

[Template for Continuing Services Contract
For CM – Not To Exceed \$1M]

**FLORIDA INTERNATIONAL UNIVERSITY
BOARD OF TRUSTEES**



**AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER
FOR CONTINUING SERVICES**

**CONTINUING SERVICES CONTRACT _____
Florida International University**

CONSTRUCTION MANAGER

**AGREEMENT BETWEEN
OWNER AND CONSTRUCTION MANAGER FOR CONTINUING SERVICES**

THIS AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER FOR CONTINUING SERVICES (this "Agreement") is made this _____ day of _____, 200_, between The Florida International University Board of Trustees, on behalf of Florida International University, (hereinafter called the "Owner") and _____, with an address of _____ and Federal I.D. No. _____ (hereinafter called the "Construction Manager").

WHEREAS, the Owner intends to retain construction management services for construction projects; and

WHEREAS, the projects implemented under this Agreement are limited to repairs, modifications, alterations and new construction, the amount of which shall not exceed \$1,000,000 or such greater amount as may be permitted by Florida Statutes.

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

ARTICLE 1

The Construction Team and Extent of Agreement

1.1 The Construction Manager agrees to furnish its best skill and judgment and to cooperate with the Architect/Engineer, where applicable, in furthering the interests of the Owner. The Construction Manager agrees to furnish efficient business administration and superintendence and to complete the Project in an expeditious and economical manner consistent with the interests of the Owner.

1.2 The Construction Team: The Construction Manager, the Owner, and the Architect/Engineer (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.

1.3 Extent of Agreement: This Agreement is supplemental to the Drawings and Specifications and the General Conditions, and together with those documents, represents the entire agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreement (collectively, the "Contract for Construction"). Where this Agreement is expressly in conflict with the General Conditions, this Agreement will prevail. Where this Agreement is silent, the General Conditions 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.

ARTICLE 2

Construction Manager's Basic Services

2.0 The Construction Manager's Basic Services under this Agreement may include pre-construction and construction services for Continuing Projects (up to \$1,000,000 each), which will be initiated by, and described in, the Purchase Order for each Project. The Purchase Order shall be considered part of the Contract Documents. The Construction Manager will submit a cost proposal for each Project based on the scope of services requested by Owner. Should the Owner and Construction Manager not reach agreement on any Project, the Owner reserves the right to cease negotiations for that Project and perform the work by other means without affecting this Agreement or any other Project.

This is a non-exclusive Construction Management Agreement and the Owner may enter into other agreements for the performance of similar services as deemed in the best interests of the Owner.

2.1 Construction Phase: Unless otherwise authorized by the Owner, all permanent construction for the Work shall be performed under Trade Contracts held by the Construction Manager or with the Construction Managers' own forces. The Construction Manager shall:

2.1.1 Administer the construction as provided herein and in the General Conditions. Unless otherwise provided for in the Purchase Order for each individual Project, General Conditions means the following: (i) the edition of AIA Document A201, General Conditions of the Contract for Construction, as revised by the Owner, dated 16 October 1989; (ii) the Supplementary General Conditions for Construction Management Contract, dated 8 November 1990; (iii) the document forms and Special Conditions contained in the Project Manual for each Project; (iv) the "Supplement to Project Manual, State of Florida, Board of Regents" dated 2/13/96; and (v) the "Supplement to the State University System of Florida Project Manual for Asbestos Abatement Work," dated 6/98. In the event Owner revises the General Conditions, Construction Manager shall comply with such revised General Conditions on all Projects authorized after the date of Owner's revisions.

2.1.2 For each Project, commence the Work no later than ten (10) days after receipt of the executed purchase order for each Project and Notice to Proceed from the Owner.

2.1.3 Develop Trade Contractor interest in the Project, conduct pre-bid conferences with interested bidders to review the design documents and 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. The Construction Manager may require bidders to submit bid bonds or other bid security acceptable to the Construction Manager as a prerequisite to bidding on the Work. The Construction Manager shall 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, the Construction Manager shall review the scope of Work in detail with apparent low and responsive bidders to determine that their bids are complete but do not include duplicate scope items, and attempt to achieve additional savings through negotiation whenever practical. Maintain records of all pre-award interviews with apparent low bidders.

