

## **OWNER – CONTRACTOR AGREEMENT**

This Agreement for Construction Services (the “Agreement”) is made and entered into this \_\_\_\_\_ day of **January, 2008**, by and between The University of Florida Board of Trustees (“Owner”) and **Contractor's Name** (“Contractor”), with an address of **Address of Contractor**, and Federal I.D. No. \_\_\_\_\_, which is authorized to do business in Florida.

### **WITNESSETH:**

**WHEREAS**, Owner solicited bids from contractors for the construction of the project described on **Exhibit A** (the “Project”); and

**WHEREAS**, in addition to Contractor being selected because it is the lowest responsible and responsive bidder, if bidders were prequalified, based on the need for specific expertise and experience, in the construction of the Project, Contractor also was selected because of its expertise and experience; and

**WHEREAS**, Owner and Contractor desire to enter into this Agreement for the construction of the Project; and

**WHEREAS**, the Owner has engaged one or more Professionals to perform architectural and/or engineering services for the Project.

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

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

**1.1** The “Contract for Construction,” which constitutes the entire agreement between Owner and Contractor, consists of this Agreement and all exhibits hereto; the General Terms and Conditions; special conditions, if any; the bid proposal submitted by Contractor and post-bid modifications, if any, set forth on **Exhibit A**; the Construction Documents; any amendments or addenda executed by the Owner and the Contractor hereafter; Owner-approved change orders or field orders; and the additional documents listed on **Exhibit A**, if any.

**1.2** Documents not included or express contemplated in this Article 1 do not, and shall not, form any part of the Contract for Construction. Without limiting the generality of the foregoing, shop drawings and other submittals from the Contractor or its subcontractors and suppliers do not constitute a part of the Contract for Construction.

**1.3** At all times the Contractor is performing services, it shall comply with the requirements of the Contract for Construction.

### **ARTICLE 2. THE WORK**

**2.1** The Contractor represents and warrants that it has (i) thoroughly reviewed the Construction Documents for the Project and all other documents related thereto made available on Owner’s website(s) or on file with Owner’s Division of Purchasing; (ii) visited and thoroughly inspected the Project Site and any structure(s) or other man-made features to be modified and familiarized itself with local conditions under which the Project will be constructed and operated; (iii) familiarized itself with surveys and other as-built drawings provided by Owner the Professional that indicate the location of all existing buildings, utilities, conditions, streets, equipment, components and other attributes having or likely to have an impact on the Project; (iv) familiarized itself with pertinent Project dates and special requirements, including the Project schedule; (v) reviewed and analyzed all Project geotechnical, Hazardous Substances, structural, chemical, electrical, mechanical and construction materials tests, investigations and recommendations provided by Owner or the Professional; and (vi) gathered any other information necessary for a thorough understanding of the Project. If the Project involves modifications to any existing structure(s) or other man-made feature(s) on the Project

site, the Contractor represents that it has also reviewed all as-built and record drawings, plans and specifications provided by Owner or the Professional and thoroughly inspected the existing structure(s) and man-made feature(s) to identify existing deficiencies and ascertain the specific locations of pertinent structural components. Claims by Contractor resulting from Contractor's failure to familiarize itself with the Site or pertinent documents shall be deemed waived.

**2.2** The Contractor shall furnish or cause to be furnished, and paid from the Construction Contract Price, the Work. The general nature of the scope of the Work the Contractor is to complete is briefly described on **Exhibit A**.

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

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

## **2.5 Construction Services**

**2.5(a)** The Contractor shall supervise and direct the work at the Site. The Contractor shall, at a minimum, staff the Project Site with personnel who shall:

- (i) supervise and coordinate the Contractor's personnel and act as its primary liaison with the Owner and Professional;
- (ii) coordinate trade contractors and suppliers, and supervise Site construction services;
- (iii) be familiar with all trade divisions and trade contractor's scopes of Work, all applicable building codes, and the Contract for Construction;
- (iv) check, review and coordinate shop drawings and materials delivered to the Site, regularly review the Work to determine its compliance with the Contract for Construction, periodically confer with the Professional and any other Owner consultants to assure acceptable levels of quality;
- (v) prepare and maintain Project records, including process documents and daily logs;
- (vi) schedule and conduct weekly progress meetings with subcontractors to review such matters as jobsite safety, job procedures, construction progress, schedule, shop drawing status, and other information as necessary and provide prior notification of, and minutes from, such meetings to the Owner and the Professional;
- (vii) schedule and conduct weekly progress meetings with the Owner and Professional to review such matters as construction progress, schedule, shop drawing status, and other information as necessary;
- (viii) make provision for Project security to protect the Project site and materials stored off-site against theft, vandalism, fire and accidents as required by the General Terms and Conditions; and
- (ix) provide documentation necessary to the Professional for, and otherwise assist the Professional with, the preparation of the final "as-built" or record drawings.

