

**AGREEMENT BETWEEN
OWNER AND CONSTRUCTION MANAGER FOR MINOR PROJECTS**

THIS AGREEMENT

made this _____ day of _____, 20__ between Florida Atlantic University Board of Trustees ("Owner"), and _____, Federal I.D. No. _____, ("Construction Manager"), for services in connection with Minor Projects at Florida Atlantic University.

The Owner and the Construction Manager agree as set forth below:

ARTICLE 1

The Construction Team and Extent of Agreement

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

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

1.3 Extent of Agreement: This Agreement is complementary to the Drawings and Specifications and the Conditions of the Contract, and together with them, represents the entire agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreement. Where this Agreement is expressly in conflict with the Conditions of the Contract, this Agreement will prevail. Where this Agreement is silent, the Conditions of the Contract, and the requirements of the Drawings and Specifications will prevail. This Agreement may be amended only by written instrument signed by the Owner and the Construction Manager.

ARTICLE 2

Construction Manager's Basic Services

2.0 The Construction Manager's Basic Services under this Agreement include construction services for Minor Projects (\$0 – \$2,000,000 each), which will be executed by Purchase Order for each Sub-project. The Purchase Order shall be considered part of the Contract Documents. The Construction Manager will submit a cost proposal for each Sub-project. Should the Owner and Construction Manager not reach a written agreement on any Sub-project, the Owner reserves the right to cease negotiations with the Construction Manager for that Sub-project and perform the work by other means without affecting this Agreement or any other Sub-project. Nothing herein precludes the Owner from negotiating with another construction manager or general contractor on any particular Sub-Project.

2.1 The Preconstruction Phase: The Construction Manager shall:

2.1.1 Provide preconstruction deliverables for each Sub-project as directed by the Owner. The deliverables for each Sub-project could include: a letter at Conceptual Schematics, and Reports at Advanced Schematics, Design Development, 50% Construction Documents, and, at 100% Construction Documents, a Guaranteed Maximum Price proposal. The letter at Conceptual Schematics will indicate the Construction Manager's confirmation that the concept selected can be constructed within the budget. The reports shall include a complete discussion and summary of the services provided in accordance with Subparagraphs 2.1.2 through 2.1.8 herein below, including the schedule and a detailed cost estimate. Recommendations and cost estimates made throughout the preconstruction phase shall be based on the *FAU Cost Containment Guidelines dated June 2010*, which is available on the Owner's website at <http://www.fau.edu/facilities/pc/info/Index.php>.

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

2.1.3 Provide for the Architect/Engineer's and the Owner's review and acceptance, a Project Schedule that coordinates and integrates the Construction Manager's services, the Architect/Engineer's services and the Owner's responsibilities with anticipated construction schedules. The Construction Manager shall update this schedule periodically, as required.

2.1.4 Prepare for the Owner's approval a detailed estimate of Construction Cost, as defined in Article 8 herein, developed by using estimating techniques which anticipate the various elements of the Project, and based on design documents prepared by the Architect/Engineer. Update and refine this estimate periodically as the Architect/Engineer prepares Construction Documents. Advise the Owner and the Architect/Engineer if it appears that the Construction Cost may exceed the Project budget. Make recommendations for corrective action.

2.1.5 Coordinate Contract Documents by consulting with the Owner and the Architect/Engineer regarding Drawings and Specifications as they are being prepared, and recommending alternative solutions whenever design details affect construction feasibility, cost or schedules.

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

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

2.1.5.3 Establish a schedule for the purchase of materials and equipment requiring long lead time procurement, and coordinate the schedule with the early preparation of portions of the Contract Documents by the Architect/Engineer. Expedite and coordinate delivery of these purchases.

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

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

2.1.8 Schedule and conduct monthly meetings (or more often as required) of the Construction Team, and prepare and distribute minutes.

2.1.9 Based upon Drawings and Specifications produced by the Architect/Engineer, develop Guaranteed Maximum Price (GMP) proposal(s), including Project Construction Schedule, itemized by Trade Contract, for phases of Work as required by the Owner. If the documents as prepared by the Architect/Engineer are not adequate for the development of a Guaranteed Maximum Price, the Construction Manager shall notify the Owner immediately, prior to developing the GMP. All assumptions made by the Construction Manager in the development of the GMP shall be specifically listed in the GMP proposals, and the GMP will not be adjusted due to assumptions made by the Construction Manager, but not included in the GMP proposal.

