



AGREEMENT
BETWEEN OWNER
AND GENERAL
CONTRACTOR

Project Name:
Continuing Services

General Contractor
Minor Projects:

March 2022 Edition

**AGREEMENT BETWEEN
OWNER AND GENERAL CONTRACTOR**

This Agreement Between Owner and General Contractor (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. 8 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 "Contractor"). Contractor 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 general contractors for renovations, alterations, additions and site improvements with a basic construction budget estimated to be \$500,000.00 or less (hereinafter collectively referred to in this Agreement as "Project"); and

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

WHEREAS, Owner intends to engage, or has engaged, one or more professionals (hereinafter referred to as the "Professional") to design components and/or develop specifications and statements of work 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 Contractor agree as follows:

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

ARTICLE 1. THE CONTRACT DOCUMENTS

1.1 The "Contract Documents," which constitute the entire agreement between Owner and Contractor, consist of this Agreement and all exhibits hereto; FIU Design Standards, FIU Building Standards, FIU Professional Services Guide, and all other standards of Owner in effect at the time of the performance of the Work (collectively, "Owner Standards"); the statement(s) of work ("SOW"); shop drawings, the construction documents, if any; amendments or addenda executed by Owner and Contractor hereafter, if any; and any Owner-approved change orders or field orders. Where this Agreement is expressly in conflict with any other Contract Documents, this Agreement shall prevail. Where this Agreement is silent the other Contract Documents, as applicable, shall prevail.

1.2 To the extent Owner's Standards are stricter than Applicable Laws (as hereinafter defined), such Owner's Standards shall be met unless Contractor obtains Owner's written consent to a deviation, which consent may be granted or withheld in Owner's sole and absolute discretion. For the purposes of this Agreement, "Applicable Laws" means all federal, state, local, municipal, judicial and quasi-governmental laws, statutes, ordinances, orders, decrees, judgments, codes and regulations, governing or applicable to the Project, Contractor or the work to be performed by Contractor in connection with the Project (the "Work"), as the same may be amended, interpreted or enforced from time to time. The term "Applicable Law" also includes all rules and requirements of any utility company serving the Project site.

ARTICLE 2. THE WORK

2.1 Each Project will be defined in a separate SOW. Contractor may be requested to perform several SOWs concurrently. Individual SOWs will not exceed the maximum cost of \$500,000.00. Any modifications to an SOW must be in writing and executed by an authorized representative of each party. Modifications may be in the form of an Owner approved change order to the applicable SOW.

2.2 Contractor represents and warrants that it will (i) thoroughly review the construction documents for the Project, if any, and all other documents related thereto and made available on Owner's website(s) or otherwise conveyed to Contractor; (ii) visit and thoroughly inspect the Project site and any structure(s) or other man-made features to be modified as part of the Work and familiarize itself with local conditions under which the Project will be constructed and operated; (iii) familiarize itself with surveys and other as-built drawings provided by Owner or the Professional that indicate the location of all existing buildings, utilities, conditions, streets, equipment, components and other attributes having or likely to have an impact on the Project; (iv) familiarize itself with pertinent Project dates and special requirements, including the Project schedule; (v) review and analyze all Project geotechnical, Hazardous Substances (as defined herein), structural, chemical, electrical, mechanical and construction materials tests, investigations and recommendations provided by Owner or the Professional; and (vi) gather any other information necessary for a thorough understanding of the Project. If the Project involves modifications to any existing structure(s) or other man-made feature(s) on the Project site, Contractor represents that it will also review all as-built and record drawings, plans and specifications provided by Owner or the Professional and thoroughly inspect the existing structure(s) and man-made feature(s) to identify existing deficiencies and ascertain the specific locations of pertinent structural components. Claims by Contractor resulting from Contractor's failure to familiarize itself with the Project site or pertinent documents shall be deemed waived.

2.3 Contractor agrees to provide all services required to complete the Work in an expeditious and economical manner consistent with the Contract Documents and in the best interest of Owner.

2.4 Contractor shall endeavor to develop, implement and maintain a spirit of cooperation, collegiality, and open communication among Contractor, Owner, any Professional and any subcontractors so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and, upon completion, the Project is deemed a success by all parties. Contractor understands that Owner will conduct evaluations of Contractor's performance and these evaluations may affect award of future work on other Projects.

2.5 Construction Services

2.5.1 Contractor shall supervise and direct the Work at the Project site. Contractor shall, at a minimum, staff the Project with personnel who shall:

- (i) supervise and coordinate Contractor's personnel and act as its primary liaison with Owner or Professional;
- (ii) coordinate trade contractors and suppliers, and supervise Project site construction services;
- (iii) be familiar with all trade divisions and trade contractor's scopes of Work, all applicable building codes, and the Contract Documents;
- (iv) check, review and coordinate shop drawings and materials delivered to the Project site, regularly review the Work to determine its compliance with the Contract Documents, and periodically confer with the Professional, if any, and any other Owner consultants to assure acceptable levels of quality;
- (v) prepare and maintain Project records, including process documents and daily logs;

- (vi) schedule and conduct progress meetings with subcontractors to review jobsite safety, job procedures, construction progress, schedule, shop drawing status and other information, as necessary;
- (vii) upon Owner's request, schedule and conduct weekly progress meetings with Owner and Professional, if any, to review construction progress, schedule, shop drawing status and other information, as necessary, and if requested by Owner distribute minutes;
- (viii) make provision for Project security to protect the Project site and materials stored off-site against theft, vandalism, fire and accidents, as required herein. Contractor must obtain approval from Owner thirty (30) days in advance of storing Project material(s) off-site; such off-site premises must be bonded and insured;
- (ix) provide necessary documentation and otherwise assist the Professional, if any, with the preparation of the final "as-built" or record drawings; and
- (x) be responsible for initiating, maintaining and supervising effective safety programs and require similar programs of the trade contractors and subcontractors. The Occupational Safety and Health Administration ("OSHA") guidelines shall serve as the basis for the construction safety program. Contractor shall promptly notify Owner, 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. Safety shall be a prime concern of Contractor at all times. Contractor 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.

