



AGREEMENT
BETWEEN OWNER
AND
CONSTRUCTION
MANAGER

Project Name:
Continuing Services

Construction Manager:

August 2021 Edition

**AGREEMENT BETWEEN
OWNER AND CONSTRUCTION MANAGER**

This Agreement Between Owner and Construction Manager (the "Agreement") is made as of the Effective Date (as defined herein) by and between The Florida International University Board of Trustees, whose principal business address is Modesto Maidique Campus, 11200 S.W. 8th Street, Miami, Florida 33199, Attention: Associate Vice President of Facilities Management, (hereinafter called "Owner"), and _____, whose principal business address is _____, Federal I.D. No. _____ (hereinafter called "Construction Manager"). Construction Manager and Owner may be collectively referred to herein as the "parties" and each may be individually referred to herein as the "party."

WITNESSETH:

WHEREAS, Owner solicited statements of qualifications from interested construction managers for the construction of the Project (hereinafter defined) described in the program provided to Construction Manager, a copy of which is available in Owner's Facilities Management Department; and

WHEREAS, based on Construction Manager's interview, qualifications statement, and related submissions, Owner has selected Construction Manager for the Project; and

WHEREAS, Owner and Construction Manager desire to enter into this Agreement; and

WHEREAS, Owner intends to engage, or has engaged one or more Professionals to perform architectural/engineering services for the Project;

NOW THEREFORE, for and in consideration of the covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner and Construction Manager agree as follows:

The parties acknowledge and agree that the above recitals are true and correct and incorporated herein by reference.

ARTICLE 1

Project

The Project(s) for which Construction Manager is being hired to perform services under this Agreement are individual construction projects which may only include those projects for which the estimated construction cost of each individual project does not exceed Four Million and No/100 Dollars (\$4,000,000.00), or such greater amount(s) as may hereinafter be permitted by Florida Statutes (hereinafter collectively referred to in this Agreement as "Project").

The parties acknowledge and agree that this is a non-exclusive Construction Manager Continuing Services Agreement and Owner may enter into other agreements for the performance of similar services as deemed in the best interests of Owner.

ARTICLE 2

The Construction Team and Extent of Agreement

2.1 Construction Manager agrees to furnish its best skill and judgment and to cooperate with the applicable architect/engineer(s) (the "Architect/Engineer(s)") in furthering the interests of Owner. Construction Manager agrees to furnish efficient business administration for the Project and to manage, supervise, and complete the Project in an expeditious and economical manner consistent with the interests of Owner.

2.2 The Construction Team. Construction Manager, Owner, and the Architect/Engineer(s) (the "Construction Team") will work as a team through construction completion. Construction Manager shall provide leadership to the Construction Team on all matters relating to construction. The Architect/Engineer will provide leadership to the Construction Team on all matters relating to design.

2.3 Extent of Agreement. This Agreement is complementary to the Conditions of the Contract (as defined herein), including, but not limited to, the Construction Documents and the General Terms and Conditions, _____ Edition ("General Terms and Conditions"), attached hereto and incorporated herein as Exhibit "A" to this Agreement, and together with those documents, represents the entire agreement between Owner and Construction Manager and supersedes all prior negotiations, representations or agreements. Where this Agreement is expressly in conflict with the Conditions of the Contract, this Agreement will prevail. Where this Agreement is silent, the Conditions of the Contract will prevail. This Agreement may be amended only by written instrument signed by Owner and Construction Manager.

2.4 Ownership of Documents. The Construction Documents are and shall remain the property of Owner and Owner shall retain all common law, statutory and other reserved rights with respect thereto. Construction Manager is granted a limited license to use and reproduce, and to permit its subcontractors to use and reproduce, applicable portions of the drawings and specifications and other documents prepared by the Architect/Engineer to and for use in the execution of the Work under the Construction Documents.

2.5 Royalties and Patents. Construction Manager shall (a) pay all royalties and license fees associated with the Work that are not the result of a particular design, process or product specifically required by the Construction Documents, and (b) be responsible for all infringements of such patent rights.

ARTICLE 3

Construction Manager's Basic Services

3.1 Construction Manager's "Basic Services" under this Agreement may include pre-construction phase services and construction phase services, if requested by Owner, for each individual project assigned pursuant to this Agreement.

3.1.1 Construction Manager represents that it is thoroughly familiar with and understands the requirements of the Project scope and that it is experienced in the administration and construction of building projects of the type and scope contemplated by Owner's program for the Project. Construction Manager represents to Owner that Construction Manager has all necessary construction education, skill, knowledge, and experience required for the Project and will maintain, at all times during the term of this Agreement, such personnel on its staff to provide the services contemplated hereby within the time periods required hereby. In addition, Construction Manager represents that it has, and all of the subcontractors performing services

under this Agreement will have, all applicable licenses and/or any other documentation required by the State of Florida to perform such services.

3.2 The Pre-Construction Phase. Construction Manager shall, upon request of Owner, provide some or all of the pre-construction services described in Sections 3.2.1-3.2.9 herein. The complete scope of pre-construction services, and the fee to be paid therefor, shall be identified in the pre-construction services proposal provided by Construction Manager and accepted by Owner. The fee for the pre-construction services shall not exceed 1% of the agreed upon Guaranteed Maximum Price (GMP) unless previously authorized in writing by Owner. Said percentage will be examined by Owner once the GMP is agreed upon, and an adjustment will be made for any overstated costs.

3.2.1 Review designs during their development. Advise on site use and improvements, selection of materials, building systems and equipment and methods of Project delivery. Provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction and factors related to cost, including, but not limited to, costs of alternative designs or materials, preliminary budgets and possible economies.

3.2.2 Provide, for the Architect/Engineer's and Owner's review and written acceptance, the Construction Schedule which shall coordinate and integrate Construction Manager's services, the Architect/Engineer's services and Owner's responsibilities with anticipated construction schedules. Construction Manager shall update the Construction Schedule at each milestone, as required. Construction Manager shall at all times carry out its duties and responsibilities as expeditiously as possible and in accordance with the Construction Schedule. Time is of the essence in the performance of this Agreement.

3.2.3 Prepare, for Owner's written approval, a detailed estimate of construction cost, as defined in this Agreement, developed by using estimating techniques which anticipate the various elements of the Project, and based on design documents prepared by the Architect/Engineer. Update and refine this estimate at each milestone as the Architect/Engineer prepares Construction Documents. Advise Owner and the Architect/Engineer if it appears that the construction cost may exceed the Project budget. Make recommendations for corrective action. Recommendations and cost estimates made throughout the pre-construction phase shall be based on the most recently dated *Cost Containment Guidelines for the State University System of Florida*.

3.2.4 Coordinate with Owner and the Architect/Engineer regarding Construction Documents as they are being prepared, and recommend alternative solutions whenever design details affect construction feasibility, cost or schedules.

3.2.4.1 Advise on the separation of the Project into contracts for various categories of Work. If separate contracts are to be awarded by Owner, review the Construction Documents and make recommendations as required to provide that: (1) the Work of the separate contractors is coordinated with that of the trade contractors; (2) all requirements for the Project have been assigned to the appropriate separate contract; (3) the likelihood of jurisdictional disputes has been minimized; and (4) proper coordination has been provided for phased construction.

3.2.4.2 Develop the Construction Schedule providing for all major elements such as phasing of construction and times of commencement and completion required of each trade contractor. Provide the Construction Schedule for each set of bidding documents. Develop a plan for the phasing of construction.

