



AGREEMENT  
BETWEEN OWNER  
AND  
CONSTRUCTION  
MANAGER

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Project Name:  
**Continuing Services**

Construction Manager:

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July 2012 Edition

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AGREEMENT BETWEEN  
OWNER AND CONSTRUCTION MANAGER

This Agreement ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ between The Florida International University Board of Trustees, on behalf of Florida International University, whose principal business address is Modesto Maidique Campus, 11200 S.W. 8<sup>th</sup> Street, Miami, Florida 33199, Attention: Associate Vice President of Facilities Management (hereinafter called the "Owner") and \_\_\_\_\_, whose principal business address is \_\_\_\_\_, Federal I.D. No. \_\_\_\_\_ (hereinafter called the "Construction Manager"), for services in connection with the Project (hereinafter defined).

WITNESSETH:

**WHEREAS**, Owner solicited statements of qualifications from interested construction managers for the construction of the Project described in the Program provided to the Construction Manager, a copy of which is available in Facilities Management;

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

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

**WHEREAS**, the 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, the Owner and the Construction Manager agree as follows:

ARTICLE 1

Project

The Project(s) for which the 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 under the contract does not exceed Two Million Dollars (\$2,000,000), 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 the Owner may enter into other agreements for the performance of similar services as deemed in the best interests of the Owner.

ARTICLE 2

The Construction Team and Extent of Agreement

2.1 The Construction Manager agrees to furnish its best skill and judgment and to cooperate with the Architect/Engineer(s) in furthering the interests of the Owner. The 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 the Owner.

2.2 The Construction Team. The Construction Manager, the Owner, and the Architect/Engineer(s) (the "Construction Team") will work as a team through construction completion. The 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 Construction Documents and the Conditions of the Contract (defined below), and together with those documents, represents the entire agreement between the Owner and the 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, and the requirements of the Drawings and Specifications will prevail. This Agreement may be amended only by written instrument signed by the Owner and the Construction Manager.

2.4 Ownership of Documents. The Construction Documents are and shall remain the property of the Owner and the Owner shall retain all common law, statutory and other reserved rights with respect thereto. The 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. The 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 The Construction Manager's Basic Services under this Agreement may include pre-construction phase services and construction phase services if requested by the 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 the 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 Agreement term; such personnel on its staff to provide the services contemplated hereby within the time periods required hereby. In addition, the 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. The Construction Manager shall:

3.2.1 Provide pre-construction deliverables for each Project, consisting of a letter and \_\_\_\_\_ ( ) copies of reports during project milestones mutually agreed to by the parties, but not less than two, at Schematics, Design Development, or 50%/100% Construction Documents together with a Guaranteed Maximum Price proposal for each applicable Project. The reports shall include a complete discussion and summary of the services provided in accordance with this Agreement, including a Project construction schedule (the "Project Construction Schedule") and a detailed cost estimate. Recommendations and cost estimates made throughout the pre-construction phase shall be based on the *Cost Containment Guidelines for the State University System of Florida, January 1996*.

3.2.2 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.

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

3.2.4 Prepare for the 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 the Owner and the Architect/Engineer if it appears that the Construction Cost may exceed the Project budget. Make recommendations for corrective action.

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

3.2.5.1 Advise on the separation of the Project into contracts for various categories of Work. If separate contracts are to be awarded by the 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.

3.2.5.2 Develop the Project 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 Project Construction Schedule for each set of bidding documents. Develop a plan for the phasing of construction.

3.2.5.3 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.

3.2.6 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.

3.2.7 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.

3.2.87 Make recommendations for pre-qualification criteria for bidders and develop bidders' interest in the Project. Establish bidding schedules.

3.2.9 Schedule and conduct bi-weekly meetings (unless specified by Owner in writing otherwise) of the Construction Team. The appropriate Team member shall prepare and distribute the minutes for each of the meetings.

3.2.10 Based upon Construction Documents produced by the Architect/Engineer, develop Guaranteed Maximum Price proposal(s), including Project Construction Schedule, itemized by Trade Contract, for phases of the Work as required by the Owner. If the documents as prepared by the Architect/Engineer are not adequate for the development of a Guaranteed Maximum Price, the Construction Manager shall notify the Owner immediately, prior to developing the GMP. All assumptions made by the Construction Manager in the development of the GMP shall be specifically listed in the GMP proposal. All assumptions and clarifications, if any, by the 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 the Construction Manager not included in the original GMP proposal.