2.5.2 Contractor shall promptly reject any Work (i) which does not conform to the SOW and Construction Documents, if any; or (ii) which does not comply with any Applicable Laws.

2.5.3 Contractor shall comply with Owner's policies applicable to this Agreement in effect at the time of the performance of the Work, as set forth in the following: <http://facilities.fiu.edu/formsandstandards.htm>

2.5.4 Contractor shall cause its subcontractors and suppliers to comply with the Project schedule and applicable sub-schedules. Contractor shall obtain and review schedules from subcontractors and suppliers, coordinate sub-schedules with the construction schedule, and enforce compliance with all applicable schedules to ensure timely completion of the Work. If, at any time, a Project is delayed, Contractor shall immediately notify Owner of the probable cause(s) and possible alternatives, and make recommendations to minimize expense and/or delay to Owner.

2.6 **Direct Purchase Program.** Owner is tax exempt and may elect, at the time that it issues a SOW for a Project, to implement a direct purchase program whereby it may purchase materials and equipment applicable to a Project 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 Contractor commences its Work on the Project. For each direct purchase, Owner shall: (a) issue its purchase order directly to the vendor supplying the materials Contractor 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; and (e) issue a Certificate of Entitlement pursuant to the DOR Rule to each vendor and to 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). Contractor 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. Notwithstanding the fact that the vendor's invoice must be issued directly to Owner as provided above, Contractor 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. Contractor 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, Contractor 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 Contractor pursuant to the terms of the Contract Documents.

ARTICLE 3. THE PROFESSIONAL

The Professional for this Project shall be set forth in the SOW provided to Contractor. The Professional will be Owner's representative in dealing with Contractor on all design and technical matters, and will administer the Contract Documents. Unless otherwise directed by Owner, Owner and Contractor shall communicate with each other through the designated Professional. Owner's instructions to Contractor will be issued through the designated Professional. If there is no professional consultant retained by Owner for a project, the Professional will be Owner's Project manager.

ARTICLE 4. TERM AND TERMINATION

4.1 Unless sooner terminated as provided herein, this Agreement shall remain in effect until June 30, 20____, and may be renewed at Owner's option for an additional four (4) one-year periods.

4.2 Termination (Default by Contractor). If Contractor defaults by failing to substantially perform in accordance with the terms of this Agreement, as reasonably determined by Owner, Owner may give written notice to Contractor (i) terminating this Agreement effective seven (7) calendar days from the date of notice; or (ii) setting forth the nature of the default and requesting Contractor initiate cure within seven (7) calendar days from the date of notice. At any time thereafter, if Contractor fails to initiate cure upon the request of Owner and continue such cure until complete, Owner may give notice to Contractor of immediate termination. If Owner terminates this Agreement pursuant to this Section, and it is subsequently determined by a court of competent jurisdiction that Contractor was not in default, then in such event, said termination shall be deemed a termination for convenience, pursuant to **Section 4.4**.

4.3 Termination (Default by Owner). If Owner defaults by failing to substantially perform in accordance with the terms of this Agreement, Contractor shall give written notice to Owner setting forth the nature of the default and requesting cure within seven (7) calendar days from the date of notice. If Owner fails to cure within seven (7) calendar days from the date of notice, Contractor may give notice to Owner of immediate termination.

4.4 Other Termination or Suspension by Owner. Owner may, at any time, give written notice to Contractor terminating this Agreement or suspending the Project, in whole or in part, for Owner's convenience and without cause. If Owner terminates this Agreement or suspends the Project, Contractor shall immediately reduce its staff, services and outstanding commitment in order to minimize the cost of termination or suspension.

4.5 Payment After Termination/Suspension. If the Agreement is terminated by Owner pursuant to **Section 4.2**, no further payment shall be made to Contractor until completion of the Project. At such time, Contractor's compensation shall, at Owner's option, be calculated (i) on the basis of services actually performed and expenses actually incurred prior to the effective termination date, or (ii) on the basis of the payment terms set forth elsewhere herein. In either case, Contractor's compensation shall be reduced by all costs and damages incurred by Owner as a result of the default of Contractor. If the Agreement is (i) terminated by Contractor pursuant to **Section 4.3**; (ii) terminated by Owner pursuant to **Section 4.4**; or (iii) suspended more than forty-five (45) days by Owner pursuant to **Section 4.4**, Contractor's compensation shall be calculated on the basis of services actually performed and expenses actually incurred prior to the effective termination or suspension date and reasonable costs associated with the termination or suspension.

