staffing costs paid pursuant to Section 7.4.2) and general operating expenses of the Design/Builder's principal and branch offices related to the Work (non-field offices), such as internet service, telephone service and long-distance and zone telephone charges, postage, office supplies, expressage, and other similar expenses.

7.4.5 Design/Builder's Contingency. The Design/Builder's Contingency, established in the GMP, may be utilized, with the Owner's concurrence, for the following reasons:

- (a) Errors and omissions in the Design/Builder's design, bidding and scoping processes provided the additional work adds previously excluded value to the Project (but expressly excluding any demolition or other costs related to the substitution of such work for previously installed work and associated design fees);
- (b) reasonable schedule recovery;
- (c) means, methods, and materials reasonably inferred from the Construction Documents;
- (d) subcontractor non-performance or default;
- (e) work not included in the Construction Documents which is necessary to cause the Project to conform to applicable building codes but was not identified as missing during the review of Construction Documents (through no fault of the Design/Builder), but expressly excluding any legal costs and expenses, including attorneys' fees and costs associated with the Project;
- (f) other costs incurred by the Design/Builder that are not Cost of the Work, General Conditions Cost or Design/Builder Staffing Costs, but expressly excluding any legal costs and expenses, including attorneys' fees and costs associated with the Project; and
- (g) costs and expenses incurred by the Design/Builder, not included in the General Conditions Cost, for provision of management services necessary to complete the Project in an expeditious and economical manner consistent with this Agreement and the best interests of Owner, but expressly excluding any legal costs and expenses, including attorneys' fees and costs associated with the Project.
- (h) If upon completion of 75% of the Work, the remaining amount of contingency exceeds one-half of the amount of the initial post-buyout contingency, such excess shall be transferred via Change Order to the Owner.

7.4.6 Buyout Savings.

- (a) If Design/Builder receives bids for portions of the Work which are less than the amounts budgeted in the GMP proposal approved by Owner for such portions of the Work, such buyout savings shall first be utilized to offset shortfalls on other bid packages.
- (b) If, after offsetting any shortfalls, buyout savings remain, at the time provided on **Exhibit F** for the award of subcontracts, all buyout savings shall be returned to the Owner via "no cost" change order.

7.4.7 Use of Buyout Savings/Sales Tax Savings. The net amount of buyout savings and savings from Owner's purchase of Direct Purchase Materials may be utilized by the Owner for the following or other reasons:

- (a) Customer or designer-requested changes;
- (b) additive bid alternates and deductive credits; and
- (c) differing/unforeseen existing conditions as described in the Design/Build General Terms and Conditions.

7.4.8 Compensation for Change Orders. Amount owed by the Owner to the Design/Builder for the Work shall be adjusted by duly authorized change order in accordance herewith and the Design/Build General Terms and Conditions.

7.4.8.1 Increase in Cost of Work. If the Cost of the Work is increased by change order, the Owner shall pay the Design/Builder the aggregate net cost directly paid by the Design/Builder to subcontractors or suppliers for the performance of the Work and the Design/Builder shall receive Overhead and Profit on such amount, as a percentage as set forth in Exhibit E, and an amount for any increased bond and insurance costs associated therewith.

7.4.8.2 Decrease in Cost of Work. If the Cost of the Work is decreased by change order, payment due from the Owner to the Design/Builder shall be reduced by the amount the Design/Builder is no longer obligated to pay subcontractors or suppliers for performance of the Work. Decreases in the Cost of the Work shall inure to the benefit of the Owner and shall not become part of the Design/Builder's Contingency.

7.4.8.3 Change Order Disputed. If the Design/Builder disputes a change order decision pursuant to the Design/Build General Terms and Conditions, it must give the Owner its written notice of dispute, including the reasons therefore, within seven (7) calendar days of the disputed decision.

7.4.9 Applications for Payment for the Work. Applications for payment shall be submitted in detail sufficient for an audit thereof. Within twenty (20) days of receipt of the Design/Builder's application for payment, properly prepared pursuant to Owner's Policy, the Owner shall pay the Design/Builder the amount approved by Owner, less retainage, unless there is a dispute about the amount of compensation due to the Design/Builder.

7.4.10 For purposes of calculating amounts due to Design/Builder under this Agreement for staffing, the parties agree that Design/Builder's labor burden for each employee staffing the Project shall be the labor burden approved by Owner prior to, or upon execution of, this Agreement. For purposes hereof, labor burden means the actual cost of benefits and taxes that Design/Builder must pay or chooses to pay its employees and shall not include any profit, markup or expense unrelated to employee compensation. With respect to benefits Design/Builder chooses to pay, such benefits must be authorized by Owner under Owner's policy pertaining to labor burden in order to receive reimbursement from Owner.

7.5 **Vendor Ombudsman.** A Vendor Ombudsman has been established within the Owner's Office of Business Affairs. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from the Owner. The Vendor Ombudsman may be contacted at 352-392-1241.

ARTICLE 8. LIQUIDATED DAMAGES FOR DELAY

- 8.1** Inasmuch as failure to Substantially Complete the Work within the time fixed in **Exhibit F** will result in injury to the Owner, and as damages arising from such failure cannot be calculated with any degree of certainty, it is agreed that if the Work is not Substantially Completed within the time provided Exhibit F, or within such further time, if any, as shall be allowed for time extensions in accordance with the provisions of this Agreement, the Design/Builder shall pay to the Owner as liquidated damages for such delay, and not as a penalty, the amount set forth in Exhibit E for each calendar day elapsing between the date fixed for Substantial Completion and the date such Substantial Completion is fully accomplished. The parties agree that said liquidated damages are reasonable given existing circumstances, including, without limitation, the range of harm that is foreseeable and the anticipation that proof of damages would be costly and impractical.
- 8.2** The liquidated damages shall be payable in addition to any excess expenses or costs payable by the Design/Builder to the Owner under the Design/Build General Terms and Conditions, and shall not preclude the recovery of damages by the Owner under other provisions of this Agreement, except claims related to Design/Builder's delays in Substantial Completion. Owner's right to receive liquidated damages shall in no manner affect the Owner's right to terminate the Agreement. The Owner's exercise of the right to terminate shall not release the Design/Builder from the obligation to pay said liquidated damages.
- 8.3** When it reasonably believes (i) that Substantial Completion will be inexcusably delayed; or (ii) that the Design/Builder will fail to achieve Final Completion by the date of Final Completion, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Design/Builder the daily amount specified for liquidated damages in this Article for each calendar day of the unexcused delay. If and when the Design/Builder overcomes the delay in timely achieving Substantial Completion or Final Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Design/Builder those funds withheld, but no longer applicable, as liquidated damages.

ARTICLE 9. INSURANCE AND BONDS

9.1 General Requirements for All Insurance.

- 9.1.1 All insurance policies shall require that the insurer shall provide at least thirty (30) calendar days written notice to Owner if a policy is to be canceled, modified, or the coverage thereunder reduced before the expiration date thereof. Design/Builder shall provide Owner with a copy of endorsement(s) to the policies and cancellation and/or non-renewal notices evidencing the same.
- 9.1.2 All Certificates of Insurance provided to Owner shall be dated and show the name of the insurer, the number of the policy, its effective date, and its termination date.
- 9.1.3 The Florida Polytechnic University Board of Trustees and the Florida Board of Governors shall be named as additional insureds on both the General Liability and Auto Liability policies.
- 9.1.4 All policies shall include a waiver of subrogation endorsement and a severability of interests endorsement.
- 9.1.5 Owner shall not be liable for amounts that may represent a deductible in any insurance policy, and the payment of such deductibles shall be the sole responsibility of the Professional or consultant providing such insurance. Design/Builder and its consultants shall reveal the amount of such deductibles, if any, for each policy.

9.1.6 Design/Builder shall, simultaneous with Design Builder's execution of this Agreement (and thereafter on or before the expiration date of an expiring policy, or upon Owner's request), provide to Owner copies of each insurance policy required by this Agreement, including all endorsements, riders, etc., in order to verify that the contractual insurance requirements set forth herein are being satisfied. .

9.2 Design Phase. In conjunction with the design phase of the Project (and continuing for as long as specified herein), Design/Builder shall carry insurance as prescribed herein. All insurance policies shall be with a company or companies lawfully authorized to do business in Florida, and with an A.M. Best rating of no less than A/XV. All insurance policies shall be issued and countersigned by duly authorized representatives of such companies and shall be written on ISO standard forms or their equivalents.

9.2.1 Professional Liability.

9.2.2 Design/Builder, and the consultants identified in **Exhibit C**, shall each carry a policy or policies of professional liability insurance protecting them and Owner from liability resulting from Design/Builder's or its consultants' professional errors or omissions which may arise from, or in connection with, the performance of Design/Builder's professional services under this Agreement, or from or out of any act or omission of Design/Builder, its consultants, or their respective officers, directors, agents, and employees. Such coverage shall be maintained during the term of the Agreement and for at least three years following completion of all operations to be performed. The policy or policies shall have a limit of liability not less than the amount set forth in **Exhibit E**. The policy retroactive date will coincide with or precede the start of design services being provided hereunder (including subsequent policies purchased as renewals or replacements). The Design/Builder shall make every effort, and cause its consultants to make every effort, to maintain similar insurance for at least three (3) years following Project completion. If the insurance is terminated for any reason, the Design/Builder agrees, and will cause its consultants to agree, to purchase an extended reporting provision of at least three years to report claims arising from work that is being performed. The policy will allow for reporting of circumstances or incidents that might give rise to future claims.

9.2.3 Other Liability Insurance. Design/Builder shall also carry and maintain the following policies:

- (a) Occurrence basis comprehensive general liability insurance (including broad form contractual coverage) and automobile liability insurance, with minimum limits of \$1,000,000 and \$1,000,000, respectively, combined single limit per occurrence, protecting it and Owner from claims for bodily injury (including death) and property damage which may arise from or in connection with the performance of Design/Builder's services under this Agreement, or from or out of any act or omission of Design/Builder, its officers, directors, agents, and employees. The general liability and automobile liability insurance policies shall provide for cross-liability coverage.
- (b) Workers' compensation insurance as required by applicable Florida law (or employer's liability insurance, with minimum limits of \$100,000, with respect to any employee not covered by workers' compensation).

- 9.3** **Construction Phase.** In conjunction with the construction phase of the Project, Design/Builder shall carry insurance in such forms and amounts, and for such periods, as are set forth in the Design/Build General Terms and Conditions. Design/Builder shall also, prior to the initiation of the construction phase of the Project, obtain the payment and performance bonds described in the Design/Build General Terms and Conditions.

ARTICLE 10. AUDIT RIGHTS

- 10.1** Owner may, upon reasonable notice, audit the records of the Design/Builder and its subcontractors and suppliers during regular business hours, during the term of this Agreement and for a period of three (3) years after final payment is made by Owner to Design/Builder under this Agreement or longer, if required by law. Such audits may be performed by an Owner's representative or an outside representative engaged by Owner. Design/Builder shall retain all records for the Project during performance of the Project and for at least three (3) years after Final Completion.
- 10.2** For purposes hereof, Design/Builder's "records" means any and all information, materials and data of every kind and character, whether hard copy or in electronic form, which may, in Owner's judgment have any bearing on or pertain to the Contract for Design/Build Construction, including, without limitation, books, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, written policies and procedures, time sheets, payroll registers, payroll records, cancelled payroll checks, subcontract files (e.g., including proposals of successful and unsuccessful bidders, bid recap), original estimates, estimating work sheets, correspondence, change order files (including documentation covering negotiated settlements), back-charge logs and supporting documentation, invoices and related payment documentation, general ledgers, records detailing cash and trade discounts earned, insurance rebates and dividends, superintendent reports, drawings, receipts, vouchers and memoranda.
- 10.3** Owner's authorized representative shall have reasonable access to the Design/Builder's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the Contract for Design/Build Construction, shall be provided adequate and appropriate work space at Design/Builder's facilities, may count employees at the Site, may be present for the distribution of payroll and shall have such other rights of access as may be reasonably necessary to carry out an audit.
- 10.4** If an audit discloses overpricing or overcharge, then Design/Builder shall refund the overpayment. If an audit discloses overpricing or overcharges of one percent (1%) of the total amount paid hereunder or \$200,000 whichever is less, in addition to making adjustments for the overcharges, the reasonable actual cost of the Owner's audit shall be reimbursed to the Owner by the Design/Builder. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Design/Builder's invoices and/or records shall be made within ninety (90) calendar days from presentation of Owner's findings to Design/Builder.
- 10.5** Design/Builder shall ensure notice of Owner's audit rights is provided to its subcontractors, suppliers, and any other vendor providing services or materials for the Project and shall ensure that each agreement it enters into pursuant hereto includes the provisions of this Article 10.

ARTICLE 11. USE OF DESIGN/BUILDER'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

- 11.1 The Drawings, specifications and other documents prepared by the Design/Builder for this Project are instruments of the Design/Builder's service for use solely with respect to this Project, except as may be expressly permitted herein. The Design/Builder shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including the copyright. The Owner shall be permitted to retain copies, including electronic format and reproducible copies, of the Design/Builder's Drawings, specifications and other documents and may use the same, without compensation to the Design/Builder, as may be necessary or desirable in the operation, maintenance, construction and renovation of the Project and the remainder of Owner's campus, including, without limitation, additions or renovations to this Project and submittals or distribution of the same to meet official regulatory requirements or other similar requirements, provided in no event may the Owner use the Design/Builder's Drawings, specifications, or other documents for the construction of a new facility unless agreed to in writing by the Design/Builder and as otherwise permitted by Florida law.
- 11.2 The Design/Builder shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Design/Builder's promotional and Design/Builder materials. The Design/Builder's materials shall not include the Owner's confidential or proprietary information.

ARTICLE 12. MISCELLANEOUS

- 12.1 **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without regard to its choice of law provisions and venue shall lie in the courts in Alachua County, Florida.
- 12.2 **Integration.** This Agreement represents the entire and integrated agreement between the Owner and the Design/Builder, and supersedes all prior negotiations, representations or agreements, either written or oral, for the Project. This Agreement may be amended only by written instruments signed by both the Owner and the Design/Builder.
- 12.3 **Severability.** If any provision of this Agreement, or the application thereof, is determined to be invalid or unenforceable, the remainder of that provision and all other provisions shall remain valid and enforceable.
- 12.4 **Waiver.** No provision of this Agreement may be waived except by written agreement of the parties. A waiver of any provision on one occasion shall not be deemed a waiver of that provision on any subsequent occasion, unless specifically stated in writing. A waiver of any provision shall not affect or alter the remaining provisions of this Agreement.
- 12.5 **Strict Compliance.** No failure of the Owner to insist upon strict compliance by the Design/Builder with any provision of this Agreement shall operate to release, discharge, modify, change or affect any of the Design/Builder's obligations.
- 12.6 **Successors and Assigns.** Owner and Design/Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors and assigns of such other party with respect to all covenants of this Agreement. Design/Builder shall not assign (whether partially or wholly) this Agreement whether by operation of law or otherwise, without the written consent of Owner. If Design/Builder makes an assignment in accordance with this provision, Design/Builder shall nevertheless remain legally responsible for all obligations arising under the Agreement, unless otherwise agreed by Owner.

- 12.7 **Third-Party Beneficiaries.** This Agreement shall inure solely to the benefit of the parties hereto and their successors and assigns, and, except as otherwise specifically provided in this Agreement, nothing contained in this Agreement is intended to or shall create a contractual relationship with, or any rights or cause of action in favor of, any third party against either the Owner or the Design/Builder.
- 12.8 **Assignment of Anti-Trust Claims.** In consideration for this Agreement, the Design/Builder hereby conveys, sells, assigns and transfers to the Owner all of its right, title and interest in and to any and all causes of action it may now have or may hereafter acquire under the antitrust laws of the United States and the State of Florida for price fixing, relating to the goods or services purchased or acquired by the Owner under this Agreement.
- 12.9 **Drug Free Workplace.** If required pursuant to 440.102(15), Florida Statutes, Design/Builder shall implement, and cause its applicable subcontractors to implement, a drug-free workplace program.
- 12.10 **Access.** Design/Builder shall provide Owner and its representatives access to the Work in preparation and progress wherever located.
- 12.11 **Ownership of Records; Public Access to Documents.** Any books, documents, records, correspondence or other information kept or obtained by the Owner or furnished by the Design/Builder to Owner in connection with the services contemplated herein are property of Owner. Design/Builder acknowledges and agrees that any and all such books, documents, records, correspondence or other information may be public records under Chapter 119, Florida Statutes. Design/Builder agrees to promptly comply with any order of a Court having competent jurisdiction which determines that records maintained by Design/Builder are “public records” which must be available to the public. Design/Builder acknowledges and agrees that any and all such books, documents, records, correspondence or other information may also be subject to inspection and copying by members of the public pursuant to Chapter 119, Florida Statutes. This Agreement may be unilaterally canceled by the Owner if the Design/Builder or its consultants refuse to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, which are made or received by the Design/Builder or its consultants in conjunction with this Agreement.
- 12.12 **Annual Appropriations.** The Owner’s performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.
- 12.13 **Public Entity Crime.** Design/Builder represents and warrants that it is not on the convicted vendor list for a public entity crime committed within the past 36 months. Design/Builder further represents and warrants that it will neither utilize the services of, nor contract with, any supplier, subcontractor, or consultant for an amount in excess of \$15,000.00 in connection with this Project if such supplier, subcontractor or consultant has been placed on the convicted vendor list within the past 36 months.
- 12.14 **No Contingency Fee.** The Design/Builder represents and warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the Design/Builder) to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation individual or firm (other than a bona fide employee working solely for the Design/Builder) any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.
- 12.15 **No Bribes or Kickbacks.** The Design/Builder shall not by any means:
- (a) induce any person or entity employed in the construction of the Project to give up any part of the compensation to which that person or entity is entitled;

- (b) offer nor accept any bribes or kick-backs in connection with the Project from or to any individual or entity, including any of its trade contractors, subcontractors, consultants, suppliers or manufacturers of Project goods and materials; or
- (c) without the express written permission of the Owner, call for or by exclusion require or recommend the use of any subcontractor, consultant, product, material, equipment, system, process or procedure in which the Design/Builder has a direct or indirect proprietary or other pecuniary interest.

- 12.16 Independent Contractor.** Design/Builder is an independent contractor to Owner.
- 12.17 Exhibits.** All exhibits referenced herein are attached hereto and incorporated herein by reference.
- 12.18 Modifications.** Any modifications to the Contract for Design/Build Construction are set forth on **Exhibit H.**
- 12.19 Small Businesses.** Owner is an equal opportunity institution and as such, encourages the use of small businesses including women and minority-owned small businesses in the provision of construction related services. Small businesses should have a fair and equal opportunity to compete for dollars spent by the Florida Polytechnic University to procure construction-related services. Competition ensures that prices are competitive and a broad vendor base is available. Design/Builder shall use good faith efforts to ensure opportunities are available to small businesses, including women and minority-owned businesses, on the Project.
- 12.20 Indemnification; Hold Harmless.** To the maximum extent permitted by law, Design/Builder hereby agrees to indemnify and hold Owner and its officers and employees harmless for, from and against all liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by (i) the negligence, recklessness, or intentionally wrongful conduct of the Design/Builder and other persons employed or utilized by the Design/Builder, including its consultants, in the performance of the Agreement; or (ii) Design/Builder's breach of any covenant, term, or provision of this Agreement.
- 12.21 Breach Remedies.** Owner's selection of one or more remedies for breach of this Agreement shall not limit the Owner's right to invoke any other remedy available to the Owner under this Agreement or by law.
- 12.22 Survival.** All provisions of this Agreement which contain continuing obligations shall survive its expiration or termination.
- 12.23 Capitalized Terms.** Capitalized terms used herein but not defined herein shall have the meaning ascribed thereto in the Design/Build General Terms and Conditions.
- 12.24 Sovereign Immunity.** Design/Builder acknowledges and agrees that nothing contained herein shall be construed or interpreted as (i) denying to Owner any remedy or defense available to it under the laws of the State of Florida; (ii) the consent of the Owner or the State of Florida or their agents and agencies to be sued; or (iii) a waiver of sovereign immunity of the Owner or of the State of Florida beyond the limited waiver provided in section 768.28, Florida Statutes.
- 12.25 Waiver of Certain Claims, Damages.** The Design/Builder shall not be entitled to, and hereby waives any monetary claims for, or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any indirect or consequential damages.