Prepare and submit written recommendations to the Owner and Architect/Engineers for award of Trade Contracts by the Construction Manager. The Construction Manager shall certify in writing that, to the best of its knowledge, the bids of the recommended Trade Contractors are bona fide, fair and reasonable. The Construction Manager shall promptly award and execute Trade Contracts with approved Trade Contractors, and shall provide copies of fully executed Trade Contracts, insurance certificates and, if required, bonds to the Owner.

2.1.4 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 subcontractors 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 efficient progress of the Work. Should disagreement occur between the Construction Manager and the Architect/Engineer over acceptability of Work and conformance with the requirements of the specifications and plans, the Owner shall be the final judge of performance and acceptability.

2.1.5 Maintain exclusively for each Project the level of staff as agreed upon in the approved GMP proposal at the Project site to coordinate and direct the Work and progress of the Trade Contractors on the Project. All of the Construction Manager's on-site management and supervisory personnel shall be consistent with the interview presentation and shall not be removed or replaced without the Owner's consent, which shall not be unreasonably withheld. 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.

2.1.5.1 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 Manger, 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.

2.1.6 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. The Construction Manager shall:

2.1.6.1 Require of the various Trade Contractors such Coordination Drawings as may be necessary to properly coordinate the Work among the Trade Contractors.

2.1.6.2 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 General Conditions.

2.1.7 Assist the Architect/Engineer in the preparation of the "As-built" or record drawings in CADD computer files for each Project. These drawings shall include, but not be limited to, changes made to each Project by Change Orders, Construction Change Directives and information provided by the Trade Contractors.

2.1.8 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 monthly Construction Team meetings scheduled by the Architect/Engineer.

2.1.9 Review the construction schedule for each Project ("Project 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 Schedule and various sub-networks as construction progresses. Identify potential variances between scheduled and probable completion dates. Review each Project Schedule for Work not started, or incomplete, and make adjustments in the Schedule to meet the scheduled completion date. Provide summary reports of such activities and document all changes in each Project Schedule. Include regular Project Schedule updates and reporting as part of the monthly project report outlined in this Agreement. Provide Owner with current Project Schedules for each Project, and review each Schedule at progress meetings.

2.1.10 Determine the adequacy of the Trade Contractors' personnel and equipment, and the availability of materials and supplies to meet the Project 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.

2.1.11 Whenever Owner-Furnished Contractor-Installed (OFCI) materials or equipment are shipped to a Project site, the Construction Manager shall notify the Owner and shall be responsible for their acceptance, proper storage, and incorporation into the Work provided the scope of the Owner-Furnished Contractor-Installed (OFCI) work is included within the Guaranteed Maximum Price.

2.1.12 Develop and maintain an effective system of Project cost control which is satisfactory to the Owner. Revise and refine each 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 whenever projected costs exceed budgets or estimates. Cost Control reports shall be included as part of the monthly project report outlined in this Agreement.

2.1.13 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. The Owner shall have access to records at any time during the performance of the Work and for a period of four (4) years after final acceptance of the Work.

2.1.13.1 Construction Manager's records which shall include but not be limited to accounting records, payroll time sheets, written policies and procedures, computer records, disks and software, videos, photographs, subcontract files (including proposals of successful and unsuccessful bidders), original estimating worksheets, correspondence, change order files (including documentation covering negotiated settlements), and any other supporting evidence necessary to substantiate charges related to this Agreement, shall be open to inspection and subject to audit by the Owner or its authorized representative to the extent necessary to adequately permit evaluation and verification of any invoices, payments or claims submitted by the Construction Manager or any of his payees pursuant to the execution of this Agreement. Such records subject to examination shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement.

2.1.13.2 The Owner or its authorized representative shall have access to the Construction Manager's facilities, shall be allowed to interview all employees to discuss matters pertinent to the performance of this Agreement and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this Article. The Owner or its authorized representative shall give Construction Manager reasonable advance notice of intended audits.

2.1.13.3 If an audit inspection or examination in accordance with this Article discloses over stated costs of any nature by the Construction Manager to the Owner in excess of five percent (5%) of the total contract billings, the actual cost of the Owner's audit shall be paid by the Construction Manager.