ARTICLE 5. SUBSTANTIAL AND FINAL COMPLETION

5.1 "Substantial Completion" of the Work shall be achieved when the Work has been completed to the point where Owner can lawfully occupy or utilize the Work for its intended purpose under a temporary certificate of completion or final certificate of completion or temporary certificate of occupancy or final certificate of occupancy (with conditions acceptable to Owner in its sole discretion) or their equivalent. Professional or Owner shall certify the date Substantial Completion of the Work is achieved. If Owner has designated portions of the Work to be turned over to Owner prior to Substantial Completion of the entire Work, Professional or Owner shall certify the date as to when Substantial Completion of such designated portions of the Work have been achieved. When the entire Work (or any portion thereof designated in writing by Owner) is Substantially Complete, Contractor shall notify Owner or Professional in writing that the entire Work (or such designated portion) is Substantially Complete. Within a reasonable time thereafter, Contractor and Owner or Professional shall make an inspection of the Work (or designated portion thereof) to determine the status of completion. If Owner or Professional do not consider the Work (or designated portion) Substantially Complete, Owner or Professional shall notify Contractor in writing giving the reasons therefor and the inspection process shall be repeated at no additional cost to Owner until the Work is determined to be Substantially Complete. In such case, Contractor shall pay the costs (including those of Professional) of all additional Substantial Completion inspections. If Owner or Professional consider the Work (or designated portion) Substantially Complete, Owner or Professional shall prepare and deliver to Contractor a final punch list of items to be completed or corrected by Contractor before final payment. Such final punch list shall be in compliance with the Contract Documents and all Applicable Laws. Accordingly, Owner or Professional shall provide the final punch list to Contractor within fourteen (14) days after Contractor has achieved Substantial Completion. Contractor acknowledges and agrees that the failure to include any corrective work or pending items not yet completed on the punch list does not alter the responsibility of Contractor to complete all the Work required under the Contract and does not waive Owner's right to demand completion of the item pursuant to the Contract Documents prior to or after final payment. Additionally, if the Contract involves Work on more than one building or structure, or involves a multi-phased Project, a punch list shall be developed in accordance with the timelines set forth in this Section for each building, structure, or phase of the Project. Owner shall have the right to exclude Contractor from the Work and Project site (or designated portion thereof) after the date of Substantial Completion (or partial Substantial Completion), but Owner shall allow Contractor reasonable access to complete or correct items on the final punch list.

5.2 "Final Completion" of the Work shall be achieved on the later of: (a) the date that the Work passes a final inspection, or (b) the date that Contractor has produced all required close-out documentation and items. Final Completion shall not be deemed to have occurred and no final payment shall be due Contractor or any of its subcontractors or suppliers until the Work has passed the Final Completion inspection and all

required close-out documentation and items have been produced to Owner by Contractor. Upon Owner's request, when Contractor believes it has fully performed all of the Work, including all punch list items, but in any event, no later than thirty (30) days from the date of Substantial Completion, Contractor shall notify Owner and/or Professional that all Work has been completed in accordance with the requirements of the Contract Documents. Professional or Owner shall promptly inspect the Work to determine if all of the Work has been completed and is ready for final acceptance by Owner. If Owner or Professional determine Contractor has completed the entire Work, Contractor shall promptly submit a final certificate for payment, stating that, to the best of its knowledge, information and belief, and on the basis of its observations and inspections: (a) all of the Work has been completed in accordance with the requirements of the Contract Documents; (b) the final balance due Contractor, as noted in the final certificate for payment, is due and payable; and (c) all conditions precedent to Contractor's entitlement to final payment have been satisfied. Neither the final payment nor the retainage shall become due and payable until Contractor submits: (i) the duly executed and notarized final Contractor's waiver and release of lien in the form acceptable to Owner and in compliance with Applicable Laws; (ii) all close-out documentation and information required by the Contract Documents to be provided by Contractor prior to its entitlement to final payment; (iii) if required by Owner, other data establishing payment or satisfaction of all obligations, such as receipts, releases and waivers of liens, arising out of the Contract Documents, to the extent and in such form as may be designated by Owner; (iv) certificate of final completion issued by the authority having jurisdiction; (v) all operation and maintenance manuals not previously produced; (vi) Owner maintenance or extra stock as prescribed in the technical specifications; (vii) one (1) set of as-built plans and specifications; (viii) certification and affidavit that all insurance required of Contractor beyond final payment, if any, is in effect and will not be canceled or allowed to expire without notice to Owner; (ix) full, final and unconditional waivers of construction liens, unless waived by Owner in writing, from each contractor, subcontractor, supplier or other person or entity who has, or might have a claim; (x) duly executed and notarized full, final and unconditional certification and affidavit that all of Contractor's obligations to contractors, subcontractors, suppliers and other third parties for payment for labor, materials or equipment related to the Project have been paid or otherwise satisfied, unless waived by Owner in writing; (xi) all written warranties and guarantees relating to the labor, goods, products, materials, equipment and systems incorporated into the Work, endorsed, countersigned, and assigned, as necessary; (xii) affidavits, releases, bonds, waivers, permits and other documents necessary for final close-out of Work, unless waived by Owner in writing; (xiii) a list of any item(s) due but unable to be delivered and the reason for non-delivery; and (xiv) any other documents reasonably and customarily required or expressly required herein for full and final close-out of the Work. Owner reserves the right to inspect the Work and make an independent determination as to the Work's acceptability, even though Professional may have issued its recommendations. Unless and until Owner is completely satisfied that Final Completion has been achieved, neither the final payment nor the retainage shall become due and payable.

ARTICLE 6. COMPENSATION OF CONTRACTOR

6.1 Owner shall pay and Contractor shall accept, as full and complete payment for Contractor's timely and complete performance of its obligations hereunder, a sum to be determined on a per Project basis.

6.2 Applications for payment shall be submitted in detail sufficient for an audit thereof in accordance with Owner's policies on the subject in effect at the time Contractor commences construction of the Work. Information that may be requested by Owner may include, without limitation, invoices from subcontractors, invoices for insurance costs, backup evidence for travel expenses and lien releases.

6.3 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 Work, Owner shall pay to Contractor, 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 Contractor. These provisions apply only to undisputed amounts for which payment has been authorized. Invoices or pay requests returned to Contractor 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.

ARTICLE 7. PERSONNEL AND SUBCONTRACTOR

7.1 If requested by Owner, Contractor shall identify the team working on the Project, on a per project basis. If applicable, Contractor will not remove or replace any members of the Project team except with the written approval of Owner based upon good cause shown or as directed by Owner. Further, if applicable, if any member of the Project team discontinues service on the Project for any reason whatsoever, Contractor shall promptly replace such team member with a qualified individual approved by Owner, in writing, which approval will not be unreasonably withheld.