- 3.2.4.3 Establish a schedule for the purchase of materials and equipment requiring long lead time procurement, and coordinate the schedule with the early preparation of portions of the Construction Documents by the Architect/Engineer. Identify those materials and/or equipment which are particularly appropriate for Owner's direct purchase based on the terms outlined in this Agreement. Expedite and coordinate delivery of these purchases.
- 3.2.5 During the course of the pre-construction phase, Construction Manager may be asked to participate in value engineering to assist with budget related issues of the Project.
- 3.2.6 Provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. Develop bidding packages designed to minimize adverse effects of labor shortages.
- 3.2.7 Make recommendations for pre-qualification criteria for bidders and develop bidders' interest in the Project. Establish bidding schedules.
- 3.2.8 Schedule and conduct bi-weekly meetings (unless specified by Owner in writing otherwise) of the Construction Team. The appropriate Construction Team member shall prepare and distribute the minutes for each of the meetings.
- 3.2.9 Based upon Construction Documents produced by the Architect/Engineer, develop Guaranteed Maximum Price (GMP) proposal(s), including the Construction Schedule, itemized by trade contract, for phases of the Work as required by Owner. If the documents as prepared by the Architect/Engineer are not adequate for the development of a GMP, Construction Manager shall notify Owner immediately, prior to developing the GMP. All assumptions made by Construction Manager in the development of the GMP shall be specifically listed in the GMP proposal. All assumptions and clarifications, if any, by Construction Manager must be identified in the original proposal. In no event shall Construction Manager's clarifications and/or assumptions modify the terms of this Agreement. This provision shall apply to the GMP and any and all amendments to this Agreement and shall survive expiration of this Agreement. The GMP will not be adjusted due to assumptions made by Construction Manager not included in the original GMP proposal.
- 3.2.9.1 If the GMP proposal is accepted by Owner, it will become an amendment to this Agreement which will establish the GMP, contract time, and liquidated damages for that phase of the Work.
- 3.2.9.2 Prior to commencement of the Work, Construction Manager shall provide to Owner certified copies of the recorded payment and performance bonds for the Project. Such payment and performance bonds shall be on Owner's standard forms or on forms otherwise acceptable to Owner. Notwithstanding any provisions in this Agreement to the contrary, Owner shall not make a payment to Construction Manager until Construction Manager has complied with this provision.
- 3.2.9.3 If the GMP proposal is not accepted by Owner, Owner shall so notify Construction Manager in writing. Construction Manager shall then recommend adjustments to the Work through value engineering acceptable to Owner and Architect/Engineer. The Construction Team will discuss and negotiate these recommendations for no more than thirty (30) calendar days from the date of Owner's foregoing notice to Construction Manager, unless an extension is granted in writing by Owner. If an acceptable GMP is not developed within this time period, negotiations may be terminated, Owner shall have the right to terminate this Agreement, and Owner may initiate negotiations with another firm for the Project. If Owner elects to terminate this Agreement, Owner shall have no further

liability under this Agreement except for any outstanding sums due and owing for pre-construction services previously approved by Owner.

3.3 Construction Phase. Unless otherwise authorized by Owner in writing, all Work shall be performed under trade contracts held by Construction Manager. Construction Manager shall not bid on any of the trade contractor Work or perform such Work with its own forces without the prior written consent of Owner. Construction Manager shall:

3.3.1 Administer the construction phase as provided herein and in the “Conditions of the Contract”, which shall include, but not be limited to, the following: (i) Owner’s General Terms and Conditions; and (ii) the Construction Documents, which shall include, but not be limited to, Division I of the Specifications. The Construction Documents, some of which are available on Owner’s Facilities Management website at <https://facilities.fiu.edu/formsandstandards.htm>, including, but not limited to, Division 1 of the Specifications, are hereby incorporated into this Agreement by reference. The Conditions of the Contract shall apply to all aspects of the Project, including, but not limited to, the pre-construction phase. The incorporated documents are intended to be complimentary and interpreted in harmony. To the extent there is a conflict between any of these documents, the documents shall govern in the following order of precedence: first, the General Terms and Conditions; second, the technical Project design specifications incorporated in the Construction Documents; and third, the design drawings incorporated in the Construction Documents.

3.3.2 Commence the Work for the Project within ten (10) days after receipt of the executed GMP amendment and “Notice to Proceed” (reflecting Owner’s Project number) from Owner.

3.3.3 Develop procedures which are acceptable to Owner for the pre-qualification of trade contractors. Develop trade contractor interest in the Project. Take competitive bids on the Work of the various trade contractors; or, if authorized by Owner in writing negotiate for the performance of that Work. Analyze and evaluate the results of the various bids and their relationship to budgeted and estimated amounts, and prepare for review with Owner and Architect/Engineer a bid tabulation analysis and such other support data as necessary to properly compare the various bids and their responsiveness to the designed scope of Work. Specifically, review the scope of Work in detail with apparent low responsive bidders to determine that their bids are complete but do not include duplicate scope items. Maintain records of all pre-award interviews with apparent low bidders. Prepare and submit written recommendations to Owner and Architect/Engineer for award of trade contracts by Construction Manager. Construction Manager shall ensure, to the best of its knowledge, the bid of the recommended trade contractors is bona fide, fair and reasonable. Promptly award and execute trade contracts with approved trade contractors. Provide copies of fully executed trade contracts, insurance certificates and, if required, bonds to Owner.

3.3.4 Manage, schedule and coordinate the Work, including the Work of the trade contractors, and coordinate the Work with the activities and responsibilities of Owner, Architect/Engineer and Construction Manager in order to complete the Project in accordance with Owner’s objectives of cost, time and quality. Develop and maintain a program, acceptable to Owner and Architect/Engineer, to assure quality control of the construction. Supervise the Work of all trade contractors, providing instructions to each when its Work does not conform to the requirements of the plans and specifications and continue to manage each subcontractor to ensure that corrections are made in a timely manner so as to not affect the progress of the Work. Should disagreement occur between Construction Manager and the Architect/Engineer over acceptability of Work and conformity with the requirements of the specifications and plans, Owner shall be the final judge of performance and acceptability.

3.3.5 Maintain, for all applicable Projects, a competent staff to coordinate and direct the Work and progress of the trade contractors. Construction Manager has provided in Construction Manager's "Professional Qualifications Supplement", submitted to Owner during the selection process (or at any other time requested by Owner), Construction Manager's personnel chart, which lists by name, job category, responsibility, and hourly rate, Construction Manager's primary employees who will work on the Project. Construction Manager shall promptly inform Owner in writing of any proposed replacements or additions to the personnel chart, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s) or addition(s). Owner shall have the right, in its reasonable discretion, to reject any proposed replacement or addition.

3.3.5.1 Construction Manager shall promptly inform Owner in writing of any proposed replacements to the list of subcontractors and suppliers in the final bid tabulation sheet provided to Owner, the reasons therefore, and the name(s) and qualification(s) of proposed replacements(s). Owner shall have the right, in its reasonable discretion, to reject any proposed replacement.

3.3.5.2 Owner shall have the right to direct Construction Manager to remove or replace any on-site personnel whose performance becomes unsatisfactory to Owner. In such event, Construction Manager shall promptly replace such personnel, without additional compensation for the replacement.