2.1.14 Develop and implement a system for the preparation, review and processing of Change Orders. Without assuming any of the Architect/Engineer's responsibilities for design, 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. Change Orders (including changes to Construction Manager's self performed work) shall be supported by a written cost proposal from the Trade Contractor or Construction Manager, as applicable, showing: quantities and sizes of materials; unit cost; labor; profit and overhead; and a narrative justification. The Architect/Engineer and the Construction Manager shall sign all Change Orders and submit the same to the Owner for approval and processing.

2.1.14.1 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.

2.1.15 Be responsible for initiating, maintaining and supervising effective safety programs and require similar programs of the Trade Contractors. The OSHA guidelines shall serve as the basis for the construction safety program.

2.1.15.1 Promptly notify the Owner, in writing, upon receiving notice of filing of any charge of non-compliance from OSHA, or upon receiving notification that a federal or state inspector shall visit or is visiting the Project site.

2.1.15.2 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.

2.1.16 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.

2.1.17 Record the progress of the Project. Submit written monthly progress reports to the Owner and the Architect/Engineer including information on the Trade Contractors' Work, the percentage of completion, current estimating, computerized updated monthly Critical Path Method scheduling and project accounting reports, including Estimated Time to Completion and Estimated Cost to Complete. Keep a daily log available to the Owner and the Architect/Engineer. Report and record such additional information related to construction as may be requested by the Owner.

2.1.18 The Construction Manager shall be responsible for the removal, encapsulation, transportation and disposal of any hazardous material, including, without limitation, any asbestos or asbestos- related products an may be required in connection with the Work. Hazardous materials as described by federal guidelines, brought to the site by the Construction Manager or the Trade Contractors, shall remain their responsibility for proper disposal and/or documentation. Any hazardous material not specifically shown on the Drawings and Specifications, surveys provided to the Construction Manager or other documents in the Construction Manager's possession 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.

2.1.19 Any asbestos abatement Work required in connection with the Work shall only be performed by an asbestos contractor which has been approved by Owner.

ARTICLE 3

Owner's Responsibilities

3.1 The Owner shall designate a representative to act in its behalf. This representative, or his/her designee 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 to represent the Owner in the day-to-day conduct of the Project. The Construction Manager will be notified in writing of the representative and of his/her designee or any changes thereto.

The Owner's representative shall be the sole party authorized to render decisions under this Agreement on Owner's behalf. If the Construction Manager accepts and relies on direction from any other FIU representative under this Agreement, the Construction Manager shall do so at its own risk and shall be responsible for all costs associated therewith.

3.2 The Owner may retain, or require Architect/Engineer to retain, a threshold inspector if required by Chapter 553, Florida Statutes.

3.3 During the construction phase, communications shall be made as described in the General Conditions.

ARTICLE 4

Schedule

4.1 The number of days for performance of the Work shall be established at the time the GMP Proposal for each Project is accepted by Owner.

4.2 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) days, 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 adjusted 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 written approval of such records.

4.3 The Owner shall have the right to occupy, or use, any portion of the Work ahead of schedule. If use or occupancy ahead of schedule affects the Cost of the Project or the schedule for the Work, the use or occupancy will be treated as a Change to the Work in accordance with the Agreement terms.

ARTICLE 5

Guaranteed Maximum Price

5.1 The "Guaranteed Maximum Price" (GMP) includes the Cost of the Work required by the Contract Documents for each Project, and the Construction Manager's fee as defined in this Agreement. The GMP will be established based on Contract Documents provided by the Owner. The GMP is subject to modification for approved changes in the Work which must comply with the Agreement terms, including but not limited to Article 8 hereof.

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

5.3 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. "Cost savings" are the difference between the final GMP and (i) the documented Construction Manager's Fee, (ii) the expended portions of the contingency, and (iii) the actual expenditures representing the Cost of the Work as defined in Article 7 herein. Liquidated damages, if any, are different from, and are not a part of, this calculation. Upon completion of the bidding 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 approved by Owner. Cost savings resulting from favorable bids will be available for Owner's use immediately following the bidding period. Changes to the GMP funded by these savings are not eligible for additional Construction Manager's overhead and profit. At the end of each Project, any remaining contingency shall be refunded to Owner together with a proportionate share of Construction Manager's fee.

