



# AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER

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Project: **BT-\_\_\_\_**  
Project Name:

\_\_\_\_\_  
\_\_\_\_\_

Construction Manager:

\_\_\_\_\_  
\_\_\_\_\_

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April 2025 Edition

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**AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER**

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

**WITNESSETH:**

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

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

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

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

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

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

**ARTICLE 1**

**Project**

The Project for which Construction Manager is being hired to perform services under this Agreement shall consist of the following:

Project Name and BT Number: \_\_\_\_\_

**ARTICLE 2**

**The Construction Team and Extent of Agreement**

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

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

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

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

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

### ARTICLE 3

#### Construction Manager's Basic Services

3.1 Construction Manager's "Basic Services" under this Agreement include pre-construction phase services and construction phase services.

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

3.2 The Pre-Construction Phase. Construction Manager shall:

3.2.1 Provide pre-construction deliverables for the Project, consisting of \_\_\_\_\_ (\_\_\_\_) copies of reports at: (i) Conceptual Schematics, (ii) Advanced Schematics, (iii) Design Development, (iv) 50% Construction Documents, and (v) 100% Construction Documents. At the Design Development stage, Construction Manager shall provide a letter indicating Construction Manager's confirmation that the concept selected can be constructed within the budget. The reports to be provided at each of the above referenced stages shall include a complete discussion and summary of the services provided in accordance with this Agreement, including a Project construction schedule (the "Project Construction Schedule") and a detailed cost estimate. Recommendations and cost estimates made throughout the pre-construction phase shall be based on the Cost Containment Guidelines for the State University System of Florida, January 1996.

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

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

3.2.4 Prepare for Owner's written approval a detailed estimate of construction cost developed by using estimating techniques which anticipate the various elements of the Project, and based on design documents prepared by the Architect/Engineer. Update and refine this estimate at each milestone as the Architect/Engineer prepares Construction Documents. Advise Owner and the Architect/Engineer if it appears that the construction cost may exceed the Project budget. Make recommendations for corrective action.

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

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

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

3.2.5.3 Establish a schedule for the purchase of materials and equipment requiring long lead time procurement, and coordinate the schedule with the early preparation of portions of the Construction Documents by the Architect/Engineer. Identify those materials and/or equipment which are particularly appropriate for Owner's direct purchase based on the terms outlined in this Agreement. Expedite and coordinate delivery of these purchases.

3.2.6 During the course of the pre-construction phase, Construction Manager may be asked to participate in value engineering to assist with budget related issues of the Project.

3.2.7 Provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. Develop bidding packages designed to minimize adverse effects of labor shortages.

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

3.2.9 Schedule and conduct bi-weekly meetings (unless specified by Owner in writing otherwise) of the

Construction Team. The appropriate Team member shall prepare and distribute the minutes for each of the meetings.

3.2.10 Based upon Construction Documents produced by the Architect/Engineer, develop Guaranteed Maximum Price (GMP) proposal(s), including Project Construction Schedule, itemized by trade contract, for phases of the Work as required by Owner. If the documents as prepared by the Architect/Engineer are not adequate for the development of a GMP, Construction Manager shall notify Owner immediately, prior to developing the GMP. All assumptions made by Construction Manager in the development of the GMP shall be specifically listed in the GMP proposal. All assumptions and clarifications, if any, by Construction Manager must be identified in the original proposal. In no event shall Construction Manager's clarifications and/or assumptions modify the terms of this Agreement. This provision shall apply to the GMP and any and all amendments to this Agreement and shall survive expiration of this Agreement. The GMP will not be adjusted due to assumptions made by Construction Manager not included in the original GMP proposal.

3.2.10.1 If the GMP proposal is accepted by Owner, it will become an amendment to this Agreement which will establish the GMP, contract time, and liquidated damages for that phase of the Work.

