

**University of West Florida**

**CONSTRUCTION MANAGEMENT  
GENERAL TERMS and CONDITIONS**

**March 1, 2010**

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AND CONDITIONS TABLE OF CONTENTS**

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**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;
- 1.1.4 As between given sets of plans, the most recently approved set of plans shall govern;
- 1.1.5 As between given Specifications, the most recently approved Specifications shall govern; and
- 1.1.6 As between the Contract for Construction and the plans and specifications, the Contract for Construction shall govern.

**1.2 Complementary Reading.** It is the intent of Owner and Construction Manager that the Contract Documents include all items necessary for proper execution and completion of the Work. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all: performance by Construction Manager 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 Definitions.** The following terms shall have the following meanings:

1.3.1 "Design Documents" means all the design documents provided by Design Professional 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.

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

1.3.3 "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 related 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.

1.3.4 "Owner's Related Parties" means the UWF Board of Trustees and its officers, trustees and employees and the officers, trustees and employees of Owner.

1.3.5 "Work" means whatever is done by or required of Construction Manager to perform and complete its duties relating to the construction of the Project under the Contract Documents.

1.3.6 Non-capitalized words that have well-known technical or construction industry meanings are used in the Agreement for Construction Management Services in accordance with such recognized meanings.

1.3.7 "Owner" means the University of West Florida.

1.3.8 Capitalized terms used herein but not defined herein shall have the meaning ascribed thereto in the Agreement for Construction Management Services unless the context otherwise clearly requires.

**1.4 Forms.** Construction Manager shall use Owner's standard forms for Change Orders, Applications for Payment, Schedules of Values, and any other forms Construction Manager may be required to complete pursuant to the Contract Documents.

## **ARTICLE 2 CONSTRUCTION MANAGER'S CONSTRUCTION DUTIES, OBLIGATIONS AND RESPONSIBILITIES**

**2.1 No Endangerment.** The Construction Manager 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 Construction Manager damage, compromise or destroy any part of the Project or the Site, the Construction Manager shall be fully and exclusively responsible for and bear all costs associated therewith.

**2.2 Compliance with Legal Requirements.** The Construction Manager 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.
- (iv) Contractor shall be entitled to a change order for the additional cost and/or time for changes to the Project required by changes to any code or regulation listed in (i), (ii) or (iii) above occurring after the date of the Agreement.

**2.3 Safety.** Safety shall be a prime concern of the Construction Manager at all times. The Construction Manager 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.

**2.4 On Site Records.** The Construction Manager 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 Construction Manager 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.

**2.5 Quality Control and Testing.** The Construction Manager shall develop and implement a quality management program to ensure quality construction. Unless otherwise specified in the Agreement for Construction Management Services, the Construction Manager shall select the quality control and testing agencies, subject to Owner's written approval. The Construction Manager shall coordinate all tests and inspections required by the Construction Documents, and the Construction Manager shall arrange for tests and inspections to be conducted as necessary to avoid any interference with the progress of Work. Cost of specified measures and tests required by the Construction Documents and performed by Owner-approved quality control and testing agencies shall be the responsibility of the Construction Manager. Testing responsibilities for this project are further defined in Exhibit F.

**2.6 Incident Reporting.** The Construction Manager 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.

**2.7 Hazardous Substances.** The Construction Manager 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 Construction Manager encounters environmental contamination (including but not limited to Hazardous Substances), the Construction Manager shall (i) immediately stop performance of Work on 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. The Owner shall issue a change order to pay to the Construction Manager all additional costs resulting from Hazardous Substances and provide for additional time provided that prior to commencing remediation work Owner and Construction Manager will first agree upon a plan to address the problem and upon the cost to be incurred.

**2.8 Environmental Compliance.** The Construction Manager shall be responsible for materials and substances brought to the job site and is responsible for hazardous materials management in accordance with the Toxic Substances Control Act (TSCA).

