

## AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

**THIS AGREEMENT** for Construction Management Services (the “Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, by and between the University of West Florida for and on behalf of The University of West Florida Board of Trustees (“Owner”) and \_\_\_\_\_, Federal I.D. No. \_\_\_\_\_ (“Construction Manager”) which is authorized to do business in Florida.

### WITNESSETH:

**WHEREAS**, Owner solicited statements of qualifications from interested construction managers for the construction of the project described on **Exhibit A** (the “Project”); and

**WHEREAS**, based on Construction Manager’s interview, qualifications statement and related submissions, Owner has selected Construction Manager for the Project; and

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

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

### ARTICLE 1 GENERAL DESCRIPTION OF SERVICES

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**1.1 The Services.** The Construction Manager agrees to furnish the pre-construction and construction services set forth herein and required for completion of the Project on a Guaranteed Maximum Price (hereinafter defined) basis. Construction Manager represents that it is thoroughly familiar with and understands the requirements of the Project scope and that it is experience in the administration and construction of building projects of the type and scope contemplated by the Owner’s program for the Project. Construction Manager represents to Owner that Construction Manager has all necessary construction education, skill, knowledge, and experience required for the Project and will maintain, at all times during the term of this Agreement, such personnel on its staff to provide the services contemplated hereby within the time periods required hereby. In addition, Construction Manager represents that it has, and all the subcontractors performing services under this Agreement will have, all applicable licenses required by the State of Florida to perform such services.

**1.2 Project Schedule/Time of the Essence.** Construction Manager has provided Owner with a preliminary schedule covering the pre-construction and construction of the Project which is incorporated herein as **Exhibit B**. This preliminary schedule shall serve as the framework for the subsequent development of all detailed construction schedules described herein and in the General Terms and Conditions. The Construction Manager shall at all times carry out its duties and responsibilities as expeditiously as possible and in accordance with the Project schedule, subject to delays in the schedule not the fault of Construction Manager or its subcontractors. Time is of the essence in the performance of this Agreement.

**1.3 Preparation/Sufficiency of Site.** The Construction Manager shall, among other things Construction Manager needs to do to perform its obligations under this Agreement, as and when appropriate, (i) visit and thoroughly inspect the Project Site and any structure(s) or other manmade features to be modified and become familiar with local conditions under which the Project will be constructed and operated; (ii) familiarize itself with the survey including the location of all existing buildings, utilities, conditions, streets, equipment, components and other attributes having or likely to have an impact on the Project; (iii) familiarize itself with the Owner’s layout and design requirements, conceptual design objectives, and budget for the Project; (iv) familiarize itself with pertinent Project dates and programming needs, including the Project schedule, (v) review and analyze all Project geotechnical, Hazardous Substances, structural, chemical, electrical, mechanical, and construction materials tests, investigations and recommendations; and (vi) gather any other information necessary for a thorough understanding of the Project. If the Project involves modifications to any existing structure(s) or other manmade feature(s) on the Project site, the Construction Manager shall also review all as-built and record drawings, plans and specifications of which Construction Manager has been informed by Owner and thoroughly inspect the existing structure(s) and manmade feature(s) to identify existing deficiencies and ascertain the specific locations of pertinent structural components. Claims by

Construction Manager resulting from Construction Manager's failure to familiarize itself with the Site or pertinent documents shall be deemed waived.

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

**1.5 Contract for Construction.** The "Contract for Construction", which constitutes the entire agreement between Owner and Construction Manager, consists of this Agreement and all exhibits hereto; the General Terms and Conditions; special conditions, if any; proposal(s) submitted by Construction Manager and accepted by Owner, if any; the Construction Documents; any amendments or addenda executed by the Owner and the Construction Manager hereafter; Owner approved change order(s) or field orders if there is insufficient time to fully execute a change order; and the additional documents listed on Exhibit A, if any. Documents not included or expressly contemplated in this Section 1.5 do not, and shall not, form any part of the Contract for Construction. Without limiting the generality of the foregoing, shop drawings and other submittals from the Construction Manager or its subcontractors and suppliers do not constitute a part of the Contract for Construction.

## **ARTICLE 2 OWNER'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES**

**2.1 Project Information.** Construction Manager acknowledges that Owner has provided Construction Manager with information regarding Owner's requirements for the Project as set forth in the Project's program.

**2.2 Owner's Budget.** The Owner shall establish and update a budget for the Project, including the amount allocated for construction, the Owner's other costs and reasonable contingencies related to these costs as appropriate.

**2.3 Owner's Representative.** The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project.

**2.4 Time for Performance** The Owner shall review and approve or take other appropriate action on all design submittals within the timeframes set forth in Exhibit B.

