



# FACILITIES MANAGEMENT Policy & Procedure #15

**TITLE:** ADMINISTRATION OF AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER (MAJOR PROJECTS)

**OBJECTIVE & PURPOSE:** To establish procedures for the administration of Construction Manager (CM) Agreements.

**RESPONSIBILITY:** ACTION

**ASSOCIATE VP FACILITIES MANAGEMENT**

- ◆ Upon approval of the Construction Manager Selection as described in Facilities Management P&P#13, prepare a memorandum to the Construction Manager (CM) for the AVP to sign requesting the CM to prepare a proposal for Preconstruction Services (**Attachment "A" - "A-1" and "A-2"**), which includes a breakdown of costs/fees/man-hours.
- ◆ Upon receipt of Fee Proposal from CM, schedule a negotiation meeting with CM representatives, the DCS Director, and Project Manager (PM) for preconstruction services.

**ASSOCIATE VP FACILITIES MANAGEMENT / DCS DIRECTOR**

- ◆ Attend negotiation meeting and negotiate preconstruction portion of the contract.
- ◆ If negotiations with the first ranked firm are unsuccessful, the University may terminate negotiations with the firm and begin negotiations with the second ranked firm. If negotiations with the second ranked firm are unsuccessful, the University may terminate negotiations with that firm and begin negotiations with the third ranked firm. If negotiations with the third ranked firm are unsuccessful, the University may terminate negotiations with the third ranked firm and may select additional firms from the original pool or re-advertise the project. At any time during the negotiation process the University may terminate negotiations entirely and reconsider the use of CM for the project.

**ADMINISTRATIVE ASSISTANT**

- ◆ Once negotiations are finalized and approved, prepare a draft of the Agreement Between the Owner and Construction Manager for Preconstruction Services (**Attachment "B"**) for AVP approval.
- ◆ Prepare and transmit one draft highlighted Agreement (showing input) along with (3) signature pages only with a memo to General Counsel for execution (**Attachment "C"**).
- ◆ When executed, transmit (3) sets of the Agreement attaching the original executed signature pages from General Counsel to each Agreement and transmit to the CM (**Attachment "D"**) for execution retaining (1) for the contract file.

**ASSOCIATE VP FACILITIES MANAGEMENT**

- ◆ Upon receipt of the executed Agreements from the CM, prepare a memorandum from the AVP (**Attachment "E"**) to the Vice President Administrative Affairs requesting the Agreements be reviewed and executed by the Vice President Financial Affairs, and returned to the AVP for further processing.

Issued By: Dashtaki	Date Issued: 9-30-2014	Date Revised:	Effective Date: 9-30-2014
APPROVED:	Vice Pres. Admin Affairs	Assistant V.P.	N/A Director

**AVP  
ADMINISTRATIVE  
ASSISTANT**

- ◆ Upon final execution of the Agreement by the VP Financial Affairs, transmit a letter to the CM (**Attachment "F"**) and distribute the Agreements to the following (make copies):
  - a. Associate Vice President Facilities Management – 1 original
  - b. Construction Management firm – 1 original
  - c. University Controller's Office – 1 original
  - d. DCS Director – 1 copy
  - e. University Purchasing Office – 1 copy

**DCS DIRECTOR**

- ◆ When it is time for the CM to develop the Guaranteed Maximum Price (GMP) Proposal per the Preconstruction Agreement, DCS Coordinator will direct the CM to prepare the GMP in accordance with the "Guidelines for Construction Managers for the Preparation of Guaranteed Maximum Price Proposal."
- ◆ Review GMP proposal and ensure that GMP is submitted in accordance with the guidelines.
- ◆ Prepare GMP documents in accordance with Guidelines for Construction Managers (CM) for the Preparation of Guaranteed Maximum Price Proposals (GMP) (**Attachment "A-2"**) and submit package with recommendation to accept GMP to the AVP Facilities Management.
- ◆ Within the 45-day period prior to the anticipated Notice to Proceed, the DCS Director is to ensure that a request for encumbrance authorization and release has been transmitted to the BOG in accordance with Florida State Statute 1013.31(2)(a,b).
- ◆ Submit to the AVP's Administrative Assistant, the following documentation:
  - a. GMP recommendation transmittal (example attached)
  - b. A/E recommendation letter accepting the GMP
  - c. CM's Guaranteed Maximum Price Proposal (GMP)
  - d. Request release of funding money from BOG
  - e. Copy of approved project COIP (most recent)
  - f. Calculations for liquidated damages.  
Formula:  $\text{daily interest cost} = \frac{\text{GMP amount} \times .07}{365 \text{ days}}$
  - g. Affidavit from the CM stating that all hourly rates included in the GMP documents are the actual rates for the personnel who will be working on the project and, that should the CM change personnel, the adjusted rate will never exceed the hourly rate stipulated in the GMP document, but will be adjusted if the new personnel rate is lower. In addition, the CM shall provide a spreadsheet detailing the position & name, total project hours, labor burden rate, and total labor cost for each proposed employee from which invoicing shall comply (example attached).

**AVP  
ADMINISTRATIVE  
ASSISTANT**

- ◆ Confirm receipt of all documents itemized in "a" through "g" above.
- ◆ Review GMP documents for the following items:
  - a) Checklist from Facilities Planning Director accepting GMP
  - b) Number of calendar days for completion
  - c) Liquidated damages amount
  - d) Any applicable supplements to the FAU Project Manual
- ◆ Prepare the GMP Amendment and Performance & Payment Bonds (**Attachment "G"**) to the Agreement Between Owner & Construction Manager.