**2.9 Laying Out Work.** The Construction Manager shall, immediately upon entering the project site for purpose of beginning work, locate all general reference points and take such action as is necessary to prevent their destruction, lay out the work and be responsible for all lines, elevations and measurements to be executed by the Construction Manager and subcontractors under this contract. Construction Manager is responsible for requesting and paying for appropriate site utility connectivity with the appropriate utility supplier. Nothing herein shall require Construction Manager to pay any costs, fees or assessments for impact fees or utility capacity charges.

**2.10 Owner's Use and Access to the Site.** The Construction Manager shall perform the Work so as not to interrupt any operations of the Owner adjacent to the Site.

2.10.1 The Construction Manager understands and acknowledges that the Owner may need access to or use of certain areas of the Site or Work prior to the Construction Manager's achievement of Substantial Completion, and that such occupancy, access or use shall not constitute the Owner's acceptance of any Work. Any damages caused as a direct result of Owner's access or use will be the responsibility of the Owner.

2.10.2 The Construction Manager shall not enter any Owner-occupied area of the Site or Project unless first approved and scheduled by the Owner. The Construction Manager 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.

2.10.3 The Construction Manager shall afford the Owner's own forces, and 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.

**2.11 Non-Interference.** The Parties understand and acknowledge 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 Parties shall conduct all of their activities so as not to interfere with the construction on the Site.

### **ARTICLE 3 CONSTRUCTION MANAGER'S PERSONNEL, SUBCONTRACTORS, SUPPLIERS, AND SITE FACILITIES**

**3.1 Staffing the Work.** The Construction Manager shall staff the Project with qualified individuals and entities responsible for its obligations and performance of the Work.

3.1.1 The Construction Manager has identified on the Project Team a construction representative to serve as its primary communication contact with the Owner.

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

3.1.3 The Construction Manager 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 Construction Manager shall use its best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance.

3.1.4 The Construction Manager 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 Construction Manager 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 Construction Manager shall be responsible to the Owner for the acts and omissions of its agents and employees, consultants, subcontractors and suppliers.

3.1.7 The unlawful possession and use of drugs or alcohol is prohibited in and on University owned or controlled property. The Construction Manager shall be responsible for ensuring that its employees, subcontractors and consultants abide by the Owner's Drug-Free Workplace Requirement.

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

3.2.1 The Construction Manager 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 Agreement for Construction Management Services, 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 Construction Manager 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 Agreement for Construction Management Services that are included by reference in its written contract with the Construction Manager, and that it will abide by those terms, conditions and requirements.

3.2.3 The Construction Manager'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 Construction Manager's agreements with its subcontractors and suppliers shall require that in the event of default under, or termination of, this Agreement for Construction Management Services, and upon request of the Owner, the Construction Manager's subcontractors and suppliers will perform services for the Owner.

3.2.4 The Construction Manager shall provide the Owner a list of subcontractors and material suppliers to be used on this project.

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

**3.3 Resolution Of Trade Disputes.** The Construction Manager 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 Construction Manager shall furnish goods, products, materials, equipment and systems which:

- (i) comply with the Agreement for Construction Management Services;
- (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 Construction Manager 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 Construction Manager shall coordinate and inter-relate 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 Security For The Project.** The Construction Manager 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. Any additional security required by the Owner shall be defined in Exhibit F to the Agreement and included in the GMP.

**4.4 Materials.** The Construction Manager shall provide materials that are in conformance with the Construction Documents. Should the Construction Manager 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 Construction Manager shall provide such at no increased cost to the Owner. It is agreed that any and all changes referenced above shall be documented in writing.

## **ARTICLE 5 CONSTRUCTION MANAGER'S INSPECTION AND CORRECTION OF THE WORK**

**5.1 Rejection And Correction Of Work In Progress.** During the course of the Project, the Construction Manager 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 Construction Manager 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 Construction Manager 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 Construction Manager 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 Construction Manager 's correction or removal of rejected Work.