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

**2.5(c)** The Contractor shall comply with Owner's policies applicable to this Agreement as referenced herein. A link to the policies is provided on **Exhibit A**.

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

**2.5(e)** In accordance with Owner's agreement with the Professional working on the Project, the Professional will visit the Project Site at intervals appropriate to the stage of construction and with sufficient frequency to familiarize itself with the progress and quality of the Work and to inspect the Work. The Professional's interpretations and decisions shall be final regarding the Construction Documents and the Work.

**2.5(f)** Contractor and its subcontractors shall participate in, and cooperate with, construction phase commissioning, validation, and other quality assurance and quality control processes.

**2.5(g)** Contractor shall work with Owner and Professional to pursue Owner's goal of obtaining Leadership in Energy and Environmental Design (LEED) certification for the Project, at the level set forth on Exhibit A.

**2.5(h)** Contractor shall provide a monthly report on CD-ROM summarizing the progress of the Project to the Owner, Professional, and Owner's user group representatives, including information on the subcontractors' Work, percentage of completion of the Work, updated monthly Critical Path Method scheduling and Project accounting reports, including projected time to completion and estimated cost to complete the Work, LEED status, digital progress photographs, project directory, logs for Requests for Information, submittals and shop drawings, Change Orders, cost change proposals, field directives, safety meetings, deficiencies, weather conditions, and meeting minutes.

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

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The Professional for this Project is set forth on Exhibit A. The Owner's designated professional will be the Owner's representative in dealing with the Contractor on all design and technical matters, and will administer the Contract for Construction. Unless otherwise directed by Owner, the Owner and Contractor shall communicate with each other in the first instance through the designated Professional. The Owner's instructions to the Contractor will be issued through the designated Professional.

### **ARTICLE 4. TIME OF COMMENCEMENT AND COMPLETION**

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Contractor shall commence the Work within ten (10) calendar days after the date indicated on the Notice to Proceed, shall be Substantially Completed by the date set forth on Exhibit A, and shall be Finally Completed by the date set forth on Exhibit A.

### **ARTICLE 5. COMPENSATION OF CONTRACTOR**

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**5.1** The Owner shall pay and the Contractor shall accept, as full and complete payment for the Contractor's timely and complete performance of its obligations hereunder the fixed price set forth on Exhibit B. Such amount is the Construction Contract Price and includes the aggregate amount of all allowances and any unit price items to be furnished or installed.

**5.2** Within twenty (20) days after execution of the Contract for Construction, the Contractor shall prepare and present to the Owner and the Professional, the Contractor's Compensation Schedule, on Owner's standard form, which Compensation Schedule shall be based on the amounts and payment terms set forth in Exhibit B. Applications for payment shall be submitted in detail sufficient for an audit thereof in accordance with Owner's policies on the subject in effect at the time the Contractor commences construction of the Work.

**5.3** Within twenty (20) days after receipt by Owner of Contractor's invoice, properly prepared pursuant to Owner's policies on the subject in effect at the time the Contractor commences construction of the Work, the Owner shall pay the Contractor the amount approved by Professional, less retainage, unless there is a dispute about the amount of compensation due to the Contractor.

**5.4** For change orders, the Contractor shall be reimbursed the actual incurred cost and expense plus a mark-up not to exceed the amount set forth on Exhibit A for the change order Work performed by its forces. If Contractor desires to self-perform any additional Work under a change order, Owner's policy on self-performed Work in effect at the time Contractor commences construction shall apply in order to ensure Owner of competitive pricing.

**5.5** A Vendor Ombudsman has been established within the Owner's Office of Business Affairs. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s)

from the Owner. The Vendor Ombudsman may be contacted at 352-392-1241, ext. 315.