[Signatures on Following Page]

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

FOR THE DESIGN/BUILDER:

DESIGN/BUILDER NAME

AS WITNESSED BY:

Name, Title

X

Name, Name

Click or tap to enter a date.
DATE

ATTEST:

X

Name, Name

CORPORATE SEAL

FOR THE OWNER:

**FLORIDA POLYTECHNIC UNIVERSITY
BOARD OF TRUSTEES**

AS WITNESSED BY:

*Dr. Randy Avent, President
Florida Polytechnic University*

X

Click or tap to enter a date.
DATE

X

REVIEWED:

APPROVED:

*Office of the General Counsel
Florida Polytechnic University*

*Dr. Allen Bottorff, VP Administration & Finance
Florida Polytechnic University*

Click or tap to enter a date.
DATE

Click or tap to enter a date.
DATE

EXHIBIT A

PROJECT DESCRIPTION, PROJECT BUDGET, AND DOCUMENTS AND GUIDELINES

DESCRIPTION OF PROJECT

FPU Project No: _____
FPU Project Name: _____
Location/Address: Main Campus of Florida Polytechnic University
Program: _____

DOCUMENTS AND GUIDELINES

1. Owner’s policies and project management guides listed under ‘Forms & Standards’ at www.floridapoly.edu/
2. [Insert description or write "None"]
3. _____
4. _____
5. _____
6. _____

BUILDING INFORMATION MODELING (BIM)

The Professional shall develop the design at each stage using Building Information Modeling (BIM) software and related technologies –specifically, the 2020 or current versions of Autodesk "Revit Architecture" for architectural, Autodesk "Revit Structure" for structural content, and Autodesk "Revit MEP" for mechanical, electrical, and plumbing drawings. These models shall be used by the Professional for design coordination, collision avoidance, and production of traditional two-dimensional drawings, and may be used for energy analysis, day lighting analysis, and other building or systems analysis. The implementation and use of BIM shall be discussed by the Professional, Owner, and Construction Manager at a BIM kickoff meeting as early in design as possible, with the agreed-upon parameters captured by the Professional in a project-specific BIM Execution Plan using Owner’s template. The BIM Execution Plan shall be updated and augmented by the Professional, with concurrence and agreement by the Owner and Construction Manager, throughout design and construction as needed to solidify details regarding terminology, schedule, content, format, risk allocation, and use of the model(s). Professional shall provide the BIM model(s) to the Construction Manager throughout design and construction subject to the limitations outlined in the BIM Execution Plan for scheduling, coordination, resource management, estimating, and other uses deemed beneficial to the Owner for delivery of the Project. Professional shall update the BIM model(s) at the end of construction to reflect the actual, "as-built" conditions per requirements as specified in the BIM Execution Plan. Final as-built model(s) shall be delivered to the Owner in the BIM format(s) as originally developed as linked Revit-based models containing the architectural, structural, and M/E/P content including sheet(s) elements reflecting content and format as depicted in the record drawings.

BIM 360 POLICIES AND PROCEDURES

BIM 360 Docs is currently being used for electronic Design Review and the Building Permit Process. Additional BIM 360 Docs features, and other BIM 360 modules, will be implemented over time. Detailed operational policies and procedures will be maintained in a BIM 360 Instruction Manual available at the Owner’s floridapoly.edu website. Projects will be automatically generated in BIM 360 from the FLORIDA POLY Project Tracker system by the FLORIDA POLY Project Manager, who will add team members requiring access to BIM 360. The information needed to start the Building Permit Application process will be electronically transmitted by FLORIDA POLY Project Tracker System to the EH&S Building Department.

PROJECT BUDGET

Design Services (including Reimbursable Expenses) <i>Expand as necessary</i>	\$ ###
Pre-Construction Services <i>Expand as Necessary</i>	\$ ###
Construction (“The Work”) <i>Expand as necessary</i>	\$ ###
Total Design/Build Budget	\$ ###

EXHIBIT B

PROJECT SCHEDULE

Ref #	PHASE	START	END
4.6	(PD) Pre-Design / Programming / Program Verification PD Review		
4.9	(CSD) Concept Schematic Design and Cost Estimate CSD Review		
4.10	(ASD) Advanced Schematic Design and Cost Estimate ASD Review ASHRAE Energy Model <i>[PM Note: Delete/Move to different design phase if needed]</i>		
4.11	(DD) Design Development Phase and Cost Estimate DD Review Life Cycle Cost Analysis		
4.12	(60% CDs) 60% Construction Documents and Cost Estimate 60% CDs Review		
Ex. F	"Fast Track" Design and GMP Proposal - 100% Site, 100% Foundations, etc. "Fast Track" Design Review		
4.12	(100% CDs) 100% Construction Documents and GMP Proposal 100% CDs Review (incl. State Fire Marshall) ASHRAE Energy Model <i>[PM Note: Delete/Move to different design phase if needed]</i>		
4.16	(CCD) Corrected/Conformance Document Set		

The timeframes below are estimated. Binding timeframes will be established in the Authorization for Construction (Exhibit F).

Bidding and Award		
Construction		
(SC) Substantial Completion		
(FC) Final Completion		
(PO) Post Occupancy Inspection & Report		

EXHIBIT C

SCHEDULE OF SERVICES, CONSULTANTS, AND PERSONNEL

BASIC SERVICES

(THIS SCHEDULE LISTS SERVICES INCLUDED IN THE LUMP SUM FEE INITIALLY BASED ON THE FPC DESIGN SERVICES FEE CURVE AND INCLUDED IN THE TOTAL FEES AND SCHEDULE OF PAYMENTS AS SET FORTH IN EXHIBIT G)

Y	N	SERVICES	CONSULTANTS
		Architectural Design	(name of firm)
		Civil Engineering	(name of firm)
		Landscape Architecture	(name of firm)
		Structural Engineering	(name of firm)
		Mechanical Engineering	(name of firm)
		Electrical Engineering	(name of firm)
		Plumbing Engineering	(name of firm)
		Fire Protection Eng. (incl. hydraulic calcs.)	(name of firm)
		BICSI, Communications, Distribution Designer	(name of firm)
		Cost Estimating & Report	(name of firm)
		Renderings/Models/Animations	(name of firm)
		Audio-Visual Systems Integration & Design	(name of firm)
		Security Systems Integration & Design	(name of firm)

CERTAIN TRADITIONAL ADDITIONAL SERVICES CONSIDERED BASIC SERVICES [5.4]

(THIS SCHEDULE LISTS OTHER SERVICES TO BE INCLUDED IN THE TOTAL FEES AND SCHEDULE OF PAYMENTS AS SET FORTH IN EXHIBIT G)

Y	N	SERVICES	CONSULTANTS
		Topographical Survey	(name of firm)
		Geotechnical Survey	(name of firm)
		Radon Survey	(name of firm)
		Existing Conditions Survey	(name of firm)
		Threshold Inspection	(name of firm)
		Detailed Cost Estimating	(name of firm)
		Historic Research & Explorative Testing	(name of firm)
		Hazardous Materials Survey / Work Plan	(name of firm)
		Life-Cycle Cost Analysis	(name of firm)
		Furniture Design and Selection	(name of firm)
		Fast-Track Design (early site package)	(name of firm)
		Additional Design Team Site Visits	(name of firm)
		HVAC Commissioning	(name of firm)
		IEQ/IAQ Commissioning	(name of firm)
		Building Envelope Commissioning (incl. roof)	(name of firm)
		Programming, Site Selection, Benchmarking	(name of firm)
		Lab and Cleanroom Design	(name of firm)
		Process Engineering and “Fit-Out”	(name of firm)

ATTACHMENT B -DESIGN BUILD SAMPLE CONTRACT

Y	N	SERVICES	CONSULTANTS
		Vibration Analysis	(name of firm)
		Electromagnetic Interference (EMI) and Radio Frequency Interference (RFI) Analysis	(name of firm)
		Cleanroom Certification	(name of firm)
		Validation	(name of firm)
		Energy Model	(name of firm)
		Acoustic Consultation	(name of firm)
		Measurement & Verification Plan	(name of firm)
		Site Master Plan	(name of firm)
		Agency Permits (SWFWMD, FDOT, FDEP or Other)	(name of firm)

INSERT DESIGN/BUILD PERSONNEL

EXHIBIT D

REQUIREMENTS FOR SUBMITTALS TO OWNER

REF#	PHASE	FULL SIZE		1/2 SIZE		PROJECT SPECIFIC REQUIREMENTS
			S & S		S & S	
4.6	Pre-Design Phase (PD)					
	Revised Facilities Program					BIM360/PDF Electronic
4.9	Concept Schematic Design (CSD)					
4.13	CSD Construction Report					BIM360/PDF Electronic & Revit
4.10	Advanced Schematic Design (ASD)					BIM360/PDF Electronic & Revit
4.13	ASD Construction Report					BIM360/PDF Electronic
	FPU Committees – Presentation & Schematic Review					Site plan w/footprint, tree removal plan, parking impact, etc. – electronic PowerPoint Presentation
	ASHRAE Energy Model					including input and output data, BIM360/PDF Electronic
	Life Cycle Costs					BIM360/PDF Electronic
4.11	Design Development Phase (DD) & Life Cycle Cost Analysis Report					BIM360/PDF Electronic & Revit
4.13	DD Construction Report					BIM360/PDF Electronic
	FPU Committees Presentation - DD Review					Site plan w/footprint, tree removal plan, parking impact, etc. – electronic PowerPoint Presentation
4.12	60% Construction Documents (60% CDs)					BIM360/PDF Electronic & Revit
4.13	60% CDs Construction Report					BIM360/PDF Electronic
Ex. F	"Fast Track" Design - 100% Site, 100% Foundations, etc.					BIM360/PDF Electronic & Revit
	"Fast Track" GMP Proposal					BIM360/PDF Electronic
4.12	100% Construction Documents (100% CDs)					BIM360/PDF Electronic & Revit

REF#	PHASE	FULL SIZE		1/2 SIZE		PROJECT SPECIFIC REQUIREMENTS
			S & S		S & S	
	ASHRAE Energy Model					including input and output data, BIM360/PDF Electronic
4.15	GMP Proposal					BIM360/PDF Electronic
4.16	Corrected/Conformance Document Set					BIM360/PDF Electronic & Revit
	Addendums, Supplemental Instructions, RFIs					BIM360/PDF Electronic & Revit
4.17	Record drawings & specifications (As- Builts)					Original "red lined" set and updated, As-built Revit Model with all Asset management information, A complete PDF Copy of all corrected sheets and specifications.
	Corrected ASHRAE Energy Model					BIM360/PDF Electronic

EXHIBIT E

PROJECT SPECIFIC REQUIREMENTS

4.8 **Jobsite Management and Logistics Plan**

- With **Design Development** Phase submittal or
- no later than **(month dd, yyyy)**

4.12 **Fast Tracked Construction**

Phase 1 portions of the Project are:
(Itemize scopes or write None)

4.13 **Design/Builder's Contingency** shall be no greater, as a percentage of the estimated Cost of the Work, than the following at each of the following phases:

ten percent (10 %) at Pre-Design

ten percent (10 %) at Conceptual Schematic Design

eight percent (8 %) at Advanced Schematic Design

six percent (6 %) at Design Development

five percent (5 %) at **(60 %)** Construction Documents

three percent (3 %) at the time the GMP proposal is submitted

two percent (2%) at the time that Design/Builder has bought out Trade Contracts representing ninety percent (90%) or more of the Cost of Work

4.14 **Initial Construction Schedule Deadline**

- With Advanced Schematic Design submittal or
- no later than Click or tap to enter a date.

4.15 **GMP Proposal Submittal Deadline**

- upon completion of **sixty percent (60 %)** of the Construction Documents.
- thirty (30)** days after completion of the Construction Documents.
- no later than Click or tap to enter a date..
- Describe or delete this line**

4.17 **Sustainable rating system per FL Statute 255.53.** (Example, the LEED Certification level is established at **Silver** level.

6.3.3 Minimum Site Visits Required. Design/Builder’s design professionals shall visit the site no less frequently than once per week.

7.2.1.1 Mileage Rate. The mileage rate for authorized travel – based on State of Florida rates on the Effective Date of this Agreement – is \$#.## per mile.

Lodging Rate. The maximum reimbursable rate for lodging in Lakeland, Florida – based on General Services Administration (GSA) rates on the Effective Date of this Agreement – is ###.00 per night, plus applicable taxes. Reference www.gsa.gov/perdiem.

Meals. The maximum reimbursable rates for meals (only paid when overnight travel is involved) – based on State of Florida rates on the Effective Date of this Agreement – are:

for breakfast

for lunch

for dinner

TOTAL

7.4.4 The Design/Builder’s Overhead & Profit percentage shall not exceed 0.0 % within the Guaranteed Maximum Price and 0.0 % for add or credit change orders.

An amount equal to 5% from the builder’s overhead & profit line item will be retained during the post occupancy period and will be released after the warranty period and upon successfully completion of the warranty items.

For all change orders to be performed by the trade subcontractors, the respective subcontractor may add up to 10% of their actual cost of work as their combined overhead and profit.

8.1 Liquidated Damages for Delay Amount. \$x,xxx per day.

9.1 Professional Liability Insurance Requirements. Throughout the Project, the Design/Builder and its architectural, mechanical engineering, electrical engineering, plumbing engineering, fire protection engineering, and structural engineering consultants shall carry, at the Design/Builder’s own expense, blanket Professional liability insurance with a coverage amount of \$x,xxx,xxx. Design/Builder’s civil engineering consultant shall carry same with a coverage amount of \$x,xxx,xxx.

PM: Ensure PL insurance coverage amount matches what was required in the selection process.

EXHIBIT F

(SAMPLE) AUTHORIZATION FOR CONSTRUCTION (SAMPLE)

Pursuant to the Agreement for Design/Build Services (“Agreement”) between the Florida Polytechnic University Board of Trustees (“Owner”) and Name of DB Firm (“Design/Builder”), for the construction of name of project, the Owner and the Design/Builder hereby execute this **Authorization for Construction** and further agree as set forth below.

[Optional: Whereas, the Project is being performed in phases as permitted by the Contract for Construction; and Whereas, Owner desires to authorize Construction Manager to commence the [_____] phase of the Project.]

1. Design/Builder shall commence [Optional: the ___ phase] of the Work within ten (10) calendar days after the date indicated on the Notice to Proceed. The date of Substantial Completion for the Project shall be: **Month Date, Year.**
2. The date of Final Completion for the Project shall be **thirty (30)** days after the date of Substantial Completion.
3. The Design/Builder’s Guaranteed Maximum Price (“GMP”) proposal dated **Month date, Year** [Optional: for ___ phase] is accepted by the Owner.
4. In accordance with Section 6.2.8 of the Agreement, the Design/Builder shall award Trade Contracts representing ninety percent (90%) or more of the Cost of the Work within _____ (##) days of issuance of the Notice to Proceed for Construction Services.

Item	Amount
Guar. Max. Cost of the Work	\$
CM Contingency	\$
Guar. Max. Construction Manager Staffing Costs	\$
Guar. Max. General Conditions Cost	\$
SUB-TOTAL	\$
Overhead & Profit	\$
Bonds & Insurance (note: this is part of the General Conditions)	\$
Guaranteed Maximum Price	\$

[Signatures on Following Page]

**FLORIDA POLYTECHNIC UNIVERSITY
BOARD OF TRUSTEES**

DESIGN/BUILDER NAME

*Dr. Randy Avent, President
Florida Polytechnic University*

Name, Title

Click or tap to enter a date.

Click or tap to enter a date.

DATE

DATE

REVIEWED:

APPROVED:

*Office of the General Counsel
Florida Polytechnic University*

*Dr. Allen Bottorff, VP Administration & Finance
Florida Polytechnic University*

Click or tap to enter a date.

Click or tap to enter a date.

DATE

DATE

EXHIBIT G

SCHEDULES OF PAYMENT FOR DESIGN SERVICES AND REIMBURSABLE EXPENSES

PHASE	Fee % ¹	Fee
4.6 (PD) Pre-Design Phase ²	%	\$
4.9 (CSD) Concept Schematic Design	%	\$
4.10 (ASD) Advanced Schematic Design	%	\$
ASHRAE Energy Model [delete/move to different design phase if needed]	%	\$
4.11 (DD) Design Development Phase & Life Cycle Cost Analysis and Report	%	\$
4.12 (60% CDs) 60% Construction Documents	%	\$
4.12 (100% CDs) 100% Construction Documents	%	\$
ASHRAE Energy Model [delete/move to different design phase if needed]	%	\$
4.16 (CCD) Corrected/Conformance Document Set		
6.2 (B/N) Bidding and Award Phase ³	%	\$
6.3 (CA) Construction Phase Administration of the Construction Contract ⁴	%	\$
6.3.10 (SC) Substantial Completion Deliverables	%	\$
6.3.10 (FC) Final Completion Deliverables	%	\$
ASHRAE Energy Model [delete/move to different phase if necessary]	%	\$
6.3.11 (PO) Post Occupancy Inspection & Report	%	\$
SUB-TOTAL FEES (LUMP SUM)	100%	\$
7.2.1 Not-To-Exceed Allowance for Reimbursable Expenses		\$
TOTAL BASIC SERVICE FEES		\$

¹ Fee % indicates proportion of lump sum items to the Sub-Total.

² A portion of the CSD fee may be distributed to pre-design (PD) phase site investigations, program reviews and as-built surveys.

³ Construction Administration Phase payments to be paid in monthly increments in proportion to payments made for The Work.

⁴ Bidding/Negotiation Phase fees will be paid in increments based on actual bid packages. These bid packages will be developed after the Project has progressed, and the payment schedule for Bidding/Negotiation Phase fees will be determined at that time.

The following guideline is for general reference only. Revise the above table as needed, then delete this note and the following table:

<i>PD</i>	<i>Pre-Design Phase</i>	<i>2.0%</i>
<i>CSD</i>	<i>Concept Schematic Design</i>	<i>8.0%</i>
<i>ASD</i>	<i>Advanced Schematic Design</i>	<i>10.0%</i>
<i>DD</i>	<i>Design Development Phase</i>	<i>18.0%</i>
<i>50-80%</i>	<i>50-80% Construction Documents</i>	<i>15.0%</i>
<i>100% CD</i>	<i>100% Construction Documents</i>	<i>15.0%</i>
<i>Bid</i>	<i>Bidding or Negotiation Phase</i>	<i>2.0%</i>
<i>CCD</i>	<i>Corrected/Conformance Document Set</i>	<i>3.0%</i>
<i>CA</i>	<i>Construction Phase Administration of the Construction Contract</i>	<i>21.0%</i>
<i>SC</i>	<i>Substantial Completion Deliverables</i>	<i>2.0%</i>
<i>Sustainability</i>	<i>LEED, GG, FGBC, Well Certification Deliverables</i>	<i>1.0%</i>
<i>Final</i>	<i>Final Completion Deliverables</i>	<i>1.0%</i>
<i>PO</i>	<i>Post Occupancy Work, Inspection & Report</i>	<i>2.0%</i>
	<i>Total</i>	<i>100%</i>

7.3 Pre-Construction Services Fee

For pre-construction services, the lump sum amount of \$#####, to be paid at the satisfactory completion of the following phases:

PHASE	FEE
(PD) Pre-design Phase	\$ #####
(SC) Schematic Concept	\$ #####
(ASD) Advanced Schematics	\$ #####
(DD) Design Development	\$ #####
(60% CD) 60% Construction Documents	\$ #####
(100% CD) 100% Construction Documents	\$ #####
Total:	\$ #####

5.3 Additional Design Services Rates

Architect	
Principal Architects	\$
Registered Architects	\$
Intern Architects	\$
CAD Technician	\$
Clerical Support	\$

MEP Engineer	
Principal Engineers	\$
Registered Engineers	\$
Intern Engineers	\$
CAD Technician	\$
Clerical Support	\$
Other Consultant	

Principal Engineers	\$
Registered Engineers	\$
Intern Engineers	\$
CAD Technician	\$
Clerical Support	\$

EXHIBIT H

PROJECT-SPECIFIC MODIFICATIONS

12.18 Modifications to the Contract for Design/Build Construction.

[Insert modifications or Write "None"]

PM/Author: Out-of-state firms may be entitled to reimbursement of travel expenses related to Basic Services. If so, address here with a modification of paragraph 7.2.1.1

Attachment C- Special Terms and Conditions



Special Terms and Conditions

Campus Development and
Facilities

August 2016 Edition

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ARTICLE 1 DEFINITIONS

When one of the following capitalized words, terms or phrases is used herein and in the Contract for Construction, it shall be interpreted or construed first as defined below, second according to its generally accepted meaning in the construction industry, and third according to its common and customary usage.

