

University of Florida

**DESIGN/BUILD
GENERAL TERMS and CONDITIONS**

DESIGN/ BUILD GENERAL TERMS
AND CONDITIONS
TABLE OF CONTENTS

ARTICLE I GENERAL PROVISIONS/DEFINITIONS 1

 1.1 Order of Precedence 1

 1.2 Complementary Reading 1

 1.3 Forms 1

 1.4 Definitions 1

ARTICLE 2 DESIGN/BUILDER'S CONSTRUCTION DUTIES,
OBLIGATIONS AND RESPONSIBILITIES 2

 2.1 Non-Interference 2

 2.2 No Endangerment 2

 2.3 Compliance with Legal Requirements 2

 2.4 Safety 3

 2.5 On Site Records 3

 2.6 Quality Control and Testing..... 3

 2.7 Incident Reporting 3

 2.8 Hazardous Substances 3

 2.9 Owner's Use and Access to the Site 4

 2.10 Commissioning 4

 2.11 Document Review 4

ARTICLE 3 DESIGN/BUILDER'S PERSONNEL, SUBCONTRACTORS,
SUPPLIERS, AND SITE FACILITIES 4

 3.1 Staffing the Work 4

 3.2 Subcontractor/Supplier Contracts 5

 3.3 Resolution of Trade Disputes 6

ARTICLE 4 GOODS, PRODUCTS AND MATERIALS 6

 4.1 Quality of Materials 6

 4.2 Installation and Use of Materials 6

 4.3 Unsuitable Materials 6

 4.4 Security for the Project 7

ARTICLE 5 DESIGN/BUILDER'S INSPECTION AND CORRECTION
OF THE WORK 7

 5.1 Rejection and Correction of Work in Progress 7

 5.2 Covered or Concealed Work 7

ARTICLE 6 CHANGE ORDERS, CHANGES TO THE WORK, AND
CHANGED CONDITIONS 8

 6.1 Change Order Requests 8

 6.2 Owner-Directed Changes 8

6.3	Compensation for Changes	8
6.4	Concealed and Unforseen Conditions	9
6.5	Performance of Changes	9
6.6	Disputes Regarding Changes	9
6.7	Necessity for Signature Approval	9
ARTICLE 7 DESIGN/BUILDER'S WARRANTIES AND GUARANTEES		9
7.1	One-Year Warranty	9
7.2	Express Warranties and Guarantees-Design/Builder	10
7.3	Express Warranties and Guarantees-Subcontractor and Supplier	10
7.4	Non-Exclusivity and Survival	10
7.5	Non-Limitation	10
7.6	Commencement of Obligations	11
ARTICLE 8 OWNER'S DUTIES, OBLIGATIONS AND RESPONSIBILITIES		11
8.1	Timely Compensation of Design/Builder	11
8.2	Owner Review of Document	11
8.3	Status of Owner	11
8.4	Owner's Utilities	11
ARTICLE 9 DESIGN/BUILDER'S COMPENSATION		
9.1	Schedule of Values	11
9.2	Unit Prices	11
9.3	Invoicing Procedures	12
9.4	Owner's Right to Refuse Payment	12
9.5	Design/Builder's Right to Refuse Performance for Non-Payment	13
9.6	Correction of Past Payments	13
9.7	Invoice Warranties and Guarantees.....	13
9.8	Design/Builder's Signature	13
9.9	Taxes	14
9.10	Compensation of Design/Builder's Subcontractor and Supplier	14
9.11	Retainage	14
9.12	Final Payment	14
ARTICLE 10 CONSTRUCTION SCHEDULE REQUIREMENTS AND COMPLETION		14
10.1	Time of the Essence	14
10.2	Construction Schedule	15
10.3	Delay in Performance	16
10.4	Compensable Delays	16
10.5	Excusable Delays	16
10.6	Modifications of Time for Performance	16
10.7	Substantial Completion	17
10.8	Final Completion	18
10.9	Early Completion	19

ARTICLE 11 INSURANCE	20
11.1 Basic Insurance	20
11.2 Workers Compensation Insurance	20
11.3 Liability Insurance	20
11.4 Design/Builder Professional Liability Insurance	20
11.5 Design/Builder's Risk Insurance	21
11.6 Certificates of Insurance	21
11.7 Effect of Insurance	22
11.8 Waiver of Subrogation	22
ARTICLE 12 SURETY BONDS	22
12.1 General Bond Requirement	22
12.2 Request for Copies of Bonds	22
12.3 Delivery of Bonds	22
ARTICLE 13 OWNER'S RIGHT TO STOP WORK	22
13.1 Cease and Desist Order	22
ARTICLE 14 TERMINATION OR SUSPENSION	23
14.1 Termination for Cause by Owner	23
14.2 Termination for Cause by Design/Builder	24
14.3 Termination or Suspension for Convenience	25
14.4 Design/Builder's Compensation When Design/Builder Terminates For Cause or Owner Terminates for Convenience	25
14.5 Design/Builder's Compensation When Owner Terminates For Cause	25
14.6 Limitation on Termination Compensation	25
14.7 Design/Builder's Responsibility Upon Termination	25
14.8 Lack of Duty to Terminate	26
14.9 Limitation on Termination Claim	26
ARTICLE 15 DISPUTE RESOLUTION	26
15.1 Mutual Discussion	26
15.2 Facilitative Mediation	26
15.3 Conflict Dispute Resolution Provisions	27
15.4 Arbitration Preclusion	27
15.5 Performance During Dispute Resolution	27
15.6 Litigation/Administrative Action	27
ARTICLE 16 DAMAGES AND REMEDIES	27
16.1 Design/Builder's Repair	27
16.2 Design/Builder's Reimbursement	27
16.3 General Indemnity	28
16.4 Intellectual Property Indemnity	28
16.5 Non-Exclusivity of Owner's Remedies	28

16.6	Waiver of Damages	28
16.7	Survival.....	28

ARTICLE 1

GENERAL PROVISIONS/DEFINITIONS

1.1 Order of Precedence. In the event of any conflict, discrepancy, or inconsistency amongst any of the documents comprising the Contract for Construction, the following shall control:

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

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

1.1.3 As between plans and specifications, the requirements of the specifications shall govern; and

1.1.4 As between the Contract for Design/Build Construction and the plans and specifications, the Contract for Design/Build Construction shall govern.

1.2 Complementary Reading. It is the intent of Owner and Design/Builder that the Contract Documents include all items necessary for proper execution and completion of the Design Services and Work. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all: performance by Design/Builder shall be required to the full extent consistent with and reasonably inferable from, the Contract Documents as being necessary to produce the results called for in Owner's program for this Project.

1.3 Forms. Design/Builder shall use Owner's standard forms for Change Orders, Applications for Payment, Schedules of Values, and any other forms Design/Builder may be required to complete pursuant to the Contract Documents.

