

## **AGREEMENT FOR CONTINUING MEDIUM VOLTAGE ELECTRICAL SERVICES**

This Agreement for Continuing Medium Voltage Electrical Services (the “**Agreement**”), effective as of the date last signed below, (the “**Effective Date**”), by and between The University of Central Florida Board of Trustees (“**Owner**”) and \_\_\_\_\_ FEIN), (“**Contractor**”), which is authorized to do business in Florida. Owner and Contractor shall from time to time hereinafter be referred to individually as a “**Party**” and together as the “**Parties.**”

### **RECITALS**

**WHEREAS**, Owner competitively selected contractors for various Continuing Medium Voltage Electrical Services and Control Circuitry projects at the University of Central Florida, with construction cost not exceeding \$2,000,000; and

**WHEREAS**, Owner may engage one or more Professionals to design components and/or develop specifications and statements of work for each project;

### **AGREEMENT**

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

#### **ARTICLE 1. THE CONTRACT DOCUMENTS**

**1.1** The “**Contract Documents**” consist of: (a) This Agreement and all exhibits hereto; (b) proposal(s) submitted by Contractor and accepted by Owner in writing, if any; (c) the plans, drawings and specifications for the Work (“**Construction Documents**”) but only after said Construction Documents have been completed by Professional and approved in writing by Owner; (d) any amendments or addenda executed by Owner and Contractor hereafter; (e) Owner approved Change Orders; and (f) (i) “UCF Design, Construction, and Renovation Standards”, (ii) “UCF Design and Professional Services Guide”, (iii) “UCF IT Telecommunications Design Standards”, (iv) “UCF Green Building Construction and Renovation Requirements” (items (f)(i)-(iv) as appearing on Owner’s website at [www.fp.ucf.edu](http://www.fp.ucf.edu)) and (v) “UCF Building Energy Systems Commissioning Procedure” (as appearing on Owner’s website at [www.energy.ucf.edu](http://www.energy.ucf.edu)); and (g) Owner’s policies applicable to this Agreement in effect on the Effective Date hereof, as set forth at [www.fp.ucf.edu](http://www.fp.ucf.edu).

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

## **ARTICLE 2. THE WORK**

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**2.1** Each specific project will be defined in a separate Statement of Work (“**SOW**”), which will not exceed the maximum construction cost of \$2,000,000. Contractor may be requested to perform several SOWs concurrently. Any modifications to the SOW must be in writing and executed by an authorized representative of each party. Modifications may be in the form of an Owner approved change order to the applicable SOW.

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

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

**2.4** In consultation with the Owner, any Professional(s), and any subcontractors, Contractor shall endeavor to develop, implement and maintain a spirit of cooperation, collegiality, and open communication among the parties so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and, upon completion, the project is deemed a success by all parties.

### **2.5 Electrical Services**

**2.5.1** Contractor shall perform various preventative maintenance, corrective action, troubleshooting, and predictive maintenance services, including but not limited to:

- Troubleshooting and repairs
- Disaster recovery
- Installation and programming of new equipment

- Lightning / grounding protection
- UPS systems
- SCADA systems
- Temporary power systems
- Large conductor placing
- Emergency generator repairs
- Calibrating and balancing
- Industrial 12,470VAC and 4160VAC cables, 1000kVA station transformers, switchgear, chiller starters, HI Pot testing, VFD's, and motor control centers
- Circuit transformer testing
- Service meter and instrument transformer installations (revenue-grade)
- Service meter and instrument transformer accuracy testing and reporting (revenue-grade)
- Assist OEM with performing 5.5-Megawatt generator housing inspections and testing under a Professional Engineer's supervision
  - Perform MEGGER testing of the:
    - Main rotor
    - Main stator
    - Exciter field
    - Armature
    - PMG armature
- Assist OEM with performing dye penetrant testing for 5.5-megawatt generator's main rotor shaft as required
- Provide field calibration certificate to UCF of all testing equipment used.

**2.5.2** All visits will be documented and report(s) sent to the appropriate UCF plant operator for records retention.

**2.5.3** The Contractor shall supervise and direct the work at the project site. The Contractor shall, at a minimum, staff the project site with personnel who shall:

- (i) supervise and coordinate the Contractor's personnel and act as its primary liaison with the Owner or Professional;
- (ii) coordinate trade contractors and suppliers, and supervise project site construction services;
- (iii) be familiar with all trade divisions and trade contractor's scopes of Work, all applicable building codes, and the Contract Documents;
- (iv) check, review and coordinate shop drawings and materials delivered to the project site, regularly review the Work to determine its compliance with the Contract

Documents, periodically confer with the Professional, if any, and any other Owner consultants, to assure acceptable levels of quality;

- (v) prepare and maintain project records, including process documents and daily logs;
- (vi) schedule and conduct weekly progress meetings with subcontractors to review such matters as jobsite safety, job procedures, construction progress, schedule, shop drawing status, and other information as necessary and provide prior notification of, and minutes from, such meetings to the Owner or the Professional;
- (vii) schedule and conduct weekly progress meetings with the Owner and Professional, if any, to review such matters as construction progress, schedule, shop drawing status, and other information as necessary;
- (viii) make provision for project security to protect the project site and materials stored off-site against theft, vandalism, fire and accidents, as required herein. Contractor must obtain approval from Owner 30 days in advance of storing project material(s) off-site; such off-site premises must be bonded and insured; and
- (ix) provide necessary documentation and otherwise assist the Professional, if any, with the preparation of the final “as-built” or record drawings

**2.5.4** The Contractor shall promptly reject any Work (i) which does not conform to the SOW and Construction Documents, if any; or (ii) which does not comply with any applicable law, statute, building code, rule or regulation of any public authority or agency of which it is aware.

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

## **2.6 Facilities and Equipment**

The facilities and equipment to be serviced under each SOW include, but are not limited to:

- **Downtown Campus Central Energy Plant** (BLDG 906)– 1100 RT of 480V electrical driven screw and scroll driven chillers, including associated distribution infrastructure
- **District Energy Plant I** (BLDG 003) – 8000 RT of electrical driven centrifugal chillers, including associated distribution infrastructure
- **District Energy Plant II & III** (BLDG 072 Plant 1 & 2) - 8000 RT of electrical driven centrifugal chillers coupled to a three-million-gallon thermal energy storage tank (TES), including associated distribution infrastructure with the plant and TES
- **District Energy Plant IV** (BLDG 143) - 4000 RT of electrical driven centrifugal chillers with four million Btu/hr. capacity of heat recovery, including associated distribution infrastructure with the plant

- **Water Plant** (BLDG 47) - Water production plant supplying demand for all potable water to the main campus, and for Research Park during emergency conditions, including distribution infrastructure, isolated booster stations, master lift stations, ancillary pumps and motors, drives, controls, electrical panels, and backup generators.
- **Wastewater Collection** - Including all lift stations, gravity, collection system, force mains ancillary pumps and motors, drives, SCADA, electrical panels, and backup generators.
- **Reclaimed Booster Stations** - Including distribution system up to the reclaimed water booster stations, ancillary pumps, and motors, drives, controls, and electrical panels.
- **Campus Booster Station** (BLDG 307) - Pressure regulation between UCF and Orange County during emergencies for potable water needs, including (4) 40HP pumps and switchgear.
- **Combined Heat & Power Plant** (BLDG 354) - Natural gas-fired prime mover coupled to a 5.5-megawatt generator; waste heat is then repurposed to fuel a vapor absorption machine that is capable of producing up to 1000 RT's of chilled water to the district cooling loop, excluding 1000 RT absorption chiller, generator, reciprocating engine, and engine ancillary skids.
- **UCF Sub-metering Infrastructure** – Including radio transmitters, validation and accuracy testing of meters, regulators, enclosures, power transformers, voltage transformers, circuit transmitters, and valve replacement maintenance for the following utilities: natural gas, potable water, waste water, chilled water, reclaim water, and electric.
- **Campus Distribution and Transmission Infrastructure** –
  - o Potable water – wells, pipes, valves, groundwater and elevated storage tanks
  - o Chilled water – pipes, vaults, manholes, valves
  - o Electrical – transformers, conductors, cable
  - o Sanitary sewer – pipes, force mains, gravity lines, lift stations, manholes
  - o Stormwater – pipes, outfalls, collection, distribution, retention and detention ponds

