



**CONSTRUCTION AGREEMENT (HARD BID)**

THIS CONSTRUCTION AGREEMENT (HARD BID) (this “**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 (NAME OF CONTRACTOR, INCLUDING LEGAL STATUS AND FEIN), (“**Contractor**”), which is authorized to do business in the State of 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 solicited statements of qualifications from interested contractors in connection with performing construction services for the \_\_\_\_\_ (the “**Project**”), located at \_\_\_\_\_ (the “**Project Site**”); and

**WHEREAS**, based on Contractor’s qualifying bid, and related submissions, Owner has selected Contractor for the Project; and

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

**WHEREAS**, Owner has engaged, one or more professionals to perform architectural, engineering or other design services for the Project hereinafter referred to individually and collectively as “**Professional**.”

**NOW THEREFORE**, in consideration of the foregoing Recitals, which are incorporated herein by reference, the terms and conditions contained herein and other good and valuable consideration, the receipt and sufficiency, of which is hereby acknowledged, the Parties agree as follows:

**ARTICLE 1**            **CONTRACT DOCUMENTS**

**1.1**        **Contract for Construction.** The “**Contract Documents**” consist of: (a) this Agreement and all exhibits hereto; (b) bid submitted by Contractor and accepted by Owner in writing; (c) the plans, drawings and specifications for the Work (“**Construction Documents**”); (d) any amendments or addenda executed by Owner and Contractor hereafter; (e) Owner approved Change Orders (hereinafter defined); and (f) (i) “UCF Design, Construction, and Renovation Standards”, (ii) “UCF Design and Professional Services Guide”, (iii) “UCF IT Telecommunication Design Standards” (items (f)(i)-(iii) as appearing on Owner’s website at [www.fp.ucf.edu](http://www.fp.ucf.edu)) and (iv) “UCF Building Energy Systems Commissioning Procedure” (as appearing on Owner’s website at [www.energy.ucf.edu](http://www.energy.ucf.edu)); (g) all other standards of Owner in effect at the time of the performance of the Work (the standards described in the foregoing clauses (a) through (g) being, collectively, “Owner Standards”); and (h) Owner’s policies applicable to this Agreement in effect at the time a project specific Purchase Order is issued to Contractor, as set forth at [www.fp.ucf.edu](http://www.fp.ucf.edu). The above-described Contract Documents form the “**Contract for Construction**” or “**Contract**”, which Contract represents the entire and integrated agreement between Owner and Contractor, and supersedes all prior negotiations, representations or agreements, either written or oral, for the Project, and no other agreement or understanding of any nature concerning the same has been entered into or will be recognized, and all negotiations, acts, work performed, or payments made prior to the execution hereof with respect to the Project shall be deemed merged in, integrated and superseded by the Contract for Construction. Documents not included or expressly contemplated in this **Section 1.1** do not, and shall not, form any part of the Contract for Construction.

**1.2**        **Interpretation of Contract Documents.** It is the intent of the Contract Documents to describe a functionally complete project (or portion thereof) to be constructed in accordance with the Contract Documents. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not specifically called for in the Contract Documents. If the Contract Documents include words or terms that have a generally accepted technical or industry meaning, then such words or terms shall be interpreted to have such standard meaning unless otherwise expressly noted in the

Contract Documents. Reference to standard specifications, manuals or codes of any technical society, organization or association or to the laws or regulations of any governmental authority having jurisdiction over the Project, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, law or regulation in effect at the time the Construction Documents are permitted, except as may be otherwise specifically stated in the Contract Documents.

**1.3 Drawings and Specifications.** Drawings are intended to show general arrangements, design and extent of Work and are not intended to serve as shop drawings. Specifications are separated into divisions for convenience of reference only and shall not be interpreted as establishing divisions for the Work, trades, subcontracts or extent of any part of the Work. In the event of a discrepancy between or among the drawings, specifications or other Contract Document provisions, Contractor shall immediately notify Professional and Owner and, absent contrary instruction from Owner, comply with the provision which is the more restrictive or stringent requirement upon Contractor, as determined by Owner. Prior to commencing each portion of the Work, Contractor shall first take all necessary field measurements and verify the applicable field conditions. After taking such measurements and verifying such conditions, Contractor shall carefully compare such measurements and conditions with the requirements of the Contract Documents, taking into consideration all other relevant information known to Contractor, for the purpose of identifying and bringing to Owner's attention all conflicts or discrepancies with the Contract Documents. Unless otherwise specifically mentioned, all anchors, bolts, screws, fittings, fillers, hardware, accessories, trim and other parts required in connection with any portion of the Work to make a complete, serviceable, finished and first quality installation shall be furnished and installed as part of the Work, whether or not called for by the Contract Documents.

**1.4 Order of Precedence.** In the event of conflicts or discrepancies among the Contract Documents, Contractor shall proceed with the Work that is unaffected by the conflict or discrepancy and interpretations of the conflict will be based upon the following Contract Documents, which are set forth and ranked in order of precedence:

- 1.4.1 Duly executed amendments, Change Orders, with those of a later date having precedence over those of an earlier date;
- 1.4.2 The Agreement, not including the Exhibits, which are addressed above and below;
- 1.4.3 The Construction Documents;
- 1.4.4 The remainder of the Exhibits to this Agreement; and
- 1.4.5 All other Contract Documents, if any.

**1.5 Copies of Construction Documents.** Professional shall furnish Contractor with electronic Construction Documents. Any printed copies of Construction Documents, required by Contractor for bidding or execution of the Work, shall be made by Contractor from its electronic set at Contractor's sole cost and expense. Professional is furnishing Contractor an electronic set of Construction Documents for Contractor's convenience and such furnishing by Professional shall not be deemed to be a waiver by Owner or Professional of any copyright, patent or license they may have with respect to the Construction Documents. All such copyrights, patents and licenses hereby being expressly reserved by Owner and Professional.

**1.6 Reserved.**

## **ARTICLE 2 RELATIONSHIP OF THE PARTIES**

**2.1 Relationship of the Parties.** Notwithstanding anything to the contrary in the Contract for Construction, Contractor is fully responsible to Owner for all duties of Contractor under the Contract for Construction, including the construction means, methods, techniques, sequences and procedures in performing the Work, for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract for Construction despite Contractor's delegation of the responsibility therefor to any of its subcontractors. In

addition, if the Work required under the Contract for Construction requires Contractor to subcontract with any party to provide any professional services constituting the practice of architecture, design, or engineering, Contractor shall be directly responsible to Owner for any portion of the Work so required. Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with Owner to cooperate with Professional and exercise Contractor's best skill and judgment in furthering the interests of Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious manner consistent with Owner's interests. Owner shall not in any manner be responsible or accountable for: (a) any violation by Contractor or Contractor's Personnel (hereinafter defined) of any Applicable Laws, or (b) for any injury, loss or damage arising from or out of any act or omission of Contractor or Contractor's Personnel. For the purposes of this Agreement, the term "**Applicable Laws**" shall mean all federal, state, local, municipal, judicial and quasi-governmental laws, statutes, ordinances, orders, decrees, judgments, directives, codes, rules and regulations, of all governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project, the Work or Contractor, governing or applicable to the Project, the Work or Contractor, as the same may be amended, interpreted or enforced from time to time. The term "Applicable Laws" also includes all rules and requirements of any utility company serving the Project Site.

**2.2 Independent Contractor.** Contractor is an independent contractor and not an agent or employee, of Owner. No provision in the Contract shall create an employment or agent relationship between the Parties.

**2.3 Representations and Warranties.** Contractor represents and warrants the following to Owner (in addition to any other representations and warranties contained in the Contract for Construction) as an inducement to Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement and the final completion of the Work: (a) that it is thoroughly familiar with and understands the requirements of the Project; (b) that it possesses a high level of experience and expertise in the administration and construction of building projects of the size, type, complexity, scope and nature of the Project and that it will perform the Work with the care, skill and diligence of such a Contractor; (c) that it has all necessary construction education, skill, knowledge, and experience required for the Project and will maintain, at all times during the term of this Agreement, such personnel on its staff to provide the services contemplated hereby within the time periods required hereby; (d) that it has, and all of the subcontractors performing services under this Agreement will have, all applicable licenses required by the State of Florida to perform such services; (e) that it is and, to the best of its knowledge, its subcontractors, once engaged, will be, financially solvent and possessed of sufficient working capital to complete the Work and perform all obligations hereunder; (f) that it is authorized to do business in the State of Florida; (g) that its execution of this Agreement and its performance thereof is within its duly authorized power; and (h) that its duly authorized representative has visited the Project Site, is familiar with the local and special conditions under which the Work is to be performed and has correlated onsite observations with the requirements of the Contract for Construction.

### **ARTICLE 3 OWNER'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES**

**3.1 Project Information.** Contractor acknowledges that Owner has provided Contractor with sufficient information regarding Owner's requirements for the Project.

**3.2 Purpose of Owner's Review.** Owner's review, inspection, or approval of any Work, applications for payment, or other submittals shall be solely for the purpose of determining whether the same are generally consistent with Owner's requirements. No review, inspection, or approval by Owner of such Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract for Construction or the accuracy, adequacy, fitness, suitability, or coordination of the Work. Approval by any governmental or other regulatory agency or other governing body of any Work shall not relieve Contractor of responsibility for the performance of its obligations under the Contract for Construction. Payment by Owner pursuant to the Contract for Construction shall not constitute a waiver of any of Owner's rights under the Contract for Construction or at law or in equity, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by Owner. Notwithstanding the foregoing, prompt written notice shall be given by Owner or Professional to Contractor if Owner becomes aware of any fault or defect in the Work or non-conformance with the Contract for Construction.

**3.3 Owner Disclaimer of Warranty.** Owner has requested that its Professional prepare documents for the Project, including the plans, drawings and specifications for the Project, which are to be complete, accurate, coordinated, and adequate for bidding, negotiating and constructing the Work. However, Owner makes no representation or warranty of any nature whatsoever to Contractor concerning such documents. Contractor hereby acknowledges and represents that it has not relied, and does not and will not rely, upon any representations or warranties by Owner concerning such documents, as no such representations or warranties have been or are hereby made.

**3.4 Status of Owner.** In no event shall Owner be deemed to have control over, charge of, or any responsibility for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted Owner in the Contract for Construction.

## **ARTICLE 4 CONTRACTOR 'S SERVICES**

**4.1 General Project Services.** Contractor shall:

4.1.1 Provide all services required to complete its services and the Work in good and workmanlike, expeditious manner, consistent with the Contract for Construction and the best interests of Owner;

4.1.2 Endeavor to develop, implement and maintain, in consultation with Owner, Professional, and the subcontractors, a spirit of cooperation, collegiality, and open communication among the Project team 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 Project team members;

4.1.3 Reserved;

4.1.4 Participate in, and cooperate with post-occupancy commissioning, validation, and other quality assurance and quality control processes;

4.1.5 Comply with Owner's policies and project management guides applicable to this Agreement as referenced herein;

4.1.6 Submit for Owner review within thirty (30) days following the Effective Date: (a) Project reporting procedures; and (b) a quality control, management and testing program to ensure quality construction;

4.1.7 As promptly as possible after the Effective Date, develop and deliver to Owner a comprehensive jobsite management and logistics plan for Owner's review; and

4.1.8 Comply with Applicable Laws applicable to its performance under the Contract for Construction, including equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities for inclusion in the Contract for Construction. Contractor shall indemnify and hold harmless Owner and its officers and employees for all penalties, fines, charges, assessments, claims, demands, actions, or causes of action by the United States Government or by any other entity or person arising out of Contractor's failure to comply with Applicable Laws, including those referenced in **Article 16**. Further, Contractor shall pay any expenses, including attorneys' fees, incurred by Owner as a result such failure to comply with Applicable Laws.

**4.2 Construction Services.**

4.2.1 Work. The term "**Work**" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by Contractor to fulfill Contractor's obligations. Contractor shall furnish and pay for all management, supervision, financing, labor, materials, tools, fuel, supplies, utilities, equipment and services of every kind and type necessary to diligently, timely and fully perform and complete in a good and

workmanlike manner the construction of the Work (or designated portions thereof) in accordance with all of the terms and conditions of the Contract Documents. For the avoidance of doubt, Contractor shall have the responsibility to perform the Work and build the entire Project in accordance with the Construction Documents, except any work as may specifically be stated in the Contract Documents to be the responsibility of others. Contractor shall diligently prosecute the Work and shall achieve Substantial Completion of the entire Work within the Contract Time.

#### 4.2.2 Supervision and Contractor's Team.

4.2.2.1 Contractor is responsible for supervising, coordinating and performing the Work with such care and skill as would be provided by a contractor with extensive and special expertise in the type of work required under the Contract Documents. Contractor is responsible for completing the Work so that it complies accurately and completely with the requirements of the Contract Documents.

4.2.2.2 In the performance of Contractor's services under the Contract for Construction, Contractor will use the personnel identified on EXHIBIT A, attached hereto, ("**Contractor's Team**"). The person identified in EXHIBIT A, attached hereto, as Contractor's "Project Manager" shall have full authority to bind Contractor on all matters arising out of or relating to the Work or the Contract for Construction. Contractor shall ensure that the Project Manager devotes whatever time is required to satisfactorily manage the Work. Further, Contractor shall keep on the Work at all times during its progress a competent resident superintendent, who is fluent in the English language and who shall not be replaced without prior written notice to Owner and Professional except under extraordinary circumstances. Each of the Project Manager and superintendent shall have authority to act on behalf of Contractor. All communications given to the Project Manager or superintendent shall be as binding as if given to Contractor.

4.2.2.3 Contractor will not remove or replace any members of Contractor's Team except with the written approval of Owner or as directed by Owner as provided hereunder, except in an instance when any member of Contractor's Team makes any inappropriate religious, racial, sexual or ethnic comment, statement or gesture towards any individual, at which time Contractor shall immediately remove said individual from the Project Site for the duration of the Contract and provide immediate written notice of removal to Owner. Further, if any member of Contractor's Team discontinues service on the Project for any reason whatsoever, Contractor, at no additional cost to the Owner or extension of time, shall promptly replace such team member with a qualified individual approved by Owner, in writing, which approval will not be unreasonably withheld. Contractor further agrees, within fourteen (14) days of receipt of a written request from Owner, to promptly remove and replace Contractor's Project Manager, or any other personnel employed or retained by Contractor to perform services hereunder whom Owner shall request in writing to be removed, which request may be made by Owner with or without cause.

4.2.2.4 Contractor shall establish and maintain lines of authority for its personnel, and shall provide this information to Owner and all other affected parties, such as the code inspectors of any permitting authority, subcontractors, and Professional. Owner and Professional may attend meetings between Contractor and its subcontractors; however, such attendance is optional and shall not diminish either the authority or responsibility of Contractor.