1.4 Definitions. The following terms shall have the following meanings:

1.4.1 "Design Documents" means all the design documents provided by Design/Builder and approved by Owner pursuant to the Contract Documents, including, without limitation, those for use in construction of the Project, performing the Work, and the rendering of the Project fully operational, and shall include, without limitation, the Schematic Design Documents, the Design Development Documents and the Construction Documents.

1.4.2 "Design Services" means any and all architectural, engineering and design services required to be performed by Design/Builder pursuant to the Contract Documents and all labor, materials, supervision, equipment, computers, documents and all other things necessary for the performance of such services.

1.4.3 The term "Hazardous Substances" means 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, including, but not limited to, the Comprehensive Environmental Response Compensation and Liability Act as amended, (42 U.S.C. § 9601 *et seq*), the Resource Conservation and Recovery Act as amended, (42 U.S.C. § 6901 *et seq*), the Federal Water Pollution Control Act (33 U.S.C.A. §§ 1451 to 1387), the Clean Air Act (42 U.S.C.A. §§ 7401 to 7671q), the Emergency Planning and Community Right to Know Act (42 U.S.C.A. §§ 11001 to

11050), the Toxic Substances Control Act (15 U.S.C.A. §§ 2601 to 2692), the Solid Waste Disposal Act (42 U.S.C.A. §§ 6901 to 6992k), the Oil Pollution Act (33 U.S.C.A. §§ 2701 to 2761) and all rules and regulations promulgated pursuant thereto. Without limiting the generality of the foregoing, “Hazardous Substances” shall specifically include polychlorinated biphenyl, asbestos (friable and non-friable), radon, urea formaldehyde, gasoline, diesel, oil, hydrocarbons, petroleum derived constituents, biomedical waste, or hazardous or toxic residue.

1.4.4 “Owner’s Related Parties” means the Board of Governors and its officers, trustees and employees and the officers, trustees and employees of Owner.

1.4.5 “Work” means whatever is done by or required of Design/Builder to perform and complete its duties relating to the construction of the Project under the Contract Documents.

1.4.6 Non-capitalized words that have well-known technical or construction industry meanings are used in the Contract for Design/Build Construction in accordance with such recognized meanings.

1.4.7 Defined terms used herein but not defined herein shall have the meaning ascribed thereto in the Agreement for Design/Build Services.

ARTICLE 2

DESIGN/BUILDER’S CONSTRUCTION DUTIES, OBLIGATIONS AND RESPONSIBILITIES

2.1 Non-Interference. The Design/Builder understands and acknowledges that the Work 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 Design/Builder shall conduct all its activities so as not to interfere with the construction of, or operations within or from, other structures on the Site.

2.2 No Endangerment. The Design/Builder 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 or structures on the Site. Should the Design/Builder damage, compromise or destroy any part of the Project or the Site, the Design/Builder shall be fully and exclusively responsible for and bear all costs associated therewith.

2.3 Compliance with Legal Requirements. The Design/Builder shall:

- (i) comply with all applicable laws, statutes, building codes, rules, regulations and lawful orders of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project;
- (ii) prepare and file documents required to obtain, and shall obtain, all necessary approvals and permits, including building permit(s), of all governmental authorities having jurisdiction over the Work, provided Owner shall pay all building permit and state fire marshal inspection fees directly; and

- (iii) give all notices required of it by governmental authorities relating to the Project.

2.4 Safety. Safety shall be a prime concern of the Design/Builder at all times. The Design/Builder shall be solely responsible for and have control over the means, methods, techniques, sequences and procedures for coordinating and constructing the Work, including Site safety and safety precautions and programs.

2.5 On Site Records. The Design/Builder shall maintain at the Site one 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 in good order and accurately marked depicting all changes as they occur during construction. The as-built drawings shall be available at all times to the Owner, the Owner's consultants, and quality control and testing agency personnel. The drawings shall be neatly and clearly marked in color during construction to record all variations made during construction, and the Design/Builder shall include such supplementary notes and details necessary to clearly and accurately represent as-built construction. The daily logs shall contain detailed information regarding weather conditions, materials delivered, work performed, operating hours, subcontractors working on the Project and staffing of each subcontractor.

2.6 Quality Control and Testing. The Design/Builder shall develop and implement a quality management program to ensure quality construction. Unless otherwise specified in the Contract for Design/Build Construction, the Design/Builder shall select the quality control and testing agencies, subject to Owner's written approval. The Design/Builder shall coordinate all tests and inspections required by the Construction Documents, and the Design/Builder 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 the Work.

2.7 Incident Reporting. The Design/Builder shall immediately notify the Owner, both orally and in writing, of the nature and details of all incidents which may adversely affect the quality or progress of the Work including, but not limited to, union jurisdictional disputes, accidents, delays, damages to Work and other significant occurrences.

2.8 Hazardous Substances. The Design/Builder shall immediately notify the Owner, 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 Design/Builder encounters environmental contamination (including but not limited to Hazardous Substances), the Design/Builder 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.

2.9 Owner's Use and Access to the Site. The Design/Builder shall perform the Work so as not to interrupt any operations of the Owner on the Site.

2.9.1 The Design/Builder understands and acknowledges that the Owner may need access to or use of certain areas of the Site or Work prior to the Design/Builder's achievement of Substantial Completion, and that such occupancy, access or use shall not constitute the Owner's acceptance of any Work.

2.9.2 The Design/Builder shall not enter any Owner-occupied area of the Site or Project unless first approved and scheduled by the Owner. The Design/Builder 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.

2.9.3 The Design/Builder 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.

2.10 Commissioning. If the Work is to be commissioned through the use of a commissioning consultant, the Design/Builder shall, through the Owner or the Owner's commissioning consultant, as the case may be, schedule and coordinate all equipment and systems start-ups and Project commissioning within its scope of the Work. The Design/Builder shall perform functional performance testing of items being commissioned under the supervision of the Owner's commissioning consultant. Owner training and all commissioning activities, including functional performance tests, shall be satisfactorily completed prior to Substantial Completion.

2.11 Document Review. The Design/Builder shall provide documents to the Owner for review in accordance with schedule requirements and with sufficient lead time to allow the Owner reasonable time for review.

ARTICLE 3

DESIGN/BUILDER'S PERSONNEL, SUBCONTRACTORS, SUPPLIERS, AND SITE FACILITIES

3.1 Staffing the Work. The Design/Builder shall staff the Project with qualified and designated individuals and entities responsible for its obligations and performance of the Work.

3.1.1 The Design/Builder has identified on the Project Team a design representative and a construction representative to serve as its primary communication contacts with the Owner.

3.1.2 The Design/Builder's Representative, or another authorized representative of the Design/Builder, shall be present at all times when Work is being performed.

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

3.1.4 The Design/Builder 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 other individual.

3.1.5 The Design/Builder shall immediately remove from the Site, for the duration of the Project, any person who is incompetent, careless, or not working in harmony.