3.2.10.1 If the GMP proposal is accepted by the 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. Performance and Payment Bonds on the Owner's standard forms will be executed prior to commencement of the Work.

3.2.10.2 If the GMP proposal is not accepted by the Owner, the Owner shall so notify the Construction Manager in writing. The 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, unless an extension is granted in writing by the Owner. If an acceptable GMP is not developed within this time period, negotiations may be terminated, and the Owner may initiate negotiations with another firm. In this event, this Agreement shall terminate and the Owner shall have no further liability under this Agreement except for any outstanding sums due and owing Pre-Construction Services.

3.3 Construction Phase. Unless otherwise authorized by the Owner in writing, all Work shall be performed under Trade Contracts held by the Construction Manager. The 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 the Owner. The 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 current General Terms and Conditions; and (ii) the Construction Documents which shall include, but not be limited to, Division I of the Specifications. The Conditions of the Contract are available on FIU's Facilities Management website and are hereby incorporated in 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 and the Agreement terms, the documents shall govern in the following order of precedence: First, the Agreement terms; second, the Technical Project Design Specifications incorporated in the above documents; and third, the Design Drawings incorporated in the above documents.

3.3.2 Commence the Work for the Project within ten (10) days after receipt of the executed Guaranteed Maximum Price Amendment and Notice to Proceed (reflecting the Contract Number) from the Owner.

3.3.3 Develop procedures which are acceptable to the Owner for the pre-qualification of Trade Contractors. Develop Trade Contractor interest in the Project and publicly advertise and conduct pre-bid conferences with interested bidders to review the documents. Take competitive bids on the Work of the various Trade Contractors; or, if authorized by the 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 the 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 the Owner and Architect/Engineer for award of Trade Contracts by the Construction Manager. The 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 the 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 the Owner, Architect/Engineer and Construction Manager in order to complete the Project in accordance with the Owner's objectives of cost, time and quality. Develop and maintain a program, acceptable to the 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 the Construction Manager and the Architect/Engineer over acceptability of Work and conformity with the requirements of the specifications and plans, the 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. The Construction Manager has provided the Construction Manager's personnel chart which lists by name, job category, responsibility and hourly rate, the Construction Manager's primary employees who will work on the Project in the Construction Manager's Professional Qualifications Supplement submitted to the Owner during the Construction Manager selection process. The Construction Manager shall promptly inform the Owner in writing of any proposed replacements or additions, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s) or addition(s). The Owner shall have the right, in its reasonable discretion, to reject any proposed replacement.

3.3.5.1 The Construction Manager shall promptly inform the 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). The Owner shall have the right, in its reasonable discretion, to reject any proposed replacement.

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

3.3.5.3 Establish on-site organization and lines of authority in order to carry out the overall plans of the Construction Team. Identify an on-site staff member to represent the Construction Manager on a daily basis, with authority to negotiate change orders and contract modifications on behalf of the Construction Manager. Make available such executive personnel as necessary to execute change orders or other contract modifications on behalf of the Construction Manager so as not to delay the progress of the Work.

3.3.6 Establish procedures for coordination among the 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 distribute minutes. Attend weekly Construction Team meetings scheduled by the Architect/Engineer.

3.3.8 Review the Project 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 Project Construction Schedule and various sub-networks as construction progresses. Identify potential variances between scheduled and probable completion dates. Review the Project 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 Project Construction Schedule. Regularly scheduled updates and reporting shall be included as part of the monthly project report outlined in this Agreement. Display the current Project Construction Schedule in the on-site office, and review the Project 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 Project Construction Schedule. In consultation with the 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. The 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 the Owner's policies on the subject in effect at the time Construction Manager commences construction of the Project. For each direct purchase, the Owner shall: (a) issue its purchase order directly to the vendor supplying the materials the contractor will use; (b) provide the vendor with a copy of the Owner's Florida Consumer's Certificate of Exemption; (c) make payment directly to the vendor from public funds based on the vendor's invoice which must be issue directly to the 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; [DISCUSS] and (f) issue a Certificate of Entitlement pursuant to the DOR Rule to each vendor and to the Owner's contractor 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. . The Construction Manager shall provide Owner with a written list of all potential Direct Purchase Materials and any other information required by the Owner with respect to each direct purchase. The Construction Manager shall also provide the Owner with monthly reports pertaining to the "Direct Purchase Materials."