2.1.9.1 If the GMP proposal is accepted, in writing, by the Owner, it will become an Amendment to this Agreement which will establish the GMP, Contract Time, and liquidated damages for that phase of the Work. Performance and Payment Bonds on the Owner's standard forms will be executed simultaneously with the GMP amendment.

2.1.9.2 If the GMP proposal is not accepted by the Owner, the Owner shall so notify the Construction Manager in writing and, at its election: (i) chose not to proceed forward on the Project with the Construction Manager or (ii) request that the Construction Manager recommend adjustments to the Work through value engineering. In the event the Owner chooses not to proceed forward on the Project with the Construction Manager, neither party shall have any further rights or responsibilities to the other party

(other than those pertaining to the Work performed under this Agreement). In the event the Owner requests recommended adjustments to the Work, the Construction Manager shall then recommend adjustments to the Work through value engineering. The Construction Team will discuss and negotiate these recommendations for no more than 30 calendar days, unless an extension is granted in writing by the Owner. If an acceptable GMP is not developed the Owner may initiate negotiations with another construction manager or general contractor.

2.2 The Construction Phase: Unless otherwise authorized by the Owner, all Work shall be performed under Trade Contracts held by the Construction Manager. The Construction Manager shall not bid on any of the Trade Contractor Work or perform such Work with its own forces without the prior written consent of the Owner and in accordance with the Florida Atlantic University, Facilities Management (FM) – Design & Construction Services Policies and Procedure #5. The Construction Manager shall:

2.2.1 Administer the construction phase as provided herein and in the Florida Atlantic University’s Project Manual dated January 2005 (or as amended from time to time) (the “Project Manual”), including the following Florida Atlantic University’s FM- Design & Construction Services Policies & Procedures #4, #5, #6, #7, #9, #16 (EU#11), #18, #20, and #26,

2.2.1.1 Terms used in the Conditions of the Contract shall have the following meanings:

- .1 "Project" means Sub-project as provided in Paragraph 2.0 above and the terms will be used interchangeably.
- .2 "Contractor" means Construction Manager, and the terms will be used interchangeably;
- .3 "Subcontractor" means Trade Contractor, and the terms will be used interchangeably; and,
- .4 "Contract Sum" for each Sub-project means Guaranteed Maximum Price (GMP), and the terms will be used interchangeably.

2.2.2 For each Sub-project, commence the Work within 10 days after receipt of the executed purchase order for each sub-contract and Notice to Proceed from the Owner.

2.2.3 Develop Trade Contractor interest in the Project and conduct pre-bid conferences with interested bidders to review the documents. Take competitive bids on the Work of the various Trade Contractors; or, if authorized by the Owner in writing and in accordance with the Florida Atlantic University, FM Design & Construction Policies and Procedure #5, negotiate for the performance of that Work. The Construction Manager may require bidders to submit bid bonds or other bid security acceptable to the Construction Manager as a prerequisite to bidding on the Work. Analyze and evaluate the results of the various bids and their relationship to budgeted and estimated amounts, and prepare for review with the Owner and Architect/Engineer a bid tabulation analysis and such other support data as necessary to properly compare the various bids and their responsiveness to the designed scope of Work. Specifically, review the scope of Work in detail with apparent low and best bidders and attempt to achieve additional savings through negotiation whenever practical. Maintain records of all pre-award interviews with apparent low bidders. Prepare and submit written recommendations to the Owner and Architect/Engineers for award of Trade Contracts by the Construction Manager. Promptly award and execute Trade Contracts with approved Trade Contractors. Provide copies of fully executed insurance certificates and bonds to the Owner.

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

2.2.5 Maintain exclusively for each Sub-project the level of staff as agreed upon in the approved GMP proposal at the Project site to coordinate and direct the Work and progress of the Trade Contractors on the Project. All of the Construction Manager's on-site management and supervisory personnel shall be consistent with the interview presentation and shall not be removed or replaced without the Owner's written consent which shall not be unreasonably withheld. The Owner shall have the right to direct the Construction Manager to remove or replace any on-site personnel whose performance becomes unsatisfactory to the Owner. In such event, the Construction Manager shall promptly replace such personnel, without consideration of additional compensation for the replacement.