3.1.6 The Design/Builder shall be responsible to the Owner for the acts and omissions of its agents and employees, consultants, subcontractors and suppliers.

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

3.2.1 The Design/Builder 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 Design/Build 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.

3.2.2 The Design/Builder shall include in its written contracts with its subcontractors and suppliers a provision which contains the acknowledgment and agreement of the subcontractor or supplier that it has received and reviewed the applicable terms, conditions and requirements of this Contract for Design/Build Construction that are included by reference in its written contract with the Design/Builder, and that it will abide by those terms, conditions and requirements.

3.2.3 The Design/Builder'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 Design/Builder's agreements with its subcontractors and suppliers shall require that in the event of default under, or termination of, this Contract for Design/Build Construction, and upon request of the Owner, the Design/Builder's subcontractors and suppliers will perform services for the Owner.

3.2.4 Without limitation of the foregoing subsections, the Design/Builder's written contracts with its subcontractors and suppliers shall include the following provision: "When the Design/Builder receives payment from the Owner for labor, services or materials furnished by subcontractors and suppliers hired by the Design/Builder for the Project, the Design/Builder shall remit payment due to those subcontractors and suppliers, less the value of any item contested in accordance with this Contract for Design/Build Construction, within ten (10) days after the Design/Builder'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 Design/Builder 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 this Contract for Design/Build Construction, within ten (10) days after the subcontractor's receipt of payment".

3.3 Resolution Of Trade Disputes. The Design/Builder shall promptly resolve claims, complaints, labor disputes and disputes over assignment of work tasks by and among its subcontractors and suppliers.

ARTICLE 4

GOODS, PRODUCTS AND MATERIALS

4.1 Quality Of Materials. The Design/Builder shall furnish goods, products, materials, equipment and systems which:

- (i) comply with the Contract for Design/Build Construction;
- (ii) conform to applicable specifications, descriptions, instructions, drawings, data and samples;
- (iii) are new (unless otherwise specified or permitted) and without apparent damage;
- (iv) are of quality, strength, durability, capacity or appearance equal to or higher than that required by the Construction Documents;
- (v) are merchantable;
- (vi) are free from defects; and
- (vii) are beyond and in addition to those required by manufacturers' or suppliers' specifications where such additional items are required by the Construction Documents.

4.2 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 Design/Builder shall so inform the Owner and shall proceed as directed by Owner. Accordingly, there shall be no substitutions of materials and equipment except as otherwise expressly permitted herein. The Design/Builder 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.

4.3 Unsuitable Materials. The Design/Builder shall inform the Owner of goods, products, materials and equipment or systems which the Design/Builder 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 Design/Builder, subcontractor, or supplier notified the Owner

in writing at the time of bid submission, along with proposed alternatives. Approval by the Owner does not mean or imply final acceptance by the Owner if such items should be defective or not as previously represented. Should the Design/Builder furnish any approved goods, products, materials, equipment or systems different from or in addition to those required by the Construction Documents which require supplemental materials or installation procedures different from or in addition to those required for specified items, the Design/Builder shall provide such at no increased cost to the Owner.

4.4 Security For The Project. The Design/Builder shall provide security for the Project, including but not limited to security for its Work in progress and for the goods, products, materials, equipment, systems, construction machinery, tools, devices and other items required, used or to be used for its scope of the Work.

ARTICLE 5

DESIGN/BUILDER'S INSPECTION AND CORRECTION OF THE WORK

5.1 Rejection And Correction Of Work In Progress. During the course of Project, the Design/Builder shall inspect and 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 governmental, public and quasi-public authorities and agencies having jurisdiction over the Project. The Design/Builder shall promptly correct or require the correction of all rejected Work, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Design/Builder shall bear all costs of correcting such Work, including additional testing and inspections and compensation for all services and expenses necessitated by such correction. The Design/Builder shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, of the Owner or other trade contractors or subcontractors caused by the Design/Builder's correction or removal of rejected Work.

5.2 Covered Or Concealed Work. If a portion of the Work has been covered, the Design/Builder shall, if notified to do so by the Owner, uncover the designated portion for observation and then replace it.

5.2.1 If the designated portion of the Work was covered contrary to the request of the Owner, or to requirements specifically expressed in the Construction Documents, the Design/Builder shall receive no additional compensation for the costs of uncovering and replacement or modification of the Construction Schedule.

5.2.2 If the designated portion of the Work was covered prior to a specific request by the Owner that it remain uncovered, the Design/Builder shall receive additional compensation for the costs of uncovering and replacement or modification of the Construction Schedule(s) only if the designated portion of the Work was in conformance with the Construction Documents.

ARTICLE 6

CHANGE ORDERS, CHANGES TO THE WORK, AND CHANGED CONDITIONS

6.1 Change Order Requests. Any party to the construction process may request changes to the Work, compensation or applicable schedules.

6.1.1 With respect to such requests for changes by the Design/Builder, the Design/Builder shall prepare and submit change order requests to the Owner, together with appropriate back-up documentation.

6.1.2 Each change order request submitted by Design/Builder shall include any and all time and monetary impacts of the change, whether the change order is considered alone or with all other changes during the course of the Project, together with substantiating back-up documentation.

6.1.3 When circumstances arise which Design/Builder believes should entitle it to a change order, Design/Builder shall promptly notify the Owner, but in no event more than seven (7) calendar days after the event or situation which Design/Builder believes has caused a change arises or begins. Change order requests, with appropriate back-up documentation, shall be submitted no later than fourteen (14) calendar days after the event or situation which Design/Builder believes has caused a change arises or begins.

6.2 Owner-Directed Changes. The Owner may unilaterally direct the Design/Builder to implement changes in the Work so long as the Work the Owner is requiring is not outside of the general scope of the Contract for Design/Build Construction, and the Design/Builder, upon written direction from the Owner, shall proceed with such change.

6.3 Compensation For Changes. With respect to all change order requests involving credit to the Owner or additional compensation to the Design/Builder, the Design/Builder shall (i) obtain from subcontractors and suppliers the best possible price quotations; (ii) review such quotations to ascertain whether they are reasonable; (iii) prepare an itemized accounting together with appropriate supporting data, including reasonable expenditures by, and savings to, those performing the Work involved in the proposed change; and (iv) provide a reasonable price quotation to the Owner.

6.3.1 If price quotations for change order requests are determined by the Owner to be unreasonable, the Design/Builder shall, in writing, justify said quotations or provide additional back-up materials. If, after review of the additional information, the Owner determines the quotation is unreasonable, the Owner may require the subject Work be performed on a time and material basis.

6.3.2 The Design/Builder and its subcontractors and suppliers shall be allowed no additional compensation for any costs, fees or expenses incurred in performing services already required by the Contract for Design/Build Construction, and shall not be entitled to additional reimbursement for home-office, other non-job-site or indirect overhead expenses, or tools necessary for construction.