5.4 By execution of this Agreement, the Construction Manager certifies that all factual unit costs supporting the fees 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 significant sums which the Owner determines the fee was increased due to inaccurate, incomplete, or non-current factual unit costs.

5.5 Adjustments to the GMP will be made as described in the General Conditions.

ARTICLE 6

Payments to Construction Manager

6.1 In consideration of the performance of this Agreement, the Owner agrees to pay the Construction Manager, as compensation for its services, the amounts set forth in the Purchase Order for each Project, as the same may be adjusted by Change Order.

6.2 The Owner shall pay, and the Construction Manager shall accept, as full and complete payment for the construction services, only the sum of the following items, which sum shall be set forth in the Purchase Order and which sum shall not exceed the GMP:

- (i) the aggregate net cost directly paid by the Construction Manager to subcontractors pursuant to written subcontracts to perform the Work (CSI Divisions 1-17) (the "Cost of the Work"), not to exceed the amount agreed upon by the parties in the GMP;
- (ii) Construction Manager's Fee, not to exceed the guaranteed maximum agreed upon by the parties in the GMP.

6.3 Upon issuance of a Purchase Order, the Construction Manager guarantees that the sum of (i) the actual Cost of the Work, (ii) Construction Manager's Contingency, and (iii) Construction Manager's Fee, shall not exceed the amount set forth in the agreed upon GMP. All costs or expenses that would cause this sum to exceed the GMP shall be borne by the Construction Manager unless adjusted by Owner approved change order.

- 6.4 Any deviation in any of the line items in the original GMP Schedule of Values shall require the prior written approval of Owner.
- 6.5 Pay requests shall be documented in accordance with State University System Chancellor's Memorandum No. CM N 08.01 01/99 which is located on-line at the Facilities Management Site and the General Conditions.
- 6.6 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 periods 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.
- 6.7 As required by Section 287.0585, Florida Statutes, within seven (7) working 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.
- 6.8 Included in the Construction Manager's Fee are the following:
- 6.8.1 The cost of its home or branch office employees, including the Project Manager and Project Executive and consultants not at the Project site, including the cost of all pension contributions, hospitalizations, bonus, vacations, medical insurance assessments or taxes for such items as unemployment compensation and social security, payroll insurance, and taxes attributable to wages and salaries and other company overhead expenses for said home office employees
 - 6.8.2 General operating expenses of the Construction Manager's principal and branch offices other than the field office, including but not limited to, minor expenses such as facsimile, long distance telephone calls, telephone service, postage, office supplies, express mail charges, courier charges and similar items in connection with the Work at the home and branch offices.
 - 6.8.3 Any part of the Construction Managers' capital expenses, including interest on the Construction Manager's capital employed for the Work.
 - 6.8.4 Overhead and profit, or general expenses of any kind, except as may be expressly included in Article 7 hereof as Cost of the Work.
 - 6.8.5 All costs incurred during the guarantee period after construction.
 - 6.8.6 Cost of the Construction Manager's home office computer services or other outside computer processing services shall be considered part of the Construction Manager's fee. Accordingly, the Construction Manager should not perform any such computer related services or alternatives at the field office when such service or functions can be performed at the Construction Manager's home or branch offices, or other outside service locations.
 - 6.8.7 Any personal computer applications and related costs or remote job entry data functions and related costs which will be incurred by personnel at the job site must receive advance written approval from the Owner to be considered a reimbursable cost, otherwise the associated cost will be considered a part of the Construction Manager's Fee.
 - 6.8.8 Any cost not specifically and expressly described in Article 7 herein, as Cost of the Work.

6.9 Adjustments in the Construction Manager’s fee will be made as follows:

6.9.1 Adjustment due to Changes in the Work shall be made as described in the General Conditions.

6.9.2 For delays in the Work caused solely by the Owner, the Construction Manager shall be entitled to an additional fee to compensate the Construction Manager for its increased expenses. The amount of this increased fee shall be calculated at a daily rate derived by dividing the basic fee, by the Contract Time established in the Contract Documents.