**5.2 Covered Or Concealed Work.** If a portion of the Work has been covered, the Construction Manager 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 written request of the Owner, or to requirements specifically expressed in the Construction Documents, the Construction Manager 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 written request by the Owner that it remain uncovered, the Construction Manager 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.** Either Party to the Agreement may request changes to the Work, compensation or applicable schedules. With respect to requests for changes by the Construction Manager resulting in architectural envelope (roof, exterior walls, exterior doors, and windows), electrical, mechanical, ADA, and life safety modifications, the Construction Manager shall prepare design change requests and submit to the Owner for approval, together with appropriate back-up documentation for Owner's records.

6.1.2 Each change order request submitted by Construction Manager 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 Construction Manager believes should entitle it to a change order, Construction Manager shall promptly notify the Owner, but in no event more than seven (7) calendar days after the event or situation which Construction Manager believes has caused a change arises or begins. Change order requests, with appropriate back-up documentation as to the nature or cause for the Change Order shall be promptly prepared by the Construction Manager and submitted to the Owner. Construction Manager shall diligently pursue all further documentation necessary to fully describe the Change Order, all costs associated with the Change Order and any time impacts of the Change Order and shall deliver same to Owner within 14 days of obtaining said information.

6.1.4 Construction Manager shall be entitled to actual costs (including General Conditions, Bonds & Insurance) plus the CM Fee as identified in Exhibit D of the Agreement for Construction Management Services for Change Orders.

**6.2 Owner-Directed Changes.** The Owner may unilaterally direct the Construction Manager to implement changes in the Work so long as the Work the Owner is requiring is not outside the general scope of the Agreement for Construction Management Services, and the Construction Manager, upon receipt of a change order for the time and cost resulting from the change, 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 Construction Manager, the Construction Manager 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 Construction Manager 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 Construction Manager 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 Agreement for Construction Management Services, 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 Construction Manager to review and approve all pricing of additional work required of its subcontractors and suppliers.

**6.4 Concealed and Unforeseen Conditions.** If (i) the Construction Manager 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 Construction Manager, the Construction Manager 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 Construction Manager'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. In no event shall Construction Manager have any responsibility whatsoever resulting from concealed conditions, unforeseen conditions, hazardous material or archeological conditions whether naturally occurring or manmade.

6.4.3 The Construction Manager'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 Construction Manager 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, Construction Manager 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. Owner shall pay all amounts not in dispute. Disputed amounts will be resolved per Article 15 – Disputes.

**6.7 Necessity For Signature Approval.** No act, omission or course of dealing shall alter the requirement that Owner directed changes 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 Construction Manager 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 CONSTRUCTION MANAGER'S WARRANTIES AND GUARANTEES**

**7.1 One-Year Warranty.** In addition to the warranties and guarantees set forth elsewhere in the Agreement for Construction Management Services, the Construction Manager, 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 Construction Manager 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 Construction Manager 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 Construction Manager shall promptly reimburse the Owner for any expenses or damages it incurs as a result of the Construction Manager's failure to correct the failure or defect.

**7.2 Express Warranties And Guarantees – Construction Manager.** In addition to the warranties and guarantees set forth elsewhere herein, the Construction Manager 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 Agreement for Construction Management Services and shall be and are performed in a workmanlike manner.

**7.3 Express Warranties And Guarantees.** The Construction Manager shall provide written warranties, guarantees and other undertakings to the Owner in a form identical to the warranties, guarantees and other undertakings set forth in the Agreement for Construction Management Services, 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 Construction Manager.

**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 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 Construction Manager's obligations under the Agreement for Construction Management Services. Paragraph 7.1 relates only to the Construction Manager's specific obligations with respect to the Work, and has no relationship to the time within which the Construction Manager's contractual obligations under the Agreement for Construction Management Services nor to the time within which proceedings may be commenced to establish the Construction Manager'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 Construction Manager'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 Construction Manager.** The Owner shall timely compensate the Construction Manager in accordance with the Agreement for Construction Management Services.

**8.2 Owner Review Of Documents.** The Owner shall review Cost Estimates, Phasing and Construction Schedule documents prepared by the Construction Manager in a timely manner and in accordance with the submittal phases and project 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 Construction Manager 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 Construction Manager, for any of the foregoing purposes, be deemed the agent of the Owner.