Builder: For the purpose of these terms and conditions the term builder refers to a Construction manager, engaged directly by the Owner pursuant to a contract for construction.

Construction Documents: Specifications, Drawing Plans, and Conditions of the Contract for Construction, including but not limited to change orders, revisions, addenda, and other information which set forth the Work in detail.

Construction Price: The dollar amount for which a Builder agrees to perform the Work set forth in a Contract for Construction.

Construction Schedule: The timetable which sets forth pertinent dates for timely completion of the Work.

Contract for Construction: A written agreement between the Owner and a Builder for provision of goods, products, materials, equipment, systems, management, supervision, labor and services required to construct all or part of a Project, as more particularly defined in the Agreement for Construction Management Services, Agreement for Design-Build Services or Owner-Contractor Agreement, as applicable. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Design Professional and Builder, (2) between the Owner and a Subcontractor or Sub-contractor, or (3) between any persons or entities other than the Owner and Builder.

Contract for Design Professional Services: A written agreement between the Owner and a Design Professional for provision of services and related items required to design or engineer all or part of a Project.

Certificate of Substantial Completion: Document declaring the Work satisfactorily completed for its intended purpose so the Owner can occupy or beneficially use, and a certificate of occupancy has been issued.

Certificate of Final Completion: Document declaring that the Work has been completed in accordance with the Contract for Construction and the Owner has received all documents and items necessary for closeout of the Work.

Design Professional: An entity, including but not limited to a licensed architect or engineer, engaged directly by the Owner to provide design or engineering services.

Final Completion: The stage of construction when the Work has been completed in accordance with the Contract for Construction and the Owner has received all documents and items necessary for closeout of the Work.

Hazardous Substances: The term "Hazardous Substances" means all hazardous or toxic substances, materials, wastes, pollutants and contaminants which are listed, defined, or regulated under applicable laws, rules, regulations, codes, ordinances, orders and directives pertaining or related to health, safety or the environment, including, but not limited to, the Comprehensive Environmental Response Compensation and Liability Act as amended, (42 U.S.C.A. §§ 9601 *et seq*), the Resource Conservation and Recovery Act as amended, (42 U.S.C. § 6901 *et seq*), the Federal Water Pollution Control Act (33 U.S.C.A. §§ 1251 to 1387), the Clean Air Act (42 U.S.C.A. §§ 7401 to 7671q), the Emergency Planning and Community Right to Know Act (42 U.S.C.A. §§ 11001 to 11050), the Toxic Substances Control Act (15 U.S.C.A. §§ 2601 to 2692), the Solid Waste Disposal Act (42 U.S.C.A. §§ 6901 to 6992k), the Oil Pollution Act (33 U.S.C.A. §§ 2701 to 2761) and all rules and regulations now or hereafter promulgated pursuant thereto. Without limiting the generality of the foregoing, "Hazardous Substances" shall specifically include polychlorinated biphenyl, asbestos (friable and non-friable), radon, urea formaldehyde, gasoline, diesel, oil, hydrocarbons, petroleum derived constituents, radioactive, biomedical waste, or hazardous or toxic residue.

Owner: The Florida Polytechnic University Board of Trustees.

Owner's Related Parties: The State of Florida Board of Governors and its officers, trustees and employees and the officers, trustees and employees of Owner.

Project Design Schedule: The timetable which sets forth the required relationships between, and pertinent dates for, required completion of design and engineering services, documents and related activities.

Site: The geographical location of a Project as defined in the Construction Documents.

Substantial Completion: The stage of construction when the Owner can occupy or beneficially use satisfactorily completed Work for its intended purpose and a certificate of occupancy has been issued.

Work: Means the construction and all services required by the Construction Documents including, but not limited to, any and all construction machinery, documents, equipment, facilities, fixtures, furnishings, goods, heat, items, labor, licenses, management, materials, permits, products, services, supervision, supplies, systems, taxes, testing, tools, utilities, transportation, vehicles, and water, required to be performed or supplied and for necessary for proper execution and completion of the Project, or some portion thereof, whether or not incorporated or to be incorporated into the Project; provided, however, that Work does not include performance of pre-construction services by a builder.

ARTICLE 2 CONTRACT DOCUMENTS

- 2.1 **Sets of Documents.** The Owner shall provide the Builder with one printed set of documents, and Owner may make available a duplicate copy in digital media. Any additional electronic copies of Construction Documents required by the Builder for execution of the Work shall be made by the Builder at the Builder's expense.
- 2.2 **Minimum Requirements.** In every case, requirements established by the Construction Documents shall be considered as the minimum which will be accepted.
- 2.3 **Owner Disclaimer of Warranty.** The Owner has requested that its Design Professional(s) prepare documents for the Project, including the plans and specifications for the Project, which



are to be complete, accurate, coordinated, and adequate for bidding, negotiating and constructing the Work. However, the Owner makes no representation or warranty of any nature whatsoever to the Builder concerning such documents. The Builder hereby acknowledges and represents that it has not relied, and does not and will not rely, upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties have been or are hereby made.

2.4 Interpretation of Construction Documents. The intent of the Construction Documents is to include the items necessary for the proper execution and completion of the Work by the Builder. The Construction Documents are complimentary, and what is required by one shall be binding as if required by all. Builder shall use Owner's standard forms for Change Orders, Applications for Payment, Schedules of Values, Direct Owner Purchase Program, and any other forms Builder may be required to complete pursuant to the Construction Documents.

2.5 Conflicts in Documents. In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up the Contract For Construction, the following shall control:

2.5.1 As between figures given on plans and scaled measurements, the figures shall govern;

2.5.2 As between large-scale plans and small-scale plans, the large-scale plans shall govern; and

2.5.3 As between a graphic and written description in the drawings, the written description shall govern.

2.5.4 As between plans and specifications, the requirements of the specifications shall govern.

2.5.5 As between given sets of plans, the most recently approved set of plans shall govern.

2.5.6 As between given Specifications, the most recently approved Specifications shall govern.

2.5.7 As between the Contract for Construction and the plans and specifications, the Contract for Construction shall govern.

2.5.8 All conflicts are to be resolved through a formal RFI Process, and incorporated into the Construction Documents.

2.5.9 The GMP Proposal and its accompanying clarifications, qualifications and assumptions shall take precedence over other Contract Documents and the GMP Proposal shall not create any individual line-item guarantees of the amounts contained therein.

2.6 Shop Drawings and Submittals. Shop drawings and other submittals from the Builder or its subcontractors and suppliers do not constitute a part of the Contract for Construction.

2.7 Contract Changes. The Builder understands and agrees that the Contract for Construction



cannot be changed except as provided herein. No act, omission or course of dealing by the parties shall alter the requirement that modifications of the Contract for Construction can be accomplished only by written documents signed by the parties.



- 2.8 **Substitutions.** Substitutions for a specified system, product or material may be requested by the Builder of the Design Professional, and the Design Professional's written approval must be issued as an addendum before the bid date or issuance of a GMP (Guaranteed Maximum Price). All requests for substitutions must be submitted prior to the opening of bids, and approvals granted no less than seven (7) calendar days prior to the bid date or GMP date.
- 2.8.1 In substituting materials or equipment, the Builder assumes all responsibility for any changes in systems or for modifications required in related or adjacent work to accommodate such substitution. None of the extra costs from such approval shall be a cost to the Owner, the Design Professional, or other builder. The Design Professional of Record will be responsible for all architectural or engineering revisions to the Contract Documents and shall be reimbursed by the Builder for the costs of making such revisions.
- 2.8.2 In making its request for substitutions, the Builder shall list the particular system, products or material for which a substitution is requested and the justification for such a request. Requests submitted shall include any and all adjustments required by the substitution and any other Work affected thereby. The Design Professional may reject a substitution for material reasons or the rejections may be based on design intent of the Design Professional with the Owner's written consent.

ARTICLE 3 BUILDER'S REVIEWS AND EVALUATIONS

- 3.1 **Sufficiency of Construction Documents and Drawings.** The Builder acknowledges its continuing duty to review and evaluate the Construction Documents during the performance of its services and shall immediately notify the Owner and the Design Professional(s) in writing about any (i) problems, conflicts, defects, deficiencies, inconsistencies or omissions it discovers in or between the Construction Documents; and (ii) variances it discovers between the Construction Documents and applicable laws, statutes, building codes, rules and regulations.
- 3.1.1 If the Builder performs any Work which it knows or should have known involves (i) a recognized problem, conflict, defect, deficiency, inconsistency or omission in the Construction Documents; or (ii) a variance between the Construction Documents and requirements of applicable laws, statutes, building codes, rules and regulations, without notifying the Design Professional(s) in writing and prior to receiving written authorization from the Design Professional(s) to proceed, the Builder shall be responsible for the consequences of such performance.
- 3.1.2 Drawings are generally drawn to scale; however, the figured dimensions or notes thereon shall govern. Before ordering any materials or doing any Work, the Builder and subcontractors shall verify all measurements at the Site and are responsible for the correctness of same. Discrepancies shall be reported in writing to the Design Professional prior to proceeding with the Work. No extra charge or compensation will be entertained due to differences between actual measurements and dimensions indicated on drawings, if such differences do not result in a written change in the scope of Work or if the Design Professional failed to receive written notice before the Work was performed.

- 3.2 **Sufficiency of Site.** Prior to signing the Contract for Construction, the Builder



acknowledges that it has:

- (i) visited the Site and become familiar with local conditions under which the Project is to be constructed and operated; and
- (ii) reviewed and familiarized itself with the Site survey and any existing structures on the Site, and gathered all other information necessary for a full understanding of the Work.

In addition, if the Work involves modifications to or remodeling of an existing structure(s) or other man-made feature(s) on the Site, the Builder acknowledges that it has also:

- (i) reviewed all as-built and record drawings, plans and specifications; and
- (ii) thoroughly inspected the structure(s) and man-made feature(s) to be modified or remodeled prior to submission of bid, if any, but in all events prior to signing the Contract for Construction.

Claims resulting from the Builder's failure to familiarize itself with the Site or pertinent documents shall be deemed waived.

ARTICLE 4 BUILDER'S DUTIES, OBLIGATIONS AND RESPONSIBILITIES

4.1 Performance of Work. The Builder shall perform and complete its obligations under the Contract for Construction, and covenants with the Owner to furnish management, supervision, coordination, labor and services: (i) which expeditiously, economically and properly completes the Work in the manner most consistent with the Owner's interests and objectives; (ii) which comply with the Contract for Construction; and (iii) which are in accordance with the highest standards currently practiced by persons and entities performing or providing management, supervision, coordination, labor and services on projects similar in size, complexity and cost to the Project.

4.1.1 The Builder shall not be required to provide services which constitute the practice of architecture or engineering, unless provided in the Construction Documents and relating to those divisions of the Work for which it is appropriate for Builder's subcontractors to engage or employ licensed engineers for design associated with the Work.

4.1.2 All services rendered by the Builder for the Project shall be performed by or under the immediate supervision of persons possessing expertise and appropriate licenses in the discipline of the service being rendered.

4.1.3 The Builder shall, in the course of providing the Work, cooperate and communicate with the Owner or the Design Professional as designated by Owner and all other persons or entities as required for satisfactory completion of the Project.

4.1.4 The Builder shall not accept nor rely on direction from anyone other than Owner's designated representative or Design Professional under this Agreement. If Builder fails to comply with this requirement, it shall do so at its own risk and shall be responsible for all costs associated therewith.

4.1.5 The Builder understands and acknowledges that the Work referred to in the Contract for Construction may be only part of the Project and that the Project may include the construction of other structures or other construction activities on the same Site. The Builder shall conduct all its activities so as not to interfere with the construction of, or operations within or from, other structures on the Site.

4.1.6 The Builder shall not damage, endanger, compromise or destroy any part of the Project or the Site, including by way of example and not limitation, work being performed by others on the Site, monuments, stakes, benchmarks and other survey points, utility services, and existing features or structures on the Site. Should the Builder damage, compromise or destroy any part of the Project or the Site, the Builder shall be fully and exclusively responsible for and bear all costs associated therewith.

4.2 **Compliance with Governmental Requirements.** The Builder shall:

- (i) comply with all applicable laws, statutes, building codes, rules, regulations and lawful orders of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project;
- (ii) prepare and file documents required to obtain, and shall obtain, all necessary approvals and permits, including building permit(s), of all governmental authorities having jurisdiction over the Work, provided Owner shall pay all building permit and state fire marshal inspection fees directly; and
- (iii) give all notices required of it by governmental authorities relating to the Project.

4.2.1 **Scheduled Inspections.** All building code compliance inspections will be conducted upon request by the Builder. Normal inspection hours shall be 8:00 AM to 4:00 PM. All off-hour inspections shall be considered as overtime work at the Builder's sole cost and responsibility. The Inspection Request shall be submitted on the standard FPU Inspection Request Form in writing for all mandatory inspections required by the Florida Building Code, with a minimum forty-eight (48) hour lead time. Any re-inspection for Work not ready for inspection, or for failed inspections as determined by the Owner's Building Code Administrator (BCA) shall be at the Builder's sole cost and responsibility and shall be deducted from the Construction Price Request Form provided.

4.3 **Safety.** Safety shall be a prime concern of the Builder at all times. The Builder is solely responsible for and have control over the means, methods, techniques, sequences and procedures for coordinating and constructing the Work, including Site safety and safety precautions and programs. As a minimum, all work is to be performed in accordance with current OSHA Standards.

4.4 **On Site Records.** The Builder shall maintain at the Site one record copy of all drawings, specifications, addenda, approved shop drawings, daily logs, change orders, submittals, other modifications and all other documents generated throughout the course of the project in good order and accurately marked depicting all changes as they occur during construction. The as-built drawings shall be available at all times to the Owner, the Design



Professional(s), the Owner's consultants, and quality control and testing agency personnel. The record drawings shall be neatly and clearly marked in color during construction to record all variations made during construction, and the Builder shall include such supplementary notes and details necessary to clearly and accurately represent as-built construction. The daily logs shall contain detailed information regarding weather conditions, materials delivered, work performed, operating hours, subcontractors working on the Project and staffing of each subcontractor.

4.5 Bribes and/or Kick-Backs. The Builder shall not by any means:

- (i) induce any person or entity employed in the construction of the Project to give up any part of the compensation to which that person or entity is entitled;
- (ii) offer nor accept any bribes or kick-backs in connection with the Project from or to any individual or entity, including any of its trade contractors, subcontractors, consultants, suppliers or manufacturers of Project goods and materials; or
- (iii) without the express written permission of the Owner, the Builder shall not call for or by exclusion require or recommend the use of any subcontractor, consultant, product, material, equipment, system, process or procedure in which the Builder has a direct or indirect proprietary or other pecuniary interest.

4.6 Quality Control and Testing. The Builder shall develop and implement a quality management program to ensure quality construction. The Owner shall select and pay for the quality control and testing agencies. The Builder shall coordinate all tests and inspections required by the Construction Documents, and the Builder shall arrange for tests and inspections to be conducted as necessary to avoid any interference with the progress of Work. No claims for extension of time or extra costs by Builder will be allowed on account of any retesting, re-inspection, or rejection of Work when defective or deficient Work is found. Cost of any retesting, re-inspections of defective or deficient Work, or specified measures and tests required by the Construction Documents and required by Owner-approved quality control and testing agencies shall be at the Builder's sole responsibility, cost, and expense and shall not be included in the Cost of the Work.

4.7 Incident Reporting. The Builder shall immediately notify the Owner and Design Professional(s), both orally and in writing, of the nature and details of all incidents which may adversely affect the quality or progress of the Work including, but not limited to, jurisdictional disputes, accidents, delays, damages to Work and other significant occurrences.

4.8 Hazardous Substances. The Builder shall immediately notify the Owner and the Design Professional(s), both orally and in writing, of the presence and location of any physical evidence of, or information regarding, environmental contamination on the Site (including but not limited to Hazardous Substances and petroleum releases) of which it becomes aware. If the Builder encounters environmental contamination (including but not limited to Hazardous Substances), the Builder shall: (i) immediately stop performance of Work or that portion of the Work affected by or affecting such contamination; (ii) secure the contaminated area against intrusion; (iii) not disturb or remove the contamination; (iv) not proceed, or allow any subcontractor or supplier to proceed, with any Work or other activities in the area affected by such contamination until directed to do so by the Owner; and (v) take any other steps necessary to protect life and health.

- 4.8.1 **Compliance with Reporting Requirements Pertaining to Hazardous Substances:** Builder shall comply with all applicable reporting requirements Pertaining to Hazardous Substances including, but not limited to, regulations under the Department of Homeland Security Chemical Facility Anti-Terrorism Standards, which can be located at Code of Federal Regulation, 6 CFR Part 27.
- 4.9 **Laying Out Work and Utility Locations.** The Builder shall, immediately upon entering the project site for purpose of beginning work, locate all general reference points and take such action as is necessary to prevent their destruction, lay out the work and be responsible for all lines, identify precise utility infrastructure locations, elevations and measurements to be executed by the Builder and subcontractors under this contract. Builder is responsible for requesting and paying for appropriate site utility connectivity with the appropriate utility supplier. Nothing herein shall require Builder to pay any costs, fees or assessments for impact fees or utility capacity charges.
- 4.10 **Owner's Utilities.** The Builder is responsible for locating precise utilities infrastructure locations, elevations, and providing for connections to utilities required for temporary service for construction to the approval date for Substantial Completion issued by a Certificate of Substantial Completion.
- 4.11 **Owner's Use of and Access to the Site.** The Builder shall perform the Work so as not to interrupt any operations of the Owner on the Site.
- 4.11.1 The Builder understands and acknowledges that the Owner may need access to or use of certain areas of the Site or Work prior to the Builder's achievement of Substantial Completion, and that such occupancy, access or use shall not constitute the Owner's acceptance of any Work.
- 4.11.2 The Builder shall not enter any Owner-occupied area of the Site or Project unless first approved and scheduled by the Owner. The Builder understands and acknowledges that the Owner may incur damages if the Owner's operations on the Site are interrupted or impaired as a result of the Work.
- 4.11.3 The Builder shall afford the Owner's own forces, and other consultants, trade contractors, subcontractors and suppliers, access to the Site for performance of their activities, and shall connect and coordinate its construction and operations with theirs as required by the Construction Documents.
- 4.12 **Commissioning.** If the Work is to be commissioned through the use of a commissioning consultant, the Builder shall, through the Owner or the Owner's commissioning consultant, as the case may be, schedule and coordinate all equipment and systems start-ups and Project commissioning within its scope of the Work.
- 4.12.1 The Builder shall perform functional performance testing of items being commissioned under the supervision of the Owner's commissioning consultant, as directed by the Design Professional.
- 4.12.2 Owner training and all commissioning activities, including functional performance tests, shall be satisfactorily completed prior to Substantial Completion.