3.2.10.2 Prior to commencement of the Work, Construction Manager shall provide to Owner certified copies of the recorded payment and performance bonds for the Project. Such payment and performance bonds shall be on Owner's standard forms or on forms otherwise acceptable to Owner and must contain the Construction Manager's office phone number. Notwithstanding any provisions in this Agreement to the contrary, Owner shall not make a payment to Construction Manager until Construction Manager has complied with this provision.

3.2.10.3 If the GMP proposal is not accepted by Owner, Owner shall so notify Construction Manager in writing. Construction Manager shall then recommend adjustments to the Work through value engineering acceptable to Owner and Architect/Engineer. The Construction Team will discuss and negotiate these recommendations for no more than thirty (30) calendar days from the date of Owner's foregoing notice to Construction Manager, unless an extension is granted in writing by Owner. If an acceptable GMP is not developed within this time period, negotiations may be terminated, Owner shall have the right to terminate this Agreement, and Owner may initiate negotiations with another firm. If Owner elects to terminate this Agreement, Owner shall have no further liability under this Agreement except for any outstanding sums due and owing for pre-construction services previously approved by Owner.

3.3 Construction Phase. Unless otherwise authorized by Owner in writing, all Work shall be performed under trade contracts held by Construction Manager. Construction Manager shall not bid on any of the trade contractor Work or perform such Work with its own forces without the prior written consent of Owner which consent shall be in Owner's sole discretion, and Construction Manager shall provide any information that may be requested by Owner in connection therewith, including, without limitation, quotes from other contractors. Construction Manager shall:

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

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

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

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

3.3.5 Maintain exclusively for this Project a competent full-time staff at the Project site to coordinate and direct the Work and progress of the trade contractors on the Project. Construction Manager has provided Construction Manager's personnel chart which lists by name, job category, responsibility and hourly rate, Construction Manager's primary employees who will work on the Project in Construction Manager's Professional Qualifications Supplement submitted to Owner during Construction Manager selection process. Construction Manager shall promptly inform Owner in writing of any proposed replacements or additions to the personnel chart, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s) or addition(s). Owner shall have the right, in its reasonable discretion, to reject any proposed replacement or addition. The costs for Construction Manager's staff at the job site that is not full-time shall be deemed included in Construction Manager's lump sum fee set forth in this Agreement.

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

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

3.3.5.3 Construction Manager shall: establish on-site organization and lines of authority in order



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

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

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

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

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

3.3.8 Review the Project Construction Schedule with the various trade contractors and review, or expand the level of detail to incorporate specific trade contractor input consistent with the overall completion requirements. Regularly monitor and update the Project Construction Schedule and various sub-networks as construction progresses. Identify potential variances between scheduled and probable completion dates. Review the Project Construction Schedule for Work not started, or incomplete, and make adjustments in the schedule to meet the scheduled completion date. Provide summary reports of each monitoring and document all changes in the Project Construction Schedule. Regularly scheduled updates and reporting shall be included as part of the monthly project report outlined in this Agreement. Display the current Project Construction Schedule in the on-site office, and review the Project Construction Schedule at progress meetings.

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

3.3.10 Direct Purchase Program.

3.3.10.1 Direct Purchase Program. Owner is tax exempt and may elect to implement a direct purchase program whereby it may purchase materials and equipment included in any Subcontractor's bid for a portion of the Work directly from the supplier of such materials or equipment in order to achieve sales tax savings. Such materials and equipment are referred to as "Direct Purchase Materials." Direct Purchase Materials shall be governed by the State of Florida Department of Revenue Rule, 12A-1.094 ("DOR Rule"), the terms herein, and Owner's policies on the subject in effect at the time Construction Manager commences construction of the Project. For each direct purchase, Owner shall: (a) issue its purchase order directly to the vendor supplying the materials Construction Manager will use; (b) provide the vendor with a copy of Owner's Florida Consumer's Certificate of Exemption; (c) make payment directly to the vendor based on the vendor's invoice which must be issued directly to Owner; (d) take title to the tangible personal property from the vendor at the time of purchase or delivery by the vendor; (e) assume the risk of damage or loss at the time of purchase; and (f) issue a Certificate of Entitlement pursuant to the DOR Rule to each vendor and to Owner's Construction Manager to confirm that the tangible