- ◆ Prepare a memorandum to the General Counsel (**Attachment "I"**) and transmit (1) original highlighted GMP along with (3) signature pages only to General Counsel for review and execution.
- ◆ Upon receipt of the executed GMP and signature pages from General Counsel, prepare a letter to the CM (**Attachment "J"**) transmitting (3) GMP's, attaching the original executed signature pages to each, along with (3) sets of the Performance & Payment Bonds for execution.
- ◆ Upon receipt of the executed GMP from the CM prepare a memorandum from the AVP Facilities Management to the VP Admin Affairs (**Attachment "K"**) to transmit the (3) executed GMP's for execution by the VP Financial Affairs. VP Admin Affairs return all executed contracts to the AVP for further processing.
- ◆ While awaiting the executed GMP from the VP Financial Affairs, make copies of the following documents to transmit to the University Risk Manager for approval:
  - a) Performance & Payment Bonds
  - b) Certificate of Insurance
  - c) Builders Risk
  - d) Page 1, Page 7 (or the page showing Article 7 breakdown), and last page of the Agreement Between Owner & Construction Manager.
  - e) GMP Amendment
- ◆ Notice to Proceed is not issued until all insurance documentation have been approved and signed off by the University Risk Manager.
- ◆ The insurance consultant must provide an approval letter (scanned and hard copy) to the AVP Facilities Management to file with the GMP.
- ◆ Prepare Notice to Proceed Memorandum (**Attachment "L"**) for AVP to sign. Effective date of the Notice to Proceed is the date of the cover letter.
- ◆ Fax and mail the Notice to Proceed to CM and distribute copies accordingly.

## REFERENCE

- ◆ *240.209(3)(p), 255.29(3) F.S.*
- ◆ *Rules 6C-14.007, 6C-14.020, F.A.C.*

## ATTACHMENTS

- ◆ **Attachment "A"** Letter to CM for Pre-construction Services
- ◆ **Attachment "A-1"** Guidelines for CM Preparation of Pre-construction Services
- ◆ **Attachment "A-2"** Guidelines for CM for the Preparation of Guaranteed Maximum Price Proposals (GMP) Agreement Between Owner and CM
- ◆ **Attachment "A-3"** GMP Recommendation Transmittal
- ◆ **Attachment "A-4"** Sample of Labor Overhead Costs Detail for GMP & CM Invoices
- ◆ **Attachment "B"** Agreement between Owner and CM
- ◆ **Attachment "C"** Memo to General Counsel
- ◆ **Attachment "D"** CM Agreement Letter
- ◆ **Attachment "E"** Memo to Vice President Administrative Affairs
- ◆ **Attachment "F"** CM Executed Agreement Letter
- ◆ **Attachment "G"** GMP Amendment & Payment & Performance Bonds
- ◆ **Attachment "H"** Memo to General Counsel
- ◆ **Attachment "I"** CM GMP Letter
- ◆ **Attachment "J"** Memo to Vice President Administrative Affairs
- ◆ **Attachment "K"** Notice to Proceed Letter

Date

(Company Name)

RE: BT-\_\_\_\_ (Project)

Dear Mr. \_\_\_\_\_:

Attached is a copy of the A/E's contract for your review regarding submittal requirements and a base CM agreement which lists the breakdown on the required submittals. Please submit your Pre-Construction Proposal for the above referenced project in accordance with the attached "Guidelines for the Preparation of Proposal for Preconstruction Services" as soon as possible. FAU has currently budgeted \$\_\_\_\_\_ for this project.

Should you have any questions please call me.

Sincerely,

Associate Vice President

Attachments – A/E contract  
Guidelines for Preparation of Preconstruction Services

cc: DCS Director

**ATTACHMENT "A"**

## Guidelines for Construction Managers for the Preparation of Proposals for Preconstruction Services

The construction manager is typically selected at the beginning of the design process. The Guaranteed Maximum Price is usually prepared based on 100% Construction Documents. In these typical cases the preconstruction deliverables include reports at the completion of Advanced Schematic Design, Design Development and 100% Construction Documents. The deliverables at 100% Construction Documents include the Guaranteed Maximum Price proposal. Reports include discussion of the items outlined in the Agreement as preconstruction services.

If the design phases are different from the standard phases, or deliverables are required which differ from the standard project described above, the Construction Manager will be notified, and the preconstruction proposal will be prepared accordingly.

The following costs are to be included in the proposal: direct labor costs, travel, printing costs, personnel expense and overhead (included as a multiplier). The proposal should include the number of hours by team member for each phase. A sample format:

Project Name Project No.	Rates \$/hr.	SD hours	SD total \$	DD hours	DD total \$	50% hours	50% total \$	100% hours	100% total \$	Precon. hours	Precon. Total \$
<b>Proj.Exec.</b>	35	0	0	0	0	4	140	4	140	4	327
<b>Proj. Dir.</b>	29	24	696	72	2,088	96	1,784	96	1,784	192	6,861
<b>Proj. Mgr.</b>	25	16	400	72	1,800	96	2,400	96	2,400	184	7,188
<b>Sr. Est.</b>	28	16	448	12	336	24	672	24	672	52	2,284
<b>Estimators</b>	22	0	0	24	528	32	704	32	704	56	2,102
<b>Total Direct Labor</b>		56	1,544	180	4,752		6,700		6,700	488	18,762
<b>*Multiplier</b>			1.6		1.6		1.6		1.6		1.6
<b>Total Labor Cost</b>			2,470		7,603		10,720		10,720		20,794
<b>*Travel</b>			0		0		0		0		200
<b>*Printing</b>			75		100		125		125		
<b>Project Total</b>			2,545		7,703		10,845		10,845		20,994

\*see attached breakdowns

### The multiplier, travel and printing items must include a further breakdown

The travel breakdown includes: If driving, the number of miles to be traveled times the state mileage rate (consistent with current State rates); if flying, the air fare; the approved per diem amount for meals consistent with State standards; and, hotel rate. Firms who represent that they have, or will have, an office local to the project site are not eligible for travel expenses.

The printing breakdown includes the number of pages of specifications times the printing rate and the number of sheets of plans times the printing rate.