4.2.2.5 Contractor shall be responsible to Owner for the acts and omissions of its employees and agents and its subcontractors, their agents and employees, and all other persons performing any of the Work or supplying materials under a contract to Contractor. Contractor shall develop and maintain a program, acceptable to Owner and Professional, to assure quality control of the Work. Contractor shall supervise the Work of all subcontractors, providing instructions to each when their portion of the Work does not conform to the requirements of the Contract Documents and Contractor shall continue to exert its influence and control over each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the Work.

#### 4.2.3 Investigation, Utilities and Unforeseen Conditions.

4.2.3.1 Contractor represents that prior to entering into this Agreement Contractor has: (a) visited and thoroughly inspected the Project Site and any structure(s) or other man-made features to be modified and become familiar with local conditions under which the Project will be constructed and operated; (b) familiarized itself with the survey, including the location of all existing buildings, utilities, conditions, streets, equipment, components and other attributes having or likely to have an impact on the Project; (c) thoroughly reviewed the Contract Documents; (d) familiarized itself with pertinent Project dates and programming needs, including Owner's schedule requirements, (e) reviewed and analyzed all Project geotechnical, Hazardous Substances (hereinafter defined), structural, chemical, electrical, mechanical, and construction materials tests, reports, investigations and recommendations; and (f) gathered any other information necessary for a thorough understanding of the Project. If the Project involves modifications to any existing structure(s) or other man-made feature(s) on or at the Project Site, Contractor represents that it has also reviewed all as-built and record drawings, plans and specifications of which Contractor about which Owner has informed Contractor and thoroughly inspected the existing structure(s) and man-made feature(s) to identify existing deficiencies and ascertain the specific locations of pertinent components, including structural components. Claims by Contractor resulting from Contractor's failure to have, or that could have been avoided by Contractor having, fully performed the acts specified in this Section shall be deemed waived.

4.2.3.2 Contractor shall have the sole responsibility of satisfying itself concerning the nature and location of the Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, legal disposal, handling and storage of materials; availability and quality of labor; water and electric power; availability and condition of roads; work area; living facilities; climatic conditions and seasons; physical conditions at the Project Site and the Project area as a whole; topography and ground surface conditions; nature and quantity of the surface materials to be encountered; subsurface conditions; equipment and facilities needed preliminary to and during performance of the Work; noise ordinances; work hours; surrounding building conditions and all other costs associated with such performance. If Contractor fails to perform the foregoing obligations, Contractor shall pay such costs and damages to Owner as would have been avoided if Contractor had performed such obligations. The failure of Contractor to acquaint itself with any applicable conditions shall not relieve Contractor from any of its responsibilities to perform under the Contract Documents, nor shall it be considered the basis for any claim for additional time or compensation.

4.2.3.3 Contractor shall locate all existing roadways, railways, drainage facilities and utility services above, upon, or under the Project Site (the "Utilities"). Contractor shall contact the owners of all Utilities to determine the necessity for relocating or temporarily interrupting any Utilities during the construction of the Project. Contractor shall schedule and coordinate its Work around any such relocation or temporary service interruption. Contractor shall be responsible for properly shoring, supporting and protecting all Utilities at all times during the course of the Work. If Contractor fails to perform the foregoing obligations of this Subsection, Contractor shall pay such costs and damages to Owner as would have been avoided if Contractor had performed such obligations. If during the performance of the Work, Contractor or any subcontractor, sub-subcontractor, agent, employee or anyone else for whom Contractor is legally liable, causes a disruption to any Utilities service to other facilities or customers within the Project area, Contractor shall take all actions necessary and required to immediately restore such Utilities service. If Contractor fails to take such immediate actions, Owner shall have the right to take whatever actions it deems necessary and required to immediately restore the disrupted services, and all costs incurred by Owner as a result thereof shall be reimbursed to Owner by Contractor within five (5) business days of written demand for same from Owner.

4.2.3.4 If, notwithstanding Contractor's performance of its obligations under the Contract Documents, including its investigatory obligations under this **Subsection 4.2.3**, conditions are encountered at the Project Site which are (a) subsurface or otherwise concealed physical conditions which differ materially

from those indicated in the Contract Documents, or (b) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, and which reasonably should not have been discovered by Contractor as part of its scope of site investigative services required pursuant to the terms of the Contract Documents, then Contractor shall provide Owner with prompt written notice thereof before conditions are disturbed and in no event later than seven (7) days after first observance of such conditions. Owner and Professional shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in Contractor's cost of, or time required for, performance of any part of the Work, Owner will acknowledge and agree to an equitable adjustment to the Contract Price or Contract Time, or both, for such Work. If Owner determines that the conditions at the Project Site are not materially different from those indicated in the Contract Documents or not of an unusual nature or should have been discovered by Contractor as part of its investigative services, and that no change in the terms of the Contract is justified, Owner shall so notify Contractor in writing, stating its reasons. Claims by Contractor in opposition to such determination by Owner must be made pursuant to the claims procedure described in **Article 21**.

4.2.4 Construction Schedule. Contractor shall at all times carry out its duties and responsibilities as expeditiously as possible and in accordance with the construction schedule approved by Owner, subject to extension of time as may be permitted by this Agreement. Contractor's submittal of a satisfactory construction schedule and updates thereto and Owner's acceptance of same shall be a condition precedent to Owner's obligation to pay Contractor. Failure of Contractor to update, revise, and submit the Construction Schedule as aforesaid shall be sufficient grounds for Owner to find Contractor in substantial default hereunder and that sufficient cause exists to terminate the Contract or to withhold payment to Contractor until a schedule or schedule update acceptable to Owner is submitted. The acceptance of the construction schedule by Owner and Professional in no way attests to the validity of the assumptions, logic constraints, dependency relationships, resource allocations, manpower and equipment, and any other aspect of the construction schedule. Contractor is and shall remain solely responsible for the planning and execution of all Work in order to meet Project milestones or Contract completion dates.

4.2.4.1 Schedule Format. The construction schedule created by Contractor shall be planned and recorded with a "Critical Path Method" ("CPM") schedule in the form of an activity-on-node diagram. All activity-on-node diagrams shall include the Activity Identification, Activity Description, and the type of relationship between activities, including any lead or lag time. No activity shall have duration greater than fifteen (15) business days. The construction schedule shall depict all activities necessary for, or incidental to, performance of the Work, showing the logic (sequence, dependency), duration, and "float" of each activity, with the critical path highlighted and shall include (a) the required Commencement Date (hereinafter defined), the required dates of Substantial Completion (hereinafter defined) and Final Completion (hereinafter defined); (b) any guideline and milestone dates required by Owner; (c) any applicable subcontractor and supplier sub-schedules; (d) coordination with the submittal schedule which allows sufficient time for review of documents and submittals; (e) allowances for procurement, fabrication, and delivery of materials, especially "long lead" items, if applicable; (f) the complete sequence of construction by activity, with dates for beginning and completion of each element of construction; (g) the time required for testing, inspections, and commissioning, if applicable; (h) time for schedule constraints, such as holidays and events on Owner's property and adverse weather conditions which are normal and may be reasonably anticipated; and (i) required decision dates. If requested by Owner or Professional, Contractor shall furnish any information needed to justify the reasonableness of activity duration. Such information shall include estimated activity manpower, anticipated quantities, and production rates. The construction time for the Work, or any milestone, shall not exceed the specified Contract Time. Logic or activity durations shall be revised in the event that any milestone or Contract completion date is exceeded in the schedule. Contractor has provided Owner with an initial construction schedule for the Work which construction schedule is attached hereto as **EXHIBIT B**.

4.2.4.2 Schedule Update Requirements. Following development and approval of the construction schedule, Contractor shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the Project, or at such earlier intervals as circumstances may require, update and/or revise the construction schedule which shall be submitted to Owner in

duplicate. No additional compensation will be due Contractor for making such updates. Contractor shall update the schedules monthly to show actual, current progress. The schedule updates shall include:

4.2.4.2.1 Dates of activities' actual starts and completions;

4.2.4.2.2 Percent of Work remaining for activities started but not completed as of the update date;

4.2.4.2.3 Narrative report including a listing of monthly progress, the activities that define the critical path and any changes to the path of critical activities from the previous update, sources of delay, any potential problems, requested logic changes, and Work planned for the next month;

4.2.4.2.4 A bar chart comparison of the updated schedule to the initial schedule. This diagram shall show actual and planned performance dates for all completed activities; and

4.2.4.2.5 All update information shall be an accurate representation of the actual Work progress.

4.2.4.3 Recovery Schedule. If the initial construction schedule or any updates fail to reflect the Work's actual plan or method of operation, or a contractual milestone date is more than fifteen (15) days behind, Contractor shall immediately submit a recovery schedule ("**Recovery Schedule**") to Owner for completion of the remaining Work. The Recovery Schedule shall describe in detail Contractor's plan to complete the remaining Work by the required Contract milestone date. The Recovery Schedule submitted shall meet the same requirements as the original construction schedule. The narrative submitted with the Recovery Schedule should describe in detail all changes that have been made to meet the Contract milestone dates. Contractor will be responsible for all additional costs related to the Recovery Schedule, including staffing and/or overtime, subcontractor manpower, equipment, and other resources required to achieve the original Construction Schedule.

4.2.4.4 Change Orders. When a Change Order is proposed, Contractor must identify all logic changes as a result of the Change Order. Contractor shall include, as part of each Change Order proposal, information depicting all schedule logic revisions, duration changes, and the relationships to other activities in the approved construction schedule (the "**Information**"). Upon approval of the Information by Owner through an executed Change Order, Contractor will revise the construction schedule or current update. The logic changes required by the Change Order will be considered incidental to Contractor's Work and no separate payment will be made therefor.

#### 4.2.5 Submittals and Substitutions.

4.2.5.1 Contractor shall carefully examine the Contract Documents for all requirements for approval of materials to be submitted such as shop drawings, data, test results, schedules and samples. Within thirty (30) days of issuance of the Notice to Proceed, Contractor shall prepare a submittal schedule and shall submit the schedule(s) for Owner's and Professional's approval. The submittal schedule shall (a) be coordinated with Contractor's construction schedule, (b) allow Professional and Owner reasonable time to review submittals, and (c) identify submittals which Owner has designated as requiring Owner's review and approval prior to acceptance. Contractor shall submit all such materials at its own expense and in such form and manner as required by the Contract Documents in accordance with the approved submittal schedule, or in the absence of an approved submittal schedule, in sufficient time to prevent any delay in the delivery of such materials and the installation thereof. Contractor shall also carefully review and certify for accuracy and completeness all shop drawings and other submittals and then forward the same to Professional for review and action. Professional will transmit them back to Contractor (and copy Owner for Owner reviewed submittals), who will then issue the submittals to the affected subcontractor for fabrication



or revision. Contractor shall request Professional make interpretations of the drawings or specifications requested of it by the subcontractors. Contractor shall advise Professional in writing which submittals or requests for clarification have the greatest urgency; the purpose being to enable Professional to prioritize requests coming from Contractor. Contractor shall advise Owner and Professional in writing when timely response is not occurring on any of the above. Shop drawings and other submittals submitted in accordance with this Subsection are not Contract Documents. Their purpose is to demonstrate the way by which Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. By submitting shop drawings and other submittals, Contractor represents to Owner and Professional that Contractor has: (x) reviewed and approved them, (y) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (z) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals except that Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by Professional's approval of submittals unless Contractor has specifically informed Professional in writing of such deviation at the time of submittal and a Change Order has been issued authorizing the deviation. Contractor shall not be relieved of responsibility for errors or omissions in submittals by Professional's approval thereof.

4.2.5.2 Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function and quality required. Materials or equipment of other suppliers may be accepted by Owner and Professional if sufficient information is submitted by Contractor to allow Owner and Professional to determine that the material or equipment proposed is equivalent or equal to that named. Requests for review of substitute items of material and equipment will not be accepted by Owner from anyone other than Contractor.

4.2.5.3 If Contractor wishes to furnish or use a substitute item of material or equipment, Contractor shall make application to Owner and Professional for acceptance thereof, certifying that the proposed substitute shall perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application shall state that the evaluation and acceptance of the proposed substitute will not prejudice Contractor's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for the Project) to adapt the design to the proposed substitute and whether or not incorporation or use by the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service shall be indicated. The application also shall contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs for redesign and claims of other contractors affected by the resulting change, all of which shall be considered by Owner and Professional in evaluating the proposed substitute. Owner and Professional may require Contractor to furnish at Contractor's expense additional data about the proposed substitute.

4.2.5.4 If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to Professional and Owner, if Contractor submits sufficient information to allow Professional and Owner to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedures for submission to and review by Professional and Owner shall be the same as those provided herein for substitute materials and equipment.

4.2.5.5 Professional and Owner shall be allowed a reasonable time within which to evaluate each proposed substitute. Professional and Owner shall be the sole judges of the acceptability of any

substitute. Acceptance of a substitute shall be at Owner's sole discretion. No substitute shall be ordered, installed or utilized without Owner's and Professional's prior written acceptance, which shall be evidenced by either a Change Order or written approval of the submittal. Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute. If Owner rejects the proposed substitute, at Owner's discretion, Owner may require Contractor to reimburse Owner for the charges of Professional and Professional's consultants for evaluating the proposed substitute.

4.2.5.6 Re-submittals required to correct errors, omissions, or invalid substitutions by Contractor or its subcontractors shall not constitute an excusable or compensable delay.

#### 4.2.6 Long Lead Procurement.

4.2.6.1 Contractor shall review the Contract Documents for the purpose of identifying long lead procurement items (machinery, equipment, materials and supplies) and consult with Professional concerning same. When any such item is identified, Contractor shall notify the subcontractors, Owner and Professional of the required procurement and schedule. Such information shall be made a part of all affected subcontracts. Contractor shall keep itself informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items, and advise Owner and Professional of any problems or possible delays in delivery.

4.2.6.2 Contractor shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate procurement of long lead items, the separate construction subcontractors and the general conditions items without duplication or overlap, and sequenced to maintain completion of all Work on schedule.

#### 4.2.7 Direct Owner Purchase (DOP) Program.

4.2.7.1 Owner has elected to participate in a direct purchase program whereby it purchases materials and equipment 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 are referred to as "DOP." Owner shall prepare purchase orders to the supplier(s) of the DOP. Contractor shall use its best efforts to maximize cost savings for the Project and cooperate with Owner in its sales tax savings program. 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 thirty (30) days after the Effective Date, Contractor will process one (1) or more deductive Change Orders under the Contract for the entire estimated amount of the DOP, inclusive of sales taxes. Prior to the final payment, a final reconciliation of the DOP against the Contract Price will be performed and such deductive Change Order will be prepared for Owner's review and approval.

