

**FLORIDA STATE UNIVERSITY GENERAL TERMS AND CONDITIONS OF THE  
CONTRACT FOR CONSTRUCTION**

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## **ARTICLE 1 DEFINITIONS**

When one of the following words, terms or phrases is used in the Agreement for Construction, it shall be interpreted or construed first as defined below, second according to its generally accepted meaning in the construction industry, and third according to its common and customary usage.

**Agreement for Construction:** A written agreement between the Owner and a Constructor for provision of goods, products, materials, equipment, systems, management, supervision, labor and services required to construct all or part of a Project, as more specifically defined in the Agreement for Construction Management Services, Agreement for Design-Build Services or Owner-Contractor Agreement, as applicable.

**Agreement for Professional Services:** A written agreement between the Owner and a Professional for provision of services and related items required to design or engineer all or part of a Project.

**Certificate of Occupancy:** A written document declaring the Work is compliant with all applicable codes and ready for occupancy as determined by the Building Code Administrator.

**Certificate of Substantial Completion:** Document declaring the Work substantially complete and suitable for occupancy or beneficial use by the Owner.

**Construction Documents:** Plans, general and technical specifications, change orders, revisions, addenda, and other information which set forth in detail the Work.

**Construction Price:** The dollar amount for which a Constructor agrees to perform the Work set forth in an Agreement for Construction.

**Construction Schedule:** The timetable which sets forth pertinent dates for timely completion of the Work.

**Constructor:** An entity, including but not limited to a general contractor, a trade contractor, a design-builder, a performance contractor or a construction manager, possessing a valid State of Florida license to perform construction and engaged by the Owner pursuant to a contract for construction. The Constructor shall designate in writing a representative who shall have express authority to bind the Constructor with respect to all matters under this Contract. The term "Constructor" means the Constructor or the Constructor's authorized representative.

**Contract Documents:** The Contract Documents consist of the Agreement between the Owner and the Constructor (hereinafter called the Agreement), General Terms and Conditions of the Contract, Drawings, Specifications, addenda issued prior to execution of the Contract, other documents and modifications issued after execution of the Agreement, including but not limited

to written amendments, change orders, contingency modifications, change directives, or a written order for a minor change issued by the Consultant(s). The Contract Documents shall, also, include the Owner's Design Guidelines for Construction, along with any written waiver of its requirements. Unless enumerated in the Agreement, the Contract Documents do not include bid requirement documents, advertisements, invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of addenda relating to bidding requirements.

**Contract Time:** The Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

The date of commencement of the Work is the date established in the Notice to Proceed.

**Drawings:** The Drawings are graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedule and diagrams.

**Final Completion:** The stage of construction when the Work has been completed in accordance with the Agreement for Construction and the Owner has received all documents and items necessary for closeout of the Work.

**Hazardous Substances:** All hazardous or toxic substances, materials, wastes, pollutants and contaminants which are listed, defined, or regulated under applicable laws, rules, regulations, codes, ordinances, orders and directives pertaining or regulated to health, safety or the environment. These include, but are not limited to, asbestos, lead, mercury, diesel oil, hydrocarbons, petroleum, biomedical and lab waste, and hazardous or toxic residue.

**Instruments of Service.** Representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Consultant and Sub-consultants. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar and supporting materials.

**Owner:** The Florida State University Board of Trustees, a public body corporate of the State of Florida, represented by its officers, trustees, and employees.

**Professional Consultant:** An entity, including but not limited to a licensed architect or engineer, engaged directly by the Owner to provide design or engineering services, hereinafter referred to as the Consultant. The Consultant may include the authorized representative of the professional consultant.

**Project:** The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

**Project Manual:** The document assembled for the Work which may include the bidding

requirements, sample forms, General Terms and Conditions of the Contract and Specifications.

**Site:** The geographical location of a Project, defined by legal boundary lines or set by coordinates and boundary lines shown in the Construction Documents as the Limits of Work.

**Specifications:** That portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

**Subcontractor:** A person or entity who holds a contract with the prime Constructor to perform a portion of the Work at the site. If required for permitting, Subcontractor(s) shall hold a valid State of Florida license for the performance of the contracted trade.

**Sub-subcontractor:** A person or entity who holds a direct contract with a Subcontractor to perform a portion of the Work at the site.

**Substantial Completion:** The stage of construction when the Owner can occupy or beneficially use satisfactorily completed Work for its intended purpose and a Certificate of Occupancy has been issued.

**Work:** Any and all construction 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 the Constructor to fulfill the Constructor's obligations. The Work may constitute the whole or a part of the Project.

## **ARTICLE 2 CONTRACT DOCUMENTS**

**2.1 Execution, Correlation and Intent.** Execution of the documents shall be accomplished by digital signature utilizing the Owner's established electronic processing. Inclusive within the Agreement shall be the Conditions of the Contract, the Drawings and the date of their latest revisions, the Specifications, and all Addenda issued prior to signing of the Agreement. The Constructor shall execute and return all required forms within ten (10) days of their receipt. Failure to return all forms correctly executed within ten (10) days of receipt without written extension by the Owner shall constitute an irregularity and shall constitute grounds, at the Owner's option, either for rejection and forfeiture of Bid Bond or for the deduction on a day for day basis from the time allotted for completion of the Work. If the Constructor is corporation, the Agreement shall bear the corporate seal and be signed by the company president or a company officer duly authorized to commit the company and attested by the secretary. If the Agreement is signed by an officer other than the president, the executed Agreement shall be accompanied by an authenticated document bearing the corporate seal authorizing the designation of the officer to execute on behalf of the corporation. The same officer can not execute the Agreement and the document of authority.

Execution of Payment and Performance Bonds on behalf of the Constructor shall be by the same person who executed the Agreement.

**2.2 Sets of Documents.** The Owner shall provide the Constructor with a complete set of contract documents in an electronic format suitable for reproduction.

**2.3 Information from Owner.** The Owner shall provide the Constructor with information reasonably necessary to assist the Constructor in performing its services including, if applicable and available:

- 1) the Site legal description and any required survey;
- 2) all written and tangible material of which it informs Constructor concerning conditions below ground at the Site;
- 3) if the Project involves an existing structure, all as-built drawings, record drawings, plans, specifications and structure system information with respect to such structure of which Owner makes Constructor aware; and
- 4) the Owner's pertinent Project dates and key milestone dates.

**2.4 Resolution of Questions.** The Constructor shall resolve all questions concerning the Construction Documents with the Consultant who has prepared the documents.

**2.5 Sufficiency of Owner Information.** The furnishing of information by the Owner to the Constructor shall not relieve the Constructor of responsibilities contained elsewhere in the Contract for Construction to evaluate information and documents provided by the Owner and the Constructor shall timely notify the Owner in writing of any additional information needed or services required from the Owner in order for the Constructor to perform the Work.

**2.6 Owner Disclaimer of Warranty.** The Owner has requested that its Consultant(s) prepare documents for the Project, including the plans and specifications for the Project, which are to be complete, accurate, coordinated, and adequate for bidding, negotiating and constructing the Work. However, the Owner makes no representation or warranty to the Constructor concerning the documents. The Constructor hereby acknowledges and represents that it has not relied, and does not and will not rely, upon any representations or warranties by the Owner concerning such documents.

Execution of the Agreement by the Constructor shall representation that the Constructor has visited the site, become familiar with local conditions under which the work is to be performed and correlated personal observations with requirements of the Contract Documents.

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Constructor. The Contract Documents are complementary

and what is required by one shall be as binding as if required by all; performance by the Constructor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

**2.7 Capitalization.** Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs, and Clauses in the document or (3) the titles of other documents published by the American Institute of Architects.

**2.8 Reference Standards.** Where reference is made to the Standard Specifications of the American Society for Testing and Materials (ASTM) or other standard specifications in connection with the required quality of materials, methods, etc., then the applicable specifications shall be of the latest revised edition effective as of the date the bids are opened, unless otherwise expressly provided in the technical specifications.

**2.9 Minimum Requirements.** In every case, requirements established by the Construction Documents shall be considered as the minimum which will be accepted.

**2.10 Trade Contract Extents.** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Constructor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**2.11 Conflicts in Documents.** In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up the Contract for Construction, the following shall control:

As between figures given on plans and scaled measurements, the figures shall govern;

As between large-scale plans and small-scale plans, the large-scale plans shall govern;  
and

As between plans and specifications, the requirements of the specifications shall govern.

**2.12 Shop Drawings and Submittals.** Shop drawings and other submittals from the Constructor or its subcontractors and suppliers do not constitute a part of the Contract for Construction.

**2.13 Contract Changes.** The Constructor understands and agrees that the Contract for Construction cannot be changed except as provided herein. No act, omission or course of dealing by the parties shall alter the requirement that modifications of the Contract for Construction can

be accomplished only by written documents signed by the parties.

## **2.14 Constructor's Reviews and Evaluations**

**2.14.1 Sufficiency of Construction Documents and Drawings.** By execution of the Agreement, the Constructor acknowledges its continuing duty to review and evaluate the Construction Documents during the performance of its services and shall immediately notify the Owner and the Consultant(s) about any problems, conflicts, defects, deficiencies, inconsistencies or omissions it discovers in or between the Construction Document and applicable laws, statutes, building codes, rules and regulations.

**2.14.2 Sufficiency of Site.** By execution of the Contract for Construction, the Constructor certifies that he/she has visited the Site, reviewed the Site survey, observed the existing conditions, and fully understands the Work. If the Work includes modification or sustainment of an existing structure, the Constructor certifies that a review of all as-builts and record documents has occurred and that the Constructor has verified and fully inspected all existing features prior to contract execution. The Constructor shall waive all rights to claims resulting from failure to familiarize itself with the Site or pertinent documents.

**2.14.3 Performance of Insufficient Work.** If the Constructor knowingly performs any work which includes a recognized problem, conflict defect, deficiency, inconsistency or omission, or if the Constructor knowingly performs work in variance of law, codes, rules or regulations, the Constructor shall be responsible for all consequences of such performance.

**2.14.4 Verification of Measurements and Calculations.** The Constructor shall be responsible for verification of all measurements and calculations required to verify accuracy of site conditions, dimensions of existing construction, or quantities of required materials. The dimensions and notes shown on the drawings shall take precedence over measured scale. The Constructor shall not determine quantities or means and methods by scaling drawings. Any discrepancy between the conditions shown in the contract documents and those verified shall be reported in writing and brought to the attention of the Consultant and the Owner immediately upon discovery. No additional compensation shall be due to the Constructor if such differences are not reported prior to the completion of the Work.

## **2.15 Ownership and Use of Consultant's Drawings, Specifications and Other Documents.**

The Drawings, Specifications and other documents prepared by the Consultant are instruments of the Consultant's service through which the Work to be executed by the Constructor is described. The Constructor may retain one (1) record set, and the Owner may retain an electronic record set. Neither the Constructor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright of the Drawings, Specifications and other documents



prepared by the Consultant(s), and unless otherwise indicated the Consultant(s) shall be deemed the author of them and will retain all common law, statutory and other reserved rights, in addition to the copyright. The Contract Documents are not to be used by the Constructor, any Subcontractor, or Sub-subcontractor or material or equipment supplier without the specific written consent of both the Owner and Consultant(s).

**2.16 Ownership of Documents Provided by the Constructor.** All information, documents, and electronic media prepared for or on behalf of the Constructor for the Project are the sole property of the Owner free of any retention rights of the Constructor . The Constructor hereby grants to the Owner an unconditional right to use, for any purpose whatsoever, any information, documents or electronic media prepared by or on behalf of the Constructor for the Project, free of any copyright claims, trade secrets or other proprietary rights with respect to such documents.

**2.17 Disclosure of Information.** The Constructor shall not disclose any information it receives from the Owner to any other person or entity except to the extent necessary to allow it to perform its duties under the Contract for Construction or as required by law.

The Constructor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Constructor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Consultant, and the Consultant's subconsultants.

**2.17.1 Instructions to Employees.** Because it is difficult to separate proprietary and confidential information from that which is not, the Constructor shall instruct its employees and agents to regard all information which is not in the public domain as information which is proprietary and confidential.

**2.18 Electronic Transmission of Documents and Project Data.** Digital transmission of project information and data shall comply with protocols established by the laws of the State of Florida, applicable regulations, and Florida State University Policies and Procedures.

**2.19 Questions Concerning the Construction Documents.** The Constructor shall resolve all questions concerning the Work with the Consultant who prepared the documents.

**2.20 Document Processing Performed by the Constructor.** The Owner may request that the Constructor process documents, and provide other related duties, including the provision of drawings, services, and certifications necessary for the procurement of permitting or other approvals by governmental entities having jurisdiction over the Project. Costs associated with the reproduction of documents for permitting and governmental approvals shall be reimbursed to the Constructor.

**2.21 Non-Publication.** Submission or distribution of documents to meet official regulatory requirements or for other required purposes in connection with the Project is not to be construed as publication in derogation of the Owner's common law copyrights or other reserved rights.

### **ARTICLE 3 OWNER**

**3.1 Owner's Project Manager.** The Owner shall appoint a Project Manager to represent the Owner in the administration and management of the contract on the Owner's behalf. The Owner's Project Manager is not the Owner's Authorized Designee but is responsible for enforcing the decisions of the Authorized Designee. The Project Manager shall, also, be responsible for the transmission of information from the Owner to the Consultant and Constructor. The Owner's Project Manager shall ensure that information or services under the Owner's control is furnished in a prompt manner in order to avoid delays or the systematic progression of the Work.

**3.2 Information to be Provided by Owner.** The Owner's Project Manager shall furnish information via the Consultant to the Constructor as reasonably necessary to perform the Work. If applicable and available, the following will be provided:

- 1) one (1) complete set of electronic Contract Documents developed by the Consultant(s) for the construction of the Project. This set shall be made available free of charge. If additional sets are requested by the Constructor, they will be furnished at a cost based upon the cost of reproduction and handling.
- 2) the Site legal description and any required survey, including but not limited to, site boundaries, easements and other limitations, utility locations, topography, and tree surveys
- 3) geotechnical information, including but not limited to scans, borings, x-rays, thermographic, acoustical, vibration, narrative reports and other data specific to the Site and its below ground conditions
- 4) if applicable, all existing as-built drawings, record drawings, plans, specifications and structure system information with respect to such structure
- 5) all known information regarding the presence of any hazardous waste or construction materials
- 6) the Owner's Project dates and key milestone dates, including occupancy requirements and known schedule impact dates
- 7) reasonable evidence that the Owner has secured sufficient financial arrangements

to fulfill the Owner's obligations per the terms of the Contract

**3.3 Sufficiency of Owner Provided Information.** The provision of information by the Owner to the Constructor does not relieve the Constructor of the responsibility to evaluate the documents and information provided by the Owner and to promptly notify the Owner in writing should additional information or services be required for the Constructor to evaluate and/or perform the Work. The Constructor shall be entitled to rely on the accuracy of information provided by the Owner but shall exercise proper precautions relating to the safe performance of the Work and shall not be relieved of the obligation to field verify conditions where warranted.

**3.4 Provision of Permits and Fees.** Except for permits and fees which are the responsibility of the Constructor as specifically prescribed under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

**3.5 Owner's Right to Stop the Work.** If the Constructor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 11.3 or persistently fails to carry out Work in accordance with the Contract Documents, or the Constructor or a Subcontractor has made false representation concerning the Contract requirements, the Owner, by written order may direct the Constructor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Constructor or any other person or entity, except to the extent required by Article 14.

**3.6 Owner's Right to Carry Out the Work.** If the Constructor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Constructor a second written notice to correct such deficiencies within a second seven-day period. If the Constructor within such second seven-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order or Construction Change Directive shall be issued deducting from payments then or thereafter due the Constructor the cost of correcting such deficiencies, including compensation for the Consultant's additional services and expenses made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Constructor are both subject to prior approval of the Consultant(s). If payments then or thereafter due the Constructor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

**3.7 Duties, Obligations and Responsibilities of the Owner.** The Owner shall perform the

following:

**3.7.1 Timely Compensation of the Constructor.** The Owner shall ensure that payments to the Constructor are made within the time constraints delineated in the Contract for Construction and in accordance with the laws of the State of Florida.

**3.7.2 Document Reviews.** The Owner shall review documents prepared by the Constructor in a timely manner and in accordance with schedule requirements. Review by the Owner shall be solely for the purpose of determining whether such documents are generally consistent with the Owner's intent and standard procedures. No review of such documents shall relieve the Constructor of any of its responsibilities. In addition, the Owner's review of documents for purposes of issuing a building permit shall not relieve the Constructor of any of its responsibilities.

**3.7.3 Status of Owner.** The Owner shall not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Constructor, for any of the foregoing purposes, be deemed the agent of the Owner.

**3.7.4 Owner's Utilities.** The Constructor shall be responsible to provide and pay for consumption of and connections to, utilities required for temporary service and construction services, if required.

## **ARTICLE 4 OWNER'S CONSULTANTS**

**4.1 Owner's Professional Consultants.** The Owner shall retain a lawfully licensed Consultant to provide professional design and administration during performance of the Work. Unless otherwise directed by the Owner, the Owner's Consultant shall act as the Owner's design representative and shall consult with and advise the Owner on all design and technical matters. The Consultant will act as initial interpreter of the contract requirements and shall advise the Owner on all claims.

**4.1.1** The authorized representatives of the Consultant and other such persons as designated by the Owner shall have access to and be permitted to inspect all work, subcontracts, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records wherever they are in preparation and progress. The Constructor shall provide proper facilities for such access and inspection and, when required, exact duplicate copies of the aforementioned data shall be furnished.

**4.2 Consultant's Contract Administration Duties.** The Consultant's duties to provide contract administration shall commence with the Notice to Proceed with Construction and shall

continue throughout until the final payment is made to the Constructor or until the Project is closed or the Owner concurs that the Consultant's duties are complete. The scope of services to be provided by the Consultant during construction shall be as described in the Contract Documents, unless modified by written instrument.

**4.3 Consultant Site Visits.** The Consultant shall have access to the site at all times and shall visit with a frequency as specified in the Consultant's agreement for design services. Visits shall be of a frequency sufficient to ensure familiarization with the progress and quality of the Work and to inspect the Work for compliance with the Contract for Construction, including but not limited to, approved shop drawings, submittals, applicable laws, building codes, rules or regulations of authorities having jurisdiction, and construction schedule. The Consultant shall not be required to make continuous or exhaustive visits to the site to check quality or quantity of the Work but will endeavor to keep the Owner informed and protected against defects and deficiencies in the Work. The Consultant shall not have authority to direct means and methods of construction, techniques, sequencing, procedures, safety precautions or programs in connection with the Work, since these are the sole responsibility of the Constructor.

**4.3.1** The authorized representatives and agents of the Consultant, Owner, and such other persons as the Owner may designate shall have access to and be permitted to inspect all Work, subcontracts, materials, payrolls, records of personnel, invoices of materials and other relevant data and records wherever they are in preparation and progress. The Constructor shall provide proper facilities for such access and inspection and, when required, exact duplicate copies of the aforementioned data shall be furnished.

**4.4 Consultant Rejection of Work.** The Consultant shall have authority to disapprove or reject any Work which is deemed non-compliant with the Construction Documents. The Consultant shall take prompt action to reject Work which does not conform to and comply with requirements, in order to limit exposure to the Owner or Constructor.