**2.7 Typical Voltages** - Terminating and splicing of high voltage and troubleshooting 12,470VAC, 4,160VAC, 480VAC, 277VAC, 120VAC, 110VAC, 125VDC, and 24VDC circuits

## **2.8 Direct Purchase Program**

**2.8.1** Owner has elected to participate in a direct purchase program whereby it purchases materials and equipment included in any subcontractor's bid for a portion of the Work costing \$5,000 and over directly from the supplier of such materials or equipment in order to achieve sales tax savings. Such materials and equipment purchased through this program are referred to as "**DOP.**" Owner shall prepare purchase orders to the supplier(s) of the DOP. Contractor shall allow three (3) weeks for execution of all such purchase orders by Owner. Contractor shall provide Owner a DOP matrix (including CSI division, description of materials, cost, lead time of material, potential tax savings, date DOP request will be submitted to Owner, date which purchase order must be issued in order not to cause delay) within 30 days of project specific Purchase Order. Any delay caused by improper paperwork/documentation by the Contractor, or its subcontractors, vendors or suppliers, shall be the responsibility of Contractor. Contractor use its best efforts to maximize cost savings for each project and to cooperate with Owner in utilizing its sales tax savings program.

**2.8.2** With respect to all DOP, Contractor shall remain responsible for coordinating, ordering, inspecting, accepting delivery, storing, handling, installing, warranting and quality control for all DOP, and such obligations shall remain subject to the Bonds (hereinafter defined). Notwithstanding anything herein to the contrary, Contractor expressly acknowledges and agrees that any materials or equipment directly purchased by Owner pursuant this Subsection shall be included within and covered to the same extent as all other warranties provided by Contractor pursuant to the terms of the Contract Documents. Contractor shall obtain Builder's Risk insurance on the Direct Purchase materials naming Owner as additional insured. Contractor shall be responsible for safeguarding all DOP on the project site on Owner's behalf.

### **ARTICLE 3. THE PROFESSIONAL**

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The Professional, if any, for each project shall be set forth in the SOW provided to Contractor. The Professional will be the Owner's representative in dealing with the Contractor on all design and technical matters, and will administer the Contract Documents. Unless otherwise directed by Owner, the Owner and Contractor shall communicate with each other through the designated Professional. The Owner's instructions to the Contractor will be issued through the designated Professional.

### **ARTICLE 4. TERM, COMMENCEMENT, TERMINATION OR SUSPENSION**

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

**4.2** Contractor shall commence the Work within ten (10) calendar days of the date of the Purchase Order and shall complete the Work by the date set forth in the SOW.

**4.3** Termination/Default by Contractor. If the Contractor defaults by failing to substantially perform, in accordance with the terms of this Agreement, as reasonably determined by Owner, the Owner may give written notice to the Contractor (i) terminating this Agreement effective seven (7) calendar days from the date of notice; or (ii) setting forth the nature of the default and requesting the Contractor initiate cure within seven (7) calendar days from the date of notice. At any time thereafter, if the Contractor fails to initiate cure upon the request of the Owner and continue such cure until complete, the Owner may give notice to the Contractor of immediate termination. If the Owner terminates this Agreement pursuant to this section, and it is subsequently determined by a court of competent jurisdiction that the Contractor was not in default, then in such even said termination shall be deemed a termination for convenience as set forth in **Section 4.5**.

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

**4.5** Other Termination or Suspension by Owner. The Owner may at any time give written notice to the Contractor terminating this Agreement or suspending the Project, in whole or in part, for the Owner's

convenience and without cause. If the Owner terminates this Agreement or suspends the Project, the Contractor shall immediately reduce its staff, services and outstanding commitment in order to minimize the cost of termination or suspension.

**4.6 Payment After Termination/Suspension.** If the Agreement is terminated by the Owner pursuant to **Section 4.3**, no further payment shall be made to the Contractor until completion of the Project. At such time, the Contractor's compensation shall, at Owner's option, be calculated on the basis of services actually performed and expenses actually incurred prior to the effective termination date, or (ii) on the basis of the payment terms set forth elsewhere herein. In either case, the Contractor's compensation shall be reduced by all costs and damages incurred by Owner as a result of the default of Contractor. If the Agreement is (i) terminated by the Contractor pursuant to **Section 4.4**; (ii) terminated by the Owner pursuant to **Section 4.5**; or (iii) suspended more than ninety (90) days by the Owner pursuant to **Section 4.5**, the Contractor's compensation shall be calculated on the basis of services actually performed and expenses actually incurred prior to the effective termination or suspension date and reasonable costs associated with the termination or suspension.

## **ARTICLE 5. SUBSTANTIAL AND FINAL COMPLETION**

**5.1 "Substantial Completion"** of the Work shall be achieved when the Work has been completed to the point where Owner can lawfully occupy or utilize the Work for its intended purpose under a Certificate of Occupancy or Temporary Certificate of Occupancy (with conditions acceptable to Owner in its sole discretion) or their equivalent. Professional or Owner shall certify the date Substantial Completion of the Work is achieved. If Owner has designated portions of the Work to be turned over to Owner prior to Substantial Completion of the entire Work, Professional or Owner shall certify the date as to when Substantial Completion of such designated portions of the Work have been achieved. When the entire Work (or any portion thereof designated in writing by Owner) is substantially complete, Contractor shall notify Owner or Professional in writing that the entire Work (or such designated portion) is substantially complete and request that Owner or Professional issue a Certificate of Substantial Completion (or Certificate of Partial Substantial Completion). Contractor shall give Owner or Professional thirty (30) days' notice prior to the predicted Substantial Completion inspection date. The issuance of a Certificate of Occupancy or Temporary Certificate of Occupancy for the Work shall be an express condition precedent to Contractor's right to request that Owner or Professional issue a Certificate of Substantial Completion. The written notice from Contractor referenced in the first sentence of this Section shall include a proposed punch list of all items of Work to be completed or corrected by Contractor. Within a reasonable time thereafter, Contractor and Owner or Professional shall make an inspection of the Work (or designated portion thereof) to determine the status of completion. If Owner or Professional do not consider the Work (or designated portion) substantially complete, Owner or Professional shall notify Contractor in writing giving the reasons therefor and the inspection process shall be repeated at no additional cost to Owner until the Work is determined to be substantially complete. In such case, Contractor shall pay the costs (including those of Professional) of all additional Substantial Completion inspections. If Owner or Professional consider the Work (or designated portion) substantially complete, Owner or Professional shall prepare and deliver to Contractor a Certificate of Substantial Completion (or Certificate of Partial Substantial Completion) which shall fix the date of Substantial Completion for the entire Work (or designated portion thereof) is actually achieved by Contractor and include a final punch list of items to be completed or

corrected by Contractor before final payment. Such final punch list shall comply with the Contract Documents and all Applicable Laws. Accordingly, Owner or Professional shall provide the final punch list to Contractor within seven (7) days after Contractor has achieved Substantial Completion. Contractor acknowledges and agrees that the failure to include any corrective work or pending items not yet completed on the punch list does not alter the responsibility of Contractor to complete all the Work required under the Contract and does not waive Owner's right to demand completion of the item pursuant to the Contract Documents prior to or after final payment. Additionally, if the Contract involves Work on more than one building or structure, or involves a multi-phased Project, a punch list shall be developed in accordance with the timelines set forth in this Section for each building, structure, or phase of a project. Owner shall have the right to exclude Contractor from the Work and project site (or designated portion thereof) after the date of Substantial Completion (or partial Substantial Completion), but Owner shall allow Contractor reasonable access to complete or correct items on the final punch list. Contractor shall submit Owner's Substantial Completion Form/Checklist and all required backup documentation for Owner approval.