ARTICLE 5
BUILDER'S PERSONNEL, SUBCONTRACTORS, SUPPLIERS AND SITE FACILITIES

- 5.1 **Project Staffing.** The Builder shall staff the Project with qualified and designated individuals and entities responsible for its obligations and performance.
- 5.1.1 The Builder shall name a representative (the "Builder's Representative") to serve as its primary communication contact with the Owner and the Design Professional(s).
- 5.1.2 The Builder's Representative, or another authorized representative of the Builder, shall be present at all times when Work is being performed.
- 5.1.3 The Builder shall employ licensed persons skilled in the tasks assigned to them and shall contract with licensed subcontractors and suppliers skilled in the tasks assigned to them and capable of working harmoniously with all trades, crafts and other individuals on the Project. The Builder shall use its best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance.
- 5.1.4 **Owner's Zero-Tolerance Policy:** The Builder shall immediately remove from the Site, for the duration of the Project, any person making an inappropriate religious, racial, sexual or ethnic comment, statement, harassment, disruptive behavior or gesture toward any other individual.
- 5.1.5 The Builder shall immediately remove from the Site, for the duration of the Project, any person who is incompetent, careless, or not working in harmony.
- 5.1.6 The Builder is responsible to the Owner for the acts and omissions of its agents and employees, consultants, subcontractors and suppliers.
- 5.1.7 The unlawful possession and use of drugs or alcohol is prohibited in and on University owned or controlled property. The Builder is responsible for ensuring that its employees, subcontractors and consultants abide by the Owner's Drug-Free Workplace Requirement.
- 5.1.8 The Builder shall immediately remove from the Site, for the duration of the Project, any person who is incompetent, careless, or not working in harmony.
- 5.1.9 The Builder is responsible to the Owner for the acts and omissions of its agents and employees, consultants, subcontractors and suppliers.
- 5.2 **Subcontractor/Supplier Contracts.** The Builder shall enter into written contracts with its subcontractors and suppliers, and those written contracts shall be consistent with the Contract for Construction. It is the intent of the Owner and the Builder that the obligations of the Builder's subcontractors and suppliers inure to the benefit of the Owner and the Builder, and that the Owner be a third-party beneficiary of the Builder's agreements with its subcontractors and suppliers.
- 5.2.1 The Builder shall make available to each subcontractor and supplier, prior to the execution of written contracts with any of them, a copy of the pertinent portions of the



Contract for Construction, including those portions of the Construction Documents to which the subcontractor or supplier will be bound, and shall require that each subcontractor and supplier shall similarly make copies of applicable parts of such documents available to its respective subcontractors and suppliers.

- 5.2.2 The Builder shall include in its written contracts with its subcontractors and suppliers a provision which contains the acknowledgment and agreement of the subcontractor or supplier that it has received and reviewed the applicable terms, conditions and requirements of the Contract for Construction that are included by reference in its written contract with the Builder, and that it will abide by those terms, conditions and requirements.
- 5.2.3 The Builder's written contracts with its subcontractors and suppliers shall preserve and protect the rights of the Owner and include the acknowledgment and agreement of each subcontractor or supplier that the Owner is a third-party beneficiary of the contract. The Builder's agreements with its subcontractors and suppliers shall require that in the event of default under, or termination of, the Contract for Construction, and upon request of the Owner, the Builder's subcontractors and suppliers will perform services for the Owner.
- 5.2.4 Without limitation of the foregoing subsections, the Builder's written contracts with its subcontractors and suppliers shall include the following provision: "When the Builder receives payment from the Owner for labor, services or materials furnished by subcontractors and suppliers hired by the Builder for the Project, the Builder shall remit payment due to those subcontractors and suppliers, less the value of any item contested in accordance with the Contract for Construction, within seven (7) days after the Builder's receipt of payment from the Owner. When the payment due the subcontractor is for final payment, including retainage, the subcontractor must include with the invoice for final payment, a conditional release of lien and all required warranties and closeout documentation. When the subcontractor receives payment from the Builder for labor, services, or materials furnished by the subcontractors and suppliers hired by the subcontractor, the subcontractor shall remit payment due to those subcontractors and suppliers, less the value of any item contested in accordance with the Contract for Construction, within seven (7) days after the subcontractor's receipt of payment".

- 5.3 **Resolution of Trade Disputes.** The Builder shall promptly resolve claims, complaints, labor disputes and disputes over assignment of work tasks by and among its subcontractors and suppliers.

ARTICLE 6 GOODS, PRODUCTS AND MATERIALS

- 6.1 **Quality of Materials.** The Builder shall furnish goods, products, materials, equipment and systems which:
- (i) comply with the Contract for Construction;
 - (ii) conform to applicable specifications, descriptions, instructions, drawings, data and samples;

- (iii) are new and unused (unless otherwise specified) and without damage;
- (iv) are of quality, strength, durability, capacity or appearance equal to or higher than that required by the Construction Documents;
- (v) are merchantable; and
- (vi) are free from defects.

- 6.2 **Installation and Use of Materials.** All goods, products, materials, equipment and systems named or described in the Construction Documents, and all others furnished as equal thereto shall, unless specifically stated otherwise, be furnished, used, installed, employed and protected in strict compliance with the specifications, recommendations and instructions of the manufacturer or supplier (unless such specifications, recommendations or instructions deviate from accepted construction practices) or the Construction Documents, in which case the Builder shall so inform the Owner and Design Professional and shall proceed as directed by that Design Professional, unless otherwise directed by the Owner. Accordingly, there shall be no substitutions of materials and equipment except as otherwise expressly permitted herein. The Builder shall coordinate and interrelate all trade contracts, and subcontracts to ensure compatibility of goods, products, materials, equipment and systems, and validity of all warranties and guarantees, required by the Construction Documents for the Work.
- 6.3 **Unsuitable Materials.** The Builder shall inform the Owner of goods, products, materials and equipment or systems which the Builder knows are unsuitable or unavailable at the time of bid submission, and claims relating to or arising out of claims that goods, products, materials, equipment or systems are unsuitable or unavailable shall not be entertained by the Owner unless the Builder, subcontractor, or supplier notified the Owner in writing at the time of bid submission, along with proposed alternatives. Approval by the Owner and a Design Professional does not mean or imply final acceptance by the Owner and Design Professional if such items should be defective or not as previously represented. Should the Builder furnish any approved goods, products, materials, equipment or systems different from or in addition to those required by the Construction Documents which require supplemental materials or installation procedures different from or in addition to those required for specified items, the Builder shall provide such at no increased cost to the Owner.
- 6.4 **Consistency with Overall Project.** If Builder is acting as construction manager or designbuilder, Builder shall also inform the Owner and Design Professional in writing during the various stages of development of the design if proposed materials or equipment do not conform with the Project design concept or the Owner's construction budget.
- 6.5 **Security for the Project.** The Builder is solely responsible for providing security for the Project, including but not limited to security for its Work in progress and for the goods, products, materials, equipment, systems, construction machinery, tools, devices and other items required, used or to be used for its scope of the Work. If any Work is conducted in existing operational facilities, Builder shall secure and lock the work area at the conclusion of each work day or task. Builder shall provide keys to all Builder furnished locks to the Owner's designated Public Safety representative.

**ARTICLE 7
DOCUMENTS AND INFORMATION**

- 7.1 **Information from Owner.** All information provided by the Owner must be verified by the Builder. The Owner, or the Owner's designee, shall provide the Builder, at Builder's request, with information reasonably necessary to assist the Builder in performing its services including, if applicable and available:
- (i) required site survey;
 - (ii) written and tangible material of which it informs Builder concerning conditions below ground at the Site;
 - (iii) if the Project involves an existing structure, as-built drawings, record drawings, plans, specifications and structure system information to the extent available with respect to such structure of which Owner makes Builder aware; and
 - (iv) the Owner's pertinent Project dates and key milestone dates.
- 7.2 **Resolution of Questions.** The Builder shall resolve all questions concerning the Construction Documents with the Design Professional who has prepared the documents by formally using Request for Information submitted to the Design Professional.
- 7.3 **Processing of Documents.** When requested to do so by the Owner, the Builder shall process documents, and provide other reasonably required drawings, services and certifications, necessary to enable the Owner to (i) obtain permits or other approvals not otherwise required to be obtained by Builder; and (ii) represent that the Work complies with requirements of governmental agencies having jurisdiction over the Project.
- 7.4 **Sufficiency of Owner Information.** The furnishing of information by the Owner to the Builder shall not relieve the Builder of responsibilities contained elsewhere in the Contract for Construction to evaluate information and documents provided by the Owner, and the Builder shall timely notify the Owner in writing of any additional information needed or services required from the Owner in order for the Builder to perform the Work.

**ARTICLE 8
SUBMITTALS**

- 8.1 **Submittal Schedule.** The Builder shall timely prepare and transmit to the Design Professional a schedule for provision of all anticipated submittals, in the form of a submittal log. The schedule shall: (i) include submittals required by the specifications; (ii) be in a format acceptable to the Design Professional; (iii) be coordinated with the construction schedule; and (iv) set forth specific dates for submission of the listed submittals.
- 8.2 **Processing of Submittals.** The Builder shall in timely fashion review, approve or reject as necessary, and forward approved submittals to the Design Professional for review and written approval along with such detail and information as the Design Professional requires. No part of the Work dealt with by a submittal shall be fabricated or performed until such written approval has been given.



- 8.2.1 A Design Professional is responsible to the Owner, but not to the Builder, to verify that the submittals conform to the design concept and functional requirements of the plans and specifications, that the detailed design portrayed in shop drawings and proposed equipment and materials shown in submittals is of the quality specified and will function properly, and that the submittals comply with the Contract for Construction.
- 8.2.2 All Work shall be performed in accordance with approved submittals. Approval of submittals by a Design Professional shall not relieve the Builder from complying with the Contract for Construction, including all plans and specifications, addenda thereto and approved Change Orders.
- 8.2.3 Re-submittals required to correct errors, omissions, or invalid substitutions by the Builder or its subcontractors shall not constitute an excusable or compensable delay.

ARTICLE 9

BUILDER'S INSPECTION AND CORRECTION OF DEFECTIVE OR INCOMPLETE WORK

- 9.1 **Rejection and Correction of Work In Progress.** During the course of Project, the Builder shall inspect and promptly reject any Work (i) which does not conform to the Construction Documents; or (ii) which does not comply with any applicable law, statute, building code, rule or regulation of any governmental, public or quasi-public authorities and agencies having jurisdiction over the Project.
 - 9.1.1 The Builder shall promptly correct or require the correction of all rejected Work, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Builder shall bear all costs of correcting such Work, including additional testing and inspections and compensation for all services and expenses necessitated by such correction.
 - 9.1.2 The Builder shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, of the Owner's or other trade contractors or subcontractors caused by the Builder's correction or removal of rejected Work.
- 9.2 **Covered Or Concealed Work.** If a portion of the Work has been covered, the Builder shall, if notified to do so by the Owner or Design Professional, uncover the designated portion for observation and then replace it.
 - 9.2.1 If the designated portion of the Work was covered contrary to the request of the Owner or the Design Professional, or contrary to requirements specifically expressed in the Construction Documents, the Builder shall receive no additional compensation for the costs of uncovering and replacement or modification of the Construction Schedule.
 - 9.2.2 If the designated portion of the Work was covered prior to a specific request by the Owner or the Design Professional that it remain uncovered, the Builder shall receive additional compensation for the costs of uncovering and replacement. Modification of the Construction Schedule(s) will be permitted only if the designated portion of the Work was in conformance with the Construction Documents.

ARTICLE 10
CHANGE ORDERS AND CHANGES TO THE WORK

- 10.1 **Change Order Requests.** Owner, Design Professional or Builder may request changes to the Work, compensation or applicable schedules. All Change Order Requests must be submitted as follows:
- 10.1.1 With respect to such requests for changes by the Builder, the Builder shall prepare and submit change order requests to the Design Professional, together with appropriate back-up documentation.
- 10.1.2 With respect to requests for changes by Owner or Design Professional, the Builder shall promptly review and respond to change order requests submitted by a Design Professional.
- 10.1.3 When requested to do so, the Builder shall prepare and submit to a Design Professional drawings, specifications or other data in support of a change order request.
- 10.1.4 Each change order request submitted by Builder shall include any and all time and monetary impacts of the change, whether the change order is considered alone or with all other changes during the course of the Project, together with substantiating back-up documentation.
- 10.2 **Owner-Directed Changes.** The Owner may unilaterally direct the Builder to implement changes in the Work so long as the Work the Owner is requiring is not outside of the general scope of the Contract for Construction, and the Builder, upon written direction from the Owner, shall proceed with such changes.
- 10.3 **Design Professional-Directed Changes.** A Design Professional, without the Owner's prior approval, may authorize or direct the Builder to make minor changes in the Work which are consistent with the intent of the Construction Documents and which do not involve a change in Project cost, time for construction, scope, or approved design elements, and the Builder shall promptly carry out such changes. Any such minor changes shall be implemented by written field order and executed by the Builder.
- 10.4 **Administration of Changes.** The Design Professional will administer and manage all change order requests and change orders and will prepare required drawings, specifications and other supporting data as necessary in a timely fashion, in recognition of the Project schedule, in connection with minor changes, change order requests, including claims for additional compensation, time, or both, and change orders.
- 10.5 **Compensation for Changes.** With respect to all change order requests involving credit to the Owner or additional compensation to the Builder, the Builder shall: (i) obtain from subcontractors and suppliers the best possible price quotations; (ii) review such quotations to ascertain whether they are reasonable; (iii) prepare an itemized accounting together with appropriate supporting data, including reasonable expenditures by, and savings to, those performing the Work involved in the proposed change; and (iv) provide a reasonable price quotation to the Design Professional.
- 10.5.1 If price quotations for change order requests are determined by the Design Professional

to be unreasonable, the Builder shall, in writing, justify said quotations or provide additional back-up materials. If after review of the additional information the Design Professional determines the quotation is unreasonable, the Owner may require the subject Work be performed on a time and material basis.

10.5.2 The Builder and its subcontractors and suppliers will not be provided additional compensation for any costs, fees or expenses incurred in performing services already required by the Contract for Construction, and they are not entitled to additional reimbursement for home-office, other non-job-site or indirect overhead expenses, or tools necessary for construction.

10.5.3 Limitation on the percentage fee for overhead and profit combined to be added to the change order shall be based on the following schedule:

- (i) for any Work performed by the Builder's own forces (if applicable) not to exceed ten percent (10%) of the cost of the change;
- (ii) for any Work performed by a subcontractor or any third tier subcontractor or material supplier not under the direct employment of the subcontractor, an amount not to exceed fifteen percent (15%) of the cost of the change, with no more than ten percent (10%) to be assigned to the subcontractor and no more than five percent (5%) to be assigned to the Builder.

10.5.4 It is the Builder's responsibility to review and approve all pricing of additional work required of its subcontractors and suppliers.

10.6 **Performance of Changes.** Upon receipt of an executed change order or written approved change order request, changes in the Work shall be promptly performed. All changes in the Work shall be performed under applicable conditions of the Construction Documents.

10.7 **Disputes Regarding Changes.**

10.7.1 Regardless of whether there is a dispute: (i) that a change has occurred; (ii) whether a change in the Work will result in adjustment of compensation or applicable schedules; or (iii) as to the amount of any adjustment of compensation or applicable schedules, the change shall be carried out if the Owner so directs. No claim shall be prejudiced by performance of the Work so long as the Owner is notified of the claim in writing prior to performance of the Work which is the subject of the dispute and the party disputing the decision of the Owner recites the reasons for its dispute in the written notice. Failure to notify the Owner of any claim or dispute in writing within twenty-one (21) calendar days after the event giving rise to such claim or dispute shall constitute a waiver of any claim resulting from the change.

10.7.2 In the event a change order request is approved by the Owner in the absence of an agreement as to cost, time, or both, the Design Professional will: (i) receive and maintain all documentation pertaining thereto; (ii) examine such documentation on the Owner's behalf; (iii) take such other action as may be reasonably necessary or as the Owner may request; and (iv) make a written recommendation to the Owner concerning any appropriate adjustment in the Construction Price or time.



- 10.8 **Necessity for Signature Approval.** No act, omission or course of dealing shall alter the requirement that change orders shall be in writing and signed by the Owner, and that change orders are the exclusive method for effecting any adjustment to compensation or applicable schedules. The Builder understands and agrees, on behalf of itself and its subcontractors and suppliers, that neither compensation nor applicable schedules can be changed by implication, oral agreement, or unwritten change order. The Builder further understands and agrees that if Builder or its subcontractors and suppliers proceed with any change order that has not been pre-approved in writing, the Builder is responsible for any and all additional costs pertaining to the Change Order Work and any cost(s) incurred by the Owner as a result of same, including but not limited to, attorney's fees and costs.

ARTICLE 11

OWNER'S CONSULTANT(S), DESIGN PROFESSIONAL(S) AND CONSTRUCTION ADMINISTRATION

- 11.1 **Owner's Designated Design Professional Representative.** Unless otherwise directed by the Owner, the Design Professional shall act as the Owner's representative.
- 11.1.1 The Design Professional is the Owner's design representative during performance of the Work and will consult with and advise the Owner on all design and technical matters.
- 11.1.2 The Design Professional acts as initial interpreter of the requirements of the Contract for Construction and as the Owner's advisor on claims.
- 11.2 **Design Professional Site Visits.** The Design Professional will visit the Site with sufficient frequency, but in no instance less than once a week, for familiarization with the progress and quality of the Work and to inspect the Work to determine compliance of the Work with (i) the Contract for Construction, including approved shop drawings and other submittals; (ii) the Construction Schedule; and (iii) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities or agencies having or asserting jurisdiction over the Project.
- 11.3 **Design Professional Rejection of Work.** The Design Professional may disapprove or reject Work which does not comply with (i) the Contract for Construction including approved shop drawings and other submittals; or (ii) applicable laws, statutes, building codes, rules or regulations of any governmental, public and quasi-public authorities or agencies having or asserting jurisdiction over the Project.
- 11.4 **Design Professional Evaluations.**
- 11.4.1 The Design Professional will review and evaluate the results of all inspections, tests and written reports required by the Contract for Construction and by any governmental entity having or asserting jurisdiction over the Project. The Design Professional will take appropriate action on test results, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by the Design Professional. The Design Professional will promptly reject Work which does not conform to and comply with testing requirements.
- 11.4.2 The Design Professional may require inspection or testing of any Work in addition to that required by the Contract for Construction or governmental entities having or



asserting jurisdiction over the Project when such additional inspections or testing is necessary or advisable, whether or not such Work is then fabricated, installed or completed. The Design Professional will take appropriate action on all such special testing and inspection reports, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by the Design Professional.

- 11.5 **Design Professional Submittal Activities.** The Design Professional will review and approve, reject or take other appropriate action on submittals such as shop drawings, product data, samples and proposed materials or equipment and will not approve any submittals unless such submittals conform to the Construction Documents. A Design Professional's review of submittals shall not constitute final acceptance of materials or equipment furnished or installed if such materials or equipment are defective or not as represented by approved submittals or as otherwise required by the Construction Documents. The Builder remains responsible for details and accuracy, for confirming and correlating all quantities and dimensions, for selecting fabrication processes, for techniques of assembly, and for performance of the Work.
- 11.6 **Design Professional Interpretations.** A Design Professional will, when requested to do so in writing by the Builder, promptly and so as to cause no unnecessary delay, render written or graphic interpretations and decisions necessary for the proper execution of the Work. A Design Professional's interpretations and decisions relating to artistic effect shall be final if not inconsistent with the Construction Documents and if approved by Owner in writing.
- 11.7 **Design Professional Change Order Activities.** The Design Professional will consult with and advise the Owner concerning, and will administer and manage, all change order requests and change orders on behalf of the Owner.
- 11.8 **Design Professional Pay Application Activities.** The Design Professional will review applications for payment, including such accompanying data, information and schedules as the Design Professional requires, to determine the amounts due to the Builder and shall authorize payment by the Owner to the Builder in writing. After the Work is determined to be finally complete by the Design Professional, the Design Professional will certify to the Owner in writing that the Builder is entitled to final payment and submit the pay application to the Owner for final approval.
- 11.9 **Design Professional Relationship to Builder.** The duties, obligations and responsibilities of the Builder under the Contract for Construction shall not be changed, abridged, altered, discharged, released, or satisfied by any duty, obligation or responsibility of any Design Professional. The Builder shall not be a third-party beneficiary of any agreement by and between the Owner and any Design Professional. The duties of the Builder to the Owner shall be independent of, and shall not be diminished by, any duties or obligations of any Design Professional to the Owner.

ARTICLE 12

INSPECTION, CORRECTION OF WORK, AND PROJECT CLOSE OUT

- 12.1 **Substantial Completion.** Substantial Completion of the Work shall be deemed to have occurred on the later of: (i) the dates that the Work passes a Substantial Completion inspection, (ii) the date the required Substantial Completion documentation and items have been produced,

or (iii) the date a certificate of occupancy is issued for the Work.