**4.5 Errors, Omissions, and Failure to Complete the Work.** The Consultant will have no responsibility for the Constructor's failure to perform the Work, in accordance with the Contract Documents. Neither shall the Consultant bear any responsibility for performance by the Constructor which results in work which includes errors or omits work shown in the Contract Documents.

**4.6 Consultant Review of Testing, Inspections, and Reports.** Pursuant to the requirements of the Contract Documents for inspections and testing, the Consultant shall review results and reports of such events and shall take appropriate action, including acceptance, rejection, approval with further testing, corrective action or limited approval with comments.

**Consultant Right to Require Additional or Special Inspection and Testing.** The Consultant may require inspection and testing beyond that specified in the Contract Documents or by the authority having jurisdiction or the Project, when in the professional judgement of the Consultant the additional inspection and/or testing is deemed necessary and essential to the safety, quality, or performance of the Project or is additionally required to ensure compliance with the intent of the

Contract Documents.

**4.7 Consultant Review of Shop Drawings and Submittals.** The Consultant will review and approve, reject or take other appropriate action on product and material submittals as required to be submitted by the Contract Documents. Such submittals shall be made prior to their incorporation in the Work and may include shop drawings, product data, samples and proposed equal materials and equipment, and requested substitutions. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Constructor as required by the Contract Documents. Nor shall the Consultant's review relieve the Constructor of any responsibility for inspection and supervision of its subcontractors, suppliers, and installers or for requirements to provide a warranty as required by the Contract Documents. The Consultant shall take action on such submittals within (14) calendar days of receipt, and will not approve any submittals which do not comply with the Contract Documents. The Consultant's review of submittals shall not constitute final acceptance of materials or equipment should such be found to be defective or not as represented by approved submittals or other requirements of the Contract Documents. The Consultant's approval of a specific item shall not indicate approval of an assembly of which the item is a component. The Constructor shall remain responsible for details and accuracy, for confirming all quantities, dimensions, fabrication processes, appropriate substrate conditions, techniques for installation, safety procedures and all other means and methods required to perform the Work.

**4.8 Consultant's Clarifications and Supplemental Information.** When requested in writing by the Constructor, the Consultant shall promptly and with sufficient detail provide written or graphic interpretation and decisions necessary to further explain and define the Work. Such actions shall be accomplished in a manner which shall not unnecessarily delay the Constructor from performance of the Work. When making interpretations and decisions, the Consultant shall endeavor to secure faithful performance by both the Owner and the Constructor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

**4.9 Interpretations and Decisions of the Consultant.** The Consultant will endeavor to render interpretations which are consistent with the intent of and reasonably inferable from the Contract Documents. Information provided by the Consultant will be in writing or in the form of drawings. When making such interpretations and decision, the Consultant will endeavor to secure faithful performance by both the Owner and the Constructor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

**4.10 Artistic Interpretations.** The Consultant's interpretation and decisions relating to the artistic effect of the Work shall be final if not inconsistent with the Contract Documents.

**4.11 Communications During Construction Administration.** The parties agree to cooperate and communicate as required for the successful completion of the Project. Unless

otherwise provided in the Contract Documents, the Owner and the Constructor shall communicate through the Consultant. Communications with sub-consultants to the primary Consultant shall be through the primary Consultant. Communications between the Consultant and the Constructor's sub-contractors and material suppliers shall be through the Constructor. Communications between separate Constructors shall be the responsibility of the Owner.

**4.12 Consultant Preparation and Review of Change Orders.** The Consultant shall advise the Owner as pertains to the Constructor's request for a change to the contract cost, time, or project scope. The Consultant shall review and make recommendations concerning the Constructor's proposed value engineering or substitutions of materials, equipment, or techniques required by the Contract Documents. The Consultant will administer and manage, all change order requests and change orders on behalf of the Owner. The Consultant shall certify and execute the change order and include the Consultant's Change Order Justification statement.

**4.12.1** The Consultant may prepare Construction Change Directives and minor changes to the work as required.

Minor changes are those which are consistent with the intent of the Contract Documents and require no adjustment in the contract sum nor extension of the contract time. Such changes shall be performed promptly, shall be written orders, and shall be binding on the Owner and Constructor.

**4.13 Consultant Evaluation of Constructor's Performance.** The Consultant will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or Constructor. The Consultant's response to such requests will be made within (15) days after written request is made for them.

**4.14 Consultant Review of Constructor's Applications for Payment.** Based upon the Consultant's observations and evaluations of the Constructor's Application for Payment, the Consultant will review and certify the amounts due the Constructor and will execute Certificates for Payment in such amounts.

**4.15 Substantial and Final Completion Inspections.** The Consultant will conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion. The Consultant will develop a list of all outstanding items and will forward to the Owner, along with electronic records and warranties required by the Contract and assembled by the Constructor. Upon compliance with all Contract Documents, the Consultant will execute a final Certificate for Payment.

**4.16 Termination of the Consultant.** Should the Consultant's contract be terminated due to any cause prior to the completion of the Work, the Owner shall appoint a replacement, whose qualifications and duties shall be the same as the former consultant.

**4.17 Professional Relationship to Constructor.** The duties, obligations and responsibilities

of the Constructor under the Contract for Construction shall not be changed, abridged, altered, discharged, released, or satisfied by any duty, obligation or responsibility of any Consultant. The Constructor shall not be a third-party beneficiary of any agreement by and between the Owner and any Consultant. The duties of the Constructor to the Owner shall be independent of, and shall not be diminished by, any duties or obligations of any Consultant to the Owner.

## **ARTICLE 5 CONSULTANT'S PROJECT REPRESENTATIVE(S)**

**5.1 Additional Site Representation.** If the Owner and Consultant agree, the Consultant will provide one or more project representatives to assist in carrying out the Consultant's responsibilities at the site.

**5.2 Authorized Duties and Responsibilities.** The duties, responsibilities and limitations of authority of such project representatives shall be as set forth herein:

**5.2.1** The Consultant's Project Representative(s) will:

- 1) Assist the Constructor in obtaining interpretation of the Contract Documents from the Consultant.
- 2) Conduct daily on-site observations for determining conformance to the Contract Documents in regard to Work, materials and equipment, etc.
- 3) Request additional detail and/or information from the Consultant when needed by the Constructor.
- 4) Evaluate suggestions and/or modifications submitted by the Constructor and transmit these to the Consultant with recommendations.
- 5) Observe problems which may create delays in construction and report these to the Consultant.
- 6) Maintain official relationship only with the Constructor and his job superintendent(s) regardless of which Subcontractor's Work is involved.
- 7) Attend all required construction conferences and participate in discussions of the Work.
- 8) Maintain a daily log of Work activity including but not limited to: hours on the job site, weather conditions, daily construction activity, number of men in each trade on the site, with specific identification of ongoing MBE activities, general observations, written directives to the Constructor, and visitors.



- 9) If, upon inspections or observations, Work is found not to be in accordance with Contract Documents, advise Constructor verbally and in writing, that the Work is not in accordance with the Contract Documents. Request further directions from the Consultant if the Constructor refuses to correct the Work.
- 10) Observe and record that tests and inspections required to be performed by others, in addition to those performed by Consultant's representative and/or the Consultant, are actually performed, in accordance with the Contract Documents.
- 11) When requested by the Owner, accompany all state and federal officials on inspections of construction and record the inspection in the log.
- 12) Cooperate with the Owner's authorized University representative and provide the representative with all required information about the Work.
- 13) Accept no directions or instructions from anyone other than the Consultant.
- 14) Maintain in an orderly manner, files of correspondence, reports of job conferences, shop drawings and samples, copies of Contract Documents, change orders, addenda, supplemental drawings, and job log.
- 15) Review Applications for Payment submitted by Constructor and recommend to the Consultant for appropriate action.
- 16) Participate in the observations of construction with the Consultant and the University's authorized representative at regular intervals and at Substantial Completion.
- 17) Refer all communications from University's authorized representative to the Consultant.
- 18) Copy University's authorized representative on all correspondence related to the Project.
- 19) Review plans, specifications and approved shop drawings on a regular basis. Advise the Consultant immediately upon discovery of any errors and omissions in the Contract Documents, or construction problems.
- 20) Advise Constructor and Consultant of Work being performed without approved shop drawings when such shop drawings are required by specifications.
- 21) Check materials and equipment delivered to the job site against specifications, approved samples, shop drawings and related correspondence. When observed to be in conflict, advise Constructor and Consultant.

- 22) Check that Constructor is maintaining record drawings of as-built conditions, from which contract record sets are to be developed.
- 23) Act as liaison between the Constructor and the University's authorized representative in the coordination of the Constructor's schedule and the University's requirements.
- 24) Provide such other services as may be required in the Owner's or Consultant's interests or in the advancement of the Work.

**5.2.2** The Consultant's Project Representative is not authorized to do the following:

- 1) Authorize deviations from the Contract Documents, unless approved in writing by the Consultant and the Owner.
- 2) Expedite the Work for the Constructor.
- 3) Advise the Constructor on building techniques or scheduling.
- 4) Approve Shop Drawings.
- 5) Issue Certifications for Payment.
- 6) Approve Substitutions.
- 7) Get involved in disputes between Constructor and Subcontractor.
- 8) Get involved in disputes or problems between Subcontractor and Sub-subcontractor.
- 9) Offer advice to Constructor or Subcontractors on how to perform the Work whether solicited from the Constructor or not.
- 10) Shut down the job except in extreme emergencies and except under certain conditions as authorized by the Consultant.

## **ARTICLE 6 CONSTRUCTOR**

**6.1 Qualifications.** The Constructor shall be lawfully licensed in the jurisdiction where the

Project is located at the time of selection or opening of bids. The Constructor shall possess the capability of procuring all bonds and insurances upon Notice of Award. If the Constructor seeking selection is a joint venture firm, both parties must be licensed at the time a selection proposal or response to bid request is submitted.

**6.2 Responsibilities & Obligations.** The Constructor shall perform the Work in accordance with the Contract Documents and shall complete its obligations under the Contract for Construction using its best skill and attention. The Constructor covenants with the Owner to furnish management, supervision, coordination, labor and services, which expeditiously, economically and properly completes the Work in the manner most consistent with the Owner's interests and objectives and which are in accordance with the highest standards currently practiced by persons and entities performing or providing management, supervision, coordination, labor and services on projects similar in size, complexity and cost to the Project.

**6.2.1 Work in Accordance with Terms of Contract.** No activities or duties performed by the Consultant in administration of the Contract, tests or inspections, or approvals by any other entity shall relieve the Constructor of obligations to perform the Work in accordance with the terms of the Contract.

**6.2.2 Responsibility for Professional Services.** Unless specifically required by the Contract Documents, the Constructor shall not be required to provide professional services which constitute the practice of architecture or engineering. Only services shown in the Contract Documents, relating to divisions of the Work for which it is customary and standard for the Constructor's Subcontractors to employ licensed engineers for design, shall be required.

**6.2.3 Conformance of Documents to Other Requirements.** The Constructor is not required to ascertain that the Construction Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities, but the Constructor shall promptly notify the Consultant of any nonconformity discovered by or made known to the Constructor.

**6.2.4 Review and Detection of Conflict, Clashes, Errors or Omissions.** The Constructor shall carefully study and compare the Contract Documents for each discipline with each other and with information furnished by the Owner and promptly notify the Consultant(s) of any conflicts, clashes, errors, or omissions.

**6.2.5 Field Verification of Existing Measurements and Conditions.** The constructor shall field verify all measurements and conditions prior to beginning any Work and promptly notify the Consultant of any discrepancies, errors, or omissions. Because the Contract Documents are complementary, the Constructor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner. The Constructor shall take field measurements of any existing conditions related to that

portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Constructor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however the Constructor shall promptly report to the Consultant any errors, inconsistencies or omissions discovered by or made known to the Constructor as a request for information in such form as the Consultant may require. It is recognized that the Constructor's review is made in the Constructor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

**6.2.6 Review of As-Built Records.** If the Project includes the renovation of an existing facility or construction, the Constructor shall thoroughly review all as-built and record drawings, plans, and specifications and shall bring to the Owner's attention any condition believed to negatively impact or preclude the performance of the Work.

**6.2.7 Failure to Perform Obligations or Notify.** The Constructor's failure to perform obligations required herein shall result in the Constructor's obligation to pay such costs and damages to the Owner as would have been avoided if the Constructor had performed such obligations. If the Constructor performs those obligations, the Constructor shall not be liable to the Owner or Consultant for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for non-conformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

**6.2.8 Waiver of Claims.** Claims which result from the Constructor's failure to field verify or review existing conditions and as-built documentation shall be deemed to be waived.

**6.2.9 Conformance with Owner's Design Guidelines or Construction Standards.** The Constructor shall bring to the attention of the Owner and Consultant any items known to deviate from the Owner's design guidelines and shall ensure that the item is brought into compliance or shall request and receive a written waiver prior to proceeding with the work.

**6.3 Compliance with Governmental Requirements.** The Constructor shall comply with all applicable laws, statutes, building codes, rules, regulations and lawful orders of all governmental, public agencies and authorities having jurisdiction over the Project. If requested by the Owner, the Constructor shall prepare and file documents required to obtain, and shall obtain, all necessary approvals and permits, including building permits, life safety permits, and connection permits necessary for the proper execution of the Work. The Constructor shall be responsible for all required governmental notices and reports necessary to demonstrate permit compliance.

**6.3.1 Construction Stormwater Permits.** The Constructor shall be responsible for

obtaining and maintaining compliance with all construction stormwater permitting, including National Pollutant Discharge Elimination System (NPDES) and Municipal separate storm sewer system permits (MS4).

**6.3.2 Non-compliance.** If the Constructor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Consultant and Owner, the Constructor shall assume full responsibility for such Work and shall bear the attributable costs.

**6.4 Safety.** The Constructor shall be solely responsible for and have control over means, methods, techniques, sequencing, and procedures for coordinating and constructing the Work, including site safety. The Constructor shall implement and enforce adherence to a safety program which meets regulatory requirements for protection of persons, property, and materials.

**6.5 Use of Site.** The Constructor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulation, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. In the absence of legal site boundaries, the Constructor shall coordinate the limits of operations to that described by the Contract Documents in the limits of the Work as approved by the Owner.

**6.5.1 Limits of Construction.** Prior issuance of a building permit and notice to proceed, the Constructor shall submit a site usage plan to the Owner indicating intended activities to occur on the site. The plans shall include location of construction fencing, access drives, laydown areas, proposed construction trailers, directional and informational signage, and other requirements necessary for the performance of work on the site.

**6.6 Protection of Project and Site.** The Constructor shall not damage, endanger, compromise, or destroy any part of the Project or the Site, including by way of example and not limitation, work being performed by others on the Site, monuments, stakes, benchmarks and other survey points, utility services, and existing features including structures, landscape, trees, plazas and walkways on the Site. Should the Constructor damage, compromise or destroy any part of the Project or the Site, the Constructor shall be fully and exclusively responsible for and bear all costs necessary to return the Project or Site to its pre-damaged condition.

**6.7 Owner's Use of and Access to the Site.** The Constructor shall perform the Work so as not to interrupt any operations of the Owner on the Site.

**6.7.1 Access by Owner.** The Constructor understands and acknowledges that the Owner may need access to or use of certain areas of the Site or Work prior to the Constructor's achievement of Substantial Completion, and that such occupancy, access or use shall not constitute the Owner's acceptance of any Work.

**6.7.2 Areas Restricted by Owner.** The Constructor shall not enter any Owner-

occupied area of the Site or Project unless first approved and scheduled by the Owner. The Constructor understands and acknowledges that the Owner may incur damages if the Owner's operations on the Site are interrupted or impaired as a result of the Work.

**6.7.3 Coordinated Construction Operations.** The Constructor shall afford the Owner's own forces, and other consultants, trade contractors, subcontractors and suppliers, access to the Site for performance of their activities, and shall connect and coordinate its construction and operations with theirs as required by the Construction Documents.

**6.8 Incident Reporting.** The Constructor shall immediately report to the Owner and the Consultant any incident which may negatively affect the quality of the Project or the progress in performing the Work, including but not limited to damages to work in place, discovery of unforeseen conditions, labor disputes, accidents, delays, and other occurrences with significant impact.

**6.9 Hazardous Materials.** The Constructor shall immediately notify the Owner and the Consultant(s), both orally and in writing, of the presence and location of any physical evidence of, or information regarding, environmental contamination on the Site (including but not limited to Hazardous Substances and petroleum releases) of which it becomes aware. If the Constructor encounters environmental contamination (including but not limited to Hazardous Substances), the Constructor shall (i) immediately stop performance of Work or that portion of the Work affected by or affecting such contamination; (ii) secure the contaminated area against intrusion; (iii) not disturb or remove the contamination; (iv) not proceed, or allow any subcontractor or supplier to proceed, with any Work or other activities in the area affected by such contamination until directed to do so by the Owner; and (v) take any other steps necessary to protect life and health.

**6.10 On Site Records.** The Constructor shall maintain at the Site one complete paper copy of all drawings, specifications, addenda, approved shop drawings, daily logs, change orders, submittals, other modifications and all other documents generated throughout the course of the project. Documents shall be maintained in good order and accurately marked to depict all changes as they occur during construction. If approved by the Owner, the Constructor may provide the as-built documents in electronic format, in lieu of, paper copy. If a digital copy is approved, the Constructor shall provide an on-site computer workstation to be available for viewing documents during construction by the Owner, the Consultant(s), quality control personnel, Building Officials, and others reviewing the Project. The daily logs shall contain detailed information regarding weather conditions, materials delivered, work performed, operating hours, subcontractors present and working on the Project, staffing of each subcontractor, visitors log, and description of any other item pertinent to the work of that day.

**6.11 Quality Control and Testing.** The Constructor shall develop and implement a quality management program to ensure quality construction. Unless otherwise specified in the contract for Construction, the Constructor shall select the quality control and testing agencies, subject to

Owner's written approval. The Constructor shall coordinate all tests and inspections required by the Construction Documents, and the Constructor shall arrange for tests and inspections to be conducted as necessary to avoid any interference with the progress of Work. No claims for extension of time or extra costs will be allowed on account of any testing, retesting, inspection, re-inspection, or rejection of Work when defective or deficient Work is found. Cost of specified measures and tests required by the Construction Documents and performed by Owner-approved quality control and testing agencies shall be included in the Cost of Work.

**6.12 Supervision and Construction Procedures.** The Constructor shall supervise and direct the Work, using the Constructor's best skill and attention.

**6.12.1 Subcontract Services.** All services rendered by the Constructor for the Project shall be performed by or under the immediate supervision of persons possessing expertise in the discipline of the service being rendered. The Constructor shall manage and have responsibility for all coordination of the subcontracts. For Construction Management or Design Build projects, any self-performance of Work by the Constructor shall be pre-approved by the Owner and utilize the Owner's standard policies, procedures, and documentation.

**6.12.2 Means and Methods.** The Constructor shall supervise and direct the Work, using the Constructor's best skill and attention. The Constructor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters.

**6.12.3 Errors and Omissions.** The Constructor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Constructor.

**6.12.4 Obligation to Perform.** The Constructor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Consultant in the Consultant's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Constructor.

**6.12.5 Duty to Inspect Completed Work.** The Constructor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

**6.12.6 Construction Meetings.** The Consultant will schedule periodic construction meetings, which the Constructor shall be required to attend.