**2.5 Purpose of Owner's Review.** Owner's review, inspection, or approval of any Work, Applications for Payment, or other submittals shall be solely for the purpose of determining whether the same are generally consistent with Owner's construction program and requirements. No review, inspection, or approval by Owner of such Work or documents shall relieve Construction Manager of its responsibility for the performance of its obligations under the Contract for Construction or the accuracy, adequacy, fitness, suitability, or coordination of the Work. Approval by any governmental or other regulatory agency or other governing body of any Work, Design Document, or Contract Documents shall not relieve Construction Manager of responsibility for the performance of its obligations under the Contract for Construction. A change order shall be issued when work is approved or directed to be completed differently than shown in contract documents. Payment by Owner pursuant to the Contract for Construction shall not constitute a waiver of any of Owner's rights under the Contract for Construction or at law, and Construction Manager expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by Owner. Notwithstanding the foregoing, prompt written notice shall be given by the Owner or Professional to the Construction Manager if the Owner becomes aware of any fault or defect in the Project or non-conformance with the Contract for Construction.

**2.6 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 Construction Manager, for any of the foregoing purposes, be deemed the agent of the Owner.

**2.7 Owner's Utilities.** The Owner shall be responsible to provide and pay for consumption of, and connections to, utilities required for temporary service and construction for this project.

### **ARTICLE 3 CONSTRUCTION MANAGER'S SERVICES**

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**3.1** The Construction Manager's Services under this Agreement include General Project Services, Pre-Construction Services, and Construction Services.

**3.2** Upon execution of this Agreement and issuance of a Notice to Proceed by the Owner, the Construction Manager shall commence performance of Pre-Construction Services. Upon execution of **Exhibit D** and issuance of a Notice to Proceed by the Owner, the Construction Manager shall commence performance of Construction Services. The parties acknowledge that (i) the Owner may determine not to proceed with Construction Services, (ii) performance of Pre-Construction Services may overlap performance of Construction Services, (iii) categories of Work performed during Construction Services may be performed in separate phases, and (iv) payment of the Construction Manager for Pre-Construction Services shall be separate from payment, if any, for Construction Services.

**3.3 General Project Services.** The Construction Manager agrees to:

3.3.1 Provide all services, as agreed to and as defined in the GMP, required to professionally complete the Work in an expeditious and economical manner consistent with the Contract for Construction and the best interests of the Owner.

3.3.2 Endeavor to develop, implement and maintain, in consultation with the Owner, Professional, and the Subcontractors, a spirit of cooperation, collegiality, and open communication among the parties so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and, upon completion, the Project is deemed a success by all parties.

3.3.3 Perform its services in accordance with schedule requirements.

3.3.4 Work with Owner and Professional to pursue Owner's goal of obtaining Leadership in Energy and Environmental Design (LEED) certification for the Project, at the level set forth on **Exhibit E**.

3.3.5 Participate in, and cooperate with, design phase and construction phase commissioning, validation, and other quality assurance and quality control processes.

3.3.6 Complete the Work by the required date of Substantial Completion. The Construction Manager shall submit an initial Construction Schedule by the date set forth on **Exhibit E**; a final Construction Schedule with each Guaranteed Maximum Price proposal; and revised Construction Schedules in accordance with the General Terms and Conditions. The Construction Schedule shall complement, and shall not conflict with, the design schedule.

3.3.7 Comply with Owner's Building Design and Construction Standards applicable to this Agreement as referenced herein. A link to the policies is provided on **Exhibit A**.

**3.4 Pre-Construction Services.** The Construction Manager shall provide the following Pre-Construction Services:

3.4.1 The Construction Manager shall familiarize itself with the approved facilities program for the Project and actively and jointly participate with the Owner and the Professional in formation of the final Project design. The phasing of, and schedule for, design for this Project are set forth on **Exhibit B**.

3.4.2 Submit for Owner review within thirty (30) calendar days of the Owner's execution of this Agreement:

- (i) Project reporting procedures;
- (ii) Quality Control and Testing Program defined in **Exhibit F**;
- (iii) Safety Program.

3.4.3 The Professional is required, in accordance with schedule requirements, to provide design concepts, narratives, and drawings. At each phase of design, in keeping with the Owner's goals and the program for the Project, the Construction Manager shall familiarize itself with these design documents and, in accordance with the Schedule on **Exhibit B**, provide the Owner and Professional with a report detailing construction issues and

concerns relating to the design, with detail appropriate to the phase of design. Without limitation of the foregoing, each construction report shall:

- (i) include an estimate of overall construction cost, with Construction Manager's contingency associated with the Cost of the Work at no greater percentages than the percentages set forth on **Exhibit E**, including a comparison of the estimate to Owner's budget for construction;
- (ii) identify conceptual decisions necessary to prepare accurate cost reports with the fewest assumptions, qualifications and exclusions;
- (iii) include an analysis and evaluation of jobsite management, site logistics, and schedule considerations;
- (iv) include an analysis and evaluation of the constructability of the design concepts, narratives, or drawings;
- (v) include an analysis and evaluation of the design concepts, narratives, or drawings in regard to the completeness of intended bid categories, conflicts or overlaps in the divisions of the Work, design details affecting construction including, without limitation, unusual or custom materials, value analysis, identification of long-lead materials affecting the Construction Schedule, availability of labor, and other factors affecting construction and, in the report provided during the Construction Documents Phase, suggestions for alternatives for matters which may delay the construction schedule;
- (vi) address problems, conflicts, defects or deficiencies in the design concepts and offer resolutions of same; and
- (vii) identify any other issues which Construction Manager reasonably believes may have a negative impact on the Project schedule, budget or performance.

3.4.4 The Construction Manager and the Professional shall jointly schedule and attend regular meetings with the Owner and evaluate the preliminary design drawings. The Professional shall prepare and distribute minutes of these meetings, and the Construction Manager shall verify the accuracy and completeness of the minutes.

3.4.5 The Construction Manager shall develop a comprehensive jobsite management and logistics plan for the Owner's review. This plan shall be submitted no later than the date set forth on **Exhibit E**.

3.4.6 The Construction Manager shall, in accordance with schedule requirements, assist the Professional with the resolution of all problems, conflicts, defects or deficiencies identified during the review and evaluation of the Construction Documents.

3.4.7 At each phase of design, the Construction Manager shall work with the Professional and/or the Owner's cost consultant to reconcile, and make recommendations on, the differences between the estimates each has prepared at that phase of design. If the final estimates of the Construction Cost by the Construction Manager and the Professional and/or the Owner's cost consultant differ materially, the Construction Manager and Professional and/or Owner's cost consultant shall meet promptly to reconcile the discrepancies between their estimates so as to permit submission to the Owner of a final estimate of Construction Cost on which both the Professional and the Construction Manager agree.

3.4.8 If the Owner elects to phase and/or "fast track" portions of the construction (such portions being described on **Exhibit E**), multiple Guaranteed Maximum Price proposals will be required.

3.4.9 The Construction Manager understands and acknowledges the Owner's intent that the Project will be completed within the budget set by Owner for the Project. Accordingly, throughout the Pre-Construction Services phase, the Construction Manager shall keep Owner informed if it believes that the Project may not be completed within Owner's budget, the reasons why it cannot be, and the Construction Manager's proposed solutions thereof.

### **3.5 Guaranteed Maximum Price Proposal**

3.5.1 At the time set forth on **Exhibit E**, which shall be prior to performance of Construction Services, the Construction Manager shall prepare and deliver to the Owner, with a copy to the Professional, a Guaranteed Maximum Price ("GMP") proposal. The Construction Manager shall, at a minimum, include in the GMP proposal:

- (i) a recital of the specific Construction Documents, including drawings, specifications, and all addenda thereto, used in preparation of the GMP proposal;
- (ii) the five (5) elements of the GMP:
  - a. Guaranteed Maximum Cost of the Work (hereinafter defined), detailed by each subcontract, trade or bid division;
  - b. the Construction Manager's Contingency for the Work;
  - c. General Conditions Costs consisting of:
    - Guaranteed Maximum Construction Manager's General Conditions Staffing Cost (hereinafter defined), detailed by expense category; and
    - Guaranteed Maximum General Conditions Cost (hereinafter defined), detailed by expense category;
  - d. Guaranteed Maximum for Construction Manager's Overhead and Profit.
  - e. Insurance and Bonds as follows:
    - Builder's Risk Insurance
    - Liability Insurance
    - Payment and Performance Bonds
- (iii) a draft schedule of values;
- (iv) a description of all other inclusions to, or exclusions from, the GMP,
- (v) all assumptions and clarifications; and
- (vi) the final Construction Schedule.

3.5.2 The Construction Manager acknowledges that the Construction Documents may be incomplete at the time the Construction Manager delivers the GMP proposal, and that the Construction Documents may not be completed until after commencement of the Work. Nevertheless, the GMP proposal shall include all costs for the Work required by the completed Construction Documents, and if the GMP proposal is accepted by the Owner, the Construction Manager shall be entitled to no increase in the GMP if the Work required by the completed Construction Documents (i) is required by the Contract for Construction, (ii) is reasonably inferable from the incomplete documents, (iii) is consistent with the Owner's programmatic goals and objectives, (iv) is consistent with the Owner's Design and Construction Standards and the general industry standards for completion of the Work, (v) is not an enlargement of the scope of Work or (vi) conforms to the nature, type, kind or quality of Work depicted in the incomplete documents.