4.2.7.2 With respect to all DPO, 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 4.2.7** 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, at Owner's written request, obtain Builder's Risk insurance on the Direct Purchase Materials naming Owner as the insured or an additional insured as elected by Owner, provided Owner shall reimburse Contractor for the cost of such insurance as provided by this Agreement. Contractor shall be responsible for safeguarding all Direct Purchase Materials on the Project Site on Owner's behalf.

#### 4.2.8 Reserved.

4.2.9 Reserved.

4.2.10 Reserved.

4.2.11 Job Site Facilities. Contractor shall arrange for all job-site facilities (e.g. trailer) as required by Owner and necessary to enable Contractor and Professional to perform their respective duties and to accommodate any representatives of Owner which may be present on the job. For all job-site facilities purchased, which may become the property of Owner at the conclusion of the Work (e.g. computers), Contractor shall maintain ownership, maintenance and repair responsibilities of such facilities until final acceptance of the Work. At that time, Contractor shall provide Owner with a complete inventory for each unit of equipment. The inventory shall describe the equipment and identify the purchase price, serial number, model number and condition. Where said equipment has a title, said title shall be properly transferred to Owner or to its designee. Contractor is responsible for proper care and maintenance of all equipment while in its control. At the time of transfer to Owner, Owner may refuse acceptance of the equipment if Owner determines, in its sole discretion, that the equipment has not been properly cared for by Contractor or that such acquisition would not otherwise be in the best interest of Owner. In such event, an equitable adjustment shall be made to the Contract Price by Owner.

4.2.12 Administration and Records. Contractor shall:

4.2.12.1 Maintain a log of daily activities, including but not limited to manpower records, weather, delays, major decisions;

4.2.12.2 Maintain a roster of companies on the Project with names and telephone numbers of key personnel;

4.2.12.3 Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline;

4.2.12.4 Provide labor relations management for a harmonious, productive Project; and

4.2.12.5 Provide job site administration functions during construction to assure proper documentation, including the following:

4.2.12.5.1 Job Meetings: Conduct a preconstruction conference with each subcontractor after award of the subcontract and prior to the start of its portion of the Work. Hold weekly progress and coordination meetings, or more frequently if required by Work progress, to provide for the timely completion of the Work. In addition, Contractor shall arrange and conduct regular weekly Project status meetings with Professional and Owner. Contractor shall use the job site meetings as a tool for the preplanning of Work and enforcing schedules, and for establishing procedures, responsibilities, and identification of authority for all parties to clearly understand. During these meetings, Contractor shall identify the party or parties responsible for following up on any problems, delay items or questions, and Contractor shall note the action to be taken by such party or parties. Contractor shall revisit each pending item at each subsequent meeting until resolution is achieved. Contractor shall attempt to obtain from all present any problems or delaying event known to them for appropriate attention and resolution. Contractor shall prepare written minutes of job meetings described in this Subsection and deliver copies of such written minutes to Owner and Professional within three (3) days of each meeting.

4.2.12.5.2 Shop Drawing Submittals/Approvals: Provide staff to review and approve shop drawings and other submittals from subcontractors and suppliers and implement procedures for transmittal to Professional and Owner of such submittals for action, and closely monitor their review process.

4.2.12.5.3 Material and Equipment Expediting: Provide staff to closely monitor material and equipment deliveries, check and follow-up on supplier commitments for all subcontractors and maintain a material and equipment expediting log.

4.2.12.5.4 Payments to Subcontractors: Develop and implement a procedure for the review, processing and payment of applications by subcontractors for progress and final payments.

4.2.12.5.5 Document Interpretation: Refer all questions for interpretation of the Contract Documents to Professional in writing. Monitor all such requests and implement procedures for timely follow-up on all such requests.

4.2.12.5.6 Reports and Project Site Documents: Record the progress of the Work. Submit written progress reports to Owner and Professional, including information on subcontractors' Work, and the percentage of completion. Keep a daily log available to Owner, Professional, and any permitting authority inspectors.

4.2.12.5.7 Subcontractors Progress: Prepare periodic deficiency logs and punch list logs for subcontractors' Work including unsatisfactory or incomplete items and schedules for their completion. The deficiency logs shall be maintained based off of any deficiencies identified by Professional, building department inspectors, material testing firms, manufacturers, threshold inspectors, and any other inspectors. These two (2) types of logs must be maintained and continually updated by Contractor and updated versions must be submitted by Contractor to Owner with Contractor's monthly payment application as an express condition precedent to Contractor's right to payment. The data on the logs submitted with Contractor's payment application must be current and the logs must be updated no more than seven (7) days prior to the submission of the payment application.

4.2.12.5.8 Reserved.

4.2.12.5.9 Final Completion: Monitor the subcontractors' performance on the completion of the Work and provide notice to Owner and Professional when the Work is ready for final inspection. Secure, review and certify compliance with the Contract Documents, then transmit to Owner, through Professional, and as an express condition precedent to final payment, all required guarantees, warranties, affidavits, releases, consent of surety to final payment, bonds, waivers, manuals, as-built drawings, and maintenance books.

4.2.12.5.10 Reserved.

4.2.12.5.11 As-Built Drawings: Contractor shall monitor the progress of its own forces and its subcontractors on marked up field prints which shall be developed by Contractor into the final as-built drawings.

4.2.12.5.12 Contractor shall maintain originals or copies of, on a current basis, all Project files and records, including the following administrative records:

- (i) Subcontracts and Purchase Orders;
- (ii) Subcontractor Licenses;
- (iii) Shop Drawing Submittal/Approval Logs;
- (iv) Equipment Purchase/Delivery Logs;
- (v) Contract Drawings and Specifications with Addenda, RFIs;

- (vi) Warranties and Guarantees;
- (vii) Payment Request Records;
- (viii) Meeting Minutes;
- (ix) Bulletin Quotations;
- (x) Lab Test Reports;
- (xi) Insurance Policies and/or Insurance Certificates, Additional Insured Endorsements and Bonds;
- (xii) Contract Changes;
- (xiii) Permits;
- (xiv) Material Purchase Delivery Logs;
- (xv) Technical Standards;
- (xvi) Design Handbooks;
- (xvii) "As-Built" Marked Prints;
- (xviii) Operating & Maintenance Instructions;
- (xix) Daily Progress Reports;
- (xx) Monthly Progress Reports, Project Site meetings minutes;
- (xxi) Correspondence Files;
- (xxii) Transmittal Records;
- (xxiii) Inspection Reports;
- (xxiv) Bid/Award Information;
- (xxv) Bid Analysis and Negotiations;
- (xxvi) Punch Lists;
- (xxvii) Project and Construction Schedules and Updates;
- (xxviii) Suspense (Tickler) Files of Outstanding Requirements;
- (xxix) Policy and Procedure Manual;
- (xxx) Safety Procedures and Safety Logs;
- (xxxi) Accident/Incident Reports;
- (xxxii) Evacuation Route;

- (xxxiii) Material Safety Data Sheets;
- (xxxiv) Documentation related to sustainability;
- (xxxv) Environmental Reports;
- (xxxvi) Description of Environmental Issues, if any; and
- (xxxvii) Any other Project related items

The Project files and records shall be available at all times to Owner and Professional or their designees for reference, review or copying.

4.2.13 Logs, Reports and Schedules. Contractor shall prepare, maintain and submit to Professional and Owner, for their review and approval, the various logs, reports, and schedules set forth in the Contract Documents. Contractor's complete performance of its obligation to prepare, maintain and submit those logs, reports, and schedules is a condition precedent to Owner's obligation hereunder to make any payments to Contractor. These logs, reports and schedules shall not constitute nor take the place of any notice required to be given by Contractor to Owner or Professional pursuant to the Contract Documents.

4.2.14 Reserved.

4.2.15 Reserved.

4.2.16 As-Built and Permit Set Construction Documents. Contractor shall maintain in a safe place at the Project Site one as-built copy and one permit set of the Construction Documents, including all drawings, specifications, addenda, amendments, Change Orders, as well as all written interpretations and clarifications issued by Professional, in good order and legibly annotated to show all changes made during construction. The as-built Construction Documents shall be continuously updated by Contractor throughout the prosecution of the Work to accurately reflect all field changes that are made to adapt the Work to field conditions, changes resulting from Change Orders, and all concealed and buried installations of piping, conduit and utility services. Contractor shall certify the accuracy of the updated as-built Construction Documents. As a condition precedent to Owner's obligation to pay Contractor, Contractor shall provide evidence, satisfactory to Owner and Professional, that Contractor is fulfilling its obligation to continuously update the as-built Construction Documents. All buried and concealed items, both inside and outside the Project Site, shall be accurately located on the as-built Construction Documents as to depth and in relationship to not less than two (2) permanent features (e.g. interior or exterior wall faces). The as-built Construction Documents shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in red. The as-built Construction Documents, together with all approved samples and a counterpart of all approved shop drawings shall be available to Owner and Professional for reference. Upon completion of the Work and as a condition precedent to Contractor's entitlement to final payment, the as-built Construction Documents, samples and shop drawings shall be delivered to Professional by Contractor for Owner.

4.2.17 Meetings.

4.2.17.1 Prior to the commencement of Work, Contractor shall attend a preconstruction conference with Owner and Professional and others as appropriate to discuss the Project schedule, procedures for handling shop drawings and other submittals, and for processing applications for payment, and to establish a working understanding among the parties as to the Work.

4.2.17.2 During the prosecution of the Work, Contractor shall attend any and all meetings convened by Owner or Professional with respect to the Project, when directed to do so by Owner or Professional. Contractor shall have its subcontractors and suppliers attend all such meetings (including the preconstruction conference) as may be directed by Owner or Professional.

4.2.17.3 Contractor shall advise Owner, its representatives and Professional of their requested or required participation in any meeting or inspection giving each at least one (1) week written notice unless such notice is made impossible by conditions beyond Contractor's fault and control, in which case at least forty-eight (48) hours prior written notice must be given.

4.2.18 Use of Premises.

4.2.18.1 At all times during the performance of the Work, Contractor shall keep all of its operations (including the use and storage of all equipment and materials) within the Project Site or such other areas as may be permitted by the Contract Documents. Contractor shall not use the Project Site in any manner that is unreasonably burdensome or otherwise inconsistent with Owner's interest. Contractor is responsible for any damage to any such area, or to the owner or occupant thereof, or any areas contiguous thereto, resulting from the performance of the Work.

4.2.18.2 Except as required by the Contract Documents or otherwise required in order for Contractor to satisfy its safety and security obligations under the Contract Documents, Contractor shall not erect or install, nor shall it permit any of its subcontractors, suppliers, subconsultants or any other party for whom it is legally responsible to erect or install, any signage upon the Project Site or any other property of Owner, unless such signage has been expressly approved in writing by Owner, which approval may be withheld by Owner in its sole discretion.

4.2.18.3 Contractor acknowledges that Work may be performed at a particular Project Site where Owner simultaneously is conducting and continuing its operations upon the same site. In such event, Contractor shall coordinate its Work so as to cause no unreasonable interference with or disruption to Owner's operations. Contractor shall not enter any Owner-occupied area of the Project Site unless first approved and scheduled by Owner. Contractor understands and acknowledges that Owner may incur damages if Owner's operations on the Project Site are interrupted or impaired as a result of the Work.

4.2.18.4 Owner may take early occupancy of all or any portions of the Work, at Owner's election, by designating in writing to Contractor the specific portions of the Work to be occupied and the date such occupancy shall commence. If any such specific early occupancy was not expressly identified by the Effective Date and such early occupancy negatively impacts Contractor's cost or time of performance, Contractor shall be entitled to an equitable adjustment to the Contract Price and the Contract Time, all in accordance with the other terms and conditions of the Contract Documents. Notwithstanding the foregoing, Contractor understands and acknowledges that Owner may need access to or use of certain areas of the Project Site prior to Contractor's achievement of Substantial Completion, and that such occupancy, access or use shall not constitute Owner's acceptance of any Work.

4.2.19 Clean Up.

4.2.19.1 Contractor shall keep the Project Site clean at all times of debris, rubbish and waste materials arising out of the Work. If Contractor fails to keep the Project Site clean, Owner has the right, after providing a twenty-four (24) hour written notice, to perform any required clean up and to back-charge Contractor for the costs of such clean up. At the completion of the Work, Contractor shall remove all debris, rubbish and waste materials from and about the Project Site, as well as all tools, appliances, construction equipment and machinery and surface materials, and shall leave the Project Site clean and ready for occupancy by Owner.

4.2.19.2 Any existing surface or subsurface improvements, including pavements, curbs, sidewalks, pipes, utilities, footings, structures, trees and shrubbery, not indicated in the Contract Documents to be removed or altered, shall be protected by Contractor from damage during the prosecution of the Work. Any such improvements so damaged shall be restored by Contractor at its expense to condition at least equal to that existing at the time of Contractor's commencement of the Work.

4.2.19.3 Contractor shall confine operations at the Project Site to areas permitted by Applicable Laws and the Contract Documents and shall not unreasonably encumber the Project Site with materials or equipment.

4.2.19.4 Protection of construction materials or equipment stored on the Project Site from weather, theft and damage is the sole responsibility and risk of Contractor.

4.2.19.5 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project Site by Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project Site.

4.2.19.6 Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas.

4.2.19.7 The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

4.2.19.8 Contractor shall use best efforts to minimize any interference with the occupancy or beneficial use of (a) any areas and buildings adjacent to the site of the Work, and (b) the building in the event of partial occupancy.

4.2.19.9 All labor, material and equipment required to provide and maintain controls for the duration of the Project, including those associated with traffic control (including all signage, street, sidewalks barriers and fencing), storm water and pollution controls shall be supplied and paid for and maintained by Contractor.

#### 4.2.20 Permits, Licenses and Taxes.

4.2.20.1 All permits and licenses, except for Building Code and State Fire Marshal, necessary for the prosecution of the Work shall be procured and paid for by Contractor. If Contractor performs any Work without obtaining, or contrary to, such permits or licenses, Contractor shall bear all costs arising therefrom. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work.

4.2.20.2 Contractor shall pay all sales, consumer, use and other similar taxes associated with the Work or portions thereof, which are applicable during the performance of the Work.

4.2.20.3 All costs incurred by Contractor with respect to performing its obligations under this **Subsection 4.2.20** are included in the Contract Price.

#### 4.2.21 Tests and Inspections.

4.2.21.1 Owner, Professional, their respective representatives, agents and employees, and governmental agencies with jurisdiction over the Project shall have access at all times to the Work, whether the Work is being performed on or off of the Project Site, for their observation, inspection and testing. Contractor shall provide proper, safe conditions for such access.