personal property purchased from that vendor will go into or become part of a public work (a separate Certificate of Entitlement shall be issued by Owner for each purchase order and each purchase order shall be attached to the applicable Certificate of Entitlement). Construction Manager shall provide Owner with a written list of all potential Direct Purchase Materials and any other information required by Owner with respect to each direct purchase. Construction Manager shall also provide Owner with monthly reports pertaining to the Direct Purchase Materials. Notwithstanding the fact that the vendor's invoice must be issued directly to Owner as provided above, Construction Manager shall be responsible for obtaining a copy of all Direct Purchase Materials' invoices from the vendor and shall be accountable for verifying and ensuring that the materials received by Owner through each direct purchase are in good condition and are consistent with the materials that were ordered from the vendor and described in each invoice.

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

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

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

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

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

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



3.3.13.3 If an audit discloses overpricing or overcharges of one percent (1.00%) of the total amount paid hereunder or \$200,000, 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 the Owner's audit shall be reimbursed to Owner by Construction Manager. Any adjustments and/or payments that must be made as a result of any such audit or inspection of Construction Manager's invoices and/or records shall be made within ninety (90) calendar days from presentation of Owner's findings to Construction Manager.

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

3.3.14.1 When requested by Owner or Architect/Engineer, promptly prepare and submit estimates of probable cost for changes proposed in the Work, including similar estimates from the trade contractors. If directed by Owner, promptly secure formal written change order proposals from such trade contractors.

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

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

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

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

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

3.3.17 Record the progress of the Project. Submit written monthly progress reports to 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 Owner and the Architect/Engineer. Report and record such additional information related to construction, including but not limited to, information pertaining to Owner's Direct Purchase Materials.

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

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

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

3.3.20 Construction Manager shall use Owners' Building Information Modeling (BIM) Standard and Guide ("BIM Standards"), which is available on the Facilities Management Website, in coordination with the Architect/Engineer.

3.3.21 Without limiting any other provisions in this Agreement, Construction Manager acknowledges and agrees that pursuant to Section 255.0993 of the Florida Statutes, any iron or steel product permanently incorporated into the Project must be produced in the United States, except as otherwise expressly permitted in Section 255.0993 of the Florida Statutes, as amended from time to time.

3.3.22 Construction Manager shall become familiar with, and abide at all times by, the terms of FIU's Environmental Management Policy available at <https://policies.fiu.edu/files/349.pdf>, as same may be amended from time to time.

3.3.23 Construction Manager shall become familiar with, and abide at all times by, the terms of FIU's Project Management Field Guide available at [https://facilities.fiu.edu/Construction/Documents/Minor\\_Project\\_Field\\_Guide.pdf](https://facilities.fiu.edu/Construction/Documents/Minor_Project_Field_Guide.pdf), as same may be amended from time to time.

## ARTICLE 4

### Additional Services

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

## ARTICLE 5

### Owner's Responsibilities

5.1 Owner shall designate a representative to act on its behalf. Owner's representative shall be the sole party authorized to render decisions (in written format only) under this Agreement on Owner's behalf. If Owner's representative is an independent third party and not an Owner employee, then Owner's representative can act on behalf of Owner but it is not authorized to make binding or financial decisions without Owner's prior written authorization and approval. Owner's representative will monitor the progress of the Work, serve as liaison with Construction Manager and the Architect/Engineer, receive and process communications and paperwork, and represent Owner in the day-to-day conduct of the Project. Construction Manager will be notified in writing of Owner's representative and any changes thereto.

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

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

## ARTICLE 6

### Schedule

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

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

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

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

## ARTICLE 7

### Guaranteed Maximum Price

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

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

7.3 All cost savings belong to and shall be returned to Owner upon Final Completion of the Work, or at such earlier time as agreed to by Owner and Construction Manager. "Cost savings" are the net difference obtained by deducting from the GMP or adjusted GMP, as applicable, the documented Construction

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

7.4 The fees specified in this Agreement and any additional fees that may be authorized in the future shall be considered lump sum fees as agreed to by Owner.