3.5.3 If the GMP proposal is unacceptable to the Owner, the Owner shall promptly notify the Construction Manager in writing. Within fourteen (14) calendar days of such notification, the Owner, Professional and Construction Manager shall meet to discuss and resolve any differences, inconsistencies, or misunderstandings and to negotiate recommended adjustments to the Work and/or to the GMP.

3.5.4 The Owner may, at its sole discretion and based upon its sole judgment, (i) indicate its acceptance of a GMP proposal; (ii) reject a GMP proposal; (iii) terminate the Project; or (iv) proceed to construct the Project using a party or parties other than the Construction Manager.

3.5.5 If the Owner rejects a GMP proposal, neither party shall have any further obligation under the Contract for Construction. Owner shall pay all costs previously approved by Owner and incurred by Construction Manager prior to the notice of rejection of the GMP proposal.

3.5.6 If the Owner accepts a GMP proposal, the parties shall complete and execute **Exhibit D**, and the Owner shall issue a written Notice to Proceed to the Construction Manager establishing the date construction is to commence (the "Commencement Date"). The Construction Manager shall not expend any monies for construction prior to receipt of such Notice to Proceed without the written approval of the Owner.

### 3.5.7 Price Guarantees

- (i) Upon execution of **Exhibit D**, the Construction Manager guarantees that the sum of (a) the actual Cost of the Work, (b) Construction Manager's Contingency, (c) Construction Manager's Staffing Costs, (d) General Conditions Cost, and (e) Construction Manager's Overhead and Profit, shall not exceed the amount set forth in the agreed upon GMP. All costs or expenses that would cause this sum to exceed the GMP shall be borne by the Construction Manager unless adjusted by Owner approved change order.
- (ii) Upon execution of **Exhibit D**, the Construction Manager guarantees that the actual Cost of the Work, Construction Manager's Contingency, Construction Manager's Staffing Costs, General Conditions Cost, and Construction Manager's Overhead and Profit, shall not exceed the guaranteed maximum for each such category and that all costs or expenses that would cause any of these individual categories to exceed the guaranteed maximum for each such category in the agreed upon GMP shall be borne by the Construction Manager unless adjusted by Owner approved change order.
- (iii) Upon execution of **Exhibit D**, the Construction Manager certifies that all factual unit costs supporting the GMP proposal are accurate, complete and current at the time of negotiations; and that any other factual unit costs that may be furnished to the Owner in the future to support any additional amounts that may be authorized will also be accurate and complete. Payments to the Construction Manager shall be reduced if the Owner determines such amounts were originally included due to materially inaccurate, incomplete, or non-current factual unit costs.
- (iv) Upon execution of **Exhibit D**, the Construction Manager guarantees that to the extent the accepted GMP includes contingency, use of contingency shall be approved by Owner by change order prior to expenditure by the Construction Manager.

## 3.6 Construction Services

### 3.6.1 Trade Contractor Selection Bidding and Negotiation

3.6.1.1 In accordance with Owner's policies on the subject in effect at the time Construction Manager commences construction, the Construction Manager shall prepare and assemble document packets for use in bidding subcontracts. Such packaging of the Work shall be broken down to maximize both competition and the involvement of small businesses in accordance with Owner's goals enumerated in Section 8.8 hereof.

3.6.1.2 The Construction Manager shall develop subcontractor and supplier interest for each division of the Work. The Construction Manager shall pre-qualify proposed subcontractors using a pre-qualification form approved by the Owner and Professional, which shall include, at a minimum, proof of licensure where applicable.

3.6.1.3 The Construction Manager shall, in accordance with Owner's policy in effect at the time the Construction Manager commences construction, competitively bid each trade category or, if approved by Owner, negotiate for the performance of a particular trade category.

3.6.1.4 The Construction Manager shall use its best efforts to obtain bids which are less than the final GMP estimates.

3.6.1.5 The Construction Manager shall conduct bid openings in the presence of the Owner's representative. The Construction Manager shall provide the Owner with a copy of its preliminary bid tabulation and copies of all bids.

3.6.1.6 The Construction Manager shall, for each subcontract, trade or bid division:

- (i) determine the final bid amounts, having reviewed and clarified the scope of Work in detail with bidders to determine which bids are the lowest bids and are complete but do not include duplicate scope items;

- (ii) prepare and furnish to the Owner a final bid tabulation summary which includes by subcontract, trade and/or bid division, the applicable final GMP estimate and the related final bid amount and the details of all scope clarifications, copies of subcontractor contracts and purchase orders for Owner's review and approval;
- (iii) if requested by Owner, provide a list of all potential Owner Direct Purchase Materials (hereinafter defined);
- (iv) identify to the Owner in writing the subcontractors to which the Construction Manager recommends award of subcontracts; and
- (v) award and enter into a subcontract between itself and each subcontractor which it has recommended in accordance with this Agreement unless otherwise notified by the Owner.