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

2.2.6 Establish procedures for coordination among the Owner, Architect/Engineer, Trade Contractors and Construction Manager with respect to all aspects of the Work. Implement such procedures, incorporate them into a project resource manual, and distribute manuals to the Construction Team. The Construction Manager shall:

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

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

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

2.2.8 Review the schedule with the various Trade Contractors and review, or expand, the level of detail to incorporate specific Trade Contractor input consistent with the overall completion requirements. Regularly monitor and update the Project Schedule and various sub-networks as construction progresses. Identify potential variances between scheduled and probable completion dates. Review schedule for Work not started, or incomplete, and make adjustments in the schedule to meet the scheduled completion date. Provide summary reports of each monitoring and document all changes in schedule. Regular schedule updates and reporting shall be included as part of the monthly project report outlined in Subparagraph 2.1.16 herein. Provide Owner with the schedule; review at progress meetings.

2.2.9 Determine the adequacy of the Trade Contractors' personnel and equipment, and the availability of materials and supplies to meet the schedule. In consultation with the Owner and the Architect/Engineer, take necessary corrective actions when requirements of a Trade Contract or a Trade Contract Schedule are not being met.

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

2.2.11 Develop and maintain an effective system of Project cost control which is satisfactory to the Owner. Revise and refine the initially approved Project Construction budget, incorporate approved changes as they occur, and develop cash flow reports and forecasts as needed. Identify variances between actual and budgeted or estimated costs and advise Owner and Architect/Engineer whenever projected costs exceed budgets or estimates. Cost Control reports shall be included as part of the monthly project report outlined in Subparagraph 2.1.16 herein.

2.2.12 The Construction Manager shall maintain a system of accounting consistent with generally accepted accounting principles. The Construction Manager shall preserve all accounting records for a period of four (4) years after final acceptance of the Work. The Owner shall have access to all such accounting records at any time during the performance of the Work and for a period of four (4) years after final acceptance of the Work.

2.2.13 Without assuming any of the Architect/Engineer's responsibilities for design, recommend necessary or desirable changes to the Owner and the Architect/Engineer, review requests for changes and submit recommendations to the Owner and Architect/Engineer.

2.2.13.1 When requested by the Owner or Architect/Engineer, promptly prepare and submit estimates of probable cost for changes proposed in the Work including similar estimates from the Trade Contractors. If directed by the Owner, promptly secure formal written Change Order Proposals from such Trade Contractors.

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

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

2.2.14.2 At progress meetings with Trade Contractors, conduct a review of job safety and accident prevention, and prepare minutes of such meetings that will be available to the Owner's Representative on request.

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

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

2.2.17 The Construction Manager shall be responsible for the removal, encapsulation, transportation and disposal of any hazardous material, including, without limitation, any asbestos or asbestos-related products may be required in connection with the Work. Hazardous materials as described by federal guidelines, brought to the site by the Construction Manager or the Trade Contractors, shall remain their responsibility for proper disposal. Any hazardous material not specifically shown on the documents shall be considered a concealed condition and may be the responsibility of the Construction Manager in a Change Order increasing the Guaranteed Maximum Price for any additional costs incurred.

2.2.18 The Construction Manager and all his subcontractors engaged to do work, shall be duly licensed and insured as required by the State of Florida and the county/city in which the work is to be performed. The Construction Manager shall verify that all his subcontractors are duly licensed as stated above and shall maintain a complete and current listing of all subcontractors on the project and provide the Owner a copy of this listing upon request.

ARTICLE 3 Owner's Responsibilities

3.1 The Owner shall designate a representative to act in its behalf. This representative, or his/her designee will monitor the progress of the Work, serve as liaison with the Construction Manager and the Architect/Engineer, receive and process communications and paperwork, and to represent the Owner in the day-to-day conduct of the Project. The Construction Manager will be notified in writing of the representative and of his/her designee or any changes thereto.