**6.12.7 Cooperate and Coordinate.** The Constructor shall, in the course of providing

the Work, cooperate and communicate with the Owner and all other persons or entities as required for satisfactory completion of the Project.

**6.12.8 Coordination with Other Construction on the Site.** The Constructor understands and acknowledges that the Work referred to in the Contract for Construction may be only part of the Project and that the Project may include the construction of other structures or other construction activities on the same Site. The Constructor shall conduct all its activities so as not to interfere with the construction of, or operations within or from, other structures on the Site, and shall if requested not unreasonably withhold from the Owner or a separate contractor the Constructor's consent to cutting or otherwise altering the Work.

**6.12.9 Protection of Work in Place and Work by Others.** The Constructor shall take precautions to ensure that no part of the Project or Site is damaged, endangered, compromised, or destroyed, including but not limited to, work being performed by others on the Site, such as monuments, stakes, benchmarks and other survey points, utility services, landscape/trees, and existing features or structures on the Site. The Constructor shall not cut or otherwise alter such construction except with written consent of the Owner and of any separate contractor in the Owner's employ. The Constructor shall be fully and exclusively responsible for and bear all costs associated with remedy, replacement, and mitigation resulting from unauthorized action.

**6.13 Labor and Materials.** Unless otherwise provided in the Contract Documents, the Constructor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**6.13.1 Maintenance of Climatic Conditions.** It shall be the responsibility of the Constructor to provide at the Constructor's expense, the power, fuel and equipment necessary to maintain climatic conditions including humidity when specified or necessary for Work to progress.

**6.13.2 Labor Force Standards.** The Constructor shall enforce strict discipline and good order among the Constructor's employees and other persons carrying out the Contract. The Constructor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

**6.14 Competitive Procurement and Award of Subcontract Services.**

**6.14.1 Lump Sum General Construction Project.** If the Project has been bid by the Owner as a lump sum price and awarded to the lowest bidder with the lowest bid received, the awarded Constructor shall within (30) days, or earlier if so stipulated in the Contract Documents, furnish to the Owner and through the Consultant the names of



persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Consultant will promptly reply to the Constructor in writing stating whether or not the Owner or the Consultant, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Consultant to reply promptly shall constitute notice of no reasonable objection. For those lump sum projects awarded based upon lowest received bid and utilizing the Owner's own design professionals, a list of subcontractors shall be submitted directly to the Owner's project representative.

**6.14.2 Construction Management/Design-Build Project.** If the Constructor is authorized to perform construction management or design build services pursuant to FSU Policy & Procedure 4-OP-B-11-D2, Administration of Construction Manager Agreements or 4-OP-B-14, Administration of Design-Build Agreements, the Constructor shall develop and competitively bid or quote trade portions of the Work on behalf of the Owner. If required by University Purchasing Procedures, the Constructor shall publicly advertise each bid package for the specified time period. The Constructor shall perform pre-qualification reviews and conduct bid openings as a service for the Owner. The Constructor shall take actions to protect the Owner's interests, including provision of complete scope, competitive pricing, quality assurance, adequate and skilled labor, ability to meet schedule requirements, and other criteria as agreed by the Owner. The Constructor shall not elect to self-perform any work without specific approval by the Owner.

**6.14.2(a) Subcontract Award Recommendations.** After receipt of bids, the Constructor shall review each scope, the proposed pricing, and the line item budget and shall prepare a Recommendation of Award package for the subcontract work. The package shall include a Bid Tabulation recording of all bidders and their respective proposed pricing for the base bid, any alternates and any voluntary alternate deductions. The Recommendation of Award form shall include the name of the recommended bidder, the proposed price, an accounting of the price relative to the budget, and a proposed funds source if exceeding the budget. If the recommendation is made for a bid which is not the lowest received price, a statement shall be included explaining the reason for the recommendation. The award form shall be signed by the Constructor, the Consultant, and the University Project Manager.

**6.14.2(b) Self-performance by the Constructor.** When warranted, the Constructor may request to self-perform a portion(s) of the Work. Upon approval to bid and subsequent determination to be the lowest responsive bid, the Owner may approve such self-performance pursuant to the University's Procedures for Self-Performance of Work included in Policy & Procedure 4-OP-B-11-D2.

**6.14.2(c) Pecuniary Interests.** Prior to the opening of bids, the Constructor shall disclose any pecuniary interests, direct or indirect, which the Constructor

holds with any potential subcontracting entity. The Owner may choose to require execution of Self-performance documentation or may choose to disallow the acceptance of bid proposals.

**6.15 Minority Business Enterprise Involvement.** The Owner encourages the Constructor to involve minority firms in its construction program through the implementation of practices including but not limited to:

- 1) conducting pre-bid meetings to inform minority business enterprises of contracting and subcontracting opportunities
- 2) advertisement in general circulation, trade association, or minority-focus media concerning subcontracting opportunities
- 3) providing written notice of pending opportunities to relevant subcontractors listed on local and statewide minority vendor lists
- 4) establishing bid packages tailored to facilitate minority business participation
- 5) distributing project information to Office of Supplier Diversity
- 6) negotiations in good faith with interested minority businesses
- 7) effective use of available community resources in recruiting minority business services

**6.15.1 MBE Reporting.** The Constructor shall maintain records of minority business participation and, if requested by the Owner, shall submit a report describing MBE involvement in the project.

**6.16 Objection to Recommended Subcontract.** If the Owner or Consultant has reasonable objection to a person or entity proposed by the Constructor, the Constructor shall propose another to whom the Owner or Consultant has no reasonable objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order or Contingency Modification shall be issued. However, no increase in the Contract Sum shall be allowed for such change unless the Constructor has acted promptly and responsively in submitting names as required.

**6.17 Objection to Subcontract Change After Award.** The Constructor shall not change a Subcontractor, person or entity previously selected if the Owner or Consultant makes reasonable objection to such change including, but not limited to, objections related to MBE participation.

**6.18 Award and NTP to Subcontractor.** The Constructor shall not award, or enter into, any contract with a Subcontractor, person or entity prior to receipt of a Notice to Proceed and

executed Recommendation of Award form by the Consultant and the Owner.

**6.19 Listing of Major Sub-subcontractors.** The Constructor and the Subcontractors shall, within forty-five (45) days of the Notice to Proceed, provide the names of all major Sub-subcontractors and/or material and equipment manufacturers. The following list is suggested but may be altered as merited by the Project needs at the discretion of the Consultant and Owner.

- 1) Landscaping
- 2) Paving contractor
- 3) Concrete supplier
- 4) Masonry - concrete/brick/pre-cast
- 5) Structural and miscellaneous steel
- 6) Millwork
- 7) Thermal and moisture protection, including roof
- 8) Windows, curtainwall, hollow metal doors and frames, hardware
- 9) Floor, wall and ceiling finishes and systems
- 10) Major specialties
- 11) Major equipment
- 12) Furniture, movable screens, fixed seating
- 13) Special construction
- 14) Elevators, escalators
- 15) Plumbing fixtures, special piping, traps, sumps, mechanical equipment, monitoring and automation controls
- 16) Electrical fixtures, controllers, switchgears, devices, transformers

**6.20 Responsibility for Sub-contractor Work and Actions.** The Constructor understands and agrees that the Constructor alone is responsible to the Owner for all of the Work under the Contract and that any review of Subcontractors or Sub-subcontractors by the Owner or Consultant will not in any way make the Owner responsible to any Subcontractor or Sub-subcontractor, nor will it make the Owner responsible for the actions or omissions of any Subcontractor or Sub-subcontractor.

**6.21 Subcontractual Relations.** By appropriate agreement, written where legally required for validity, the Constructor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Constructor by terms of the Contract Documents, and to assume toward the Constructor all the obligations and responsibilities which the Constructor, by these Documents, assumes toward the Owner and Consultant. Each subcontract agreement shall preserve and protect the rights of the Owner and Consultant under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Constructor that the Constructor, by the Contract Documents, has against the Owner. Where appropriate, the Constructor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Constructor shall make available to each

proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective Sub-subcontractors.

**6.22 Contingent Assignment of Subcontracts.** Each subcontract agreement for a portion of the Work is assigned by the Constructor to the Owner provided that:

- 1) Assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 22.5 (Termination by the Owner for Cause) herein, and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and
- 2) Assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

**6.23 Constructor's Personnel.** The Constructor shall staff the Project with qualified and designated individuals and entities responsible for its obligations and performance.

**6.23.1 Constructor's Primary Representative.** The Constructor shall name a representative to serve as the primary contact with the Owner.

**6.23.2 Team Assignment.** For construction management and design build projects, the Constructor shall assign the same team members and roles as proposed in the Construction Manager's Qualifications Supplement (CMQS) or Design Builder's Qualifications Supplement (DBQS) utilized in the selection process. Substitutions shall require a written request and authorization by the Owner and shall include a review of the qualifications and salary requirements of the proposed replacement. If a proposed change is approved by the Owner and results in increased staffing costs, this change shall be incorporated into the cost of the Project by execution of a contingency modification, if sufficient contingency funds exist in the previously negotiated constructor's contingency. Increases for which insufficient contingency funds exist will require documentation from the Constructor justifying the increase to project costs and approval from the Owner as a change order. The Owner reserves the right to approve the staffing change with or without approving an increase in staffing costs.

**6.23.3 On Site Supervision.** The Constructor's Primary Representative, or another authorized representative of the Constructor, shall be present at all times when Work is being performed.

**6.23.4 Subcontractor Skill and Harmony.** The Constructor shall employ persons skilled, and certified/licensed if required, in the task assigned to them, and shall further,

contract with subcontractors and suppliers skilled in the tasks assigned to them. All employees of the Constructor and the subcontractors shall be capable of working harmoniously with all trades, crafts and other individuals on the Project. The Constructor shall use its best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance.

**6.23.5 Zero Tolerance Policy.** The Constructor shall immediately remove from the Site, for the duration of the project, any person making an inappropriate religious, racial, sexual or ethnic comment, statement or gesture toward any student, University staff, consultant, or any other individual.

**6.23.6 Incompetency or Disharmonious Conduct.** The Constructor shall immediately remove from the Site, for the duration of the Project, any person who is incompetent, careless, or not working in harmony.

**6.23.7 Prohibited Substances and Abuse.** The Constructor shall immediately remove from the Site, any person found to be under the influence of alcohol or illegal substances or who brings them to the Site.

**6.23.8 Smoke-free Campus.** The Constructor shall enforce the Owner's ban on the use of tobacco products on the University campus.

**6.23.9 Errors and Omissions.** The Constructor shall be responsible to the Owner for the acts and omissions of its agents and employees, consultants, subcontractors and suppliers.

**6.24 Subcontractor/Supplier Contracts.** The Constructor shall enter into written contracts with its subcontractors and suppliers, and those written contracts shall be consistent with the Contract for Construction. It is the intent of the Owner and the Constructor that the obligations of the Constructor's subcontractors and suppliers inure to the benefit of the Owner and the Constructor, and that the Owner be a third-party beneficiary of the Constructor's agreements with its subcontractors and suppliers.

**6.24.1 Provision of Construction Documents.** The Constructor shall make available to each subcontractor and supplier, prior to the execution of written contracts with any of them, a copy of the pertinent portions of the Contract for Construction, including those portions of the Construction Documents to which the subcontractor or supplier will be bound, and shall require that each subcontractor and supplier shall similarly make copies of applicable parts of such documents available to its respective subcontractors and suppliers.

**6.24.2 Subcontractor Agreement to Conditions of the Contract.** The Constructor shall include in its written contracts with its subcontractors and suppliers a provision which contains the acknowledgment and agreement of the conditions and requirements of

the Contract for Construction that are included by reference in its written contract with the Constructor, and that it will abide by those terms, conditions, and requirements.

**6.24.3 Rights and Assignment to Owner.** The Constructor's written contracts with its subcontractors and suppliers shall preserve and protect the rights of the Owner and include the acknowledgment and agreement of each subcontractor or supplier that the Owner is a third-party beneficiary of the contract. The Constructor's agreements with its subcontractors and suppliers shall require that in event of default under, or termination of, the Contract for Construction, and upon request of the Owner, the Constructor's subcontractors and suppliers will perform services for the Owner.

**6.24.4 Prompt Payment to Subcontractors and Suppliers.** Without limitation of the foregoing subsections, the Constructor's written contracts with its subcontractors and suppliers shall include the following provision: "When the Constructor receives payment from the Owner for labor, services or materials furnished by subcontractors and suppliers hired by the Constructor for the Project, the Constructor shall remit payment due to those subcontractors and suppliers, less the value of any item contested in accordance with the Contract for Construction, within ten (10) days after the Constructor's receipt of payment from the Owner. When the payment due the subcontractor is for final payment, including retainage, the subcontractor must include with the invoice for final payment, a conditional release of lien and all required warranties and closeout documentation. When the subcontractor receives payment from the Constructor for labor, services, or materials furnished by the subcontractors and suppliers hired by the subcontractor, the subcontractor shall remit payment due to those subcontractors and suppliers, less the value of any item contested in accordance with the Contract for Construction, within ten (10) days after the subcontractor's receipt of payment".

**6.24.5 Prohibition on Induced Compensation Reductions.** The Constructor shall not induce any subcontractor, material supplier, or other entity entitled to compensation to accept reduced compensation for any portion of the Work for which payment is entitled.

**6.25 Trade Disputes.** The Constructor shall promptly resolve claims, complaints, labor disputes and disputes over assignment of work tasks by and among its subcontractors and suppliers.

## **ARTICLE 7 BONDS AND INSURANCE REQUIREMENTS**

**7.1 Basic Insurance Requirements.** The Constructor shall maintain the following insurances with a company or companies lawfully authorized to do business in Florida, and with an A.M. Best Rating of no less than A, X. 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. The insurance policies shall require that the insurer shall provide at least thirty

(30) days written notice to Owner if a policy is to be canceled or the coverage thereunder reduced before the expiration date thereof and the Constructor shall provide Owner with a copy of an endorsement to the policy evidencing the same. The insurance required hereunder shall be carried by Constructor at least until the Project is finally completed and accepted by Owner. Owner may require the Constructor and its subcontractors to carry additional types and amounts of insurance it deems appropriate given the nature and size of a particular Project. In such case, Owner shall notify Constructor within a reasonable period of time prior to the commencement of the Work of such additional requirements. The Owner shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the responsibility solely of the Constructor and/or Subcontractor providing such insurance. This insurance shall protect the Constructor from the following claims:

- 1) claims under workers's or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- 2) claims for damage because of bodily injury, occupational sickness or disease, or death of the Constructor's employees;
- 3) claims for damages because of bodily injury, sickness or disease, or death of any person other than the Constructor's employees;
- 4) claims for damages insured by usual personal injury liability coverage including claims which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Constructor, or (2) by another person;
- 5) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- 6) claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and
- 7) claims involving contractual liability insurance applicable to the Constructor's obligations (indemnification) herein.

## **7.2 Liability Insurance.**

**7.2.1 Commercial General Liability Insurance.** The Constructor shall provide a commercial general liability insurance policy which has liability limits of at least \$1,000,000.00 per occurrence for bodily injury, death and property damage. The Florida State University Board of Trustees and the Board of Governors shall be named as additional insureds on such policy and the policy shall provide cross liability coverage. Such insurance policy shall protect Constructor from claims which may arise whether

such claims may arise out of the operations of the Constructor or by anyone directly or indirectly employed by the Constructor. In addition, the policy shall contain the following endorsement (I) "XCU" (explosion, collapse, underground damage) for those classification excluded under the policy and (ii) contractual liability. If Constructor is performing asbestos-related work, the policy shall also contain a pollution liability endorsement.

**7.2.2 Automobile Liability Insurance.** The Constructor shall carry automobile liability insurance which has liability limits of at least \$500,000.00 per person, \$1,000,000.00 per occurrence and property damage in at least the amount of \$500,000.00; or combined single limit of \$1,000,000.00 for bodily injury and property damage. This insurance shall be provided on all vehicles throughout the life of the Agreement. The Florida State University Board of Trustees and Board of Governors shall be named as additional insureds on such policy and a waiver of subrogation in favor of the Owner shall be included in all liability policies.

**7.2.3 Deductibles.** Deductibles under these liability policies shall not exceed \$5,000.000. Owner shall not be liable for amounts that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Constructor and/or Subcontractor providing such insurance.

**7.3 Worker's Compensation.** The Constructor shall secure and maintain Worker's Compensation Insurance which complies with the requirements of Chapter 440, Florida Statutes throughout the life of this Agreement. Copies of the insurance policy shall be provided to the Owner no later than sixty (60) days after execution of the Owner-Contractor Agreement.

**7.4 Builder's Risk Insurance.** The Constructor shall maintain builder's risk insurance, at replacement cost, covering the full value of the construction being performed, including where applicable, the existing structure. Such policy shall be written on a causes of loss special form policy, and shall include coverage for reasonable compensation for the Consultant's services and expenses required as a result of such insured loss. This insurance shall insure the interests of the Constructor, 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 the Constructor's office trailer(s). 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 Florida State Board of Trustees and Florida Board of Governors shall be named as additional insureds on such policy. The policy shall include a waiver of subrogation endorsement and a severability of interests endorsement. The Builder's Risk policy shall be maintained until final payment has been made or until no person or entity other than the Owner has insurable interest in the property required to be covered. This insurance shall include interests of the Owner, the Constructor, Subcontractors and Sub-subcontractors in the Work.

**7.4.1 Deductible.** The deductible under the policy shall not exceed \$5,000.00. Owner



shall not be liable for amounts that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Constructor.

**7.4.2 Coverage Requirement.** Property insurance shall be written on a Builder's Risk form or its equivalent and shall include coverage on a replacement value basis. Property covered by this insurance shall include property of the Owner, Constructor, Subcontractors and Sub-subcontractors, consisting of materials, supplies, machinery, equipment and fixtures which will become a permanent part of the Work at the project site.

**7.4.3 Off-Site Stored Materials Coverage.** Property 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 also portions of the Work in transit. Refer to Paragraph 18.7 herein.

**7.4.4 Special Coverages.** Any special insurance requirements will be included in the Special Conditions or Supplemental Conditions to the Contract, if required.

**7.4.5 Coverage for Live Steam Equipment/Materials.** 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.

**7.4.6 Adjustment of Loss(es).** A loss or losses insured under this insurance policy shall be adjusted by the Constructor and its insurance company. The Constructor shall repair or replace the damaged property with the proceeds from the builder's risk policy. The Constructor shall be responsible for all damages and necessary repairs whether or not the loss is covered by the builder's risk policy.

**7.5 Certificates of Insurance.** Certificates of Insurance and/or evidence of insurance for all insurance required to be carried under this Article, together with certified copies of the insurance policies (including required endorsements), shall be filed with, and approved by, the Owner prior to commencement of the Work. Policies required under this Article shall contain a provision that coverage afforded under the policies will not be cancelled or allowed to expire until at least thirty (30) days written notice has been given to the Owner. The Certificates of Insurance shall include the specific job name and number, shall be dated and show the name of the insurer, the number of the policy, its effective date, and its termination date. Owner will not issue a Notice to Proceed for the Work until Constructor has complied with this Article. Constructor shall not be entitled to an extension of time or to compensation which may result from delays in the issuance of a Notice to Proceed caused by its failure to provide the foregoing certificates and policies in a timely manner. Owner's review, inspection, or approval of Constructor's insurance shall not relieve Constructor of its responsibility for providing the insurance required hereby nor constitute a waiver of any such requirements. If any foregoing insurance coverage is required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment as required by Paragraph 18.19 (Final

Payment) herein.