3.6.1.7 No portion of the Work may be performed by the Construction Manager or its affiliates except with Owner's approval in accordance with Owner's policies on the subject in effect at the time the Construction Manager commences construction.

3.6.1.8 The Construction Manager shall award Trade Contracts representing ninety percent (90%) of the Cost of the Work or more, within the timeframe outlined in **Exhibit D**.

3.6.1.9 The Construction Manager shall promptly inform the Owner in writing of any proposed replacements to the list of subcontractors and suppliers in the final bid tabulation sheet provided to Owner, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). The Owner shall have the right, in its reasonable discretion, to reject any proposed replacement if such proposed replacement fails to meet any criteria or requirements established for subcontractors performing such portion of, or for, the Work.

### 3.6.2 Construction Supervision

3.6.2.1 Commencing with the award of the first subcontract and terminating on the date of Final Completion, the Construction Manager shall provide the services described herein.

3.6.2.2 The Construction Manager shall, as the Owner's construction representative during construction, advise and consult with the Owner and the Professional, and provide administration of the Construction Documents.

3.6.2.3 The Construction Manager shall supervise and direct the Work at the Site. The Construction Manager shall, at a minimum, staff the Project Site with personnel who shall:

- (i) supervise and coordinate the Construction Manager's personnel and act as its primary liaison with the Owner and the Professional;
- (ii) coordinate trade contractors and suppliers, and supervise Site construction management services;
- (iii) be familiar with all trade divisions and trade contractors' scopes of Work, all applicable building codes and standards, and the Contract for Construction;
- (iv) check, review, coordinate and distribute shop drawings and check and review materials delivered to the Site, regularly review the Work to determine its compliance with the Construction Documents and the Contract for Construction, confer with the appropriate Owner's consultant(s) as necessary to assure acceptable levels of quality;
- (v) prepare and maintain Project records, including process documents and daily logs;
- (vi) schedule and conduct weekly progress meetings with subcontractors to review such matters as jobsite safety, job procedures, construction progress, schedule, shop drawing

status and other information as necessary and provide notification of, and minutes from, such meetings to Owner and Professional;

(vii) schedule and conduct progress meetings as agreed with the Owner and Professional to review such matters as construction progress, schedule, shop drawing status, and other information as necessary;

(viii) make provision for Project security to protect the Project site and materials stored off-site against theft, vandalism, fire and accidents as required by the General Terms and Conditions.

(ix) promptly reject any Work which does not conform to the Construction Documents or which does not comply with any applicable law, statute, building code, rule or regulation of any public authority or agency of which it is aware, immediately notifying the Professional and the Owner in writing when it has rejected any Work;

(x) comply with, and cause its subcontractors and suppliers to comply with, the Project Construction Schedule and applicable sub-schedules. The Construction Manager shall obtain and review schedules from subcontractors and suppliers, coordinate sub-schedules with the Construction Schedule, and enforce compliance with the all applicable schedules to insure timely completion of the Work. If at any time the Project is delayed, the Construction Manager shall immediately notify the Owner and the Professional of the probable cause(s) and possible alternatives and make recommendations to minimize expense and delay to the Owner; and

(xi) provide documentation necessary to the Professional for, and otherwise assist the Professional with, the preparation of the final "as-built" or record drawings.

3.6.2.4 In accordance with Owner's agreement with the Professional working on the Project, the Professional will visit the Project Site at intervals appropriate to the stage of construction to familiarize itself with the progress and quality of the Work and to inspect the Work. The Construction Manager shall request that the Professional visit the Site at additional times as the Construction Manager deems necessary to attend meetings, inspect the Work, and render interpretations regarding the Work necessary for the proper execution of the Work. The Professional's interpretations and decisions after conferring with the Owner shall be final regarding the Construction Documents and the Work.

3.6.3 Owner Direct Purchase Program. The Owner may elect to implement an owner direct purchase program whereby it may purchase materials and equipment included in any Subcontractor's bid for a portion of the Work directly from the supplier of such materials or equipment in order to achieve sales tax savings. Such materials and equipment are referred to as "Owner Direct Purchase Materials." If Owner elects to implement an owner direct purchase program, it shall so notify Construction Manager in writing, and the terms of this paragraph shall govern, along with Owner's policies on the subject in effect at the time Construction Manager commences construction of the Project. Construction Manager shall submit to the Owner a list of appropriate materials and equipment that exceed \$5,000 per purchase requisition for consideration by the Owner as Owner Direct Purchase Materials. Construction Manager shall obtain Builder's Risk insurance on the Owner Direct Purchase Materials naming Owner as the insured or an additional insured, provided Owner shall reimburse Construction Manager for the cost of such insurance as provided by this Agreement. Construction Manager shall be responsible for safeguarding all Owner Direct Purchase Materials on the Project site on Owner's behalf.