**8.4 Owner's Utilities.** The Construction Manager shall be responsible to provide and pay for connections to and consumption of utilities required for temporary service for construction to the approval date for Substantial Completion issued by a Certificate of Substantial Completion.

## **ARTICLE 9 CONSTRUCTION SCHEDULE REQUIREMENTS AND COMPLETION**

**9.1 Time Of The Essence.** The parties hereto mutually understand and agree that time is of the essence in the performance of the Agreement for Construction Management Service and that the Owner will incur damages if the Work is not completed on time. The Construction Manager 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.

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

9.2.1 The Construction Schedule shall be a Critical Path Method (CPM) 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 projected dates of Substantial Completion and Final Completion. When preparing the schedule, Construction Manager shall consider and account for Owner's operational needs on the site and adjacent thereto, particularly with regard to utility interruptions and access restrictions.

9.2.2 By reviewing the Construction Schedule, the Owner does not assume any of the Construction Manager's responsibility (i) that the Construction Schedule be coordinated or complete; or (ii) for timely and orderly completion by the projected dates of Substantial Completion, Final Completion and any milestone dates required by the Owner.

9.2.3 The Construction Manager shall review, on a monthly basis, the actual status of the Work against the Construction Schedule and shall discuss the status of the Work regularly with the Owner's Representative.

**9.3 Delay In Performance.** If at any time the Construction Manager anticipates that performance of the Work will be delayed or in fact has been delayed, the Construction Manager 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.

**9.4 Compensable Delays.** If the Construction Manager 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 Construction Manager for the delay, the Construction Manager's compensation shall be equitably adjusted by change order to cover the Construction Manager's actual and direct increased costs attributable to such delay.

**9.5 Excusable Delays.** If the Construction Manager is delayed at any time in the progress or performance of the Work by (i) acts or omissions of the Owner; (ii) 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 Construction Manager, including hurricanes and named storms and other unusual or unforeseeable "Acts of God" that are beyond the Construction Manager's control and are related thereto; (vi) unavoidable casualties; (vii) unavoidable inability to procure materials; (viii) failure of power not resulting from the Owner's or Construction Manager's actions or failure to act as required hereunder; (ix) restrictive governmental laws enacted or taking effect after the Commencement Date of this agreement; (x) riots, insurrections, acts of terror, wars, fire, or other reason of a like nature not the fault of the party delayed in doing work or doing acts under the Contract Documents; (xi) causes beyond the Construction Manager's control which the Owner agrees in writing are justifiable; or (xii) any other cause which the Owner determines may justify the delay, the time for performance shall be extended to allow for a demonstrated increase in overall construction duration, but only if (a) such delay is not concurrent with other, inexcusable delay(s); (b) such delay impacts the schedule; (c) such delay is not in any way caused by default or collusion on the part of the Construction Manager or by any cause which the Construction Manager could reasonably control or circumvent; and (d) the Construction Manager would have otherwise been able to timely perform all of its obligations under the Agreement for Construction Management Services but for such delay. Delay caused by labor disputes, picketing, employee boycotts, or the like which directly or indirectly involves employees of the Construction Manager 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.

9.5.1 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; and that the weather conditions had an adverse effect on the overall critical path of the schedule. Delays caused by adverse weather conditions shall be compensable to the extent associated costs are not covered by builder's risk or other insurance carried by Construction Manager. In no event shall the Construction Manager be responsible for the adverse effects of any named storm or hurricane, tornadoes or effects related thereto, with respect to time or cost. With regard to the aforementioned weather conditions, Construction Manager agrees to take industry standard actions to protect the Work against inclement weather.

**9.6 Modifications of Time For Performance.** The Construction Manager 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 Construction Manager 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.

9.6.1 Modification(s) of the projected 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 Agreement for Construction Management Services to the projected dates of Substantial Completion or Final Completion shall thereafter refer to the date(s) as modified, and all rights and obligations shall be determined in relation to the date(s) as modified.