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

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

## ARTICLE 8

### Payments to Construction Manager

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

8.1.1 For pre-construction services, the lump sum amount of \_\_\_\_\_ (\$\_\_\_\_\_) to be invoiced in the following increments within thirty (30) days after the later of: (a) satisfactory completion of each of the following phases, and (b) Owner's written approval of each phase:

Conceptual Schematics	\$ _____
Advanced Schematics	\$ _____
Design Development Report	\$ _____
50% Const. Doc.	\$ _____
100% Const. Doc.	\$ _____
Printing	\$ _____
TOTAL	\$ _____

The lump sum amount consisting of the increments outlined above was derived based upon the "Guidelines for Construction Managers for the Preparation of Proposals for Pre-Construction Services" set forth on Facilities Management's website. All services provided under pre-construction shall be included within the above lump sum amount. Construction Manager shall not be entitled to any other fees for pre-construction services, except as otherwise specifically provided in this Agreement.

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

8.1.2 Once Construction Manager has commenced construction Work based upon Owner's written Notice to Proceed (with Owner's Project number identified), Construction Manager shall submit monthly invoices to Owner based upon the percentage of the Work completed subject to and on the terms described in the

Conditions of the Contract. As required by Section 255.05, Florida Statutes, Owner shall not make a payment to Construction Manager until Construction Manager has provided Owner with a certified copy of the recorded payment and performance bond for the Project.

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

8.1.3 Pay requests for pre-construction services and for construction shall be documented in accordance with Owner's requirements and procedures in effect from time to time.

8.1.4 As provided by Section 215.422, Florida Statutes, if a warrant in payment of an invoice is not mailed or electronically transmitted by Owner within forty (40) days after receipt of the invoice and receipt, inspection and approval of the services, Owner shall pay to Construction Manager, in addition to the amount of the invoice, interest at the rate established by the Florida state comptroller pursuant to Section 55.03, Florida Statutes, on the unpaid balance from the expiration of such 40-day period(s) until such time as the warrant is mailed to Construction Manager. These provisions apply only to undisputed amounts for which payment has been authorized. Invoices or pay requests returned to Construction Manager due to preparation errors will result in a payment delay. Invoice payment requirements do not start until a properly completed invoice or pay request is provided to Owner. A vendor ombudsman has been established within Owner's Office of Business and Finance. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from Owner. The vendor ombudsman may be contacted at 305 348-6585.

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

8.2.1 Salaries and other compensation of Construction Manager's personnel stationed at the Construction Manager's principal and branch offices other than the field office.

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

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

8.2.4 Overhead and profit, or general expenses of any kind, except as may be expressly included in the provision entitled "Cost of the Work". Overhead and profit percentages shall be broken down separately in the GMP provided by Construction Manager.

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

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

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

8.2.8 All costs incurred during the warranty period after construction.

8.2.9 Any cost not specifically and expressly described in the Article entitled “Cost of the Work”.

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

8.3.1 Adjustments due to Changes in the Work shall be made as described in the Conditions of the Contract.

8.3.2 For delays in Work caused solely by Owner, Construction Manager shall be entitled to an additional fee to compensate Construction Manager. The amount shall be calculated at a daily rate derived by dividing the basic fee (excluding profit) established in the accepted GMP proposal by the Contract Time established in the GMP amendment to this Agreement.

8.4 Construction Manager’s fee shall be invoiced on a monthly basis by the Construction Manager based upon percentage of work completed.

## ARTICLE 9

### Cost of the Work

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

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

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

9.2.1 Subject to prior written approval by Owner, wages paid for labor in the direct employ of Construction Manager and engaged in the performance of the Work under this Agreement; to cover fringe benefits, a “Multiplier” times the wages will be considered a reimbursable cost and will be used for billing purposes only. The Multiplier shall be defined as the employer’s net actual cost of payroll taxes and net actual cost of employee’s worker’s compensation insurance, taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, and other variables, and said Multiplier shall be established in the GMP amendment to this Agreement. 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. Employee bonuses, calendar dates designated by the federal government as holidays, vacation and/or sick leave benefits, life insurance policies, or other similar perks and/or benefits paid to Construction Manager’s employees shall not be considered reimbursable and will be deemed to be included as part of the Multiplier.