3.6.4 If Owner elects to purchase any Owner Direct Purchase Materials, it shall so notify the Construction Manager and the Construction Manager shall thereafter promptly furnish to the Owner, at least fourteen (14) days prior to the date such Owner Direct Purchase Materials must be ordered, a purchase order request reflecting the approved Owner Direct Purchase Materials. A change order shall be executed both to reduce the Guaranteed Maximum Price by the amount(s) being directly purchased including related sales tax.. In addition, the Construction Manager shall reduce the applicable Subcontractor's subcontract amount by the cost

of the Owner Direct Purchase Materials and sales tax related thereto on the next application for payment following the change order execution to reduce the Guaranteed Maximum Price.

3.6.5 Reporting. The Construction Manager shall provide a monthly report on **CD-ROM** summarizing the progress of the Project to the Owner, Professional, and Owner's user group representatives, including information on the subcontractors' Work, percentage of completion of the Work, current estimating, subcontract buyouts, updated monthly Critical Path Method scheduling unless stated otherwise in Exhibit F and Project accounting reports, including projected time to completion and estimated cost to complete the Work, LEED status, digital progress photographs, project directory, logs for Requests for Information, submittals and shop drawings, Change Orders, cost change proposals, field directives, safety meetings, deficiencies, weather conditions and meeting minutes. Owner recognizes that the Design Professional is ultimately responsible for the administration and submittal of all documentation provided by the Construction Manager and required by the U.S. Green Building Council for LEED certification.

#### **ARTICLE 4 COMPENSATION OF CONSTRUCTION MANAGER**

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**4.1 Payment for Pre-Construction Services.** The Owner agrees to pay the Construction Manager, and the Construction Manager shall accept as complete payment for performance of Pre-Construction Services, the fee set forth on **Exhibit E**, payable pursuant to the schedule set forth thereon.

**4.2 Payment for Construction Services.**

4.2.1 The Owner shall pay, and the Construction Manager shall accept, as full and complete payment for the Construction Services, only the sum of the following items, which sum shall not exceed the GMP:

(i) the aggregate net cost directly paid by the Construction Manager to subcontractors pursuant to written subcontracts to perform the Work (CSI Divisions 2-17) (the "Cost of the Work"), not to exceed the guaranteed maximum set forth on **Exhibit D**;

(ii) the compensation for the Construction Manager's provision of management services (the "Construction Manager's Staffing Costs"), not to exceed the guaranteed maximum set forth on **Exhibit D**;

(iii) the aggregate net cost of the Construction Manager's General Conditions (the "General Conditions Cost"), not to exceed the guaranteed maximum set forth on **Exhibit D** and paid for actual cost incurred during the construction period; and

(iv) Construction Manager's Overhead and Profit, not to exceed the guaranteed maximum set forth on **Exhibit D**.

4.2.2 Staffing Costs. Construction Manager's Staffing Costs include and are limited to actual expenditures or negotiated amounts for the following items as authorized in the GMP Proposal approved by Owner

(i) the cost of its supervisory, technical, administrative and clerical personnel engaged in supervision and management of the Work on the Project Site;

(ii) the cost of periodic site visits for supervision, inspection, oversight, or management of the Project by specific "home office" personnel as agreed upon and identified in the GMP proposal;

(iii) direct costs incurred in the Work with the exception of those specifically enumerated compensable as a General Conditions Cost or a Cost of the Work;

(iv) reasonable expenses for transportation, meals, and temporary lodging of principals and employees when traveling in connection with services and duties specifically related to this Project, at the rates set forth as specified in §112.061, Florida Statutes, for meals and transportation. In accordance with Owner travel policy, when the single room rate exceeds \$150 per night, a written

justification explaining why a more economical room was not used is required. Justification must be accompanied by a comparison of other comparable hotel rates in the same area;

(v) expenses incurred for relocation and temporary living allowances of personnel required for the Work, if required by the Project; and

(vi) any costs or expenses incurred by the Construction Manager, not included in the General Conditions Cost, for provision of management services necessary to complete the Project in an expeditious and economical manner consistent with the Contract for Construction and the best interests of Owner.