**9.7 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. Notwithstanding the foregoing, Construction Manager shall not be responsible for any delay(s) caused by the acts or omissions of Owner.

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

9.7.2 Upon receipt of notification from the Construction Manager, the Owner and the Construction Manager shall agree on a date for inspection of the Work to determine whether the Work is substantially complete.

9.7.3 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 until the Work is determined to be substantially complete.

9.7.4 On or prior to the required date of Substantial Completion, the Construction Manager 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 Building Design and Construction Standards dated March 2009. The Owner will obtain and review Substantial Completion documentation and items, and will inform the Construction Manager of any deficiencies.

9.7.5 When the Owner and the Construction Manager agree that the Work has passed the Substantial Completion inspection and the Construction Manager 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.

9.7.7 The Construction Manager shall provide the Owner with operation and maintenance manuals and other operational documentation prior to the required date of Substantial Completion to allow adequate time for training prior to the Owner's occupancy of the Project. The Substantial Completion Date shall be agreed to and set independently of Construction Managers performance of this Article 9.7.7.

9.7.8 The Construction Manager shall meet with the Owner's personnel prior to the required date of Substantial Completion to familiarize and train them with respect to maintenance and use of the Project.

9.7.9 The date of Substantial Completion shall fix the commencement date of warranties and guaranties and allocate between the Owner and the Construction Manager responsibility for security, utilities, damage to the Work and insurance.

**9.8 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 Construction Manager has produced all required Final Completion close-out documentation and items. Final Completion shall not be deemed to have occurred 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 Construction Manager. Notwithstanding the foregoing, Construction Manager shall not be responsible for any delay(s) caused by the acts or omissions of Owner.

9.8.1 When the Construction Manager believes the Work is finally complete, the Construction Manager shall notify the Owner that the Work is ready for Final Completion inspection.

9.8.2 Upon receipt of such notification from the Construction Manager, the Owner and the Construction Manager shall agree upon a date for inspection of the Work to determine whether the Work is finally complete.

9.8.3 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;
- (iii) determine whether required inspections and approvals by the official(s) having or asserting jurisdiction over the Project have been satisfactorily completed.

9.8.4 If the Work is not finally complete, the Construction Manager shall continue to execute the Work, and the inspection process shall be repeated until the Work is finally complete.

9.8.5 On or prior to the date of Final Completion, the Construction Manager 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 stock, including but not limited to, tile and paint.
- (iv) one (1) full-size set of red-lined as-built plans and specifications delivered to the Design Professional and one set using the 2008 or most recent version compatible with Owners Autodesk AutoCad Architectural software;

- (v) certification and affidavit that all insurance required of the Construction Manager beyond final payment, if any, is in effect and will not be canceled or allowed to expire without notice to the Owner;
- (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 Construction Manager'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) written consent of the surety(ies), if any, to final payment;
- (xi) a list of any item(s) due but unable to be delivered and the reason for non-delivery; and
- (xii) any other documents reasonably and customarily required or expressly required herein for full and final close-out of the Work.

**9.9 Early Completion.** The Construction Manager may attempt to achieve Substantial Completion before the required date of Substantial Completion. However, such planned early completion shall be for the Construction Manager's sole convenience.

## **ARTICLE 10 INSURANCE**

**10.1 Basic Insurance Requirements.** The Construction Manager 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. 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 Construction Manager shall provide Owner with a copy of an endorsement to the policy evidencing the same. The insurance required hereunder shall be carried by Construction Manager at least until the Project is finally completed and accepted by Owner. Owner may require the Construction Manager and its subcontractors to carry additional types and amounts of insurance it deems appropriate given the nature and size of a particular Project. In such case, Owner shall notify Construction Manager within a reasonable period of time prior to the commencement of the Work of such additional requirements.

**10.2 Workers Compensation Insurance.** Construction Manager shall carry worker's compensation insurance required by Chapter 440, Florida Statutes.