3.3.10.2 The Guaranteed Maximum Price 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 THE OWNER DOES NOT CHANGE ANY OF THE CONSTRUCTION MANAGER'S RESPONSIBILITIES REGARDING INSTALLATION OF THE MATERIALS PURCHASED,** The 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 the 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 The Construction Manager shall maintain a system of accounting consistent with generally accepted accounting principles. The 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 the 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 the 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 work space 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 one percent (1%) of the total amount paid hereunder or \$20,000, whichever is less, in addition to making adjustments for the overcharges, the reasonable actual cost of the Owner's audit shall be reimbursed to the Owner by the Construction Manager. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the 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 the Owner and the Architect/Engineer, review requests for changes and submit recommendations to the Owner and Architect/Engineer.

3.3.14.1 When requested by the 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 the 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 OSHA guidelines shall serve as the basis for the construction safety program.

3.3.15.1 Promptly notify the Owner and, where applicable, the 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 the Owner's Representative on request. The minutes of job safety and accident prevention portion of such progress meetings shall be made available to the Owner's Insurance Administrator, where applicable, upon request.

3.3.15.3 Designate a full-time staff member as the project safety director covering all Projects assigned who shall oversee job safety and accident prevention for the Construction Manager, Trade Contractors and sub-subcontractors involved in the Work, in addition to any other responsibilities assigned to such staff member.

3.3.16 Make provisions for Project security acceptable to the 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. Submit written monthly progress reports to the 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 the 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 Purchases of Materials.

3.3.18 The Construction Manager shall be responsible for the removal, encapsulation, transportation and disposal of any hazardous material, including, any asbestos or asbestos-related products except hazardous and/or contaminated material as defined by CERCLA which shall be abated by the Owner. Hazardous material, described by federal guidelines brought by the Construction Manager or the Trade Contractors shall remain their responsibility for proper disposal. Construction Manager shall notify Owner immediately if any hazardous material is discovered. Except as otherwise provided herein, Owners shall be responsible for testing any hazardous materials discovered and if required by law, remediating the site prior to Construction Manager continuing the Work. Any hazardous material not specifically shown on the documents shall be considered a concealed condition and may be the responsibility of the Construction Manager in a Change Order increasing the Guaranteed Maximum Price for any additional costs incurred.

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

#### ARTICLE 4

##### Additional Services

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

#### ARTICLE 5

##### Owner's Responsibilities

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

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

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

ARTICLE 6

Schedule

6.1 The 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 the Owner and the Architect/Engineer within thirty (30) calendar days after each of the referenced documents have been made available to the 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 Guaranteed Maximum Price Amendment to this Agreement.

6.3 In the event the Owner desires to accelerate the schedule for any portion of the Work, the Owner shall notify the Construction Manager in writing. Within seven (7) calendar days after Owner's submission of such notice to the Construction Manager, the Construction Manager shall give the Owner a revised Guaranteed Maximum Price for the acceleration which shall become a Change Order upon acceptance. The Owner may then direct the 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 the Owner shall reimburse the Construction Manager for the costs of such acceleration subject to the Guaranteed Maximum Price. In no event shall the Construction Manager be entitled to compensation in excess of the adjusted Guaranteed Maximum Price. The Construction Manager shall require accurate daily records of all costs of the required acceleration and shall secure the Owner's approval of such records.

6.4 The 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" (GMP) includes the Cost of the Work required by the Construction Documents, as defined in this Agreement, and the Construction Manager's fee, as defined in this Agreement. 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 Agreement terms, 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."

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 for the not-to-exceed value of the GMP shall be returned to the Owner as part of the net aggregate savings established when final accounting is submitted upon Final Completion of the Work, or at such earlier time as agreed to by the Owner and the 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 the Construction Manager's contingency and the actual expenditures representing the Cost of the Work as defined herein. Liquidated damages, if any, are different from, and are not a part of, this calculation. Upon completion of the bidding and award period, the Construction Manager's contingency will be adjusted so that it does not exceed the

contingency percentage agreed upon in the original GMP proposal. Those savings which cause the agreed upon contingency to be exceeded will be available for the Owner's use as soon as reasonably possible, but in no event later than sixty (60) days after final GMP approval. 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 shall be required for modification to GMP line items.