**5.2 "Final Completion"** of the Work shall be achieved on the later of: (a) the date that the Work passes a Final Completion inspection, or (b) the date that Contractor has produced all required Final Completion close-out documentation and items. Final Completion shall not be deemed to have occurred and no final payment shall be due Contractor or any of its subcontractors or suppliers until the Work has passed the Final Completion inspection and all required Final Completion close-out documentation and items have been produced to Owner by Contractor. When Contractor believes it has fully performed all of the Work, including all punch list items, Contractor shall deliver to Owner a written affidavit from Contractor certifying that all Work has been completed in accordance with the requirements of the Contract Documents. That written affidavit shall be delivered to Owner by Contractor at the same time it submits its final application for payment, which Contractor shall submit within thirty (30) days of the date of Substantial Completion. After receipt of such affidavit, the final application for payment and all other documents required for project close-out, Professional or Owner shall promptly inspect the Work to determine if all of the Work has been completed and is ready for final acceptance by Owner. If Owner or Professional determine Contractor has completed the entire Work, Owner or Professional shall promptly issue a final Certificate for Payment, stating that, to the best of its knowledge, information and belief, and on the basis of its observations and inspections: (a) all of the Work has been completed in accordance with the requirements of the Contract Documents; (b) the final balance due Contractor, as noted in the final Certificate for Payment, is due and payable; and (c) all conditions precedent to Contractor's entitlement to final payment have been satisfied. Neither the final payment nor the retainage shall become due and payable until Contractor submits: (i) the duly executed and notarized final Waiver and Release of Lien in the form acceptable to Owner and in compliance with Applicable Laws, (ii) written consent of surety to final payment, (iii) all close-out documentation and information required by the Contract Documents to be provided by Contractor prior to its entitlement to final payment, (iv) if required by Owner, other data establishing payment or satisfaction of all obligations, such as receipts, releases and waivers of liens, arising out of the Contract Documents, to the extent and in such form as may be designated by Owner, (v) Certificate of Final Completion in form approved by Owner, (vi) all operation and maintenance manuals not previously produced, (vii) Owner maintenance or "attic" stock as prescribed in the technical specifications, (viii) one (1) set of as-built plans and specifications, (ix) certification and affidavit that all insurance required of Contractor beyond final payment, if any, is in effect and will not be canceled or allowed to expire without notice to Owner, (x) full, final and unconditional waivers of construction liens,



from each contractor, subcontractor, supplier or other person or entity who has, or might have a claim, (xi) duly executed and notarized full, final and unconditional certification and affidavit that all of Contractor's obligations to contractors, subcontractors, suppliers and other third parties for payment for labor, materials or equipment related to each project have been paid or otherwise satisfied, (xii) all written warranties and guarantees relating to the labor, goods, products, materials, equipment and systems incorporated into the Work, endorsed, countersigned, and assigned as necessary; affidavits, releases, bonds, waivers, permits and other documents necessary for final close-out of Work, (xiii) a list of any item(s) due but unable to be delivered and the reason for non-delivery; and (xiv) any other documents reasonably and customarily required or expressly required herein for full and final close-out of the Work. Owner reserves the right to inspect the Work and make an independent determination as to the Work's acceptability, even though Owner or Professional may have issued its recommendations. Unless and until Owner is completely satisfied that Final Completion has been achieved, neither the final payment nor the retainage shall become due and payable.

## **ARTICLE 6. COMPENSATION OF CONTRACTOR**

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**6.1** The Owner shall pay and the Contractor shall accept, as full and complete payment for the Contractor's timely and complete performance of its obligations hereunder, a sum to be determined on a per project basis, in accordance with the Labor Rates (with include Contractor's General Conditions) attached hereto as **Exhibit C**.

**6.2** Applications for payment shall be submitted in detail sufficient for an audit thereof in accordance with Owner's policies on the subject in effect at the time the Contractor commences construction of the Work.

**6.3** Owner shall pay the Contractor within thirty (30) calendar days after receipt by Owner of Contractor's invoice, properly prepared pursuant to Owner's policies on the subject in effect at the time, unless there is a dispute about the Work or the amount of compensation claimed due to the Contractor.

**6.4** As an express condition precedent to final payment, Contractor shall provide all required guarantees, warranties, affidavits, releases, consent of surety to final payment, bonds, waivers, manuals, as-built drawings, and maintenance books. Contractor shall provide:

a. an indexed, readable and searchable electronic copy, in format acceptable to Owner and, if requested, hard copies of all operation and maintenance manuals, permits, and temporary and final certificates of completion or occupancy, as applicable, and third-party warranty documents applicable to the Work;

b. a warranty matrix, in spreadsheet or database format, which includes the following information: Contractor's name, description of asset, building, room number, asset criticality, status, part number, serial number, manufacturer name, and warranty start and end date.

**6.5** The Contractor's application for final payment shall be accompanied by a completed and notarized "Certificate of Contract Completion".

## **ARTICLE 7. LIQUIDATED DAMAGES FOR DELAY**

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**7.1** Contractor shall achieve Substantial Completion and Final Completion of the Work within the time prescribed in the SOW (as may be adjusted in accordance with the Contract Documents). Inasmuch as failure to achieve Substantial Completion and Final Completion of the Work within the time prescribed in the SOW will result in damages to Owner, and as the damages arising from such failure cannot be calculated with any degree of certainty, it is agreed that if Contractor does not achieve Substantial Completion and/or Final Completion of the Work within the time prescribed in the SOW, or within such further time, if any, as shall be allowed for time extensions in accordance with the provisions of the Contract Documents, Contractor shall be required to pay to Owner as liquidated damages for such delay, and not as a penalty, the amount of **construction cost x .07/365 or \$100, whichever is greater**, for each day elapsing between the date fixed for Substantial Completion and/or Final Completion and the date Substantial Completion and/or Final Completion is fully achieved. The Parties agree that said liquidated damages are reasonable given existing circumstances, including the range of harm that is foreseeable and the anticipation that proof of damages would be costly and impractical. Contractor hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty. It is further mutually understood and agreed that Owner's assessment of liquidated damages for delays pursuant to this Section is intended to compensate Owner solely for Contractor's failure to achieve Substantial Completion and/or Final Completion of the Work within the time prescribed in the SOW, and shall not release Contractor from liability from any other breach of requirements of the Contract Documents. If the liquidated damages set forth herein are deemed unenforceable for any reason, Owner instead shall be entitled to recover those actual delay damages that it sustained as a result of Contractor's failure to achieve Substantial Completion and/or Final Completion of the Work. Liquidated Damages for failure to achieve Final Completion shall not be stacked on top of Liquidated Damages for failure to achieve Substantial Completion. Liquidated Damages shall not be assessed against Contractor in the event of Owner delay; however, in event of concurrent delay by Owner and Contractor, Liquidated Damages shall still be assessed.