### **10.3 Liability Insurance.**

10.3.1 Commercial General Liability Insurance. The Construction Manager 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, \$2,000,000.00 aggregate. The Owner, the University of West Florida Board of Trustees and the Florida 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 Construction Manager from claims which may arise whether such claims may arise out of the operations of the Construction Manager or by anyone directly or indirectly employed by the Construction Manager.

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 Construction Manager is performing asbestos-related work, the policy shall also contain a pollution liability endorsement.

10.3.2 Automobile Liability Insurance. Construction Manager shall carry an automobile liability insurance which has liability limits of at least \$1,000,000.00. The Owner, the University of West Florida Board of Trustees and the Florida Board of Governors shall be named as additional insureds on such policy and the policy shall provide cross liability coverage.

10.3.3 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 Construction Manager and/or subcontractor providing such insurance.

**10.4 Umbrella Liability.** A policy applicable to Commercial General Liability and Automobile Liability which shall have a limit of liability not less than \$1,000,000.00 per occurrence. Coverage should be as broad as primary.

**10.5 Builder's Risk Insurance.** The Construction Manager 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 Construction Manager, 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 Construction Manager'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 Owner, the University of West 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 the following:

- Windstorm - \$25,000.00.
- Named Storms - the lesser of 5 % or \$250,000.00 (deductible to be paid by Owner).
- All other (Fire, Theft, Vandalism, etc.) – \$10,000.00

Owner shall not be liable for amounts that may represent a deductible in any insurance policy, except the deductible for Named Storm losses as stated above. The payment of such deductibles (excluding named storm deductibles which shall be paid by Owner) shall be the sole responsibility of the Construction Manager.

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 Construction Manager and its insurance company. The Construction Manager shall repair or replace the damaged property with the proceeds from the Construction Manager's risk policy. The Construction Manager shall be responsible for all damages and necessary repairs whether or not the loss is covered by the Construction Manager's risk policy.

**10.6 Certificates of Insurance.** Certificates of Insurance and/or evidence of insurance for all insurance required under this Article (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 Construction Manager has complied with this Article. Construction Manager shall not be entitled to an extension of time 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 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 Construction Manager's insurance shall not relieve Construction Manager 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 completion, an additional certificate evidencing continuation of such coverage shall be submitted with the Certificate of Final Completion.

**10.7 Additional Insured Endorsement.** With respect to Commercial General Liability, Automobile Liability, and Umbrella/Excess Liability, certificate of insurance is to be accompanied by an Additional Insured Endorsement naming the State of Florida, Florida Board of Governors, University of West Florida Board of Trustees, and the University of West Florida, its officers, employees, agents, and volunteers as "Additional Insured."

**10.8 Effect of Insurance.** Compliance with insurance requirements shall not relieve the Construction Manager of any responsibility to indemnify the owner for any liability to the owner as specified in any other provision of the Agreement for Construction Management Services, and the owner shall be entitled to pursue any remedy in law or equity if the Construction Manager fails to comply with the contractual provisions of the Agreement for Construction Management Services. Indemnity obligations specified elsewhere in the Agreement for Construction Management Services 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.

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

## **ARTICLE 11 SURETY BONDS**

**11.1 General Bond Requirements.** Recognizing the Project is a public project with a Construction Value which exceeds \$100,000.00, and as such is required to be bonded pursuant to §255.05, Florida Statutes, the Construction Manager shall furnish Payment and Performance bonds on Owner's standard form covering the full and faithful performance of the Contract for Construction Management Services 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.

**11.2 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 Agreement for Construction Management Services, the Construction Manager shall promptly furnish a copy of the bonds or shall permit a copy to be made.

**11.3 Delivery Of Bonds.** The Construction Manager shall deliver required bonds and powers of attorney, if applicable, to the Owner prior to commencement of the Work.

## **ARTICLE 12 OWNER'S RIGHT TO STOP WORK**

**12.1 Owner's Right to Stop Work.** If the Construction Manager 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 Construction Manager to stop and desist in performing until the cause for the order has been eliminated to the satisfaction of the Owner.