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

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



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

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

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

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

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

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

9.2.7 Cost of removal and disposal of all debris from the site, including clean-up and trash removal.

9.2.8 Cost incurred due to an emergency affecting the safety of persons and/or property not caused by the fault of Construction Manager, its consultants, subcontractors, material men and suppliers.

9.2.9 Cost to Construction Manager of temporary electric power, lighting, water and heat required for the performance of the Work, or required to protect the Work from weather damage where applicable.

9.2.10 Cost to Construction Manager of temporary safety-related protection including barricades and safety equipment, temporary roads and parking, dust control, pest control, installation and operation of temporary hoists, scaffolds, ladders and runways, and temporary project signs and costs of permits and fees pursuant to the Conditions of the Contract.

9.2.11 Cost of watchmen or similar security services.

9.2.12 Cost of surveys, measurements and layout work reasonably required for the execution of the

Work or the requirements of the Agreement.

9.2.13 Cost of preparation of shop drawings, computer generated coordination plans, photographs, or as-built documents not included in trade contracts.

9.2.14 No travel costs shall be paid unless such costs are pre-approved by Owner in writing and such approved costs, if any, shall be subject to the requirements and limits set forth in Florida Statutes, Section 112.061. If Construction Manager desires to submit a claim related to automobile costs, it must submit a claim for either:

(a) Automobile allowance, or

(b) Fuel Costs, but not both.

9.2.15 Cost of reproduction of the Construction Documents other than those required to be provided by Construction Manager under this Agreement. Reproduction costs shall be the actual costs of reproduction. Documentation evidencing actual costs must be provided to Owner if requested.

9.2.16 Costs, including transportation and maintenance, of materials, supplies, equipment, temporary facilities and hand tools not customarily owned by workmen that are provided by Construction Manager at the site and fully consumed in the performance of the Work. At the end of the Project, any such items which are used but not consumed will be turned over to Owner, or, at Owner's option, will be credited to Owner at their fair market value at such time.

9.2.17 Rental charges for all necessary machinery, equipment and hand tools used in the performance of the Work, and not customarily owned by construction workers. Each piece of equipment to be rented shall have hourly, daily, weekly and monthly rates submitted to and approved by Owner in writing in advance before equipment rental charges will be considered reimbursable. Rental charges shall not exceed the purchase price of the machinery, equipment or tools.

9.2.18 Reasonable costs associated with setting up and demobilizing tool sheds, Project field offices, temporary fences, temporary roads, and temporary fire protection. Charges related to damaged and/or lost temporary fencing and related items will be the responsibility of Construction Manager.

9.2.19 Any data processing costs directly related to the Work performed at the project site, including any hardware, software or CADD costs.

9.2.20 Expenses incurred in accordance with Construction Manager's standard personnel policy for relocation and temporary living allowance of personnel required for the Work, if and to the extent pre-approved by Owner in writing.

9.2.21 Other expenses or charges properly incurred and paid in the performance of the Work, if and to the extent pre-approved by Owner in writing.

## ARTICLE 10

### Changes in the Work

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

## ARTICLE 11

### Discounts

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

## ARTICLE 12

### Insurance

12.1 Prior to commencement of the Project and throughout the Project, Construction Manager shall provide insurance as shown in the Facilities Management's website at <https://facilities.fiu.edu/formsandstandards.htm> on the terms (including but not limited to minimum amount(s) of insurance required) and time-frames set forth therein, which terms and time-frames are incorporated herein by reference. Owner reserves the right to require additional types and/or amounts of insurance at its sole discretion. For the sole purposes of calculating the insurance premium costs for the insurances required, the GMP accepted by Owner shall not include any insurance premium costs. Construction Manager shall be reimbursed for insurance based on the actual cost of the insurance(s) only and shall not include a fee or other mark-up on the insurance premium costs. Prior approval from Owner is required in the event Construction Manager is looking for reimbursement for a coverage type that is not specified in the Conditions of the Contract. Owner will not pay for amounts that may represent a deductible in any insurance policy including a Subcontractor Default Insurance policy (i.e. Subguard). This **does not** apply to a Builder's Risk Policy. Buy-Down Policies / Deductible Buy-Down / or policies that perform the same function are considered deductibles and will not be paid by Owner.