4.2.21.2 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by Applicable Laws. Unless otherwise provided, Contractor shall, at its cost as part of the Contract Price, make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. Unless otherwise specified in the Contract for Construction, Contractor shall select the quality control and testing agencies, subject to Owner's written approval. Contractor shall give Owner and Professional timely



notice of when and where tests and inspections are to be made so that Owner and Professional may be present for such procedures.

4.2.21.3 If Professional, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subsection **4.2.21.2**, Professional will, upon written authorization from Owner, instruct Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to Owner, and Contractor shall give timely notice to Owner and Professional of when and where tests and inspections are to be made so that Owner and Professional may be present for such procedures.

4.2.21.4 If such procedures for testing, inspection or approval under **Subsections 4.2.21.2** and **4.2.21.3** reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for Professional's services and expenses shall be at the Contractor's expense.

4.2.21.5 Required certificates and reports of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by Contractor and promptly delivered to Owner, with a copy to Professional.

4.2.21.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

4.2.21.7 If Owner or Professional consider it necessary or advisable that covered Work be observed by Professional or inspected or tested by others, Contractor, at Professional's or Owner's request, shall uncover, expose or otherwise make available for observation, inspection or tests as Owner or Professional may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, Contractor shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction (including fees and charges of engineers, architects, attorneys and other professionals), and Owner shall be entitled to an appropriate decrease in the Contract Price. If, however, such Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price and/or an extension to the Contract Time, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction.

4.2.21.8 If any Work that is to be inspected, tested or approved pursuant to the Contract Documents is covered without such inspection, testing or approval having been satisfactorily obtained by Contractor and without obtaining the written concurrence from Professional and Owner, Contractor must, if requested by Professional or Owner, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor has given Professional and Owner forty-eight (48) hours' written notice of Contractor's intention to cover the same and has requested written concurrence by Professional and Owner and Professional or Owner has not acted with reasonable promptness to respond to such notice and request. If any Work is covered contrary to written directions from Professional or Owner, such Work must, if requested by Professional or Owner, be uncovered for Professional's and/or Owner's observation and be replaced at Contractor's sole expense.

4.2.21.9 Neither observations by Professional or Owner, nor inspections, tests or approvals by others shall relieve Contractor from Contractor's obligations to perform the Work in accordance with the Contract Documents.

4.2.21.10 Reserved.

4.2.21.11 Reserved.

4.2.21.12 In addition to all other inspection obligations of Contractor under the Contract Documents, Contractor shall coordinate with Owner's Threshold Inspector to conduct structural inspections on threshold buildings pursuant to a structural inspection plan prepared by Professional. The term "threshold building" as used herein shall have the meaning prescribed in the Florida Building Code. The purpose of the structural inspection plan is to provide specific inspection requirements, procedures and schedules so the building's structure can be adequately inspected for compliance with the applicable Contract Documents. Inspection of the shoring and reshoring for conformance with the shoring and reshoring plans is also required. The threshold building inspection shall be performed by a threshold inspector, certified by the State of Florida and approved by Owner. Contractor shall promptly provide to Owner and Professional copies of all threshold building inspection reports.

4.2.16.11 Construction Materials Testing shall be the responsibility of Contractor, unless otherwise indicated by Owner in writing.

4.2.22 Protection of Work.

4.2.22.1 Contractor shall fully protect the Work and adjacent property from loss or damage and shall bear the cost of any such loss or damage until final payment has been made. Loss or damage includes environmental impacts to the ground, air, and water. If Contractor or anyone for whom Contractor is legally liable is responsible for any loss or damage to the Work or other work or materials of Owner or Owner's separate contractors, or adjacent property, Contractor shall be charged with the same, and any monies necessary to replace such loss or damage shall be deducted from any amounts due Contractor.

4.2.22.2 Contractor shall ascertain what temporary enclosures, if any, of building areas, including existing facilities, should be provided for and may be provided as a practical matter, in order to assure orderly progress of the Work and to protect and secure the Work and existing facilities, in periods when extreme weather conditions are likely to be experienced.

4.2.22.3 Contractor shall not permit any unsafe loading of any structure at the Project Site, nor shall Contractor subject any part of the Work or adjacent property to any forces that will endanger it.

**ARTICLE 5 SUBCONTRACTORS**

**5.1 Subcontractors Generally.**

5.1.1 A subcontractor is any person or entity who is performing, furnishing, supplying or providing any portion of the Work pursuant to a contract with Contractor. Contractor shall be solely responsible for and have control over the subcontractors.

5.1.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior written consent of Owner. If a subcontract is awarded on a cost-plus a fee basis, Contractor shall provide in the subcontract for Owner to receive the same audit rights with regard to the subcontractor as Owner receives with regard to the Contractor.

**5.2 Subcontractor List.**

5.2.1 When Contractor shall submit to Owner a list of the names, addresses, licensing information and phone numbers of the subcontractors Contractor intends to use for each portion of the Work, as well as identifying in writing those portions of the Work it intends to perform with its own employees. The list identifying each subcontractor cannot be modified, changed, or amended without prior written approval from

Owner. Contractor shall continuously update that subcontractor list, so that it remains current and accurate throughout the entire performance of the Work.

5.2.2 Contractor shall not enter into a subcontract with any subcontractor, if Owner reasonably objects to that subcontractor. Contractor shall not be required to contract with anyone to whom it has reasonable objection. As part of the Project document file to be maintained by Contractor at the Project site, Contractor shall keep on file a copy of the license for every subcontractor and sub-subcontractor performing any portion of the Work, as well as maintain a log of all such licenses.

### 5.3 **Subcontracts.**

5.3.1 All subcontracts between Contractor and its subcontractors shall be in writing and are subject to Owner's approval. Further, all subcontracts shall: (a) require each subcontractor to be bound to Contractor to the same extent Contractor is bound to Owner by the terms of the Contract Documents, as those terms may apply to the portion of the Work to be performed by the subcontractor; (b) provide for the assignment of the subcontracts from Contractor to Owner at the election of Owner upon termination of Contractor as described in **Subsection 5.3.3**; (c) provide that Indemnitees will be additional indemnified parties of the subcontract; (d) provide that Indemnitees will be additional insureds on all insurance policies required to be provided by the subcontractor except workman's compensation and professional liability, if applicable; (e) assign all warranties directly to Owner; (f) identify Owner as an intended third party beneficiary of the subcontract; (g) provide that the Work being performed pursuant to such subcontract be performed in accordance with the requirements and intent of the Contract Documents and provide for retainage as specified herein; (h) provide for submission of applications for payment in form acceptable to Owner, together with reasonable backup and supporting information, together with Waivers and Releases of Lien and Waivers of Right to Claim Against the Payment Bond, in the forms required by the Contract; (i) provide that each subcontractor furnish to Contractor, as the case may be, in a timely fashion all information necessary for the preparation and submission of the reports required by the Contract; (j) provide that the subcontractor will resolve all disputes involving Owner in the same manner as provided in the Contract; (k) require that any claims by subcontractor for delay or additional cost must be submitted to Contractor within the time and in the manner in which Contractor must submit such claims to Owner, and that failure to comply with such conditions for giving notice and submitting claims shall result in the waiver of such claims; (l) incorporate the insurance requirements of this Agreement into all of its subcontracts and, upon Owner's request, to provide copies of such insurance policies and additional insured endorsements, to Owner; and (m) require subcontractor to provide field (on-site) supervision through a named superintendent for each trade (e.g. general concrete forming and placement, masonry, mechanical, plumbing, electrical and roofing) included in the subcontract. Further, Contractor shall require all subcontractors to similarly incorporate such terms into their sub-subcontracts.

5.3.2 Additionally, 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 contract 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.”

5.3.3 Each subcontract agreement for a portion of the Work is assigned by Contractor to Owner, provided that (a) assignment is effective only after termination of the Contract by Owner and only for those subcontract agreements that Owner accepts by notifying subcontractor and Contractor in writing; and (b) assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract. Each subcontract shall specifically provide that Owner shall only be responsible to the subcontractor for those obligations of Contractor that accrue subsequent to Owner’s exercise of its right to take an assignment of such subcontract. Upon such assignment to Owner under this Subsection, Owner may further assign the subcontract to a successor contractor or other entity.

5.3.4 Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the subcontractor will be bound by this **Section 5.3** and identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents. Each subcontractor shall similarly make copies of such documents available to its sub-subcontractors. Contractor shall make available for Owner’s review and copying or, at Owner’s request, deliver to Owner true and complete copies of Contractor’s agreements with subcontractors and suppliers.

## **ARTICLE 6    OTHER WORK**

**6.1    Separate Contractors.** Owner may perform other work related to the Project at the site by Owner’s own forces, have other work performed by utility owners or let other direct contracts. If the fact that such other work is to be performed is not noted in the Contract Documents, written notice thereof will be given to Contractor prior to starting any such other work. If Contractor believes that such performance will involve additional expense to Contractor or require additional time, Contractor shall send written notice of that fact to Owner and Professional within seven (7) days of being notified of the other work. If Contractor fails to send the above required seven (7) days’ notice, Contractor will be deemed to have waived any rights it otherwise may have had to seek an extension to the Contract Time or adjustment to the Contract Price.

**6.2    Coordination.** Contractor shall afford each utility owner and other contractor who is a party to such a direct contract (or Owner, if Owner is performing the additional work with Owner’s employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work and shall properly connect and coordinate its Work with theirs. Contractor shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall be responsible for all damage to the work of others caused by the performance of its Work. Further, Contractor shall not in any way cut or alter the work of others without first receiving the written consent of that other person and Professional.

**6.3    Work of Separate Contractors.** If any part of Contractor’s Work depends for proper execution or results upon the work of any other contractor or utility owner (or Owner), Contractor shall inspect and promptly report to Owner and Professional in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. Such report must be made within seven (7) days of the time Contractor first became aware of the delay, defect or deficiency or by the scheduled commencement of Contractor’s

dependent Work, whichever occurs first. Contractor's failure to report within the allotted time will constitute an acceptance of the other work as fit and proper for integration with Contractor's Work.

**ARTICLE 7    COMPENSATION OF CONTRACTOR**

**7.1    Contract Price.** In consideration of the full and faithful performance by Contractor of the requirements of the Contract Documents, Owner agrees to pay, or cause to be paid, to Contractor the lump sum amount of \_\_\_\_\_ ("**Contract Price**"), said payment to be made in accordance with the terms and conditions of the Contract Documents. Contractor represents and warrants to Owner that it has fully reviewed the Construction Documents, Project Site and all other documents, information and items necessary to agree to the Contract Price and that the Contract Price, represents adequate and sufficient compensation for Contractor's timely provision of all of the Work within the Contract Time, without the necessity of Change Orders or additional compensation or time. CONTRACTOR FURTHER WARRANTS, BUT WITHOUT ASSUMING ANY ARCHITECTURAL OR ENGINEERING RESPONSIBILITY, EXCEPT AS MAY BE SPECIFICALLY ALLOCATED TO CONTRACTOR IN THE CONSTRUCTION DOCUMENTS, THAT THE CONSTRUCTION DOCUMENTS ARE CONSISTENT WITH EACH OTHER, PRACTICAL, FEASIBLE AND CONSTRUCTABLE.

**7.2    Taxes.** The Contract Price includes all sales, consumer, use and similar taxes for the Work provided by Contractor that are legally enacted, whether or not yet effective, at the time this Agreement is executed.

**7.3    Allowances.** Allowances included in the Contract Price, if any:

Item	Price

Unless otherwise provided in the Contract Documents: (a) allowances shall cover the cost to Contractor of materials and equipment delivered at the Project Site and all required taxes, less applicable trade discounts; (b) Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Price but not in the allowances; and (c) whenever costs are more than or less than allowances, the Contract Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (x) the difference between actual costs and the allowances under clause (a) of the foregoing sentence and (y) changes in Contractor's costs under clause (b) of the foregoing sentence.

**ARTICLE 8    PAYMENTS**

**8.1    Progress Payments.**

8.1.1 Applications for payment and supporting information required by the Contract for Construction 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 first application for payment shall be submitted no earlier than thirty (30) days after the Commencement Date. Contractor's applications for payment shall be completed, duly executed and notarized.

8.1.2 Prior to commencement of the Work, Contractor shall submit to Owner and Professional, for their review, a detailed schedule of values in C.S.I. format, listing the major elements of the Work and the dollar value for each element and, if required by Owner, broken down further into the major elements of the Work to be completed during the various phases of the Work. That schedule of values shall be used as the basis for Contractor's monthly applications for payment thereafter. The schedule of values shall be updated for the current month Change Orders and submitted each month to Owner and Professional along with Contractor's application for payment.

8.1.3 If payment is requested on the basis of materials and equipment not incorporated into the Project, but delivered and suitably stored at the Project Site, the application for payment shall also be accompanied

by a bill of sale, invoice or other documentation warranting that Owner has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances, together with evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner's interest therein, all of which shall be subject to Owner's satisfaction. Owner has the discretion whether or not to pay for such unincorporated materials.

8.1.4 Contractor shall submit electronic copies of its notarized monthly application for payment to Owner and Professional on or before the twenty-fifth (25<sup>th</sup>) day of each month for Work performed during the previous month. Invoices received after the twenty-fifth (25<sup>th</sup>) day of each month shall be considered for payment as part of the next month's application. Within seven (7) days after receipt of each application for payment, Professional shall submit to Owner a Certificate for Payment in the amount recommended by Professional as being due and owing Contractor. Owner shall pay Contractor that portion of the amount certified in Professional's Certificate for Payment which Owner approves as being due and owing Contractor within thirty (30) days of Owner's receipt of the Certificate for Payment.

8.1.5 Owner shall retain ten percent (10%) of that portion of the gross amount of each monthly payment request certified by Professional and approved by Owner for payment, until fifty percent (50%) completion of the Work. Upon fifty percent (50%) completion of the Work, the amount of retainage thereafter withheld by Owner from subsequent payments shall be reduced to five percent (5%) of that portion of the gross amount of each monthly payment request certified by Professional and approved by Owner for payment. No retainage shall be held on bond or insurance. Also, after fifty percent (50%) completion of the Work has been achieved, and to the extent required by Section 255.078, Fla. Stat., Contractor may request in its next monthly application for payment release of up to one-half (1/2) of the retainage theretofore withheld by Owner prior to said fifty percent (50%) of the Work being completed. Owner reserves the right, at its sole discretion, to further reduce or release any portion of such retainage prior to final payment; provided, however, nothing in this **Subsection 8.1.5** shall preclude or limit Owner's right to withhold payment as otherwise permitted by the terms of the Contract Documents or as permitted by law. Further, any reduction or release of retainage, or portion thereof shall not be a waiver of (a) any of Owner's rights to retainage in connection with other payments to Contractor, or (b) any other right or remedy that Owner has under the Contract Documents, at law or in equity.