7.2 If requested by Owner, (i) Contractor shall provide a list of subcontractors, which lists by name and trade each subcontractor, if any, who may be utilized by Contractor to provide goods and services valued at \$10,000.00 or more with respect to a specific Project; and (ii) Contractor shall promptly inform Owner in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). Owner shall have the right, in its reasonable discretion, to object to any proposed replacement. Contractor shall not enter into any agreement with any subcontractor or supplier to which Owner raises a reasonable, timely objection.

7.3 Unless otherwise expressly agreed to by Owner in writing, all subcontracts shall provide:

a. **LIMITATION OF REMEDIES - NO DAMAGES FOR DELAY:** Subcontractor's exclusive remedy for delays in the performance of the subcontract caused by events beyond its control, including delays claimed to be caused by Owner or Professional or attributable to Owner or Professional and including claims based on breach of contract or negligence, shall be an extension of its contract time. In the event of a change in the Work, the subcontractor's claim for adjustments in the subcontract price are limited exclusively to its actual costs for such changes plus no more than ten percent (10%) for overhead and five percent (5%) for profit of the amount of the change. The subcontract shall require the subcontractor expressly agree that the foregoing constitute its sole and exclusive remedies for delays and changes in the Work and thus eliminate any other remedies for claim for increase in the subcontract price, damages, losses or additional compensation.

b. **PAYMENT TO SUBCONTRACTORS:** When Contractor receives payment from Owner for labor, services or materials furnished by subcontractors and suppliers hired by Contractor for the Project, Contractor shall remit payment due to those subcontractors and suppliers, less the value of any item contested in accordance with the Contract Documents, within ten (10) days after Contractor's receipt of payment from Owner. When the payment due the subcontractor is for final payment, including retainage, the subcontractor must include with the invoice for final payment, a release of lien and all required warranties and closeout documentation. When the subcontractor receives payment from Contractor for labor, services, or materials furnished by the subcontractors and suppliers hired by the subcontractor, the subcontractor shall remit payment due to those subcontractors and suppliers, less the value of any item

contested in accordance with the Contract Documents, within ten (10) days after the subcontractor's receipt of payment.

ARTICLE 8. CHANGES IN THE WORK

8.1 A "Change Order" is a written instrument prepared by Contractor and signed by Owner, Contractor and, if requested, the Professional stating their agreement upon all of the following: (a) the change in the Work; (b) the amount of the adjustment, if any, in the Project price; and (c) the extent of the adjustment, if any, in the Project time.

8.2 Owner shall have the right at any time during the progress of the Work, without invalidating the Contract, to change, increase or decrease the Work. Except in an emergency endangering life or property, no addition or changes to the Work shall be made except upon written order of Owner, and Owner shall not be liable to Contractor for any increased compensation or adjustment to the Project time without such written order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be a basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided in the Contract Documents. No officer, employee or agent of Owner is authorized to direct any extra or changed work orally. Contractor shall familiarize itself with Owner's Change Order approval process and shall manage progress of the Work accordingly.

8.3 As part of Owner's Change Order approval process, Owner shall have the right to request that Contractor provide labor rates (which include Contractor's general requirements). For approved Change Orders, Contractor shall be reimbursed the actual cost of material, labor, and overhead and profit. In the event such changed Work is self-performed by Contractor, a maximum fifteen percent (15%) markup for Contractor for all overhead and profit on their direct labor and material costs shall be permitted. In the event such changed Work is performed by subcontractors or sub-subcontractors, a maximum fifteen percent (15%) markup for such subcontractors or sub-subcontractors for all overhead and profit on their direct labor and material costs shall be permitted, with a maximum five percent (5%) markup thereon by Contractor for its overhead and profit, for a total maximum markup of twenty percent (20%) of the amount of the change.

8.4 Promptly after being notified of a change, but in no event more than fourteen (14) days after its receipt of such notification (unless Owner has agreed in writing to a longer period of time), Contractor shall submit an itemized estimate of any cost or time increases or savings it foresees as a result of the change. Contractor's estimate shall include an analysis of impacts to cost and time, if any, to perform additional work, or delete Work, as applicable, including the effects and impacts, if any, on unchanged Work, estimates of costs and Contractor's proposed methods to minimize costs, delay and disruption to the performance of the Work. If Contractor fails to submit a written proposal or request additional time for submitting the proposal within the fourteen (14) day time period, it shall be presumed that the change described in Owner's request for a proposed change will not result in a modification to the Project price or Project time and, if directed by Owner in writing, the change shall be performed by Contractor without additional compensation. Owner's request for a proposed change does not authorize Contractor to commence performance of the change, unless otherwise specified in writing. If Owner decides that the proposed change be performed, the Work shall be authorized according to Change Order procedures set forth herein.

8.5 If Contractor observes any circumstance that may, in its opinion, be a change in the scope of the Work that justifies a change to the Project price or Project time, or Contractor otherwise becomes aware of

the need for or desirability of a change in the Work, then Contractor may submit a written Change Order Request ("COR") (to be followed by substantiating data), in a format provided by Owner, and must specify the reasons for such proposed change, including relevant circumstances and impacts on the schedule. Contractor shall prepare and submit to Professional drawing, specifications or other data in support of a COR. Contractor shall submit a written price proposal concurrently with the COR. Contractor may request additional compensation and/or time through a COR, but not for instances that Contractor knew or reasonably should have known occurred more than fourteen (14) days prior to the date the COR is submitted. Contractor's failure to initiate a COR within such period shall be deemed a waiver of the right to adjustment of the Project price or the Project time for the alleged change. Any such COR that is approved by Owner will be incorporated in a Change Order. If Owner determines that the Work in question is not a change in the scope of the Work and the COR is denied, but Contractor believes that it does have merit, Contractor may submit a Claim (as defined here) in accordance with the procedures set forth herein.