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

**7.7 Waiver of Subrogation.** The Constructor hereby releases and discharges the Owner and the Owner's Related Parties of and from all liability to the Constructor, and to anyone claiming by, through or under the Constructor, by subrogation or otherwise, on account of any loss or damage to tools, machinery, equipment or other property, however caused.. The Constructor shall cause its builder's risk property insurance company to issue a waiver of subrogation consistent with this provision.

**7.8 Partial Occupancy/Beneficial Occupancy.** Early occupancy or use in accordance with Paragraph xxxx shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Constructor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

**7.9 General Bond Requirements.** Recognizing the Project is a public project with a construction price which exceeds \$100,000.00, and as such is required to be bonded pursuant to 255.05, Florida Statutes, the Constructor shall furnish Payment and Performance bonds on Owner's standard form covering the full and faithful performance of the Contract for Construction and the payment of obligations arising hereunder.

**7.10 Delivery of Bonds.** The Constructor shall deliver required bonds and powers of attorney to the Owner prior to commencement of the Work. Bonds shall be registered with the appropriate jurisdiction.

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

## **ARTICLE 8**

### **QUALITY ASSURANCE**

**8.1 Quality Control.** The Constructor warrants to the Owner that shall goods, products, materials, equipment and systems furnished under this Contract shall comply with the Contract for Construction, including applicable specifications, descriptions, instructions, drawings, data and samples. All materials shall be new and free of damage or any defect unless specified or permitted otherwise in writing by the Consultant and/or Owner. All materials shall be merchantable and of quality, strength, durability, capacity or appearance equal to or higher than that required by the Construction Documents.

**8.1.1 Materials Substitutions.** Materials not conforming or not properly approved and authorized may be considered defective. The Constructor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Constructor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Consultant, the Constructor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**8.2 Documents and Samples at the Site.** The Constructor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Consultant and shall be delivered to the Consultant for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

**8.3 Shop Drawings, Product Data and Samples.** Shop Drawings, Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Constructor 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. Review by the Consultant is subject to the limitations herein. Informational submittals upon which the Consultant is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Consultant without action.

- 1) Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Constructor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.
- 2) Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Constructor to illustrate materials or equipment for some portion of the Work.

- 3) Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

**8.4 Constructor's Review of Submittals.** Submittals made to the Consultant by the Constructor shall bear evidence of review and approval by the Constructor. By affixing approval, the Constructor represents to the Owner and Consultant that the submittals made by the Subcontractors, Sub-subcontractors, Manufacturers, Suppliers, or Vendors are compliant with the Contract Documents and that the Constructor has verified field measurements and field construction criteria related thereto. The Constructor shall approve and submit to the Consultant all submittals required by the Contract Documents in accordance with the submittal schedule approved by the Consultant or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate constructors.

**8.5 Required Approval by Consultant.** The Constructor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Consultant.

**8.6 Work in Accordance with Submittals.** The Work shall be in accordance with approved submittals except that the Constructor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Consultant's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Constructor has specifically informed the Consultant in writing of such deviation at the time of submittal and (I) the Consultant has given written approval to the specific deviation as a minor change in the Work, or (ii) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Constructor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Consultant's approval thereof.

**8.6.1** Submittals required to be re-submitted shall bear specific notification in writing from the Constructor indicating such.

**8.6.2** Submittals which include a request for any deviation from the Contract Documents shall be clearly marked in writing as such and a written request for specific approval of the change shall be included. In the absence of a written request for approval, the Consultant's approval of the submittal shall not apply to the revisions.

**8.7 Mock-ups.** The Constructor is encouraged to provide mock-ups of systems, finishes and other custom installations. If required by the Contract Documents, mock-ups shall be of specified scale and shall be reviewed and approved by the Consultant and Owner prior to beginning any work for which the mock-up shall serve as a reference in quality assurance. Mock-ups shall be located in an accessible area of the Project site and shall remain in place until all related work is completed and approved for payment.

**8.8 Installation and Use of Materials.** All goods, products, materials, equipment and systems named or described in the Construction Documents, and all others furnished as equal thereto shall, unless specifically stated otherwise, be furnished, used, installed, employed and protected in strict compliance with the specifications, recommendations and instructions of the manufacturer or supplier, unless such specifications, recommendations or instructions deviate from accepted construction practices, or the Construction Documents, in which case the Constructor shall so inform the Owner and Consultant and shall proceed as directed by that Consultant, unless otherwise directed by the Owner. Accordingly, there shall be no substitutions of materials and equipment except as otherwise expressly permitted herein. The Constructor shall coordinate and interrelate all trade contracts, and subcontracts to ensure compatibility of goods, products, materials, equipment and systems, and validity of all warranties and guarantees, required by the Construction Documents for the Work.

**8.9 Unsuitable Materials.** The Constructor shall inform the Owner of goods, products, materials and equipment or systems which the Constructor knows are unsuitable or unavailable at the time of bid submission, and claims relating to or arising out of claims that goods, products, materials, equipment or systems are unsuitable or unavailable shall not be entertained by the Owner unless the Constructor, subcontractor, or supplier notified the Owner in writing at the time of bid submission, along with proposed alternatives. Approval by the Owner and a Consultant does not mean or imply final acceptance by the Owner and Consultant if such items should be defective or not as previously represented. Should the Constructor furnish any approved goods, products, materials, or equipment or systems different from or in addition to those required by the Construction Document which require supplemental materials or installation procedures different from or in addition to those required for specified items, the Constructor shall provide such at no increased cost to the Owner.

**8.10 Consistency with Overall Project.** If the Constructor is acting as construction manager or design/builder, the Constructor shall also inform the Owner and Consultant during the various stages of development of the design if proposed materials or equipment do not conform with the Project design concept and the Owner's construction budget.

**8.11 Budget Management.** If the Constructor is performing services to assist the Owner with budget overruns, the Constructor shall inform the Consultant and Owner of changes to quality, life cycle costs, procurement lead times and constructability resulting from material and systems substitutions.

**8.12 Constructor Provided Design Services.** If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Constructor by the Contract Documents, the Owner and the Consultant will specify all performance and design criteria that such service must satisfy. The Constructor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work design by or certified by such professional, if prepared by others,

shall bear such professional's written approval when submitted to the Consultant. The Owner and the Consultant shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals; provided the Owner and Consultant have specified to the Constructor all performance and design criteria that such services must satisfy. Pursuant to this Section, the Consultant will review, approve or take other appropriate action on submittals only for the limited purpose of checking of conformance with information given and the design concept expressed in the Contract Document. The Constructor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

## **ARTICLE 9 MATERIALS AND PRODUCTS**

**9.1 Labor and Materials.** Unless otherwise provided in the Contract Documents, the Constructor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**9.1.1 Taxes.** Per Florida law, real property contractors and subcontractors are the ultimate consumers of materials they use in the performance of real property construction contracts. Therefore, purchases of materials by real property contractors and subcontractors are subject to sales tax. This law applies to contractors and subcontractors who buy materials for public works construction contracts. The Constructor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Constructor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

**9.1.2 Owner Direct Purchase Materials.** The Owner may elect to implement direct purchase of construction materials for sales tax savings. If so directed, the Constructor shall follow the Owner's established procedures and protocols and shall retain all responsibilities for installation, storage, protection and insurances, and warranty.

**9.1.3 Protection of Materials and Work in Progress.** It shall be the Constructor's responsibility and expense to provide and maintain protection of materials and equipment, construction machinery, tools, and other items stored at the site. This shall include provision of power, fuel, and equipment necessary to maintain climatic conditions, including humidity control when specified or necessary for Work in progress.

**9.1.4 Off-Site Stored Materials.** All off-site stored materials and equipment shall be protected and maintained by the Constructor, bonded and insured as per the Owner's requirement, and shall list the Owner as an additional insured party. Materials and equipment shall be clearly labeled identifying its intended Project destination and the

name of the Owner. The Constructor shall execute the Owner's Agreement for Off-Site Stored Materials.

**9.2 Cutting and Patching.** The Constructor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

**9.3 Submittals.** The Constructor shall timely prepare and transmit to the Consultant a schedule for provision of all anticipated submittals. The schedule shall (i) include submittals required by the specifications; (ii) be in a format acceptable to the Consultant; (iii) be coordinated with the construction schedule; and (iv) set forth specific dates for submission of the listed submittals.

**9.4 Processing of Submittals.** The Constructor shall, in a timely fashion, review, approve or reject as necessary, and forward approved submittals to the Consultant for review and approval along with such detail and information as the Consultant requires. No part of the Work dealt with by a submittal shall be fabricated or performed until such approval has been given.

**9.4.1 Submittal Conformance.** A Consultant is responsible to the Owner, but not the Constructor, to verify that the submittals conform to the design concept and functional requirements of the plans and specification, that the detailed design portrayed in shop drawings and proposed equipment and materials shown in submittals are of the quality specified and will function properly, and that the submittals comply with the Contract for Construction.

**9.4.2 Work to Conform with Approved Submittals.** All Work shall be performed in accordance with approved submittals. Approval of submittals by a Consultant shall not relieve the Constructor from complying with the Contract for Construction, including all plans and specifications, addenda thereto and approved documented changes to the Contract for Construction.

**9.4.3 Re-submittals.** Re-submittals required to correct errors, omissions, or invalid substitutions by the Constructor or its subcontractors shall not constitute an excusable or compensable delay,

**9.5 Unsuitable Materials.** Materials which have been rejected during the submittal/shop drawing process shall not be brought to the site. Those materials brought to the site and subsequently rejected shall not be incorporated in the Work and shall be removed immediately.

**9.6 Warranty.** The Constructor warrants to the Owner and Consultant that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the

requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Constructor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Constructor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Consultant, the Constructor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**9.7 Protection of the Work, Site , and Materials Stored at the Site.** Upon notice to proceed with construction services from the Owner, the Constructor shall assume responsibility for all aspects of site management relating to the performance of the Work. The Constructor shall take measures to provide for the protection of the site to include guarding against unauthorized site entry, unsafe conditions, vandalism, including but not limited to damage to work in place, damage or theft of materials stored on site, damage to or unauthorized use of construction equipment, damage/unauthorized entry of temporary facilities, or any other detrimental action to persons or property inside the construction area.

**9.7.1 Construction Fencing.** Construction fencing with windscreen fabric shall be installed to ensure containment of the site. Installation shall provide structural integrity of the panels, and fencing shall be maintained to prevent blockage or overturn into pedestrian or vehicular ways. The Constructor shall be responsible for securing fencing in preparation for extreme weather events and for any damage resulting from failure.

**9.7.2 Construction Signage.** Construction signage shall be installed in visible locations and shall identify the name of the project, name of the A/E Consultant, name of the Constructor, and provide an emergency contact phone number. Format of the sign shall be as shown in the *Florida State University Design Guidelines & Specifications*, current edition.

**9.8 Attic Stock.** The Constructor shall include in the Cost of the Work the costs of all attic stock as required by the Contract Documents to be used in future maintenance of the facility. Upon project completion, the Constructor shall notify the Owner and arrange delivery of attic stock materials to the location directed by the Owner.

## **ARTICLE 10 TESTS AND INSPECTIONS**

**10.1 Building Permit.** No work required to obtain a building permit from the FSU Building Code Administration Section shall proceed until a permit is issued. The Constructor shall be responsible for ensuring that all requirements for a permit are in place, including but not limited to licensing, insurance, special inspection plan, and subcontract documents. Payment of permit costs will be provided by the Owner, unless directed otherwise by the Contract Documents.

**10.2 Schedule for Tests/Inspections.** Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or order of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise



provided, the Constructor shall make arrangements for such test, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Constructor shall give the Consultant timely notice of when and where tests and inspections are to be made so the Consultant may observe such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

**10.2.1 Tests Required by Technical Specifications.** Where tests are required by the technical specifications for materials, methods or equipment, the Constructor shall pay the cost of initial tests to prove qualities and determine conformance with specification requirements, e.g. mill tests on cement and steel; load testing of piling; sieve analysis and colorimetric test on sand; strength tests for determining proportions of materials for concrete, moisture content and sound transmission tests of concrete blocks, etc.

**10.2.2 Constructor's Proposed Substitutions.** If substitute materials or equipment are proposed by the Constructor, he shall pay the cost of all test which may be necessary to satisfy the Consultant that specification requirements are met.

**10.2.3 Testing Costs.** The Constructor shall pay for all testing costs, including but not limited to, power, fuel, and equipment costs which may be required for complete testing of all equipment and systems for proper operation such as plumbing, heating, ventilation, air conditioning, electrical, elevator, dumbwaiters and conveyors, etc.

The Constructor shall pay for all testing costs required to provide compliant replacement soils, soil amendments, and pressure tests for irrigation systems.

**10.3 Additional Tests, Inspections, and Approvals.** If the Consultant, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 10.2.1 herein, the Consultant will, upon written authorization from the Owner, instruct the Constructor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Constructor shall give timely notice to the Consultant of when and where tests and inspection are to be made so the Consultant may observe such procedures. The Owner shall bear such costs except as provided in Subparagraph 10.2.2 herein.

**10.4 Failure of Tested Material.** If procedures for testing, inspection or approval described herein reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Constructor shall bear all costs made necessary by such failure, including those of repeated procedures and compensation for the Consultant's services and expenses.

**10.5 Certificates.** Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Constructor and promptly

delivered to the Consultant.

**10.6 Consultant Observation of Testing.** If the Consultant is to observe tests, inspections or approvals required by the Contract Documents, the Consultant will do so promptly and, where practical, at the normal place of testing.

**10.7 Timely Scheduling of Tests and Inspections.** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

**10.8 Commissioning.** If the Work is to be commissioned through the use of a commissioning consultant, the Constructor shall, through the Owner or the Owner's commissioning consultant, schedule and coordinate all equipment and systems start-ups and Project commissioning within its scope of the Work.

**10.8.1 Verification and Testing Requirements.** The Constructor shall coordinate systems verification checklists and shall perform functional performance testing of all items specified by the commissioning plan, as recommended by the commissioning consultant and approved by the Owner. Functional performance testing shall be supervised by the Owner's commissioning consultant. Owner training and all commissioning activities, including functional performance testing, shall be satisfactorily completed prior to Substantial Completion.

**10.9 Threshold or Special Inspections.** If the Project includes construction of a threshold building, as defined by Chapter 553 Florida Statutes, the Owner shall employ an independent Special Inspector to conduct inspections and report findings to the responsible Building Code Official. The Constructor shall afford access to the Site by the Special Inspector and the designated agents of the inspector as required to perform the necessary inspections. The Constructor shall be responsible for ensuring that the Work is completed in compliance with the Threshold Inspection Plan, coordinating and scheduling inspections, and performance of all remedies required, if the Work is found to be non-compliant with the Contract Documents. The Constructor shall coordinate and schedule inspections in such a manner as to ensure that the Work has not been concealed prior to nor the schedule delayed due to the required inspection.

## **ARTICLE 11 UNCOVERING AND CORRECTION OF WORK**

**11.1 Uncovering Work Required by Contract Documents.** If a portion of the Work is covered contrary to the Consultant's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Consultant be uncovered for the Consultant's observation and be replaced at the Constructor's expense without change in the Contract Time.

**11.2 Uncovering Work Not Required to be Inspected in Contract Documents.** If a portion of

the Work has been covered which the Consultant has not specifically requested to observe prior to it's being covered, the Consultant may request to see such Work and it shall be uncovered by the Constructor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Constructor shall pay such costs unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

**11.3 Correction of Work.** The Constructor shall promptly correct Work rejected by the Consultant or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Constructor shall bear costs of correcting such reject Work, including additional testing and inspections and compensation for the Consultant's services and expenses made necessary thereby. The Constructor shall commence correction of the Work within seven (7) days after the date of written notice from the Consultant.

**11.3.1 Correction of Work During Warranty.** If, within one (1) year after the date of Substantial Completion of the Work, or designated portion thereof, or after the date for commencement of warranties established under Article 20 herein, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Constructor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Constructor a written acceptance of such condition. This period of one (1) year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation under this Subparagraph 11.2 herein, shall survive acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

**11.3.2 Removal of Non-Corrected/Non-Accepted Work.** The Constructor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Constructor nor accepted by the Owner.

**11.4 Failure to Correct Non-conforming Work.** If the Constructor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 3.6 (Owner's right to carry out the work) herein. If the Constructor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Consultant, the Owner may remove it and store the salvagable materials or equipment at the Constructor's expense. If the Constructor does not pay cost of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the

Constructor, including compensation for the Consultant's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Constructor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Constructor are not sufficient to cover such amount, the Constructor shall pay the difference to the Owner.

**11.5 Costs for Correction by Forces Other than the Constructor.** The Constructor shall bear the cost incurred by the Owner or separate contractors as a result of the Constructor's failure to complete correction or removal of Work found to be not in accordance with the requirements of the Contract Documents.

**11.6 Latent Defect.** Nothing contained in this Paragraph 11.2 (correction of work) herein, shall be construed to establish a period of limitation with respect to other obligations which the Constructor might have under the Contract Documents. Establishment of the time period of one (1) year as described in Subparagraph 11.2.1 herein, relates only to the specific obligation of the Constructor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor the time within which proceedings may be commenced to establish the Constructor's liability with respect to the Constructor's obligations other than specifically to correct the Work.

**11.7 Acceptance of Nonconforming Work.** If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## **ARTICLE 12 TIME OF PERFORMANCE AND SCHEDULE**

**12.1 Day.** The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

**12.2 Construction Schedule.** The Construction Schedule shall include all pertinent dates and periods for timely completion of the Work.

**12.2.1 Notice to Proceed.** The Notice to Proceed date is the date established by: (I) letter authorizing commencement of services effective on a specified date; (ii) execution date of Agreement; (iii) execution date of purchase order authorizing a specific scope of work. The date shall not be postponed by the failure to act of the Constructor or of persons or entities for whom the Constructor is responsible.

**12.2.2 Critical Path Scheduling.** Unless otherwise directed and approved by the Owner, the Constructor shall, within fourteen (14) calendar days of the Notice to Proceed,

prepare a Critical Path Method schedule with separate divisions for each major portion of the Work or operations. The Construction Schedule shall include and properly coordinate dates for performance of all divisions of the Work, including completion of off-site requirements and tasks, so that the Work can be completed in a timely and orderly fashion consistent with the required dates of Substantial Completion and Final Completion. When preparing the schedule, the Constructor shall consider and account for Owner's operational needs on the site and adjacent thereto, particularly with regard to utility interruptions and access restrictions.

**12.2.3 Logic, Sequencing, Durations, and Milestones.** 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 (I) the required Commencement Date, the required dates of Substantial Completion and Final Completion; (ii) any guideline and milestone dates required by the Owner; (iii) any applicable subcontractor and supplier sub-schedules; (iv) coordination with the submittal schedule which allows sufficient time for review of documents and submittals; (v) allowances for procurement, fabrication, and delivery of materials, especially "long lead" items; (vi) the complete sequence of construction by activity, with dates for beginning and completion of each element of construction; (vii) the time required for testing, inspections, and commissioning, if applicable; (viii) 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 (ix) required decision dates.