12.1.1 The Construction Manager shall not be entitled to an adjustment in the time for performance or the Construction Price under this clause.

12.1.2 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 Construction Manager or others.

12.1.3 In the event the Owner issues instructions to cease and desist, and in the further event that the Construction Manager fails and refuses within 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 Construction Manager's obligations hereunder and the Construction Manager 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 Construction Manager. Any Dispute concerning the Owner's stoppage of the Work shall be resolved under Article 15.

## **ARTICLE 13 DAMAGES AND REMEDIES**

**13.1 Construction Manager's Repair.** The Construction Manager 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 Agreement for Construction Management Services, or any other applicable warranty or guarantee.

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

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

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

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

**13.6 Waiver Of Damages.** The Construction Manager and Owner shall not be entitled to, and hereby waive any monetary claims for or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any indirect consequential damages.

**13.7 Survival.** The obligations set forth herein shall survive the expiration or earlier termination of the Agreement for Construction Management Services.

## **ARTICLE 14**

### **TERMINATION OR SUSPENSION**

#### **14.1 Termination For Cause By Owner.**

14.1.1 The Owner may terminate the Agreement for Construction Management Services for cause if the Construction Manager materially breaches the Agreement for Construction Management Services 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 Agreement for Construction Management Services 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 Construction Manager.

14.1.2 Upon the occurrence of any of the events described above, the Owner may give written notice to the Construction Manager setting forth the nature of the default and requesting cure within fourteen (14) calendar days from the date of notice.

At any time thereafter, if the Construction Manager fails to initiate the cure or if the Construction Manager fails to expeditiously continue such cure until complete, the Owner may give written notice to the Construction Manager 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 Work, 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;
- (iv) take possession of all materials, tools, construction equipment and machinery on the Site owned or leased by the Construction Manager;
- (v) directly pay the Construction Manager's subcontractors and suppliers compensation due to them from the Construction Manager;
- (vi) finish the Work by whatever method the Owner may deem expedient;
- (vii) require the Construction Manager to assign the Construction Manager's right, title and interest in any or all of Construction Manager's subcontracts or orders to the Owner.

14.1.3 If the Owner terminates the Agreement for Construction Management Services for cause, and the Owner takes possession of all materials, tools, construction equipment and machinery on the Site owned or leased by the Construction Manager, the Construction Manager'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 Construction Manager the Owner's damages resulting from the termination.

14.1.4 If the Owner terminates the Agreement for Construction Management Services 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 Construction Manager.**

14.2.1 The Construction Manager may terminate the Agreement for Construction Management Services for cause if the Owner materially breaches the Agreement for Construction Management Services by:

- (i) refusing, failing or being unable to make prompt payment to the Construction Manager without just cause;
- (ii) disregarding laws, ordinances, rules, regulations or orders of any public authority or quasi-public authority having jurisdiction over any Project; or refusing, failing or being unable to substantially perform in accordance with the terms of the Agreement for Construction Management Services.

14.2.2 Upon the occurrence of any of the events described above, the Construction Manager may give written notice to the Owner setting forth the nature of the default and requesting cure within fourteen (14) calendar days from the date of notice. If the Owner fails to cure the default within seven (7) calendar days, the Construction Manager, 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 Construction Manager terminating the Agreement for Construction Management Services 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 Construction Manager shall immediately reduce its staff, services and outstanding commitments in order to minimize the cost of suspension. Upon payment by Owner to Construction Manager and resolution of all claims submitted by Construction Manager as herein described, Construction Manager shall transfer title and deliver to Owner such completed or partially completed Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Construction Manager has, provided Owner releases any claims it may have against Construction Manager.