4.2.3 General Conditions Costs. General Conditions costs include and are limited to actual expenditures or negotiated amounts for the following items as authorized in the GMP Proposal approved by Owner:

(i) costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value;

(ii) costs incurred to provide site safety;

(iii) costs of removal of debris from the site;

(iv) costs of document reproduction including bid sets, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office;

(v) that portion of insurance and bond premiums directly attributable to this Contract for Construction. Premiums shall be net of trade discounts, volume discounts, dividends and other adjustments;

(vi) sales, use, or similar taxes imposed by a governmental authority and paid by the Construction Manager, and directly related to the Work;

(vii) fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract for Construction to pay, including deposits lost for causes other than Construction Manager's fault;

(viii) data processing costs directly related to the Work and as approved by Owner in writing;

(ix) the cost of crossing or protecting any public utility, if required, and as directed by the Owner;

(x) the cost of secure off-site storage space or facilities approved in advance by Owner;

(xi) printing and reproduction of the Construction Documents;

(xii) rental charges for temporary facilities, and for machinery, equipment, and tools not customarily owned by construction workers; however any rental charge shall not exceed the purchase price of such facilities, machinery, equipment or tools;

(xiii) cost of surveys, measurements and layout work reasonably required for the execution of the Work or by the Construction Documents; and

(xiv) other expenses or charges properly incurred and paid in the prosecution of the Work, with the prior written approval of the Owner.

4.2.4 Construction Manager's Overhead and Profit. The Construction Manager's Overhead and Profit is a fixed percentage of the (i) Guaranteed Maximum Cost of the Work, (ii) Construction Manager's Contingency, (iii) Guaranteed Maximum Construction Manager Staffing Costs and (iv) Guaranteed Maximum General Conditions Cost (excluding bond and insurance costs), as agreed upon in **Exhibit D**. Overhead and Profit covers the costs of all of Construction Manager's overhead and expenses related to the Work, including home or branch office employees or consultants not at the Project Site, except those staffing costs paid pursuant to Section 4.2.2(ii) and general operating expenses of the Construction Manager's principal and branch offices related to the Work (non-field offices), such as telegrams, telephone service and long-distance and zone telephone charges, postage, office supplies, expressage, and other similar expenses.

#### 4.2.5 Construction Manager's Contingency.

4.2.5.1 The Construction Manager's Contingency, established in the GMP, may be utilized, with the Owner's concurrence, via "no cost" change order for the following reasons:

- (i) Errors and omissions in the Construction Manager's bidding and scoping processes;
- (ii) reasonable schedule recovery;
- (iii) means, methods, and materials reasonably inferred from the Construction Documents;
- (iv) subcontractor non-performance or default;
- (v) Work not included in the Construction Documents which is necessary to cause the Project to conform to applicable building codes but was not identified as missing during the review of Construction Documents (through no fault of the Construction Manager);
- (vi) other costs incurred by the Construction Manager that are not Cost of the Work, General Conditions Cost or Construction Manager Staffing Costs; and
- (vii) costs and expenses incurred by the Construction Manager, not included in the General Conditions Cost, for provision of management services necessary to complete the Project in an expeditious and economical manner consistent with this Agreement and the best interests of Owner.
- (viii) legal costs reasonably and properly resulting from prosecution of the Project for the Owner, including handling claims for changes by Subcontractors and Vendors, subject to the following limitations:
  - (a) The Owner approved incurring such cost in advance, which approval shall not be unreasonably denied; and
  - (b) The legal costs were not incurred as a result of the Construction Manager's own negligence or default.

This paragraph does not provide for payment of legal costs incurred in preparing or asserting claim or request by Construction Manager itself for change orders or in enforcing the obligations of this contract.

4.2.5.2 If upon completion of 75% of the Work, the remaining amount of contingency exceeds one-half of the amount of the initial post-buyout contingency, Owner may, at its sole discretion, direct Construction Manager to transfer such excess including related overhead and profit via change order to the Owner.

#### 4.2.6 Buyout Savings.

(i) If Construction Manager receives bids for portions of the Work which are less than the amounts budgeted in the GMP proposal approved by Owner for such portions of the Work, such buyout savings shall first be utilized to offset shortfalls on other bid packages.

(ii) If, after offsetting any shortfalls, buyout savings remain, at the time provided on **Exhibit D** for the award of subcontracts, Owner may, at its sole discretion, direct Construction Manager to return all buyout savings including related overhead and profit to the Owner via “no cost” change order.

4.2.7 Use of Buyout Savings/Sales Tax Savings. The net amount of buyout savings and savings from Owner’s purchase of Direct Purchase Materials may be utilized by the Owner for the following or other reasons:

(i) customer or designer-requested changes;

(ii) additive bid alternates and deductive credits;

(iii) design errors or omissions in the Construction Documents which were not detected by the Construction Manager through no fault of Construction Manager, including Work necessary to cause the Project to conform to applicable building codes;

(iv) differing/unforeseen existing conditions, as permitted in the General Terms and Conditions;

(v) retained by Owner for future projects and not part of this contract.