## **ARTICLE 6. LIQUIDATED DAMAGES FOR DELAY**

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**6.1** Inasmuch as failure to Substantially Complete the Work within the time fixed in **Exhibit A** will result in injury to the Owner, and as damages arising from such failure cannot be calculated with any degree of certainty, it is agreed that if the Work is not Substantially Completed within the time provided in **Exhibit A**, or within such further time, if any, as shall be allowed for time extensions in accordance with the provisions of the Contract for Construction, the Contractor shall pay to the Owner as liquidated damages for such delay, and not as a penalty, the amount set forth in **Exhibit A** for each calendar day elapsing between the date fixed for Substantial Completion and the date such Substantial Completion is fully accomplished. The parties agree that said liquidated damages are reasonable given existing circumstances, including, without limitation, the range of harm that is foreseeable and the anticipation that proof of damages would be costly and impractical.

**6.2** The liquidated damages shall be payable in addition to any excess expenses or costs payable by the Contractor to the Owner under the General Terms and Conditions, and shall not preclude the recovery of damages by the Owner under other provisions of the Contract for Construction, except claims related to Contractor's delays in Substantial Completion. Owner's right to receive liquidated damages shall in no manner affect the Owner's right to terminate the Contract for Construction, as provided in the General Terms and Conditions or elsewhere in the Contract for Construction. The Owner's exercise of the right to terminate shall not release the Contractor from the obligation to pay said liquidated damages.

**6.3** When the Owner reasonably believes (i) that Substantial Completion will be inexcusably delayed; or (ii) that the Contractor will fail to achieve Final Completion by the date of Final Completion, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor the daily amount specified for liquidated damages in this Article for each calendar day of the unexcused delay. If and when the Contractor overcomes the delay in timely achieving Substantial Completion or Final Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

## **ARTICLE 7. PERSONNEL, SUBCONTRACTOR AND SUPPLIER CHARTS**

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

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

## **ARTICLE 8. ADDITIONAL CONSTRUCTION SERVICES**

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**8.1** The Contractor shall provide such additional services as are initiated and authorized in writing by the Owner prior to performance. The services described in this Article 8 are not included in Work. Additional services include, but are not limited to:

- (i) services performed after the Date of Final Completion, except when required as part of the original Work.
- (ii) services for preparation for and attendance at deposition, discovery or court or other dispute resolution proceedings on behalf of the Owner, except when such proceedings involve issues of fault, neglect or alleged liability of the Contractor, or its agents, employees, or consultants.

- (iii) Other services not included in the Work mutually agreed to by the Owner and the Contractor in writing.

**8.2** Payments to the Contractor for additional services shall be in accordance with applicable provisions of the Contract for Construction.

## **ARTICLE 9. AUDIT RIGHTS**

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

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

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

**9.4** If an audit discloses overpricing or overcharges of one percent (1%) of the total amount paid hereunder or \$200,000 whichever is less, in addition to making adjustments for the overcharges, the reasonable actual cost of the Owner's audit shall be reimbursed to the Owner by the Contractor. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Contractor's records shall be made within ninety (90) calendar days from presentation of Owner's findings to Contractor.

**9.5** Contractor shall ensure notice of Owner's audit rights is provided to its subcontractors, suppliers and any other vendor providing services or materials for the Project and shall ensure that each agreement it enters into with such parties includes the provisions of this Article 9.

## **ARTICLE 10. MISCELLANEOUS PROVISIONS**

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**10.1** Owner and Contractor, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors and assigns of such other party with respect to all covenants of this Agreement. Contractor shall not assign this Agreement, whether by operation of law or otherwise, without the written consent of Owner.

**10.2** The Contract for Construction shall be governed by, and construed under, the laws of the State of Florida, without regard to its choice of law provisions and venue shall lie in the courts in Alachua County, Florida.

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

**10.4** The Contract for Construction may be unilaterally canceled by the Owner for refusal by the Contractor to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Contractor in conjunction herewith.

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

**10.6** The Contractor warrants that it is not on the State of Florida's convicted vendor list for a public entity crime committed within the past thirty six (36) months. The Contractor further warrants that it will neither utilize the services of, nor contract with, any supplier, subcontractor, or consultant for an amount in excess of \$15,000.00 in connection with this Project if the supplier, subcontractor or consultant has been placed on the State of Florida's convicted vendor list within the past thirty six (36) months.

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

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

**10.9** All exhibits referenced herein are attached hereto and incorporated herein by reference.

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

**10.11** Any modifications to the Contract for Construction are set forth on **Exhibit E**.

**10.12** Contractor shall provide Owner and its representatives access to the Work in preparation and progress wherever located.