**12.2.4 Scheduling Responsibility.** By reviewing the Construction Schedule, the Owner and Consultant do not assume any of the Constructor's responsibility (I) that the Construction Schedule be coordinated or complete; or (ii) for timely and orderly completion by the required dates of Substantial Completion, Final Completion and any milestone dates required by the Owner.

**12.2.5 Weekly Schedule Reviews.** The Constructor shall review on a weekly basis, the actual status of the Work against the Construction Schedule. The Constructor shall discuss the status of the Work bi-weekly with the Consultant and the Owner, so that proper overall management may be provided.

**12.2.6 Monthly Schedule Update.** The Constructor shall periodically and in all instances when the Constructor anticipates that performance of the Work will be delayed or in fact has been delayed, but not less frequently than monthly, prepare a revised Construction Schedule and show actual progress of the Work through the revision date, projected completion of each remaining activity modified since previous submittal, major changes in scope, and other identifiable changes. The updated Construction Schedule shall be accompanied by a narrative report which (I) states and explains any modifications of the critical path schedule, including any changes in the logic; (ii) defines problem areas and lists areas of anticipated delays; (iii) explains the anticipated impact the problems and

delays will have on the schedule and scheduled activities; (iv) reports corrective action taken or proposed; and (v) states how problems anticipated by projections shown on the schedule will be resolved to avoid delay in delivering the Work by the required dates of Substantial Completion and Final Completion, and other milestone dates required by the Owner, if any.

**12.2.7 Document Review.** The Constructor shall provide documents to the Owner and Consultant(s) for review in accordance with schedule requirements and with sufficient lead time to allow the Owner and Consultant reasonable time for review.

**12.3 Delay in Performance.** If at any time the Constructor anticipates that performance of the Work will be delayed or in fact has been delayed, the Constructor shall (I) immediately notify the Consultant of the probable cause of and effects from the delay, and possible alternatives to minimize the delay; and (ii) take all corrective actions reasonably necessary to deliver the Work by the required dates of Substantial Completion and Final Completion, and other milestone dates required by the Owner, if any.

**12.4 Modifications of Time for Performance.** The Constructor may submit delay claims or otherwise propose modifications of the required dates of Substantial Completion or Final Completion, or other milestone dates required by the Owner, if any. However, such claims shall be submitted in writing and supported by evidence that the delay was excusable, critical, and compensable. The Constructor shall determine and promptly notify the Owner and the Professional in writing when it believes such adjustments are necessary, but no such adjustments shall be effective unless approved in writing by the Owner and Consultant.

**12.4.1 Extension of Substantial and Final Completion Dates.** Modification(s) of the required dates of Substantial Completion or Final Completion shall be accomplished only by duly authorized and accepted change order(s) stating the new dates with specificity and reciting that all references in the Contract for Construction to the required dates of Substantial Completion or Final Completion shall thereafter refer to the date(s) as modified, and all rights and obligations, including the Constructor's liability for actual damages, delay damages and liquidated damages, shall be determined in relation to the date (s) as modified.

**12.5 Progress and Completion.** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Constructor confirms that the Contract Time is a reasonable period for performing the Work. The Constructor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

**12.6 Early Start.** The Constructor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required to be furnished by the Constructor. The date of commencement of the Work shall not be changed by the effective date of such insurance.

**12.7 Time of the Essence.** The Constructor shall at all times carry out its duties and responsibilities as expeditiously as possible and shall begin, perform and complete its services so that (I) the Work progresses in accordance with the Construction Schedule; (ii) the Work is substantially completed by the required date of Substantial Completion; and (iii) the Work is finally complete by the date of Final Completion.

**12.8 Substantial Completion Date.** The date of Substantial Completion is the date certified by the Consultant in accordance with Paragraph 4.15.

**12.9 Early Completion for Convenience by the Constructor.** The Constructor may attempt to achieve Substantial Completion before the required date of Substantial Completion. However, such planned early completion shall be for the Constructor's sole convenience and shall not create any additional Constructor rights or Owner obligations under the Contract for Construction, nor shall it change the required dates of Substantial Completion or Final Completion. The Owner shall not pay the Constructor any additional compensation for achievement of Substantial Completion or Final Completion prior to the required dates nor will the Owner owe the Constructor any compensation should the Owner cause the Constructor not to achieve Substantial Completion earlier than the required date of Substantial Completion or Final Completion earlier than the required date of Final Completion.

**12.10 Delay Claims.** The Constructor may submit delay claims or otherwise propose modifications of the required dates of Substantial Completion or Final Completion, or other milestone dates required by the Owner, if any. However, such claims shall be submitted in writing and supported by evidence that the delay was excusable, critical, and, if applicable, compensable. Extensions of time will be granted only to the extent that equitable time adjustments for the effected activity or activities exceed the total float along the network path involved. Such claims shall include an estimate of cost, if any, and substantiate the projected impact on the overall critical path schedule of the Project. In the case of a continuing delay, only one claim is necessary.

**12.10.1 Weather Delay.** If adverse weather conditions are the basis for a delay claim, the claim shall be documented by data substantiating that: the weather conditions were abnormal for the given location and period of time; the weather conditions could not have been reasonably anticipated; and that the weather conditions had an adverse effect on the overall critical path of the schedule. Delays caused by adverse weather conditions are not compensable.

**12.10.2 Impacts Attributed to Action/Non-Action of Consultant.** If the Constructor believes that additional cost or time is involved because of clarifications or instructions the Consultant issues in response to the Constructor's notices or requests for information pursuant to Paragraphs 4.7 thru 4.9, the Constructor shall make Claims as provided in Article 23. If the Constructor fails to perform the obligations of Paragraphs 4.7 thru 4.9, the Constructor shall pay such costs and damages to the Owner as would have

been avoided if the Constructor had performed such obligations. If the Constructor performs those obligations, the Constructor shall not be liable to the Owner or Consultant for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for non-conformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

**12.10.3 Compensable Delay.** If the Constructor is delayed at any time in the progress or performance of the Work by (i) acts or omissions of the Owner or Consultant; (ii) major changes ordered by the Owner in the scope of Work; or (iii) any other cause which the Owner determines may justify the compensation of the Constructor for the delay, the Constructor's compensation shall be equitably adjusted to cover the Constructor's actual and direct increased costs attributable to such delay.

**12.10.4 Excusable Delay.** If the Constructor is delayed at any time in the progress or performance of the Work by (i) acts or omissions of the Owner or Consultant; (ii) major changes ordered by the Owner in the scope of "Work; (iii) fire; (iv) unusual delays in transportation; (v) adverse abnormal weather conditions not reasonably anticipated by the Constructor; (vi) unavoidable casualties; (vii) causes beyond the Constructor's control which the Owner agrees in writing are justifiable; or (viii) any other cause which the Owner determines may justify the delay, the time for performance may be extended to allow for a demonstrated increase in overall construction duration, which may or may not be equal to the length of such delay, but only if (a) such delay is not concurrent with other, inexcusable delay(s); (b) such delay impacts the critical path; (c) such delay is not in any way caused by default or collusion on the part of the Constructor or by any cause which the Constructor could reasonably control or circumvent; (d) the Constructor would have otherwise been able to timely perform all of its obligations under the Contract for Construction by for such delay; and (e) immediately but no later than fourteen (14) calendar days after the beginning of any such delay the Constructor gives notice of its delay claim to the Owner. Such delay claims may be submitted by change order request. All such claims will be reviewed by the Consultant within seven (7) days of submission. Delay caused by labor disputes, picketing, employee boycotts, or the like which directly or indirectly involves employees of the Constructor or its subcontractors and suppliers is not the responsibility of the Owner and will result in time extensions only if agreed to in writing by the Owner at the time such events arise.

**12.10.5 Delay Claims with No Extended Overhead Costs.** For claims resulting from delay in instances of adverse weather conditions and labor disputes, which are deemed to be compensable, extended overhead costs will not be allowed



## **ARTICLE 13 CHANGES IN THE WORK**

**13.1 Change Request.** Any party to the Project process may request a change to the Work, compensation or schedule. Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Contingency Modification, Construction Change Directive or order for minor change in the Work, subject to the limitations stated herein and elsewhere in the Contract Documents.

**13.1.1 Requirements for Performance.** Changes in the Work shall be performed under the applicable provisions of the Contract Documents, and the Constructor shall proceed promptly, unless otherwise instructed in the Change Order, Construction Change Directive, or order for a minor change in the Work.

**13.1.2 Unit Pricing.** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Constructor, the applicable unit prices shall be equitably adjusted.

**13.2 Change Order.** A Change Order is a written instrument executed by the Consultant, Constructor, and the Owner which establishes agreement to change the scope, cost, and/or schedule of completion for the Work.

**13.2.1 Change Order Form.** All Change Orders shall be on the Florida State University Change Order form included herein.

**13.3 Construction Change Directive.** A Construction Change Directive is a written order prepared by the Consultant and signed by the Owner and Consultant, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. A Construction Change Directive shall be used in the absence of agreement on the terms of a Change Order. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly. The Construction Change Order Directive form is included herein.

**13.3.1 Receipt of a Construction Change Directive.** Upon receipt of a Construction Change Directive, the Constructor shall promptly proceed with the change in the Work involved and advise the Consultant of the Constructor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**13.3.2 Disagreement with Terms of Change Directive.** If the Constructor does not

respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment and the not-to-exceed amount shall be determined by the Consultant on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, the stipulated allowance for overhead and profit as stated herein. In such case, the Constructor shall keep and present, in such form as the Consultant may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph shall be limited to the terms of Subparagraph 13.6.1.

**13.3.3 Eligible for Payment.** Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment.

**13.3.4 Agreement to Terms.** When the Owner and the Constructor agree with the adjustment to Contract Sum or Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

**13.4 Minor Changes in the Work.** The Consultant shall have authority, after receiving the Owner's approval, to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

**13.5 Methods for Calculation of Adjustments to the Contract Sum.** Adjustments to the Contract Sum shall be determined based upon the following:

- (1) mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit complete evaluation; data to include all itemized material, labor, and other overhead costs including clearly indicated profit percentages;
- (2) a not-to-exceed amount based on unit prices stated in the Contract Documents or subsequently agreed upon, with quantity assumptions indicated;
- (3) costs to be determined in a manner agreed upon by the parties and a percentage fee as provided in the Agreement and Contract Documents;
- (4) competitive bids or quotes and a percentage fee as provided in the Contract Documents.

**13.6 Cost of Change in the Work.**

**13.6.1 Eligible Adjustments.** The following costs are eligible for adjustments in the Cost of the Work:

- (1) costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom and workers' or workmen's compensation insurance;
- (2) costs of materials, supplies and equipment, including sales tax and cost of transportation, whether incorporated or consumed;
- (3) rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Constructor or others;
- (4) costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- (5) additional costs of supervision and field office personnel directly attributable to the change.

**13.6.2 Ineligible Costs.** The Cost of the Change shall not include any of the following items which are considered to already be included in the Contract Sum:

- (1) Salaries or other compensation of the Constructor's personnel at the Constructor's offices, including the field office, unless direct additional expense has been incurred exclusively because of the change;
- (2) Expenses of the Constructor's offices, including the field office;
- (3) Any part of the Constructor's capital expenses, including interest on the Constructor's capital;
- (4) Costs due to the negligence of the Constructor, any Subcontractor, and Sub-subcontractor, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including, but not limited to, the correction of defective or nonconforming Work, disposal of materials and equipment wrongly supplied, or making good any damage to property; or,
- (5) Overhead, general expense, and the cost of any item not specifically or reasonably inferable as included in the items described in Subparagraph 13.6.1.

**13.7 Percentage Fee for Overhead and Profit.** The Constructor's mark-up for overhead and profit in a Change Order shall be included as follows:

- (1) **Construction Management and Design-Build Contracts:** The percentage shall be the same as that agreed in the Guaranteed Maximum Price for the Work.
- (2) **Lump Sum Contracts:** For any work performed by the Constructor's own forces,

a maximum of fifteen percent (15%) mark-up shall be allowed for the total cost of the change. For any work performed by a subcontractor or forces under a subcontractor or other persons not in the direct employ of the Constructor, a maximum total of twenty-two and one-half percent (22.5%) of the cost of the change, with fifteen percent (15%) to be assigned to the subcontractor and seven and one-half percent (7.5%) to be assigned to the Constructor.

- (3) **Performance Energy Savings Contracts:** In consideration for the diverse nature of performance energy savings contracts and the potential reliance on previously negotiated contract terms, overhead and profit adjustments shall be considered on an individual basis with attention paid to transparency and the University's requirements for substantiating documentation. In no case shall profit percentages exceed those in Subparagraph 13.7(2).

**13.8 Adjustment of Contract Time.** The Constructor's proposed adjustment to Contract time shall be included on the Change Order form. Disputes regarding the amount or method of determining a time adjustment shall be referred to the Consultant for determination.

**13.9 Contingency Modifications.** For Construction Management or Design-Build projects which include terms for pre-negotiated contingencies, the Constructor shall submit requests to modify a contingency balance on the FSU Contingency Modification form. The proposed adjustment shall be supported with the same back-up documentation as required for a Change Order except that no adjustment for time shall be included. Contingency Modifications shall be utilized for supplementation of bid package buy-outs, unanticipated costs, adjustment of costs between line items, and convenience in management of minor expenses. Since allowance for the Constructor's overhead and profit is included at the time a Guaranteed Maximum Price is executed, no overhead or profit shall be added to the Contingency Modification. The Constructor shall make no adjustments to the Contingency without the approval of the Owner and the Consultant and shall include a separate line item in the Schedule of Values for tracking all approved changes.

**13.10 Submission.** If the change is requested by the Constructor, the Constructor shall prepare and submit the Change Order or Contingency Modification request, along with appropriate back-up documentation, to the Consultant for review and response. The Consultant shall review the scope of the change, along with the submitted documentation, to determine whether the change is consistent and appropriate with the Work shown in the previously executed Contract Documents. Upon approval, the Change Order shall be submitted to the Owner for review and approval.

**13.11 Execution.** If the parties agree to the change, an electronic copy of the Change Order or Contingency Modification shall be submitted to the FSU Project Administration mailbox for review of contract terms and calculations. When all parties are in agreement, the Change Order or Contingency Modification shall be executed utilizing the Owner's electronic signature

process. All parties executing the change shall possess authority to commit the resources of their respective companies.

**13.11.1 Implementation of the Change.** Changes in the Work shall proceed under applicable provisions in the Contract Documents, and the Constructor shall proceed promptly upon receipt of the executed change document, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

## **ARTICLE 14**

### **CONSTRUCTION BY OWNER OR SEPARATE CONTRACTOR**

**14.1 Reserved Right to Use Owner's Forces and to Use Separate Contracts.** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Constructor claims that delay or additional cost is involved because of such action by the Owner, the Constructor shall make such Claim as provided elsewhere in the Contract Documents.

**14.2 Term "Constructor".** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Constructor" in the Contract Documents in each case shall mean the Constructor who executes each separate Owner-Constructor agreement.

**14.3 Coordination of Multiple Constructors.** The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate constructor with the Work of the Constructor who shall cooperate with them. The Constructor shall participate with other separate constructors and the Owner in reviewing their construction schedules when directed to do so. The Constructor shall make any revisions to the construction schedule and Contract Sum deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Constructor, separate constructors and the Owner until subsequently revised.

**14.4 Mutual Responsibility.** The Constructor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Constructor's construction and operations with theirs as required by the Contract Documents.

**14.5 Constructor's Responsibility to Accept Work of Other Contractors.** If part of the Constructor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Constructor shall, prior to proceeding with that portion of the Work, promptly report to the Consultant apparent discrepancies or defects in such other

construction that shall constitute an acknowledgment that the Owner's or separate contractors' completed or partially completed construction is fit and proper to receive the Constructor's Work, except as to defects not then reasonably discoverable.

**14.6 Responsibility for Costs of Delays.** Costs caused by delays or by improperly time activities or defective construction shall be borne by the party responsible therefor.

**14.7 Remedy Damaged Caused to Others Work.** The Constructor shall promptly remedy damage wrongfully caused by the Constructor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Article 16 and Article 24.

**14.8 Claims and Disputes Between Multiple Constructors.** Claims and other disputes and matters in question between the Constructor and a separate constructor shall be subject to the provisions of Article 23 (Claims and Disputes) herein, provided the separate constructor has reciprocal obligations.

**14.9 Cutting/Patching.** The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Constructor in Paragraph 9.2 (cutting and patching) herein.

**14.10 Owner's Right to Clean Up.** If a dispute arises among the Constructor, separate constructors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Paragraph 14.10 (cleaning up) herein, the Owner may clean up and allocate the cost among those responsible as the Consultant determines to be just.

## **ARTICLE 15 UNFORESEEN AND CONCEALED CONDITIONS**

**15.1 Hazardous Materials.** The Constructor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials.

**15.2 Unknown Hazardous Materials.** If the Constructor encounters a hazardous material or substance that is not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Constructor, the Constructor shall upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Consultant in writing.

**15.3 Responsibility of Owner.** Upon receipt of the Constructor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Constructor and in the event such material or substance is found to

be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Constructor and Consultant the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Constructor and the Consultant will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Constructor or Consultant has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Constructor and Consultant have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Constructor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable costs of shut-down, delay and start-up.

**15.4 Indemnification by Owner.** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Constructor, Subcontractors, Consultant, Subconsultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such danger, loss, or expense is due to the fault or negligence of the party seeking indemnity.

**15.4.1 Non-negligence.** If, without negligence on the part of the Constructor, the Constructor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Constructor for all cost and expense thereby incurred.

**15.5 Responsibility for Materials Brought to the Site.** The Owner shall not be responsible for materials or substances the Constructor brings to the site unless such materials or substances are required by the Contract Documents and specified for use by the Consultant. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Constructor's fault or negligence in the use and handling of such materials or substances.

**15.6 Indemnification by the Constructor.** The Constructor shall indemnify the Owner for the cost and expense the Owner incurs (1) for modification of a material or substance the Constructor brings to the site and negligently handles, or (2) where the Constructor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

## **ARTICLE 16**

### **PROTECTION OF PERSONS AND PROPERTY**

**16.1 Safety Precautions and Programs.** The Constructor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance with the Contract.

**16.1.1 Required Notices and Compliance.** The Constructor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

**16.1.2 On-Site Safety Person.** The Constructor shall designate a responsible member of the Constructor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Constructor's superintendent unless otherwise designated by the Constructor in writing to the Owner and Consultant.

**16.1.3 Safety Protections.** The Constructor 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. If required, the Constructor shall employ trench safety precautions compliant with all applicable regulations.

**16.1.4 Explosives.** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Constructor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Constructor shall provide notification to the Owner prior to initiation of activities, including storage of hazardous or highly flammable materials on the Project site.

**16.1.5 Trench Safety.** The Constructor shall comply with all terms of the Trench Safety Act, Chapter 553, Part III, Florida Statutes.

**16.2 Unforeseen Asbestos or Other Hazardous Material.** Unless asbestos abatement is specifically included as part of the Work elsewhere in the Contract Documents, then in the event the Constructor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Constructor shall immediately stop Work in the area affected and report the condition to the Owner and Consultant in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Constructor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Constructor, or in accordance with



final determination by the Consultant on which legal recourse has not been demanded, or by legal recourse under Article 15 herein.