3.3.5.3 Construction Manager shall establish on-site organization and lines of authority in order to carry out the overall plans of the Construction Team; identify a staff member to represent Construction Manager, on-site, if included in the construction general conditions costs, with authority to negotiate change orders and contract modifications on behalf of Construction Manager; and make available such executive personnel as necessary to execute change orders or other contract modifications on behalf of Construction Manager so as not to delay the progress of the Work.

3.3.6 Establish procedures for coordination among Owner, Architect/Engineer, trade contractors and Construction Manager with respect to all aspects of the Work. Implement such procedures, incorporate them into a project resource manual, and distribute manuals to the Construction Team.

3.3.6.1 Require of the various trade contractors such Coordination Drawings as may be necessary to properly coordinate the Work among the trade contractors.

3.3.6.2 In coordination with the Architect/Engineer, establish and implement procedures for tracking and expediting the processing of shop drawings and samples, as required by the Conditions of the Contract.

3.3.7 Schedule and conduct weekly progress meetings with trade contractors to review such matters as job procedures, construction progress, schedule, shop drawing status and other information as necessary. Provide prior notice to Owner and Architect/Engineer of all such meetings, and prepare and, if requested by Owner distribute minutes. Attend weekly Construction Team meetings scheduled by the Architect/Engineer.

3.3.8 Review the Construction Schedule with the various trade contractors and review, or expand the level of detail to incorporate specific trade contractor input consistent with the overall completion requirements. Regularly monitor and update the Construction Schedule and various sub-networks as construction progresses. Identify potential variances between scheduled and probable completion dates. Review the Construction Schedule for Work not started, or incomplete, and make adjustments in the schedule to meet the scheduled completion date. Provide summary reports of each monitoring and document all changes in

the Construction Schedule. Regularly scheduled updates and reporting shall be included as part of the monthly project report outlined in this Agreement. Display the current Construction Schedule in the on-site office, and review the Construction Schedule at progress meetings.

3.3.9 Determine the adequacy of the trade contractors' personnel and equipment, and the availability of materials and supplies to meet the Construction Schedule. In consultation with Owner and the Architect/Engineer, take necessary corrective actions when requirements of a trade contract or a trade contract schedule are not being met.

3.3.10 Direct Purchase Program.

3.3.10.1 Direct Purchase Program. Owner is tax exempt and may elect to implement a direct purchase program whereby it may purchase materials and equipment included in any Subcontractor's bid for a portion of the Work directly from the supplier of such materials or equipment in order to achieve sales tax savings. Such materials and equipment are referred to as "Direct Purchase Materials." Direct Purchase Materials shall be governed by the State of Florida Department of Revenue Rule, 12A-1.094 ("DOR Rule"), the terms herein, and Owner's policies on the subject in effect at the time Construction Manager commences construction of the Project. For each direct purchase, Owner shall: (a) issue its purchase order directly to the vendor supplying the materials Construction Manager will use; (b) provide the vendor with a copy of Owner's Florida Consumer's Certificate of Exemption; (c) make payment directly to the vendor based on the vendor's invoice which must be issued directly to Owner; (d) take title to the tangible personal property from the vendor at the time of purchase or delivery by the vendor; (e) assume the risk of damage or loss at the time of purchase; and (f) issue a Certificate of Entitlement pursuant to the DOR Rule to each vendor and to Construction Manager to confirm that the tangible personal property purchased from that vendor will go into or become part of a public work (a separate Certificate of Entitlement shall be issued for each purchase order and each purchase order shall be attached to the applicable Certificate of Entitlement). Construction Manager shall provide Owner with a written list of all potential Direct Purchase Materials and any other information required by Owner with respect to each direct purchase. Construction Manager shall also provide Owner with monthly reports pertaining to the "Direct Purchase Materials." Notwithstanding the fact that the vendor's invoice must be issued directly to Owner as provided above, Construction Manager shall be responsible for obtaining a copy of all Direct Purchase Materials' invoices from the vendor and shall be accountable for verifying and ensuring that the materials received by Owner through each direct purchase are in good condition and are consistent with the materials that were ordered from the vendor and described in each invoice. Construction Manager shall remain responsible for coordinating, ordering, inspecting, accepting delivery, storing, handling, installing, warranting and quality control for all Direct Purchase Materials. Notwithstanding anything herein to the contrary Construction Manager expressly acknowledges and agrees that any Direct Purchase Materials shall be included within and covered to the same extent as all other warranties provided by Construction Manager pursuant to the terms of the Contract Documents.

3.3.10.2 The GMP amount shall be reduced by the net, undiscounted amount of the purchase order, plus all sales taxes that would have applied. **ISSUANCE OF THE PURCHASE ORDERS BY OWNER DOES NOT CHANGE ANY OF CONSTRUCTION MANAGER'S RESPONSIBILITIES REGARDING THE RECEIVING AND INSTALLATION OF THE MATERIALS PURCHASED.** Construction Manager remains fully responsible for all other obligations it has under the terms of this Agreement.

3.3.11 Develop and maintain an effective system of Project cost control which is satisfactory to Owner. Revise and refine the initially approved Project construction budget, incorporate approved changes as they occur, and develop cash flow reports and forecasts as needed. Identify variances between actual and budgeted or estimated costs and advise Owner and Architect/Engineer in writing whenever projected costs exceed budgets or estimates. Cost control reports shall be included as part of the monthly project report outlined in this Agreement.

3.3.12 Construction Manager shall maintain a system of accounting consistent with generally accepted accounting principles. Construction Manager shall maintain full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement, and the accounting and control systems shall be satisfactory to Owner.

3.3.13 Owner may, upon reasonable notice, audit the records of its Construction Manager and its subcontractors and suppliers during regular business hours, during the term of this Agreement and for a period of four (4) years after final payment is made by Owner to Construction Manager under this Agreement or longer, if required by law. Such audits may be performed by an Owner's representative or an outside representative engaged by Owner.

3.3.13.1 For purposes hereof, Construction Manager's "records" means any and all information, materials and data of every kind and character, whether hard copy or in electronic form, which may, in Owner's judgment have any bearing on or pertain to this Agreement, including, without limitation, books, subscriptions, recordings, agreements, leases, contracts, commitments, arrangements, notes, daily diaries, written policies and procedures, time sheets, payroll registers, payroll records, cancelled payroll checks, subcontract files (e.g., including proposals of successful and unsuccessful bidders, bid recap), original estimates, estimating work sheets, correspondence, change order files (including documentation covering negotiated settlements), back-charge logs and supporting documentation, invoices and related payment documentation, general ledgers, records detailing cash and trade discounts earned, insurance rebates and dividends, superintendent reports, drawings, receipts, vouchers and memoranda.

3.3.13.2 Owner's authorized representative shall have reasonable access to Construction Manager's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to this Agreement, shall be provided adequate and appropriate workspace at Construction Manager's facilities, may count employees at the site, may be present for the distribution of payroll and shall have such other rights of access as may be reasonably necessary to carry out an audit.

3.3.13.3 If an audit discloses overpricing or overcharges of two and one-half percent (2.5%) of the total amount paid hereunder or \$20,000, whichever is less, in addition to making adjustments for the overcharges (which adjustments shall be made in the event the audit discloses any overpricing or overcharge, regardless of the amount of such overprice or overcharge), the reasonable actual cost of Owner's audit shall be reimbursed to Owner by Construction Manager. Any adjustments and/or payments that must be made as a result of any such audit or inspection of Construction Manager's invoices and/or records shall be made within ninety (90) calendar days from presentation of Owner's findings to Construction Manager.