6.10 The Construction Manager's fee for each Project shall be the following percentages of the Cost of the Work:

\$	0.01 to \$	100,000	15 %
	\$100,001.00 to \$	250,000	12.5%
	\$250,001.00 to \$	500,000	12 %
	\$500,001.00 to \$	750,000	11 %
	\$750,001.00 to \$1,000,000		10 %

ARTICLE 7

Cost of the Work

7.1 The term "Cost of the Work" shall mean costs including General Conditions costs, incurred in the Work as described and defined in Paragraph 7.2 below, and paid or incurred by the Construction Manager less any reimbursement for scrap value and cash or trade discounts, subject to Article 9 hereof. 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, salaried, or other remuneration paid to employees of the Construction Manager. The Cost of the Work shall include only the items set forth in this Article 7.

7.1.1 The Owner agrees to pay the Construction Manager for the Cost of the Work as defined in Article 7 hereof, through completion of the Work. Such payment shall be in addition to the Construction Manager's Fee as stipulated in Paragraph 6.2 hereof.

7.2 Cost of the Work for each Project includes and is limited to actual expenditure for the following cost items:

7.2.1 Subject to prior written approval by Owner, wages paid for labor in the direct employ of the Construction Manager (other than those supervisory and managerial personnel provided as a part of the Construction Manager's fee) and engaged in the performance of the Work under applicable collective bargaining agreements, or under a salary or wage schedule agreed upon by the Owner and Construction Manager. A copy of all wage schedules shall be included with each Application for Payment. To cover fringe benefits a "Multiplier" times the wages will be considered a reimbursable cost and will be used for the billing purpose only. The Multiplier shall be defined as the employer's net actual cost of payroll taxes (FICA, Medicare, UITA, FUTA), net actual cost for of union benefits (or other usual and customary fringe benefits if the employees are not union employees), and net actual cost to 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.

7.2.1.1 Daily hours worked by the Construction Manager's employees for performance of the Work shall be provided to the Owner a weekly basis. Time sheets with employee signatures shall be provided as back up.

7.2.1.2 No Construction Manager personnel stationed at the 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.

7.2.1.3 Overtime wages paid to the Construction Manager's employees must be approved in advance in writing by the Owner and will be reimbursed at the actual rate of overtime pay paid to the individual. No time charges for overtime hours worked on the Project will be allowed if the individual is not paid for the overtime worked.

7.2.2 The cost of all materials, supplies and equipment incorporated into the Work or stored on site, including cost of transportation and storage thereof shall be included in the Cost of the Work. Transportation and storage of materials, supplies and equipment off-site shall require prior written approval of Owner. At the Owner's sole discretion, the Owner may make payment for materials, supplies and/or equipment stored off-site.

7.2.3 Payments made by the Construction Manager to Trade Contractors for their Work performed pursuant to Trade Contracts with the Construction Manager.

7.2.4 Cost of the premiums for all insurance or bonds including Trade Contractor bonds which the Construction Manager is required to procure by the Agreement, or other insurance or bonds subsequently deemed necessary by the Construction Manager, and agreed upon by the Owner in writing. The Construction Manager's actual cost for insurance shall be considered to be included in the GMP. 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. Upon request by Owner, 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.

7.2.5 Sales, use, gross receipt, or similar taxes related to the Work imposed by any governmental authority and for which the Construction Manager is liable.

7.2.6 Building and operating permit fees, inspection and filing fees, sewer and water fees, and deposits lost for causes other than the negligence of Construction Manager, its officers, employees, agents or subcontractors. If royalties or losses and damages, including cost of defense, are incurred which arise from a particular design, process or the product of a particular manufacturer or manufacturers specified by the Owner or Architect/Engineer, and the Construction Manager had no reason to believe there would be infringement of patent rights, such royalties, losses and damages shall be paid by the Owner and the GMP shall be adjusted by Change Order to compensate the Construction Manager for the increased costs. If the Construction Manager has actual knowledge or reason to believe that use of the particular design, process or product would infringe a patent(s) and fails to provide written notice to the Owner before using such design, process or product, then any royalties, losses or damages arising from use of such design, process or product shall be paid by Construction Manager and shall not be included in the Cost of the Work.

7.2.7 Cost of removal and disposal of all debris including clean up and trash removal.

7.2.8 Cost incurred due to an emergency affecting the safety of persons and/or property, not caused by the Construction Manager and/or its consultants, subcontractors, vendors, suppliers, and/or any other representatives.

7.2.9 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.

7.2.10 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 General Conditions.