**7.2** Owner may deduct liquidated damages prescribed in this **Article 7** from any unpaid amounts then or thereafter due Contractor under this Agreement and any liquidated damages not so deducted shall be payable to Owner by Contractor upon demand by Owner plus interest from the date of demand at the maximum legal rate of interest until paid. Further, when Owner reasonably believes (a) that Substantial Completion will be inexcusably delayed; or (b) that Contractor will fail to achieve Final Completion by the Final Completion Date, Owner shall be entitled, but not required, to withhold from any amounts otherwise due Contractor the daily amount specified for liquidated damages in this **Article 7** for each day of the anticipated unexcused delay. If and when Contractor overcomes the delay in timely achieving Substantial Completion or Final Completion, or any part thereof, for which Owner has withheld payment, Owner shall release to Contractor only those funds withheld but no longer applicable, as liquidated damages, subject to the satisfaction of all other conditions precedent to release of such funds.

**7.3** The liquidated damages prescribed in this **Article 7** shall be payable in addition to any other expenses or costs payable by Contractor to Owner under this Agreement, and shall not preclude the recovery of damages by Owner under other provisions of the Contract Documents. Owner's right to received liquidated damages shall in no manner affect Owner's right to terminate this Agreement. Owner's exercise of the right to terminate shall not release Contractor from the obligation to pay said liquidated damages.

## **ARTICLE 8. PERSONNEL AND SUBCONTRACTOR**

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**8.1** The Contractor will use the Project Team identified in **Exhibit A** on a per project basis. Contractor will not alter the Project Team except with the written approval of Owner based upon good cause shown or as directed by Owner. Further, if any member of the Project Team discontinues service on the project for any reason whatsoever, Contractor shall promptly replace such team member with a qualified individual approved by Owner, in writing, which approval will not be unreasonably withheld.

**8.2** The Contractor (i) has provided a Subcontractors Chart as **Exhibit B**, which lists by name and trade each subcontractor, if any, who will be utilized by the Contractor to provide goods and services valued at \$10,000 or more with respect to the specific Project; (ii) shall not enter into any agreement with any subcontractor or supplier to which the Owner raises a reasonable, timely objection; and (iii) shall promptly inform the Owner in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). The Owner shall have the right, in its reasonable discretion, to reject any proposed replacement.

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

### LIMITATION OF REMEDIES - NO DAMAGES FOR DELAY

That the subcontractor's exclusive remedy for delays in the performance of the subcontract caused by events beyond its control, including delays claimed to be caused by Owner or Professional or attributable to Owner or Professional and including claims based on breach of contract or negligence, shall be an extension of its contract time.

In the event of a change in the work, the subcontractor's claim for adjustments in the contract sum is limited exclusively to its actual costs for such changes, plus no more than a five percent (5%) markup.

The subcontract shall require the subcontractor expressly agree that the foregoing constitute its sole and exclusive remedies for delays and changes in the Work and thus eliminate any other remedies for claim for increase in the subcontract price, damages, losses or additional compensation.

### PAYMENT TO SUBCONTRACTORS

In accordance with §255.073(3), Florida Statutes, [w]hen a contractor receives payment from a public entity for labor, services, or materials furnished by subcontractors and suppliers hired by the contractor, the contractor shall remit payment due to those subcontractors and suppliers within 10 days after the contractor's receipt of payment. When a subcontractor receives payment from a contractor for labor, services, or materials furnished by subcontractors and suppliers hired by the subcontractor, the subcontractor shall remit payment due to those subcontractors and suppliers within 7 days after the subcontractor's receipt of payment. This Subsection does not prohibit a contractor or subcontractor from disputing, pursuant to the terms of the relevant contract, all or any portion of a payment alleged to be due to another party if the contractor or subcontractor notifies the party whose payment is disputed, in writing, of the amount in dispute and the actions required to cure the dispute. The contractor or subcontractor must pay all undisputed amounts due within the time limits imposed by this Subsection.

## **ARTICLE 9. CHANGES IN THE WORK**

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**9.1** A “**Potential Change Order (PCO)**” is a notification to the Owner, through Owner’s project management software, that the Contractor has become aware of a circumstance that, in its opinion, could be a change in the scope of the Work that justifies a change to the Contract Price and/or Contract Time.

**9.2** A “**Change Order**” is an instrument approved by Owner, Contractor and Professional, stating their agreement upon all of the following: (a) the change in the Work; (b) the amount of the adjustment, if any, in the Contract Price; and (c) the extent of the adjustment, if any, in the Contract Time. A Change Order shall be issued through Owner’s project management software, and shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including all direct and indirect costs associated with such change and any and all adjustments to the Contract Price and/or Contract Time.

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

### **9.4 PCO Process.**

- a. Contractor must initiate a PCO within fourteen (14) days of Contractor becoming aware of a circumstance giving rise to a change the Work. Contractor may request additional compensation and/or time through a PCO, but not for instances that Contractor knew, or reasonably should have known, occurred more than fourteen (14) days prior to the date the PCO is initiated. A PCO must include: a) an itemized estimate, including an analysis of impacts to cost and time, if any, to perform the change in the Work, including the effects and impacts, if any, on unchanged Work; b) Contractor’s proposed methods to minimize costs, delay, and disruption of the performance of the Work; and c) all substantiating data. If Contractor fails to initiate a PCO within said fourteen (14) day time period (unless Owner has agreed in writing to a longer period of time), Contractor shall nevertheless be required to perform such change in the Work, without additional compensation and/or time.
- b. Contractor shall negotiate PCOs with all affected subcontractors and shall review the costs of those proposals and advise Owner and Professional of their validity and reasonableness, acting in Owner’s best interest, prior to requesting approval of each PCO.

- c. Owner's request for a proposed change in the Work does not authorize Contractor to commence performance of the change. Contractor shall be authorized to proceed through an executed Change Order.
- d. Once a PCO becomes an executed Change Order, Contractor shall promptly perform the changes authorized by such Change Order.

**9.5 Disagreement on PCOs.** If Owner and Contractor are unable to agree on the adjustment to the price and/or time for a potential change in the Work, Contractor shall, nevertheless, promptly perform the change as directed by Owner in writing. In that event, Contract Time shall be adjusted as directed by Owner. Contract Price shall be limited to the amount of the increase or decrease of Contractor's actual and direct (a) personnel and labor expenses, (b) material and equipment costs, and (c) extended general conditions expenses (including bond premiums), reasonably incurred as a result of the change, plus a maximum five percent (5%) markup for overhead and fee; provided, however, there shall be no additional general conditions expenses payable to Contractor on the first Five Hundred Thousand and No/100ths Dollars (\$500,000.00) of Change Order. In the event such change Work is performed by subcontractors or sub-subcontractors, a maximum five percent (5%) markup for each of those subcontractors or sub-subcontractors for all overhead and fee on their direct labor and material costs shall be permitted, with a maximum five percent (5%) markup thereon by Contractor for its overhead and fee, for a total maximum markup of ten percent (10%).

**9.6 Denial of PCOs.** If Owner determines that the Work in question is not a change in the scope of the Work, and denies the PCO, but Contractor believes that the PCO does have merit, the Contractor may submit a Claim in accordance with **Article 18**. Contractor shall, nevertheless, promptly perform the disputed work as directed by Owner in writing

**9.7 Records Regarding Changes.** Owner shall have the right to conduct an audit of Contractor's books and records, as well as those of its subcontractors and suppliers, to verify the accuracy of Contractor's claim with respect to Contractor's costs associated with any Change Order.

## **ARTICLE 10. AUDIT RIGHTS**

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**10.1** Owner or its designees may, upon reasonable notice, audit the records of its Contractor and its subcontractors and suppliers during regular business hours, during the term of this Agreement and for a period of three (3) years after final payment is made by Owner to Contractor under this Agreement or longer, if required by law. Such audits may be performed by an Owner's representative or an outside representative engaged by Owner. Contractor shall retain all records for the project during performance of the project and for at least three (3) years after Final Completion.