6.3.3 It is the responsibility of the Design/Builder to review and approve all pricing of additional work required of its subcontractors and suppliers.

6.4 Concealed and Unforeseen Conditions. If (i) the Design/Builder encounters concealed and unforeseen conditions of an unusual nature which affect the performance of the Work; or (ii) the conditions vary from those indicated by the Construction Documents; and (iii) such conditions are not ordinarily found to exist or differ materially from those generally recognized as inherent in work of the character provided by the Design/Builder, the Design/Builder shall promptly, but in no event later than seven (7) calendar days after first observance of the conditions, notify the Owner before conditions are disturbed and give the Owner opportunity to observe the condition in its undisturbed state.

6.4.1 The conditions will be promptly investigated and, if they differ substantially and cause a material increase or decrease in the Design/Builder's cost of, or time required for, performance of the Work, compensation or time for performance or both will be equitably adjusted.

6.4.2 Requests for adjustments in compensation or extensions of time shall be requested by submitting a change order request.

6.4.3 The Design/Builder's failure to notify the Owner as provided in this Article shall constitute a waiver of any claim arising out of or relating to such concealed or unknown condition.

6.5 Performance Of Changes. Upon receipt of an executed change order or approved change order request, changes in the Work shall be promptly performed. All changes in the Work shall be performed under applicable conditions of the Construction Documents.

6.6 Disputes Regarding Changes. Regardless if there is a dispute (i) that a change has occurred; (ii) whether a change in the Work will result in adjustment of compensation or applicable schedules; or (iii) as to the amount of any adjustment of compensation or applicable schedules, the change shall be carried out if the Owner so directs. No claim shall be prejudiced by performance of the Work so long as Design/Builder has notified the Owner of the claim in writing prior to performance of the Work which is the subject of the dispute and the party disputing the decision of the Owner recites the reasons for its dispute in the written notice. Otherwise, Design/Builder shall notify Owner in writing that it disputes a decision regarding a change order, including the specific reasons therefore, within seven (7) calendar days of the disputed decision. Failure to notify the Owner in writing as required herein shall constitute a waiver of any claim resulting from the change.

6.7 Necessity For Signature Approval. No act, omission or course of dealing shall alter the requirement that change orders shall be in writing and signed by the Owner, and that change orders are the exclusive method for effecting any adjustment to compensation or applicable schedules. The Design/Builder understands and agrees, on behalf of itself and its subcontractors and suppliers, that neither compensation nor applicable schedules can be changed by implication, oral agreement, or unwritten change order.

ARTICLE 7

DESIGN/BUILDER'S WARRANTIES AND GUARANTEES

7.1 One-Year Warranty. In addition to the warranties and guarantees set forth elsewhere in the Contract for Design/Build Construction, the Design/Builder, upon request by the Owner, 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.

7.1.1 The Design/Builder shall schedule, coordinate and participate in a walk-through inspection of the Work one month prior to the expiration of the one-year correction period, and shall notify the Owner, and any necessary subcontractors and suppliers of the date of, and request their participation in, the walk-through inspection. The purpose of the walk-through inspection will be to determine if there are defects or failures which require correction.

7.1.2 Should the Design/Builder fail to promptly correct any failure or defect, the Owner may take whatever actions it deems necessary to remedy the failure or defect and the Design/Builder shall promptly reimburse the Owner for any expenses or damages it incurs as a result of the Design/Builder's failure to correct the failure or defect.

7.2 Express Warranties And Guarantees – Design/Builder. In addition to the warranties and guarantees set forth elsewhere herein, the Design/Builder expressly warrants and guarantees to the Owner:

- (i) 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.
- (ii) 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
- (iii) that all management, supervision, labor and services required for the Work shall comply with the Contract for Design/Build Construction and shall be and are performed in a workmanlike manner.

7.3 Express Warranties And Guarantees - Subcontractors And Suppliers. The Design/Builder shall require that all of its subcontractors and suppliers provide written warranties, guarantees and other undertakings to the Owner and the Design/Builder in a form identical to the warranties, guarantees and other undertakings set forth in the Contract for Design/Build 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 Design/Builder.

7.4 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.

7.5 Non-Limitation. Nothing contained in Paragraph 7.1, shall be construed to establish a period of limitation with respect to the Design/Builder's obligations under the Contract for Design/Build Construction. Paragraph 7.1 relates only to the Design/Builder's specific obligations with respect to the Work, and has no relationship to the time within which the

Design/Builder's contractual obligations under the Contract for Design/Build Construction or professional liability claims may be enforced, nor to the time within which proceedings may be commenced to establish the Design/Builder's liability with respect to any contractual obligations pursuant to Paragraph 8.1 or contained elsewhere herein.

7.6 Commencement Of Obligations. Unless otherwise specified, all of the Design/Builder's warranty and guaranty obligations, including the time period(s) for all written warranties and guarantees of 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 8

OWNER'S DUTIES, OBLIGATIONS AND RESPONSIBILITIES

8.1 Timely Compensation Of Design/Builder. The Owner shall timely compensate the Design/Builder in accordance with the Contract for Construction.

8.2 Owner Review Of Documents. The Owner shall review documents prepared by the Design/Builder 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. No review of such documents shall relieve the Design/Builder of any of its responsibilities. In addition, the Owner's review of documents for purposes of issuing a building permit shall not relieve the Design/Builder of any of its responsibilities.

8.3 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 Design/Builder, for any of the foregoing purposes, be deemed the agent of the Owner.

8.4 Owner's Utilities. The Design/Builder shall be responsible to provide and pay for consumption of, and connections to, utilities required for temporary service and construction.

ARTICLE 9

DESIGN/BUILDER'S COMPENSATION

9.1 Schedule of Values. Prior to submitting its first application for payment for the Work, the Design/Builder shall prepare and present to the Owner for approval a schedule of values based on the draft schedule of values submitted with the GMP Proposal and adjusted to account for the final accepted bid amounts for payment. An allowance for un-awarded Trade Contracts may be included in the schedule of values. The Design/Builder shall not imbalance or artificially inflate any element of its schedule of values. Upon the Owner's acceptance, the schedule of values shall be used to process and pay the Design/Builder's payment requests. The schedule of values shall not be changed without written change order authorized by the Owner. The Design/Builder shall comply with the Trench Safety Act (Chapter 553, Part VI, Florida Statutes) which requires that builders delineate in their Schedules of Values the cost of compliance with applicable trench safety standards.

9.2 Unit Prices. If any portion of the Construction Price is determined by the application of unit prices, the number of units contained in the Design/Builder's compensation schedule is an

estimate only, and the compensation to the Design/Builder shall be determined by the actual number of units incorporated in, or required by, the Work.