8.1.6 Payments to Contractor, whether progress or final, shall in no way imply approval or acceptance of Contractor's Work.

8.1.7 Each application for payment shall be accompanied by: (a) duly executed and notarized (i) Waiver and Release of Liens in form acceptable to Owner and complying with Applicable Laws, and (ii) Waiver of Right to Claim Against the Payment Bond (Progress Payment) in form acceptable to Owner and complying with Applicable Laws, each showing that all materials, labor, equipment and other bills associated with that portion of the Work for which payment has been requested have been paid in full through the previous month's application for payment, from Contractor and all first tier subcontractors and suppliers and all subcontractors and suppliers that have delivered a Notice to Owner; provided, however, Owner, in its sole discretion, may require such Waiver and Release of Liens and Waivers of Right to Claim Against the Payment Bond (Progress Payment) from all lower tier subcontractors and suppliers and, if so required Contractor shall, as a condition precedent to payment provide same; (b) updated schedule(s) required by the Contract Documents, (c) a written consent from the surety for the payment being requested; and (d) such other information, documentation, and materials as Owner or Professional may reasonably require. Owner shall not be required to make payment until and unless these affidavits, waivers, reports and other information, documentation and materials are furnished by Contractor. Further, if Contractor is withholding any portion of a payment to any subcontractor or supplier for any labor, services, or materials for which Owner has paid Contractor, Contractor shall refund such money to Owner.

8.1.8 Applications for payment shall not include requests for payment for portions of the Work for which Contractor does not intend to pay a subcontractor or supplier, unless such Work has been performed by others whom Contractor intends to pay.

8.1.9 In addition to all other materials and information required by the Contract Documents, each application for payment shall constitute a certification and representation by Contractor to Owner that: (a) the construction has progressed to the point indicated; (b) the quality of the Work covered by the application is in accordance with the Contract Documents; (c) there are no liens or claims outstanding or known to exist at the date of the application for payment; (d) all due and payable bills with respect to the Work have been paid to date or included in the amount requested in the current application, and there is no known basis for the filing of any construction liens or claims or any other lien or claim on the Work; (e) duly executed waivers and releases have been obtained from all subcontractors and suppliers for work done and materials furnished through the date of payment; (f) Contractor is entitled to payment in the amount requested; (g) such application for payment represents a just estimate of cost reimbursable to Contractor under the terms of the Contract Documents, and (h) such application for payment has not been front-end-loaded either by Contractor or by any of its subcontractors or suppliers (including placing a value on a line item that is in excess of its cost, increasing unit prices on early completed items while decreasing unit prices on later completed ones, and/or inflating the percentage of completion on line items).

8.1.10 Contractor warrants that title to all Work covered by an application for payment will pass to Owner no later than the time of payment unless later passage of title is expressly provided for elsewhere in the Contract Documents. Contractor further warrants that upon submittal of an application for payment all Work for which Certificates for Payment have been previously issued and payments received from Owner shall, to the best of Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Contractor, subcontractors, suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

**8.2 Payments Withheld.** Professional shall review each application for payment submitted by Contractor and shall make certifications or recommendations to Owner as to the proper amounts, if any, which may be owed Contractor under the application for payment. Professional's payment certification or recommendation shall be evidenced by a Certificate for Payment issued by Professional to Owner. All Certificates for Payment are subject to Owner's review and approval. Both Professional and Owner shall have the right to refuse to certify or approve for payment any amounts, or portions thereof, requested by Contractor in an application for payment, or rescind any amount previously certified and approved in a Certificate for Payment, and Owner may withhold any payments otherwise due Contractor under the Contract or any other agreement between Owner and Contractor, to the extent it is reasonably necessary, to protect Owner from any expense, cost or loss attributable to: (a) defective or deficient Work not properly remedied in accordance with the terms of the Contract Documents; (b) the filing or reasonable evidence indicating the probable filing of third party claims against Owner attributable to the fault or neglect of Contractor; (c) Contractor's failure to make timely and proper payments to all subcontractors and suppliers; (d) reasonable evidence that the remaining Work cannot be completed for the unpaid Contract Price balance; (e) reasonable evidence indicating that the remaining Work cannot be completed within the remaining Contract Time; (f) Contractor's failure to satisfactorily prosecute the Work in accordance with the requirements of the Contract Documents; or (g) any other material breach of the requirements of the Contract Documents by Contractor. Owner shall have the right, but not the obligation, to take any corrective action Owner deems appropriate to cure any of the above noted items, at Construction Manager's expense, if such items are not cured by Contractor to Owner's reasonable satisfaction within three (3) days after Contractor's receipt of written notice from Owner.

### **8.3 Final Payment.**

8.3.1 Owner shall make final payment to Contractor within forty-five (45) days after the Work is finally accepted by Owner in accordance with **Section 10.2**, provided that Contractor first, and as an explicit condition precedent to the accrual of Contractor's right to final payment, shall have furnished Owner with: (a) a duly executed and notarized (i) Final Waiver and Release of Lien in form acceptable to Owner and in compliance with Applicable Laws and, (ii) Waiver of Right to Claim Against the Payment Bond (Final Payment) in form acceptable to Owner and in compliance with Applicable Laws, from Contractor and all first tier subcontractors and suppliers and all subcontractors and suppliers that have delivered a Notice to Owner; provided, however, Owner, in its sole discretion, may require such Waivers and Releases of Lien and Waivers of Right to Claim Against the Payment Bond (Final Payment) from all lower tier subcontractors and suppliers and, if so required Contractor shall, as a condition precedent to payment provide same; (b) all as-built Contract Documents, including as-built drawings for design-build systems delegated to Contractor; (c)

a complete list of subcontractors and principal suppliers on the Project, including addresses and telephone numbers; (d) evidence reasonably acceptable to Owner that the Work has passed all requisite governmental inspections; (e) 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; (f) a duly executed and notarized Final Payment Affidavit in statutory form; (g) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to Owner; (h) if required by Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by Owner; and (i) all other materials, information and documentation that may be required by the Contract Documents or Owner. Notwithstanding the foregoing, Owner reserves the right to require any of the foregoing items or portions thereof which may have been completed prior to final completion as a condition to payment of any progress payment to be made after completion of such item(s).

8.3.2 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.

8.3.3 Contractor's acceptance of final payment shall constitute a full waiver of any and all claims by Contractor against Owner arising out of the Contract or otherwise relating to the Project, except those identified in writing by Contractor as unsettled in the final application for payment. Neither the acceptance of the Work nor payment by Owner shall be deemed to be a waiver of Owner's right to enforce any obligations of Contractor hereunder or to the recovery of damages for defective Work.

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

**9.1     Changes in the Work.** 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.

**9.2     Contractor's Estimate.** Promptly after being notified of a change, but in no event more than fourteen (14) days after its receipt of such notification (unless Owner has agreed in writing to a longer period of time), Contractor shall submit an itemized estimate of any cost or time increases or savings it foresees as a result of the change. Contractor's estimate shall include an analysis of impacts to cost and time, if any, to perform additional work, or delete Work, as applicable, including the effects and impacts, if any, on unchanged Work, estimates of costs and Contractor's proposed methods to minimize costs, delay and disruption to the performance of the Work. If Contractor fails to submit a written proposal or request additional time for submitting the proposal within the fourteen (14)-day time period, it shall be presumed that the change described in Owner's request for a proposed



change will not result in a modification to the Contract Price or Contract Time and, if directed by Owner in writing, the change shall be performed by Contractor without additional compensation. Owner's request for a proposed change does not authorize Contractor to commence performance of the change, unless otherwise specified in writing. If Owner decides that the proposed change should be performed, the Work shall be authorized according to Change Order procedures set forth herein.

**9.3 Potential Change Order.** If Contractor observes any circumstance that will, in its opinion, be a change in the scope of the Work that justifies a change to the Contract Price or Contract Time, or Contractor otherwise becomes aware of the need for or desirability of a change in the Work, then Contractor will submit a Potential Change Order ("PCO"), along with substantiating data, in a format provided by the Owner, specifying the reasons for such proposed change, including relevant circumstances and impacts on the schedule. Contractor shall prepare and submit to Professional drawing, specifications or other data in support of a PCO. Contractor shall submit a price proposal concurrently with the PCO; provided, however, Contractor shall not submit applications for payment with Change Orders that have not been approved in writing by Owner. 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 submitted. Contractor's failure to initiate a PCO within such period shall be deemed a waiver of the right to adjustment of the Contract Price or the Contract Time for the alleged change. Any PCO that is approved by Owner will be incorporated in a Change Order, and Contractor shall promptly perform changes authorized by such executed Change Order(s). If Owner determines that the Work in question is not a change in the scope of the Work, and the PCO is denied, but Contractor believes that it does have merit, the Contractor may submit a Claim in accordance with the procedures set forth herein.

**9.4 Disagreement on Potential Change Orders.** If Owner and Contractor are unable to agree on a PCO, Contractor shall, nevertheless, promptly perform the change as directed by Owner in writing. In that event, the Contract Price and Contract Time shall be adjusted as directed by Owner. If Contractor disagrees with Owner's adjustment determination, Contractor must make a Claim pursuant to **Article 21** or else be deemed to have waived any Claim it might otherwise have had on that matter

**9.5 Change Order.** 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 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 the Contract Time. Contractor shall familiarize itself with Owner's Change Order approval process and shall manage progress of the Work accordingly.

**9.6 Subcontractor Change Order Requests.** Contractor shall negotiate all Change Orders 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 Change Order from Owner.

**9.7 Pricing of Change Orders.** In the event Owner and Contractor are unable to mutually agree on a change to the Contract Price, resulting from a change made pursuant to this **Article 9**, the amount of the increase or decrease shall be limited to 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 profit; 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). 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 profit on their direct labor and material costs shall be permitted, with a maximum five percent (5%) markup thereon by Contractor for its overhead and profit, for a total maximum markup of ten percent (10%).

**9.8 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 COMPLETION**

**10.1 Substantial Completion.** “**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 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 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 and Professional in writing that the entire Work (or such designated portion) is substantially complete and request that Professional issue a Certificate of Substantial Completion. Contractor shall give Owner and 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 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, Owner, Contractor and Professional shall make an inspection of the Work (or designated portion thereof) to determine the status of completion. If Owner and Professional do not consider the Work (or designated portion) substantially complete, 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 and Professional consider the Work (or designated portion) substantially complete, Professional shall prepare and deliver to Contractor a Certificate of 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 be in compliance with the Contract Documents and all Applicable Laws. Accordingly, 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 the Project. Owner shall have the right to exclude Contractor from the Work and Project site (or designated portion thereof) after the date of Substantial Completion, 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.

**10.2 Final Completion.** “**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 sixty (60) 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 and 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 and Professional determine Contractor has completed the entire Work, 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: (x) all of the Work has been completed in accordance with the requirements of the Contract Documents; (y) the final balance due Contractor, as noted in the final Certificate for Payment, is due and payable; and (z) 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 the 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 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; provided, however, that if a good faith dispute exists as to whether one or more punch list items have been properly completed, but all other conditions precedent to final payment have been satisfied, Owner shall make final payment less an amount not to exceed 150 percent of the total costs to complete such items and less any other amounts that the Contract Documents or Applicable Laws entitle Owner to withhold.

#### **ARTICLE 11 CONTRACT TIME, EXTENSION AND LIQUIDATED DAMAGES FOR DELAY**

**11.1 Commencement Date.** Owner shall issue a written “Notice to Proceed” to Contractor establishing the date construction is to commence (the “**Commencement Date**”). No portion of the Work shall be performed prior to the Commencement Date, unless expressly approved in advance by Owner in writing, and Contractor shall not expend any monies for construction prior to receipt of such Notice to Proceed without the written approval of Owner and any monies so expended in violation of this requirement shall be at Contractor’s sole expense and Owner shall have no obligation or responsibility therefor.

**11.2 Contract Time.** Contractor shall achieve Substantial Completion of the entire Work not later than \_\_\_\_\_ days from the Commencement Date (the “**Contract Time**”), subject to adjustments of this Contract Time as provided in the Contract Documents. All Work shall be fully and finally completed within sixty (60) days after the date of Substantial Completion of the Work (the “**Final Completion Date**”), as the date of Substantial Completion is established in accordance with the provisions hereof.

**11.3 Float.** Float is defined as the amount of time between when an activity “can start” (the early start) and when an activity “must start” (the late start). It is understood by Owner and Contractor that float is a shared commodity, not for the exclusive use or financial benefit of either Party. Either Party has the full use of the float until it is depleted.

**11.4 Diligent Prosecution.** Contractor shall diligently pursue the completion of the Work and coordinate the Work being done on the Project by its subcontractors and suppliers, as well as coordinating its Work with all work of others at the Project Site, so that its Work or the work of others shall not be delayed or impaired by any act or omission by Contractor or anyone for whom Contractor is responsible or liable. Unless expressly noted otherwise in the Contract Documents, Contractor shall be solely responsible for all construction means, methods, techniques, sequences, and procedures, as well as coordination of all portions of the Work under the Contract Documents, coordination of trades and subcontractors, coordination of drawings to existing as-built conditions and site conditions, and the coordination of Owner’s suppliers and contractors, as set forth in **Article 6**.

**11.5 Excusable Delay.** Should Contractor actually be obstructed or delayed in the critical path of the prosecution of, or completion of, the Work as a result of unforeseeable causes: (a) beyond the control of Contractor, (b) not due to Contractor's fault or neglect, and (c) which could not be avoided by the exercise of reasonable diligence, including: (i) acts of God or of the public enemy, (ii) acts of government, (iii) fires, (iv) floods, (v) epidemics, (vi) quarantine regulation, (vii) strikes, (viii) lockouts, or (ix) weather conditions abnormal for the period of time (as defined below) which exceed the aggregate number of days allotted for adverse weather conditions in Contractor's construction schedule approved by Owner, Contractor shall notify Owner and Professional in writing within forty-eight (48) hours after the commencement of such delay (which time period shall control over any longer time periods specified elsewhere herein) stating the cause or causes thereof, or be deemed to have waived any right which Contractor may have had to request a time extension therefor. "**Abnormal for the period of time**" for purposes of this Section means rain or bad weather (e.g. named tropical storms or hurricanes), only when such rain or bad weather is in excess of the ten (10) year average for that specific period of time (from its commencement to its conclusion, as compared with the historical data for that same period) as published by the National Oceanic and Atmospheric Administration, Asheville, North Carolina, for Metropolitan Orlando, Florida, Reporting Station. Contractor's construction schedule shall allow the number of days it deems necessary for rain and bad weather when Contractor prepares its schedule and not every day of adverse weather conditions abnormal for the period of time shall be grounds for an extension of time. Contractor and Owner acknowledge that any Project Site rain gauge measurements will not be relied upon for determining rain fall amounts. Contractor shall use commercially reasonable efforts to mitigate the effects of any delays described in this Section so as to minimize any effect on the schedule for completion of the Work.