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

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

**10.4** If an audit discloses overpricing or overcharges of five percent (5%) of the total amount paid hereunder or \$200,000 whichever is less, in addition to making adjustments for the overcharges, the reasonable actual cost of the Owner's audit shall be reimbursed to the Owner by the Contractor. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Contractor's records shall be made within ninety (90) calendar days from presentation of Owner's findings to Contractor.

**10.5** Contractor shall ensure notice of Owner's audit rights is provided to its subcontractors, suppliers and any other vendor providing services or materials for the project and shall ensure that each agreement it enters into with such parties includes the provisions of this **Article 10**.

## **ARTICLE 11. BUILDING ENVELOPE WARRANTY**

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**11.1** Contractor shall provide a 5-year building envelope warranty commencing on the date of Substantial Completion of the Work. During this warranty period:

- a) Owner shall be responsible for relevant maintenance and maintenance logs;
- b) Contractor will be responsible for all manufacturer or installer warranty requirements, unless otherwise stipulated;
- c) All claims reported to Contractor by Owner will be investigated, executed, and managed by Contractor on behalf of Owner until the claim is resolved; and
- d) A mutually acceptable third-party building envelope consultant, at Owner's expense, will determine if the repair is satisfactory.

The warranty given in this Section shall in all relevant cases be superseded by Section 95.11 (3)(c), Florida Statutes, concerning latent defects. If the failure is determined to be a latent defect, the cost of the third-party building envelope consultant will be the responsibility of the Contractor and/or its sub-contractor. The warranty given in this Section is in addition to all other warranties given hereunder or implied by Applicable Law.

**11.2 Notice of Defect.** If Contractor becomes aware of a design flaw, building practice, material unreliability or any other reason that the completed project could be subject to water intrusion, mold, fungus, or bacterial growth, Contractor shall notify Owner in writing within twenty-four (24) hours.

**11.3 Exclusion.** Warranties in this **Article 11** exclude design flaws and material selection made by the

Professional. Should Contractor assert that the required warranty work is due to such design flaw or material selection, Owner, in addition to all of Owner's other rights and remedies, may retain an independent third-party to determine as to the nature of the flaw. Should the third-party determine that the flaw is not due to the Professional's design or material selection, Contractor shall be responsible for all costs incurred in obtaining such third-party determination, as well as all resulting corrections, repairs or replacements.

## **ARTICLE 12. ADDITIONAL WARRANTIES**

The Contractor agrees that commencing on the date of Substantial Completion of the Work there shall be a minimum two (2) year warranty on all building components. The minimum two (2) year warranty shall in no way limit, reduce or shorten any warranty guaranteed by law, issued by manufacturers, or accepted as a general contracting or construction practice.

## **ARTICLE 13. BACKGROUND CHECKS, CIVIL LITIGATION, E-VERIFY**

### **13.1 Background Check.**

**13.1.1** Contractor shall perform, at Contractor's expense, a criminal background screening for each employee, subcontractor, consultant, agent or representative (collectively "**Personnel**") intended to perform work or services at a site owned or controlled by Owner, which criminal background screening will have been performed no more than ninety (90) days prior to the assignment of Personnel to Owner's site for work. Contractor acknowledges that this obligation may require re-screening of previously screened Personnel. Background screening shall require that Personnel shall not have been convicted of, found guilty of, regardless of adjudication, or have entered a plea of *nolo contendere* or guilty to any offense prohibited under Section 435.04(2), Fla. Stat. Contractor shall not permit any Personnel to provide services or work under this Agreement who does not meet the criminal background screening requirements set forth herein.

**13.1.2** Contractor shall conduct:

- a) a Level 1 background check through FDLE;
- b) a search of the on-line State of Florida Sex Offender/Predator lists; and
- c) a search of the National Sex Offender website.

Personnel shall be rescreened annually; provided, however, in the event previously screened Personnel ceases to provide work or services to Contractor for more than ninety (90) days, Contractor shall re-screen such Personnel prior to allowing such Personnel to again provide services or work at Owner's site.

**13.1.3** Contractor shall maintain copies of the results of the criminal background checks for the term of this Agreement.

**13.1.4** In the event Contractor obtains, or is provided, supplemental criminal background information, including police reports or arrest information, after execution of this Agreement,

which potentially disqualifies Personnel previously deemed eligible to provide work or services under this Agreement, Contractor shall promptly notify owner of such matter. Contractor shall take immediate action to review the matter; provided, however, during such review time until a determination of eligibility is made, Contractor shall immediately cease allowing said Personnel to provide services or work under the Agreement. Additionally, Personnel shall be required to notify Contractor within forty-eight (48) hours of any arrest which has occurred after a Personnel was deemed eligible to provide services or work under this Agreement.

**13.1.5** Contractor shall submit to owner an affidavit, attached as **Exhibit D**, affirming the Personnel listed in the affidavit have completed the required background check and have been deemed eligible by Contractor to provide services under this Agreement. Within 24 hours of a change in the Personnel listed on the affidavit, Contractor shall submit an updated affidavit specifically identifying new or removed Personnel.

**13.1.6** Owner may terminate this Agreement immediately upon notice to Contractor for any violation of this **Article 13**.

**13.2 E-verify.** Owner is an E-verify employer. Contractor must be enrolled in E-Verify with the federal Department of Homeland Security at the time of performance of services under this Agreement. Contractor must provide proof of enrollment as a Contractor in E-verify at the time of Owner's award of this Agreement to Contractor. If not, then Owner may terminate this Agreement immediately upon notice to Contractor for any violation of this provision. After enrollment in E-Verify, Contractor shall use E-Verify to initiate verification of employment eligibility of all new hires, including consultants, subcontractors, agents, or representatives of Contractor who are assigned to the project or intended to perform work or services under this Agreement. Contractor shall complete the E-Verify of Contractor's new hires within three (3) business days after the date of hire.

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

**13.4 Flow Through.** The Contractor agrees to incorporate the substance of this **Article 13** in all subcontracts under this Agreement.

## **ARTICLE 14. INSURANCE, BONDS & INDEMNIFICATION**

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



- a. Commercial General Liability insurance coverage for commercial general liability (including loss or damage because of bodily injury, personal injury, sickness, disease or death of persons and injury to or destruction of property, as a result of the acts or omissions of Contractor, its employees, agents or subcontractors), which shall provide a per occurrence coverage amount not less than One Million Dollars (\$1,000,000) and One Million Dollars (\$1,000,000) in the aggregate;
- b. Automobile Liability insurance covering owned and rented vehicles operated by Contractor with policy limits of not less than One Million Dollars (\$1,000,000) combined single limit and aggregate for bodily injury and property damage;
- c. Workers' Compensation insurance at statutory limits;
- d. Employer's Liability insurance with a policy limit of not less than Five Hundred Thousand Dollars (\$500,000);
- e. Builder's Risk. The Contractor shall maintain Builder's Risk insurance, unless otherwise directed by Owner in writing, at replacement cost, covering the full value of the construction being performed, including where applicable, the existing structure. Such policy shall be written on a causes of loss special form policy, and shall include coverage for reasonable compensation for the Contractor's services and expenses required as a result of such insured loss. This insurance shall insure the interests of the Owner, Contractor, subcontractors and sub-subcontractors in the Work. Property covered by the insurance shall include temporary building(s) or structure(s) at the project site, other than any of Contractor's office trailer(s) (which shall be covered under separate policy. In addition, such insurance shall cover portions of the Work stored off the site, after written approval of the Owner, at the value established in the approval, and portions of the Work in transit. The University of Central Florida Board of Trustees shall be named as additional insureds on such policy. The policy shall include a waiver of subrogation endorsement, additional insured endorsement and a severability of interests endorsement. The deductible under the policy shall not exceed \$10,000.00 for all risks, except named storm, for which the deductible shall not exceed 1% of current value. When the Work includes the repair, removal, installation and/or testing of live steam boilers, valves, pipes or lines, then such insurance shall include boiler and machine coverage, written on an ISO form or its equivalent. A loss or losses insured under this insurance policy shall be adjusted by the Contractor and its insurance company. The Contractor shall repair or replace the damaged property with the proceeds from the Builder's Risk policy. The Contractor shall be responsible for all damages and necessary repairs whether or not the loss is covered by the Builder's Risk Policy.