**16.2.1 Requirement for Asbestos Free Project.** The Constructor shall be responsible to insure that Asbestos Containing Materials (ACM) are not incorporated in the scope of work for the Project. The Constructor shall provide Material Safety Data Sheets for all products and materials for the Project and shall certify that Asbestos Containing Materials have not been incorporated in the Work.

**16.2.2 Disposal of Hazardous Materials.** The Constructor shall be responsible for notification of the proper agencies, and for the cost of the removal, encapsulation, transportation and disposal of any hazardous material, including, without limitation, any asbestos or asbestos-related products as substitutions in connection with the Work. Hazardous material, described by Federal guidelines brought by either the Constructor or the Subcontractors shall remain their responsibility for proper disposal. Any hazardous material on the site prior to proceeding with the Work and not specifically shown on the documents shall be considered a concealed condition.

**16.2.3 Pre-qualification of Abatement Contractor.** Any hazardous material removal including asbestos abatement Work required in connection with the Work shall only be performed by an approved contractor for asbestos, etc., which has holds certifications and experience removing the specific material and has been pre-qualified by the Owner.

**16.2.4 Consent of Constructor.** The Constructor shall not be required pursuant to Article 13 herein, to perform without consent any Work relating to asbestos, polychlorinated biphenyl (PCB) or lead based paint.

**16.3 Safety of Persons and Property.** The Constructor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- (1) employees on the Work and other persons who may be affected thereby;
- (2) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Constructor or the Constructor's Subcontractors or Sub-subcontractors; and
- (3) other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

**16.4 Protection of Existing Conditions.** The Constructor shall provide and put in place all protections required to prevent damage to existing construction, landscape, walks, plazas,

utilities, infrastructure, roadways and other amenities to remain. The Constructor shall repair and be responsible for the return of all existing conditions damaged during construction to their pre-construction condition.

**16.4.1 Structural Overloading.** The Constructor shall not load or permit any part of the construction or site to be over-loaded so as to endanger its safety. This requirement includes, but is not limited to, the storage of construction materials in partially completed building areas.

**16.4.2 Salvaged Materials.** All materials to be salvaged per the Contract Documents shall be turned over to the Owner in satisfactory condition. If the Owner determines that salvaged materials are to be disposed, any revenues generated in the disposal shall be documented and credited to the Owner through the Project accounting.

**16.5 Construction Lay-down and Parking Areas.** The Owner will endeavor to provide adequate lay-down for on-site material storage and construction parking areas. The Constructor will be responsible for all safety and maintenance of the lay-down and parking site, including but not limited to provisions for safety of persons, prevention of vandalism and theft of materials, transportation and automobile safety to and from site, and repair/restoration of the site at the end of the Work.

**16.5.1 Site Access Control.** The Constructor shall ensure that access to the work site, parking areas, or lay-down areas is controlled to prevent unauthorized entry, whether incidental or malicious, by others.

**16.5.2 Construction Equipment Storage.** The Constructor shall ensure that all equipment used in the construction of the project is protected from unauthorized use at all times. This requirement shall include, but is not limited to, protection of cranes, vertical lifts, hoists, scaffolding, and tractors.

**16.6 Traffic Control.** The Constructor shall provide necessary safety signage, barricades, and flag persons to ensure the safe movement of traffic into and from the construction site.

**16.7 Maintenance of Site Protections.** The Constructor shall ensure the maintenance of tree barricades and stormwater protections. Construction materials or equipment shall not be stored within tree barricades (drip lines) nor shall they impede the flow of stormwater to inlets. The Constructor shall maintain and replace stormwater filters/hay bales as required to comply with permit terms. The Constructor shall prevent debris from leaving the site during a weather event and shall be responsible for clean-up of any debris which leaves the site.

**16.8 Injury or Damage to Person or Property.** If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding (21) days after discovery.

The notice shall provide sufficient detail to enable the other party to investigate.

**16.9 Emergencies.** In an emergency affecting safety of persons or property, the Constructor shall act, at the Constructor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Constructor on account of an emergency shall be determined as provided in Article 13 ( Changes in the Work) and Article 23 (Claims and Disputes) herein.

**16.9.1 Emergency Contact.** The Constructor shall maintain an emergency contact phone number for afterhours needs. This contact should be knowledgeable of the Work and be available for site access/assistance. The individual should possess contact information for all subcontractors employed in the execution of the Project.

**16.10 Site Management During Weather Events.** In the event of a known impending extreme weather event, such as tropical storm or hurricane, the Constructor shall take immediate and appropriate actions to secure the Project site, including work in place, stored materials, and equipment at the site. Safeguards to prevent windborne debris and damage to construction shall be implemented. Construction fencing should be secured in order to prevent overturn. Measures to prevent damage from on-site cranes should be implemented, if required.

## **ARTICLE 17 PROTECTION OF INTELLECTUAL PROPERTY**

**17.1 Intellectual Property.** All documents furnished by the Owner to the Constructor for the performance of the Work shall remain the property of the Owner and shall not be disclosed without notification and written request to the Owner. This requirement excludes the submission or distribution for purposes required in the execution of the Work, such as permit applications and approvals necessary to proceed. All documents prepared by the Constructor for the Project shall become the sole property of the Owner and the Constructor shall grant to the Owner unconditional rights for use.

**17.1.1 Constructor's Employees and Subcontractors.** The Constructor shall instruct its own employees and those subcontractors employed in the performance of the Work, that all information distributed in the performance of the work shall be treated as proprietary and confidential and may be subject to copyright laws.

**17.1.2 Disclosure.** Disclosure of any information not shown on the Owner's public website shall be by the Owner.

## **ARTICLE 18 PAYMENTS**

**18.1 Contract Sum.** The Contract Sum is the amount stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Constructor for performance of the Work under the Contract Documents.

**18.2 Schedule of Values.** Before the first Application for Payment, the Constructor shall submit to the Consultant a schedule of values allocated to various portions of the Work, prepared in the form as provided herein and supported by such data to substantiate its accuracy as the Consultant may require. This schedule, unless objected to by the Consultant, shall be used as a basis for reviewing the Constructor's Applications for Payment. The Schedule of Values shall be developed in sufficient detail and correlate to the extent feasible with the Constructor's developed bid packages.

**18.2.1 Costs of Compliance with Trench Safety.** The Constructor shall include a line item in the Schedule of Values specific to the cost of providing trench safety pursuant to the Trench Safety Act (Florida Statutes, Chapter 553, Part III).

**18.2.2 Requirement for Contingency Modification or Change Order.** The Constructor may not submit an Application for Payment which develops a negative balance for any line item in the Schedule of Values. Resolution to negative balances which require a Change Order or Contingency Modification must occur prior to submittal of the Application for Payment to the Owner.

**18.3 Applications for Payment.** The Constructor shall submit invoices to the Consultant for labor and services rendered complete during the preceding (30) days. Each invoice shall contain sufficient detail and back-up documentation required to substantiate the payment.

**18.3.1 Minimum Requirements.** The Application for Payment shall be on the Owner's standard form and include the following minimum information:

- 1) execution by the Consultant, thereby constituting certification that the Work is complete as indicated and that it has been performed at a level of quality and conformance with the Contract Documents to warrant acceptance or partial acceptance and that the "as-built" documentation is up-to-date;
- 2) the total original construction price and the total current construction price;
- 3) change order summary;
- 4) the amount due for labor, materials, and equipment compliantly completed

in the Work; and proof title transfer to the Owner for such;

- 5) a Schedule of Values providing breakdown of the Project phases, bid packages, stored materials, and work previously completed;
- 6) previously invoiced totals and payments made and retainage previously withheld;
- 7) total amount due, less any agreed retainage;
- 8) lien waiver(s) and other verification of payment to subcontractors and suppliers.

**18.3.1 Submission of Draft.** At least ten days before the date established for each progress payment, the Constructor shall submit to the Consultant an itemized preliminary draft of the Application for Payment with complete supporting data on the Florida State University Certificate of Partial Payment form.

**18.3.2 Approval of Draft.** Upon approval of the preliminary draft, the Constructor shall submit to the Owner via the Owner's electronic mail system a copy of the Application for Payment for operations completed in accordance with the schedule of values. Such application shall be submitted in an approved electronic format and include all such data as necessary to substantiate the Constructor's right to payment as required for review and approval by the Owner and Consultant. It is required that the Constructor submit supporting data such as copies of requisitions from Subcontractors and materials suppliers, including evidence of retainage withheld from such parties. Applications for payment should be made monthly beginning (30) days after notice to proceed.

**18.3.3 Submittal to Owner.** Submittal of the Constructor's pay application shall be via the Owner's electronic submission process. Upon satisfactory review by the Owner, the pay application will be circulated for electronic signature by all parties. Digital signature by the parties shall represent certification and acceptance of the Work complete as indicated.

**18.3.4 Prompt Payment.** As provided in Section 215.422, Florida Statutes, if a warrant in payment of an invoice is not mailed by the Owner within (40) days after receipt of the invoice and receipt, inspection and approval of the services, the Owner shall pay to the Constructor, in addition to the amount of the invoice, interest at the rate established in the Florida Statutes, on the unpaid balance from the expiration of such 40-day period until such time as the warrant is mailed to the Constructor. These provisions apply only to undisputed amounts for which payment has been authorized. Invoices or pay requests returned to the Constructor due to preparation errors may result in a payment delay. Payment requirements do not start until a properly completed pay request is provided to the Owner.

**18.4 Retainage.** With the exception of Work which may be exempted from this requirement by a provision in the Special Conditions, if any, retainage shall be withheld from each monthly payment request as allowed by Chapter 255 Florida Statutes. Retainage shall be withheld in an amount not to exceed ten percent (10%) of the approved payment until fifty percent (50%) of construction payments are made. Fifty percent completion shall be defined as the point at which the Owner has expended 50% of the total cost of the Contract Sum with modifications or shall be as defined in the Contract Documents. After the Work is considered to be fifty percent (50%) complete, retainage thereafter not to exceed five percent (5%) shall be withheld from subsequent progress payments by the Owner to the Constructor.

**18.4.1 Applicability to Design Build and Performance Energy Contracts.** For contracts which include terms for professional services, retainage will not be withheld on professional services invoiced. Construction/Implementation services shall be subject to retainage terms.

**18.4.2 Retainage Withheld by Constructor From Subcontractors.** After 50% completion, the Constructor may elect to withhold retainage from its Subcontractors at a rate higher than 5%. The specific amount shall be determined on a case-by-case basis and must be based on the Subcontractor's past performance, the likelihood that such performance will continue, and the Constructor's ability to rely on other safeguards. The Constructor shall notify the Subcontractor in writing of its determination to withhold more than 5 percent of the progress payment; and, the Constructor may not request the release of such retained funds from the Owner.

**18.4.3 Release of Retainage.** After fifty percent (50%) completion of the construction services, the Constructor may request release of up to one-half of the retainage held by the Owner. The Owner shall promptly make payment to the Constructor, unless circumstances exist to warrant withholding payment due to a dispute or claim. If the Owner makes payment of retainage to the Constructor which is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers, the Constructor shall timely remit payment of such retainage to those subcontractors and suppliers within seven (7) days.

**18.5 Securities in Lieu of Retainage.** If securities are substituted in lieu of retainage as permitted in [Sec. 255.052, Florida Statutes](#), the securities must be free of all encumbrances, and the Constructor must assign all its rights to the securities Owner, enabling the Owner to use those securities as it would retainage.

**18.6 On-Site Stored Materials.** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work.

**18.7 Off-Site Stored Materials.** If approved in advance and stored at a location agreeable to the Owner, off-site stored materials shall become eligible for payment upon receipt of the

Constructor's Application for Payment, submission of an executed FSU Off-site Stored Materials Agreement, establishment of Owner's title to materials and equipment, insurance certificate listing Florida State University as an additional insured, evidence of bonding/insurance for the storage facility, and photographs depicting exact materials to be used in completion of the work.

**18.7.1 Storage and Transportation Costs.** Off-site stored materials shall not be subject to payment for storage or transportation to the site unless agreed prior to storage.

**18.8 Transfer of Title.** The Constructor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Constructor 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 the Owner shall, to the best of the Constructor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Constructor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

**18.9 Certificates for Payment.** Upon submission by the Constructor, the Architect/Engineer shall within seven (7) days review the Application for Payment and notify the Constructor of approval of the amount due or reasons for withholding certification in whole or part.

**18.9.1 Certification for Payment by Architect/Engineer.** The approval to issue a Certificate of Payment by the Architect/Engineer will constitute a representation by the Architect/Engineer to the Owner, based on the Architect/Engineer's observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect/Engineer's knowledge, information, and belief, quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Architect/Engineer. The issuance of a Certificate for Payment will further constitute a representation that the Constructor is entitled to payment in the amount certified. However, the issuance of a Certificate of Payment will not be a representation that the Architect/Engineer has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and materials suppliers and other data requested by the Owner to substantiate the Constructor's right to payment or (4) made examination to ascertain how or for what purpose the Constructor has used money previously paid on account of the Contract Sum.

**18.9.2 Constructor's Certification to Owner.** Execution of an electronic signature on the Application for Payment by the Constructor shall constitute the Constructor's

certification to the Owner that (1) the Constructor's services included on the Application have progressed to the percentage of completion indicated and have been performed as required by the Contract Documents; (2) the Constructor has paid its subcontractors and suppliers their requested share of previous applications received from the Owner; (3) the amount requested is currently due and owing; (4) all subcontractors performing Work for which payment has been made and is requested hold all necessary State of Florida licenses and certifications.

**18.9.2 Decisions to Withhold Certification.** The Architect/Engineer may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect/Engineer's opinion the representations to the Owner required in Subparagraph 18.9.1 herein cannot be made. If the Architect/Engineer is unable to certify payment in the amount of the Application, the Architect/Engineer will notify the Constructor and Owner as provided in Subparagraph 18.9 herein. If the Constructor and the Architect cannot agree on a revised amount, the Architect/Engineer will promptly issue a Certificate of Payment for the amount for which the Architect/Engineer is able to make such representations. The Architect/Engineer may also decide to not certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate of Payment previously issued, to such extent as may be necessary in the Architect/Engineer's opinion to protect the Owner from loss because of, but not limited to:

- 1) defective Work not remedied;
- 2) third party claims filed or reasonable evidence indicating probable filing of such claims;
- 3) failure of the Constructor to make payments properly to Subcontractors or for labor, materials, or equipment;
- 4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- 5) damage to the Owner or another constructor;
- 6) reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- 7) persistent failure or refusal to carry out the Work in accordance with the Contract Documents.

**18.9.3 Removal of Holds on Certification.** When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.



**18.10 Progress Payments.** After the Architect/Engineer has approved payment, the Owner's representative shall initiate an electronic signature process and approve payment to the Constructor by the University.

**18.11 Subcontractor Payment by Constructor.** Upon receipt of payment by the Owner, the Constructor shall promptly pay each subcontractor on accord of each subcontractor's portion of the Work, the amount as certified and entitled to each, reflecting percentages actually retained from payments to the Constructor on account of such Subcontractor's portion of the Work. When the Constructor receives payment from the Owner for labor, services or materials furnished by subcontractors and suppliers hired by the Constructor for the project, the Constructor shall remit payment due to those subcontractors and suppliers, less the value of any item contested in accordance with the Contract, within ten (10) days after the Constructor's receipt of payment from the Owner. When the payment due the subcontractor is for final payment, including retainage, the subcontractor must include with the invoice for final payment a conditional release of lien and all appropriate warranties and closeout documentation. When the subcontractor receives payment from the Contractor for labor, services or materials furnished by those subcontractors and suppliers hired by the subcontractor the subcontractor shall remit payment due to those subcontractors and suppliers, less the value of any item contested in accordance with the Contract with ten (10) days after the subcontractor's payment.

**18.12 Release of Payment Information.** The Consultant will upon request, furnish to a Subcontractor information regarding percentages of completion or amounts applied for by the Constructor and action taken thereon by the Consultant and Owner on account of portions of the Work done by such Subcontractors.

**18.13 Obligations to Pay Subcontractor.** Neither the Owner nor the Consultant shall have an obligation to pay nor to see to the payment of money to a Subcontractor except as may otherwise be required by law.

**18.14 Payment to Material Suppliers.** Payment to material suppliers shall be treated in the manner described in 18.11, 18.12, and 18.13 above EXCEPT that payment to material suppliers contracted through the Owner's direct purchase program will be treated as per University Policy & Procedure.

**18.15 Payment Does Not Constitute Acceptance.** A Certificate of Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

**18.16 Failure of Payment.** If the Consultant does not issue a Certificate for Payment, through no fault of the Constructor, within seven (7) days after receipt of the Constructor's Application for Payment, or if the Owner does not pay the Constructor within seven (7) days after the date established in the Contract Documents the amount certified by the Consultant or awarded by litigation then the Constructor may upon seven additional days' written notice to the Owner and Consultant, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of

the Constructor's reasonable costs of shut-down, delay and start-up, which shall be accomplished as provided in **Article 15, Changes in the Work** herein.

**18.17 Correction of Past Payments.** All prior payments may be corrected and adjusted in any subsequent payment or corrected and adjusted in the final payment. In the event that any invoice contains a defect or impropriety which would prevent payment by the date due, the Owner shall notify the Constructor in writing of such defect or impropriety. Any disputed amounts determined by the Owner to be payable to the Constructor shall be due thirty calendar days from the date the dispute is resolved.

**18.18 Payment at Substantial Completion.** Based upon satisfactory completion of all criteria for establishing Substantial Completion set forth in **Article 19 herein**, the Constructor shall submit an Application for Payment to the Consultant for certification. Certification by the Consultant shall cause the Owner to make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

**18.18.1 Liquidated Damages.** If applicable, liquidated damages to the date of Substantial Completion shall be deducted by Construction Change Directive from the Contract Sum and from the Substantial Completion payment.

**18.18.2 Acceptance of Substantial Completion Payment.** Acceptance of Substantial Completion payment shall constitute a waiver of all claims by the Constructor except those previously made in writing and identified by the Constructor as unsettled at the time of the Application for Payment for Substantial Completion, except for the retainage sums due at final acceptance.

**18.19 Final Payment.** Final payment shall not be due to the Constructor until Final Completion has been achieved based upon all criteria identified in **Article 19 herein**, the Consultant has inspected and certified all Work as acceptable under the Contract Documents and the Contract fully performed. Certification by the Consultant shall cause the entire balance to become due and payable to the Constructor. Any liquidated damages assessed subsequent to Substantial Completion shall be deducted by Construction Change Directive from the Contract Sum and from the final payment.

**18.19.1 Affidavit by Constructor.** Final payment and remaining retainage shall not become due to the Constructor until the Constructor submits to the Consultant:

- 1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts held by the Owner) have been paid or otherwise satisfied;
- 2) 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

cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner,

- 3) a written statement that the Constructor knows of no substantial reason that the insurance will be renewable to cover the period required by the Contract Documents;
- 4) consent of surety, if any, to final payment
- 5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of claims, security interests, or encumbrances arising out of the Contract.

**18.19.2 Failure of Subcontractor to Furnish a Release of Lien.** If a subcontractor refuses to furnish a release or waiver required by the Owner, the Constructor may furnish a bond satisfactory to the Owner to indemnify the Owner against such claim. If such claim remains unsatisfied after payments are made, the Constructor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such claim, including all costs and reasonable attorneys' fees.