## 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, the Owner agrees to pay the 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 FIU 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 the Facilities Management Project Number), the Construction Manager shall begin providing the indemnification described in this Agreement. The 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 the Construction Manager has commenced construction Work based upon the Owner's written Notice To Proceed (with the Facilities Management Project Number identified), the Construction Manager shall submit monthly invoices to the Owner based upon the percentage of the Work completed subject to and on the terms described in the Conditions of the Contract.

8.1.2.1 As required by Section 287.0585, Florida Statutes, within seven (7) business days from receipt of payment from the Owner, the Construction Manager shall pay each Trade Contractor out of the amount paid to the 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 the Construction Manager on account of said Trade Contractor's Work. The 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 As provided by Section 215.422, Florida Statutes, if a warrant in payment of an invoice is not mailed or electronically transmitted by the Owner within 40 days after receipt of the invoice and receipt, inspection and approval of the services, the Owner shall pay to the 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 the Construction Manager. These provisions apply only to undisputed amounts for which payment has been authorized. Invoices or pay requests returned to the 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 the Owner. A Vendor Ombudsman has been established within the 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 the Owner. The Vendor Ombudsman may be contacted at 305 348-2101.

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

8.2.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal and branch offices other than the field office. The costs for Construction Manager's staff at the job site that is not full-time shall be deemed included in the Construction Manager's lump sum fee set forth in this Agreement, except as otherwise specifically stated in this agreement.

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

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

8.2.9 Any costs associated with personal vehicles, allowances, maintenance and fuel costs by any employee at the home, branch or field office.

8.3 Adjustments in the 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.

8.4 The 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%
\$	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 \$1,250,000.00	09.0%
\$1,250,001.00 to \$1,500,000.00	08.0%
\$1,500,001.00 to \$1,750,000.00	07.0%
\$1,750,001.00 to \$2,000,000.00	06.0%

## ARTICLE 9

### Cost of the Work

9.1 The term “Cost of the Work” shall mean costs, including General Conditions costs, incurred in the Work as described and defined below, and paid or incurred by the Construction Manager, less any reimbursement for scrap value and cash or trade discounts, subject to this Agreement. The term “wages” as used herein shall include the straight time and overtime pay (if approved in advance in writing by the Owner) and the cost of associated employee benefits. Employee benefits include unemployment compensation, social security, compensated absences, and other mandatory and customary contributions and fringe benefits insofar as such costs are based on wages, salaries, or other remuneration paid to employees of the Construction Manager. The Cost of the Work shall include only the items set forth in this provision. Employee benefits do not include Workers’ Compensation insurance when such insurance is provided by the Owner in accordance with the terms required in this Agreement.

9.1.1 The Owner agrees to pay the 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 the 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 Subject to prior written approval by the Owner, wages paid for labor in the direct employ of the Construction Manager and engaged in the performance of the Work for each Project under this Agreement. To cover fringe benefits a “Multiplier” \_\_\_\_\_ for all applicable Projects under this Agreement [which shall be negotiated and agreed upon by the parties shall be reflected and incorporated herein in the space provided]times the wages will be considered a reimbursable cost and will be used for billing purposes only. The Multiplier shall be defined as 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. The 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. The percentage used for the multiplier may be examined at the conclusion of the Project and an adjustment will be made for any overstated costs included in the billed multiplier. Employee bonuses, holidays, vacation and/or sick leave benefits, life insurance policies, vehicle allowances, or other similar perks and/or benefits paid to the Construction Manager’s employees shall not be considered reimbursable labor or labor burden costs and will be deemed to be included as part of the Construction Manager’s Lump Sum Fee.

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

9.2.1.2 No Construction Manager personnel stationed at Construction Manager's home or branch offices shall be charged to the Cost of the Work unless the Owner approves such charges in advance in writing.

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.

9.2.2 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 the Owner's sole discretion, the 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 the 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 the 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. The Construction Manager's actual cost for insurance and bonds directly attributable to this Agreement shall be considered to be included within the GMP, 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 the Construction Manager.

9.2.5 Sales, use, gross receipt, or similar taxes related to the Work imposed by any governmental authority and paid by the 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 the Construction Manager is required by this Agreement to pay, including cost of deposits lost for causes other than the fault or negligent act of the 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 the Construction Manager, its consultants, subcontractors, material men and suppliers.