8.6 A Change Order, in form provided by Owner, shall be prepared by Contractor, reviewed and certified by Professional or Owner, and executed promptly by the parties after an agreement is reached between Contractor and Owner concerning requested changes. Contractor shall promptly perform changes authorized by duly executed Change Orders. The Project price and Project time shall be adjusted in the Change Order in the manner as Owner and Contractor shall mutually agree. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including all direct and indirect costs associated with such change and any and all adjustments to the Project price and the Project time.

8.7 If Owner and Contractor are unable to agree on a Change Order for a requested change, Contractor shall, nevertheless, promptly perform the change as directed by Owner in writing. In that event, the Project price and Project time shall be adjusted as directed by Owner. If Contractor disagrees with Owner's adjustment determination, Contractor must make a Claim pursuant to **Article 12** or else be deemed to have waived any Claim it might otherwise have had on that matter.

8.8 Contractor shall negotiate all Change Orders with all affected subcontractors and shall review the costs of those proposals and advise Owner or Professional of their validity and reasonableness, acting in Owner's best interest, prior to requesting approval of each Change Order from Owner.

8.9 If Contractor encounters on the Project site any Hazardous Substance(s), as set forth in **Section 10.13** below, Contractor immediately shall (a) stop Work in the area affected; (b) take all reasonable precautions to prevent foreseeable bodily injury or death to persons; and (c) notify Owner and Professional(s), both orally and in writing, of the presence and location of any physical evidence of, or information regarding, such Hazardous Substance(s) on the Project site. If the Work is so stopped and a Hazardous Substance is found, the Work in the affected area shall not thereafter be resumed until the site is fully remediated and approved by Owner. A Change Order shall be issued, which shall include an adjustment to the Contract time and compensation for any out of pocket costs incurred by Contractor as a result of the stoppage. If no Hazardous Substance is found after the Work is stopped, no Change Order will be issued. Further, if the Hazardous Substance was introduced to the Project site or caused by Contractor or any of its employees, agents, subcontractors, or material suppliers, no Change Order will be issued for an adjustment in the Contract time and Contractor shall indemnify Owner and hold Owner harmless for any costs incurred by Owner with respect to such Hazardous Substance.

ARTICLE 9. AUDIT RIGHTS

9.1 Owner or its designees may, upon reasonable notice, audit the records of Contractor and its subcontractors and suppliers during regular business hours, during the term of this Agreement and for a

period of three (3) years after final payment is made by Owner to Contractor under this Agreement or longer, if required by law (and such audit rights include Owner's right to request and receive backup information as to how Contractor's bid for any particular Project was calculated). Such audits may be performed by an Owner's representative or an outside representative engaged by Owner. Contractor shall retain all records for the Project during performance of the Project and for at least three (3) years after Final Completion.

9.2 For purposes hereof, Contractor's "records" means any and all information, materials and data of every kind and character, whether hard copy or in electronic form, which may, in Owner's judgment have any bearing on or pertain to the Contract Documents, including, without limitation, books, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, written policies and procedures, time sheets, payroll registers, payroll records, cancelled payroll checks, subcontract files (e.g., including proposals of successful and unsuccessful bidders and 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.

9.3 Owner's authorized representative shall have reasonable access to Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the Contract Documents, shall be provided adequate and appropriate work space at Contractor'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.

9.4 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 Contractor. Any adjustments and/or payments that must be made as a result of any such audit or inspection of Contractor's records shall be made within ninety (90) calendar days from presentation of Owner's findings to Contractor.

9.5 Contractor shall ensure notice of Owner's audit rights is provided to its subcontractors, suppliers and any other vendor providing services or materials for the Project and shall ensure that each agreement it enters into with such parties includes the provisions of this Article.

ARTICLE 10. INSURANCE, BONDS & INDEMNIFICATION

10.1 Required Insurance. Contractor shall maintain all forms of insurance required by Applicable Laws. Contractor shall also maintain the following insurance for the duration of this Agreement or such longer period of time as may be specified below or required by Applicable Laws:

a. Commercial general liability insurance coverage for commercial general liability (including loss or damage because of bodily injury, personal injury, sickness, disease or death of persons and injury to or destruction of property, as a result of the acts or omissions of Contractor, its employees, agents or subcontractors), which shall provide a per occurrence coverage amount not less than One Million Dollars (\$1,000,000.00) and Two Million Dollars (\$2,000,000.00) in the aggregate;

b. Workers' compensation insurance at statutory limits: Contractor shall have and maintain during the life of the Agreement, workers' compensation insurance for all of its employees connected with the Work related to the Project. In the event any Work related to the Project is sublet or subcontracted,

Contractor shall require the subcontractor similarly to provide workers' compensation insurance for all of the latter's employees unless such employees are covered by the protection afforded by Contractor. Such insurance shall comply fully with the Florida workers' compensation law. In case any class of employees engaged in hazardous work at the site of a Project is not protected under workers' compensation, Contractor shall provide, and cause each subcontractor to provide, adequate insurance for the protection of such employees.