The multiplier breakdown lists all items included in the firm's personnel expense multiplier. Overhead and profit are not included in the preconstruction phase, as those items will be included in the MP for the construction phase.

## ATTACHMENT "A-1"

## **Guidelines for Construction Managers (CM) for the Preparation of Guaranteed Maximum Price Proposals**

The Guaranteed maximum Price (GMP) Proposal is developed at the phase specified in the Agreement Between Owner and Construction Manager, usually at 50% Construction Documents.

The GMP Proposal should be bound and entitled, “Guaranteed Maximum Price Proposal for (name of project, project number)” and must include a date on the cover. Proposal pages must be numbered, bound inside the proposal in the order indicated below:

- Transmittal letter, including confirmation of project team
- Table of contents

**Tab 1** GMP Summary – (brief general summary of scope of work, alternates, etc.)

**Tab 2** List of documents (project manual(s), drawings by sheet number & date)

**Tab 3** Description of Work

- Specification listing – provide a detailed listing of specifications by divisions and section which describes exclusions, substitutions, modifications, etc. If no changes are proposed for a particular section, insert “as per specifications.”
- Qualifications and Assumptions – a summary of all qualifications and assumptions included in the specification listing.
- Exclusions – a summary of all exclusions included in the specification listing, plus any exclusions not related to the specifications.
- Value Engineering recommendations – if applicable
- Allowance Schedule – if applicable
- Add Alternate Schedule – if applicable (a description of alternates with accompanying breakdown of GMP cost)

**Tab 4** GMP Cost Summary

- A detailed summary of costs using CSI format, organized according to anticipated bid packages, which includes quantities, unit prices and cost extensions.
- Following the cost summary of the work, the CM’s fee (as identified in Paragraph 7.2 of the Agreement) must be broken down further. This breakdown must include a detailed listing of home office support, field staff and all other items listed in the definition of “fee” in the Agreement Between Owner and Construction Manager. Calculations made to arrive at cost extensions must be shown for each team member, i.e., actual salary rate times number of hours – subtotal, times personnel expense multiplier – total labor cost. A breakdown justifying the multiplier used for personnel expense must be included. The profit multiplier portion of the fee shall be shown on a separate line of the cost summary.

**Tab 5** Master Project Schedule

**ATTACHMENT “A-2”**

OFFICE OF ASSOCIATE VICE PRESIDENT FACILITIES MANAGEMENT

**GUARANTEED MAXIMUM PRICE RECOMMENDATION**

**TRANSMITTAL**

PROJECT NO: \_\_\_\_\_

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

**PROJECT MANAGER CHECKLIST**

- \_\_\_\_\_ 1. CM's Guaranteed Maximum Price (GMP) Proposal Dated: \_\_\_\_\_
2. Calculations for Liquidated Damages in accordance with UAVP Policy & Procedure #16
- \_\_\_\_\_ 3. A/E Recommendation Letter to accept the GMP
- \_\_\_\_\_ 4. Copy of Approved COIP (most recent)
- \_\_\_\_\_ 5. Affidavit from CM stating that all hourly rates included in the GMP Documents are the actual rates for the personnel who will be working on the project, and that should the CM change personnel, the adjusted rate will never exceed the hourly rate stipulated in the GMP document, but will be adjusted if the new personnel rate is lower.

**FACILITIES PLANNING SENIOR ACCOUNTANT**

- \_\_\_\_\_ 6. Encumbrance Authorized for Project Funds  
has been requested \_\_\_\_\_, (is authorized \_\_\_\_\_)

**DCS DIRECTOR**

The above items have been reviewed and Facilities Planning recommends the acceptance of the enclosed GMP for the above project.

\_\_\_\_\_  
DCS Director (Signature)

Date: \_\_\_\_\_

**ATTACHMENT "A-3"**

**LABOR OVERHEAD COSTS**  
**SAMPLE OF DETAIL TO BE PROVIDED IN GMP AND CM INVOICES**

FOR EXHIBIT PURPOSES ONLY								
(1) DETAIL SHOWN IN GMP								
	Labor Type/Position	Employee Name	Total Project Hours	Hourly Base Rate	Labor Burden Rate	Total CM Labor Costs		
	Superintendent	John Brown	2000	\$ 55.00	1.60	\$ 176,000.00		
	Manager	Tom Smith	2000	\$ 50.00	1.60	\$ 160,000.00		
	Supervisor	Peter Jones	2000	\$ 45.00	1.60	\$ 144,000.00		
	Secretary	Mary Johnson	500	\$ 25.00	1.60	\$ 20,000.00		
	Total					\$ 500,000.00		
(2) DETAIL SHOWN IN CM INVOICES								
	Labor Type/Position	Employee Name	Total Project Hours	Hourly Base Rate	Labor Burden Rate	Total CM Labor Costs		
	Superintendent	John Brown	160	\$ 55.00	1.60	\$ 14,080.00		
	Manager	Tom Smith	160	\$ 50.00	1.60	\$ 12,800.00		
	Supervisor	Peter Jones	160	\$ 45.00	1.60	\$ 11,520.00		
	Secretary	Mary Johnson	40	\$ 25.00	1.60	\$ 1,600.00		
	Total					\$ 40,000.00		
(3) EXAMPLE OF LINE IN SCHEDULE OF VALUES								
Item	Description	Scheduled Value	Previous work	Work this invoice	Total Completed	% Complete	Balance to Finish	Retainage Value
1	CM Labor Fee	\$ 500,000.00	\$0.00	\$ 40,000.00	\$ 40,000.00	8.00%	\$460,000.00	\$4,000.00

**ATTACHMENT "A-4"**



**AGREEMENT BETWEEN  
OWNER AND CONSTRUCTION MANAGER**

**THIS AGREEMENT**

made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Florida Atlantic University, for and on behalf of its Board of Trustees, (hereinafter called the "Owner") and \_\_\_\_\_, Federal I.D. No. \_\_\_\_\_, (hereinafter called the "Construction Manager"), for services in connection with the following described Project: \_\_\_\_\_, State Project No. BT-\_\_\_\_\_.