12.1.1 When the Builder believes that the Work is substantially complete, it shall notify the Owner and the Design Professional that the Work is ready for a Substantial Completion inspection. Prior to the scheduled inspection, Builder shall prepare and submit to the Design Professional and the Owner a comprehensive list of items to be completed or corrected. Builder shall proceed to complete and correct items on the list within the calendar days set forth in the Certificate of Substantial Completion. The Builder shall give the Owner and Design Professional written notice two (2) weeks prior to the predicted Substantial Completion inspection date.

12.1.2 The Builder shall deliver to the Design Professional the following Substantial Completion close-out documentation and items:

- (i) all operation and maintenance manuals;
- (ii) Owner maintenance or extra stock as prescribed in the technical specifications;
- (iii) one (1) set of as-built plans and specifications;
- (iv) certification and affidavit that all insurance required of the Builder beyond final payment, if any, is in effect and will not be canceled or allowed to expire without at least thirty (30) days prior written notice to the Owner;
- (v) all written warranties and guarantees relating to the labor, goods, products, materials, equipment and systems incorporated into the Work, endorsed, countersigned, and assigned as necessary;
- (vi) affidavits, releases, bonds, waivers, permits and other documents necessary for final close-out of Work, and
- (vii) any other documents reasonably and customarily required or expressly required herein for Substantial Completion of the Work.

12.1.3 Upon receipt of notification from the Builder, the Design Professional will coordinate with the Owner and the Builder a date for inspection of the Work to determine whether the Work is substantially complete.

12.1.4 At inspection(s) to determine whether the Work is substantially complete, the Design Professional will:

- (i) inspect the Work;
- (ii) list items to be completed or corrected;
- (iii) determine whether the Work complies with: (a) the Contract for Construction; (b) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project; and (c) applicable installation and workmanship standards;

- (iv) determine whether required inspections and approvals by the official(s) having or asserting jurisdiction over the Project have been satisfactorily completed; and
- (v) consult with the Owner.

12.1.5 If the Work is determined not to be substantially complete, the Work shall be prosecuted until the Work is substantially complete and the inspection process shall be repeated at no additional cost to the Owner until the Work is determined to be substantially complete. Builder will be responsible for costs of the Design Professional associated with all premature inspections. Costs for any such inspections shall be deducted from the Construction Price at Final Payment, at the Design Professional's approved billable rate.

12.1.6 On or prior to the required date of Substantial Completion, the Builder shall comply with all closeout requirements set forth in the Department of Campus Development & Facilities Construction Project Guide, including but not limited to delivery of permits, and other necessary and customary documents and items which are pre-requisites for the Owner's occupancy and use of the Work for its intended purpose. The Design Professional will obtain and review Substantial Completion documentation and items, and will inform the Builder of any deficiencies.

12.1.7 When the Owner, the Builder and the Design Professional agree that the Work has passed the Substantial Completion inspection and the Builder has produced the required Substantial Completion documentation and items, each shall sign the Owner's standard form Certificate of Substantial Completion declaring the Work substantially complete and establishing the actual date of Substantial Completion. The Certificate of Substantial Completion shall also include a list of and timeline for the completion of Work needing completion and correction.

12.1.8 If the Work is commissioned through the services of a commissioning consultant, such commissioning shall be completed as a pre-requisite to the Work being declared Substantially Complete, provided Builder shall not be responsible for delays in commissioning not the fault of Builder.

12.1.9 The Builder shall provide the Owner with operation and maintenance manuals and other operational documentation not less than twenty-eight (28) calendar days prior to the required date of Substantial Completion to allow adequate time for training prior to commissioning and the Owner's occupancy of the Project.

12.1.10 The Builder shall meet with the Owner's personnel not less than twenty-eight (28) calendar days prior to the required date of Substantial Completion to familiarize and train them with respect to maintenance and use of the Project. All training sessions shall be recorded in digital audio visual format with copy provided to the Owner.

12.1.11 The date of Substantial Completion shall fix the commencement date of warranties and guaranties and allocate between the Owner and the Builder responsibility for security, utilities, damage to the Work and insurance.

12.1.12 The acceptance of Substantial Completion payment by the Builder shall constitute a

waiver of all claims by the Builder except those previously made in writing and identified as unsettled at the time of the Application for Payment for Substantial Completion, and except for the retainage sums due at final acceptance.

12.1.13 Upon Substantial Completion of the Work, or designated portion thereof, and upon application by the Builder and certification by the Design Professional, the Owner shall make payment, reflecting adjustments to retainage, if any, for such Work or portions thereof as provided in the Construction Documents. Liquidated Damages to the date of Substantial Completion shall be deducted by Construction Change Directive from the Construction Price from the Substantial Completion payment.

12.2 **Final Completion.** Final Completion of the Work shall be deemed to have occurred on the later of: (i) the date that the Work passes a Final Completion inspection or (ii) the date that the Builder has produced all required Final Completion close-out documentation and items (if any). Final Completion shall not be deemed to have occurred and no final payment shall be due the Builder or any of its subcontractors or suppliers until the Work has passed the Final Completion inspection and all required Final Completion close-out documentation and items have been produced to the Owner by the Builder.

12.2.1 When the Builder believes the Work is finally complete, the Builder shall notify the Owner and the Design Professional in writing that the Work is ready for Final Completion inspection.

12.2.2 Upon receipt of such written notification from the Builder, the Design Professional will coordinate with the Owner and the Builder a date for inspection of the Work to determine whether the Work is finally complete.

12.2.3 At the Final Completion inspection to determine whether the Work is finally complete, the Design Professional will:

- (i) inspect the Work;
- (ii) determine whether all items on the list included with the Certificate of Substantial Completion have been satisfactorily completed and corrected; and
- (iii) determine, in consultation with the Owner, whether the Work is finally complete.

12.2.4 If the Work is not finally complete, the Builder shall continue to prosecute the Work, and the inspection process shall be repeated at no additional cost to the Owner, until the Work is finally complete. Costs for any such inspections shall be deducted by Construction Change Directive (CCD) from the Construction Price at Final Payment, at the Design Professional's approved billable rate.

12.2.5 On or prior to the date of Final Completion, the Builder shall deliver to the Design Professional the following Final Completion close-out documentation and items:

- (i) Certificate of Final Completion – executed on the Owner's standard form set forth in Campus Development & Facilities Department's, Construction Project Guide and Forms.

- (ii) written consent of the surety(ies), if any, to final payment;
- (iii) full, final and unconditional waivers of mechanics or construction liens, from each contractor, subcontractor, supplier or other person or entity who has, or might have a claim;
- (iv) full, final and unconditional certification and affidavit that all of the Builder's obligations to contractors, subcontractors, suppliers and other third parties for payment for labor, materials or equipment related to the Project have been paid or otherwise satisfied;
- (v) acceptance of Final Payment by Builder constitutes a waiver of claims by the Builder; and
- (vi) any other documents reasonably and customarily required or expressly required herein for full and final close-out of the Work.

12.2.6 The Design Professional will review and determine the sufficiency of all Final Completion close-out documentation and items required for Final Completion which are submitted by the Builder, and will immediately inform the Builder in writing about any deficiencies and omissions.

ARTICLE 13 BUILDER'S WARRANTIES AND GUARANTEES

13.1 **One-Year Warranty.** In addition to the warranties and guarantees set forth elsewhere in the Contract for Construction and for the Construction Documents, the Builder, upon request by the Owner or the Design Professional, shall promptly correct all failures or defects in the Work for a period of one year after the actual date of Substantial Completion.

13.1.1 The Builder shall schedule, coordinate and participate in a walk-through inspection of the Work one month prior to the expiration of the one-year correction period (11 month walk through), and shall notify the Owner, the Design Professional, and any necessary subcontractors and suppliers of the date of, and request their participation in, the walk-through inspection. The purpose of the walk-through inspection will be to determine if there are defects or failures which require correction.

13.1.2 Should the Builder fail to promptly correct any failure or defect during the one-year warranty period, the Owner may take whatever actions it deems necessary to remedy the failure or defect and the Builder shall promptly reimburse the Owner for any expenses or damages it incurs as a result of the Builder's failure to correct the failure or defect.

13.2 **Express Warranties and Guarantees – Builder.** In addition to the warranties and guarantees set forth elsewhere herein, the Builder expressly warrants and guarantees to the Owner:

- (i) that the Work complies with (a) the Construction Documents; and (b) all applicable laws, statutes, building codes, rules and regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project;



- (ii) that all goods, products, materials, equipment and systems incorporated into the Work conform to applicable specifications, descriptions, instructions, drawings, data and samples and shall be and are (a) new and unused (unless otherwise specified or permitted) and without damage or defect; (b) of quality equal to or higher than that required by the Construction Documents; and (c) merchantable; and
 - (iii) that all management, supervision, labor and services required for the Work shall comply with the Contract for Construction, the Construction Documents, and shall be and are performed in a workmanlike manner.
- 13.3 **Express Warranties and Guarantees - Subcontractors and Suppliers.** The Builder shall require that all of its subcontractors and suppliers provide written warranties, guarantees and other undertakings to the Owner and the Builder in a form identical to the warranties, guarantees and other undertakings set forth in the Contract for Construction, including the warranties, guarantees and undertakings set forth in this Article, which warranties, guarantees and undertakings shall run to the benefit of the Owner as well as the Builder.
- 13.4 **Non-Exclusivity and Survival.** The warranties and guarantees set forth in this Article shall be in addition to all other warranties, express, statutory, and shall survive the Owner's payment, acceptance, inspection of or failure to inspect the Work, and review of the Construction Documents.
- 13.5 **Non-Limitation.** Nothing contained in Paragraph 13.1, shall be construed to establish a period of limitation with respect to the Builder's obligations under the Contract for Construction. Paragraph 13.1 relates only to the Builder's specific obligations with respect to the Work, and has no relationship to the time within which the Builder's contractual obligations under the Contract for Construction may be enforced, nor to the time within which proceedings may be commenced to establish the Builder's liability with respect to any contractual obligations pursuant to Paragraph 13.1 or contained elsewhere herein.
- 13.6 **Commencement of Obligations.** Unless otherwise specified, all of the Builder's warranty and guaranty obligations, including the time period(s) for all written warranties and guarantees of specifically designated equipment required by the Construction Documents, shall begin on the actual date of Substantial Completion.

ARTICLE 14 OWNER'S DUTIES, OBLIGATIONS AND RESPONSIBILITIES

- 14.1 **Compensation of Builder.** The Owner shall compensate the Builder in accordance with the Contract for Construction.
- 14.2 **Owner Review of Builder's Documents.** Any review by the Owner shall be solely for the purpose of determining whether such documents are generally consistent with the Owner's intent. No review of such documents shall relieve the Builder of any of its responsibilities. In addition, the Owner's review of documents for purposes of issuing a building permit shall not relieve the Builder of any of its responsibilities.
- 14.3 **Status of Owner.** The Owner shall not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Builder, for any of the foregoing purposes, be deemed



the agent of the Owner.

- 14.4 **Owner's Utilities.** The Builder is responsible for providing and paying for consumption of, and connections to, utilities required for temporary service and construction.

ARTICLE 15 BUILDER'S COMPENSATION

- 15.1 **Unit Prices.** If any portion of the Construction Price is determined by the application of unit prices, the number of units contained in the Builder's Compensation Schedule is an estimate only, and the compensation to the Builder shall be determined by the actual number of units incorporated in, or required by, the Work.
- 15.2 **Schedule of Values.** The Builder shall prepare and present to the Owner and the Design Professional the Builder's schedule of values, apportioning the different elements of the Work for purposes of periodic and final payment. The Builder's schedule of values shall be presented utilizing the Department of Campus Development & Facilities CM Schedule of Values Invoice form, and with such detail and supporting information, requested by the Design Professional or Owner. The Builder shall not imbalance or artificially inflate any element of its schedule of values. Upon the Design Professional and Owner's acceptance, the schedule of values shall be used to process and pay the Builder's payment requests. The schedule of values shall not be changed without written authorization by the Owner.
- 15.3 **Trench Safety Act.** The Builder shall comply with the Trench Safety Act (Chapter 553, Part VI, Florida Statutes) which requires that builders delineate in their Schedules of Values the cost of compliance with applicable trench safety standards.
- 15.4 **Invoicing Procedures.** With respect to each payment request by Builder, Builder shall submit to the Design Professional and Owner a fully executed CM Schedule of Values Invoice form, referenced herein and available on the FPU Campus Development & Facilities website.
- 15.4.1 The Builder shall submit invoices to the Design Professional requesting payment for labor and services rendered during the preceding thirty (30) calendar days. Each invoice shall contain such detail and be backed up with whatever supporting information the Owner or Design Professional requests and shall at a minimum state:
- (i) the total original Construction Price and total current Construction Price;
 - (ii) the amount due for properly provided labor, materials and equipment properly incorporated into the Project; and with respect to amounts invoiced for materials or equipment necessary for the Project and properly stored at the Site (or elsewhere if offsite storage is approved in writing by the Owner), be accompanied by written proof that the Owner has title to such materials or equipment and that such material and equipment is fully insured against loss or damage;
 - (iii) a breakdown of the various phases, bid packages, or parts of the Work as related to the Construction Price in accordance with the Department of Campus Development & Facilities' Construction Project Guide and Forms.

- (iv) the value of the various phases, bid packages, or parts of the Work actually performed;
- (v) previously invoiced amounts and credit payments made;
- (vi) the total amount due, less any agreed retainage;
- (vii) a summary of change orders to date; and
- (viii) the value of Work actually awarded and performed by certified Minority-owned firms; using the FPU Small, Minority, Local or Women's Business Enterprises utilization form shall be as to form referenced herein and available on the FPU Campus Development and Facilities website.

15.4.2 Builder's Signature. The signature of the Builder on any payment application constitutes the Builder's certification to the Owner that:

- (i) all items and amounts shown on each Certificate for Payment Request are true and correct;
- (ii) the amount requested is currently due and owing;
- (iii) the Builder's services listed in the invoice have progressed to the level indicated and have been performed as required by the Contract for Construction;
- (iv) the Builder has paid its subcontractors and suppliers their proportional share of all previous payments received from the Owner;
- (v) there are no pending or existing claims, lawsuits or other legal action by reason of the Work on the Project under this Contract for Construction as of the date for each Certificate of Payment; and
- (vi) all subcontractors performing the Work for which payment is made hold all necessary State of Florida licenses.

15.5 Payment Procedures.

15.5.1 Within seven (7) calendar days of receipt, the Design Professional will review the Builder's applications for payment, including such accompanying data, information and schedules as the Design Professional requires, determining the amounts due to the Builder and, based upon such review, together with its inspections of the Work, shall authorize payment by the Owner to the Builder in writing. Such authorization will constitute the Design Professional's certification to the Owner that:

- (i) the Work described in the Builder's invoice has progressed to the level indicated and has been performed in accordance with the Contract For Construction;
- (ii) all necessary and appropriate lien waivers have been submitted;

- (iii) the “as-built” record documents are current and up-to-date; and
- (iv) the amount requested is currently due and owing to the Builder.

15.5.2 In the case of unit price work, the Design Professional’s recommendations for payment will constitute a final determination of quantities and classifications of such work.

15.6 **Owner’s Right to Refuse Payment.** A Design Professional’s approval of the Builder’s invoice shall not preclude the Owner from exercising any of its remedies under the Contract for Construction. In the event of a dispute, payment shall be made on or before the date provided in this Section for amounts not in dispute, subject to any setoffs claimed by the Owner. The Owner shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or the entire amount previously paid to the Builder due to:

- (i) the Builder's failure to perform the Work in compliance with the requirements of the Contract for Construction or any other agreement between the parties;
- (ii) the Builder’s failure to correctly and accurately represent the Work performed in a payment request, or otherwise;
- (iii) the Builder’s performance of the Work at a rate or in a manner that, in the Owner's opinion, is likely to result in the Project or any portion of the Project being inexcusably delayed;
- (iv) the Builder’s failure to use funds previously paid the Builder by the Owner, to pay the Builder’s Project-related obligations including, but not limited to, the Builder’s subcontractors, material men, and suppliers;
- (v) claims made against the Owner;
- (vi) loss caused by the Builder or the Builder’s subcontractors or suppliers; or
- (vii) the Builder’s failure or refusal to perform any of its obligations to the Owner.

15.7 **Correction of Past Payments.** All prior payments, whether based on estimates or otherwise, may be corrected and adjusted in any subsequent payment and shall be corrected and adjusted in the final payment. In the event that any invoice contains a defect or impropriety which would prevent payment by the date due, the Owner shall notify the Builder in writing of such defect or impropriety. Any disputed amounts determined by the Owner to be payable to the Builder shall be invoiced in accordance with the Department of Campus Development & Facilities Construction Project Guide and CM Schedule of Values Invoice form.

15.8 **Invoice Warranties and Guarantees.** The Builder expressly warrants and guarantees to the Owner that:

- (i) title to all goods, products, materials, equipment and systems covered by an



invoice will pass to the Owner either by incorporation into the Work, or upon receipt of payment by the Builder, whichever occurs first;

- (ii) all goods, products, materials, equipment and systems covered by an invoice are free and clear of liens, claims, security interests or encumbrances;
- (iii) no goods, products, materials, equipment or systems covered by an invoice have been acquired by the Builder, or its subcontractors or suppliers, subject to an agreement under which any interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Builder, or its subcontractors or suppliers; and
- (iv) all goods, products incorporated into the Project will be subject to warranties and guarantees as set forth in the Contract Documents.

15.9 **Taxes.** The Builder shall incorporate into the Construction Price, and pay, all sales, consumer, use and similar taxes for goods, products, materials, equipment and systems incorporated into the Work which were legally required at the time of execution of the Contract for Construction, whether or not yet effective or merely scheduled to go into effect. If Owner decides to select its option to undertake a Direct Purchase Program at any time under this contract, the Builder shall cooperate with and assist the Owner in the procurement process for goods, materials, equipment and systems.

15.10 **Compensation of Builder's Subcontractors and Suppliers.** No later than seven (7) business days after receipt of payment from the Owner, the Builder shall pay each of its subcontractors and suppliers out of the amount received by the Builder on account of such subcontractor's or supplier's portion of the Work, the amount to which each entity is entitled, reflecting percentages actually retained from payments to the Builder on account of such entity's portion of the Work, if any. The Owner shall have no obligation to pay, and shall not be responsible for payments to, the Builder's subcontractors or suppliers. However, the Owner reserves the right, but has no duty, to make payment jointly to the Builder and to any of its subcontractors or suppliers in the event that the Owner becomes aware that the Builder failed to pay or unreasonably withheld payment from one or more of those entities. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

15.11 **Retainage.** Retainage shall be withheld from each payment, in an amount not to exceed ten percent (10%) of the approved payment amount. Retainage on payments to Builder shall be processed subject to and in accordance with Florida Statutes Section 255.078, as may be amended from time to time.

15.12 **Final Payment.** Prior to being entitled to receive final payment, and as a condition precedent thereto, the Builder must achieve Final Completion. The Owner shall, subject to its rights set forth above in this Article, make final payment of all sums due the Builder within the terms provided in the Contract for Construction.

ARTICLE 16 SCHEDULE REQUIREMENTS

16.1 **Construction Schedule.** The Construction Schedule shall include all pertinent dates and



periods for timely completion of the Work.

16.1.1 Unless otherwise directed and approved by the Owner, the Builder shall, within fourteen (14) calendar days of the Notice to Proceed, prepare a Construction Schedule with separate divisions for each major portion of the Work or operations. The Construction Schedule shall include and properly coordinate dates for performance of all divisions of the Work, including completion of off-site requirements and tasks, so that the Work can be completed in a timely and orderly fashion consistent with the required dates of Substantial Completion and Final Completion. When preparing the schedule Builder shall consider and account for Owner's operational needs on the site and adjacent thereto, particularly with regard to utility interruptions and access restrictions.

16.1.2 By reviewing the Construction Schedule, the Owner and Design Professional do not assume any of the Builder's responsibility (i) that the Construction Schedule be coordinated or complete; or (ii) for timely and orderly completion by the required dates of Substantial Completion, Final Completion and any milestone dates required by the Owner.

16.1.3 The Builder shall review, on a weekly basis, the actual status of the Work against the Construction Schedule. The Builder shall discuss the status of the Work bi-weekly with the Design Professional and Owner, so that proper overall management may be provided.