**14.2 Insurance Requirements Generally.** All of the foregoing policies of insurance shall be: (a) issued by an insurance carrier approved in advance by Owner, with a rating from A.M. Best Company of not less than A/XII, and licensed to provide such coverage in the State of Florida, and (b) in a form satisfactory to Owner without unacceptable exclusions or exceptions to coverage. All policies and renewals thereof are to be written for not less than one (1) year. All policy numbers must be clearly identified. All liability policies must provide for claims to be made on an occurrence basis. The insurance policies will name, and

the certificates and endorsements will show, Indemnitees as additional insureds on the all liability policies and all certificates of insurance, shall include the following statement: "Indemnitees are added as additional insureds to the Commercial General Liability, Automobile Liability and Builder's Risk policies. Owner shall also be named Additional Insured on the Commercial General Liability policy of any off-site storage premises. Additional Insured status applies on a primary/non-contributory basis. Waiver of Subrogation applies in favor of Indemnitees for Commercial General Liability, Automobile Liability, Worker's Compensation and Builder's Risk policies." All insurance policies required of Contractor shall be primary and non-contributory to any other insurance or indemnity as may be available to any additional insured. It shall be the insurance company's responsibility to seek reimbursement from the insured. Contractor for itself and on behalf of its insurance carriers, waives and releases any right of recovery or subrogation for any claim, damage, or loss covered or insured by any insurance policy required of Contractor under this Agreement that Contractor or its insurers may have at any time against Indemnitees and Contractor shall cause its insurance policies to be so endorsed. The required insurance policies shall remain in effect for the benefit of Owner at least through any warranty period covering the project(s) but in no case for less than four (4) years after the date of issuance of the final Certificate for Payment by Contractor or such longer period as may be specified elsewhere herein. The insurance policies required of Contractor shall be endorsed to contain a provision requiring a written notice directly from the producer or insurer to Owner at least thirty (30) days prior to any cancellation, non-renewal or material modification of the policies, provided that only ten (10) days' prior written notice shall be required in the case of cancellation for non-payment of premium.

**14.3 Consultants' Insurance.** Contractor shall ensure that any and all Contractor's consultants engaged or employed by Contractor also carry and maintain the above-specified policies of insurance meeting the requirements of **Sections 14.1** and **14.2** above and Contractor shall include language in Contractor's consultancy agreements binding Contractor's consultants to the terms and conditions of this **Article 14**.

**14.4 Evidence of Insurance.** Upon execution of this Agreement, and at every date for renewal of a required insurance policy and at such other times as Owner shall request, Contractor and Contractor's consultants shall cause a certified copy of Contractor's and Contractor's consultants' insurance policies or, at Owner's election, Certificates of Insurance, Declarations Pages and Additional Insured Endorsements, to be issued to Owner by an insurance agent licensed in the State of Florida. The maintenance in full current force and effect of the insurance coverage required by this Agreement and provision of a valid evidence of insurance that meets the requirements of this Agreement are conditions precedent to the payment of any amounts due Contractor by Owner. Contractor shall deliver the required evidence of insurance to the following address:

University of Central Florida  
Gina Seabrook  
P.O. 163020  
Orlando FL 32816

**14.5 Failure to Maintain Insurance.** The failure of Contractor or any of Contractor's consultants to fully and strictly comply at all times with the insurance requirements set forth herein will be deemed a material breach of this Agreement. In the event that Contractor shall fail or be unable to obtain or maintain coverage required pursuant to this Article, Owner, in addition to all other rights and remedies available to

it and without waiving Contractor's default, shall have the right (but not the obligation) to obtain and/or maintain coverage of the type and amount required hereunder on behalf of Contractor; in which case, Contractor shall furnish to Owner all necessary information and to reimburse Owner for the cost of such coverage. At Owner's option, Owner may deduct the costs and expenses of any coverage obtained by Owner on behalf of Contractor from any amount due to Contractor under this Agreement or under any other agreement between Owner and Contractor.

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

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

**14.8 Owner's Right to Adjust Requirements.** Owner has the right to allow Contractor deviate from any of the above insurance requirements, if Owner, at Owner's sole discretion decides to do so. If Owner decides to allow Contractor to deviate from the above noted insurance requirements, Owner will inform Contractor in writing in those particular circumstances. Unless Owner notifies Contractor in writing that Owner is willing to allow Contractor deviate from the insurance requirements noted above, all of the above insurance requirements shall apply to Contractor.

**14.9 General Bond Requirements.** Any project with a construction cost exceeding \$100,000.00 is required to be bonded pursuant to 255.05, Florida Statutes, and the Contractor shall furnish Payment and Performance bonds on the Owner's standard form covering the full and faithful performance of this Agreement and the payment of obligations arising hereunder.

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

**14.11 Indemnification.** To the maximum extent permitted by law, Contractor shall indemnify and hold Owner, University of Central Florida Board of Trustees, and their respective officers, employees and trustees (collectively, "**Indemnitees**") harmless from and against any and all charges, complaints, actions, suits, proceedings, hearings, investigations, delays, claims, demands, judgments, awards, orders, decrees, stipulations, injunctions, damages, dues, penalties, fines, expenses, amounts paid in settlement, liabilities (whether known or unknown, whether absolute or contingent, whether liquidated or unliquidated, and whether due or to become due), obligations, taxes, liens, losses, fees and costs, including all attorneys' fees and all court and arbitration costs (at any level or of any type), (collectively, "**Adverse Consequences**") in connection with Contractor's performance of this Agreement to the extent caused by the negligent acts or

omissions, recklessness, or intentional wrongful misconduct of Contractor or anyone for whose acts or omissions Contractor may be liable. The provisions of this **Paragraph 14.11** shall be in addition to, and shall not be construed to negate, abridge, or reduce other rights or obligations of, any other indemnification right that may be available to Indemnitees under this Agreement or Applicable Laws. Contractor's indemnification obligations under this Agreement, including those specified in this **Paragraph 14.11**, shall be deemed part of the project specifications and to fully comply with Section 725.06 or 725.08, Florida Statutes, as applicable, including any amendments thereto, in all respects. If any word, clause or provision of any of the indemnification provisions of this Agreement is determined not to comply with Section 725.06 or 725.08, Florida Statutes, as applicable, including any amendments thereto, it shall be stricken and the remaining words, clauses and provisions shall remain in full force and effect. It is the intent of the parties that Contractor's indemnification obligations comply fully with Section 725.06 and 725.08, Florida Statutes, as applicable, including any amendments, in all respects.

**14.12 Claims Under Indemnity.** In claims against Owner indemnified under this **Article 14** by an employee of Contractor, anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable, the indemnification obligation under this Article shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Contractor under workers' compensation acts, disability benefit acts or other employee benefit acts, nor shall the indemnification obligation be limited by the existence of any insurance policy.