9.3 Invoicing Procedures. In accordance with the procedures and requirements set forth in the Owner's policy **PMG-B17**, the Design/Builder shall invoice the Owner and the Owner shall pay the Design/Builder the Construction Price. The Design/Builder shall submit invoices to the Owner requesting payment for labor and services rendered during the preceding thirty calendar days. Each invoice shall contain such detail and be backed up with whatever supporting information the Owner requests and shall at a minimum state:

- (i) the total original Construction Price and total current Construction Price;
- (ii) the amount due for properly provided labor, materials and equipment properly incorporated into the Project; and with respect to amounts invoiced for materials or equipment necessary for the Project and properly stored at the Site (or elsewhere if offsite storage is approved in writing by the Owner), be accompanied by written proof that the Owner has title to such materials or equipment and that such material and equipment is fully insured against loss or damage;
- (iii) a breakdown of the various phases, bid packages, or parts of the Work as related to the Construction Price in accordance with standard Construction Specifications Institute (CSI) format;
- (iv) the value of the various phases, bid packages, or parts of the Work actually performed;
- (v) previously invoiced amounts and credit payments made;
- (vi) the total amount due, less any agreed retainage; and
- (vii) a summary of change orders to date.

9.4 Owner's Right To Refuse Payment. Owner's approval of the Design/Builder's invoice shall not preclude the Owner from exercising any of its remedies under the Contract for Design/Build Construction. In the event of a dispute, payment shall be made on or before the date provided in the Agreement for Design/Build Services for amounts not in dispute, subject to any setoffs claimed by the Owner. The Owner shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or all of the amount previously paid to the Design/Builder due to:

- (i) the Design/Builder's failure to perform the Work in compliance with the requirements of the Contract for Design/Build Construction or any other agreement between the parties;
- (ii) the Design/Builder's failure to correctly and accurately represent the Work performed in a payment request, or otherwise;
- (iii) the Design/Builder's performance of the Work at a rate or in a manner that, in the Owner's opinion, is likely to result in the Project or any portion of the Project being inexcusably delayed;

- (iv) the Design/Builder's failure to use funds previously paid the Design/Builder by the Owner, to pay the Design/Builder's Project-related obligations including, but not limited to, the Design/Builder's subcontractors, materialmen, and suppliers;
- (v) claims made, or likely to be made, against the Owner;
- (vi) loss caused by the Design/Builder or the Design/Builder's subcontractors, or suppliers; or
- (vii) the Design/Builder's failure or refusal to perform any of its obligations to the Owner.

9.5 Design/Builder's Right To Refuse Performance For Non-Payment. If, within twenty (20) calendar days from the receipt of the Design/Builder's application for payment properly prepared pursuant to Owner's policy *PMG-B17*, the Owner, without cause or basis hereunder, fails to pay the Design/Builder any amounts then due and payable to the Design/Builder, the Design/Builder shall have the right, in addition to all other rights and remedies contained herein, to cease performance of the Work until receipt of proper payment after first providing fourteen (14) calendar days written notice to the Owner of its intent to cease work.

9.6 Correction Of Past Payments. All prior payments, whether based on estimates or otherwise, may be corrected and adjusted in any subsequent payment and shall be 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 Design/Builder in writing of such defect or impropriety. Any disputed amounts determined by the Owner to be payable to the Design/Builder shall be due thirty (30) calendar days from the date the dispute is resolved.

9.7 Invoice Warranties And Guarantees. The Design/Builder expressly warrants and guarantees to the Owner that:

- (i) title to all goods, products, materials, equipment and systems covered by an invoice will pass to the Owner either by incorporation into the Work, or upon receipt of payment by the Design/Builder, whichever occurs first;
- (ii) all goods, products, materials, equipment and systems covered by an invoice are free and clear of liens, claims, security interests or encumbrances; and
- (iii) no goods, products, materials, equipment or systems covered by an invoice have been acquired by the Design/Builder, or its subcontractors or suppliers, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Design/Builder, or its subcontractors or suppliers.

9.8 Design/Builder's Signature. The signature of the Design/Builder on any invoice constitutes the Design/Builder's certification to the Owner that (i) the Design/Builder's services listed in the invoice have progressed to the level indicated and have been performed as required by the Contract for Design/Build Construction; (ii) the Design/Builder has paid its subcontractors and suppliers their proportional share of all previous payments received from the Owner; (iii) the amount requested is currently due and owing; and (iv) all subcontractors performing the Work for which payment is made hold all necessary State of Florida licenses.

9.9 Taxes. The Design/Builder shall incorporate into the Construction Price, and pay, all sales, consumer, use and similar taxes for goods, products, materials, equipment and systems incorporated into the Work which were legally required at the time of execution of the Contract for Design/Build Construction, whether or not yet effective or merely scheduled to go into effect. The Design/Builder shall cooperate with and assist the Owner in securing qualified refunds of any sales or use tax paid by the Owner or Design/Builder on goods, products, materials, equipment or systems. Any refund secured shall be paid to the Owner.

9.10 Compensation Of Design/Builder's Subcontractors And Suppliers. Forty five (45) days after satisfactory completion of their portion of the Work, subcontractors may invoice Design/Builder for remaining unpaid Work, including the full value of the retainage related to such Work less the value of any contested item(s), and provided each such subcontractor has provided Design/Builder with all required close-out documentation. Design/Builder shall include subcontractor pay requests in the Design/Builder's application for payment. No later than ten (10) days after receipt of payment from the Owner, the Design/Builder shall pay each of its subcontractors and suppliers out of the amount received by the Design/Builder on account of such subcontractor's or supplier's portion of the Work, the amount to which each entity is entitled, reflecting percentages actually retained from payments to the Design/Builder on account of such entity's portion of the Work, if any. The Owner shall have no obligation to pay, and shall not be responsible for payments to, the Design/Builder's subcontractors or suppliers. However, the Owner reserves the right, but has no duty, to make payment jointly to the Design/Builder and to any of its subcontractors or suppliers in the event that the Owner becomes aware that the Design/Builder fails to pay or unreasonably withholds payment from one or more of those entities. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

9.11 Retainage. Subject to the other provisions in this Article, retainage shall be withheld from each payment, in an amount not to exceed ten percent (10%) of the approved payment amount. At such time as the Work is at least seventy-five percent (75%) complete, the Owner may, in its sole and absolute discretion, reduce the amount of retainage required to less than ten percent (10%) on subsequent applications for payment.

9.12 Final Payment. Prior to being entitled to receive final payment, and as a condition precedent thereto, the Design/Builder must achieve Final Completion. The Owner shall, subject to its rights set forth above in this Article, make final payment of all sums due the Design/Builder within fourteen calendar days of receipt of Design/Builder's application for payment.

ARTICLE 10

CONSTRUCTION SCHEDULE REQUIREMENTS AND COMPLETION

10.1 Time Of The Essence. The parties hereto mutually understand and agree that time is of the essence in the performance of the Contract for Construction and that the Owner will incur damages if the Work is not completed on time. The Design/Builder 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.