16.1.4 The Builder shall periodically and in all instances when the Builder anticipates that performance of the Work will be delayed or in fact has been delayed, but not less frequently than monthly, prepare a revised Construction Schedule and show actual progress of the Work through the revision date, projected completion of each remaining activity, activities modified since previous submittal, major changes in scope, and other identifiable changes. The updated Construction Schedule shall be accompanied by a narrative report which:

- (i) states and explains any modifications of the critical path schedule, including any changes in logic;
- (ii) defines problem areas and lists areas of anticipated delays;
- (iii) explains the anticipated impact the problems and delays will have on the schedule and scheduled activities;
- (iv) reports corrective action taken or proposed; and
- (v) states how problems anticipated by projections shown on the schedule will be resolved to avoid delay in delivering the Work by the required dates of Substantial Completion and Final Completion, and other milestone dates required by the Owner, if any.

16.2 **Delay in Performance.** If at any time the Builder anticipates that performance of the Work will be delayed or in fact has been delayed, the Builder shall (i) immediately notify the Design Professional and the Owner in writing of the probable cause of and effect from the delay, and



possible alternatives to minimize the delay; and (ii) take all corrective actions reasonably necessary to deliver the Work by the required dates of Substantial Completion and Final Completion, and other milestone dates required by the Owner, if any.

16.3 Modifications of Time for Performance. The Builder may submit delay claims or otherwise propose modifications of the required dates of Substantial Completion or Final Completion, or other milestone dates required by the Owner, if any. However, such claims shall be submitted in writing within twenty-one (21) calendar days after occurrence of the event giving rise to such claim by Builder and supported by evidence that the delay was excusable, critical, and compensable. The Builder shall determine and promptly notify the Owner and the Design Professional in writing when it believes such adjustments are necessary, but no such adjustments shall be effective unless approved in writing by the Owner and Design Professional. Once a claim is approved by the Owner it will be deemed final and no further modifications to said claim will be given consideration and for approved.

16.3.1 Modification(s) of the required dates of Substantial Completion or Final Completion shall be accomplished only by duly authorized and accepted change order(s) stating the new date(s) with specificity and reciting that all references in the Contract For Construction to the required dates of Substantial Completion or Final Completion shall thereafter refer to the date(s) as modified, and all rights and obligations, including the Builder's liability for actual damages, delay damages and liquidated damages, shall be determined in relation to the date(s) as modified.

16.4 Early Completion. The Builder may attempt to achieve Substantial Completion before the required date of Substantial Completion. However, such planned early completion shall be for the Builder's sole convenience and shall not create any additional Builder rights or Owner obligations under the Contract for Construction, nor shall it change the required dates of Substantial Completion or Final Completion. The Owner shall not pay the Builder any additional compensation for achievement of Substantial Completion or Final Completion prior to the required dates nor will the Owner owe the Builder any compensation should the Owner cause the Builder not to achieve Substantial Completion earlier than the required date of Substantial Completion, or Final Completion earlier than the required date of Final Completion.

16.5 Document Review. The Builder shall provide documents to the Owner and Design Professional(s) for review in accordance with schedule requirements and with sufficient lead time to allow the Owner and Design Professional reasonable time for review.

ARTICLE 17 TIME OF PERFORMANCE

17.1 Time of the Essence. The parties hereto mutually understand and agree that time is of the essence in the performance of the Contract for Construction with regard to the achievement of the milestones identified in Exhibit B and that the Owner will incur damages if the Work required to achieve the milestones are not completed on time. The Builder shall at all times carry out its duties and responsibilities as expeditiously as possible and shall begin, perform and complete its services so that: (i) the Work progresses in accordance with the Construction Schedule; (ii) the Work is substantially completed by the required date of Substantial Completion; and (iii) the Work is finally complete by the date of Final Completion.



17.2 **Contract Time/Liquidated Damages.** The number of calendar days to complete the project and the Liquidated Damages to be assessed for failure to complete the project within the



time required by the Owner in the Continuing Service Provider project specific contract.

17.3 Delay Claims for Additional Time. The Builder may only submit delay claims on the terms provided herein. Such claims shall be submitted in writing and supported by documentation as required by Owner. Extensions of time will be granted only to the extent that equitable time adjustments for the effected activity or activities exceed the total float along the network paths involved. Such claims shall include an estimate of cost, if any, and substantiate the projected impact on the overall critical path schedule of the Project. In the case of a continuing delay, only one claim is necessary.

17.3.1 If adverse weather conditions are the basis for a delay claim, the claim shall be documented by data substantiating that: the weather conditions were abnormal for the given location and period of time; the weather conditions could not have been reasonably anticipated; and that the weather conditions had an adverse effect on the overall critical path of the schedule. Delays caused by adverse weather conditions are not compensable.

17.4 Compensable Delay. If the Builder is delayed in the progress or performance of the Work by (i) acts or omissions of the Owner or Design Professional; or (ii) major changes ordered by the Owner in the scope of Work or (iii) any other cause beyond Construction Manager's reasonable control which shall justify the compensation of the Builder for the delay, the Builder's compensation shall be equitably adjusted to cover the Builder's actual and direct increased costs attributable to such delay. Except as otherwise provided herein, Builder shall not be entitled to compensation for any other time delay.

17.5 Excusable Delay. If the Builder is delayed in the progress or performance of the Work by (i) acts or omissions of the Owner or Design Professional; (ii) major changes ordered by the Owner in the scope of Work; (iii) fire; (iv) unusual delays in transportation; (v) adverse abnormal weather conditions which could not be reasonably anticipated by the Builder; (vi) unavoidable casualties; (vii) causes beyond the Builder's control which the Owner agrees in writing are justifiable; or (viii) any other cause which the Owner determines in writing may justify the delay, the time for performance may be extended to allow for a demonstrated increase in overall construction duration, which may or may not be equal to the length of such delay, but only if:

- (i) such delay is not concurrent with other, inexcusable delay(s);
- (ii) such delay impacts the critical path;
- (iii) such delay is not in any way caused by default or collusion on the part of the Builder or by any cause which the Builder could reasonably control or circumvent;
- (iv) the Builder would have otherwise been able to timely perform all of its obligations under the Contract for Construction but for such delay; and
- (v) immediately but not later than fourteen (14) calendar days after the beginning of any such delay, the Builder gives written notice of its delay claim to the Owner and the Design Professional. Such time delay claims shall be submitted by change order request. All such claims will be reviewed by the Design Professional within seven (7) days of Design Professional's receipt of the claim. Delay caused by acts of God, acts of government, war or other hostilities, civil disorder, industrial or labor disputes, strikes,

or the like which directly or indirectly involves employees of the Builder or its subcontractors and suppliers is not the responsibility of the Owner and will result in time extensions only if agreed to in writing by the Owner at the time such events arise. Excusable delays are non-compensable.

- 17.6 **Waiver.** Failure of the Builder to comply with any and or all requirements for the submission of any delay Claim under this Section shall constitute a waiver of such claim(s).

ARTICLE 18 CONCEALED AND UNFORESEEN CONDITIONS

- 18.1 **Notification Regarding Concealed and Unforeseen Conditions.** If (i) the Builder encounters concealed and unforeseen conditions of an unusual nature which affect the performance of the Work; or (ii) the conditions vary from those indicated by the Construction Documents; and (iii) such conditions are not ordinarily found to exist or differ materially from those generally recognized as inherent in work of the character provided by the Builder, the Builder shall promptly, but in no event later than three (3) calendar days after first observance of the conditions, notify the Design Professional and the Owner both verbally and in writing before conditions are disturbed and give the Design Professional or the Owner opportunity to observe the condition in its undisturbed state.

- 18.2 **Conditions.** The conditions will be promptly investigated by the Owner and the Design Professional and, if they differ substantially and cause a material increase or decrease in the Builder's cost of, or time required for, performance of the Work, compensation or time for performance or both will be equitably adjusted.

18.2.1 All adjustments in compensation or extensions of time shall be by change order. Change order requests must be made promptly once informed by Design Professional or other professional as to the specific needs to address the concealed or unforeseen condition and in no event longer than 14 calendar days after notice from the Design Professional or other professional.

18.2.2 The Builder's failure to notify the Design Professional and Owner as provided in this Article shall constitute a waiver of any claim by Builder arising out of or relating to such concealed or unknown condition.

ARTICLE 19 PROPRIETARY DOCUMENTS AND CONFIDENTIALITY

- 19.1 **Nature and Use of Information.** All information, documents, and electronic media furnished by the Owner to the Builder (i) belong to the Owner; (ii) are proprietary and confidential; (iii) are furnished solely for use on the Owner's Project; (iv), shall be kept confidential by the Builder; and (v) shall not be used by the Builder on any other project or in connection with any other person or entity, unless disclosure or use thereof in connection with any matter other than services rendered to the Owner hereunder is specifically authorized in writing by the Owner in advance or is required by law. The Owner hereby grants to the Builder a limited license to use and reproduce applicable portions of the Construction Documents necessary for execution of the Work. All copies made under this license shall bear the statutory copyright notice, if any, shown on the documents.



19.2 **Ownership of Information.** All information, documents, and electronic media prepared by or



on behalf of the Builder for the Project are the sole property of the Owner free of any retention rights of the Builder. The Builder hereby grants to the Owner an unconditional right to use, for any purpose whatsoever, any information, documents or electronic media prepared by or on behalf of the Builder for the Project, free of any copyright claims, trade secrets or other proprietary rights with respect to such documents.

- 19.3 **Disclosure of Information.** The Builder shall not disclose any information it receives from the Owner to any other person or entity except to the extent necessary to allow it to perform its duties under the Contract for Construction or as required by law.
- 19.4 **Instructions to Employees.** Because it is difficult to separate proprietary and confidential information from that which is not, the Builder shall instruct its employees and agents to regard all information which is not in the public domain as information which is proprietary and confidential.
- 19.5 **Non-Publication.** Submission or distribution of documents to meet official regulatory requirements or for other required purposes in connection with the Project is not to be construed as publication in derogation of the Owner's common law copyrights or other reserved rights.

ARTICLE 20 INSURANCE REQUIREMENTS

- 20.1 **Basic Insurance Requirements.** In accordance with the Contract for Construction, the Builder is required to procure and maintain throughout each Project the following insurance policies for the joint benefit of the Builder and Owner, with an insurer acceptable to Owner:

20.2 **Types/Amounts of Insurance Required:**

20.2.1 **Commercial General Liability** insurance (occurrence form) including products/completed operations and contractual liability providing coverage in the minimum amount of:

20.2.1.1 For a major project or continuing services projects where the aggregate Construction Price is greater than \$2,000,000: A \$5,000,000 per occurrence liability limit. The deductible amount must be mutually agreed to, in writing, by both Owner and Builder. The per occurrence liability limit may be met with the combination of primary and excess policy limits; or

20.2.1.2 For a major project or continuing services projects where the aggregate Construction Price is \$2,000,000 or less: A \$2,000,000 per occurrence liability limit. The deductible amount must be mutually agreed to, in writing, by both Owner and Builder.

The insurance certificate(s) shall indicate that the Commercial General Liability policy carries an endorsement (no more restrictive than CG 20 10) which names The Florida Polytechnic University Board of Trustees, Florida Polytechnic University, the State of Florida, The Florida Board of Governors, and their respective trustees, directors, officers, employees and agents, as additional insureds. The Builder's policy(ies) shall be primary and any insurance carried by Owner shall be noncontributing with respect

thereto. In addition, the policy shall contain the following endorsements: “XCU” (explosion, collapse, underground damage) for those classifications excluded under the policy and contractual liability. If Builder is performing asbestos-related work, the policy shall also contain a pollution liability endorsement; and

- 20.2.2 **Auto Liability** insurance covering Builder owned, non-owned and leased vehicles shall provide a minimum combined single limit of \$1,000,000 each accident. The deductible amount must be mutually agreed to, in writing, by both Owner and Builder. The insurance certificate(s) shall indicate that the Auto Liability policy carries an endorsement which names The Florida Polytechnic University Board of Trustees, Florida Polytechnic University, the State of Florida, The Florida Board of Governors, and their respective trustees, directors, officers, employees and agents, as additional insureds. The Builder’s policy(ies) shall be primary and any insurance carried by Owner shall be noncontributing with respect thereto; and
- 20.2.3 **Workers’ Compensation** insurance which complies with the requirements of Chapter 440, Florida Statutes; and
- 20.2.4 **Design Professional Liability** insurance (occurrence form) or if the insurance is written on a claims-made form, it shall continue for five (5) years following the completion of the performance or the attempted performance of this agreement. The insurance shall have a retroactive date of placement prior to or coinciding with the effective date of this agreement. If the coverage is canceled or non-renewed and not replaced with another claims-made policy form with a retroactive date prior to the effective date or coinciding with the effective date of this agreement the Builder must purchase Extended Reporting (“Tail”) coverage for a minimum of five (5) years following the completion of the performance or the attempted performance of the provisions of this agreement, providing coverage in the amount of:
- 20.2.4.1 For projects where the Construction Price is greater than \$2,000,000: A \$5,000,000 per occurrence liability limit is required;
- 20.2.4.2 For projects where the Construction Price is \$2,000,000 or less: A \$2,000,000 per occurrence liability limit is required; and
- 20.2.5 **Builder’s Risk** insurance, at replacement cost, covering the full GMP contract value for the construction being performed, including, the existing structure, if applicable. Such builder’s risk policy shall be written on an All-Risk Form that includes Windstorm as a covered loss and shall only contain exclusions acceptable to Owner in writing, and shall include coverage for reasonable compensation for the Construction Manager for Design Professional and expenses required as a result of such insured loss. This insurance shall insure the interests of the Builder, subbuilders, and sub-subbuilders in the Project. Property covered by the builder’s insurance shall include Owner’s Direct Purchase Materials whether stored on or off-site and temporary building(s) or structure(s) at the Project site, other than any of Builder’s office trailer(s). In addition, such builder’s risk insurance shall cover portions of the Project stored off the site, after the written approval of the Owner, at the value established in the approval, and portions of the Project in transit. The Florida Polytechnic University Board of Trustees, Florida Polytechnic University, the State of Florida, The Florida Board of Governors

and their respective trustees, directors, officers, employees and agents shall be named as additional insureds on such policy. The policy shall include a waiver of subrogation endorsement. Builder's Risk insurance deductibles shall be subject to the following requirements:

20.2.5.1 For projects where the Construction Price is greater than \$2,000,000: the deductible under this policy shall not exceed \$250,000 for Flood, five percent (5%) of the value of the Project at the time of the loss or a minimum of \$250,000 for Windstorm and \$10,000 for all other perils unless otherwise agreed to by the parties in the GMP Amendment; and

20.2.5.2 For projects where the Construction Price is \$2,000,000 or less: the deductible under this policy shall not exceed \$50,000 for Flood: five percent (5%) of the value of the Project at the time of the loss or a maximum of up to \$50,000 for Windstorm; and a maximum of up to \$5,000 for all other perils.

20.2.5.3 When the Project includes the repair, removal, installation and for testing of live steam boilers, valves, pipes or lines then such insurance shall include testing and start-up coverage, written on the ISO form or its equivalent. A loss or losses insured under this insurance policy shall be adjusted by the Builder and its insurance company. The Builder shall repair or replace the damaged property with the proceeds from the builder's risk policy. The Builder is responsible for all damages and necessary repairs whether or not the loss is covered in the builders' risk policy; and

20.2.5.4 Notwithstanding the above Builder's Risk provisions, Owner has the option, at its sole discretion, to procure a Builder's Risk Insurance policy for the Project, in which event, the Owner shall notify the Builder in writing and this Article 20.2.5 shall not be applicable.

20.2.5.5 If relevant to the Project – Builder will obtain **Pollution, Environmental Impairment, and/or Asbestos Pollution** Liability coverage in the minimum amount of \$1,000,000 per occurrence and \$2,000,000 policy aggregate, coverage to be maintained for a minimum of five (5) years after Project completion.

20.3 Requirements Pertaining to all Insurance Required under this Section:

20.3.1 All insurance policies shall be issued and countersigned by duly authorized representatives of such companies and the Commercial General Liability and Automobile Liability shall be written on ISO standard forms or their equivalent. Additionally, all insurance under this Section must be issued by an insurance company authorized to do business in the State of Florida and have an AM Best rating of A-, VII or higher. The insurance certificate(s) shall provide that any such insurance policy(ies) shall not be canceled, terminated, non-renewed, or materially changed without thirty (30) days' prior written notice to the Owner. In addition, the Builder shall require all subcontractors, consultants, and agents providing services on the Project to carry any and all insurance coverage that adequately covers each consultant's exposure based on the type of services they are providing in connection with the Project. In



addition, the Builder shall notify the Owner, in writing, of any reduction in the aggregate coverage provided by the Builder insurance within (30) days after each such revision in coverage. In the event the Builder or its consultants fail to maintain the insurance required hereby, the Owner may, at its discretion, pay any premium necessary to maintain the coverage required hereby and deduct such premium costs from the Builder fees under this Agreement.

20.3.2 The Builder shall release and discharge the Owner and the Owner's Related Parties of and from all liability to the Builder, and to anyone claiming by, through or under the Builder, by subrogation or otherwise, on account of any loss or damage to tools, machinery, and equipment or other property, however caused. The Builder shall cause its builder's risk property insurance company to issue a waiver of subrogation consistent with this provision.

20.3.3 Builder must provide the Owner with a Certificate(s) of Insurance(s) reflecting all of the insurance coverages satisfying the above requirements not later than 10 days after the Effective Date of this Agreement and prior to commencement of any operations or activities hereunder. Additionally, the insurance required under this Agreement shall be carried by the Builder at least until the Project is Substantially Completed and accepted by the Owner.

20.3.4 Owner shall not be liable for amounts that may represent a deductible in any insurance policy, except for the Builder's Risk Policy. With regard to the Builder's Risk Policy only, the payment of any required deductible is the responsibility of the Owner. The Builder shall fully and timely cooperate with the Owner in filing claims on any deductible amounts claimed under Builder's Risk for damages sustained in the event of a loss.

20.3.5 The absence of a demand for any type of insurance certificates or policy or insurance condition, or for higher coverage limits shall not be construed as a waiver of the Builder obligations to carry and maintain the appropriate types of insurances at limits that are appropriate to the liability exposure associated with this Agreement. Owner does not represent that coverage and the limits specified herein will necessarily be adequate to cover Builder liability.

20.4 **Effect of Insurance.** Compliance with insurance requirements shall not relieve the Builder of any responsibility to indemnify the Owner for any liability to the Owner as specified in any other provision of the Contract for Construction, and the Owner is entitled to pursue any remedy in law or equity if the Builder fails to comply with the contractual provisions of the Contract for Construction. Indemnity obligations specified elsewhere in the Contract for Construction shall not be negated or reduced by virtue of any insurance carrier's (i) denial of insurance coverage for the occurrence or event which is the subject matter of the claim; or (ii) refusal to defend any named insured.

20.5 This entire Article 20 shall survive expiration of the Contract for Construction.

ARTICLE 21 GENERAL BOND REQUIREMENTS

21.1 General Bond Requirements. Recognizing the Project is a public project with a Construction



Price which exceeds \$100,000.00, and as such is required to be bonded pursuant to 255.05, Florida Statutes, the Builder shall furnish Payment and Performance bonds in a form acceptable to the Owner covering the full and faithful performance of the Contract for Construction and the payment of obligations arising hereunder. Prior to commencement of any construction work, Builder shall provide to Owner certified copies of the recorded Performance and Payment Bonds for the Project.

21.2 Requests for Copies of Bonds. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract for Construction, the Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

21.3 Delivery of Bonds. The Builder shall deliver required bonds and powers of attorney to the Owner prior to commencement of the Work.

ARTICLE 22 OWNER'S RIGHT TO STOP WORK

22.1 Cease and Desist Order. If the Builder fails or refuses to perform or fails to correct defective Work as required, or persistently fails to carry out the Work in accordance with the Contract For Construction, the Owner may, by written notice, order the Builder to cease and desist in performing the Work or any portion of the Work until the cause for the order has been eliminated to the satisfaction of the Owner. Upon receipt of such instruction, the Builder shall immediately cease and desist as instructed by the Owner and shall not proceed further until the cause for the Owner's order has been corrected, no longer exists, or the Owner instructs that the Work may resume.

22.1.1 The Builder shall not be entitled to an adjustment in the time for performance or the Construction Price under this clause since such stoppages are considered to be the fault of the Builder.