c. Employer's liability insurance with a policy limit of not less than One Million Dollars (\$1,000,000.00);

d. Builder's Risk. Contractor shall maintain builder's risk insurance, unless otherwise directed by Owner in writing, at replacement cost, covering the full value of the construction being performed, including where applicable, the existing structure. Such policy shall be written on an all-risk form policy that includes coverage for losses as a result of windstorm and flood, and shall include coverage for reasonable compensation for Contractor's services and expenses required as a result of such insured loss. This insurance shall insure the interests of Contractor, subcontractors and sub-subcontractors in the Work. Property covered by the insurance shall include temporary building(s) or structure(s) at the Project site, other than any of Contractor's office trailer(s) (which shall be covered under separate policy). In addition, such insurance shall cover portions of the Work stored off the site, after written approval of Owner, at the value established in the approval, and portions of the Work in transit. As provided below and without limiting the requirements set forth below, Owner (i.e., The Florida International University Board of Trustees) shall be named as additional insureds on such policy. The policy shall include a waiver of subrogation endorsement, additional insured endorsement and a severability of interests endorsement. The deductible under the policy shall not exceed \$10,000.00 for all risks, except named storm, for which the deductible shall not exceed 1% of current value. When the Work includes the repair, removal, installation and/or testing of live steam boilers, valves, pipes or lines, then such insurance shall include boiler and machine coverage, written on an ISO form or its equivalent. A loss or losses insured under this insurance policy shall be adjusted by Contractor and its insurance company. Contractor shall repair or replace the damaged property with the proceeds from the builder's risk policy. Contractor shall be responsible for all damages and necessary repairs whether or not the loss is covered by the builder's risk policy. The builder's risk policy must include language limiting the scope of the exclusionary language regarding, and providing coverage for, costs rendered necessary by defect of material workmanship, design plan or specification in accordance with the London Engineering Group's LEG 3/06 policy wording.

10.2 Insurance Requirements Generally. All of the foregoing policies of insurance shall be: (a) issued by an insurance carrier approved in advance by Owner, with a rating from A.M. Best Company of not less than A/IX, and licensed to provide such coverage in the State of Florida, and (b) in a form satisfactory to Owner without unacceptable exclusions or exceptions to coverage. All policies and renewals thereof are to be written for not less than one (1) year. All policy numbers must be clearly identified. All liability policies must provide for claims to be made on an occurrence basis. The insurance policies will name, and the certificates and endorsements (no more restrictive than CG 20 10 on the CGL policy) will show, Owner (i.e., The Florida International University Board of Trustees), 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") as additional insureds. Owner shall also be named as an additional insured on the liability policy of any off-site storage premises. Additional insured status applies on a primary/non-contributory basis. Waiver of subrogation applies in favor of Owner for commercial general liability, worker's compensation and builder's risk policies. All insurance policies required of Contractor shall be primary and non-contributory to any other insurance or indemnity as may be available to any additional insured. It shall be the insurance company's responsibility to seek reimbursement from the insured. Contractor for itself and on behalf of its insurance carriers, waives and releases any right of

recovery or subrogation for any claim, damage, or loss covered or insured by any insurance policy required of Contractor under this Agreement that Contractor or its insurers may have at any time against Indemnitees, and Contractor shall cause its insurance policies to be so endorsed. The required insurance policies shall remain in effect for the benefit of Owner at least through any warranty period covering the Project, but in no case for less than one (1) year after the date of Substantial Completion or such longer period as may be specified elsewhere herein. The insurance policies required of Contractor shall be endorsed to contain a provision requiring a written notice directly from the producer or insurer to Owner at least thirty (30) days prior to any cancellation, non-renewal or material modification of the policies, provided that only ten (10) days' prior written notice shall be required in the case of cancellation for non-payment of premium.

10.3 Subcontractors / Consultants' Insurance. Contractor shall ensure that any and all Contractor's subcontractors/consultants engaged or employed by Contractor also carry and maintain policies of insurance that adequately covers each subcontractor's/consultant's exposure based on the type of services they are providing in connection with the Agreement.

10.4 Evidence of Insurance. Upon execution of this Agreement, and at every date for renewal of a required insurance policy and at such other times as Owner shall request, Contractor shall provide Owner with a certificate(s) of insurance(s) reflecting all of the insurance coverages satisfying the above requirements. Owner, upon request, reserves the right to obtain a copy of the policies requested above. The maintenance in full current force and effect of the insurance coverage required by this Agreement and provision of a valid evidence of insurance that meets the requirements of this Agreement are conditions precedent to the payment of any amounts due Contractor by Owner.

10.5 Failure to Maintain Insurance. The failure of Contractor or any of Contractor's subcontractors/consultants to fully and strictly comply at all times with the insurance requirements set forth herein will be deemed a material breach of this Agreement. In the event that Contractor shall fail or be unable to obtain or maintain coverage required pursuant to this Article, Owner, in addition to all other rights and remedies available to it and without waiving Contractor's default, shall have the right (but not the obligation) to obtain and/or maintain coverage of the type and amount required hereunder on behalf of Contractor; in which case, Contractor shall furnish to Owner all necessary information and to reimburse Owner for the cost of such coverage. At Owner's option, Owner may deduct the costs and expenses of any coverage obtained by Owner on behalf of Contractor from any amount due to Contractor under this Agreement or under any other agreement between Owner and Contractor.

10.6 Insurance No Limitation. Insurance coverage required in this Agreement shall be additional security for the obligations assumed by Contractor and in no event shall the types or limits of coverage required be deemed to limit any obligations or liabilities assumed under this Agreement. The carrying of insurance shall not be deemed to release Contractor or in any way diminish its liability or obligations hereunder, by way of indemnity or otherwise.

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

10.8 Owner's Right to Adjust Requirements. Owner has the right to allow Contractor to deviate from any of the above insurance requirements, if Owner, at Owner's sole discretion decides to do so. If Owner

decides to allow Contractor to deviate from the above noted insurance requirements, Owner will inform Contractor in writing in those particular circumstances. Unless Owner notifies Contractor in writing that Owner is willing to allow Contractor to deviate from the insurance requirements noted above, all of the above insurance requirements shall apply to Contractor.

10.9 General Bond Requirements. Recognizing the Project is a public project, if the Construction price exceeds \$100,000.00, the Project is required to be bonded pursuant to 255.05, Florida Statutes. Contractor shall furnish payment and performance bonds on Owner's standard form covering the full and faithful performance of the Contract Documents and the payment of obligations arising hereunder. As required by Section 255.05, Florida Statutes, Owner shall not make a payment to Contractor until Contractor has provided Owner with a certified copy of the recorded payment and performance bonds for a Project, as applicable.