The Architect/Engineer for the Project is \_\_\_\_\_.

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

ARTICLE 1

The Construction Team and Extent of Agreement

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

1.2 The Construction Team: The Construction Manager, the Owner, and the Architect/Engineer (the "Construction Team") will cooperate together through construction completion. The Construction Manager shall provide leadership to the Construction Team on all matters relating to construction. The Architect/Engineer will provide leadership to the Construction Team on all matters relating to design. Nothing herein is intended to make the Construction Manager a partner with the Owner or Architect/Engineer; nor is the Owner liable for the acts or deeds of the Construction Manager.

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

ARTICLE 2

Construction Manager's Basic Services

2.0 The Construction Manager's Basic Services under this Agreement include preconstruction phase services and construction phase services.

2.1 The Preconstruction Phase: The Construction Manager shall:

2.1.1 Provide preconstruction deliverables consisting of a letter at Conceptual Schematics, and \_\_\_\_\_ copies of reports at Advanced Schematics, Design Development, 50% Construction Documents, and \_\_\_\_\_ copies of report at 100% Construction Documents together with a Guaranteed Maximum Price proposal. The letter at Conceptual Schematics will indicate the Construction Manager's confirmation that the concept selected can be constructed within the budget. The reports shall include a complete discussion and summary of the services provided in accordance with Subparagraphs 2.1.2 through 2.1.8 herein below, including the schedule and a detailed cost estimate. Recommendations and cost estimates made throughout the preconstruction phase shall be based on the *FAU Cost Containment Guidelines dated May 2003*.

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

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

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

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

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

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

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

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

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

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

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

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

2.1.9.2 If the GMP proposal is not accepted by the Owner, the Owner shall so notify the Construction Manager in writing. The Construction Manager shall then recommend adjustments to the Work through value engineering. The Construction Team will discuss and negotiate these recommendations for no more than 30 calendar days, unless an extension is granted in writing by the Owner. If an acceptable GMP is not developed, negotiations may be terminated, and the Owner may initiate negotiations with another Construction Manager.

2.2 Construction Phase. Unless otherwise authorized by the Owner, all Work shall be performed under Trade Contracts held by the Construction Manager. The Construction Manager shall not bid on any of the Trade Contractor Work or perform such Work with its own forces without the prior written consent of the Owner in accordance with the guidelines established in Facilities Planning Policy & Procedure FP #5. The Construction Manager shall:

2.2.1 Administer the construction phase as provided herein and in the Conditions of the Contract, which include the following :the Florida Atlantic University Project Manual for Construction Management Construction Projects dated January 2005; and Florida Atlantic University Division Policies & Procedures Manual.

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

- .1 "Contractor" means Construction Manager, and the terms will be used interchangeably;
- .2 "Subcontractor" means Trade Contractor, and the terms will be used interchangeably; and,
- .3 "Contract Sum" means Guaranteed Maximum Price, and the terms will be used interchangeably.

2.2.2 Commence the Work within 10 days after receipt of the executed Guaranteed Maximum Price Amendment and Notice to Proceed from the Owner. Prior to commencing with the construction the Construction Manager shall obtain, or verify, that all permits have been issued and have written approval from the Owner.

2.2.3 Develop procedures which are acceptable to the Owner for the prequalification of Trade Contractors. Develop Trade Contractor interest in the Project and publicly advertise and conduct pre-bid conferences with interested bidders to review the documents. Take competitive bids on the Work of the various Trade Contractors; or, if authorized by the Owner in writing, negotiate for the performance of that Work. The Construction Manager may require bidders to submit bid bonds or other bid security acceptable to the Construction Manager as a prerequisite to bidding on the Work. Analyze and evaluate the results of the various bids and their relationship to budgeted and estimated amounts, and prepare for review with the Owner and Architect/Engineer a bid tabulation analysis and such other support data as necessary to properly compare the various bids and their responsiveness to the desired scope of Work. Specifically, review the scope of Work in detail with apparent low responsive bidders to determine that their bids are complete but do not include duplicate scope items. Maintain records of all pre-award interviews with apparent low bidders. Promptly award and execute Trade Contracts with approved Trade Contractors.

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

2.2.5 Maintain exclusively for this Project a competent full-time staff at the Project site to coordinate and direct the Work and progress of the Trade Contractors on the Project. All of the Construction Manager's on-site management and supervisory personnel shall be consistent with the interview presentation and shall not be removed or replaced without the Owner's consent which shall not be unreasonably withheld. The Owner shall have the right to direct the Construction Manager to remove or replace any on-site personnel whose performance becomes unsatisfactory to the Owner. In such event, the Construction Manager shall promptly replace such personnel, without consideration of additional compensation for the replacement.

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

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

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

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

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

2.2.8 Review the schedule with the various Trade Contractors and review, or expand, the level of detail to incorporate specific Trade Contractor input consistent with the overall completion requirements. Regularly monitor and update the Project Schedule and various sub-networks as construction progresses. Identify potential variances between scheduled and probable completion dates. Review schedule for Work not started, or incomplete, and make adjustments in the schedule to meet the scheduled completion date. Provide summary reports of each monitoring and document all changes in schedule. Regular schedule updates and reporting shall be included as part of the monthly project report outlined in Subparagraph 2.2.16 herein. Display the current Project Schedule in the on-site office; review at progress meetings.

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

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

2.2.11 Develop and maintain an effective system of Project cost control which is satisfactory to the Owner. Revise and refine the initially approved Project Construction budget, incorporate approved changes as they occur, and develop cash flow reports and forecasts as needed. Identify variances between actual and budgeted or estimated costs and advise Owner and Architect/Engineer whenever projected costs exceed budgets or estimates. Cost Control reports shall be included as part of the monthly project report outlined in Subparagraph 2.2.16 herein.