22.1.2 The right of the Owner to stop Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Builder or others.

22.1.3 In the event the Owner issues instructions to cease and desist, and in the further event that the Builder fails and refuses within seven (7) calendar days to provide adequate assurance to the Owner that the cause of such instructions will be eliminated or corrected, then the Owner shall have the right, but not the obligation, to carry out the Work or any portion of the Work with its own forces, or with the forces of another builder, and the Builder shall be responsible for the cost of performing such Work (including compensation for the Design Professional's additional services and expenses made necessary by such default, neglect or failure) by the Owner.

22.1.4 The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the Owner may have against the Builder.

ARTICLE 23 TERMINATION OR SUSPENSION OF CONTRACT FOR CONSTRUCTION

23.1 Termination for Cause by Owner.

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23.1.1 The Owner may terminate the Contract for Construction for cause if the Builder materially breaches the Contract for Construction by:

- (i) refusing, failing or being unable to properly manage or perform on any Project;
- (ii) refusing, failing or being unable to supply the Project with sufficient numbers of workers, properly skilled workers, proper materials to maintain applicable schedules;
- (iii) refusing, failing or being unable to make prompt payment to subcontractors or suppliers;
- (iv) disregarding laws, ordinances, rules, regulations or orders of any public authority or quasi-public authority having jurisdiction over the Project;
- (v) refusing, failing or being unable to substantially perform in accordance with the terms of the Contract For Construction as determined by the Owner, or as otherwise defined elsewhere herein; or
- (vi) refusing, failing or being unable to substantially perform in accordance with the terms of any other agreement between the Owner and Builder.

23.1.2 Upon the occurrence of any of the events described in Paragraph 23.1.1, the Owner may give written notice to the Builder setting forth the nature of the default and requesting cure within seven (7) calendar days from the date of notice. At any time thereafter, if the Builder fails to initiate the cure or if the Builder fails to expeditiously continue such cure until complete, the Owner may give written notice to the Builder of immediate termination, and the Owner, without prejudice to any other rights or remedies, may take any or all of the following actions:

- (i) complete all or any part of the Work, including supplying workers, material and equipment which the Owner deems expedient to complete the Work;
- (ii) contract with others to complete all or any part of the Work, including supplying workers, material and equipment which the Owner deems expedient to complete the Work;
- (iii) take such other action as is necessary to correct such failure;
- (iv) take possession of all materials, tools, construction equipment and machinery on the Site owned or leased by the Builder;
- (v) finish the Work by whatever method the Owner may deem expedient; and
- (vi) require the Builder to assign the Builder's right, title and interest in any or all of Builder's subcontracts or orders to the Owner.



possession of all materials, tools, construction equipment and machinery on the Site owned or leased by the Builder, the Builder's compensation shall be increased by fair payment, either by purchase or rental at the election of the Owner, for any materials, tools, construction equipment and machinery items retained, subject to the Owner's right to recover from the Builder the Owner's damages resulting from the termination.

23.1.4 If the Owner terminates the Contract for Construction for cause, and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, then in such event, said termination shall be deemed a termination for convenience as set forth in Paragraph 24.3.

23.2 Termination for Cause by Builder.

23.2.1 The Builder may terminate the Contract for Construction for cause if the Owner materially breaches the Contract for Construction by:

- (i) refusing, failing or being unable to make payment within the terms set forth in the Contract for Construction and these General Terms and Conditions to the Builder without just cause;
- (ii) refusing, failing or being unable to substantially perform in accordance with the terms of the Contract for Construction.

23.2.2 Upon the occurrence of any of the events described in Paragraph 23.2.1, the Builder may give written notice to the Owner setting forth the nature of the default and requesting cure within seven (7) calendar days from the date of notice. If the Owner fails to cure the default within seven (7) calendar days, the Builder, without prejudice to any rights or remedies, may give written notice to the Owner of immediate termination.

23.3 **Termination or Suspension for Convenience.** The Owner may at any time give written notice to the Builder terminating the Contract for Construction or suspending the Project, in whole or in part, for the Owner's convenience and without cause. If the Owner suspends the Project for convenience, the Builder shall immediately reduce its staff, services and outstanding commitments in order to minimize the cost of suspension.

23.4 **Builder's Compensation when Builder Terminates for Cause or Owner Terminates for Convenience.** If the Contract for Construction is (i) terminated by the Builder pursuant to Paragraph 23.2; (ii) terminated by the Owner pursuant to Paragraph 23.3; or (iii) suspended more than ninety (90) calendar days by the Owner pursuant to Paragraph 23.3, the Owner shall pay the Builder specified amounts due for Work actually performed and accepted by the Owner prior to the effective termination date and Builder's actual reasonable documented costs directly associated with this termination or suspension whichever is applicable and subject to Owners prior review and approval of same.

23.5 **Builder's Compensation when Owner Terminates for Cause.** If the Contract for Construction is terminated by the Owner for cause pursuant to Paragraph 23.1, no further payment shall be made to the Builder until Final Completion of the Project. At such time, the Builder shall be paid the remainder of the Construction Price less all costs and damages incurred by the Owner as a



result of the default of the Builder, including liquidated damages applicable thereto. The Builder shall additionally reimburse the Owner for any additional costs or expenses incurred.

23.6 Limitation on Termination Compensation. Irrespective of the reason for termination or the party terminating, the total sum paid to the Builder shall not exceed the Construction Price, as properly adjusted, reduced by the amount of payments previously made and penalties or deductions incurred pursuant to any other provision of the Contract for Construction, and shall in no event include duplication of payment.

23.7 Builder's Responsibility upon Termination. Irrespective of the reason for termination or the party terminating, if the Contract for Construction is terminated, the Builder shall, unless notified otherwise by the Owner:

- (i) immediately stop work;
- (ii) terminate outstanding orders and subcontracts;
- (iii) settle the liabilities and claims arising out of the termination of subcontracts and orders; and
- (iv) transfer title and deliver to the Owner such completed or partially completed Work, and, if paid for by the Owner, materials, equipment, parts, fixtures, information and such contract rights as the Builder has.

23.8 Lack of Duty to Terminate. The right to terminate or suspend the Work shall not give rise to a duty on the part of either the Owner or the Builder to exercise that right for the benefit of the Owner, the Builder or any other persons or entities.

23.9 Limitation on Termination Claim. If the Builder fails to file a claim within one year from the effective date of termination, the Owner shall pay the Builder only for services actually performed and expenses actually incurred prior to the effective termination date.

ARTICLE 24 DISPUTE RESOLUTION

24.1 Mutual Discussion. In case of any dispute, claim, question or disagreement arising from or relating to the Project or arising out of the Contract for Construction or the breach thereof, the parties shall first attempt resolution through mutual discussion.

24.2 Performance During Dispute Resolution. The Owner and the Builder agree that pending the resolution of any dispute, controversy, or question, the Owner and the Builder shall each continue to perform their respective obligations without interruption or delay, and the Builder shall not stop or delay the performance of the Work.

24.3 Litigation/Administrative Action. Disputes, claims, or any other matters shall be determined under the judiciary system of the State of Florida and Florida law shall apply. The venue of any and all actions pertaining to this Contract for Construction shall be in Polk County, Florida.

**ARTICLE 25
DAMAGES AND REMEDIES**

- 25.1 **Builder's Repair.** The Builder shall, at its expense, promptly correct, repair, or replace all goods, products, materials, systems, labor and services to the Work, existing facilities or other property at the site or adjacent thereto which do not comply with the Construction Documents, the warranties and guarantees set forth therein, or any other applicable warranty or guarantee.
- 25.2 **Builder's Reimbursement.** The Builder shall promptly reimburse the Owner for any expenses or damages incurred by the Owner as a result of: (i) the Builder's failure to substantially perform in accordance with the terms of the Contract for Construction; (ii) deficiencies or conflicts in the Construction Documents attributable to the Builder or of which the Builder was or should have been aware; (iii) breach of the warranties and guarantees set forth in the Contract for Construction or any other applicable warranty or guarantee; or (iv) other acts or omissions of the Builder.
- 25.3 **Intellectual Property Indemnity.** To the fullest extent permitted by law, the Builder shall defend, protect, hold harmless, and indemnify the Owner and Owner's Related Parties from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, for infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by the Owner or Design Professional(s) in writing. If the Builder has reason to believe the use of a required design, process or product is an infringement of a patent, the Builder shall be responsible for such loss unless such information is promptly given to the Owner.
- 25.4 **Non-Exclusivity of Owner's Remedies.** The Owner's selection of one or more remedies for breach of the Contract for Construction contained herein shall not limit the Owner's right to invoke any other remedy available to the Owner under the Contract for Construction or by law, or in equity.
- 25.5 **Waiver of Damages.** The Builder shall not be entitled to, and hereby waives any monetary claims for or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any indirect consequential damages.

**ARTICLE 26
MISCELLANEOUS PROVISIONS**

- 26.1 **Integration.** The Contract for Construction, which incorporates this General Terms and Conditions and the Construction Documents, represents the entire agreement between the Owner and the Builder, and supersedes all prior negotiations, representations or agreements, either written or oral, for the Project. The Contract for Construction may be amended only by written instruments signed by both the Owner and the Builder.
- 26.2 **Severability.** If any provision of the Contract for Construction, or the application thereof, is determined to be invalid or unenforceable, the remainder of that provision and all other



provisions shall remain valid and enforceable.

- 26.3 **Waiver.** No provision of the Contract for Construction may be waived except by written agreement of the parties. A waiver of any provision on one occasion shall not be deemed a waiver of that provision on any subsequent occasion, unless specifically stated in writing. A waiver of any provision shall not affect or alter the remaining provisions of the Contract for Construction.
- 26.4 **Strict Compliance.** No failure of the Owner to insist upon strict compliance by the Builder with any provision of the Contract for Construction shall operate to release, discharge, modify, change or affect any of the Builder's obligations.
- 26.5 **Third-Party Beneficiaries.** The Contract for Construction shall inure solely to the benefit of the parties hereto and their successors and assigns, and, except as otherwise specifically provided in the Contract for Construction, nothing contained in the Contract for Construction is intended to or shall create a contractual relationship with, or any rights or cause of action in favor of, any third party against either the Owner or the Builder.
- 26.6 **Assignment of Anti-Trust Claims.** In consideration for the Contract for Construction, the Builder hereby conveys, sells, assigns and transfers to the Owner all of its right, title and interest in and to any and all causes of action it may now have or may hereafter acquire under the antitrust laws of the United States and the State of Florida for price fixing, relating to the goods or services purchased or acquired by the Owner under the Contract for Construction.
- 26.7 **Drug Free Workplace.** If required pursuant to 440.102(15), Florida Statutes, Builder shall implement, and cause its applicable subcontractors to implement, a drug-free workplace program.
- 26.8 **Survival.** All provisions of the Contract for Construction which contain continuing obligations shall survive its expiration or termination.
- 26.9 **Independent Contractor.** Builder is an independent contractor to Owner

Attachment D- General Terms and Conditions

1. General Terms.

The following are the terms and conditions that will become part of any agreement consummated between the University and the awarded Respondent. In the event of a conflict between any provisions contained in any of the documents governing this transaction, the following will be the order of precedence: the Agreement; the Solicitation; the final response.

2. Actions of Awarded Respondent.

The University is under no obligation whatsoever to be bound by the actions of the awarded Respondent with respect to third parties. The awarded Respondent is not an agent of the University.

3. Americans with Disabilities Act.

The awarded Respondent must comply with all applicable provisions of the Americans with Disabilities Act and applicable federal regulations under the Act.

4. Availability of Funds.

The State of Florida's and University's performance and obligation to pay under this agreement is contingent upon sufficient appropriation by the Florida Legislature and other entities' allowance of the University to use such funds. University's financial obligations continue under this Agreement are conditioned upon the appropriation of funds on an annual basis, which is not controlled by the University. In the event that the entities controlling such funding fail to appropriate funds or to allow University to use funds and University has determined, in University's sole discretion, that there are insufficient funds available to cover University's obligation under this Agreement, University will have the right to terminate this Agreement for the upcoming year without damage, penalty, cost, or further obligation. University will notify Contractor at least 30 day in advance of a termination pursuant to this provision; University must pay for all services rendered until the date of termination.

5. Assignment.

The awarded Respondent may not assign any obligations or rights under the agreement without express written permission from the University and any attempted assignment is void.

6. Background Check.

All of Respondent's employees who enter the University campus or premises must have passed an employer background check and must not be listed on the Florida or National Sex Offenders Registry.

7. Confidentiality of Information.

If awarded Respondent is exposed to University's confidential information (such as donor information), awarded Respondent will keep such information confidential and will act in accordance with any guidelines and applicable laws including the Family Educational Rights and Privacy Act (FERPA) and the Gramm-Leach Bliley Act

8. Contractor.

Awarded Respondent is retained by University only for those purposes and to the extent set forth in this Agreement, and awarded Respondent's relationship to University will, during the term of this Agreement, be that of independent Contractor. Awarded Respondent is not and will not be considered as having an employee status. Awarded Respondent is responsible for the payment of any taxes on any monies received by awarded Respondent.

9. Copyright and Intellectual Property.

- a. If awarded Respondent uses copyrighted materials or documents not owned by University ("Copyrighted Materials") in its performance of the Agreement, awarded Respondent represents and warrants that it owns, or is licensed to use and to authorize others to use, the Copyrighted Materials.
- b. Awarded Respondent will, at its expense, defend any suit brought against University and will indemnify University against an award of damages and costs, including attorney's fees, made against University by a settlement or final judgment that is based on a claim that University's use of the Copyrighted Materials infringes a trademark or copyright of a third party.
- c. Any reports or deliverables provided to the University pursuant to this agreement are considered as works for hire, and the University may use such reports or deliverables for any purposes.

10. Default.

The University reserves the right to terminate the agreement in whole or in part due to the failure of the awarded Respondent to comply with any term or condition of the agreement, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the agreement. The University shall provide written notice of the termination and the reasons for it to the awarded Respondent.

11. Equal Opportunity Statement.

The awarded Respondent and any subcontractors must abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a), and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as qualified protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or veteran status.

12. E-Verify.

All terms defined in section 448.095, Florida Statutes are adopted and incorporated into this provision. Pursuant to section 448.095, Florida Statutes, Contractor certifies that it is registered with and uses the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of this agreement. If Contractor enters into a contract with a subcontractor to perform work or provide services pursuant to this agreement, Contractor must also require the subcontractor to comply with the requirements of section 448.095, Florida Statutes. The subcontractor must provide to Contractor an affidavit stating that the subcontractor does not employ, contract with, or subcontract with or to any unauthorized alien. Contractor must maintain a copy of such affidavit for the duration of the contract. University may terminate this agreement immediately upon notice to Contractor for any violation of this provision.

13. Federal, State, Local Laws, and Regulation.

The awarded Respondent and any subcontractors must comply with all laws, ordinances, and regulations that apply to the University and awarded Respondent. The awarded Respondent is



solely responsible for keeping itself fully informed of and faithfully observing all laws, ordinances, and regulations and agrees to protect and indemnify the University, its officers, and agents against any claims of liability arising from or based on any violation thereof.

14. Force Majeure.

In the event compliance with any obligation under the agreement is impractical or impossible due to any Event of Force Majeure, then the time for performance of such obligation shall be extended for a period equivalent to the duration of the Event of Force Majeure. The provisions of this section shall not operate to excuse either party's inability to perform its obligations hereunder because of inadequate finances. "Event of Force Majeure:" means any strike, lockout, labor dispute, embargo, flood, earthquake, storm, dust storm, lightning, fire, epidemic, act of God, war, national emergency, civil disturbance or disobedience, riot, sabotage, terrorism, restraint by governmental order or any other occurrence beyond the reasonable control of the party in question.

15. Governing Law.

This Agreement and any amendments to it are governed by the laws of the State of Florida and venue for any actions arising out of this agreement must be in the state courts in Polk County, Florida.

16. Indemnification/Hold Harmless.

- a. The awarded Respondent agrees to indemnify, defend, and hold harmless the Board of Trustees, Florida Polytechnic University, the State of Florida and the Florida Board of Governors, and their officers, agents, and employees from any and all claims, demands, suits, actions, proceedings, loss, cost, and damages of every kind and description, including attorneys' fees and/or litigation expenses, which may be brought or made against or incurred on account of loss of or damage to any property or for injuries to or death of any person, caused by, arising out of, or contributed to, in whole or in part, by reasons of any act, omission, professional error, fault, mistake, or negligence of awarded Respondent, its employees, agents, representatives, or subcontractors, their employees, agents, or representatives in connection with or incident to the performance of the Agreement.
- b. The awarded Respondent's obligation under this provision does not extend to any liability caused by the sole negligence of the Florida Polytechnic University, or its officers, agents, and employees.

- c. Nothing in this agreement may be construed as an indemnification of the Contractor by the University or as a waiver of sovereign immunity beyond that provided in section 768.28, Florida Statutes.
- d. This provision will survive the termination of this agreement.
- e. Due to its sovereign immunity, University will not indemnify Contractor.

17. Insurance.

This section pertains to the Successful Respondent.

Design-Builder shall at all times during the term of this Contract procure prior to commencement of Services and maintain at its sole expense during the life of this Contract (and Design-Builder shall require its, subcontractors, laborers, materialmen and suppliers to provide, as applicable), insurance of the types and limits not less than amounts stated below:

Insurance Coverages

Schedule	Limits
Worker's Compensation	Florida Statutory Coverage
Employer's Liability	\$1,000,000 Each Accident
	\$1,000,000 Disease Policy Limit
	\$1,000,000 Each Employee/Disease

This insurance shall cover Florida Polytechnic University Board of Trustees (and to the extent they are not otherwise insured, their Contractors and subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers' Compensation policy

Commercial General Liability	\$3,000,000 General Aggregate
	\$3,000,000 Products & Comp. Ops. Agg.
	\$1,000,000 Personal/Advertising Injury
	\$1,000,000 Each Occurrence
	\$50,000 Fire Damage
	\$5,000 Medical Expenses

Design-Builder shall continue to maintain products/completed operations coverage for a period of ten (10) years after the final completion of the Project. The amount of products/completed operations coverage maintained during the ten (10) year period shall be not less than the combined limits of Products/ Completed Operations coverage required to be maintained by Design-Builder in the combination of the Commercial General Liability coverage and Umbrella Liability Coverage during the performance of the Services.

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form as filed for use in the State of Florida without

any restrictive endorsements other than those reasonably required by Florida Polytechnic University Board of Trustees.

Automobile Liability \$1,000,000 Combined Single Limit

Coverage for all automobiles, owned, hired or non-owned used in performance of the Contract. Such insurance shall be no more restrictive than that provided by the most recent version of the standard Business Auto Coverage Form as filed for use in the State of Florida without any restrictive endorsements other than those which are required by the State of Florida, or equivalent.

Design Professional Liability \$5,000,000 per Claim
\$10,000,000 Aggregate

Any entity hired to perform professional services as a part of this Contract shall maintain professional liability coverage on an Occurrence Form or a Claims Made Form with a retroactive date to at least the first date of this Agreement and with a ten (10) year reporting option beyond the annual expiration date of the policy.

Builders Risk 100% Completed Value of the Project

Such insurance shall be on a form acceptable to Florida Polytechnic University Board of Trustees. The Builder's Risk policy shall include the SPECIAL FORM/ALL RISK COVERAGES. The Builder's Risk and/or Installation policy shall not be subject to a coinsurance clause. A maximum \$10,000 deductible for other than windstorm and hail. For windstorm and hail coverage, the maximum deductible applicable shall be 2% of the completed value of the Project.

Named insured's shall be: Florida Polytechnic University Board of Trustees, Design-Builder, and respective members, officials, officers, employees and agents and the Engineer, and the Program Management Firms(s) (when program management services are provided).

The Florida Polytechnic University Board of Trustees, its members, officials, officers, employees and agents are to be named as a loss payee.

Pollution Liability \$5,000,000 per Loss
\$5,000,000 Annual Aggregate

Any entity hired to perform services as part of this Contract for environmental or pollution related concerns shall maintain Pollution Liability coverage. Such Coverage will include bodily injury, sickness, and disease, mental anguish or shock sustained by any person, including death; property damage including physical injury to destruction of tangible property including resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured

or destroyed; defense including costs charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages; coverage for losses caused by pollution conditions that arises from the operations of the Design-Builder including transportation.