**18.19.3 Acceptance of Final Payment.** Acceptance of final payment by the Constructor, a Subcontractor, or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

**18.19.4 Certificate of Contract Completion.** The Constructor's application for final payment shall be accompanied by a completed "Certificate of Contract Completion" as included herein. The "Certificate of Contract Completion" shall be submitted for electronic signature utilizing the Owner's accepted process.

## **ARTICLE 19 PROJECT COMPLETION**

**19.1 Substantial Completion.** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended purpose. Substantial Completion of the Work shall be deemed to have occurred on the later of:

- 1) the dates that the Work passes a Substantial Completion inspection;
- 2) the date the required Substantial Completion documentation and items have been produced; or

- 3) the date a certificate of occupancy is issued for the Work.

**19.2 Certificate of Occupancy.** A Certificate of Occupancy issued by the FSU Building Code Official shall be required as a pre-requisite to Substantial Completion.

**19.3 Building Systems.** Acceptance of the Work, or portions thereof, as substantially complete will not be granted until all building life safety and other systems are functional.

**19.3.1 Test and Balance of Mechanical Systems.** Test and Balance services for mechanical systems shall be completed prior to Substantial Completion.

**19.3.2 Building Systems Commissioning.** If the Work is commissioned through the services of a commissioning consultant, such commissioning shall be completed as a pre-requisite to the Work being declared Substantially Complete, provided the Constructor shall not be responsible for delays in commissioning not the fault of Constructor.

**19.3.3 Owner Training Sessions.** Approximately (21) days prior to the anticipated date of Substantial Completion, the Constructor shall schedule training sessions with the Owner's personnel for the purposes of instructing them in the operations and maintenance of the Project. The Constructor shall document the attendance of the Owner's personnel and shall videotape the training sessions, providing copies to the Owner.

**19.3.4 Emergency Generator Testing.** If the Project includes an emergency generator, generator testing shall be complete prior to Substantial Completion.

**19.4 Substantial Completion for Site Amenities Projects.** Substantial Completion of projects for which there is no building construction, such as site amenities, roadway, and landscape shall be considered substantially complete when:

- 1) all hardscape or roadway may be opened to the public for use;
- 2) all landscape material and sod has been placed;
- 3) irrigation systems are functioning as designed and have passed pressure testing;
- 4) all site furnishings have been installed;
- 5) all site construction materials, equipment and debris have been removed; and
- 6) the Consultant has inspected the Work and found it to be in compliance with the Contract Documents.

**19.5 Substantial Completion Inspection.** When the Constructor believes that the Work is

substantially complete, the Constructor shall prepare and submit to the Owner and Consultant a comprehensive list of items to be completed or corrected. Upon receipt and review of the Constructor's list and in agreement that the punchlist items do not prevent the functional use of the Work, the Owner and Consultant will make an inspection to determine whether the Work, or designated portion thereof, is substantially complete. The Constructor shall endeavor to give the Owner and Consultant (2) weeks prior notice of the anticipated date for the Substantial Completion inspection date. Upon receipt of such notification, the Consultant will coordinate with the Owner and the Constructor and establish a date for inspection of the Work. During the inspection(s):

- 1) the Consultant will inspect the Work for compliance with the Contract Documents;
- 2) list additional items to be completed or corrected; and
- 3) determine, in consultation with the Owner, whether Substantial Completion of the Work has occurred.

**19.6 Punchlist.** The Constructor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Constructor to complete all Work in accordance with the Contract Documents.

**19.7 Work Not Substantially Complete.** If the Work is determined not to be substantially complete, the Work shall continue to be carried out until the Work is substantially complete and the inspection process shall be repeated at no additional cost to the Owner until the Work is determined to be substantially complete. The Constructor will be responsible for costs of the Consultant associated with premature inspections.

**19.8 Operations and Maintenance Items.** On or prior to the required date of Substantial Completion, the Constructor shall deliver keys, permits, operating manuals, and other necessary and customary documents and items pre-requisite for the Owner's occupancy and use of the Work for its intended purpose. The Consultant shall review the Substantial Completion documentation and items, and will inform the Constructor of any deficiencies.

**19.9 Date of Certificate of Substantial Completion.** When the Owner, Constructor and Consultant agree that the Work has passed the Substantial Completion inspection and the Constructor has produced the required Substantial Completion documentation and items, they shall each sign the Owner's standard form Certificate of Substantial Completion declaring the Work substantially complete and establishing the actual date of Substantial Completion. The Certificate of Substantial Completion shall also include a list of and timeline for the completion of all Work needing completion and correction.

**19.9.1 Warranty and Guarantees Period.** The warranty guarantees period shall commence effective the date of execution of the Certificate of Substantial Completion.

**19.9.2 Transfer of Responsibilities.** The Owner shall assume responsibility for security, utilities, damage to the Work and insurance effective on the date that the Work is declared substantially complete.

**19.9.3 Assessment of Liquidated Damages.** The date of Substantial Completion shall terminate the assessment of liquidated damages due to contract delay(s), if applicable.

**19.10 Partial Occupancy or Use.** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required by and authorized by authorities having jurisdiction over the Work. Partial occupancy or use may commence whether or not the portion of Work is substantially complete, provided the Owner and Constructor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. Consent of Constructor to partial occupancy or use shall not be unreasonably withheld.

**19.10.1 Partial Occupancy Inspection.** Immediately prior to partial occupancy or use, the Owner, Contractor and Consultant shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**19.10.2 Partial Occupancy Shall Not Constitute Acceptance.** Unless otherwise agreed upon, partial occupancy or use of a portion(s) of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

**19.11 Payment Upon Substantial Completion.** As per Article 18 herein, upon Substantial Completion of the Work or designated portion thereof and upon application by the Constructor and certification by the Consultant, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents. If applicable, liquidated damages to the date of Substantial Completion shall be deducted by Construction Change Directive from the Contract Sum and from the Substantial Completion payment.

**19.12 Support Services by Constructor.** Subsequent to the time of Substantial Completion and receipt of contract record sets and operations and maintenance books, but prior to the date of final acceptance, the Constructor and/or Subcontractor shall provide a competent and experienced person(s) thoroughly familiar with the Work for a reasonable period of time but not less than forty (40) hours to instruct and support the Owner's personnel in operation and maintenance of equipment and control systems. This instruction will include normal start-up, run, stop, and emergency operations, location and operation of all controls, alarms and alarm systems, etc. This instruction will, also, include tracing the system in the field and on the

diagrams in the instruction booklets in order that operating personnel will be thoroughly familiar with both the system and the data supplied. These support services shall be in addition to the Constructor's requirement to provide operations and maintenance training prior to substantial completion.

**19.13 Close-out and Record Documents.**

The Constructor shall be responsible for collecting, identifying, indexing and collating the following materials from the Subcontractors, and will deliver (2) copies in electronic format of the complete document to the Consultant for verification of completeness. The document shall be presented in searchable format and shall include as applicable:

- 1) Complete equipment diagrams, operating instructions, maintenance manuals, parts lists, wiring diagrams, pneumatic and/or electrical control diagrams, test and balance reports, inspection reports, guarantees and warranties, as applicable, for each piece of equipment furnished under the Contract;
- 2) Specific information regarding manufacturer's names, addresses, phone numbers, make and model numbers, operating design and characteristics, etc.;
- 3) Copies of as-built construction documents, including all specifications, Requests for Information, Architect's Supplemental Instructions, Shop Drawings, Submittals, Product Data, Color and Finish data;
- 4) Copies of tests and reports, including soils report and tests, materials tests, indoor air quality, test and balance, commissioning, and threshold inspection reports;
- 5) Copies of Certificate(s) of Occupancy, Substantial Completion, and Final Completion;
- 6) Sustainability documentation, if applicable.

**19.14 Constructor's As-Built Drawings.** Throughout the duration of the Project, the Constructor shall maintain a record set of construction drawings which include the Constructor's redlines and notes documenting the Work as constructed. At Substantial Completion, a copy of these documents shall be submitted to the Consultant for review and inclusion in the Project record drawings submitted to the Owner for use in operating and maintaining the Project.

**19.15 Date of Final Completion.** Final Completion of the Works shall be deemed to have occurred on the later of:

- 1) the date that the Work passes a Final Completion inspection; or
- 2) the date that the Constructor has produced all required Final Completion close-out documentation and items.

**19.16 Final Completion Inspection.** When the Constructor believes the Work is finally complete, the Constructor shall notify the Owner and the Consultant that Work is ready for final Completion inspection. Upon receipt of such notification from the Constructor, the Consultant will coordinate with the Owner and the Constructor a date of inspection of the Work to determine whether the Work is finally complete. The Consultant will perform the following at the Final Inspection:

- 1) inspect the Work;
- 2) determine whether all items on the list included with the Certificate of Substantial Completion have been satisfactorily completed and corrected;
- 3) determine whether the Work complies with (a) the Contract for Construction; (b) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project; and © applicable installation and workmanship standards;
- 4) determine whether required inspections and approvals by the officials(s) having or asserting jurisdiction over the Project have been satisfactorily completed; and
- 5) determine, in consultation with the Owner, whether the Work is finally complete.

**19.17 Failure of the Work to Achieve Final Completion.** If the Work is not finally complete, the Constructor shall continue to carry out the Work, and the inspection process shall be repeated at no additional cost to the Owner, until the Work is finally complete.

**19.18 Final Completion Deliverables.** On or prior to the date of Final Completion, the Constructor shall deliver to the Consultant the following Final Completion close-out documentation and items:

- 1) Certificate of Final Completion – executed on Owner’s standard form; included herein;
- 2) all operation and maintenance manuals not previously produced;
- 3) Owner maintenance or “attic” stock as prescribed in the technical specifications;
- 4) certification and affidavit that all insurance required of the Constructor beyond final payment, if any, is in effect and will not be canceled or allowed to expire without notice to the Owner;
- 5) written consent of the surety(ies), if any, to final payment;
- 6) full, final and unconditional waivers of mechanics or construction liens, from each



contractor, subcontractor, supplier or other person or entity who has, or might have a claim;

- 7) full, final and unconditional certification and affidavit that all of the Constructor'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;
- 8) 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;
- 9) affidavits, releases, bonds, waivers, permits and other documents necessary for final close-out of Work;
- 10) a list of any item(s) due but unable to be delivered and the reason for non-delivery; and
- 11) any other documents reasonably and customarily required or expressly required herein for full and final close-out of the Work.

The Consultant will review and determine the sufficiency of all Final Completion close-out documentation and items required for Final Completion which are submitted by the Constructor, and will immediately inform the Constructor about any deficiencies and omissions.

**19.19 Final Completion and Final Payment.** When the Consultant finds the Work acceptable under the Contract Documents and the Contract fully performed, the Consultant will promptly issue a final Certificate for Payment stating that to the best of the Consultant's knowledge, information and belief, and on the basis of the Consultant's observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Constructor and noted in said final Certificate is due and payable. The Consultant's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 19.18 herein, as precedent to the Constructor's being entitled to final payment have been fulfilled. Liquidated damages assessed subsequent to Substantial Completion shall be deducted by Construction Change Directive from the Contract Sum and from the final payment.

**19.20 Refusal to Furnish Release or Waiver of Lien.** If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Constructor may furnish a bond satisfactory to the Owner to indemnify the Owner against such claim. If such claim remains unsatisfied after payments are made, the Constructor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such claim, including all costs and reasonable attorneys' fees.

**19.21 Delay Due to No Fault of Constructor.** If after Substantial Completion of the Work,

final completion thereof is materially delayed through no fault of the Constructor or by issuance of Change Orders affecting final completion, and the Consultant so confirms, the Owner shall upon application by the Constructor and certification by the Consultant, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Constructor to the Consultant prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**19.22 Acceptance of Final Payment to Constitute Waiver of Claims.** Acceptance of final payment by the Constructor, a Subcontractor, Sub-contractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment. Such waivers shall be in addition to the waiver described in Paragraph 18.19.1 herein.

**19.23 Certificate of Contract Completion.** The Constructor's application for final payment shall be accompanied by a completed "Certificate of Contract Completion" as provided herein. The Certificate of Contract Completion shall be executed digitally using the Owner's electronic processing.

## **ARTICLE 20 WARRANTY**

**20.1 One-Year Warranty.** In addition to the warranties and guarantees set forth elsewhere in the Contract for Construction, the Constructor, upon request by the Owner or the Consultant, shall promptly correct all failures or defects in the Work for a period of one year after the actual date of Substantial Completion, or the date of acceptance by the Owner, whichever is later.

**20.1.1 End of Warranty Walk-thru.** At one month prior to the completion of the Constructor's warranty, the Constructor shall schedule and conduct a walk-thru for the purposes of inspecting the Work and determining the presence of any defects or failures which require correction. Participants shall be recorded and include the Constructor, the Subcontractors, Sub-subcontractors, the Consultant, the Owner and any representatives of the Owner responsible for the operation or maintenance of the Project. The Constructor shall prepare a written report listing any corrections required, responsible party, and the actual completion date of the required work. Corrections shall be completed within (30) days of walk-thru date.

**20.1.2 Failure of the Constructor to Provide Remedy.** If warranty corrections are not completed by the Constructor as prescribed, the Owner may take whatever actions are deemed necessary to remedy the failure or defect and the

Constructor shall promptly reimburse the Owner for all costs of the actions resulting from the Constructor's failure to remedy.

**20.2 Express Warranties and Guarantees By Constructor.** In addition to the warranties and guarantees set forth elsewhere herein, the Constructor expressly warrants and guarantees to the Owner:

- 1) that the Work complies with (a) the Construction Documents; and (b) all applicable laws, statutes, building codes, rules and regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.
- 2) that all goods, products, materials, equipment and systems incorporated into the Work conform to applicable specifications, descriptions, instructions, drawings, data and samples and shall be and are (a) new, unless otherwise specified or permitted, and without apparent damage or defect; (b) of quality equal to or higher than that required by the Construction Documents; and c) merchantable; and
- 3) that all management, supervision, labor and services required for the Work shall comply with the Contract for Construction and shall be and are performed in a workmanlike manner.

**20.3 Express Warranties and Guarantees By Subcontractors and Suppliers.** The Constructor shall require that all of its subcontractors and suppliers provide written warranties, guarantees and other undertakings to the Owner and constructor in a form identical to the warranties, guarantees and other undertakings set forth in the Contract for Construction, including the warranties, guarantees and undertakings set forth in this Article, which warranties, guarantees and undertakings shall run to the benefit of the Owner as well as the Constructor.

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

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

**20.6 Commencement of Obligations.** Unless otherwise specified, all of the Constructor's warranty and guarantee obligations, including the time period(s) for all written warranties and

guarantees for specifically designated equipment required by the Construction Documents, shall begin on the actual date of Substantial completion or the date of acceptance by the Owner, whichever is later.

## **ARTICLE 21 OWNER'S RIGHT TO STOP WORK**

**21.1 Cease and Desist Order.** If the Constructor fails or refuses to perform or fails to correct defective Work as required, or persistently fails to carry out the Work in accordance with the Contract for Construction, the Owner may, by written notice, order the Constructor to cease and desist in performing the Work or any portion of the Work until the cause for the order has been eliminated to the satisfaction of the Owner. Upon receipt of such instruction, the Constructor shall immediately cease and desist as instructed by the Owner and shall not proceed further until the cause of the Owner's order has been corrected, no longer exists, or the Owner instructs that the Work may resume.

**21.1.1 Non-Compensable Delay.** The Constructor shall not be entitled to an adjustment in the time of performance or the Construction Price under this clause since such stoppages are considered to be the fault of the Constructor.

**21.1.2 Right Not Duty.** The right of the Owner to stop Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Constructor or others.

**21.1.3 Failure of Constructor to Remedy.** In the event the Owner issues instructions to cease and desist, and in the further event that the Constructor fails and refuses within seven calendar days to provide adequate assurance to the Owner that the cause of such instructions will be eliminated or corrected, then the Owner shall have the right, but not the obligation, to carry out the Work or any portion of the Work with its own forces, or with the forces of another Constructor, and the Constructor shall be responsible for the cost of performing such Work by the Owner.

## **ARTICLE 22 TERMINATION OR SUSPENSION**

**22.1 Termination for Cause by Owner.** The Owner may terminate the Contract for Construction for cause if the Constructor materially breaches the Contract for Construction by:

- 1) refusing, failing or being unable to properly manage or perform on any project;
- 2) refusing, failing or being unable to supply the Project with sufficient numbers of workers, properly skilled workers, proper materials to maintain applicable

schedules;

- 3) refusing, failing or being unable to make prompt payment to subcontractors or suppliers;
- 4) disregarding laws, ordinances, rules, regulation or orders of any public authority or quasi-public authority having jurisdiction over the Project;
- 5) refusing, failing or being unable to substantially perform in accordance with the terms of the Contract for Construction as determined by the Owner, or as otherwise defined elsewhere herein, or
- 6) otherwise is guilty of substantial breach of a provision of the Contract Documents.

**22.2 Termination and Right to Complete the Work.** Upon the occurrence of any of the events described in **Paragraph xxxxx**, the Owner may give written notice to the Constructor setting forth the nature of the default and requesting remedy within seven calendar days from the date of notice. At any time thereafter, if the Constructor fails to initiate the remedy or if the Constructor fails to expeditiously continue such remedy until complete, the Owner may give written notice to the Constructor and the Constructor's surety, if any, seven days's written notice and terminate employment of the Constructor. The Owner, without prejudice to any other rights or remedies, may take any or all of the following actions:

- 1) direct the surety to complete the work;
- 2) complete all or any part of the Work, including supplying workers, material and equipment which the Owner deems expedient to complete the Work;
- 3) contract with others to complete all or any part of the Work, including supplying workers, material and equipment which the Owner deems expedient to complete the Work,
- 4) take possession of all materials, tool, construction equipment and machinery on the Site owned or leased by the Constructor;
- 5) directly pay the Constructor's subcontractors and suppliers compensation due to them from the Constructor;
- 6) require the Constructor to assign the Constructor's right, title and interest in any or all of Constructor's subcontracts or orders to the Owner.
- 7) finish the Work by whatever method the Owner may deem expedient; and

**22.3 Fair Payment to Constructor.** If the Owner terminates the Contract for Construction for

cause, and the Owner takes possession of all materials, tools, construction equipment and machinery on the Site owned or leased by the Constructor, the Constructor's compensation shall be increased by fair payment, either by purchase or rental at the election of the Owner, for any materials, tools, construction equipment and machinery items retained, subject to the Owner's right to recover from the Constructor the Owner's damages resulting from the termination.

**22.4 Termination Without Proper Cause.** If the Owner terminates the Contract for Construction for cause, and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, then such termination shall be deemed a termination for convenience as set forth in **Paragraph 22.6.**

**22.5 Termination for Cause by Constructor.** The Constructor may terminate the Contract for Construction for cause if the Owner materially breaches the Contract for Construction by:

- 1) refusing, failing or being unable to make prompt payment to the Constructor without just cause;
- 2) disregarding laws, ordinances, rules regulations or orders of any public authority of quasi-public authority having jurisdiction over any Project; or refusing, failing or being unable to substantially perform in accordance with the terms of the Contract for Construction .

**22.5.1 Written Notice by Constructor.** Upon the occurrence of any of the events described in Paragraph 22.5, the Constructor may given written notice of the Owner setting forth the nature of the default and requesting cure within seven calendar day from the date of notice. If the Owner fails to cure the default within seven calendar days, the Constructor, without prejudice to any rights or remedies, may give written notice to the Owner of immediate termination.