3.3.14 Recommend necessary or desirable changes to Owner and the Architect/Engineer, review requests for changes and submit recommendations to Owner and Architect/Engineer.

3.3.14.1 When requested by Owner or Architect/Engineer, promptly prepare and submit estimates

of probable cost for changes proposed in the Work, including similar estimates from the trade contractors. If directed by Owner, promptly secure formal written change order proposals from such trade contractors.

3.3.15 Be responsible for initiating, maintaining and supervising effective safety programs and require similar programs of the trade contractors and sub-subcontractors. The Occupational Safety and Health Administration (OSHA) guidelines shall serve as the basis for the construction safety program.

3.3.15.1 Promptly notify Owner and, where applicable, Owner's insurance administrator, in writing, upon receiving notice of filing of any charge of noncompliance from OSHA, or upon receiving notification that a federal or state inspector shall visit or is visiting the Project site.

3.3.15.2 At progress meetings with trade contractors, conduct a review of job safety and accident prevention, and prepare minutes of such meetings that will be available to Owner's representative on request. The minutes of job safety and accident prevention portion of such progress meetings shall be made available to Owner, where applicable, upon request.

3.3.15.3 Designate a full-time staff member to also serve as the project safety director covering all Projects assigned; in his/her role as the project safety director, he/she shall oversee job safety and accident prevention for Construction Manager, trade contractors, and sub-subcontractors involved in the Work, in addition to any other responsibilities assigned to such staff member unrelated to his/her role as project safety director.

3.3.15.4. Construction Manager shall be 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.

3.3.16 Make provisions for Project security acceptable to Owner, to protect the Project site and materials stored off-site against theft, vandalism, fire and accidents, etc., as required by job and location conditions. Mobile equipment and operable equipment at the site, and hazardous parts of new construction subject to mischief, shall be locked or otherwise made inoperable or protected when unattended.

3.3.17 Record the progress of the Project. Upon request by Owner, submit written monthly progress reports to Owner covering all Projects assigned, including information on the trade contractors' Work, the percentage of completion, current estimating, computerized updated monthly "Critical Path Method" scheduling and project accounting reports as applicable to each Project, including "Estimated Time to Completion" and "Estimated Cost to Complete". Keep a daily log for each Project available to Owner and the Architect/Engineer(s). Report and record such additional information related to construction, including, but not limited to, information pertaining to Owner's Direct Purchase Materials.

3.3.18 Construction Manager shall be responsible for the removal, encapsulation, transportation and disposal of any hazardous materials, including any asbestos or asbestos- related products only if, and as, specified in the GMP; provided, however, hazardous materials or substances brought by Construction Manager or the trade contractors to the Project site shall remain their responsibility for proper removal, encapsulation, transportation and disposal at their sole cost and expense without any additional cost to Owner. Construction Manager shall notify Owner immediately if any hazardous materials are discovered on the Project site and, except to the extent such hazardous materials are brought to the Project site by Construction Manager or the trade contractors of the Project site, Owner shall be responsible for testing any

such hazardous materials discovered and, if required by law, remediating the Project site prior to Construction Manager continuing the Work. Any hazardous materials not specifically described in the GMP and not otherwise brought into the Project site by Construction Manager or the trade contractors shall be considered a concealed condition and if Owner elects for Construction Manager to perform any needed removal, encapsulation, transportation and disposal of such hazardous materials, Owner shall issue a change order for the additional Work.

3.3.19 Any asbestos abatement work required in connection with the Work shall only be performed by an asbestos contractor which has been approved and pre-qualified by Owner.

3.3.20 Construction Manager shall use Owners' Building Information Modeling (BIM) Standard and Guide ("BIM Standards"), which is available on the Facilities Management Website at <https://facilities.fiu.edu/formsandstandards.htm>, in coordination with the Architect/Engineer.

ARTICLE 4

Additional Services

4.1 Upon the mutual agreement of Owner and Construction Manager, and upon prior written authorization from Owner, Construction Manager shall provide additional services which are beyond the scope of the Basic Services described in this Agreement. Construction Manager shall be compensated for such additional services in an amount to be negotiated by Owner and Construction Manager at the time of the additional service request.

ARTICLE 5

Owner's Responsibilities

5.1 Owner shall designate a representative to act on its behalf for each Project assigned under this Agreement. Owner's representative shall be the sole party authorized to render decisions under this Agreement on Owner's behalf. Owner's representative will monitor the progress of the Work, serve as liaison with Construction Manager and the Architect/Engineer, receive and process communications and paperwork, and represent Owner in the day-to-day conduct of the Project. Construction Manager will be notified in writing of Owner's representative and any changes thereto.

5.2 Owner may retain a threshold inspector if required by Chapter 553, Florida Statutes.

5.3 Owner shall use its best efforts to review and approve or take other appropriate action on Construction Manager's pre-construction deliverables within fifteen (15) calendar days of receipt of such deliverables.

ARTICLE 6

Schedule

6.1 Construction Manager shall submit its construction cost analysis and any other requirements under this Agreement for each of the applicable pre-construction deliverables, if any, referenced in this Agreement to Owner and the Architect/Engineer within thirty (30) calendar days after each of the referenced documents have been made available to Construction Manager.

6.2 The number of days for performance of the Work under the construction phase of this Agreement shall be established in the GMP amendment to this Agreement.

6.3 In the event Owner desires to accelerate the schedule for any portion of the Work, Owner shall notify Construction Manager in writing. Within seven (7) calendar days after Owner's submission of such notice to Construction Manager, Construction Manager shall give Owner a revised GMP for the acceleration which shall become a change order upon acceptance. Owner may then direct Construction Manager to increase its staff and require its trade contractors to increase their manpower, or to work such overtime hours as may be necessary to accomplish the required acceleration in accordance with the approved change order. In such event Owner shall reimburse Construction Manager for the costs of such acceleration subject to the GMP. In no event shall Construction Manager be entitled to compensation in excess of the adjusted GMP. Construction Manager shall require accurate daily records of all costs of the required acceleration and shall secure Owner's approval of such records.

6.4 Owner shall have the right to occupy, or use, any portion of the Work ahead of schedule.

ARTICLE 7

Guaranteed Maximum Price

7.1 The "Guaranteed Maximum Price" (also referred to herein as the "GMP") includes the "Cost of the Work" (as such phrase is defined herein) required by the Construction Documents and the Construction Manager's Fee (as defined herein). The GMP will be established based on design documents for each Project assigned under this Agreement. The GMP is subject to modification for approved changes in the Work which must comply with the terms of this Agreement, including, but not limited to, the requirements set forth in the Article entitled "Changes in the Work" hereof. As described herein, the GMP in its totality consists of the Cost of the Work plus the Construction Manager's Fee, as either may be amended on the terms set forth in the Article entitled "Changes in the Work." Notwithstanding anything in this Agreement to the contrary, the Construction Manager's Fee shall be based solely on a percentage of the Cost of the Work mutually agreed upon by the parties, and the calculation shall not include the Construction Manager's Fee itself.

7.2 The GMP will only include those taxes in the Cost of the Work which are legally enacted at the time the GMP is established.