Pollution Legal Liability	\$5,000,000 per Loss \$5,000,000 Aggregate
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Any entity hired to perform services as a part of this Contract that require disposal of any hazardous material off the job site shall maintain Pollution Legal Liability with coverage for bodily injury and property damage for losses that arise from the facility that is accepting the waste under this Contract.

Umbrella Liability	\$10,000,000 Each Occurrence/ Aggregate.
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The Umbrella Liability policy shall be in excess of the above limits without any gap. The Umbrella coverage will follow-form the underlying coverages and provides on an Occurrence basis all coverages listed above.

Additional Insurance Provisions

A. Additional Insured: All insurance except Worker’s Compensation and Professional Liability shall be endorsed to name Florida Polytechnic University Board of Trustees their members, officials, officers, directors, employees and agent .

B. Waiver of Subrogation. All required insurance policies shall be endorsed to provide for a waiver of underwriter’s rights of subrogation in favor of Florida Polytechnic University Board of Trustees their members, officials, officers, directors, employees and agents .

C. Design-Builder’s Insurance Primary. The insurance provided by Design-Builder shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by Florida Polytechnic University Board of Trustees their members, officials, officers, directors, employees and agents .

D. Deductible or Self-Insured Retention Provisions. All deductibles and self-insured retentions associated with coverages required for compliance with this Contract shall remain the sole and exclusive responsibility of the named insured. Under no circumstances Florida Polytechnic University Board of Trustees their members, officials, officers, directors, employees and agents be responsible for paying any deductible or self-insured retentions related to this Contract.

E. Insurance Additional Remedy. Compliance with the insurance requirements of this Contract



shall not limit the liability of Design-Builder, Subcontractors, employees or agents to The Florida Polytechnic University Board of Trustees. Any remedy provided to Florida Polytechnic University Board of Trustees their members, officials, officers, directors, employees and agents shall be in addition to and not in lieu of any other remedy available under this Contract or otherwise.

F. Waiver/Estoppel. Neither approval by The Florida Polytechnic University Board of Trustees nor failure to disapprove the insurance furnished by Design-Builder shall relieve Design-Builder of its full responsibility to provide insurance as required under this Contract.

G. Certificates of Insurance. Design-Builder shall provide The Florida Polytechnic University Board of Trustees Certificates, Additional Insureds as provided above and waivers of subrogation. The certificates of insurance shall be mailed:

FLORIDA POLYTECHNIC UNIVERSITY
Procurement Department
c/o Wellness Center Mail Room
4550 Research Way
Lakeland, Florida 33805-8531

H. Carrier Qualifications. The above insurance shall be written by an insurer holding a current certificate of authority pursuant to chapter 624, Florida State or a company that is declared as an approved Surplus Lines carrier under Chapter 626 Florida Statutes. Such Insurance shall be written by an insurer with an A.M. Best Rating of A- VII or better.

I. Notice. Design-Builder shall provide an endorsement issued by the insurer to provide The Florida Polytechnic University Board of Trustees thirty (30) days prior written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal. If such endorsement is not provided, Design-Builder shall provide a thirty (30) days written notice of any change in the above coverages or limits, coverage being suspended, voided, cancelled, including expiration or non-renewal.

J. Survival. Anything to the contrary notwithstanding, the liabilities of Design-Builder shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage.

K. Additional Insurance. Depending upon the nature of any aspect of any project and its accompanying exposures and liabilities, The Florida Polytechnic University Board of Trustees may reasonably require additional insurance coverages in amounts responsive to those liabilities, which

may or may not require The Florida Polytechnic University Board of Trustees also be named as an additional insured.

L. Special Provisions: Prior to executing this Contract, DESIGN BUILDER shall present the Contract and all information listed under this section to its Insurance Agent affirming: 1) The Agent has personally reviewed the insurance requirements of the Project Documents, and(2) The Agent is capable (has proper market access) to provide the coverages and limits of liability required on behalf of Design Builder.

Bonds and Other Performance Security.

Design-Builder shall not perform or commence any construction services for any Phase of the Services until the following performance bond and labor and material payment bond or other performance security have been delivered to The Florida Polytechnic University Board of Trustees: Bonds - In accordance with the provisions of Section 255.05, Florida Statutes, Design-Builder shall provide to The Florida Polytechnic University Board of Trustees forms furnished by the State of Florida, a 100% Performance Bond and a 100% Labor and Material Payment Bond for each Phase of the Services performed under this Contract, each in an amount not less than an amount at least equal to the amount of the Direct Costs for the construction of the Improvements no qualification or modifications to the Bond forms are permitted.

To be acceptable to The Florida Polytechnic University Board of Trustees as Surety for Performance Bonds and Labor and Material Payment Bonds, a Surety Company shall comply with the following provisions:

1. The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.
2. The Surety Company shall have a currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
3. The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
4. The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code during the life of this Contract.
5. If the Contract Award Amount exceeds \$200,000, the Surety Company shall also comply with the following provisions:
 - a. The Surety Company shall have at least the following minimum ratings in the latest issue of A.M.

Best's Key Rating Guide.

CONTRACT AMOUNT RATING

\$ 500,000 TO \$1,000,000 A- CLASS IV
\$1,000,000 TO \$2,500,000 A- CLASS V
\$2,500,000 TO \$5,000,000 A- CLASS VI
\$5,000,000 TO \$10,000,000 A- CLASS VII
\$10,000,000 TO \$25,000,000 A- CLASS VIII
\$25,000,000 TO \$50,000,000 A- CLASS IX
\$50,000,000 TO \$75,000,000 A- CLASS X

b. The Surety Company shall not expose itself to any loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:

1) Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance to conduct business in this state have been met.

2) In the case of the surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.

18. Licensing Requirements.

To the extent applicable, awarded Respondent must have all appropriate licenses to conduct business in the State of Florida and Polk County at or prior to award of a Contract/Lease and maintain such licenses for so long as necessary or required. Respondent must provide proof of such to the University as a condition of award of a Contract/Lease Agreement and provide proof of such license to the University upon request thereafter.

19. Notices.

- a. Any notice to either party must be in writing and signed by the party giving it, and served:
 - i. By hand notice; or
 - ii. Through the United States Mail, postage prepaid, registered or certified, return receipt requested; or
 - iii. Through expedited mail or package service, if a receipt showing the delivery has been retained; or



iv. By e-mail and addressed as follows:

To UNIVERSITY:

The Florida Polytechnic University
Board of Trustees
Attn: Procurement Department
4700 Research Way
Lakeland, FL 33805

E-mail: procurement@floridapoly.edu

To Awarded Respondent:

Name: _____

Address: _____

Attn: _____

E-mail: _____

CONTRACT MANAGER:

Attn: David Calhoun

Email: dcalhoun@floridapoly.edu

20. Parking.

The awarded Respondent will ensure that all of the Respondent's and Respondent's employees', agents', and subcontractors' vehicles parked on the University premises have proper parking permits. All such vehicles must be registered with and have parking permits purchased from the University's Parking and Transportation Services. Respondent and Respondent's employees, agents and subcontractors will observe all parking regulations. The failure to comply with the University's parking regulations could result in the ticketing and/or the towing of the vehicles.

21. Public Records Contract for Services: Compliance with section 119.0701, Florida Statutes.

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:

Florida Polytechnic University
Attn: Office of the General Counsel

4700 Research Way
Lakeland, FL 33805
ogc@floridapoly.edu
(863) 874-8412

To the extent that Respondent meets the definition of “contractor” under section 119.0701, Florida Statutes, in addition to other contract requirements provided by law, Respondent must comply with public records laws, including the following provisions of section 119.0701, requiring Respondent to:

- A. Keep and maintain public records required by University to perform the service.
- B. Upon request from the University’s custodian of public records, provide the University with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in chapter 119, Florida Statutes, or as otherwise provided by law.
- C. Ensure that confidential information or records that are exempt from public records disclosure are not disclosed except as authorized by law for the duration of this agreement, renewals, and following completion of the contract if Respondent does not transfer the records to University.
- D. Upon completion of this Agreement, transfer, at no cost, to University all public records in possession of Respondent or keep and maintain public records required by University to perform the service.
 - 1) If Respondent transfers all public records to University upon completion of the contract, Respondent must destroy any duplicate confidential information or records that are exempt from public records disclosure.
 - 2) If Respondent keeps and maintains public records upon completion of this Agreement, Respondent must meet all applicable requirements for retaining public records.
 - 3) All records stored electronically must be provided to University, upon request from the University’s custodian of public records, in a format that is compatible with the information technology systems of the University.
- E. Third parties requesting to inspect or copy public records relating to this agreement must be made directly to University. If University does not possess the requested records, University will notify Respondent of the request, and Respondent must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.
- F. The University may inspect the:
 - 1) Financial records, papers, and documents of the Respondent that are directly related to the performance of the contract or the expenditure of state funds.

- 2) Respondent's programmatic records, papers, and documents which the University determines are necessary to monitor the performance of this agreement or to ensure that the terms of this agreement are being met.
 - 3) The Respondent must provide such records, papers, and documents requested by the University within 10 business days after the request is made.
 - 4) The right of access in this provision is not limited to the required retention period but lasts as long as the records are retained.
- G. The terms of section 6 are material terms of this agreement, and failure to comply may result in termination and/or civil penalties.

22. Remedies and Applicable Law.

The Agreement and any disputes thereunder will be governed by the laws of the State of Florida and will be deemed to have been executed and entered into in the State of Florida. The Agreement will be construed, performed, and enforced in all respects in accordance with the laws and rules of the State of Florida, and any provision in the agreement in conflict with Florida law and rules will be void and of no effect. The University and the awarded Respondent hereby agree that the agreement will be enforced in the courts of the State of Florida and that venue will always be in Polk County, Florida.

23. Safety.

The University seeks to furnish its students and employees with a place of work and study that is free from recognized hazards that are causing or are likely to cause death or serious physical harm, and one that complies with occupational health and safety standards promulgated under Occupational Safety and Health Act of 1970 (OSH ACT). Therefore, the awarded Respondent is required to comply with the occupational safety and health standards and all rules, regulations and orders issued pursuant to the OSH ACT while on the University's premises. The University has not found and is not aware of any hazardous materials on the site; however, The University recommends awarded Respondent perform an environmental assessment prior to the pre-development phase of the project to investigate subsurface soil conditions in order to ascertain if any hazardous materials may exist. The University will make available any of its geotechnical engineering reports upon request. The University accepts no liability for any hazards on the land; awarded Respondent accepts all risks.

24. Sales and Use Tax.

The State of Florida and its agencies (including the University) are tax-immune and exempt from the payment of taxes. The awarded Respondent will be responsible to pay any such taxes imposed on taxable activities/services under the agreement.

25. Small Business Minority Enterprise (SBME) Reporting.

Awarded Respondent must report all minority subcontractors, identifying the Name, Address, Type of Certification and Dollar Amount to the University with each invoice submitted for payment.

26. Software.

If awarded Respondent is providing software, University may create and retain a copy of the software and related documentation for backup and disaster-recovery purposes, and for archival purposes for use after this agreement is terminated.

27. Subcontractors.

The awarded Respondent is fully responsible for all work performed under the related to the agreement. The awarded Respondent may enter into written subcontract(s) for performance of certain of its functions under the agreement, subject to the terms and provisions of the agreement. Respondent's subcontracts will not be implemented or effective until and unless approved in writing by the University, as applicable. No subcontract which the Respondent enters into related to the agreement will in any way relieve the awarded Respondent of any responsibility for performance of its duties under the agreement. Awarded Respondent will fully notify any subcontractors of Respondent's responsibilities pursuant to the agreement in Respondent's subcontract(s) with a subcontractor(s) for work related to the agreement. Respondent is solely responsible for all payments to its subcontractors. Awarded Respondent will require all of its subcontractors to provide the required insurance coverage as well as any other coverage that the awarded Respondent may consider necessary, and any deficiency in coverage or policy limits of said subcontractor will be the sole responsibility of the awarded Respondent.

28. Suspension or Debarment.

The University may by written notice to the awarded Respondent immediately terminate the agreement if the University determines that the awarded Respondent has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor respondent of any public procurement unit or other governmental body.

29. Termination.

- a. Termination at Will. This Agreement may be terminated by University by providing written notice to awarded Respondent of such intent to terminate at least 10 days prior to the effective date of such termination.
- b. Termination for Cause. Notwithstanding the provisions of subsection 22.a. above, University may termination this Agreement for cause upon 5 days' written notice to awarded Respondent that specifies the basis for termination. For purposes of this Agreement, "cause" is defined as awarded Respondent's failure to perform the Services within the time specified herein or any extension thereof or awarded Respondent's failure to adhere to any of the material terms of this Agreement.
- c. If this Agreement is terminated, University is liable only for payment of goods received and services rendered prior to the date of termination and accepted by University.

30. Work for Hire.

- a. Any work specifically created for the University under this Agreement by the awarded Respondent is considered a "work for hire." All designs, prints, paintings, artwork, sketches, etchings, drawings, writings, photographs, or any other work or material or property produced, developed or fabricated and any other property created hereunder, including all material incorporated therein and all preliminary or other copies thereof, (the "Materials") are and remain the property of the University, and, unless otherwise specifically set forth herein, are considered specially ordered for the University as a "work made for hire," or, if for any reason held not to be a "work for hire," the awarded Respondent who created, produced, developed or fabricated the Materials hereunder assigns all of his/her right, title and interest in the Materials to the University.
- b. The University owns all right, title and interest in the Materials. Awarded Respondent agrees upon request to execute any documents necessary to perfect the transfer of such title to the University.
- c. The Materials must be to the University's satisfaction and are subject to the University's approval. Awarded Respondent bears all risk of loss or damage to the Materials until the University has accepted delivery of the Materials.
- d. The University is entitled to return, at awarded Respondent's expense, any Materials which the University deems to be unsatisfactory.
- e. On or before completion of the awarded Respondent's services hereunder, the awarded Respondent must furnish the University with valid and adequate releases necessary for the unrestricted use of the Materials for advertising or trade purposes, including model and property releases relating to the Materials and releases from any persons whose names, voices or likenesses are incorporated or used in the Materials.

- f. Awarded Respondent hereby represents and warrants that the Materials may be used or reproduced for advertising or trade purposes or any commercial purposes without violating any laws or the rights of any third parties and that no third party has any rights in, to, or arising out of, or in connection with the Materials, including without limitation any claims for fees, royalties or other payments.

31. Waiver of Rights and Breaches.

No right conferred on the University by the agreement, will be deemed waived and no breach of any such agreement excused, unless such waiver of right or excuse of breach is in writing and signed by the University. The University's waiver of a right or breach does not constitute a waiver or excuse of any other right or breach.

32. Term.

This Agreement is effective on [insert date or upon being fully executed by both parties] and remains in effect for [insert time frame].

Attachment E- Requested Deviation or Exemption Form

Respondent must complete this form and include it in Tab A of their Response to request deviations or exceptions to the solicitation Requirements, including any Contract Terms and Conditions (**Attachment B, C, D**). The University reserves the right to accept or reject any proposed changes or replacement contract language. The University may also lower Respondent’s evaluation rating based on the number and severity of exceptions taken. Although some minor revisions and clarifications may be accepted, the University intends that the Successful Respondent will be required to execute the University’s contract as written and attached. Respondents are warned against saving their objections to the various provisions until negotiations, as this may be cause for eliminating Respondent’s response from further consideration. Any and all objections must be identified in Respondent’s written response.

Section Number	Proposed Change or Replacement Language	Justification

Attachment F- Trade Secret Affidavit

STATE OF _____

COUNTY OF _____

I, the undersigned, being first duly sworn, do hereby state under oath and under penalty of perjury that the following facts are true:

1. I am over the age of eighteen and am a resident of the State of _____. I have personal knowledge of the facts herein, and, if called as a witness, could testify competently thereto.
2. I am the _____ (position) of _____ (name of corporate entity), a _____ (state) _____ (type of corporate entity), whose principal address is _____.
3. [I consider/My company considers] the information contained in the document(s) entitled _____ (Identify with specificity the documents for which trade secrets protection is claimed) and inserted in Tab H a trade secret under applicable law for the following reasons: (Provide a description of the document sufficient to determine the application of the trade secret exemption and explain in detail the specific element(s) or provision(s) of Florida Statutes Section 688.002(4) or Section 812.081(c) that render the document at issue a trade secret exempted from public records under applicable Florida law).
4. [I have/My company has] taken measures to prevent the disclosure of the information contained in Tab H _____ to anyone other than those who have been selected to have access for limited purposes, and [I intend/my company intends] to continue to take such measures.
5. [I consider/My company considers] the information contained in Tab H to have value and provides an advantage or an opportunity to obtain an advantage over those who do not know or use it.
6. All of the information in Tab H is not, and has not been, reasonably obtainable without [my/our] consent by other persons by use of legitimate means.
7. All of information in Tab H is not publicly available elsewhere.
8. I am the person for Florida Polytechnic University to contact in the event a challenge to any information contained in this Affidavit is received.

Executed on this ____ day of _____ in _____ County, _____
(State).

Affiant- Full Name: _____

Address: _____

Telephone: _____

E-mail: _____

Affiant Signature: _____

STATE OF _____

COUNTY OF _____

Sworn to or affirmed and signed before me on _____ (date) by

_____ (Affiant).

NOTARY PUBLIC

Personally Known

Produced identification (Type of ID)

Attachment G- E-Verify Certification

Contractor hereby certifies compliance with the following:

Pursuant to section 448.095, Florida Statutes, Contractor must utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by Contractor while performing work or providing services for Florida Polytechnic University. Contractor shall also include in any related subcontracts a requirement that subcontractors performing work or providing services for Florida Polytechnic University on its behalf utilize the E-Verify system to verify the employment eligibility of all new employees hired by subcontractor.

Respondent Name

By: _____
Signature

Name: _____
Printed

Title: _____
Printed

Date: _____

Exhibit 1- References and Experience

NOTE: Complete one 2-page form for each of the 10 “most relevant” projects.

Experience Of (firm and/or person): _____

Project Information

Role(s) in project (*principal/prime, consultant/sub-consultant, or individual experience*) and services provided:

Current Status: _____ Construction Cost: _____

LEED-Certified? _____ Delivery Method (CM, DB, etc.): _____

Construction Start (NTP) Date: _____ Substantial Completion Date: _____

Staffing Information (*for project above, Primary respondent*)

Principal: _____	On proposed FPU team?	YES	NO
Operations Lead: _____	On proposed FPU team?	YES	NO
Architect: _____	On proposed FPU team?	YES	NO
Project Manager: _____	On proposed FPU team?	YES	NO
Superintendent: _____	On proposed FPU team?	YES	NO
Bookkeeping: _____	On proposed FPU team?	YES	NO
(Other).: _____	On proposed FPU team?	YES	NO

Narrative description of facility, including space type(s), major building components, and construction type(s):

Explanation of relevance/similarity:

STAGE ONE (Experience & References)

Owner Contact Information

Owner/Client: _____ Contact Person or PM: _____
Address: _____
Phone and Fax: _____ E-mail Address: _____

Design Professional Information

A/E Firm: _____ Contact Person or PM: _____
Address: _____
Phone and Fax: _____ E-mail Address: _____

Mechanical Professional Information

Firm: _____ Contact Person or PM: _____
Design Discipline: _____
Address: _____
Phone and Fax: _____ E-mail Address: _____

Electrical Professional Information

Firm: _____ Contact Person or PM: _____
Design Discipline: _____
Address: _____
Phone and Fax: _____ E-mail Address: _____

Plumbing Professional Information

Firm: _____ Contact Person or PM: _____
Design Discipline: _____
Address: _____
Phone and Fax: _____ E-mail Address: _____

Exhibit 2- Team

1. PERSONNEL by role and discipline:	Name	Registered? (Yes or No)	Disc. Of Reg./Training	City of Residence
Principal-In-Charge				
Operations Principal				
Project Accountant				
2. Design				
Principal				
Design Lead				
Other				
3. Pre-construction				
Pre-Construction Team Leader				
Scheduling				
Budget Development				
Cost Estimating				
4. Construction				
Project Manager				
Project Engineer				
Superintendent				