4.2.8 Compensation for Change Orders. Construction Manager shall be entitled to compensation for Additional Services it provides, at the amounts agreed to by Construction Manager and Owner, in writing, prior to performing such additional services. Amounts owed by the Owner to the Construction Manager shall be adjusted by duly authorized change order in accordance herewith and the General Terms and Conditions. Upon performance of additional services, Construction Manager shall submit to Owner an Application for Payment with each additional service identified beneath the basic service milestones, or on a continuation page as required, associated monetary value, and appropriate back-up documentation in preparation for an audit thereof.

4.2.8.1 Increase in Cost of Work. If the Cost of the Work is increased by change order, the Owner shall pay the Construction Manager the aggregate net cost directly paid by the Construction Manager to subcontractors or suppliers for the performance of the Work and the Construction Manager shall receive Overhead and Profit on such amount, as a percentage as set forth in **Exhibit E**, and an amount for any increased bond and insurance costs associated therewith.

4.2.8.2 Decrease in Cost of Work. If the Cost of the Work is decreased by change order, payment due from the Owner to the Construction Manager including related overhead and profit shall be reduced by the amount the Construction Manager is no longer obligated to pay subcontractors or suppliers for performance of the Work. Decreases in the Cost of the Work shall inure to the benefit of the Owner and shall not become part of the Construction Manager’s Contingency.

4.2.8.3 Change Order Disputed. If the Construction Manager disputes a change order decision pursuant to the General Terms and Conditions, it must give the Owner its written notice of dispute, including the reasons therefore, within seven (7) calendar days of the disputed decision.

4.2.9 Applications for Payment for the Work. Applications for payment shall be submitted in detail sufficient for an audit thereof in accordance with Owner’s policies on the subject in effect at the time Construction Manager commences construction. The Construction Manager’s accounts receivable representative will coordinate with the Facilities Business Manager, (850) 474-3059, who is the University representative for processing accounts payable business documents, and prior to the first payment application, to assure the University receives the Division and Section data in an acceptable format following the Construction Specifications Institute (CSI) format, Divisions 1 – 17. Within twenty (20) days of receipt of the

Construction Manager's application for payment, properly prepared pursuant to Owner's policies on the subject and request provided herein, the Owner shall pay the Construction Manager the amount approved by Professional, less retainage as defined in **Exhibit E**, unless there is a dispute about the amount of compensation due to the Construction Manager.

4.2.9.1 At Owner's discretion, retainage may be reduced at designated stage of completion as defined in **Exhibit E**.

**4.3 Labor Burden.** For purposes of calculating amounts due to Construction Manager under this Agreement for staffing, the parties agree that Construction Manager's labor burden for each employee staffing the Project shall be the labor burden approved by the Owner prior to, or upon execution of, this Agreement. For purposes hereof, labor burden means the actual cost of benefits and taxes that Construction Manager must pay or chooses to pay its employees and shall not include any profit, markup or expense unrelated to employee compensation. With respect to benefits Construction Manager chooses to pay, such benefits must be authorized by Owner under Owner's policy pertaining to labor burden in order to receive reimbursement from Owner.

## **ARTICLE 5 LIQUIDATED DAMAGES FOR DELAY**

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

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

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

## **ARTICLE 6 INSURANCE AND BONDS**

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**6.1** The Construction Manager shall carry the insurance and payment and performance bonds described in the General Terms and Conditions.

## **ARTICLE 7 AUDIT RIGHTS**

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**7.1** Owner may, upon reasonable notice, audit the records of its Construction Manager and its subcontractors and suppliers during regular business hours, during the term of this Agreement and for a period of three (3) years after final payment is made by Owner to Construction Manager under this Agreement or longer, if required by law. Such audits may be performed by an Owner's representative or an outside representative engaged by Owner.

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

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

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

**7.5** Construction Manager shall ensure notice of Owner's audit rights is provided to its subcontractors, suppliers and any other vendor providing services or materials for the Project and shall ensure that each agreement it enters into pursuant hereto includes the provisions

## **ARTICLE 8 MISCELLANEOUS PROVISIONS**

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

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

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

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

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

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

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

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

**8.9** Construction Manager is an independent contractor to Owner.

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

**8.11** Any modifications to this Agreement or the Contract for Construction are set forth on **Exhibit A**.

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

**FOR THE CONSTRUCTION MANAGER:**

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ATTEST:

**INSERT NAME OF CONSTRUCTION MGR**

\_\_\_\_\_  
(CORPORATE SEAL)

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

AS WITNESSED BY:

TITLE: \_\_\_\_\_

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

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**FOR THE OWNER:**

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**THE UNIVERSITY OF WEST FLORIDA BOARD OF TRUSTEES**

AS WITNESSED BY:

BY: \_\_\_\_\_

Michael F. Dieckman  
Interim Vice President, University Affairs

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