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

10.2.1 The Construction Schedule shall be 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 offsite 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, Design/Builder shall consider and account for Owner's operational needs on the site and adjacent thereto, particularly with regard to utility interruptions and access restrictions.

10.2.2 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.

10.2.3 By reviewing the Construction Schedule, the Owner does not assume any of the Design/Builder'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.

10.2.4 The Design/Builder shall review, on a weekly basis, the actual status of the Work against the Construction Schedule and shall discuss the status of the Work regularly with the Owner.

10.2.5 The Design/Builder shall periodically and in all instances when the Design/Builder 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, activities 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 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.

10.3 Delay In Performance. If at any time the Design/Builder anticipates that performance of the Work will be delayed or in fact has been delayed, the Design/Builder shall (i) immediately notify the Owner of the probable cause of and effect 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. No adjustments in the Construction Schedule shall be effective unless approved in writing by the Owner.

10.4 Compensable Delays. If the Design/Builder is delayed at any time in the progress or performance of the Work by (i) acts or omissions of the Owner; (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 Design/Builder for the delay, the Design/Builder's compensation shall be equitably adjusted by change order to cover the Design/Builder's actual and direct increased costs attributable to such delay.

10.5 Excusable Delays. If the Design/Builder is delayed at any time in the progress or performance of the Work by (i) acts or omissions of the Owner; (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 Design/Builder; (vi) unavoidable casualties; (vii) causes beyond the Design/Builder'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 Design/Builder or by any cause which the Design/Builder could reasonably control or circumvent; and (d) the Design/Builder would have otherwise been able to timely perform all of its obligations under the Contract for Design/Build Construction but for such delay. Delay caused by labor disputes, picketing, employee boycotts, or the like which directly or indirectly involves employees of the Design/Builder 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.

10.5.1 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 may be compensable to the extent associated costs are not covered by builder's risk or other insurance carried by Design/Builder.

10.6 Modifications of Time For Performance. The Design/Builder 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. 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 paths 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. The Design/Builder shall determine and promptly notify the Owner in writing when it believes such adjustments are necessary, but no such adjustments shall be effective unless approved in writing by the Owner.

10.6.1 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 date(s) 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 Design/Builder's liability for actual damages, delay damages and liquidated damages, shall be determined in relation to the date(s) as modified.

10.7 Substantial Completion. Substantial Completion of the Work shall be deemed to have occurred on the later of: (i) the dates that the Work passes a Substantial Completion inspection, (ii) the date the required Substantial Completion documentation and items have been produced, or (iii) the date a certificate of occupancy is issued for the Work.

10.7.1 When the Design/Builder believes that the Work is substantially complete, it shall notify the Owner that its Work is ready for a Substantial Completion inspection. The Design/Builder shall endeavor to give the Owner notice two (2) weeks prior to the predicted Substantial Completion inspection date.

10.7.2 Upon receipt of notification from the Design/Builder, the Owner and the Design/Builder shall agreed on a date for inspection of the Work to determine whether the Work is substantially complete.

10.7.3 If the Work is determined not to be substantially complete, the Work shall be prosecuted 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.

10.7.4 On or prior to the required date of Substantial Completion, the Design/Builder shall deliver keys, permits, and other necessary and customary documents and items pre-requisite for the Owner's occupancy and use of the Work for its intended purpose. These documents and items are enumerated in the Owner's Quality Assurance and Substantial Completion Guide. The Owner will obtain and review Substantial Completion documentation and items, and will inform the Design/Builder of any deficiencies.

10.7.5 When the Owner and the Design/Builder agree that the Work has passed the Substantial Completion inspection and the Design/Builder 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 Work needing completion and correction.

10.7.6 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 Design/Builder shall not be responsible for delays in commissioning not the fault of Design/Builder.

10.7.7 The Design/Builder shall provide the Owner with operation and maintenance manuals and other operational documentation not less than twenty-eight (28) calendar

days prior to the required date of Substantial Completion to allow adequate time for training prior to commissioning and the Owner's occupancy of the Project.

10.7.8 The Design/Builder shall meet with the Owner's personnel not less than twenty-eight (28) calendar days prior to the required date of Substantial Completion to familiarize and train them with respect to maintenance and use of the Project. All training sessions shall be videotaped, with copies provided to the Owner.

10.7.9 The date of Substantial Completion shall fix the commencement date of warranties and guaranties and allocate between the Owner and the Design/Builder responsibility for security, utilities, damage to the Work and insurance.

10.8 Final Completion. Final Completion of the Work shall be deemed to have occurred on the later of: (i) the date that the Work passes a Final Completion inspection or (ii) the date that the Design/Builder has produced all required Final Completion close-out documentation and items. Final Completion shall not be deemed to have occurred and no final payment shall be due the Design/Builder or any of its subcontractors or suppliers until the Work has passed the Final Completion inspection and all required Final Completion close-out documentation and items have been produced to the Owner by the Design/Builder.

10.8.1 When the Design/Builder believes the Work is finally complete, the Design/Builder shall notify the Owner that the Work is ready for Final Completion inspection.

10.8.2 Upon receipt of such notification from the Design/Builder, the Owner and the Design/Builder shall agree upon a date for inspection of the Work to determine whether the Work is finally complete.

10.8.3 At the Final Completion inspection to determine whether the Work is finally complete, the Owner will:

- (i) inspect the Work;
- (ii) determine whether all items on the list included with the Certificate of Substantial Completion have been satisfactorily completed and corrected;
- (iv) determine whether required inspections and approvals by the official(s) having or asserting jurisdiction over the Project have been satisfactorily completed; and

10.8.4 If the Work is not finally complete, the Design/Builder shall continue to prosecute the Work, and the inspection process shall be repeated at no additional cost to the Owner, until the Work is finally complete.

10.8.5 On or prior to the date of Final Completion, the Design/Builder shall deliver to the Owner the following Final Completion close-out documentation and items:

- (i) Certificate of Final Completion – executed on Owner's standard form;
- (ii) all operation and maintenance manuals not previously produced;

- (iii) Owner maintenance or “attic” stock as prescribed in the technical specifications;
- (iii) one (1) set of as-built plans and specifications;
- (iv) certification and affidavit that all insurance required of the Design/Builder beyond final payment, if any, is in effect and will not be canceled or allowed to expire without notice to the Owner;
- (v) written consent of the surety(ies), if any, to final payment;
- (vi) 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;
- (vii) full, final and unconditional certification and affidavit that all of the Design/Builder’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;
- (viii) 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;
- (ix) affidavits, releases, bonds, waivers, permits and other documents necessary for final close-out of Work;
- (x) a list of any item(s) due but unable to be delivered and the reason for non-delivery; and
- (xi) any other documents reasonably and customarily required or expressly required herein for full and final close-out of the Work.