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

10.11 Indemnification. To the maximum extent permitted by law, Contractor shall indemnify and hold 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 Contractor's performance of this Agreement to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Contractor or anyone for whose acts or omissions Contractor may be liable in the performance of this Agreement. The provisions of this Paragraph 10.11 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. Contractor's indemnification obligations under this Agreement, including those specified in this Paragraph 10.11, 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 Contractor'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 10.11 shall survive the expiration or termination of this Agreement and the completion of the Work.

10.12 Claims Under Indemnity. In claims against Owner indemnified under this Article by an employee of Contractor, anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable, the indemnification obligation under this Article shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Contractor under workers' compensation acts, disability benefit acts or other employee benefit acts, nor shall the indemnification obligation be limited by the existence of any insurance policy.

10.13 Hazardous Substances.

In the event Contractor reasonably believes it has discovered Hazardous Substances on the Project site that are not contemplated by SOW or this Agreement, Contractor shall proceed in accordance with **Section 8.9** above. Contractor shall strictly comply with all Applicable Laws, and secure the Project site to prevent access by unauthorized personnel, as directed by Owner. If (a) Contractor fails to comply with this Section and/or **Section 8.9** or (b) Hazardous Substances are knowingly transported (either on or off-site) or (c) material which Contractor or its employees, agents, or subcontractors should have known were Hazardous Substance(s) is transported (either on or off-site), without notice to Owner, such materials shall become the property of Contractor and Contractor shall be solely responsible for all costs and fines associated therewith. For the purposes of this Agreement, "Hazardous Substances" means all hazardous or toxic substances, materials, wastes, pollutants and contaminants which are listed, defined, or regulated under Applicable Laws pertaining or related to health, safety or the environment, including the Comprehensive Environmental Response Compensation and Liability Act, as amended, (42 U.S.C. § 9601 et seq), the Resource Conservation and Recovery Act, as amended, (42 U.S.C. §6901 et seq), the Federal Water Pollution Control Act (33 U.S.C.A. §§ 1251 to 1387), the Clean Air Act (42 U.S.C.A. §§ 7401 to 7671q), the Emergency Planning and Community Right to Know Act (42 U.S.C.A. §§ 11001 to 11050), the Toxic Substances Control Act (15 U.S.C.A. §§ 2601 to 2692), the Solid Waste Disposal Act (42 U.S.C.A. §§ 6901 to 6992k), the Oil Pollution Act (33 U.S.C.A. §§ 2701 to 2761) and all rules and regulations promulgated pursuant thereto. Without limiting the generality of the foregoing, "Hazardous Substances" shall include polychlorinated biphenyl, asbestos (friable and non-friable), radon, urea formaldehyde, gasoline, diesel, oil, hydrocarbons, petroleum derived constituents, biomedical waste, or hazardous or toxic residue.

10.14 Survival. Contractor's obligations under this Article shall survive the expiration or earlier termination of this Agreement and the completion of the Work.

10.15 Flow Through. Contractor agrees to incorporate the substance of this Article in all subcontracts under this Agreement.

ARTICLE 11. REQUIREMENT TO PROVIDE QUOTES

Contractor is required to provide quotes for all projects that are solicited by Owner (and all quotes must include a breakdown of materials, labor and Contractor's fee). If Contractor does not intend to submit a quote on a certain project, written justification must be provided to Owner. Owner shall take non-responsiveness into consideration when awarding future work and determining whether contract options are to be exercised.

ARTICLE 12. CLAIMS AND DISPUTES

12.1 Claim Defined. The term "Claim" as used herein shall mean any and all demands made by one party hereunder against the other party, whether such demand be for money, time or the assertion of any right or obligation that arises out of the Contract Documents.

12.2 Notice of Claims. Unless another time is expressly provided for herein, initial notice of Claims by Contractor shall be made in writing to Owner and Professional within seven (7) calendar days after the first day of the event giving rise to such Claim or else Contractor shall be deemed to have waived the Claim. Unless another time is expressly provided for herein, if initial notice of Claim is properly received by Owner and Professional as stated herein, written supporting data shall be submitted to Owner and Professional within thirty (30) days after the occurrence of the event, unless Owner grants additional time in writing, or else Contractor shall be deemed to have waived the Claim.

12.3 Continuing Performance. Contractor shall proceed diligently with its performance as directed by Owner, regardless of any pending Claim, unless otherwise agreed to by Owner in writing. Owner shall continue to make payments of undisputed amounts due in accordance with the Contract Documents during the pendency of any Claim.

12.4 Negotiation. Prior to the initiation of any action or proceeding to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation between representatives with decision-making power.

12.5 Litigation/Administrative Action. Disputes, claims, or any other matters shall be determined under the judiciary system of the State of Florida. The venue of any and all actions pertaining to the Contract Documents shall be 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.

12.6 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 Contractor or Owner (including their respective counsel) has represented, expressly or otherwise, to Contractor or Owner or to any agent or representative of Contractor 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.

12.7 Joinder. In the event the dispute resolution procedure applicable to another dispute between Owner and another party regarding the Project is different from the procedure specified in this Agreement, then Contractor hereby consents, if requested by Owner, to its joinder in such dispute resolution proceeding, provided that the dispute resolution proceeding involves substantially common questions of law or fact.

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

ARTICLE 13. MISCELLANEOUS PROVISIONS

13.1 Owner and Contractor, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors and assigns of such

other party with respect to all covenants of this Agreement. Contractor shall not assign this Agreement, whether by operation of law or otherwise, without the written consent of Owner.

13.2 The Contract Documents shall be governed by, and construed under, the laws of the State of Florida, without regard to its choice of law provisions and, as provided above, venue shall lie in the courts in Miami-Dade County, Florida.