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

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

ARTICLE 4 Schedule

4.1 The number of days for performance of the Work shall be established in the Contract Documents for each Sub-project.

4.2 In the event the Owner desires to accelerate the schedule for any portion of the Work, the Owner shall notify the Construction Manager in writing. Within seven (7) days, the Construction manager shall give the Owner a revised Guaranteed Maximum Price for the acceleration which shall become a Change Order upon acceptance. The Owner may then direct the Construction manager to increase its staff and require its Trade Contractors to increase their manpower, or to work such overtime hours as may be necessary to accomplish the required acceleration in accordance with the approved Change Order. In such event the Owner shall reimburse the Construction Manager for the costs of such acceleration subject to the Guaranteed Maximum Price. In no event

shall the Construction Manager be entitled to compensation in excess of the adjusted Guaranteed Maximum Price. The Construction Manager shall require accurate daily records of all costs of the required acceleration and shall secure the Owner's approval of such records.

4.3 The Owner shall have the right to occupy, or use, any portion of the Work ahead of schedule. If use or occupancy ahead of schedule affects the Cost of the Project or the schedule for the Work, the use or occupancy will be treated as a Change to the Work in accordance with Article 9, herein.

ARTICLE 5 Guaranteed Maximum Price

5.1 The "Guaranteed Maximum Price" (GMP) includes Cost of the Work required by the Contract Documents for each Sub-project, and the Construction Manager's fee as defined in Paragraph 6.2 herein. The GMP will be established based on Contract Documents provided by the Owner. The GMP is subject to modification for changes in the Work as provided in Article 8, herein.

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

5.3 All cost savings for the not-to-exceed value of the GMP shall be returned to the Owner as part of the net aggregate savings established when final accounting is submitted upon Final Completion of the Work. "Cost savings" are the net difference obtained by deducting from the Adjusted GMP, the Construction Manager's Fee, the expended portions of the construction Manager's contingency and the actual expenditures representing the Cost of the Work as defined in Article 7 herein. Liquidated damages, if any, are different from, and are not a part of, this calculation.

5.4 Prior to the execution of this agreement the Construction Manager shall submit to the Owner a list of personnel as outlined in paragraph 2.2.5 and their hourly expense rates as well as a tabulation of the personnel expense "Multiplier". The Multiplier shall be defined as the employer's net actual cost of payroll taxes and net actual cost of employee's worker's compensation insurance, taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, and other variables. The Construction Manager shall reduce its standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes. Employee bonuses, holidays, vacation and/or sick leave benefits, life insurance policies, vehicle allowances, or other similar perks and/or benefits paid to the Construction Manager's employees shall not be considered reimbursable labor or labor burden costs and will be deemed to be included as part of the Construction Manager's lump sum fee. The list of personnel and approved multiplier will be included as "Exhibit A" to the agreement. Any modification to "Exhibit A" will require prior approval by the University. By execution of this Agreement, the Construction Manager certifies that all factual unit costs supporting the fees specified in this Agreement are accurate, complete and current at the time of negotiations; and that any other factual unit costs that may be furnished the Owner in the future to support any additional fees that may be authorized will also be accurate and complete. The fees specified in this Agreement and any additional fees that may be authorized in the future shall be adjusted to exclude any significant sums which the Owner determines the fee was increased due to inaccurate, incomplete, or non-current factual unit costs.

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

ARTICLE 6 Payments to Construction Manager

6.1 In consideration of the performance of the Agreement, the Owner agrees to pay the Construction Manager, as compensation for its services as set forth below:

6.1.1 For pre-construction services, if requested by Owner in writing for a Sub-project, a mutually agreeable lump sum which shall be reflected in an FAU Purchase Order for the applicable Sub-project. Each invoice(s) for pre-construction services shall be submitted to Owner within thirty (30) days after the later of: (a) satisfactory completion of each of the requested phases, and (b) Owner's written approval of each phase. All services provided under pre-construction shall be included within the above lump sum amount. Construction Manager shall not be entitled to any other fees for pre-construction services, except as otherwise specifically provided in this Agreement.

6.1.2 During the construction phase, upon acceptance of the GMP, which includes the Construction Manager's lump sum fee and the Cost of the Work, to be paid monthly as described in the Conditions of the Contract or as stipulated in the Purchase Order executed for each Sub-project.