**11.6 Acceleration.** Owner shall have the right, at any time, whether or not Contractor is behind schedule, to order Contractor to accelerate its Work. In the event that Owner orders Contractor to accelerate its Work and Contractor (a) is not behind schedule, and (b) believes that acceleration will increase the cost of performance, Contractor, shall be required to submit a Claim for increase pursuant to **Article 9**. Any such Claim shall be based exclusively and solely on actual and direct increased field costs associated with the acceleration.

**11.7 Delays Related to Hazardous Substances.** Contractor is responsible for compliance with all requirements included in the Contract Documents regarding Hazardous Substances. If Contractor encounters on the Project site any materials reasonably believed by Contractor to be Hazardous Substances not specifically identified prior to commencement of construction and not subject to a plan already in place of dealing with such Hazardous Substances in compliance with Applicable Laws, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from such Hazardous Substances, Contractor immediately shall (a) stop Work in the area affected, (b) notify Owner, both orally and in writing, of the presence and location of any physical evidence of, or information regarding, any such Hazardous Substances and (c) Contractor shall secure the Project site to prevent access by unauthorized personnel as directed by Owner. If the Work is so stopped and a Hazardous Substance is found, the Work in the affected area shall not thereafter be resumed except by Change Order. Any such Change Order shall include an adjustment to the Contract Time as appropriate. If no Hazardous Substance is found after the Work is stopped, no Change Order is required to resume the Work in the affected area. Further, if the Hazardous Substance was generated or caused by Contractor, any of its Subcontractors, or any Personnel, no Change Order will be required for an adjustment in the Contract Time and Contractor shall indemnify and hold Indemnitees harmless from and against all Adverse Consequences arising out of such Hazardous Substance.

**11.8 Compensation for Delay.** No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work from any cause whatever, including those for which Owner and Professional may be responsible, in whole or in part, shall relieve Contractor of its duty to perform or give rise to any right to damages or additional compensation from Owner. Contractor expressly acknowledges and agrees that it shall receive no damages for delay. Contractor's sole remedy, if any, against Owner will be the right to seek an extension to the Contract Time; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damage For Delay" provision. This Section shall expressly apply to claims for early completion, as well as to claims based on late completion. Notwithstanding the foregoing, if the Work is delayed due to the fault or neglect of Owner or anyone for whom Owner is liable, and such delays have a cumulative total of more than twenty-one (21) days after receipt by Owner of written notice from Contractor of such fault or neglect, Contractor may make a Claim for its actual and direct delay damages accruing after said twenty-one (21) days; provided, however, Contractor expressly acknowledges and agrees that its actual and direct delay damages shall not exceed, and shall be limited to no more than, One Thousand and No/100 Dollars (\$1,000.00) per day. In

no event shall Owner be liable to Contractor whether in contract, warranty, tort (including negligence or strict liability) or otherwise for any acceleration, soft costs, lost profits, punitive, special, indirect, incidental, or consequential damages of any kind or nature whatsoever. For the avoidance of doubt, Owner's exercise of its reserved right to change, increase or decrease the Work shall not be deemed to be "fault or neglect of Owner" serving as the basis for additional compensation under this **Section 11.8**. Claims for increased compensation or extension of time for such changes, increases or decreases shall be governed by **Article 9**.

**11.9 Liquidated Damages for Failure to Achieve Substantial Completion and/or Final Completion.**

Contractor shall achieve Substantial Completion and Final Completion of the Work within the times set forth in the Contract Documents (as may be adjusted in accordance with the Contract for Construction). Inasmuch as failure to achieve Substantial Completion and/or Final Completion of the Work within times set forth in the Contract Documents 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 times set forth in the Contract Documents, or within such further time, as may be allowed for time extensions in accordance with the provisions of the Contract for Construction, Contractor shall be required to pay to Owner as liquidated damages for such delay, and not as a penalty, the amount determined by the following formula: **Contract Price x .07/365**, 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 in the time prescribed in the Contract Documents and shall not release Contractor from liability from any other breach of requirements of the Contract for Construction. 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.

**11.10 Damages Other Than for Delay.** The liquidated damages prescribed in this **Article 11** shall be payable in addition to any other expenses or costs payable by Contractor to Owner under the Contract for Construction, and shall not preclude the recovery of damages by Owner under other provisions of the Contract for Construction. Owner's right to received liquidated damages shall in no manner affect Owner's right to terminate the Contract for Construction, as provided herein or elsewhere in the Contract for Construction. Owner's exercise of the right to terminate shall not release Contractor from the obligation to pay said liquidated damages.

**11.11 Withholding of Liquidated Damages.** Owner may deduct liquidated damages prescribed in this Article from any unpaid amounts then or thereafter due Contractor under the Contract for Construction 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 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.

**ARTICLE 12 SAFETY, EMERGENCIES AND HAZARDOUS SUBSTANCES**

**12.1 Safety.**

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

12.1.2 Contractor is responsible for the safety and protection of all persons and property on or about the Project Site during the progress of the Work. Further, it is Contractor's responsibility to protect from damage or loss all material and equipment to be incorporated into the Work which may be stored off of the Project Site. Contractor shall develop and implement, in accordance with the requirements of the Contract Documents a safety plan for the Work.

12.1.3 Contractor shall comply with, and give notices required by, all Applicable Laws applicable to performance of the Work and rules and regulations of Owner and any public body having jurisdiction over the Work, including all of their safety and building codes, environmental laws, ordinances, rules and regulations. Contractor shall notify owners of adjacent property and of any underground structures or improvements and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation or replacement of their property. Contractor's duties and responsibilities for the safety and protection of the Work and the environment shall continue until such time as the Work is completed and final acceptance of same by Owner has occurred. Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. Further, Contractor shall employ all necessary measures to protect adjoining adjacent property and shall provide barricades, temporary fences and covered walkways required to protect the safety of passersby, as required by prudent construction practices, local building codes, ordinances or other laws and the Contract Documents. Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

12.1.4 At all times during the performance of the Work at the Project Site, Contractor shall have designated, and located on a full time basis at the Project Site, a qualified individual whose responsibility shall be to monitor and enforce Contractor's safety program at the Project Site. Contractor hereby designates its superintendent as that safety representative. Contractor may designate by written notice to Owner another individual, reasonably acceptable to Owner, who shall be Contractor's safety representative at the Project Site.

12.1.5 Alcohol, drugs and all illegal substances are strictly prohibited on any Owner property. All employees, agents and representatives of Contractor, as well as those of all subcontractors and those of any other person or entity for whom Contractor is legally liable or responsible (collectively, "**Personnel**"), shall not possess or be under the influence of any such substances while on any Owner property. Further, Personnel shall not bring on to any Owner property any gun, rifle or other firearm, or explosives of any kind.

12.1.6 Contractor acknowledges that the Work may be progressing on a Project Site which is located upon or adjacent to an existing Owner facility. In such event, Contractor shall comply with the following:

12.1.6.1 All Owner facilities are smoke free. Smoking is strictly prohibited;

12.1.6.2 All Personnel shall be provided an identification badge by Contractor. Such identification badge must be prominently displayed on the outside of the Personnel' clothing at all times. All Personnel working at the Project Site must sign in and out with Contractor each day;

12.1.6.3 Contractor shall strictly limit its operations to the designated work areas and shall not permit any Personnel to enter any other portions of Owner's property without Owner's expressed prior written consent;

12.1.6.4 All Personnel are prohibited from distributing any papers or other materials upon Owner's property, and are strictly prohibited from using any of Owner's telephones or other office equipment;

12.1.6.5 All Personnel shall at all times comply with OSHA regulations with respect to dress and conduct at the Project Site. Further, all Personnel shall comply with the dress, conduct and facility regulations issued by Owner's officials onsite, as said regulations may be changed from time to time;

12.1.6.6 All Personnel shall enter and leave Owner's facilities only through the ingress and egress points identified in the site utilization plan approved by Owner or as otherwise designated, from time to time, by Owner in writing;

12.1.6.7 When requested, Contractor shall cooperate with any ongoing Owner investigation involving bodily injury, economic loss or damage to Owner's facilities or personal property therein;

12.1.6.8 Interaction between the Personnel and the teacher and student population is strictly prohibited; and

12.1.6.9 Personnel may not solicit, distribute or sell products while on Owner's property. Friends, family members or other visitors of the Personnel are not permitted on Owner's property.

12.1.7 At all times Contractor shall adhere to Owner's safety and security regulations, and shall comply with all security requirements at Owner's facilities, including all safety and security regulations and requirements, as said regulations and requirements may be modified or changed by Owner from time to time.

12.1.8 Contractor certifies that no person or subcontractor will be assigned to work on any work pursuant to the Contract that pose any threat or risk of harm to the health, safety or welfare of any student, employee, guest, vendor or property of Owner. Further, Contractor shall indemnify and hold harmless Owner and its officers and employees from any and all claims, suits, damages, costs, or attorney fees incurred as a result of any harm done to any student, employee, guest, vendor or property of Owner by Contractor's Personnel or subcontractors assigned to do work pursuant to the Contract.

**12.2 Emergencies.** Contractor shall take immediate action to prevent injury to any person or damage to any property (including the Work and any adjacent property) which otherwise might arise from an emergency event at the Project Site. Property damage includes environmental impacts to the ground, air, and water. Contractor shall give Professional and Owner written notice within forty-eight (48) hours after the occurrence of the emergency, if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. In addition, Contractor shall deliver to Owner copies of any written notice of violations received by Contractor or subcontractors within forty-eight (48) hours following notification by the regulatory agency. If Owner or Professional determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Change Order shall be issued to document the consequences of the changes or variations. If Contractor fails to provide the forty-eight (48) hour written notice noted above, Contractor shall be deemed to have waived any right it otherwise may have had to seek an adjustment to the Contract Price or an extension to the Contract Time. Contractor is obligated to promptly report in writing to Owner all accidents relating to the Work that result in any personal injury or property damage. The notice procedures contained in this **Section 12.2** control over any conflicting notice periods herein.

**12.3 Hazardous Substances.** 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. Contractor is responsible for compliance with any requirements included in the Contract Documents regarding Hazardous Substances. Further, Contractor shall strictly comply with Section 11.7 and all

Applicable Laws concerning Hazardous Substances. If (a) Contractor fails to so comply, or (b) Hazardous Substances are knowingly transported (either on or off-site) or material which Contractor, its Subcontractors, or Personnel should have known to be Hazardous Substances 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. If any Hazardous Substances are contained in the products used on the Project site or incorporated into the construction by Contractor or any of its Subcontractors, Contractor shall provide to Owner a Material Safety Data Sheet at the time of each delivery or prior to each new use of such product. Contractor shall indemnify and hold harmless Indemnitees against the cost and expense Owner incurs: (a) for remediation of a material or substance Contractor brings to the Project site and negligently handles, or (b) where Contractor fails to perform its obligations under this **Section 12.3**.

## **ARTICLE 13 INSURANCE, BONDS & INDEMNIFICATION**

**13.1 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:

13.1.1 Commercial General Liability insurance coverage for commercial general liability endorsed to state that limits apply to the Project separately [including Premises-Operations, Products and Completed Operations Coverage (including X, C, and U coverages, as applicable), Independent Contractors' Protective, Contractual Liability with specified provision for the Contractor's indemnity obligations, Personal Injury and Broad Form Property Damage, including Explosion, Collapse and Underground Hazards] and without elimination of the subcontractor exception to "damage to your work" exclusion, which shall provide a per occurrence coverage amount not less than One Million Dollars (\$1,000,000) and Ten Million Dollars (\$10,000,000) in the aggregate;

13.1.2 Automobile Liability insurance covering owned, rented and non-owned vehicles operated by Contractor or its Personnel with policy limits of not less than One Million Dollars (\$1,000,000) combined single limit and aggregate for bodily injury and property damage;

13.1.3 Workers' Compensation insurance at full statutory limits as required by laws of the State in which the Project is located and Federal law, if applicable;

13.1.4 Employer's Liability insurance with a policy limit of not less than One Million Dollars (\$1,000,000) for Bodily injury by Accident, each Accident, Bodily injury by Disease, each employee and Bodily Injury by Disease, policy limit;

13.1.5 Pollution Liability with policy limits of not less than One Million Dollars (\$1,000,000) per occurrence;

13.1.6 Builder's Risk, unless otherwise directed by Owner in writing, at replacement cost, covering the full value of the Phase(s) of 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 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. Owner shall be responsible for payment of the deductible in the event of a loss due to named storm, and Contractor shall be responsible for payment of the deductible in all other instances. 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.

13.1.7 Property insurance providing coverage for property in which the Contractor retains the risk of loss including its own equipment, (stationary or mobile), tools (including employee tools), supplies, materials, or any other property owned or leased by the Contractor;

13.1.8 To the extent the services or Work required of Contractor under the Contract for Construction include professional services, Professional Liability insurance to compensate Owner for all negligent acts, errors and omissions by Contractor and Contractor's Personnel arising out of this Agreement, with limits of not less than One Million Dollars (\$1,000,000) per claim and in the aggregate. Such Professional Liability insurance policy shall: (a) be maintained for a period up to and including the date of the expiration of the applicable "statute of repose", (b) have a retroactive date prior to the performance of any professional services to be provided under the Contract for Construction, and (c) state that in the event of cancellation or non-renewal, the discovery period for insurance claims (tail coverage) shall be at least four (4) years.

## **13.2 Insurance Requirements Generally.**

13.2.1 All insurance policies shall be issued and countersigned by duly authorized representatives of such companies and shall be written on ISO standard forms or their equivalents.

13.2.2 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, that is licensed to provide such coverage in the State of Florida, and that has been in such insurance business continuously for not less than five (5) years immediately prior to the Effective Date, and (b) in a form satisfactory to Owner without unacceptable exclusions or exceptions to coverage.

13.2.3 All insurance policies shall be fully performable in Orange County, Florida, and shall be construed in accordance with the laws of the State of Florida.

13.2.4 All insurance policies to be provided by Contractor pursuant to the terms hereof must expressly state that the insurance company will accept service of process in Orange County, Florida, and that the exclusive venue for any action concerning any matter under those policies shall be in the appropriate state court situated in Orange County, Florida.