9.2.9 Cost to the 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 the 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 Florida Statutes Section 112.061.

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 the 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 the Owner, or, at the 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 the 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 the Construction Manager.

9.2.18 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 The 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, the Construction Manager shall not allow any Changes in the Work unless each such change has been pre-approved in writing by the Owner.

## ARTICLE 11

### Discounts

11.1 All quantity discounts shall accrue to the 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 the Owner. Any surplus items remaining at Project completion shall be returned to or credited to the Owner at their fair market value at such time.

## ARTICLE 12



Insurance

12.1 Prior to commencement of the Project and throughout the Project, the Construction Manager shall provide insurance as required by the Conditions of the Contract for the joint benefit of the 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 such requirements shall be reflected in the Contract for Construction. 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 the Owner shall not include any insurance premium costs.

ARTICLE 13

Indemnification

13.1 To the maximum extent permitted by law, the Construction Manager hereby agrees to indemnify and hold Owner, Florida International University, and their respective trustees, officers, and employees, harmless for, from, and against all liabilities, damages, losses, and costs, including but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Construction Manager and other persons employed by or utilized by the Construction Manager in the performance of this Agreement. This provision shall survive expiration of this Agreement. See Florida Statutes Section 725.06.

ARTICLE 14

Liquidated Damages

14.1 Inasmuch as failure to complete the Work for designated projects (as determined by the Owner) assigned pursuant to this Agreement within the time fixed in the General Terms and Conditions of the Contract For Construction ("General Conditions") will result in injury to the Owner, and as damages arising from such failure cannot be calculated with any degree of certainty, it is agreed that if the Work is not substantially completed, according to the definition of "Substantial Completion" in the General Conditions, or within such further time, if any, as shall be allowed for time extensions in accordance with the provisions of the Construction Documents, the Construction Manager shall pay to the 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 in the General Conditions 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 the Construction Manager, to the Owner under the General Conditions and shall not preclude the recovery of damages by the Owner under other provisions of 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 the Owner's right to terminate the Contract as provided in the General Conditions or elsewhere in the Construction Documents. The Owner's exercise of the right to terminate shall not release the Construction Manager from the obligation to pay said liquidated damages on the terms provided in this Agreement. It is further agreed that the Owner may deduct from the balance retained by the Owner under the General Conditions, the liquidated damages provided in this Agreement, and damages outlined in the General 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 \_\_\_\_\_ years from the date of this Agreement.

ARTICLE 16

Miscellaneous Provisions

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

16.2 The 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. Neither Owner nor Construction Manager shall assign this Agreement or any interest therein without the prior written consent of the other.

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.

16.4 The 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 the 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 the 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 This Agreement may be unilaterally canceled by the Owner for refusal by the 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 the Construction Manager in conjunction herewith. Furthermore, at Owner's request, the Construction Manager shall make available to the Owner any and all documents, papers, letters, or other material made or received by the 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 The Construction Manager warrants that it is not on the convicted vendor list for a public entity crime committed within the past 36 months. The 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. The 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 This Agreement may be terminated by the Owner in its sole discretion upon seven (7) calendar days' prior written notice to the Construction Manager.

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 the Owner and the 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 the 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 the Owner or the Construction Manager. Notwithstanding the foregoing, the Owner shall be an intended third party beneficiary of the 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, the 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 the 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 the 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 Conditions and Owner's rights and remedies under the General 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 the 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 the 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 interruption, failure, inability, or delay to perform hereunder, if such failure, inability, or delay is due to any cause beyond the reasonable control of the party so failing, including without limitation, acts of God, acts of any government, war or other hostility, civil disorder, industrial or labor dispute and due diligence is used in curing such cause and in resuming performance.

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

**CONSTRUCTION MANAGER:**

\_\_\_\_\_

Attest:

By: \_\_\_\_\_

*Signature*

*Print Name & Title of Company Executive (Affix Corporate Seal)*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

As Witnessed by:

\_\_\_\_\_

*Signature*

**OWNER:**

Witnessed By:

\_\_\_\_\_

\_\_\_\_\_

**The Florida International University  
Board of Trustees**

By: \_\_\_\_\_

Print Name: Mark B. Rosenberg

Title: President

APPROVED AS TO FORM AND LEGALITY

By: \_\_\_\_\_

University Attorney

Date: \_\_\_\_\_