6.1.3 As required by Section 287.0585, F.S., within seven working days from receipt of payment from the Owner, the Construction Manager shall pay each Trade Contractor out of the amount paid to the Construction Manager on account of such Trade Contractor's Work, the amount to which said Trade Contractor is entitled reflecting the percentage actually retained, if any, from payments to the Construction Manager on account of said Trade Contractor's Work. The Construction Manager shall, by appropriate agreement with each Trade Contractor, require each Trade Contractor to make payments to its subcontractors in a similar manner.

6.1.4 Pay requests shall be documented in accordance with the Facilities Management Design & Construction Services Policies & Procedures FP#7.

6.1.5 In the event University owes payment to the Vendor, the University shall initiate payment via Automated Clearing House (ACH) direct deposit batch processing within forty (40) days after receipt of an acceptable invoice and receipt and after inspection and acceptance of the goods, services or both, as provided in accordance with the terms and conditions of the applicable purchase order/agreement. Failure to initiate or mail the payment within 40 days may subject the University to accrue interest at a rate established pursuant to §55.03(1), Florida Statutes on the unpaid balance from the expiration of such 40 day period. Invoices shall cite the Contract and shall be submitted in detail sufficient for a proper pre-audit and post-audit. Each bill or invoice must clearly identify the services, portion of services, and expenses for which compensation is sought. Payment will be tendered only for services or the portion of services completed prior to the submission of the bill or invoice, or for expenses incurred prior to such submission. The University has established a "Vendor Ombudsman" for vendors who may be experiencing problems in obtaining timely payment(s). The University's ombudsman may be contacted at (561) 297-3693. Invoices which have been returned because of vendor preparation errors will result in delay in payment. The invoice payment requirements do not commence until a properly completed invoice is provided to the University.

6.2 Included in the Construction Manager's lump sum fees are the following, as applicable:

6.2.1 The cost of its home or branch office employees or consultants not at the Project site, including the cost of all pension contributions, hospitalizations, bonus, vacations, medical insurance assessments or taxes for such items as unemployment compensation and social security, payroll insurance, and taxes attributable to wages and salaries and other company overhead expenses for said home office employees.

6.2.2 General operating expenses of the Construction Manager's principal and branch offices other than the project field office.

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

6.2.4 Overhead and profit, or general expenses of any kind, except as may be expressly included in Article 7 herein, as Cost of the Work.

6.2.5 All travel and per diem costs of Construction Managers' employees and consultants. All travel costs will be paid in accordance with Section 112.061, F.S.

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

6.2.7 Minor expenses such as telegrams, long distance telephone calls, postage, office supplies, expressage, and similar items in connection with the Work.

6.2.8 Cost of data processing services required in the performance of the construction phase services as outlined in Paragraph 2.1, herein.

6.2.9 All costs incurred during the guarantee period after construction.

6.3 Adjustments in the fee will be made as follows:

6.3.1 Adjustment due to Changes in the Work shall be made as described in the Conditions of the Contract.

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

6.4 The Construction Manager's fee shall be calculated for each Sub-project based on the Cost of the Work in accordance with the following guidelines:

- Up to \$100,000 – 12.5%
- \$100,001 to \$250,000 – 11%
- \$250,001 to \$500,000 – 10%
- \$500,001 to \$750,000 – 9%
- \$750,001 to \$1,000,000 – 8%
- \$1,000,001 to \$1,250,000 – 7%
- \$1,250,001 to \$1,500,000 – 6%
- \$1,500,001 to \$1,750,000 – 5.5%
- \$1,750,001 to \$2,000,000 – 5%

The fee calculation may be adjusted to account for project complexity or other extenuating circumstances, at Owner's sole discretion.

6.5 The Construction Manager's fee shall be invoiced on a monthly basis by the Construction Manager based upon percentage of work completed, as determined by the Owner.

ARTICLE 7 Cost of the Work

7.1 The term "Cost of the Work" shall mean costs including General Conditions costs, incurred in the Work as described and defined in Paragraph 7.2, below, and paid or incurred by the Construction manager less any reimbursement for scrap value and cash or trade discounts, subject to Article 10, herein. The term "wages" used herein shall include the straight time and overtime pay and the cost of associated employee benefits. Employee benefits include, but are not limited to, unemployment compensation, social security, compensated absences, and other mandatory and customary contributions and fringe benefits insofar as such costs are based on wages, salaried, or other remuneration paid to employees of the Construction Manager.