13.3 Contractor represents and warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for Contractor) 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 Contractor) any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

13.4 Contractor 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 CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'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 Contractor 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 Contractor in conjunction herewith. Furthermore, at Owner's request, Contractor shall make available to Owner any and all documents, papers, letters, or other material made or received by Contractor pertaining to this Agreement, whether or not such documents are subject to the provisions of Chapter 119 of the Florida Statutes.

13.5 Owner's performance and obligation to pay hereunder is contingent upon an annual appropriation by the Legislature. See **Article 4** for termination provisions.

13.6 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. Contractor shall use good faith efforts to ensure opportunities are available to small businesses, including women and minority-owned small businesses on the Project.

13.7 All exhibits referenced herein are attached hereto and incorporated herein by reference.

13.8 The Contract Documents represent the entire and integrated agreement between Owner and Contractor, and supersedes all prior negotiations, representations or agreements, either written or oral, for the Project. This Agreement may be amended only by written instruments signed by both Owner and Contractor.

13.9 Contractor shall provide Owner and its representatives access to the Work in preparation and progress wherever located.

13.10 Contractor 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 Contractor 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 Contractor has a direct or indirect proprietary or other pecuniary interest.

13.11 All provisions of this Agreement which contain continuing obligations shall survive its expiration or termination.

13.12 Contractor warrants that it is not on the convicted vendor list for a public entity crime committed within the past 36 months. Contractor 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. Contractor 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.

13.13 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 Contractor. Notwithstanding the foregoing, Owner shall be an intended third party beneficiary of Contractor's contracts with its subcontractors/consultants, if any.

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

13.15 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 Section 4.2 of this Agreement remain in full force and effect, can be exercised by Owner at any time in accordance with the terms of this Agreement and is not vitiated by the terms of this Section 13.15.

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

13.17 Contractor 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 Contractor becomes either a plaintiff or defendant in such civil litigation during the term of this Agreement, Contractor will inform Owner as soon as

practicable. If Contractor fails to inform Owner of such civil litigation, Owner may terminate this Agreement and Contractor will be responsible for all costs and damages incurred by Owner as a result of said termination.

13.18 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.

13.19 E-Verify. Pursuant to §448.095, Fla. Stat., Contractor certifies that it is registered with and uses the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by Contractor during the term of this Agreement. If Contractor enters into a contract with a subcontractor to perform work or provide services pursuant to this Agreement, Contractor shall likewise require the subcontractor to comply with the requirements of §448.095, Fla. Stat., and the subcontractor shall provide to Contractor an affidavit stating that the subcontractor does not employ, contract with or subcontract with an unauthorized alien. Contractor shall maintain a copy of such affidavit for the duration of its contract with Owner. This section serves as notice to Contractor regarding the requirements of §448.095, Fla. Stat., and Owner's obligation to terminate the Agreement if it has a good faith belief that Contractor has knowingly violated §448.095, Fla. Stat. If terminated for such reason, Contractor 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 Contractor 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 Contractor evidencing its compliance with §448.095, Fla. Stat. at any time during the term of this Agreement.

ARTICLE 14. CONTRACTOR'S WARRANTIES AND GUARANTEES

14.1. One-Year Warranty. In addition to the warranties and guarantees that may be set forth elsewhere in this Agreement, Division 1 of the Specifications, Section 017836 (available at <https://facilities.fiu.edu/formsandstandards.htm>), and/or the Contract Documents, Contractor, upon request by Owner or Professional, shall promptly correct all failures or defects in the Work for a period of one year after the actual date of Substantial Completion.

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

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

14.2 Express Warranties And Guarantees – Contractor. In addition to the warranties and guarantees set forth elsewhere herein, Contractor expressly warrants and guarantees to Owner:

(i) that the Work complies with (a) the construction documents; and (b) all Applicable Laws;

(ii) that all goods, products, materials, equipment and systems incorporated into the Work conform to applicable specifications, descriptions, instructions, drawings, data and samples and shall be and are (a) new and unused (unless otherwise specified or permitted) and without damage or defect; (b) of quality equal to or higher than that required by the construction documents; and (c) merchantable; and

(iii) that all management, supervision, labor and services required for the Work shall comply with this Agreement and the construction documents, and shall be and are performed in a workmanlike manner.

14.3 Express Warranties and Guarantees - Subcontractors and Suppliers. Contractor shall require that all of its subcontractors and suppliers provide written warranties, guarantees and other undertakings to Owner and Contractor in a form identical to the warranties, guarantees and other undertakings set forth in this Agreement, including the warranties, guarantees and undertakings set forth in this Article, which warranties, guarantees and undertakings shall run to the benefit of Owner as well as Contractor.

14.4 Non-Exclusivity and Survival. The warranties and guarantees set forth in this Article shall be in addition to all other warranties, express, implied or statutory, and shall survive Owner's payment, acceptance, inspection of or failure to inspect the Work, and review of the construction documents.

14.5 Non-Limitation. Nothing contained in Paragraph 14.1 shall be construed to establish a period of limitation with respect Contractor's obligations under this Agreement. Paragraph 14.1 relates only to Contractor's specific obligations with respect to the Work, and has no relationship to the time within which Contractor's contractual obligations under this Agreement may be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to any contractual obligations pursuant to Paragraph 14.1 or contained elsewhere herein.

14.6 Commencement of Obligations. Unless otherwise specified, all of Contractor's warranty and guaranty obligations, including the time period(s) for all written warranties and guarantees of specifically designated equipment required by the construction documents, shall begin on the actual date of Substantial Completion.

-Signature page to follow-

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

GENERAL CONTRACTOR:

(General Contractor Company Name)

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

OWNER:

**The Florida International University
Board of Trustees**

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

APPROVED AS TO FORM AND LEGALITY

Print Name: _____
Title: _____
Date: _____