7.3 All cost savings belong to and shall be returned to Owner upon Final Completion of the Work, or at such earlier time as agreed to by Owner and Construction Manager. "Cost savings" are the net difference obtained by deducting from the GMP or adjusted GMP, as applicable, the documented Construction Manager's Fee, the expended portions of Construction Manager's contingency, and the actual expenditures representing the Cost of the Work. Liquidated damages, if any, are different from, and are not a part of, this calculation. Upon completion of the bidding and award period, Construction Manager's contingency will be adjusted so that it does not exceed the contingency percentage agreed upon in the original GMP proposal. Construction Manager's use of the contingency shall be subject to Owner's prior written approval. Those savings which cause the agreed upon contingency to be exceeded will be available for Owner's use as soon as reasonably possible. Changes to the GMP funded by these savings are not eligible for additional Construction Manager overhead and profit as outlined in this Agreement.

7.4 Adjustments to the GMP will be made as described in the Conditions of the Contract.

7.5 Owner's prior written approval through Owner's forms shall be required for modification to GMP line items, including transfer or use of Construction Manager's contingency and any cost savings.

ARTICLE 8

Payments to Construction Manager

8.1 In consideration of the performance of the services to be provided by Construction Manager pursuant to this Agreement, Owner agrees to pay Construction Manager compensation for its services as set forth below:

8.1.1 For pre-construction services, if requested by Owner in writing for a Project, a mutually agreeable lump sum which shall be reflected in an Owner purchase order for the applicable Project. Each invoice(s) for pre-construction services shall be submitted to Owner within thirty (30) days after the later of: (a) satisfactory completion of each of the requested phases, and (b) Owner's written approval of each phase. All services provided under pre-construction shall be included within the above lump sum amount. Construction Manager shall not be entitled to any other fees for pre-construction services, except as otherwise specifically provided in this Agreement.

8.1.1.1 Upon receipt of the Notice to Proceed for each Project (reflecting Owner's Project number), Construction Manager shall begin providing the indemnification described in this Agreement. Construction Manager acknowledges that ten dollars (\$10.00) has been included in the fee proposal for pre-construction services for the purpose of providing indemnification, and is a part of the fee established for the first phase of pre-construction services.

8.1.2 Once Construction Manager has commenced construction of the Work based upon Owner's written Notice to Proceed (with Owner's Project number identified), Construction Manager shall submit monthly invoices to Owner based upon the percentage of the Work completed subject to and on the terms described in the Conditions of the Contract. As required by Section 255.05, Florida Statutes, Owner shall not make a payment to Construction Manager until Construction Manager has provided Owner with a certified copy of the recorded payment and performance bonds for the Project.

8.1.2.1 As required by Section 287.0585, Florida Statutes, within seven (7) business days from receipt of payment from Owner, Construction Manager shall pay each trade contractor out of the amount paid to Construction Manager on account of such trade contractor's Work, the amount to which said trade contractor is entitled reflecting the percentage actually retained, if any, from payments to Construction Manager on account of said trade contractor's Work. Construction Manager shall, by appropriate agreement with each trade contractor, require each trade contractor to make payments to its subcontractors in a similar manner.

8.1.3 Pay requests for pre-construction services and for construction shall be documented in accordance with State University System Chancellor's Memorandum No. CM-N-08.01-01/99, a copy of which is located at <https://facilities.fiu.edu/formsandstandards.htm>.

8.1.4. As provided by Section 215.422, Florida Statutes, if a warrant in payment of an invoice is not mailed or electronically transmitted by Owner within forty (40) days after receipt of the invoice and receipt, inspection and approval of the services, Owner shall pay to Construction Manager, in addition to the amount

of the invoice, interest at the rate established by the Florida state comptroller pursuant to Section 55.03, Florida Statutes, on the unpaid balance from the expiration of such 40-day period(s) until such time as the warrant is mailed to Construction Manager. These provisions apply only to undisputed amounts for which payment has been authorized. Invoices or pay requests returned to Construction Manager due to preparation errors will result in a payment delay. Invoice payment requirements do not start until a properly completed invoice or pay request is provided to Owner. A vendor ombudsman has been established within Owner's Office of Business and Finance. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from Owner. The vendor ombudsman may be contacted at 305 348-6585.

8.2 Included in the "Construction Manager's Fee" are the following:

8.2.1 Unless approved by Owner in advance in writing, salaries and other compensation of Construction Manager's personnel stationed at Construction Manager's principal and branch offices other than the field office.

8.2.2 Expenses of Construction Manager's principal and branch offices other than the field office.

8.2.3 Any part of Construction Manager's capital expenses, including interest on Construction Manager's capital employed for the Work.

8.2.4 The cost of estimating services which may be required during the construction phase in locations other than the Project site.

8.2.5 Minor expenses, such as long-distance telephone calls, telephone and cellular communication service, postage, office supplies, courier or overnight delivery costs, and similar items incurred by the home and branch offices.

8.2.6 Cost of equipment, such as typewriters, cameras, radios, computers, cellular communication devices, copiers, facsimile equipment, dictating units, trailers, vehicles, and furniture purchased or rented by Construction Manager at the home and branch offices.

8.2.7 All costs incurred during the warranty period after construction.

8.2.8 Any cost not specifically and expressly described in the Article entitled "Cost of the Work."

8.3 Adjustments in Construction Manager's Fee will be made as follows:

8.3.1 Adjustments due to Changes in the Work shall be made as described in the Conditions of the Contract, provided, however, that notwithstanding the terms of Section 10.5.3 of the General Terms and Conditions, the percentages shall be applied to the entire Cost of the Work (and not just to the increase in the Cost of the Work due to the change order).

8.4 Construction Manager's Fee for each Project shall be the following percentages of the Cost of the Work.

\$	0.01 to \$ 100,000.00	15.0%
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\$ 100,001.00 to \$ 250,000.00	12.5%
\$ 250,001.00 to \$ 500,000.00	12.0%
\$ 500,001.00 to \$ 750,000.00	11.0%
\$ 750,001.00 to \$1,000,000.00	10.0%
\$1,000,001.00 to \$1,500,000.00	8.5%
\$1,500,001.00 to \$2,000,000.00	6.5%
\$2,000,001.00 to \$2,500,000.00	6.0%
\$2,500,001.00 to \$3,000,000.00	5.5%
\$3,000,001.00 to \$4,000,000.00	5.0%

8.5 Retainage shall be withheld from each payment, in an amount not to exceed five percent (5%) of the approved payment amount. Retainage on payments to Construction Manager shall be processed subject to and in accordance with Florida Statutes Section 255.078, as may be amended from time to time. The terms of this section shall prevail over the terms of Section 15.11 of the General Terms and Conditions.

ARTICLE 9

Cost of the Work

9.1 The term “Cost of the Work” shall mean costs, including construction general conditions costs, incurred in the Work as described and defined below, and paid or incurred by Construction Manager, less any reimbursement for scrap value and cash or trade discounts, subject to this Agreement. The Cost of the Work shall include only the items set forth in this provision.

9.1.1 Owner agrees to pay Construction Manager for the Cost of the Work pursuant to the terms of this Agreement through completion of the Work. Such payment shall be in addition to Construction Manager’s Fee as stipulated in this Agreement.