13.2.5 All policies and renewals thereof are to be written for not less than one (1) year.

13.2.6 All policy numbers must be clearly identified.

13.2.7 All liability policies must provide for claims to be made on an occurrence basis, except Professional Liability, which shall be written on a claims made basis. All claims made policies contributing to the satisfaction of the insurance requirements herein shall have an extended reporting period option or automatic coverage of not less than four (4) years. If provided as an option, Contractor shall purchase the extended reporting period on cancellation or termination unless a new policy is affected. Any new policy shall maintain the original retroactive date evidenced at the commencement of the Contract.

13.2.8 Indemnitees (hereinafter defined) must be named as additional insureds on the all liability policies (other than the Professional Liability policy) and all certificates of insurance, except that for the Professional Liability policy, shall include the following statement: "Indemnitees are added as additional insureds to the Commercial General Liability and Automobile Liability policies. Additional Insured status applies on a primary/non-contributory basis. Commercial General Liability, Automobile Liability, and Worker's Compensation Waiver of Subrogation applies in favor of Indemnitees." Owner shall be named as "Certificate Holder" on the Certificate of Insurance for Contractor's Professional Liability insurance policy.

13.2.9 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 and contain a severability or separation of insureds clause. Each insurance policy required by the Contract shall apply separately to each insured against whom claim is made and suit is brought, except with respect to limits of the insurer's liability.

13.2.10 The deductibles or self-insured retentions on Contractor's insurance policies shall not exceed Five Thousand Dollars (\$5,000) per occurrence (or claim for Contractor's Professional Liability Insurance policy, if applicable); provided, however, payment of any such deductible or self-insured amounts shall be at Contractor's sole cost and expense. It shall be the insurance company's responsibility to seek reimbursement from the insured. Companies issuing the insurance policy or policies shall have no recourse against Owner for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of Contractor.

13.2.11 The required insurance policies shall remain in effect for the benefit of Owner up to and including the applicable "statute of repose".

13.2.12 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. Contractor shall also notify Owner, in a like manner, within two (2) days after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverages or limits received by Contractor from its insurer, and nothing contained herein shall relieve Contractor of this requirement to provide notice.

13.2.13 In the event of a reduction in the aggregate limit of any policy to be provided by it hereunder, Contractor shall immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy.

13.2.14 Owner shall retain the right to review, at any time, coverage, form, and amount of insurance.

13.2.15 The procuring of required policies of insurance shall not be construed to limit Contractor's liability or to fulfill the indemnification provisions and requirements of the Contract.

13.2.16 All Certificates of Insurance will reference the contract, bid, project or job number on the certificate. All insurance carriers listed on the certificate must have their corresponding A. M. Best carrier ID listed.

13.2.17 Notices of Accidents (occurrences) and Notices of Claims associated with work being performed under the Contract, shall be provided to Contractor's or subcontractor's, as the case may be, insurance company and Owner as soon as practicable after notice to the insured.

**13.3 Waiver of Subrogation.** Contractor waives all rights of subrogation against Indemnitees for damages or injuries caused by perils covered by any insurance required to be maintained by Contractor or its subcontractors, to the extent such damages or injuries are covered by such insurance. Contractor shall require similar waivers from all of its subcontractors. If any policies of insurance required to be maintained by Contractor or its subcontractors require an endorsement to provide any waiver of subrogation referenced above, Contractor shall cause such policies to be so endorsed.

**13.4 Subcontractors' Insurance.** Contractor shall ensure that any and all Contractor's subcontractors also carry and maintain the above-specified policies of insurance meeting the requirements of **Sections 13.1, 13.2 and 13.3** above, unless other requirements are expressly agreed to by Owner in writing, and Contractor shall include language in all subcontracts binding Contractor's subcontractors to the terms and conditions of this **Article 13**, unless other requirements are expressly agreed to by Owner in writing. Contractor shall be held responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to subcontractors.

**13.5 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 subcontractors shall cause a certified copy of Contractor's and Contractor's subcontractors' 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. In no event shall any failure of Owner to receive copies or certificates of policies required under the Contract be construed as a waiver by Owner of Contractor's obligations to obtain insurance pursuant as required by the Contract. The obligation to procure and maintain insurance required by the Contract is a separate responsibility of Contractor and independent of its duty to furnish a copy or certificate of such insurance policies. The acceptance by Owner of any evidence of the insurance coverages and limits required by the Contract, including any Certificate of Insurance, policy or additional insured endorsement, does not constitute approval or agreement by Owner that the insurance requirements have been met or that the insurance policies shown on the evidence of insurance are in compliance with the requirements of the Contract. Contractor shall deliver the required evidence of insurance to the following address:

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

**13.6 Failure to Maintain Insurance.** The failure of Contractor or any of Contractor's subcontractors 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 or its subcontractor(s), as applicable; 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 or its subcontractor(s) from any amount due to Contractor under this Agreement or under any other agreement between Owner and Contractor.

**13.7 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.

**13.8 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 (a) denial of insurance coverage for the occurrence (a) or event which is the subject matter of the claim; or (b) refusal to defend any named insured.

**13.9 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 to deviate from the insurance requirements noted above, all of the above insurance requirements shall apply to Contractor.

**13.10 Bond Requirements.** Contractor shall, within five (5) days after this Agreement is executed by the Parties and before any portion of the Work is commenced, furnish Payment and Performance bonds (together, the "Bonds") on Owner's standard forms covering the full and faithful performance of the Contract for Construction and the

payment of obligations arising hereunder. The Bonds must comply with the following provisions and must be otherwise acceptable to Owner:

13.10.1 The Bonds shall each be in amount equal to the Contract Price for the Phase(s) of construction, and all subsequent increases.

13.10.2 A rider including the following provisions shall be attached to each bond (or, alternatively, each bond shall include the following language or substantially similar language acceptable to Owner): (a) the surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents; (b) the surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid Contractor shall automatically increase the obligation of the surety on the bond and notice to the surety is not required for such increased obligation; (c) any addition, alteration, change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of Owner or of Contractor to the other, shall not release the surety of its obligations hereunder, and notice to the surety of such matters is hereby waived; and (d) the surety agrees that it is obligated under the bonds to any successor, grantee, or assignee of the obligees.

13.10.3 The Bonds must be underwritten by a surety company which has a currently valid Certificate of Authority issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.

13.10.4 The surety company shall have currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.

13.10.5 The surety company shall be in full compliance with the provisions of the Florida Insurance Code.

13.10.6 The surety company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued.

13.10.7 The Bonds must be fully performable in Florida, with service and venue in Orange County, Florida.

13.10.8 If the Contract Price exceeds \$500,000.00, the surety company shall also comply with the following provisions:

13.10.8.1 The surety company shall have at least the following minimum ratings in the latest issue of Best's Key Rating Guide:

CONTRACT PRICE (\$)	POLICYHOLDER'S RATING	REQUIRED FINANCIAL RATING
500,000 to 1,000,000	A	CLASS IV
1,000,001 to 2,500,000	A	CLASS V
2,500,001 to 5,000,000	A	CLASS VI
5,000,001 to 10,000,000	A	CLASS VII
10,000,001 to 25,000,000	A	CLASS VIII
25,000,001 to 50,000,000	A	CLASS IX
50,000,001 to 75,000,000	A	CLASS X

13.10.8.2 The surety company shall not expose itself to any loss on any one risk in an amount exceeding ten percent (10%) of its surplus to policyholders, provided:

13.10.8.2.1 Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this Section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance to do business in this State have been met.

13.10.8.2.2 In the case of a surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any surety deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.

13.10.9 If the surety for any bond furnished by Contractor is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida, or it ceases to meet the requirements imposed by the Contract for Construction, Contractor shall, within five (5) days thereafter, substitute another bond and surety, both of which shall be subject to the minimum requirements noted above and Owner's approval.

13.10.10 In accordance with the requirements of Section 255.05(1)(a), Florida Statutes, within five (5) days after Owner's written approval of the Bonds and before commencing the Work, Contractor shall record in the Public Records of Orange County, Florida, a copy of the Bonds. Contractor shall deliver to Owner certified copies of the recorded Bonds within ten (10) days of recording of the Bonds but, in any event, before commencing the Work. The proper recording and delivery of such Bonds are conditions precedent to Owner's obligation to make any progress payments to Contractor hereunder.

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

**13.11 Indemnification.** To the maximum extent permitted by applicable law, Contractor shall defend, indemnify and hold harmless Owner, University of Central Florida Board of Trustees, and their respective officers, employees and trustees (collectively, "**Indemnitees**") from any and all liabilities, claims, damages, penalties, demands, judgments, actions, proceedings, losses or costs, including reasonable attorneys' fees and paralegals' fees, whether resulting from any claimed breach of this Agreement or the Contract for Construction by Contractor, for infringement of patent rights, copyrights, or other intellectual property rights, or from personal injury, bodily injury (including death), property damage, direct or consequential damages, or economic loss, to the extent caused, in whole or in part, by the negligence, recklessness, or intentional wrongful misconduct of Contractor or anyone employed or utilized by Contractor in the performance of the Contract for Construction. This indemnification obligation shall not be construed to negate, abridge or reduce, and shall be in addition to, any other rights or remedies which otherwise may be available to an indemnified party or person to the extent described in this Section. For the avoidance of doubt, such indemnification shall not include claims of, or damages resulting from, gross negligence, or willful, wanton or intentional misconduct of the Indemnitees or their officers, directors, agents or employees, or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of Contractor or any of Contractor's contractors, subcontractors, sub-subcontractors, materialmen, or agents of any tier or their respective employees. In claims against Owner indemnified under this Agreement 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 Agreement 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. The duty to defend under this **Section 13.11** is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of Contractor, Owner and any Indemnitee. The duty to defend arises immediately upon presentation of a claim by any party and written notice of such claim being provided to Contractor. Contractor's obligation to defend the specified Indemnitees shall be at Contractor's sole expense. Contractor shall respond within

fifteen (15) days to the tender of any indemnity claim for defense and/or indemnity by an Indemnitee, unless such person or party agrees in writing to an extension of this time. The defense provided by Contractor shall be by well qualified, adequately insured and experienced legal counsel acceptable to Owner. Contractor's indemnification and defense obligations under the Contract for Construction, including those specified in this Section, shall be deemed to fully comply with Section 725.06, Florida Statutes, including any amendments thereto, in all respects. If any word, clause or provision of any of the indemnification and defense provisions of the Contract for Construction is determined not to be in compliance with Section 725.06, Florida Statutes, 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 and defense obligations comply fully with Section 725.06, Florida Statutes, including any amendments, in all respects and, to the greatest extent permitted by Applicable Law, Contractor waives for itself and its insurers any and all claims that the indemnification and defense obligations under this Agreement violate Applicable Law.

## **ARTICLE 14    AUDIT RIGHTS**

**14.1    Record Keeping.** Contractor shall exercise such controls as may be necessary for proper financial management under the Contract for Construction and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to Owner. Contractor shall keep all records and accounts which concern or relate to the Work hereunder for a minimum of three (3) years from the date of termination of the Contract or the date the Project is completed, whichever is later or such longer period of time as may be required by law.

**14.2    Audits.** Owner, and any duly authorized agents or representatives of Owner, shall be provided access to all such records and accounts at any and all times during normal business hours upon request by Owner. Further, Owner, and any duly authorized agents or representatives of Owner, shall have the right to audit, inspect and copy all of Contractor's and any subcontractor's Project records and accounts as often as they deem necessary and Contractor shall cooperate in any audit, inspection, or copying of the documents. This access, inspection, copying and auditing rights shall survive the termination of the Contract.

**14.3    Records.** For purposes hereof, Contractor's "records and accounts" 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 for Construction, including books, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, correspondence, 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.

**14.4    Access.** Owner's authorized representative shall have reasonable access to Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the Contract for Construction, shall be provided adequate and appropriate work space at Contractor's facilities, may count employees at the Project 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.

**14.5    Adjustments.** If at any time, Owner conducts such an audit of Contractor's records and accounts and finds that Contractor overcharged Owner, Contractor shall pay to Owner the "**Overcharged Amount**", which is defined as the total aggregate overcharged amount together with interest thereon (such interest to be established at the rate of Twelve percent (12%) per annum). If the Overcharged Amount is equal to or greater than Ten Thousand and No/100 Dollars (\$10,000.00), Contractor shall pay to Owner the Overcharged Amount and the "**Audit Amount**", which is defined as the total aggregate of Owner's reasonable audit costs incurred as a result of its audit of Contractor. Owner may recover the Overcharged Amount and the Audit Amount, as applicable, from any amount due or owing Contractor with regard to the Project or under any other agreement between Contractor and Owner. If such amounts owed Contractor are insufficient to cover the Overcharged Amount and Audit Amount, as applicable, then Contractor shall pay such remaining amounts to Owner within seven (7) business days of its

receipt of Owner's invoice for such remaining amounts. In no event shall the Overcharged Amount or the Audit Amount be deemed a reimbursable Cost of the Work.

**14.6 Survival.** This **Article 14**, including all access, inspection, copying, auditing, reimbursement and repayment rights, shall survive the termination of the Contract.

**14.7 Flow Through.** 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 pursuant hereto includes the provisions of this Article.

## **ARTICLE 15 BACKGROUND SCREENING STANDARDS, CIVIL LITIGATION, AND E-VERIFY**

### **15.1 Background Checks.**

15.1.1 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.

15.1.2 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.

15.1.3 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.

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

15.1.5 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.

15.1.6 Contractor shall submit to owner an affidavit, attached as **Exhibit C**, affirming the employees listed in the affidavit have completed the required background check and have been deemed eligible by Contractor to provide services under this Agreement. Should there be a change in the employees listed on the affidavit, Contractor shall immediately submit an updated affidavit specifically identifying new or removed Contractor employees.

**15.2 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 the Work under this Agreement. Contractor must provide proof of enrollment as a professional 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.

**15.3 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 or 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 the cost incurred as a result of said termination.

**15.4 Termination.** Notwithstanding anything in the Contract for Construction to the contrary, Owner may terminate this Agreement immediately upon notice to Contractor for any violation of this **Article 15**.

**15.5 Flow Through.** Contractor shall incorporate the substance of this **Article 15** in all subcontracts under this Agreement.

## **ARTICLE 16 GOVERNMENT REGULATIONS**

**16.1 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.

**16.2 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).

**16.3 "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.

**16.4 Contact 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 (28 CFR, Part 5).

**16.5 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).

**16.6 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).

**16.7 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).

**16.8 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).

**16.9 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.



**16.10 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.

**16.11 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).

**16.12 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.

**16.13 Trench Safety Act.** Contractor certifies that it does, and shall, comply with the Trench Safety Act (Chapter 553, Florida Statutes).