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

ARTICLE 11
INSURANCE

11.1 Basic Insurance Requirements. The Design/Builder 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, modified or the coverage thereunder reduced before the expiration date thereof and Design/Builder shall provide Owner with a copy of an endorsement to the policy evidencing the same. The insurance required hereunder shall be carried by Design/Builder at least until the Project is finally completed and accepted by Owner. Owner may require the Design/Builder and its subDesign/Builders 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 Design/Builder within a reasonable period of time prior to the commencement of the Work of such additional requirements.

11.2 Workers Compensation Insurance. Design/Builder shall carry worker's compensation insurance required by Chapter 440, Florida Statutes.

11.3 Liability Insurance.

11.3.1 Commercial General Liability Insurance. The Design/Builder 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 University of Florida 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 Design/Builder from claims which may arise whether such claims may arise out of the operations of the Design/Builder or by anyone directly or indirectly employed by the Design/Builder. In addition, the policy shall contain the following endorsements (i) "XCU" (explosion, collapse, underground damage) for those classifications excluded under the policy and (ii) contractual liability. If Design/Builder is performing asbestos-related work, the policy shall also contain a pollution liability endorsement.

11.3.2 Automobile Liability Insurance. Design/Builder shall carry an automobile liability insurance which has liability limits of at least \$500,000.00. The University of Florida Board of Trustees and Board of Governors shall be named as additional insureds on such policy and the policy shall provide cross liability coverage.

11.3.3 Deductibles. Deductibles under these liability policies 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 Design/Builder and/or subcontractor providing such insurance.

11.4 Design/Builder Professional Liability Insurance. A policy or policies issued covering the liability of Design/Builder and the other members of the Project Team providing Design Services for any and all errors or omissions committed by them. The coverage shall be maintained during the term of the Agreement and for at least three years following completion of all operations to be performed. The policy, or policies shall have a limit of liability not less than the amount set forth in the Agreement. The policy retroactive date will coincide with or precede

Design/Builder's start of Work (including subsequent policies purchased as renewals or replacements). Design/Builder will make every effort to maintain similar insurance for at least three (3) years following Project completion. If the insurance is terminated for any reason, Design/Builder agrees to purchase an extended reporting provision of at least three years to report claims arising from work that is being performed. The policy will allow for reporting of circumstances or incidents that might give rise to future claims.

11.5 Design/Builder's Risk Insurance. The Design/Builder 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 Architect/Engineer's services and expenses required as a result of such insured loss. This insurance shall insure the interests of the Design/Builder, 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 Design/Builder'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 University of Florida 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 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 Design/Builder.

When the Work includes the repair, removal, installation and/or testing of live steam boilers, valves, pipes or lines, then such insurance shall include boiler and machine coverage, written on an ISO form or its equivalent.

A loss or losses insured under this insurance policy shall be adjusted by the Design/Builder and its insurance company. The Design/Builder shall repair or replace the damaged property with the proceeds from the Design/Builder's risk policy. The Design/Builder shall be responsible for all damages and necessary repairs whether or not the loss is covered by the Design/Builder's risk policy.

11.6 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. The Certificates of Insurance 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 Design/Builder has complied with this Article. Design/Builder 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. Certificates of Insurance evidencing the renewal of all insurance required to be carried under this Article shall be provided to Owner at least thirty (30) days prior to the date each applicable insurance policy is scheduled to expire. Owner's review, inspection, or approval of Design/Builder's insurance shall not relieve Design/Builder of its responsibility for providing the insurance required hereby nor constitute a waiver of any such requirements. If any of the foregoing insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the application for final payment.

11.7 Effect of Insurance. Compliance with insurance requirements shall not relieve the Design/Builder of any responsibility to indemnify the owner for any liability to the owner as specified in any other provision of the Contract for Design/Build Construction, and the owner shall be entitled to pursue any remedy in law or equity if the Design/Builder fails to comply with the contractual provisions of the Contract for Design/Build Construction. Indemnity obligations specified elsewhere in the Contract for Design/Build 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.

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

ARTICLE 12

SURETY BONDS

12.1 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 Design/Builder shall furnish Payment and Performance bonds on Owner's standard form covering the full and faithful performance of the Contract for Design/Build Construction and the payment of obligations arising hereunder. All bonds required by this section shall be written through reputable and responsible insurance companies licensed to do business in the State of Florida, with a Best Rating of at least A/IX.

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

12.3 Delivery Of Bonds. The Design/Builder shall deliver required bonds and powers of attorney, if applicable, to the Owner prior to commencement of the Work.

ARTICLE 13

OWNER'S RIGHT TO STOP WORK

13.1 Cease And Desist Order. If the Design/Builder fails or refuses to perform or fails to correct defective Work as required, or persistently fails to carry out its obligations under the Contract for Design/Build Construction, the Owner may, by written notice, order the Design/Builder to cease and desist in performing until the cause for the order has been eliminated to the satisfaction of the Owner. Upon receipt of such instruction, the Design/Builder shall immediately cease and desist as instructed by the Owner and shall not proceed further until the cause for the Owner's order has been corrected, no longer exists, or the Owner instructs that its services may resume.

13.1.1 The Design/Builder shall not be entitled to an adjustment in the time for performance or the Construction Price under this clause since such stoppages are considered to be the fault of the Design/Builder.

13.1.2 The rights of the Owner hereunder shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design/Builder or others.

13.1.3 In the event the Owner issues instructions to cease and desist, and in the further event that the Design/Builder fails and refuses with seven (7) 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 perform or cause a third party to perform, Design Builder's obligations hereunder and the Design/Builder shall be responsible for the costs associated therewith. The rights set forth herein are in addition to, and without prejudice, to any other rights and remedies to Owner may have against the Design/Builder.

ARTICLE 14

TERMINATION OR SUSPENSION

14.1 Termination For Cause By Owner.

14.1.1 The Owner may terminate the Contract for Design/Build Construction for cause if the Design/Builder materially breaches the Contract for Design/Build Construction by:

- (i) refusing, failing or being unable to properly manage or perform on any Project;
- (ii) refusing, failing or being unable to supply the Project with sufficient numbers of workers, properly skilled workers, proper materials to maintain applicable schedules;
- (iii) refusing, failing or being unable to make prompt payment to subcontractors or suppliers;
- (iv) disregarding laws, ordinances, rules, regulations or orders of any public authority or quasi-public authority having jurisdiction over the Project;
- (v) refusing, failing or being unable to substantially perform in accordance with the terms of the Contract for Design/Build Construction as determined by the Owner, or as otherwise defined elsewhere herein; or
- (vi) refusing, failing or being unable to substantially perform in accordance with the terms of any other agreement between the Owner and Design/Builder.