7.2.11 Cost of watchmen or similar security services.

7.2.12 Cost of surveys, measurements and layout work reasonably required for the execution of the Work or the requirements of the Agreement.

7.2.13 Cost of preparation of shop drawings, coordination plans, photographs, or as-built documents not included in Trade Contracts.

7.2.14 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.

7.2.15 All costs for reproduction of documents, other than those required to be provided by the Construction Manager under this Agreement. Reproduction costs will be the actual costs of reproduction subject to a maximum of three cents per square foot for prints and a maximum of three cents per 8 ½ by 11 inch page for offset print or photo copied contract documents, specifications, etc.

7.2.16 Other costs incurred in the performance of the Work if and to the extent approved in writing by the Owner.

7.2.17 Cost of deductibles for insurance claims.

7.2.18 Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen which are employed or 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 Owner's option, will be credited to the Owner at their fair market value at such time.

7.2.20 Rental charges of all necessary machinery and equipment, including hand tools used in the performance of the Work, whether rented from the Construction Manager or others, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof. Each piece of equipment to be rented shall have hourly, daily, weekly and monthly rates submitted to and approved by the Owner in advance before equipment rental charges will be considered reimbursable.

7.2.21 Contractor's contingency may be used only with the Owner's prior written approval.

7.2.22 Any savings buy-out may only be used with the Owner's prior written approval.

ARTICLE 8

Changes in the Work

8.1 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 shall be authorized as described in the General Conditions. Except in cases of emergency endangering life or property, the Construction Manager shall allow no Changes in the Work without the prior written approval of the Owner.

ARTICLE 9

Discounts

9.1 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.

ARTICLE 10

Insurance

10.1 Insurance will be provided as required by the General Conditions.

10.2 Additionally, throughout the Project, the Construction Manager shall carry, at the Construction Manager's own expense, commercial general liability insurance (occurrence form) including products/completed operations providing coverage in the minimum amount of \$1,000,000 per occurrence and professional liability insurance (occurrence form) providing coverage in the minimum amount of \$1,000,000 per occurrence. If the professional liability coverage is provided on a claims-made basis, then such insurance shall continue throughout the term of this Agreement and upon the termination of this Agreement, or the expiration or cancellation of the insurance, Construction Manager shall purchase, tail coverage for a period of three years after the termination of this Agreement or the expiration or cancellation of the claim-made coverage (said tail coverage shall be in amounts and type equivalent to the claims-made coverage). An insurance certificate shall be provided to the Owner within ten (10) calendar days following the full execution of this Agreement.

The insurance certificate shall provide that such insurance policy shall not be canceled, terminated, non-renewed, or materially changed without thirty (30) days' prior written notice to the Owner. In addition, the Construction Manager shall require all consultants on the Project Team to carry professional liability coverage in the same amount as the Construction Manager is required to carry. The Construction Manager shall provide the Owner with insurance certificates for these consultants with the same provisions required of the Construction Manager's insurance certificate at the same time it provides its certificate of insurance to Owner. In addition, the Construction Manager shall notify the Owner, in writing, of any reduction in the aggregate coverage provided by the Construction Manager's insurance within (30) days after each such revision in coverage. In the event the Construction Manager or its consultants fail to maintain the insurance required hereby, the Owner may, at its discretion, pay any premium necessary to maintain the coverage required hereby and deduct such premium costs from the Construction Manager's fees under this Agreement.

The certificates shall indicate that the Commercial General Liability policy carries an endorsement (no more restrictive than CG 20 10) which names *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, are additional insureds*. The Construction Manager's policy shall be primary and that any insurance carried by FIU shall be noncontributing with respect thereto.

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

ARTICLE 11

Indemnification

11.1 The Construction Manager hereby agrees to indemnify, defend and hold Owner, Florida International University, the Florida Board of Governors, the State of Florida, and their respective trustees, officers and employees harmless for, from and against all liabilities, damages, losses, claims and any other costs or expenses whatsoever, (including, but not limited to, reasonable attorneys' fees and costs, whether suit is instituted or not, and if instituted, at all tribunal levels) arising directly or indirectly out of: (a) Construction Manager's performance or breach of the Agreement terms, (b) the acts, omissions, negligence, recklessness, or wrongful conduct of the Construction Manager and other persons employed or utilized by the Construction Manager, including its consultants, in the performance of the Agreement; (c) the Construction Manager's operations on or use of the Owner's Property; and (d) any third party claims or law suits against Owner arising in connection with Construction Manager's performance or non-performance of the Agreement terms. This provision shall survive expiration of this Agreement.