**14.13 Hazardous Substances.**

a. Contractor shall have its project management and site superintendent attend a one-hour training conducted by UCF Environmental Health & Safety, to be scheduled by Owner's Project Manager.

b. In the event Contractor reasonably believes it has discovered Hazardous Substances on a project site that are not contemplated by the Contract Documents, Contractor shall proceed in accordance with **Section 9.9** above. Contractor shall strictly comply with all Applicable Laws, and secure the project site to prevent access by unauthorized personnel, as directed by Owner. If (a) Contractor fails to comply with this Section and/or **Section 9.9** or (b) Hazardous Substances are knowingly transported (either on or off-site) or (c) material which Contractor or its employees, agents, or subcontractors should have known were Hazardous Substance(s) is transported (either on or off-site), without notice to Owner, such materials shall become the property of Contractor and Contractor shall be solely responsible for all costs and fines associated therewith. For the purposes of this Agreement, "Hazardous Substances" means all hazardous or toxic substances, materials, wastes, pollutants and contaminants which are listed, defined, or regulated under Applicable Laws pertaining or related to health, safety or the environment, including the Comprehensive Environmental Response Compensation and Liability Act as amended, (42 U.S.C. § 9601 et seq), the Resource Conservation and Recovery Act as amended, (42 U.S.C. §6901 et seq), the Federal Water Pollution Control Act (33 U.S.C.A. §§ 1251 to 1387), the Clean Air Act (42 U.S.C.A. §§ 7401 to 7671q), the Emergency Planning and Community Right to Know Act (42 U.S.C.A. §§ 11001 to 11050), the Toxic Substances Control Act (15 U.S.C.A. §§ 2601 to 2692), the Solid Waste Disposal Act (42 U.S.C.A. §§ 6901 to 6992k), the Oil Pollution Act (33 U.S.C.A. §§ 2701 to 2761) and all rules and regulations promulgated pursuant thereto. Without limiting the generality of the foregoing, "Hazardous Substances" shall include polychlorinated biphenyl, asbestos (friable and

non-friable), radon, urea formaldehyde, gasoline, diesel, oil, hydrocarbons, petroleum derived constituents, biomedical waste, or hazardous or toxic residue.

**14.14 Survival.** Contractor's obligations under this **Article 14** shall survive the expiration or earlier termination of this Agreement and the completion of the Services.

**14.15 Flow Through.** The Contractor agrees to incorporate the substance of this **Article 14** in all subcontracts under this Agreement.

## **ARTICLE 15. GOVERNMENT REGULATIONS**

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**15.1 Clean Air Act / Federal Water Pollution Control Act.** Contractor certifies that it does, and shall, comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et.seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et.seq. as amended), and will include a provision in all subcontracts as required under Federal law.

**15.2 Executive Order 11246.** Contractor certifies that it does, and shall, comply with Executive Order 11246, (Equal Employment Opportunity), as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60).

**15.3 "Anti-kickback" Act.** Contractor certifies that it does, and shall, comply with the Copeland "Anti-kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR, Part 3). Contractor shall report all suspected or reported violations to the Economic Development Administration.

**15.4 Contract Work Hours and Safety Standards Act.** Contractor certifies that it does, and shall, comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5).

**15.5 Civil Rights Act of 1964.** Contractor certifies that it does, and shall, comply with Title VI of the Civil Rights Act of 1964 (P.L.88-352).

**15.6 Education Amendments of 1972.** Contractor certifies that it does, and shall, comply with Section 112 of P.L. 92-45 and Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686).

**15.7 Rehabilitation Act.** Contractor certifies that it does, and shall, comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

**15.8 Age Discrimination Act.** Contractor certifies that it does, and shall, comply with the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107).

**15.9 Drug Abuse Office and Treatment Act.** Contractor certifies that it does, and shall, comply with the Drug Abuse Office and Treatment Act of 1972 (P.L. 93-255), as amended.

**15.10 Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act.** Contractor certifies that it does, and shall, comply with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended.

**15.11 Public Health Service Act.** Contractor certifies that it does, and shall, comply with Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290dd-3 and 290ee-3, as amended).

**15.12 Civil Rights Act of 1968.** Contractor certifies that it does, and shall, comply with Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et.seq.), as amended.

#### **ARTICLE 16. ENERGY EFFICIENT COMMERCIAL BUILDING TAX DEDUCTION**

The Contractor agrees to the following terms and conditions of engagement for the work described herein:

(i) The Owner reserves the right to designate any eligible entity as the "Designer" of the energy efficient improvements incorporated in the project(s) for the purposes of allocating accelerated depreciation benefits pursuant to Section 179D of the Internal Revenue Code of 1986, as amended (the "Code");

(ii) if Owner determines that the Contractor shall receive accelerated depreciation benefits as a "Designer" for the purposes of Section 179D of the Code or that the Contractor shall otherwise benefit financially from the monetization of the accelerated depreciation benefit, the Contractor shall agree to discount its contract price or provide a cash rebate to the Owner (the determination of rebate versus discount to be determined by the Owner in its sole discretion) in an amount equal to no less than 50% of the incremental financial benefit realized by the Contractor as a result of the accelerated depreciation benefit or the monetization thereof, such actual percentage to be negotiated in good faith by the Owner at the time the financial benefit to the Contractor becomes ascertainable;

(iii) the Owner reserves the right to retain a third-party consultant ("EP ACT Consultant") to manage and administer the process of obtaining and monetizing the accelerated depreciation benefit derived from the project(s) and to designate the Energy Efficiency Consultant as the "Designer" of the energy efficient improvements for the purposes of Section 179D of the Code; and

(iv) the Contractor agrees to cooperate in all reasonable respects with the Energy Efficiency Consultant's efforts to obtain and monetize any such benefits derived from the project(s) on behalf of the Owner.

#### **ARTICLE 17. REQUIREMENT TO PROVIDE QUOTES**

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

## **ARTICLE 18. CLAIMS AND DISPUTES**

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**18.1** “**Claim**” shall mean any and all demands made by one Party hereunder against the other Party, whether such demand be for money, time or the assertion of any right or obligation that arises out of the Contract Documents.

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

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

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

**18.5** **Mediation.** Except for claims in which injunctive relief is sought, as a condition precedent to either Party filing any action for a claim, dispute or other matter arising out of or related to this Agreement, the Parties shall submit the dispute to mediation pursuant to the American Arbitration Association Construction Industry Mediation Rules currently in effect. Either Party may file a written request for mediation with the American Arbitration Association and serve a copy on the other Party. The mediation shall be concluded within sixty (60) days of the request, unless otherwise agreed or ordered by the court. Any legal or equitable proceedings shall be stayed pending conclusion of the mediation. The Parties shall share the mediator’s fee and other administrative costs of the mediation equally. The mediation shall be held in Orange County, Florida, unless the Parties agree upon another location. Agreements reached in mediation shall be enforceable in any court of competent jurisdiction as settlement agreements. To the extent permitted by law, the mediation proceedings shall be confidential and shall be privileged from disclosure in any subsequent proceedings as settlement discussions.

**18.6** **Litigation.** For disputes not resolved by mediation in accordance with the preceding Section, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction and, in that regard, 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 Orange 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(s) in any court or other tribunal other than any of the Applicable Courts. Notwithstanding the foregoing, disputes, claims, questions or disagreements involving monetary claims of \$200,000.00 or less shall be conducted pursuant to, and under, the Administrative Procedures Act, Chapter 120 Florida Statutes.

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

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

**18.9 Chapter 558, Florida Statutes.** The Parties specifically opt out of the requirements of Chapter 558, Florida Statutes.

**ARTICLE 19. MISCELLANEOUS PROVISIONS**

**19.1 Notices.** Any notice pursuant to this Agreement shall be given in writing by (a) personal delivery, (b) reputable overnight delivery service with proof of delivery, or (c) legible facsimile or email transmission, sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given upon receipt or refusal to accept delivery, or, in the case of facsimile or email transmission, as of the date of the facsimile or email transmission. Either Party may change its address by giving written notice to the other Party in accordance with the requirements of this **Section 19.1**.