14.1.2 Upon the occurrence of any of the events described above, the Owner may give written notice to the Design/Builder setting forth the nature of the default and requesting cure within seven (7) calendar days from the date of notice. At any time thereafter, if the Design/Builder fails to initiate the cure or if the Design/Builder fails to expeditiously continue such cure until complete, the Owner may give written notice to the Design/Builder of immediate termination, and the Owner, without prejudice to any other rights or remedies, may take any or all of the following actions:

- (i) complete all or any part of the services being provided under the Contract for Design/Build Construction, including supplying workers, material and equipment which the Owner deems expedient to complete the Work;
- (ii) 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;
- (iii) take such other action as is necessary to correct such failure;
- (vi) take possession of all materials, tools, construction equipment and machinery on the Site owned or leased by the Design/Builder;
- (v) directly pay the Design/Builder's subcontractors and suppliers compensation due to them from the Design/Builder;
- (vi) finish the Work by whatever method the Owner may deem expedient;
and
- (vii) require the Design/Builder to assign the Design/Builder's right, title and interest in any or all of Design/Builder's subcontracts or orders to the Owner.

14.1.3 If the Owner terminates the Contract for Design/Build Construction for cause, and the Owner takes possession of all materials, tools, construction equipment and machinery on the Site owned or leased by the Design/Builder, the Design/Builder'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 Design/Builder the Owner's damages resulting from the termination.

14.1.4 If the Owner terminates the Contract for Design/Build Construction for cause, and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, then in such event, said termination shall be deemed a termination for convenience as set forth in Paragraph 14.3.

14.2 Termination For Cause By Design/Builder.

14.2.1 The Design/Builder may terminate the Contract for Design/Build Construction for cause if the Owner materially breaches the Contract for Design/Build Construction by:

- (i) refusing, failing or being unable to make prompt payment to the Design/Builder without just cause;
- (ii) 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 Design/Build Construction.

14.2.2 Upon the occurrence of any of the events described above, the Design/Builder may give written notice to the Owner setting forth the nature of the default and requesting cure within seven (7) calendar days from the date of notice. If the Owner fails to cure the default within seven (7) calendar days, the Design/Builder, without prejudice to any rights or remedies, may give written notice to the Owner of immediate termination.

14.3 Termination Or Suspension For Convenience. The Owner may at any time give written notice to the Design/Builder terminating the Contract for Design/Build 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 Design/Builder shall immediately reduce its staff, services and outstanding commitments in order to minimize the cost of suspension.

14.4 Design/Builder's Compensation When Design/Builder Terminates For Cause Or Owner Terminates For Convenience. If the Contract for Design/Build Construction is (i) terminated by the Design/Builder pursuant to Paragraph 14.2; (ii) terminated by the Owner pursuant to Paragraph 14.3; or (iii) suspended more than three months by the Owner pursuant to Paragraph 14.3, the Owner shall pay the Design/Builder specified amounts due for Design Services and 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 Design/Builder. Absent agreement on the additional amount due the Design/Builder, the Owner shall pay the Design/Builder:

- (i) reasonable costs incurred in preparing to perform the terminated portion of the Work, and in terminating the Design/Builder'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 Design/Builder 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 anticipated rates of loss, if any; and
- (ii) 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.

14.5 Design/Builder's Compensation When Owner Terminates For Cause. If the Contract for Design/Build Construction is terminated by the Owner for cause pursuant to Paragraph 14.1, no further payment shall be made to the Design/Builder until Final Completion of the Project. At such time, the Design/Builder 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 Design/Builder, including liquidated damages applicable thereto. The Design/Builder shall additionally reimburse the Owner for any additional costs or expenses incurred.

14.6 Limitation On Termination Compensation. Irrespective of the reason for termination or the party terminating, the total sum paid to the Design/Builder shall not exceed Guaranteed Maximum Price for all services, 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 Design/Build Construction, and shall in no event include duplication of payment.

14.7 Design/Builder's Responsibility Upon Termination. Irrespective of the reason for termination or the party terminating, if the Contract for Design/Build Construction is terminated, the Design/Builder shall, unless notified otherwise by the Owner,

- (i) immediately stop work;
- (ii) terminate outstanding orders and subcontracts;
- (iii) settle the liabilities and claims arising out of the termination of subcontracts and orders; and
- (iv) 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 Design/Builder has.

14.8 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 Design/Builder to exercise that right for the benefit of the Owner, the Design/Builder or any other persons or entities.

14.9 Limitation On Termination Claim. If the Design/Builder fails to file a claim within one year from the effective date of termination, the Owner shall pay the Design/Builder only for services actually performed and expenses actually incurred prior to the effective termination date.

ARTICLE 15 DISPUTE RESOLUTION

15.1 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 Design/Build Construction or the breach thereof, the parties shall first attempt resolution through mutual discussion.

15.2 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 Design/Build 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.

15.2.1 All parties to the 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.

15.2.2 The parties shall not be required to mediate for a period greater than ninety (90) 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.

15.2.3 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.

15.2.4 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.

15.2.5 The Owner, the Design/Builder 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 Design/Build Construction or an agreement that incorporates the Contract for Design/Build 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.

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

15.3 Conflicting Dispute Resolution Provisions. Neither party to the Contract for Design/Build Construction shall enter into any contract with regard to the Project which directly or indirectly gives 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.

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

15.5 Performance During Dispute Resolution. The Owner and the Design/Builder agree that pending the resolution of any dispute, controversy, or question, the Owner and the Design/Builder shall each continue to perform their respective obligations without interruption or delay, and the Design/Builder shall not stop or delay the performance of the Work.

15.6 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 140 Florida Statutes. All other claims, disputes and other matters shall be determined under the judiciary system of the State of Florida.

ARTICLE 16

DAMAGES AND REMEDIES

16.1 Design/Builder's Repair. The Design/Builder 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 Design/Build Construction, or any other applicable warranty or guarantee.

16.2 Design/Builder's Reimbursement. The Design/Builder shall promptly reimburse the Owner for any expenses or damages incurred by the Owner as a result of (i) the Design/Builder's failure to substantially perform in accordance with the terms of the Contract for Design/Build Construction; (ii) deficiencies or conflicts in the Construction Documents attributable to the

Design/Builder or of which the Design/Builder was or should have been aware; (iii) breach of the warranties and guarantees set forth in the Contract for Design/Build Construction or any other applicable warranty or guarantee; or (iv) other acts or omissions of the Design/Builder.

16.3 General Indemnity. To the fullest extent permitted by law, the Design/Builder 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 Design/Builder's services, including without limitation any breach of contract or negligent act or omission (i) of the Design/Builder; or (ii) of the Design/Builder's subcontractors or suppliers, or (iii) of the agents, employees or servants of the Design/Builder or its subcontractors or suppliers.

16.4 Intellectual Property Indemnity. To the fullest extent permitted by law, the Design/Builder 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 Design/Builder(s) in writing. If the Design/Builder has reason to believe the use of a required design, process or product is an infringement of a patent, the Design/Builder shall be responsible for such loss unless such information is promptly given to the Owner.

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

16.6 Waiver Of Damages. The Design/Builder 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.

16.7 Survival. The obligations set forth herein shall survive the expiration or earlier termination of the Contract for Design/Build Construction.