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

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

7.2.1 Subject to prior approval by the Owner, wages paid for labor in the direct employ of the Construction Manager other than those provided under Paragraph 6.2, herein as a part of the Construction Manager's Fee in the performance of the Work under applicable collective bargaining agreements, or under a salary or wage schedule agreed upon by the Owner and Construction Manager, and including such welfare or other benefits, if any, as may be payable with respect thereto.

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

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

7.2.4 Cost of the premiums for all insurance or bonds including Trade Contractor bonds which the Construction Manager is required to procure by the Agreement, or other insurance or bonds subsequently deemed necessary by the Construction Manager, and agreed upon by the Owner.

- 7.2.5 Sales, use, gross receipt, or similar taxes related to the Work imposed by any governmental authority and for which the Construction Manager is liable.
- 7.2.6 Building and operating permit fees, inspection and filing fees, sewer and water fees, and deposits lost for causes other than the Construction Managers' own negligence. If royalties or losses and damages, including cost of defense, are incurred which arise from a particular design, process or the product of a particular manufacturer or manufacturers specified by the Owner or Architect/Engineer, and the Construction Manager had no reason to believe there would be infringement of patent rights, such royalties, losses and damages shall be paid by the Owner and the GMP shall be adjusted by Change Order to compensate the Construction Manager for the increased costs. If the Construction Manager has actual knowledge that use of the particular design, process or product would infringe a patent(s) and fails to provide written notice to the Owner before using such design, process or product, then no royalties, losses or damages arising from use of such design, process or product shall be a Cost of the Work.
- 7.2.7 Cost of removal and disposal of all debris including clean-up and trash removal.
- 7.2.8 Cost incurred due to an emergency affecting the safety of persons and/or property.
- 7.2.9 Legal costs reasonably, and properly, resulting from prosecution of the Work for the Owner provided, however, that they are not the result of the Construction Manager's own negligence or malfeasance. Legal costs incurred in connection with disputes solely between the Construction Manager and the Owner or incurred in connection with disputes solely between the Construction manager and Trade Contractors are the responsibility of the Construction manager and shall not be included in the Cost of the Work.
- 7.2.10 Cost to the Construction Manager of temporary electric power, lighting, water and heat required for the performance of the Work, or required to protect the Work from weather damage.
- 7.2.11 Cost to the Construction Manager of temporary safety-related protection including barricades and safety equipment, temporary roads and parking, dust control, pest control, installation and operation of temporary hoists, scaffolds, ladders and runways, and temporary project signs and costs of permits and fees pursuant to the Conditions of the Contract.
- 7.2.12 Cost of watchmen or similar security services.
- 7.2.13 Cost of surveys, measurements and layout work reasonably required for the execution of the Work or the requirements of the Agreement.
- 7.2.14 Cost of preparation of shop drawings, coordination plans, photographs, or as-built documents not included in Trade Contracts.
- 7.2.15 All costs for reproduction of documents.
- 7.2.16 All costs directly incurred in the performance of the Work and not included in the Construction Manager's Fee set forth in Paragraph 6.2, herein.
- 7.2.17 Cost of deductibles for insurance claims.
- 7.2.18 Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen which are employed or consumed in the performance of the Work.
- 7.2.19 Rental charges of all necessary machinery and equipment, including hand tools used in the performance of the Work, whether rented from the Construction Manager or others, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof.
- 7.2.20 Costs associated with setting up and demobilizing tool sheds, Project field offices, temporary fences, temporary roads, and temporary fire protection.
- 7.2.21 The cost of its field employees identified in Subparagraph 2.2.5 herein, or their approved replacements and in accordance with Subparagraph 5.4 herein, their cost shall be based upon the personnel expense multiplier applied to the actual hourly wages and /or salaries for said field employees.

7.2.22 Cost of equipment such as typewriters, cameras, radios, telephone service at the site, computers, pagers, copiers, facsimile equipment, dictating units, trailers, vehicles and furniture purchased or rented by the Construction Manager.

ARTICLE 8
Changes in the Work

8.1 The Owner, without invalidating this Agreement, may order changes in the Work within the general scope of this Agreement consisting of additions, deletions, or other revisions. All changes in the Work shall be authorized as described in the Conditions of the Contract. Except in cases of emergency endangering life or property, the Construction Manager shall allow no Changes in the Work without the prior written approval of the Owner.