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

2.2.13 Develop and implement a system for the preparation, review and processing of change orders. Without assuming any of the Architect/Engineer's responsibilities for design, recommend necessary or desirable changes to the Owner and the Architect/Engineer, review requests for changes and submit recommendations to the Owner and Architect/Engineer.

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

2.2.14 Be responsible for initiating, maintaining and supervising effective safety programs and require similar programs of the Trade Contractors and Sub-subcontractors. The OSHA guidelines shall serve as the basis for the construction safety program. If the Owner implements an Owner Provided Insurance Program as provided for in Article 11, the Construction Manager shall cooperate with the safety representatives of the Owner's Insurance Administrator and/or the Owner's insurance carrier(s) in the course of construction site inspections and in all other matters related to job safety and accident prevention.

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

2.2.14.2 At progress meetings with Trade Contractors, conduct a review of job safety and accident prevention, and prepare minutes of such meetings that will be available to the Owner's Representative on request. The minutes of job safety and accident prevention portion of such progress meetings shall be made available to the Owner's Insurance Administrator, where applicable, upon request.

2.2.14.3 Designate a full-time staff member as the project safety director who shall oversee job safety and accident prevention for the Construction Manager, Trade Contractors and Sub-subcontractors involved in the Work, in addition to any other responsibilities assigned to such staff member.

2.2.15 Make provisions for Project security acceptable to the Owner, to protect the Project site and materials stored off-site, or on-site, against theft, vandalism, fire and accidents, damage, or injury to person(s) or property, etc., as required by job and location conditions. Mobile equipment and operable equipment at the site, and hazardous parts of new construction subject to mischief, unauthorized use or misuse, shall be locked or otherwise made inoperable or protected when unattended.

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

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

2.2.17.1 Any asbestos abatement Work required in connection with the Work shall only be performed by an asbestos contractor which has been prequalified by the Owner.

### ARTICLE 3

#### Additional Services

3.1 Upon the mutual agreement of the Owner and the Construction Manager, and upon written authorization from the Owner, the Construction Manager shall provide additional services which are beyond the scope of the



Basic Services described in Article 2 herein. The Construction Manager shall be compensated for such additional services a fee to be negotiated by the Owner and the Construction Manager at the time of the additional service request.

#### ARTICLE 4

##### Owner's Responsibilities

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

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

4.3 The Owner shall review and approve or take other appropriate action on the Construction Manager's preconstruction deliverables within \_\_\_\_\_ calendar days of receipt.

4.4 During the construction phase, communications shall be made as described in Subparagraph 4.2.4 of the General Conditions.

#### ARTICLE 5

##### Schedule

5.1 Preconstruction Phase

5.1.1 The Construction Manager shall submit the Schematic Design Report, Design Development Report, 50% Construction Document Report and Guaranteed Maximum Price Proposal within \_\_\_\_\_ days after the Design Documents have been made available to the Construction Manager.

5.2 The number of days for performance of the Work under the construction phase of this Agreement shall be established in the Guaranteed Maximum Price Amendment to this Agreement.

5.3 In the event the Owner desires to accelerate the schedule for any portion of the Work, the Owner shall notify the Construction Manager in writing. Within 7 days, the Construction Manager shall give the Owner a revised Guaranteed Maximum Price for the acceleration which shall become a Change Order upon acceptance. The Owner may then direct the Construction Manager to increase its staff and require its Trade Contractors to increase their manpower, or to work such overtime hours as may be necessary to accomplish the required acceleration in accordance with the approved Change Order. In such event the Owner shall reimburse the Construction Manager for the costs of such acceleration subject to the Guaranteed Maximum Price. In no event shall the Construction Manager be entitled to compensation in excess of the adjusted Guaranteed Maximum Price. The Construction Manager shall require accurate daily records of all costs of the required acceleration and shall secure the Owner's approval of such records.

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

#### ARTICLE 6

##### Guaranteed Maximum Price

6.1 The "Guaranteed Maximum Price" (GMP) includes Cost of the Work required by the Contract Documents as defined in Article 8 herein, and the Construction Manager's fee as defined in Paragraph 7.2 herein. The GMP will be established based on design documents prepared by the Architect/Engineer. The GMP is subject to modification for changes in the Work as provided in Article 9, herein.

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

6.3 All cost savings for the not-to-exceed value of the GMP shall be returned to the Owner as part of the net aggregate savings established when final accounting is submitted upon Final Completion of the Work, or at such earlier time as agreed to by the Owner and the Construction Manager. "Cost savings" are the net difference obtained by deducting from the Adjusted GMP, the documented Construction Manager's Fee, the expended portions of the Construction Manager's contingency and the actual expenditures representing the Cost of the Work as defined in Article 8, herein. Liquidated damages, if any, are different from, and are not a part of, this calculation. Upon completion of the bidding period, the Construction Manager's contingency will be adjusted so that it does not exceed the contingency percentage agreed upon in the original GMP proposal. Those savings resulting from favorable bids will be available for the Owner's immediate use. Changes to the GMP funded by these savings are not eligible for additional Construction Manager overhead and profit as described in Subparagraph 7.2.5 herein.

6.4 By execution of this Agreement, the Construction Manager certifies that all factual unit costs supporting the fees specified in this Agreement are accurate, complete and current at the time of negotiations; and that any other factual unit costs that may be furnished the Owner in the future to support any additional fees that may be authorized will also be accurate and complete. The fees specified in this Agreement and any additional fees that may be authorized in the future shall be adjusted to exclude any significant sums which the Owner determines the fee was increased due to inaccurate, incomplete, or non-current factual unit costs.