**14.4 Construction Manager's Compensation When Construction Manager Terminates For Cause Or Owner Terminates Or Suspends For Convenience.** If the Agreement for Construction Management Services is (i) terminated by the Construction Manager 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 Construction Manager specified amounts due for Work actually performed prior to the effective termination date and reasonable costs associated with termination. The Owner may agree to additional compensation, if any, due to the Construction Manager. Absent agreement on the additional amount due the Construction Manager, the Owner shall pay the Construction Manager:

- (i) compensation for all Work performed through the date of termination as well as demobilization costs, including reasonable costs incurred in preparing to perform the terminated portion of the Work, plus overhead and profit in accordance with Section 6.1.4 (such overhead and profit shall not be applied to work not performed), and in terminating the Construction Manager's performance; and
- (ii) any actual 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.

In no event shall the Owner be obligated to compensate the Construction Manager for lost profits, or any resulting or consequential damages.

**14.5 Construction Manager's Compensation When Owner Terminates For Cause.** If the Agreement for Construction Management Services is terminated by the Owner for cause pursuant to Paragraph 14.1, no further payment shall be made to the Construction Manager until Final Completion of the Project. The Construction Manager's surety's obligations shall be as is set forth in Florida Statute §255.05. If the costs and expenses of finishing the Project, together with such costs and damages, exceed the unpaid balance of the Construction Price, the Construction Manager shall pay the difference to the Owner. Upon Final Completion of the Project, the excess of the contract sum remaining after payment of the costs of the Project and all other sums required to be paid to the Owner or to others on its behalf as described in this section, if any, including liquidated damages and all other costs and damages incurred by the Owner and not expressly waived, shall be paid to the Construction Manager. This obligation for payment shall survive termination of the employment of the Construction Manager. The Owner shall not be entitled to indirect consequential damages. Any dispute as to whether Construction Manager was properly terminated or the costs claimed by the Owner shall be subject to dispute resolution in accordance with Article 15.

**14.6 Limitation On Termination Claims.** If the Construction Manager fails to file a claim within one year from the effective date of termination, the Owner shall pay the Construction Manager only for services actually performed and expenses actually incurred prior to the effective termination date.

**14.7 Construction Manager's Responsibility Upon Termination.** Irrespective of the reason for termination or the party terminating, if the Agreement for Construction Management Services is terminated, the Construction Manager 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 Construction Manager 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 Construction Manager to exercise that right for the benefit of the Owner, the Construction Manager or any other persons or entities.

## **ARTICLE 15 DISPUTES**

**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 Agreement or the breach thereof, the parties shall first attempt resolution through Mutual Discussion. If after 21 days from the initiation of Mutual Discussion regarding an issue, the parties have not resolved the issue of dispute, Claim, question or disagreement, the parties shall move to Facilitative Mediation.

**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 Agreement or the breach thereof through Mutual Discussion as described in Paragraph 15.1, as a condition precedent to any litigation, 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 a mediation shall promptly provide all other parties to the mediation with copies of essential documentation relevant to the support or defense of the matter being mediated.

15.2.2 The parties shall not be required to mediate for a period greater than ninety-one (91) 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. 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.

15.2.4 The Owner, the Professional, the Construction Manager 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, provided that they have signed the Agreement or a contract that incorporates the Agreement 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.

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

**15.3 Conflicting Dispute Resolution Provisions.** Neither party to the Contract 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.

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

**15.5 Performance During Dispute Resolution.** Pending the resolution of any dispute, controversy, or question, and provided that Owner has paid Construction Manager all amounts owed to Construction Manager that are not in dispute, Owner and Construction Manager shall each continue to perform their respective obligations without interruption or delay, and Construction Manager shall not stop or delay the performance of the Work.

**15.6 Time Limits on Claims.** Claims by either party must be initiated within twenty-one (21) days after occurrence of the event giving rise to such claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the claim, whichever is later. Claims must be initiated by written notice to the other party.

**15.7 Waiver of Claims.** Acceptance of final payment by the Construction Manager, a subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final application for payment.

**15.8 Litigation.** Either party shall have the right to pursue any claim that is not resolved under 15.1 or 15.2 in a court of competent jurisdiction in Escambia County, Florida.

FOR THE OWNER:  
UNIVERSITY OF WEST FLORIDA

FOR THE CONSTRUCTION MANAGER:  
Insert name of const. mgr.

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