9.2 Cost of the Work is limited to actual expenditure for the following cost items:

9.2.1 Staffing costs as authorized in the GMP, including the cost of its supervisory, technical, administrative and clerical personnel engaged in supervision and management of the Work on the Project site; direct costs incurred in the Work; expenses for transportation, meals, and lodging of principals and employees, when traveling in connection with services and duties specifically related to the Project and when authorized in writing by Owner. The cost of periodic site visits for supervisory, inspection, oversight, or management of the Project by specific “home office” personnel shall not be included unless authorized in writing by Owner. To cover fringe benefits (or labor burden) a “Multiplier” not to exceed 1.40 for all applicable Projects under this Agreement, which shall be negotiated and agreed upon by the parties in the GMP times the wages will be considered a reimbursable cost and will be used for billing purposes only. The Multiplier shall be defined as employee bonuses, holidays, vacation and/or sick leave benefits, life insurance policies, vehicle allowances, or other similar perks and/or benefits paid to Construction Manager’s employees, the employer’s net actual cost of payroll taxes and net actual cost of employee’s worker’s compensation insurance taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, and other variables. Construction Manager shall reduce its standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes.

9.2.1.1 Daily hours worked by Construction Manager's employees for performance of the Work on each Project shall be provided to Owner on a weekly basis in the form of a timecard report signed by the employee.

9.2.1.2 No Construction Manager administrative personnel (e.g. accountant, scheduler, safety manager, etc.) stationed at Construction Manager's home or branch offices shall be charged to the Cost of the Work unless Owner approves such charges in advance in writing. A single project manager, otherwise assigned to the home or branch office, may be charged to the Cost of Work while on or away from the Project site, provided that individual's time is certified as attributable to the Project. Total amount charged for the project manager cannot exceed 4% of the Cost of Work for each project with attributable time.

9.2.1.3 Overtime wages paid to Construction Manager's employees will be reimbursed at the actual rate of overtime pay paid to the individual, provided such overtime wages have been pre-approved by Owner in writing. No time charges for overtime hours worked on each Project will be allowed if the individual is not actually paid for the overtime worked.

9.2.1.4 Subject to prior written approval by Owner of self-performed Work, the Cost of the Work shall include labor in the direct employ of Construction Manager and engaged in the performance of the Work for each Project under this Agreement.

9.2.2 The cost of all materials, supplies and equipment incorporated in the Work or stored on site, including cost of transportation and storage thereof, shall be included in the Cost of the Work. At Owner's sole discretion, Owner may agree in writing to make payment for materials, supplies, and/or equipment stored off-site and bonded.

9.2.3 The aggregate net cost directly paid by Construction Manager to trade contractors pursuant to written subcontracts to perform the Work, not to exceed the amounts set forth in the GMP for such Work.

9.2.4 Cost of the premiums for insurance and bonds required under this Agreement. All premiums for any insurance and bonds required for the Project shall reflect the net actual costs to Construction Manager after taking into consideration cost adjustments due to experience modifiers, premium discounts, policy dividends, retrospective rating plan premium adjustments, assigned risk pool rebates, refunds, etc. Construction Manager's actual cost for insurance and bonds directly attributable to this Agreement shall be considered to be included within the GMP (but shall not be included in the amount for purposes of calculating Construction Manager's Fee), and shall be charged at the actual rate paid by Construction Manager, provided that such rate shall not exceed the amount allocated to these expenses in the GMP. Prior to Final Payment, Construction Manager shall procure and/or provide to Owner any and all documentation requested evidencing net actual costs for insurance and bonds for the Project to Construction Manager.

9.2.5 Sales, use, gross receipt, or similar taxes related to the Work imposed by any governmental authority and paid by Construction Manager and directly related to the Work.

9.2.6 Fees and assessments for the building permit and for other permits, licenses and inspections which Construction Manager is required by this Agreement to pay, including cost of deposits lost for causes other than the fault or negligent act of Construction Manager, and/or its consultants, subcontractors, vendors and suppliers.

- 9.2.7 Cost of removal and disposal of all debris from the site, including clean-up and trash removal.
- 9.2.8 Cost incurred due to an emergency affecting the safety of persons and/or property not caused by the fault of Construction Manager, its consultants, subcontractors, material men and suppliers.
- 9.2.9 Cost to Construction Manager of temporary electric power, lighting, water and heat required for the performance of the Work, or required to protect the Work from weather damage where applicable.
- 9.2.10 Cost to Construction Manager of temporary safety-related protection including barricades and safety equipment, temporary roads and parking, dust control, pest control, installation and operation of temporary hoists, scaffolds, ladders and runways, and temporary project signs and costs of permits and fees pursuant to the Conditions of the Contract.
- 9.2.11 Cost of watchmen or similar security services.
- 9.2.12 Cost of surveys, measurements and layout work reasonably required for the execution of the Work or the requirements of the Agreement.
- 9.2.13 Cost of preparation of shop drawings, computer generated coordination plans, photographs, or as-built documents not included in trade contracts.
- 9.2.14 No travel costs shall be paid unless such costs are pre-approved by Owner in writing and such approved costs, if any, shall be subject to the requirements and limits set forth in Section 112.061, Florida Statutes and in Owner's Travel & Other Expenses Manual available at http://finance.fiu.edu/controller/Docs/Travel_Manual.pdf.
- 9.2.15 Costs, including transportation and maintenance of materials, supplies, equipment, temporary facilities and hand tools not customarily owned by workmen that are provided by Construction Manager at the site and fully consumed in the performance of the Work. At the end of the Project, any such items which are used, but not consumed, will be turned over to Owner, or, at Owner's option, will be credited to Owner at their fair market value at such time.
- 9.2.16 Rental charges for all necessary machinery, equipment and hand tools used in the performance of the Work, and not customarily owned by construction workers. Each piece of equipment to be rented shall have hourly, daily, weekly and monthly rates submitted to and approved by Owner in writing in advance before equipment rental charges will be considered reimbursable. Rental charges shall not exceed the purchase price of the machinery, equipment or tools.
- 9.2.17 Reasonable costs associated with setting up and demobilizing tool sheds, Project field offices, temporary fences, temporary roads, and temporary fire protection. Charges related to damaged and/or lost temporary fencing and related items will be the responsibility of Construction Manager.
- 9.2.18 Cost of reproduction of Construction Documents other than those required to be provided by the Construction Manager under this Agreement. Reproduction costs shall be the actual costs of reproduction. Documentation evidencing actual costs must be provided to Owner if requested.
- 9.2.19 Other expenses or charges properly incurred and paid in the performance of the Work, if and to the extent pre-approved by Owner in writing.

ARTICLE 10

Changes in the Work

10.1 Owner, without invalidating this Agreement, may order changes in the Work within the general scope of this Agreement consisting of additions, deletions, or other revisions. All changes in the Work must be authorized as described in the Conditions of the Contract. Except in cases of emergency endangering life or property, Construction Manager shall not allow any changes in the Work unless each such change has been pre-approved in writing by Owner.

ARTICLE 11

Discounts

11.1 All quantity discounts shall accrue to Owner. All trade discounts, rebates and refunds, including without limitation, rebates and refunds associated with insurance and payment and performance bonds, and all returns from the sale of surplus materials and equipment shall be credited to Owner. Any surplus items remaining at Project completion shall be returned to or credited to Owner at their fair market value at such time.

