



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/or 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.
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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
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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;
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- (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.
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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.
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- 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.
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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
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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
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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;
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- (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.



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- (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;
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- (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
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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.
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- (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:



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**



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



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, subcontractors, and sub-subcontractors 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



23.1.1 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
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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
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