## ARTICLE 13

### Indemnification

13.1 To the maximum extent permitted by law, Construction Manager shall indemnify and hold 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") harmless from and against any and all charges, complaints, actions, suits, proceedings, hearings, investigations, delays, claims, demands, judgments, awards, orders, decrees, stipulations, injunctions, damages, dues, penalties, fines, expenses, amounts paid in settlement, liabilities (whether known or unknown, whether absolute or contingent, whether liquidated or unliquidated, and whether due or to become due), obligations, taxes, liens, losses, fees and costs, including all attorneys' fees and all court and arbitration costs (at any level or of any type) (collectively, "Adverse Consequences") in connection with Construction Manager's performance of this Agreement to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Construction Manager or anyone for whose acts or omissions Co Construction Manager may be liable in the performance of this Agreement. The provisions of this Paragraph shall be in addition to, and shall not be construed to negate, abridge, or reduce other rights or obligations of, any other indemnification right that may be available to Indemnitees under this Agreement or Applicable Laws. Construction Manager's indemnification obligations under this Agreement, including those specified in this Paragraph, shall be deemed part of the Project specifications and to fully comply with Section 725.06 or 725.08, Florida Statutes, as applicable, including any amendments thereto, in all respects. If any word, clause or provision of any of the indemnification provisions of this Agreement is determined not to be in compliance with Section 725.06 or 725.08, Florida Statutes, as applicable, including any amendments thereto, it shall be stricken and the remaining words, clauses and provisions shall remain in full force and effect. It is the intent of the parties that Construction Manager's

indemnification obligations comply fully with Section 725.06 and 725.08, Florida Statutes, as applicable, including any amendments, in all respects. The terms of this Paragraph shall survive the expiration or termination of this Agreement and the completion of the Work.

## ARTICLE 14

### Liquidated Damages

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

## ARTICLE 15

### Miscellaneous Provisions

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

15.2 Owner and Construction Manager respectively, bind themselves, their partners, successors, assigns and legal representative to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Construction Manager shall assign this Agreement or any interest therein without the prior written consent of the other.

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

Applicable Courts.

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

15.5 Construction Manager agrees to comply with all applicable public records laws, including those specifically set forth under Florida Statutes, Section 119.0701(2)(b) to the extent applicable. IF CONSTRUCTION MANAGER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONSTRUCTION MANAGER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 348-1377, BY EMAIL AT [recordsmanagement@fiu.edu](mailto:recordsmanagement@fiu.edu) OR BY MAIL AT 11200 SW 8<sup>TH</sup> STREET, GL 460, MIAMI, FLORIDA 33199.

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

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

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

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

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

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

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



increased fee due to inaccurate, incomplete, or non-current factual unit costs.

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

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

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

15.15 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. Increases in costs, fees and/or expenses due to the imposition of tariffs, duties, levies and/or similar fees or in connection with labor shortages are expressly excluded from this paragraph and shall not constitute grounds for any force majeure claim under 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. Notwithstanding the foregoing, the parties expressly agree that all Owner termination rights under 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 are not vitiated by the terms of this Section.

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

15.17 Construction Manager shall not by any means:

- (i) induce any person or entity employed in the construction of the Project to give up any part of the compensation to which that person or entity is entitled;
- (ii) offer nor accept any bribes or kick-backs in connection with the Project from or to any individual or entity, including any of its trade contractors, subcontractors, consultants, suppliers or manufacturers of Project goods and materials; or



(iii) without the express written permission of Owner in accordance with Owner's policies on the subject in effect at the time Construction Manager commences construction, call for or by exclusion require or recommend the use of any subcontractor, consultant, product, material, equipment, system, process or procedure in which Construction Manager has a direct or indirect proprietary or other pecuniary interest.