ARTICLE 12

Insurance

12.1 Prior to commencement of the Project and throughout the Project, Construction Manager shall provide insurance as required by the Conditions of the Contract for the joint benefit of Construction Manager and Owner, with an insurer acceptable to Owner. Owner reserves the right to require additional types and/or amounts of insurance at its sole discretion, and Owner will indicate if a builder's risk policy is required for the particular Project (as not all Projects may require said coverage). To the extent that there is any conflict between this Section and the Conditions of the Contract pertaining to insurance, this Section shall control. For the sole purposes of calculating the insurance premium costs for the insurances required, the GMP accepted by Owner shall not include any insurance premium costs. Construction Manager shall be reimbursed for insurance based on the actual cost of the insurance(s) only and shall not include a fee or other mark-up on the insurance premium costs. Prior approval from Owner is required in the event Construction Manager is looking for reimbursement for a coverage type that is not specified in the Conditions of the Contract. Owner will not pay for amounts that may represent a deductible in any insurance policy including a Subcontractor Default Insurance policy (i.e. Subguard). This **does not** apply to a Builder's Risk Policy. Buy-Down Policies / Deductible Buy-Down / or policies that perform the same function are considered deductibles and will not be paid by Owner.

ARTICLE 13

Indemnification

13.1 To the maximum extent permitted by law, Construction Manager shall indemnify and hold Florida International University, the State of Florida, The Florida Board of Governors, and their respective trustees, directors, officers, employees and agents (hereinafter referred to as "Indemnitees"), harmless from and against any and all charges, complaints, actions, suits, proceedings, hearings, investigations, delays, claims, demands, judgments, awards, orders, decrees, stipulations, injunctions, damages, dues, penalties, fines,

expenses, amounts paid in settlement, liabilities (whether known or unknown, whether absolute or contingent, whether liquidated or unliquidated, and whether due or to become due), obligations, taxes, liens, losses, fees and costs, including all attorneys' fees and all court and arbitration costs (at any level or of any type) (collectively, "Adverse Consequences") in connection with Construction Manager's performance of this Agreement to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Construction Manager or anyone for whose acts or omissions Construction Manager may be liable in the performance of this Agreement. The provisions of this Paragraph 13.1 shall be in addition to, and shall not be construed to negate, abridge, or reduce other rights or obligations of, any other indemnification right that may be available to Indemnitees under this Agreement or applicable laws. Construction Manager's indemnification obligations under this Agreement, including those specified in this Paragraph 13.1, shall be deemed part of the Project specifications and to fully comply with Section 725.06 or 725.08, Florida Statutes, as applicable, including any amendments thereto, in all respects. If any word, clause or provision of any of the indemnification provisions of this Agreement is determined not to be in compliance with Section 725.06 or 725.08, Florida Statutes, as applicable, including any amendments thereto, it shall be stricken and the remaining words, clauses and provisions shall remain in full force and effect. It is the intent of the parties that Construction Manager's indemnification obligations comply fully with Section 725.06 and 725.08, Florida Statutes, as applicable, including any amendments, in all respects. The terms of this Paragraph 13.1 shall survive the expiration or termination of this Agreement and the completion of the Work.

ARTICLE 14

Liquidated Damages

14.1 Inasmuch as failure to complete the Work for designated projects (as determined by Owner) assigned pursuant to this Agreement within the time fixed in accordance with Article 6 herein will result in injury to Owner, and as damages arising from such failure cannot be calculated with any degree of certainty, it is agreed that if the Work is not substantially completed, according to the definition of "Substantial Completion" in the General Terms and Conditions, within such fixed time or within such further time, if any, as shall be allowed for time extensions in accordance with the provisions of this Agreement or the Construction Documents, Construction Manager shall pay to Owner as liquidated damages for each such delay, the liquidated damages sum agreed to between Owner and Construction Manager at the time Owner and Construction Manager establish the accepted GMP for the designated Project and not as a penalty, for each and every calendar day elapsing between the date fixed for Substantial Completion and the date such Substantial Completion shall have been fully accomplished. Said liquidated damages shall be payable, in addition to any excess expenses or costs payable by Construction Manager, to Owner and shall not preclude the recovery of damages by Owner under other provisions of this Agreement, the General Terms and Conditions, the Construction Documents, or at law or in equity, except for Construction Manager's delays. This provision for liquidated damages for delay shall in no manner affect Owner's right to terminate this Agreement as provided in this Agreement, the General Terms and Conditions, or elsewhere in the Construction Documents. Owner's exercise of the right to terminate shall not release Construction Manager from the obligation to pay said liquidated damages on the terms provided in this Agreement. It is further agreed that Owner may deduct from the balance retained by Owner pursuant to the General Terms and Conditions, the liquidated damages provided in this Agreement, and damages outlined in the General Terms and Conditions, as the case may be, or such portion thereof as the remaining balance will cover. To the extent that there is any conflict between this Section and the Conditions of the Contract pertaining to liquidated damages, this Section shall control.

ARTICLE 15

Term Period of Service

15.1 Unless sooner terminated as provided in this Agreement, this Agreement shall remain in force for such period of one year, commencing on July 1, _____ and ending on June 30, _____. Notwithstanding this provision, all Projects commenced within this one-year term shall be completed in accordance with and under the terms of this Agreement.

15.2 This Agreement may be renewed annually, at Owner's sole discretion, but in no event for a period to exceed a total of five (5) years from the Effective Date of this Agreement. **Construction Manager acknowledges and agrees that Owner is in the process of updating all of its construction templates, and if renewed, Construction Manager may be presented with an amended and restated agreement incorporating new and/or revised terms and conditions.**

ARTICLE 16

Miscellaneous Provisions

16.1 All capitalized terms used herein but not defined herein shall have the meaning ascribed thereto in the General Terms and Conditions.

16.2 Owner and Construction Manager respectively, bind themselves, their partners, successors, assigns and legal representative to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Construction Manager shall not assign this Agreement, whether by operation of law or otherwise, without the written consent of Owner.

16.3 This Agreement shall be governed by and construed under the laws of the State of Florida, without regard to its choice of law provisions, and venue shall lie in the courts in Miami-Dade County, Florida. Each of the parties hereby (a) irrevocably and unconditionally consents to submit itself to the sole and exclusive personal jurisdiction of any federal or state court located within Miami-Dade County, Florida (the "Applicable Courts"), (b) waives any objection to the laying of venue of any such litigation in any of the Applicable Courts, (c) agrees not to plead or claim in any such court that such litigation brought therein has been brought in an inconvenient forum and agrees not otherwise to attempt to deny or defeat such personal jurisdiction or venue by motion or other request for leave from any such court, and (d) agrees that such party will not bring any action, suit, or proceeding in connection with any dispute, claim, or controversy arising out of or relating to this Agreement or the Project in any court or other tribunal other than any of the Applicable Courts.

16.4 Construction Manager represents and warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for Construction Manager) to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation individual or firm (other than a bona fide employee working solely for Construction Manager) any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

16.5 Construction Manager agrees to comply with all applicable public records laws, including those specifically set forth under Florida Statutes, Section 119.0701(2)(b), as amended from time to time, to the extent applicable. IF CONSTRUCTION MANAGER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONSTRUCTION MANAGER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 348-1377, BY EMAIL AT recordsmanagement@fiu.edu OR BY MAIL AT 11200 SW 8TH STREET, GL

460, MIAMI, FLORIDA 33199.

This Agreement may be unilaterally canceled by Owner for refusal by Construction Manager to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119 of the Florida Statutes and made or received by Construction Manager in conjunction herewith. Furthermore, at Owner's request, Construction Manager shall make available to Owner any and all documents, papers, letters, or other material made or received by Construction Manager pertaining to this Agreement, whether or not such documents are subject to the provisions of Chapter 119 of the Florida Statutes.