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

## ARTICLE 7

### Payments to Construction Manager

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

7.1.1 For preconstruction services, the total sum amount of \$\_\_\_\_\_, to be paid in the amounts specified at the satisfactory completion of the following phases:

Advanced Schematics  
Design Development  
50% Const. Docs./Acceptance of GMP  
100% Const.Docs.  
TOTAL

7.1.1.1 Upon receipt of the Notice to Proceed, the Construction Manager shall begin providing the indemnification described in Paragraph 3.18 of the General Conditions of the Contract. The Construction Manager acknowledges that ten dollars (\$10.00) has been included in the fee proposal for preconstruction services for the purpose of providing indemnification, and is a part of the fee established for the first phase of preconstruction services.

7.1.2 Upon acceptance of the GMP, the amount established in the GMP Amendment to this Agreement, which includes the Construction Manager's fee as described in Paragraph 7.2 and the Cost of the Work as described in Article 8, to be paid monthly as described in the Conditions of the Contract.

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

7.1.3 Pay requests for preconstruction services and for construction shall be submitted and documented in accordance with Facilities Planning Policy & Procedure FP #7.

7.1.4 In the event University owes payment to the Vendor, the University shall mail the Vendor's payment within forty (40) days after receipt of an acceptable invoice and receipt, and after inspection and acceptance of the goods, services or both, as provided in accordance with the terms and conditions of the applicable purchase order/agreement. Failure to mail the warrant within 40 days shall result in the University paying interest at a rate of 1% per month on the unpaid balance from the expiration of such 40 day period until such time as the warrant is issued to the Vendor. The interest penalty shall be mailed within 15 days after mailing the warrant. The University has established a "Vendor Ombudsman". The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s). The University's Ombudsman may be contacted at (561) 297-2693.

7.2 Included in the Construction Manager's Fee are the following:

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

7.2.2 The cost of its field employees identified in Subparagraph 2.2.5 herein, or their approved replacements, including the cost of all pension, contributions, hospitalization, bonuses, vacations, medical insurance, assessments or taxes for such items as unemployment compensation and social security, payroll insurance, and taxes attributable to wages and salaries for said field employees.

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

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

7.2.5 Overhead and profit, or general expenses of any kind, except as may be expressly included in Article 8, herein, as Cost of the Work.

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

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

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

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

7.2.10 All costs incurred during the guarantee period after construction.

7.3 Adjustments in the fee will be made as follows:

7.3.1 Adjustments due to Changes in the Work shall be made as described in the Conditions of the Contract.

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

7.4 Invoices for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre audit and post audit thereof.



## ARTICLE 8

### Cost of the Work

8.1 The term "Cost of the Work" shall mean costs including General Conditions costs, incurred in the Work as described and defined in Paragraph 8.2, below, and paid or incurred by the Construction Manager less any reimbursement for scrap value and cash or trade discounts, subject to Article 10, herein. The term "wages" used herein shall include the straight time and overtime pay and the cost of associated employee benefits. Employee benefits include, but are not limited to, unemployment compensation, social security, compensated absences, and other mandatory and customary contributions and fringe benefits insofar as such costs are based on wages, salaries, or other remuneration paid to employees of the Construction Manager. Employee benefits do not include Workers' Compensation insurance when such insurance is provided by the Owner in accordance with Article 11.

8.1.1 The Owner agrees to pay the Construction Manager for the Cost of the Work as defined in Article 8, herein, through completion of the Work. Such payment shall be in addition to the Construction Manager's Fee as stipulated in Paragraph 7.2, herein.

8.2 Cost of the Work includes and is limited to actual expenditure for the following cost items:

8.2.1 Subject to prior approval by the Owner, wages paid for labor in the direct employ of the Construction Manager other than those provided under Paragraph 7.2, herein, as a part of the Construction Manager's Fee in the performance of the Work under applicable collective bargaining agreements, or under a salary or wage schedule agreed upon by the Owner and Construction Manager, and including such welfare or other benefits, if any, as may be payable with respect thereto.

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

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

8.2.4 Cost of the premiums for all insurance or bonds including Trade Contractor bonds which the Construction Manager is required to procure by this Agreement, or other insurance or bonds subsequently deemed necessary by the Construction Manager, and agreed upon by the Owner. The cost of insurance for the Construction Manager, trade contractors, and sub-subcontractors at any tier in the Work shall be excluded for any insurance to be provided by the Owner in accordance with Article 11 herein.

8.2.5 Sales, use, gross receipt, or similar taxes related to the Work imposed by any governmental authority and for which the Construction Manager is liable.

8.2.6 Building and operating permit fees, inspection and filing fees, sewer and water fees, and deposits lost for causes other than the Construction Manager's own negligence. If royalties or losses and damages, including cost of defense, are incurred which arise from a particular design, process or the product of a particular manufacturer or manufacturers specified by the Owner or Architect/Engineer, and the Construction Manager had no reason to believe there would be infringement of the patent rights, the GMP shall be adjusted by Change Order to compensate the Construction Manager for the increased costs. If the Construction Manager has knowledge, or should have knowledge, that use of the particular design, process or product would infringe a patent(s) and fails to provide written notice to the Owner before using such design, process or product, then no royalties, losses or damages arising from use of such design, process or product shall be a Cost of the Work.

8.2.7 Cost of removal and disposal of all debris including clean-up and trash removal.

8.2.8 Cost incurred due to an emergency affecting the safety of persons and/or property.

8.2.9 Legal costs reasonably, and properly, resulting from prosecution of the Work for the Owner provided, however, that they are not the result of the Construction Manager's own negligence or malfeasance. Legal costs incurred in connection with disputes solely between the Construction Manager and the Owner or incurred in connection with disputes solely between the Construction Manager and Trade Contractors are the responsibility of the Construction Manager and shall not be included in the Cost of the Work.

8.2.10 Cost to the Construction Manager of temporary electric power, lighting, water and heat required for the performance of the Work, or required to protect the Work from weather damage.