**10.13** The Contractor shall not by any means:

(i) induce any person or entity employed in the construction of the Project to give up any part of the compensation to which that person or entity is entitled;

(ii) offer nor accept any bribes or kick-backs in connection with the Project from or to any individual or entity, including any of its trade contractors, subcontractors, consultants, suppliers or manufacturers of Project goods and materials; or

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

**10.14** Until the Contract for Construction terminates, Contractor shall carry the insurance and payment and performance bonds described in the General Terms and Conditions.

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THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

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

**FOR THE CONTRACTOR:**

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ATTEST:

**CONTRACTOR (FIRM NAME)**

\_\_\_\_\_  
(NAME, TITLE AND CORPORATE SEAL)

BY:

\_\_\_\_\_  
NAME

\_\_\_\_\_  
TITLE

AS WITNESSED BY:

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

**FOR THE OWNER:**

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**UNIVERSITY OF FLORIDA BOARD OF TRUSTEES**

AS WITNESSED BY:

BY:

\_\_\_\_\_  
ED POPPELL, VICE PRESIDENT  
BUSINESS AFFAIRS  
UNIVERSITY OF FLORIDA

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

APPROVED AS TO FORM AND LEGALITY

APPROVED

BY:

\_\_\_\_\_  
M. KRISTINA RAATTAMA  
SENIOR UNIVERSITY COUNSEL  
UNIVERSITY OF FLORIDA

BY:

\_\_\_\_\_  
CAROL J. WALKER, ASST. VICE-PRESIDENT  
FACILITIES PLANNING & CONSTRUCTION  
University of Florida

DATE:

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

**EXHIBIT A**

**PROJECT DESCRIPTION, POST-BID MODIFICATIONS, ADDITIONAL DOCUMENTS, LEED CERTIFICATION,  
PROFESSIONAL, DEADLINES, CHANGE ORDER MARK-UPS AND LIQUIDATED DAMAGES**

Project Number and Title: \_\_\_\_\_  
Project Location: \_\_\_\_\_

Post-Bid Modifications to Contract for Construction (Section 1.1):  
**[Identify with specificity or state "None"]**

Additional Documents forming part of Contract for Construction (Section 1.1):  
Owner's policies listed under 'Forms & Standards' at [www.facilities.ufl.edu](http://www.facilities.ufl.edu)

**[Identify with specificity or state "None"]**

Brief Description of Work (Article 2):  
**[Insert]**

**LEED Certification.** The LEED Certification level is established at **SILVER** level (Section 2.5(g))

The Professional (Article 3):  
**[Insert name and address of A/E]**

Substantial Completion Deadline (Article 4):  
**[Insert]**

Final Completion Deadline (Article 4):  
**[Insert]**

Change Order Mark-Up (Section 5.4)  
Self-Performed Work: Not to Exceed **[Insert]**  
Other Work: Not to Exceed **[Insert]**

Liquidated Damages for Delay (Section 6.1):  
**Insert Amount** per calendar day

**EXHIBIT B**  
**CONTRACT PRICE AND COMPENSATION SCHEDULE**

Construction Contract Price (Section 5.1):  
**(Spell Out Numbers) (\$ xx,xxx,xxx)**

**(PM: Select applicable payment term(s) and delete others; insert or reference sample Schedule(s) of Values; delete this note-to-author)**

- A. SCHEDULE OF VALUES FOR PAYMENT ON THE CONSTRUCTION CONTRACT PRICE ON A LUMP SUM BASIS  
  
(insert or reference sample)
- B. UNIT PRICES AND ESTIMATED NUMBER OF UNITS FOR COMPENSATION FOR SERVICES RENDERED AND GOODS SUPPLIED ON A UNIT-PRICE BASIS  
  
(insert schedule of unit prices)
- C. RATES FOR COMPENSATION FOR SERVICES RENDERED ON A TIME AND MATERIALS BASIS  
  
(insert T&M rates)
- D. COMPENSATION FOR GOODS FURNISHED ON A TIME AND MATERIALS BASIS  
  
(insert T&M rates)
- E. ALLOWANCES  
  
(itemize and describe allowances)

**EXHIBIT C**

**CONTRACTOR'S PERSONNEL**

[Insert Contractor's Personnel Chart]

**EXHIBIT D**  
**CONTRACTOR'S SUBCONTRACTORS**

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

**EXHIBIT E**  
**MODIFICATIONS**

[Itemize modifications or state "NONE"]