**16.14 Immigration and Control Act.** Contractor certifies that it does, and shall, comply with the Immigration and Control Act of 1986 as applicable to Contractor, including required employment and identity verification procedures and record keeping requirements.

#### **ARTICLE 17 RESERVED**

#### **ARTICLE 18 DEFECTIVE WORK**

**18.1 Defective Work.** Work not conforming to the requirements of the Contract Documents shall be deemed defective Work. Should a disagreement occur between Contractor and Professional over the acceptability of the Work, Owner, in its sole discretion, shall have the right to determine the acceptability. If required by Owner or Professional, Contractor shall as directed, either promptly correct all defective Work, whether or not fabricated, installed or completed, or, if the defective Work has been rejected by Owner or Professional, promptly remove it from the site and replace it with non-defective Work. Contractor shall bear all direct, indirect and consequential costs of such correction or removal (including fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby, and shall hold Owner and Professional harmless for same. With respect to the correction of any defective or nonconforming Work, Contractor shall be liable for all damage to any part of the Work itself and to any adjacent property which is caused by such corrective work.

**18.2 Owner's Right to Stop Work.** Owner shall have the right to order Contractor to stop all or any portion of the Work if at any time Owner reasonably determines that Contractor's performance of the Work is not in compliance with the requirements of the Contract Documents. Such noncompliance shall include Contractor's failure to provide adequate labor, materials or equipment to satisfactorily maintain the various Project schedules (including the construction schedule). This right to stop the Work shall be exercised, if at all, solely for Owner's benefit and nothing herein shall be construed as obligating Owner to exercise this right for the benefit of Contractor or any other person.

**18.3 Acceptance of Defective Work.** Should Owner determine, at its sole opinion, it is in Owner's best interest to accept defective Work, Owner may do so. Contractor shall bear all direct, indirect and consequential costs attributable to Owner's evaluation of and determination to accept defective Work. If such determination is rendered prior to final payment, a Change Order shall be executed evidencing such acceptance of such defective Work, incorporating the necessary revisions in the Contract Documents and reflecting an appropriate decrease in the Contract Price. If Owner accepts such defective Work after final payment, Contractor shall promptly pay Owner an appropriate amount determined by Owner to adequately compensate Owner for its acceptance of the defective Work.

**18.4 Owner's Right to Perform Work.** If Contractor fails, within three (3) days after written notice from Owner or Professional, to correct defective Work or to remove and replace rejected defective Work as required by Owner or Professional, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any of the provisions of the Contract Documents, Owner may, correct and remedy any such deficiency; provided, however, in the event that any defective or non-conforming work is deemed by Owner in its sole discretion to present an immediate threat to safety or security, Owner shall be entitled to

immediately correct and fix such defective or non-conforming portions of the Work without three (3) days written notice to Contractor. To the extent necessary to complete corrective and remedial action, Owner may exclude Contractor from any or all of the Project Site, take possession of all or any part of the Work, and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Project Site and incorporate in the Work all materials and equipment stored at the Project site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Professional and their respective representatives, agents, and employees such access to the Project Site as may be necessary to enable Owner to exercise the rights and remedies under this Section. All direct, indirect and consequential costs of Owner in exercising such rights and remedies shall be charged against Contractor, and a Change Order shall be issued, incorporating the necessary revisions to the Contract Documents, including an appropriate decrease to the Contract Price. Such direct, indirect and consequential costs shall include fees and charges of engineers, architects, attorneys and other professionals, all court and arbitration costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of Contractor's defective Work. Contractor shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by Owner of Owner's rights and remedies hereunder.

## **ARTICLE 19    WARRANTIES**

**19.1    General Warranties.** Contractor expressly warrants to Owner that: (a) all materials and equipment to be incorporated into the Work shall be new unless otherwise specified; (b) all Work shall be of good quality, free from all defects and in conformance with the Contract Documents; and (c) all materials and equipment furnished under the Contract Documents shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturers, fabricators, suppliers or processors except as otherwise provided for in the Contract Documents. Contractor's warranty excludes remedy for damage or defect caused by Owner's abuse, modifications not performed by Contractor, improper or insufficient maintenance by Owner (unless such maintenance was performed in accordance with the directions from Contractor), improper operation by Owner (unless such operations were performed in accordance with the directions from Contractor), or normal wear and tear under normal usage. Contractor shall obtain and assign to Owner on a non-exclusive basis all warranties given to Contractor by any subcontractors or by any suppliers supplying materials, equipment or fixtures to be incorporated into the Project. Any warranty to be provided will be in such form as is acceptable to Owner and shall not include any exclusions, exceptions or modifications except to the extent approved by Owner in its sole discretion. Contractor shall conduct, jointly with Owner and Professional, a warranty inspection at six (6) months and eleven (11) months after the date Substantial Completion is achieved.

**19.2    Reserved.**

**19.3    Additional Warranties.** Contractor shall provide a minimum two (2) year warranty on all building components, which warranty commences on the date of Substantial Completion of the Work. 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.

**19.4    Correction, Repair, Replacement.** Correction, repair, or replacement of warranted Work described in this **Article 19**, or elsewhere in the Contract for Construction, shall be done without any additional expense to Owner during the applicable warranty period. If correction or repair of the same Work fails to result in a permanent fix or solution on more than two (2) occasions during the warranty period, Owner may at its sole discretion, demand replacement of the Work without any additional expense to Owner.

**19.5    Design Flaws.** Warranties in this **Article 19** 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 make a determination 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 20 TERMINATION AND SUSPENSION

### 20.1 Termination for Default.

20.1.1 Contractor shall be considered in material default of the Contract and such default shall be considered cause for Owner to terminate the Contract, in whole or in part, as further set forth in this Section, if Contractor: (a) fails to begin the Work under the Contract Documents within the time specified herein; or (b) fails to properly and timely perform the Work as directed by Owner or Professional or as provided for in the approved construction schedule; or (c) performs the Work unsuitably or neglects or refuses to remove materials or to correct or replace such Work as may be rejected as unacceptable or unsuitable; or (d) discontinues the prosecution of the Work contrary to the requirements of the Contract; or (e) fails to resume Work which has been suspended within a reasonable time after being notified to do so; or (f) becomes insolvent or is declared bankrupt, or commits any act of bankruptcy; or (g) allows any final judgment to stand against it unsatisfied for more than ten (10) days; or (h) makes an assignment for the benefit of creditors; or (i) fails to obey any Applicable Laws with respect to the Work; or (j) fails to promptly pay its subcontractors and suppliers; or (k) fails to supply the Project with sufficient numbers of workers, properly skilled workers, proper materials to maintain applicable schedules; or (l) materially breaches any other provision of the Contract Documents.

20.1.2 If Owner determines that Contractor is in default under the Contract, Owner shall notify Contractor in writing of Contractor's default(s). If Owner determines that Contractor has not remedied and cured the default(s) within three (3) days following receipt by Contractor of said written notice, then Owner, at its option, without releasing or waiving its rights and remedies against Contractor's sureties and without prejudice to any other right or remedy it may be entitled to hereunder or by law, may terminate Contractor's right to proceed under the Contract, in whole or in part, and take possession of all or any portion of the Work and any materials, tools, equipment, and appliances of Contractor, take assignments of any of Contractor's subcontracts and purchase orders that Owner may designate, and complete all or any portion of Contractor's Work by whatever means, method or agency which Owner, in its sole discretion, may choose.

20.1.3 If Owner deems any of the foregoing remedies necessary, Contractor shall not be entitled to receive any further payments hereunder until after the Work is completed. All monies expended and all of the costs, losses, damages and extra expenses, including all management, administrative and other overhead and other direct and indirect expenses (including Professional and attorneys' fees) or damages incurred by Owner incident to such completion, shall be deducted from the unpaid balance of the Contract Price, and if such expenditures exceed the unpaid balance of the Contract Price, Contractor shall promptly pay to Owner on demand the full amount of such excess, including costs of collection, attorneys' fees (including appeals) and interest thereon at the maximum legal rate of interest until paid. If the unpaid balance of the Contract Price exceeds all such costs, expenditures and damages incurred by Owner to complete the Work, Contractor shall not be entitled to any portion of such excess, except for the unpaid portion of the Contract Price earned or incurred prior to Contractor's right to continue performance under the Contract being terminated. These payment obligations shall survive termination of the Contract.

20.1.4 The liability of Contractor hereunder shall extend to and include the full amount of any and all sums paid, expenses and losses incurred, damages sustained, and obligations assumed by Owner in good faith under the belief that such payments or assumptions were necessary or required, in completing the Work and providing labor, materials, equipment, supplies, and other items therefor or re-letting the Work, and in settlement, discharge or compromise of any claims, demands, suits, and judgments pertaining to or arising out of the Work hereunder. Further, in the event Owner has exercised its right to terminate due to Contractor's default, Contractor shall be prohibited from bidding or otherwise seeking additional work from Owner in accordance with Owner's then current debarment policy.

20.1.5 If, after notice of termination of Contractor's right to proceed pursuant to this Section, it is determined for any reason that Contractor was not in default, or that its default was excusable, or that Owner is not entitled to the remedies against Contractor provided herein, then such termination shall be deemed a termination for Owner's convenience and Contractor's remedies against Owner shall be the same as and limited to those afforded Contractor under **Section 20.2** below.

## **20.2 Termination for Convenience and Right of Suspension.**

20.2.1 Owner shall have the right to terminate the Contract without cause upon seven (7) days written notice to Contractor. In the event of such termination for convenience, Contractor's recovery against Owner shall be limited to that portion of the Contract Price earned through the date of termination, together with any retainage withheld and reasonable termination expenses incurred, but Contractor shall not be entitled to any other or further recovery against Owner, including damages or any anticipated profit on portions of the Work not performed.

20.2.2 Owner shall have the right to suspend all or any portions of the Work upon giving Contractor two (2) days' prior written notice of such suspension. If all or any portion of the Work is so suspended, Contractor's sole and exclusive remedy shall be to seek an extension to the Contract Time in accordance with the procedures set forth in the Contract Documents. In no event shall Contractor be entitled to any additional compensation or damages except as otherwise expressly provided for in the Contract Documents; provided, however, if the ordered suspension exceeds ninety (90) days, Contractor shall have the right to terminate the Contract with respect to that portion of the Work which is subject to the ordered suspension. When all or a portion of the Work is suspended for any reason, Contractor shall securely fasten down all coverings and fully protect the Work, as necessary, from injury or damage.

**20.3 Limitation.** Under no circumstance shall Contractor be entitled to recover from Owner indirect, consequential, and special or punitive damages as a result of any termination, including lost profits and loss of business opportunity.

**20.4 Continuing Duty.** Irrespective of reasons for termination, if the Contract is terminated, Contractor shall, unless notified otherwise by Owner, shall (a) immediately stop work, (b) terminate outstanding orders and subcontracts, (c) settle the liabilities and claims arising out of the termination of subcontracts and orders, and (d) transfer title to Owner such completed Work, and, if paid by Owner, materials, equipment, parts, fixtures, information and such contract rights as Contractor has.

## **ARTICLE 21 CLAIMS AND DISPUTES**

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

**21.2 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.

**21.3 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.

**21.4 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.

**21.5 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.

**21.6 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 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.

**21.7 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.

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

**21.9 CHAPTER 558, FLORIDA STATUTES.** The Parties specifically opt out of the requirements of Chapter 558, Florida Statutes.

## **ARTICLE 22 MISCELLANEOUS PROVISIONS**

**22.1 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 above noted address by giving written notice to the other Party in accordance with the requirements of this Section.

Owner: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

**22.2 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.

**22.3 No Third Party Beneficiaries.** This Agreement shall inure solely to the benefit of the Parties and their successors and permitted 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.

**22.4 Time.** Time is of the essence in the performance of Contractor's duties the Contract for Construction. When any period of time is referenced by days herein, it shall be computed to exclude the first day and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the laws of Florida, such day shall be omitted from the computation, and the last day shall become the next succeeding day which is not a Saturday, Sunday or legal holiday. "Days" means consecutive calendar days unless a contrary intent is specifically indicated with regard to any reference to the word "days". The term "business day" as used herein shall mean all days of the week excluding Saturdays, Sundays and all legal holidays observed by Owner.

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

**22.6 Severability.** If any provision of this Agreement or the Contract for Construction, 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.

**22.7 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 for Construction 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 for Construction 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 for Construction. No approval, consent or waiver by Owner shall be effective unless it is in writing and then only to the extent specifically stated.

**22.8 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 Contractor's obligations.

**22.9 Governing Law.** The Contract for Construction shall be governed by, and construed under, the laws of the State of Florida, without regard to its choices of law provisions.

**22.10 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.

**22.11 No Bribes or Kickbacks.** Contractor shall not by any means: (a) 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; (b) 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 (c) 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.

**22.12 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.

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

**22.14 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.

**22.15 Survival.** All of Contractor's representations, warranties and indemnities made in, required by, or given in accordance with this Agreement and the Contract for Construction, as well as all continuing obligations of the Parties indicated in this Agreement and Contract for Construction, 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.

**22.16 Sufficiency of Services.** Nothing in the Contract for Construction is intended or shall be construed to require Owner to determine the adequacy, accuracy or sufficiency of the Work or Contractor's services and nothing in the Contract for Construction shall impose upon Owner a duty to third-parties to assure that Contractor or 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.

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

**22.18 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.

**22.19 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.

**22.20 Exhibits.** All Exhibits referenced herein and attached hereto are incorporated herein by reference, including:

**EXHIBIT A** -- CONTRACTOR’S TEAM

**EXHIBIT B** – PROJECT SCHEDULE

**EXHIBIT C** – AFFIDAVIT OF CRIMINAL BACKGROUND CHECK AND E-VERIFY

**22.21 Counterparts.** This Agreement may be executed and delivered in counterparts, each of which shall be deemed to be an original and all of which, taken together, shall be deemed to be one agreement. For purposes of executing this Agreement, a document signed and transmitted by facsimile or by emailed PDF scan shall be treated as an original document. The signature of either Party on a faxed or emailed PDF scanned version of this Agreement shall be considered as an original signature and the document transmitted shall be considered to have the same binding legal effect as if it were originally signed. At the request of either Party, any facsimile or PDF scanned document shall be re-executed by all Parties in original form. Neither Party may raise the use of facsimile, emailed PDF scan or the fact that any signature was transmitted by facsimile or email as a defense to the enforcement of this Agreement or any amendment executed in compliance with this Section.

*[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**

---

\_\_\_\_\_  
President

**EXHIBIT A**

**CONTRACTOR 'S TEAM**

[Insert Contractor 's Personnel Chart]

**EXHIBIT B**

**CONSTRUCTION SCHEDULE**

EXHIBIT C

**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