8.2.11 Cost to the Construction Manager of temporary safety-related protection including barricades and safety equipment, temporary roads and parking, dust control, pest control, installation and operation of temporary hoists, scaffolds, ladders and runways, and temporary project signs and costs of permits and fees pursuant to the Conditions of the Contract.

8.2.12 Cost of watchmen or similar security services.

8.2.13 Cost of surveys, measurements and layout work reasonably required for the execution of the Work or the requirements of the Agreement.

8.2.14 Cost of preparation of shop drawings, coordination plans, photographs, or as-built documents not included in Trade Contracts.

8.2.15 Cost of data processing services required in the performance of the construction phase services as outlined in Paragraph 2.2, herein.

8.2.16 All costs for reproduction of documents.

8.2.17 All costs directly incurred in the performance of the Work and not included in the Construction Manager's Fee as set forth in Paragraph 7.2, herein.

8.2.18 Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen which are employed or consumed in the performance of the Work.

8.2.19 Rental charges of all necessary machinery and equipment, including hand tools used in the performance of the Work, whether rented from the Construction Manager or others, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof.

8.2.20 Costs associated with setting up and demobilizing tool sheds, Project field offices, temporary fences, temporary roads, and temporary fire protection.

## ARTICLE 9

### Changes in the Work

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

## ARTICLE 10

### Discounts

10.1 All quantity discounts shall accrue to the Owner. All trade discounts, rebates and refunds, and all returns from the sale of surplus materials and equipment shall be credited to the Owner.

## ARTICLE 11

### Insurance

11.1 The Construction Manager shall provide insurance as required by the Conditions of the Contract.

## ARTICLE 12

### Miscellaneous Provisions

12.1 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.

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

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

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

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

12.5 As required by Section 287.058, Florida Statutes, this contract may be unilaterally canceled by the Owner for refusal by the Construction Manager to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119 and made or received by the Construction Manager in conjunction with the contract.

12.6 As provided by Section 287.0582, F.S., the State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature.

12.7 As required by Section 287.133, Florida Statutes, the Construction Manager warrants that it is not on the convicted vendor list for a public entity crime committed within the past 36 months. The Construction Manager further warrants that it will neither utilize the services of, nor contract with, any supplier, subcontractor, or consultant in excess of \$10,000.00 in connection with this Project for a period of 36 months from the date of their being placed on the convicted vendor list.

12.8 The Construction Manager is an independent contractor. Nothing herein is intended to create a partnership between the parties, nor does anything herein make one party liable for the acts of another party. The Construction Manager shall not make representations on behalf of the Owner beyond that required and authorized by the Owner under this Agreement.

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

**\*\*\*\*\* CONSTRUCTION MANAGER \*\*\*\*\***

Attest:  
  
\_\_\_\_\_  
(Name, Title and Corporate Seal)

(CM)

By: \_\_\_\_\_

Title: \_\_\_\_\_

As Witnessed by:  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

**SAMPLE**

**\*\*\*\*\* OWNER \*\*\*\*\***

As Witnessed By:  
  
\_\_\_\_\_

**FLORIDA ATLANTIC UNIVERSITY**

By: \_\_\_\_\_  
(enter name), VP Financial Affairs

Date: \_\_\_\_\_

**APPROVED AS TO FORM AND LEGALITY**

By: \_\_\_\_\_  
Office of General Counsel - FAU

Date: \_\_\_\_\_

**ATTACHMENT "B"**

**MEMORANDUM**

**TO:** (Name) FAU General Counsel  
**FROM:** Associate Vice President  
**DATE:** \_\_\_\_\_  
**RE:** BT-\_\_\_\_\_ – (Project Name)  
CM Agreement

SAMPLE

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Find attached a highlighted base CM Agreement (including 3 signature pages) between FAU and (Name of Firm) for the above-referenced project.

Please review and contact me with any comments. If the Agreement meets with your approval, sign the (3) original signature pages and return all to my office at your earliest convenience.

Thanking you in advance for your cooperation in this matter.

Attachments

**ATTACHMENT "C"**

Date

Firm Name & Address)

RE: BT-\_\_\_\_ (Project Name)

Dear Mr.:

Enclosed are three (3) original sets of the Agreement for the above-referenced project, which has been reviewed by our legal counsel.

If you find this document to be in accordance with your understanding of the negotiations, please execute each of the three (3) originals as follows:

Signature of your firm's president or other authorized individual. (If not signed by the president, submit proof of authority to execute contracts); attesting signature of another officer or partner and his/her title; signature of a witness; apply your corporate or professional seal. **Date ONLY the signature page.**

Please return the three (3) signed original Agreements to this office. After the Agreements have been completely executed by FAU, we will return a copy for your files.

Sincerely,

Associate Vice President

Enclosures

cc: DCS Director

**ATTACHMENT "D"**

**MEMORANDUM**

**TO:** VP Administrative Affairs

**FROM:** Associate Vice President Facilities Management

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

**RE:** BT-\_\_\_\_\_ (Project # & Name)  
CM Agreement

**SAMPLE**

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Find attached three (3) executed Agreements from \_\_\_\_\_ for the above-referenced project. Please review and forward all three (3) Agreements to the President for execution.

Thereafter, please return all three (3) Agreements to me for final distribution.

Attachments

**ATTACHMENT "E"**

(Date)

(Firm Name & Address)

RE: BT-\_\_\_\_ (Project Name )

Dear \_\_\_\_\_:

Attached is an executed copy of the contract for the above referenced project for your files.

We look forward to working with your firm on this project.

Sincerely,

Associate Vice President Facilities Management

Attachment

cc: DCS Director  
DCS Project Manager  
Controller's Office  
Purchasing

**ATTACHMENT "F"**



**AMENDMENT NO. 1 TO  
AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER  
ACCEPTING THE GUARANTEED MAXIMUM PRICE**

made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between FLORIDA ATLANTIC UNIVERSITY for and on behalf of its BOARD OF TRUSTEES, (hereinafter called the "Owner") and \_\_\_\_\_ (cm & address), Federal I.D. No. \_\_\_\_\_ (hereinafter called the "Construction Manager").