ARTICLE 12

Liquidated Damages

12.1 Inasmuch as failure to complete the Work within the time fixed in the document reflecting the final GMP accepted by Owner and Construction Manager ("Final GMP") for each applicable Project 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 for each Project is not substantially completed, according to the definition of "Substantial Completion" in the General Conditions of the Contract, or within such further time, if any, as shall be allowed for time extensions in accordance with the provisions of the Contract 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 in the Final GMP for each Project and not as a penalty, for each calendar day elapsing between the date fixed for Substantial Completion in Final GMP for each applicable Project and the date such Substantial Completion shall have been fully accomplished for each applicable Project. Said liquidated damages shall be payable, in addition to any excess expenses or costs payable by the Construction Manager, to the Owner under the provisions of Article 14 of the General Conditions of the Contract for Construction, and shall not preclude the recovery of damages by the Owner under other provisions of the Contract 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 Article 14 of the General Conditions or elsewhere in the Contract Documents. The Owner's exercise of the right to terminate shall not release the Construction Manager from the obligation to pay said liquidated damages in the amount stipulated herein. It is further agreed that the Owner may deduct from the balance remaining for the final payment, the liquidated damages stipulated herein and in the General Conditions, or such portion thereof as the remaining balance will cover.

ARTICLE 13

Period of Service

13.1 This Agreement shall remain in force for a period which may reasonably be required for the construction of each Project initiated by _____, including extra work and any required extension thereto.

13.2 This Agreement may be renewed for _____ additional one (1) year periods, at Owner's sole discretion.

ARTICLE 14

Miscellaneous Provisions

14.1 Terms used in the General Conditions shall have the following meanings:

14.1.1 "Contractor" means Construction Manager, and the terms will be used interchangeably;

14.1.2 "Subcontractor" means Trade Contractor, and the terms will be used interchangeably; and,

14.1.3 "Contract Sum" for each Project means Guaranteed Maximum Price, or GMP, and the terms will be used interchangeably.

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

14.2 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 without the written consent of the other.

14.3. 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.

14.4 The Construction manager agrees that after completion of all Work for each Project and all Amendments thereto and prior to final payment, it will execute and deliver to the Owner an "Assignment of Anti-trust Claims" as shown in the General Conditions.

14.5 The Construction Manager also agrees that prior to final payment, it will cause each of its suppliers and Trade Contractor who have furnished services, goods, or materials in connection with the performance of this Agreement, to execute and deliver to the Owner and "Assignment of Anti-trust Claims".

14.6 The Construction Manager represents and warrants that it has not employed or retained any company or person to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation individual or firm any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

14.7 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 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.

14.8 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 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.

14.9 This Agreement may be terminated by the Owner in its sole discretion upon seven (7) calendar days' written notice to the Construction Manager.

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

14.11 Construction Manager is an independent contractor to Owner.

14.12 This Agreement represents the entire and integrated agreement between the Owner and the Consultant 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 Consultant.

14.13 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either 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 consultants, if any.

14.14 By execution of this document and in compliance with Section 287.055(5)(a), Florida Statutes, the Consultant certifies that all factual unit costs supporting the fees 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.

14.15 The Construction Manager shall not be entitled to, and hereby waives any monetary claims for or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any indirect consequential damages.

14.16 Owner's selection of one or more remedies for breach of this Agreement shall not limit the Owner's right to invoke any other remedy available to the Owner under this Agreement or by law or in equity.

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

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

******* CONSTRUCTION MANAGER *******

Attest: _____

By: _____
Signature

By: _____
Signature

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

Print Name & Title of President

As Witnessed by:

Date: _____

Signature

******* OWNER *******

**The Florida International University
Board of Trustees**

By: _____
Modesto A. Maidique, President

As Witnessed By:

Date: _____

APPROVED AS TO FORM AND LEGALITY

By: _____
Fleta A. Stamen, Assistant General Counsel

Date: _____