**22.6 Termination or Suspension for Convenience.** The Owner may at any time give written notice to the Constructor terminating the Contract for Construction or suspending the Project, in whole or in part, for the Owner's convenience and without cause. If the Owner suspends the Project for convenience, the Constructor shall immediately reduce its staff, services and outstanding commitments in order to minimize the cost of suspension.

**22.7 Constructor's Compensation When Constructor Terminates for Cause or Owner Terminates for Convenience.** If the Contract for Construction is (1) terminated by the Constructor pursuant to Paragraph 22.5; (2) terminated by the Owner pursuant to Paragraph 22.6; or (3) suspended more than three months by the Owner pursuant to Paragraph 22.6, the Owner shall pay the Constructor specified amounts due for Work actually performed prior to the effective termination date and reasonable costs associated with termination. The Owner may agree to additional compensation, if any due to the Constructor. Absent agreement on the additional amount due the Constructor, the Owner shall pay the Constructor:

- 1) reasonable costs incurred in preparing to perform the terminated portion of the Work, and in terminating the Constructor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided, however, that if it appears that the Constructor would not have profited or would have sustained a loss if the Work had been completed, no profit shall be allowed or included, and the amount of compensation shall be reduced to reflect the anticipate rates of loss, if any; and
- 2) reasonable costs of settling and paying claims arising out of the termination of subcontracts or supplier orders. These costs shall not include amounts paid in accordance with other provisions hereof.

**22.8 Constructor's Compensation When Owner Terminates for Cause.** If the Contract for Construction is terminated by the Owner for cause pursuant to Paragraph 22.1, no further payment shall be made to the Constructor until Final Completion of the Project. At such time, the Constructor shall be paid the remainder of the Construction Price less all costs and damages incurred by the Owner as a result of the default of the Constructor, including liquidated damages applicable thereto. The Constructor shall additionally reimburse the Owner for any additional costs or expenses incurred.

**22.9 Limitation on Termination Compensation.** Irrespective of the reason for termination or the party terminating, the total sum paid to the Constructor shall not exceed the Construction Price, as properly adjusted, reduced by the amount of payments previously made and penalties or deductions incurred pursuant to any other provision of the Contract for Construction, and shall in no event include duplication of payment.

**22.10 Constructor's Responsibility Upon Termination.** Irrespective of the reason for termination or the party terminating, if the Contract for Construction is terminated, the Constructor shall unless notified otherwise by the Owner,

- 1) immediately stop work;
- 2) terminate outstanding orders and subcontracts;
- 3) settle the liabilities and claims arising out of the termination of subcontracts and orders; and
- 4) transfer title and deliver to the Owner such completed or partially completed Work, and, if paid for by the Owner, materials, equipment, parts, fixtures, information and such contract rights as the Constructor has.

**22.11 Lack of Duty to Terminate.** The right to terminate or suspend the Work shall not give rise to a duty on the part of either the Owner or the Constructor to exercise that right for the benefit of the Owner, the Constructor or any other persons or entities.

**22.12 Limitation on Termination Claim.** If the Constructor fails to file a claim within one year from the effective date of termination, the Owner shall pay the Constructor on for services actually performed and expenses actually incurred prior to the effective termination date.

## **ARTICLE 23 CLAIMS AND DISPUTE RESOLUTION**

**23.0 Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term “Claim” also includes other disputes and matters in question between the Owner and Constructor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

**23.1 Decision of Consultant.** Claims, including those alleging an error or omission by the Consultant, shall referred initially to the Consultant for action as provide in **Paragraph xxxx** (Resolution of Claims and Disputes) herein. A decision by the Consultant, as provided in **Subparagraph XXXX** herein, shall be required as a condition precedent to litigation of a Claim between the Constructor and Owner as to all such matters arising prior to the date final payment is due, regardless of:

- 1) whether such matters relate to execution and progress of the Work; or
- 2) the extent to which the Work has been completed.

**23.2 Decision by Consultant Not Precedent to Litigation.** The decision by the Consultant in response to a Claim shall not be a condition precedent to litigation in the event:

- 1) the position of Consultant is vacant,
- 2) the Consultant has not received evidence or has failed to render a decision within agreed time limits,
- 3) the Consultant has failed to take action required under **Subparagraph xxxx** herein, within thirty (30) days after the Claim is made, or
- 4) forty-five (45) days have passed after the Claim has been referred to the Consultant.

**23.3 Time Limits on Claims.** Claims by either party must be made within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been



implemented by Change Order will not be considered unless submitted within the time limits provided in this **Subparagraph XXX** (Time Limits on Claims) herein.

**23.4 Continuing Contract Performance.** Pending final resolution of a Claim including litigation, unless otherwise agreed in writing the Constructor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

**23.5 Waiver of Claims: Final Payment.** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- 1) Claims, security interest or encumbrances arising out of the Contract and unsettled;
- 2) Failure of the Work to comply with the requirements of the Contract Documents;  
or
- 3) Terms of special warranties required by the Contract Documents.
- 4) Damages including attorneys' fees and costs incurred by the Owner resulting from lawsuits brought against the Owner, the Consultant or their agents, employees or representatives because of acts or omissions on the part of the Constructor, any Subcontractor, or any of their employees, agents or representatives.

**23.6 Claims for Concealed or Unknown Conditions.** If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) 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, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than twenty-one (21) days after first observance of the conditions. The Consultant will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Constructor's cost of or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Consultant determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract are justified, the Consultant shall so notify the Owner and Constructor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within twenty-one (21) days after the Consultant has given notice of the decision. If the Owner and Constructor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Consultant for initial determination, subject to further proceedings pursuant to **Paragraph XXX** (Resolution of Claims and Disputes ) herein.

**23.7 Claims for Additional Cost.** If the Constructor wishes to make Claim for an increase in the Contract sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under **Paragraph XXXX** (Emergencies) herein.

**23.8 Claims for Additional Time.** If the Constructor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Constructor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

**23.9 Claims for Weather Conditions.** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonable anticipated, and that weather conditions had an adverse effect on the scheduled Construction.

**23.10 Injury or Damage to Person or Property.** If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding twenty-one (21) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in **Subparagraph XXXX** (Claims for Additional Costs) or **XXX** (Claims for Additional Time) herein.

**23.11 Resolution of Claims and Disputes.** The Consultant will review Claims and take one or more of the following preliminary actions within ten days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the Consultant expects to take actions, (3) reject the Claim in whole or in part, stating reasons for rejection, (4) recommend approval of the Claim by the other party or (5) suggest a compromise. The Consultant may also, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim.

**23.12 Action by Consultant for Resolved Claim.** If a Claim has been resolved, the Consultant will prepare or obtain appropriate documentation.

**23.13 Action by Claimant for Unresolved Claim.** If a Claim has not been resolved, the party making the Claim shall, within ten days after the Consultant's preliminary response, take one or more of the following actions:

- 1) submit additional supporting data requested by the Consultant,
- 2) modify the initial Claim, or

- 3) notify the Consultant that the initial Claim stands.

**23.14 Decision by Consultant.** If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Consultant, the Consultant will notify the parties in writing that the Consultant's decision will be made with seven days, which decision shall be final and binding on the parties but subject to resolution as provided in Legal Recourses herein. Upon expiration of such time period, the Consultant will render to the parties the Consultant's written decision relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Constructor's default, the Consultant may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**23.15 Legal Recourse.** The finding of the Consultant shall be a required condition precedent to further action by the Owner or Constructor as follows:

- 1) Claims of one-hundred-thousands dollars (\$100,000.00) or less in value shall be conducted pursuant to and under the procedures of the Chapter 120 (Administrative Procedures Act), Florida Statutes;
- 2) All other claims, disputes and other matters not governed by the foregoing shall be determined under the judiciary system of the State of Florida.

The Chapter 558 (Construction Defects), Florida Statutes contains requirements which must be followed prior to bringing any legal action for an alleged construction defect. Sixty (60) days prior to bringing legal action, the claimant must deliver written notice to the other party, referring to Chapter 558, Florida Statutes, and delineating any construction conditions alleged to be defective. The party against whom the notice is served shall be provided the opportunity to inspect the alleged construction defect and to consider making an offer to repair or pay for the alleged defect(s). No obligation shall exist to accept any offer which may be made. All requirements of Florida law shall be met as pertains to claim resolution.

### **23.16 Dispute Resolution.**

**23.16.1 Mutual Discussion.** In case of any dispute, claim, question or disagreement arising from or relating to the Project or arising out of the Contract for Construction or the breach thereof, the parties shall first attempt resolution through mutual discussion.

**23.16.2 Facilitative Mediation.** If the parties cannot resolve any dispute, claim, question, or disagreement arising from or relating to the Project or arising out of the Contract for Construction or the breach thereof through mutual discussion, as a condition precedent to any litigation or administrative action, the parties shall in good faith participate in private, non-binding facilitative mediation seeking a just and equitable solution satisfactory to all parties.

All parties to a mediation shall promptly provide all other parties to the mediation with copies of essential documentation relevant to the support or defense of the matter being mediated.

The parties shall not be required to mediate for a period greater than ninety-one calendar days unless otherwise agreed to in writing by the parties. The parties shall share equally any administrative costs and fees of such proceedings, but shall each be responsible for their own expenses otherwise incurred.

In the event that the statute of limitations would run during the required mediation period, either party may institute litigation so as to avoid the running of such statute upon the condition that such party immediately seek a stay of such litigation pending the conclusion of the mediation period.

During the course of mediation, any party to the mediation may apply for injunctive relief from any court of competent jurisdiction until the mediation period expires or the dispute is otherwise resolved.

The Owner, the Consultant, the Constructor, and any other parties involved in any way in the design or construction of the Project are bound, each to each other, by this requirement to mediate prior to commencement of any litigation or administrative action, provided that they have signed the Contract for Construction or an agreement that incorporates the Contract for Construction by reference or signed any other agreement which binds them to mediate. Each such party agrees that it may be joined as an additional party to a mediation involving other parties under any such agreement. In the case where more than one mediation is begun under any such agreement and any party contends that the mediations are substantially related, the mediations may be conducted by the mediator selected in the first mediation which was commenced.

The mediation shall be conducted in Leon County, Florida, unless agreed otherwise by the parties.

**23.17 Conflicting Dispute Resolution Provisions.** Neither party to the Contract for Construction shall enter into any contract with regard to the Project which directly or indirectly give the right to resolve any dispute with, involving, or affecting the other to any other person or legal entity which is in conflict with the dispute resolution procedures required by this Article.

**23.18 Arbitration Preclusion.** In case of a dispute relating to the Project, or arising out of the Contract for Construction, no party to the Contract for Construction shall be required to participate in or be bound by, any arbitration proceedings.

**23.19 Performance During Dispute Resolution.** The Owner and the Constructor agree that pending the resolution of any dispute, controversy, or question, the Owner and the Constructor shall each continue to perform their respective obligations without interruption or delay, and the

Constructor shall not stop or delay the performance of the Work.

**23.20 Litigation/Administrative Action.** 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. All other claims, disputes and other matters shall be determined under the judiciary system of the State of Florida.

## **ARTICLE 24 DAMAGES/REMEDY**

**24.1 Written Notice.** Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

**24.2 Additions not Limitation.** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

**24.3 No Waiver of Right or Duty.** No action or failure to act by the Owner, Consultant or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

**24.4 Constructor's Repair.** The Constructor shall, at its expense, promptly correct, repair, or replace all goods, products, materials, systems, labor and services which do not comply with the warranties and guarantees set forth in the Contract for Construction, or any other applicable warranty or guarantee.

**24.5 Constructor's Reimbursement.** The Constructor shall promptly reimburse the Owner for any expenses or damages incurred by the Owner as a result of (I) the Constructor's failure to substantially perform in accordance with the terms of the Contract for Construction; (ii) deficiencies or conflicts in the Construction Documents attributable to the Constructor or of which the Constructor was or should have been aware; (iii) breach of the warranties and guarantees set forth in the Contract for Construction or any other applicable warranty or guarantee; or (iv) other acts or omissions of the Constructor.

**24.6 General Indemnity.** To the fullest extent permitted by law, the Constructor shall secure, defend, protect, hold harmless, and indemnify the Owner and the Owner's Related Parties from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, and regardless of the legal theories upon which premised, including, but not limited to, those actually or allegedly arising out of bodily injury to, or sickness or death of, any

person, or property damage or destruction (including loss of use), which may be imposed upon, incurred by or asserted against the Owner allegedly or actually arising out of or resulting from the Constructor's services, including without limitation any breach of contract or negligent act or omission (I) of the Constructor; or (ii) of the Constructor's subcontractors or suppliers, or (iii) of the agents, employees or servants of the Constructor or its subcontractors or suppliers.

**24.7 Intellectual Property Indemnity.** To the fullest extent permitted by law, the Constructor shall defend, protect, hold harmless, and indemnify the Owner and Owner's Related Parties from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, for infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by the Owner or Consultant(s) in writing. If the Constructor has reason to believe the use of a required design, process or product is an infringement of a patent, the Constructor shall be responsible for such loss unless such information is promptly given to the Owner.

**24.8 Non-Exclusivity of Owner's Remedies.** The Owner's selection of one or more remedies for breach of the Contract for Construction contained herein shall not limit the Owner's right to invoke any other remedy available to the Owner under the Contract for Construction or by law.

**24.9 Waiver of Damages.** The Constructor shall not be entitled to and hereby waives any monetary claims for or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any indirect consequential damages.

#### **24.10 Mutual Responsibility**

**24.10.1 Coordination of Forces.** The Constructor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Constructor's construction and operations with theirs as required by the Contract Documents.

**24.10.2 Fitness of Work by Others.** If part of the Constructor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Constructor shall, prior to proceeding with that portion of the Work, promptly report to the Consultant apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Constructor to so report shall constitute an acknowledgment that the Owner's or separate contractors' completed or partially completed construction is fit and proper to receive the Constructor's Work, except as to defects not then reasonably discoverable.

**24.10.3 Responsibility for Delay.** Costs caused by delays or improperly timed activities or defective construction shall be borne by the party responsible therefor.

**24.10.4 Prompt Remedy of Damage.** The Constructor shall promptly remedy damage wrongfully caused by the Constructor on completed or partially completed construction or to property of the Owner or separate contractors.

**24.10.5 Claims and Disputes with Separate Contractor.** Claims and other disputes and matters in question between the Constructor and a separate contractor shall be subject to the provisions provided in the Agreement.

**24.10.6 Cutting and Patching.** The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Constructor.

**24.11 Owner's Right to Clean-up.** If a dispute arises among the Constructor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and allocate the cost among those responsible as the Consultant determines to be just.

## **ARTICLE 25 MISCELLANEOUS PROVISIONS**

**25.1 Governing Law.** The Contract shall be governed by the law of the State of Florida.

**25.2 Successors and Assigns.** The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. In case the Contractor, on written consent of the Owner, assigns all or any part of money due or to become due under this Contract, the instrument of assignment shall contain a Subparagraph substantially to the effect that it is agreed that the right of the assignee to any money due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.

**25.3 Interest.** Interest shall be paid in certain cases as provided by Section 215.422 (payments), Florida Statutes.

The Constructor shall be required to pay interest to Subcontractors and suppliers in certain cases where payments are not within the time constraints of Section 287.0585 (late payments), Florida Statutes.

**25.4 Commencement of Statutory Limitation Period.**

As between the Owner and Constructor:

**25.4.1 Before Substantial Completion.** As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion.

**25.4.2 Between Substantial Completion and Final Certificate for Payment.** As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the Final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and

**25.4.3 After Final Certificate for Payment.** As to acts or failures to act occurring after the relevant date of issuance of the final Certificate of Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Constructor pursuant to the Work or failure to correct the Work by the Constructor under Paragraph xxxx(Warranty) herein, the date of any correction of the Work or failure to correct the Work by the Constructor under Paragraph xxxx(Correction of Work) herein, or the date of actual commission of any other act or failure to perform any duty or obligation by the Constructor or Owner, whichever occurs last.

**25.5 Harmony.** The Constructor shall exert every reasonable and diligent effort to assure that all labor employed by the Constructor and the Subcontractors for Work on the Project shall Work in harmony with and be compatible with all other labor being used on the site of the Project, and representative of the Consultant(s) and the Owner.

The Constructor shall include this provision in all contracts with Subcontractors, and the Constructor shall require that such a provision be included in the contracts between the Subcontractors and the Sub-subcontractors, provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article 1, Section 6 (Right to Work) of the Florida Constitution.

**25.6 Change of Address.** If the address of the Constructor changes, the Constructor shall provide written notice to that effect to both the Owner and the Consultant.

**25.7 Discovery of Valuable Items of Historical Significance.** If in the execution of the Work any items of historical significance or any valuable items or materials of any kind are discovered buried or hidden within the Work, such items or materials shall be the property of the Owner. The Constructor shall immediately upon discovery of such items or materials, and before removal thereof, acquaint the Consultant with such discovery and carry out by Change Order, at



the expense of the Owner, the Consultant's orders as to the disposal of the items or materials.

**25.8 Integration.** The Contract for Construction represents the entire and integrated agreement between the Owner and the Constructor, and supersedes all prior negotiations, representations or agreements, either written or oral, for the Project. The Contract for Construction may be amended only by written instruments signed by both the Owner and the Constructor.

**25.9 Severability.** If any provision of 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.

**25.10 Waiver.** No provision of the Contract for Construction may be waived except by written agreement of the parties. A waiver of any provision on one occasion shall not be deemed a waiver of that provision on any subsequent occasion, unless specifically stated in writing. A waiver of any provision shall not affect or alter the remaining provisions of the Contract for Construction.

**25.11 Strict Compliance.** No failure of the Owner to insist upon strict compliance by the Constructor with any provision of the Contract for Construction shall operate to release, discharge, modify, change or affect any of the Constructor's obligations.

**25.12 Third-Party Beneficiaries.** The Contract for Construction shall inure solely to the benefit of the parties hereto and their successors and assigns, and, except as otherwise specifically provided in the Contract for Construction, nothing contained in the Contract for Construction 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 the Owner or the Constructor.

**25.13 Assignment of Anti-Trust Claims.** In consideration for the Contract of Construction, the Constructor hereby conveys, sells, assigns and transfers to the Owner all of its right, title and interest in and to any and all causes of action it may now have or may hereafter acquire under the antitrust laws of the United States and the State of Florida for price fixing, relating to the goods or services purchased or acquired by the Owner under the Contract for Construction.

**25.14 Drug Free Workplace.** If required pursuant to 440.102(15), Florida Statutes, Constructor shall implement, and cause its applicable subcontractors to implement, a drug-free workplace program.

**25.14.1** The Owner maintains a smoke and tobacco free environment. By execution of the Agreement, the Constructor agrees to abide by the Owner's policies and shall likewise enforce compliance among its Subcontractors, Sub-subcontractors, suppliers, delivery personnel, and others as may be present in, on, and around the project site.

**25.15 Royalties, Patents and Copyrights.** The Constructor shall pay all royalties and license fees. The Constructor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Consultant harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Consultant. However, if the Constructor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Constructor shall be responsible for such loss unless such information is promptly furnished to the Consultant.

**25.16 Survival.** All provisions of the Contract for Construction which contain continuing obligations shall survive its expiration or termination.

**25.17 Independent Contractor.** Constructor is an independent contractor to the Owner.