16.6 Construction Manager warrants that it is not on the convicted vendor list for a public entity crime committed within the past 36 months. Construction Manager further warrants that it will neither utilize the services of, nor contract with, any supplier, subcontractor, or consultant in excess of the threshold amount stated in Florida Statutes Section 287.017 (Category Two) in connection with this Agreement if such person is on the convicted vendor list for a public entity crime committed within the past 36 months. Construction Manager also warrants that neither it nor its principals, officers, directors, or members, as applicable, have been convicted of or charged with a felony or any crimes relating to fraud, bribery, or abuse of public competitive processes or other abuses of process.

16.7 Construction Manager 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 Owner in accordance with Owner's policies on the subject in effect at the time Construction Manager commences construction, call for or by exclusion require or recommend the use of any subcontractor, consultant, product, material, equipment, system, process or procedure in which Construction Manager has a direct or indirect proprietary or other pecuniary interest.

16.8 Owner/State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

16.9 This Agreement represents the entire and integrated agreement between Owner and Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

16.10 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either Owner or Construction Manager. Notwithstanding the foregoing, Owner shall be an intended third-party beneficiary of Construction Manager's contracts with its subcontractors/consultants, if any.

16.11 By execution of this document and in compliance with Section 287.055(5)(a), Florida Statutes, Construction Manager certifies that all factual unit costs supporting the Cost of the Work specified in this Agreement are accurate, complete and current at the time of negotiations; and that any other factual unit costs that may be furnished Owner in the future to support any additional fees that may be authorized will

also be accurate and complete. The fees specified in this Agreement and any additional fees that may be authorized in the future shall be adjusted to exclude any amounts which Owner determines resulted in an increased fee due to inaccurate, incomplete, or non-current factual unit costs.

16.12 In addition to Construction Manager's obligations under the General Terms and Conditions and Owner's rights and remedies under the General Terms and Conditions, Construction Manager shall be responsible to promptly make corrections to the Work when the Work is found to contain errors or omissions. To the extent that such errors and/or omissions are the fault of Construction Manager, its subcontractors, employees, agents or other representatives, costs associated with corrections of Construction services, increased costs of construction, cost for correction or replacement of construction work already performed and damages associated with the Work or the work of other Project participants resulting from such errors shall be borne by Construction Manager.

16.13 The parties acknowledge and agree that all exhibits referenced in this Agreement are attached hereto and incorporated herein by reference.

16.14 The "Effective Date" of this Agreement is the latest date this Agreement is fully executed by the parties.

16.15 Neither party shall be liable to the other party for any delay, failure in performance, loss, or damage to the extent caused by force majeure conditions such as acts of God, fire, explosion, power blackout, acts of regulatory or governmental agencies, or other causes beyond the impacted party's reasonable control not anticipated and provided for in this Agreement. The impacted party shall use diligent efforts to end the failure or delay and ensure the effects of such force majeure event are minimized. The impacted party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. The parties expressly agree that any and all termination rights of Owner set forth in the General Terms and Conditions remain in full force and effect, can be exercised by Owner at any time in accordance with the terms of this Agreement and the General Terms and Conditions, as applicable, and are not vitiated by the terms of this Section 16.15.

16.16 **Waiver of Jury Trial.** To the extent permitted by applicable law, the parties expressly covenant and agree to waive the right to trial by jury in connection with any litigation or judicial proceeding related to or concerning, directly or indirectly, this Agreement, or the conduct, omission, action, obligation, duty, right benefit, privilege or liability of a party. This waiver of right to trial by jury is separately given and is knowingly, intentionally and voluntarily made by the parties, and both acknowledge that separate and good and valuable consideration has been provided by each for this waiver. The parties have had an opportunity to seek legal counsel concerning this waiver. This waiver is intended to and does encompass each instance and each issue as to which the right to a jury trial would otherwise accrue. The parties further certify and represent to each other that no employee, representative or agent of Construction Manager or Owner (including their respective counsel) has represented, expressly or otherwise, to Construction Manager or Owner or to any agent or representative of Construction Manager or Owner (including their respective counsel) that they will not seek to enforce this waiver of right to jury trial. This waiver shall apply to this Agreement and any future amendments, supplements or modifications hereto.

16.17. If any provision of the Agreement, or the application thereof, is determined to be invalid or unenforceable, the remainder of that provision and all other provisions shall remain valid and enforceable.

16.18. **E-Verify.** Pursuant to §448.095, Fla. Stat., Construction Manager certifies that it is registered with and uses the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of

all new employees hired by Construction Manager during the term of the Agreement. If Construction Manager enters into a contract with a subcontractor to perform work or provide services pursuant to the Agreement, Construction Manager shall likewise require the subcontractor to comply with the requirements of §448.095, Fla. Stat., and the subcontractor shall provide to Construction Manager an affidavit stating that the subcontractor does not employ, contract with or subcontract with an unauthorized alien. Construction Manager shall maintain a copy of such affidavit for the duration of its contract with Owner. This paragraph serves as notice to Construction Manager regarding the requirements of §448.095, Fla. Stat., and Owner's obligation to terminate the Agreement if it has a good faith belief that Construction Manager has knowingly violated §448.095, Fla. Stat. If terminated for such reason, Construction Manager will not be eligible for award of a public contract for at least one year after the date of such termination. Further, Owner has an obligation to order the immediate termination of any contract between Construction Manager and a subcontractor performing work on its behalf should Owner develop a good faith belief that the subcontractor has knowingly violated §448.095, Fla. Stat. Owner reserves the right to request documentation from Construction Manager evidencing its compliance with §448.095, Fla. Stat. at any time during the term of the Agreement.

16.19 Construction Manager warrants that it is not plaintiff or defendant in any civil litigation currently pending in the United States and concerning the type of Work to be performed under this Agreement that would materially impair its ability to perform its obligations under this Agreement. If Construction Manager becomes either a plaintiff or defendant in such civil litigation during the term of this Agreement, Construction Manager will inform Owner as soon as practicable. If Construction Manager fails to inform Owner of such civil litigation, Owner may terminate this Agreement and Construction Manager will be responsible for all costs and damages incurred by Owner as a result of said termination.

16.20 Owner is an equal opportunity institution and as such, encourages the use of small businesses including women and minority-owned small businesses in the provision of construction related services. Small businesses should have a fair and equal opportunity to compete for dollars spent by Owner to procure construction-related services. Competition ensures that prices are competitive and a broad vendor base is available. Construction Manager shall use good faith efforts to ensure opportunities are available to small businesses, including women and minority-owned small businesses on the Project.

16.21 **Chapter 558, Florida Statutes.** The parties specifically opt out of the requirements of Chapter 558, Florida Statutes.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have affixed their signatures, effective on the date(s) set forth below.

CONSTRUCTION MANAGER:

(Construction Manager Company Name)

Attest:

By: _____
(Name, Title and Corporate Seal)

By: _____
Print Name: _____
Title: _____
Date: _____

OWNER:

**The Florida International University
Board of Trustees**

By: _____
Print Name: Mark B. Rosenberg
Title: President
Date: _____

APPROVED AS TO FORM AND LEGALITY

By: _____
Wendy Vargas
Senior University Counsel

Date: _____

EXHIBIT "A"
GENERAL TERMS AND CONDITIONS, _____ EDITION

[SEE ATTACHED]