ARTICLE 9
Discounts

9.1 All quantity discounts shall accrue to the Owner. All trade discounts, rebates and refunds, and all returns from the sale of surplus materials and equipment shall be credited to the Owner. Any surplus items, equipment or tools purchased for the project shall be returned to the Owner or credited to the Owner at fair market value upon completion of the project.

ARTICLE 10
Insurance

10.1 Insurance will be provided as required by the Conditions of the Contract and as applicable for each Sub-project.

10.2 The Owner may elect to purchase insurance under an Owner Provided Insurance Program, in which case the Construction Manager will not be required to provide insurance, but will provide coordination with the Owner and the Owner's insurance administrator, as required.

ARTICLE 11
Period of Service and Termination of Agreement

11.1 This Agreement may be terminated by either party upon seven days' notice by mutual agreement, or immediately should the other party fail substantially to perform in accordance with its terms through no fault of the other. In the event of termination due to the fault of others, than the Construction Manager shall be paid for services performed to termination date, including reimbursements then due, plus terminal expense. This Agreement may be terminated by the Owner at its sole discretion upon seven day's written notice to the Construction Manager.

11.2 Unless sooner terminated, as provided in Subparagraph 11.1, this Agreement shall remain in force for a period that may reasonably be required for the construction of each Project initiated by _____, including extra work and any required extension thereto.

11.3 This agreement may be renewed at the Owner's option for two (2) one year extensions, to be evaluated annually, based upon satisfactory performance of the Construction Manager.

ARTICLE 12
Miscellaneous Provisions

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

12.2 This Agreement shall be governed by the laws of the State of Florida.

12.3 The Construction Manager agrees that after completion of all Work for each Sub-project and all Amendments thereto and prior to final payment, it will execute and deliver to the Owner an "Assignment of Anti-trust Claims" as shown in the Special Conditions of the Contract.

12.3.1 The Construction Manager agrees that prior to final payment, it will cause each of its suppliers and Trade Contractor who have furnished services, goods, or materials in connection with the performance of this Contract, to execute and deliver to the Owner an "Assignment of Anti-trust Claims" in the same form as specified in Paragraph 12.3 above.

12.3.2 The Construction Manager also agrees that throughout the period of service for this agreement a Payment and Performance Bond will be in effect for each Sub-project which exceeds \$100,000.

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

12.5 As required by Section 119.0701, Florida Statutes, the Construction Manager shall comply with public records laws, specifically to: (i) keep and maintain public records that ordinarily and necessarily would be required by the Owner in order to perform the service, (ii) provide the public with access to public records on the same terms and conditions that the Owner would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law, (iii) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law, and (iv) meet all requirements for retaining public records and transfer, at no cost, to the Owner all public records in possession of the Construction Manager upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Owner in a format that is compatible with the information technology systems of the Owner. As required by Section 287.058, F.S., this contract may be unilaterally canceled by the Owner for refusal by the Construction Manager to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119 and made or received by the Construction Manager in conjunction with the contract.

12.6 The Construction Manager warrants that it is not on the convicted vendor list for a public entity crime committed within the past 36 months. The Construction Manager further warrants that it will neither utilize the services of, nor contract with, any supplier, subcontractor, or consultant in excess of \$35,000.00 in connection with this Project for a period of 36 months from the date of their being placed on the convicted vendor list.

12.7 Notwithstanding Subparagraph 7.2.6 herein, the cost of re-inspections as a result of a failed inspection, or a cancelled inspection shall be borne by the Construction Manager as required in FM Design & Construction Policy and Procedure FP #16 (EU #11). The cost of these re-inspections shall be paid directly to the Code Review and Inspection Company by the Construction Manager and shall not be a Cost of the Work.

**** BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK ****

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

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

Attest:

CONTRACTOR

By: _____

By: _____
Name, Title

(Name, Title and Corporate Seal)

Date: _____

As Witnessed by:

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

**FLORIDA ATLANTIC UNIVERSITY
BOARD OF TRUSTEES**

By: _____
Stacy Volnick
Vice President for Administrative Affairs &
Chief Administrative Officer

As Witnessed By:

Date: _____

APPROVED AS TO FORM AND LEGALITY

By: _____

Date: _____