Owner: University of Central Florida  
3528 North Perseus Loop  
Orlando, Florida 32816-3020  
Attention: Curt Wade  
Email:

Contractor: \_\_\_\_\_  
\_\_\_\_\_



\_\_\_\_\_  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

**19.2 Successors and Assigns.** Owner and Contractor, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other Party to this Agreement and to the partners, successors and permitted assigns of such other Party with respect to all covenants of this Agreement. Contractor shall not assign (whether partially or wholly) this Agreement whether by operation of law or otherwise, without the prior written consent of Owner, which Owner may grant or withhold in its sole and absolute discretion. Any attempted assignment in violation of the foregoing prohibition shall be void *ab initio* and, at Owner's election, a breach of this Agreement. If Contractor makes a permitted assignment in accordance with this provision, Contractor shall nevertheless remain legally responsible for all obligations arising under the Agreement, unless otherwise agreed by Owner.

**19.3 Third-Party Beneficiaries.** This Agreement shall inure solely to the benefit of the Parties and their successors and assigns, and, except as otherwise specifically provided in this Agreement, nothing contained in this Agreement is intended to or shall create a contractual relationship with, or any rights or cause of action in favor of, any third-party against either Owner or Contractor.

**19.4 Amendment.** No modification or amendment to the Contract Documents shall be valid or binding upon the Parties unless in writing and executed by the Party or Parties intended to be bound by it.

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

**19.6 Waiver.** The failure of Owner to enforce at any time or for any period of time any one or more of the provisions of the Contract Documents shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision. Further, the failure of Owner to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of the Contract for Construction, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance. Waiver by Owner of a breach of any provision of the Contract Documents shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of the Contract Documents. No approval, consent or waiver by Owner shall be effective unless it is in writing and then only to the extent specifically stated.

**19.7 Strict Compliance.** No failure of Owner to insist upon strict compliance by Contractor with any provision of this Agreement shall operate to release, discharge, modify, change or affect any of Construction Manager's obligations.

**19.8 Time of the Essence.** Time is of the essence in the performance of Contractor's duties the Contract Documents. For purposes of the Contract Documents, the term "days" means consecutive calendar days unless a contrary intent is specifically indicated with regard to any reference to the word

“days” and the term “business day” shall mean all days of the week excluding Saturdays, Sundays and all legal holidays observed by Owner.

**19.9 Governing Law.** This Agreement shall be governed by, and construed under, the laws of the State of Florida, without regard to its choices of law provisions.

**19.10 No Contingency Fee.** Contractor represents and warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for Contractor) to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm (other than a bona fide employee working solely for Contractor) any fee, commission, percentage, or gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

**19.11 No Bribes or Kickbacks.** Contractor shall not by any means:

- (i) induce any person or entity employed in the construction of the Project to give up any part of the compensation to which that person or entity is entitled;
- (ii) offer to accept any bribes or kick-backs in connection with the Project from or to any individual or entity, including any of its consultants; or
- (iii) without the express written permission of Owner in accordance with Owner’s policy on the subject, call for or by exclusion require or recommend the use of any subcontractor, consultant, product, material equipment, system, process or procedure in which Contractor has a direct or indirect proprietary or other pecuniary interest.

**19.12 Public Records.** This Agreement may be canceled by Owner for refusal by Contractor to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by Contractor in conjunction herewith.

**19.13 Annual Appropriations.** Owner’s performance and obligation to pay hereunder is contingent upon an annual appropriation by the Legislature.

**19.14 Convicted Vendor List.** Contractor warrants that it is not on the convicted vendor list for a public entity crime committed within the past thirty six (36) months. Contractor further warrants that it will neither utilize the services of, nor contract with, any supplier, subcontractor, or consultant for an amount in excess of Fifteen Thousand Dollars (\$15,000) in connection with this Project if the supplier, subcontractor or consultant has been placed on the convicted vendor list within the past thirty six (36) months.

**19.15 Survival.** All of Contractor’s representations, warranties and indemnities made in, required by, or given in accordance with this Agreement and the Contract Documents, as well as all continuing obligations of the Parties indicated in this Agreement and Contract Documents, will survive final payment, completion, and acceptance of Contractor’s services and the Work or termination or completion of this Agreement or termination of the services of the Contractor.

**19.16 Sufficiency of Services.** Nothing in the Contract Documents is intended or shall be construed to require Owner to determine the adequacy, accuracy or sufficiency of the Work or Construction Manager’s

services and nothing in the Contract for Construction shall impose upon Owner a duty to third-parties to assure that Contractor's Personnel, Professional or others are adhering to Applicable Laws. Further, Owner's review of, inspection of, acceptance of, or payment for any of the Work or Contractor's services shall not constitute acceptance of, or a waiver of any of Owner's rights or remedies relating to, Work or services that fail to conform to the requirements of this Agreement, unless Owner expressly accepts such non-conforming Work or services in writing.

**19.17 Remedies Cumulative.** Except as may be expressly stated otherwise herein, the remedies granted to Owner in the Contract Documents are cumulative and not in limitation of any other rights and remedies of Owner at law or in equity.

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

**19.19 Construction.** This Agreement has been negotiated by the Parties with the advice of counsel. Therefore, this Agreement shall not be interpreted more strictly against one Party than the other, including by virtue of one Party having drafted some or all of this Agreement. The singular shall include the plural, the plural the singular, and the use of any gender shall include all genders. Whenever the word "including", "include" or "includes" is used in this Agreement it shall be deemed to be followed by the words "without limitation". The terms "hereof", "herein", "hereunder", and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement, unless stated otherwise. Caption headings are included for ease of use only and shall not be utilized for purposes of interpreting the provisions of this Agreement. All Section and Article references in this Agreement are to Articles and Sections of this Agreement unless expressly stated otherwise.

-Signature page to follow-

IN WITNESS WHEREOF, a duly authorized and validly authorized representative of each Party has affixed his or her respective signature hereto.

**FOR THE CONTRACTOR:**

ATTEST:

\_\_\_\_\_  
(Name, Title, & Corporate Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

On this \_\_\_\_ day of \_\_\_\_\_, 2019

As Witnessed By:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Signature)

On this \_\_\_\_ day of \_\_\_\_\_, 2019

**FOR OWNER: THE UNIVERSITY OF CENTRAL FLORIDA BOARD OF TRUSTEES**

\_\_\_\_\_  
Thad Seymour, Interim President

**EXHIBIT A**  
**PROJECT TEAM**

**EXHIBIT B**

**SUBCONTRACTORS**

[Itemize all subs by name and trade for all packages valued at \$10,000 or more]

**EXHIBIT C**  
**LABOR RATES**

**EXHIBIT D**

AFFIDAVIT OF CRIMINAL BACKGROUND CHECK AND E-VERIFY

CONTRACT: \_\_\_\_\_

CONTRACTOR'S NAME: \_\_\_\_\_

DATE: \_\_\_\_\_

By signing this form, I am swearing or affirming that all individuals providing work or services to University of Central Florida (“**Owner**”) under the above-referenced Agreement, on any Owner owned or leased property: (a) have been background screened in accordance with requirements set forth in the Agreement; (b) have been deemed eligible by Contractor to provide work or services to Owner based on the results of such screening; and (c) are legally eligible to work in Florida.

The information contained herein is current, as of the date this Affidavit is furnished to Owner. All individuals providing work of services to Owner under the above-referenced Agreement are listed below.

Each individual is identified by name, date of birth and shall fall into one (1) of the following categories:

- Previously screened and deemed eligible.  
[Attach list of individuals]
- New individuals screened and deemed eligible.  
[Attach list of individuals]
- Individuals no longer providing services for Contractor under the Agreement  
[Attach list of individuals]

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

Sworn to and subscribed before me this \_\_ day of \_\_\_\_\_, 2019.  
My commission expires