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

15.19 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](http://finance.fiu.edu/controller/Docs/Travel_Manual.pdf).

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

15.21 Construction Manager acknowledges and agrees that in the event Construction Manager has presented a proposal to Owner which may contain terms, conditions, assumptions and/or qualifications beyond those set forth in this Agreement, such terms, conditions, assumptions and/or qualifications shall not be valid, shall not be enforceable, and shall not be considered a part of this Agreement.

15.22 All contracts or purchase orders made or entered into by Owner, which are paid in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, shall contain the terms and conditions attached to this Agreement as Exhibit "B". Accordingly, Construction Manager hereby agrees to comply with the attached terms and conditions, if and to the extent applicable. This covenant is made for the benefit of (and may be relied upon by) Owner, its successors and assigns.

**[SIGNATURE PAGE FOLLOWS]**

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

**CONSTRUCTION MANAGER:**

\_\_\_\_\_  
(Construction Manager Company Name)

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**OWNER:**

**The Florida International University  
Board of Trustees**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_  
Wendy Vargas  
Senior University Counsel

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

**EXHIBIT "A"**  
**GENERAL TERMS AND CONDITIONS, \_\_\_\_\_ EDITION**

[SEE ATTACHED]

**EXHIBIT "B"**

**CONTRACTUAL PROVISIONS – FEDERAL LAW**

1. **Equal Employment Opportunity.** (Applies to construction work)

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24,

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(9) Contractor shall abide by the requirements of 41 CFR § 60-741.5. This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities. Further, Contractor shall abide by the requirements of 41 CFR § 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

2. **Compliance with the Davis Bacon Act.** (Applies to contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works)

~~a. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.~~

b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

c. Additionally, contractors are required to pay wages not less than once a week.

d. Contractors shall provide FIU evidence of compliance with these obligations upon request, and shall retain all documents indicating compliance for a minimum of 3 years following final payment.

e. Contractors can contact the Department of Labor for guidance on how to comply with these obligations, but in general it requires Contractors to pay prevailing wages and file weekly payroll certifications on Form WH-347. The Department of Labor will provide you with the necessary forms.

3. **Compliance with the Copeland “Anti-Kickback” Act.** (Applies to construction work greater than \$2,000)

a. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

b. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as federal authorities may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

4. **Compliance with the Contract Work Hours and Safety Standards Act.** (Applies to contracts in excess of \$100,000 that involve employment of mechanics or laborers)

a. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.

c. Withholding for unpaid wages and liquidated damages. The Florida International University Board of Trustees shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same



~~prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.~~

d. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

5. **Clean Air Act.** (Applies to contracts in excess of \$150,000)

a. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

b. The contractor agrees to report each violation to The Florida International University Board of Trustees and understands and agrees that The Florida International University Board of Trustees will, in turn, report each violation as required to assure notification to the federal awarding agency and the appropriate Environmental Protection Agency Regional Office.

c. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

6. **Federal Water Pollution Control Act.** (Applies to contracts in excess of \$150,000)

a. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

b. The contractor agrees to report each violation to The Florida International University Board of Trustees and understands and agrees that The Florida International University Board of Trustees, in turn, report each violation as required to assure notification to the federal awarding agency and the appropriate Environmental Protection Agency Regional Office. 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

7. **Suspension and Debarment.** (Applies to contracts in excess of \$25,000)

a. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

b. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

c. This certification is a material representation of fact relied upon by The Florida International University Board of Trustees. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to The Florida International University Board of Trustees, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

8. **Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)** (Applies to contracts in excess of \$100,000)

a. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or

~~organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.~~

**9. Procurement of Recovered Materials.**

a. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- i. Competitively within a timeframe providing for compliance with the contract performance schedule;
- ii. Meeting contract performance requirements; or
- iii. At a reasonable price.

b. Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.

c. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

**10. Domestic Preferences for Procurements.**

a. As appropriate and to the extent consistent with law, The Florida International University Board of Trustees, to the greatest extent practicable under a Federal award, provides a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

b. For purposes of this section:

- i. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- ii. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**11. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.**

a. The contractor agrees to comply with the provisions of 2 C.F.R. Section 200.321 by taking all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

b. Affirmative steps must include:

- i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

- ~~iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities~~  
to permit maximum participation by small and minority businesses, and women's business enterprises;  
iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and  
v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

**12. Prohibition on certain telecommunications and video surveillance services or equipment.**

- a. Contractor is prohibited from obligating or expending any funds under the Agreement to:
- i. Procure or obtain;
  - ii. Extend or renew a contract to procure or obtain; or
  - iii. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
1. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
2. Telecommunications or video surveillance services provided by such entities or using such equipment.
3. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

**13. Records Access.** (Applies to contracts in excess of \$100,000) The Florida International University Board of Trustees, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions. Contractor shall retain all documents relating to a federally assisted project for at least three (3) years or longer if otherwise required by federal law.

**14. No Obligation by Federal Government.** The Federal Government is not a party to the Agreement and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the Agreement.

**15. Program Fraud and False or Fraudulent Statements or Related Acts.** The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to the Agreement.

**16. Other Requirements.**

- a. Recipient agrees to comply with the requirements of section 602 of the Social Security Act (the Act), regulations adopted by Treasury pursuant to section 602(f) of the Act, and guidance issued by Treasury regarding the foregoing. Recipient also agrees to comply with all other applicable federal statutes, regulations, and executive

~~orders, and Recipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.~~

b. Statutes and regulations prohibiting discrimination applicable to this award, without limitation, include:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin.
- ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability.
- iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity.
- iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities.
- v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services.

c. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

d. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

**Addendum - Tariffs**

1. It is understood that vendors providing materials for the Project may be experiencing industry-wide economic fluctuations due to tariffs that affect the price, availability, delivery and execution of the Project.
2. If new tariffs are announced and implemented by federal, state, or local authorities after the date of the GMP Amendment that may impact the GMP, Owner and Construction Manager agree to negotiate in good faith to equitably assess and address the impact of such tariffs on the cost of materials, equipment and/or commodities. In such regard, CM shall have an obligation to use commercially reasonable and documented efforts to mitigate the impacts of such tariffs through reasonably available and appropriate means, including but not limited to value engineering, substitutions, early procurement, and alternative material considerations.
3. Any considerations for adjustments to the GMP due to tariffs, as described above, will be limited to documented increases (with all documentation requested by Owner in its sole but reasonable discretion) in excess of 10% of the actual cost of materials, equipment and/or commodities between the date of the GMP Amendment and the date of procurement only (the "Threshold"), as applicable, and shall not impact any labor, fees, mark-ups, profit, overhead, or other related items. Documented increases less than the Threshold shall be funded through the GMP contingency line item pursuant to the terms of this Agreement and Owner's policies and procedures in effect from time to time.
4. Construction Manager acknowledges and agrees that if prices for materials, equipment and/or commodities decrease from those prices included in the original GMP, or if the escalated prices for any such items decrease before the purchase date, Owner shall be entitled to a credit against the GMP (which credit may be applied as a replenishment of the GMP contingency line item or as otherwise directed by Owner). Construction Manager shall provide all documentation requested by Owner to verify the calculation of any such credit.
5. Owner's approval of any adjustment to the GMP shall be in writing.
6. The intent and applicability of this subsection is to reasonably reconcile only the Project's materials cost escalation due to tariffs, and no adjustments will be made for changes in quantities of materials.
7. Construction Manager acknowledges and agrees that the industry-wide economic fluctuations due to tariffs are dynamic and may require more detailed negotiations between the parties. Construction Manager shall consider and negotiate in good faith any future amendments to the provisions of this Addendum.