WHEREAS, the Owner and the Construction Manager entered into an agreement on, \_\_\_\_\_ for the Project, \_\_\_\_\_, State Project No. \_\_\_\_\_, Florida Atlantic University, (hereinafter called the Agreement), and

WHEREAS, in accordance with Sub-subparagraph 2.1.9.1 of the Agreement, the Owner and the Construction Manager intend to establish the Guaranteed Maximum Price for the Work,

NOW THEREFORE, the Owner and the Construction Manager agree to amend the Agreement to read as follows:

**Add new Subparagraph 2.2.18:**

2.2.18 The Construction Manager shall provide all Work as described in the Document, "Florida Atlantic University, \_\_\_\_\_, BT-\_\_\_\_\_, Guaranteed Maximum Price Proposal, dated \_\_\_\_\_.

**Revise Paragraph 5.2 to read as follows:**

5.2 The Work to be performed under this contract shall proceed within \_\_\_\_ calendar days after the date indicated on the Notice to Proceed, shall be substantially completed within \_\_\_\_\_ calendar days.

**Add new Subparagraph 5.2.1:**

5.2.1 Inasmuch as failure to complete the Work within the time fixed in Paragraph 5.2 herein 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, according to the definition of "Substantial Completion" in the General Conditions of the Contract, or within such further time, if any, as shall be allowed for time extensions in accordance with the provisions of the Contract Documents, the Construction Manager shall pay the Owner as liquidated damages for such delay, and not as a penalty \$\_\_\_\_\_ for each calendar day elapsing between the date fixed for Substantial Completion in Paragraph 5.2 and the date such Substantial Completion shall have been fully accomplished. Said liquidated damages shall be payable in addition to any excess expenses or costs payable by the Construction Manager to the Owner under the provisions of Article 14 of the General Conditions of the Contract for Construction, and shall not preclude the recovery of damages by the Owner under other provisions of the Contract Documents. This provision for liquidated damages for delay shall in no manner affect the Owner's right to terminate the Contract as provided in Article 14 of the General Conditions or elsewhere in the Contract Documents. The Owner's exercise of the right to terminate shall not release the Construction Manager from the obligation to pay said liquidated damages in the amount stipulated herein. It is further agreed that the Owner may deduct from the balance remaining for the final payment, the liquidated damages stipulated herein, or such portion thereof as the remaining balance will cover.

**Add New Paragraph 6.6:**

The Guaranteed Maximum Price Proposal for the work is \$\_\_\_\_\_ ( ).

**ATTACHMENT "G"**

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

**\*\*\*\*\*CONSTRUCTION MANAGER\*\*\*\*\***

Attest:

**(CM) (Seal)**

\_\_\_\_\_

By: \_\_\_\_\_

(Name, Title, and Corporate Seal)

Title: \_\_\_\_\_

As Witnessed By:

Date: \_\_\_\_\_

\_\_\_\_\_

**SAMPLE**

**\*\*\*\*\*OWNER\*\*\*\*\***

**FLORIDA ATLANTIC UNIVERSITY**

By: \_\_\_\_\_

Vice President Financial Affairs

As Witnessed By:

\_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY

By: \_\_\_\_\_

General Counsel Florida Atlantic University

Date: \_\_\_\_\_

**ATTACHMENT "G"**

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**PAYMENT BOND  
(FOR LABOR AND MATERIALS)**

**THIS BOND IS ISSUED SIMULTANEOUSLY WITH PERFORMANCE BOND IN FAVOR OF THE OWNER CONDITIONED ON THE FULL AND FAITHFUL PERFORMANCE OF THE CONTRACT AS PROVIDED BY SECTION 255.05, F.S.**

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**KNOW ALL MEN BY THESE PRESENTS:** that (firm name/address) as Principal, hereinafter called Construction Manager and \_\_\_\_\_, hereinafter called Surety, are held and firmly bound unto Florida Atlantic University for and on behalf of its Board of Trustees, of the State of Florida, hereinafter called Owner, for the use and benefit of claimants as herein below defined, in the amount of \$\_\_\_\_\_ (Dollars), for the payment whereof Construction Manager and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally

**WHEREAS:**

Construction Manager has by written agreement dated \_\_\_\_\_, entered into a contract with Owner for construction of (Project names) on the (campus name), in accordance with Drawings and Specifications prepared by (a/e firm name/address), which Owner-Construction Manager Agreement is by reference made a part hereof, and is hereinafter referred to as the Agreement.

**THE CONDITIONS OF THIS BOND are such that:**

1. If Construction Manager shall promptly make all payments owing when due to all persons who are defined in Section 713.01, Florida Statutes, whose claims derive directly or indirectly from the prosecution of the Work provided for in the Agreement, then this bond is void; otherwise, it remains in full force and effect.
2. Each said claimant shall have a right of action against the Construction Manager and Surety for the amount due the claimant. No such action shall subject the Owner to any cost, expense, loss or damage, and Construction Manager shall promptly pay Owner for the full measure of all cost, expense, loss, damage, and attorney's fees sustained by Owner as a result of any default by Construction Manager under the Agreement.
3. A claimant, except a laborer, who is not in privity with the Construction Manager and who has not yet received payment for his labor, materials, equipment or supplies shall, within forty five (45) days after beginning to furnish labor, materials, equipment or supplies for the prosecution of the Work, furnish the Construction Manager with a notice that the claimant intends to look to the bond for protection. A claimant who is not in privity with the Construction Manager and who has not received payment for labor, materials, equipment or supplies shall, within ninety (90) days after completing performance of the labor or after completing delivery of the materials, equipment or supplies, deliver to the Construction Manager and to the Surety written notice of the performance of the labor or delivery of the materials, equipment or supplies and of the nonpayment. No action for the labor, materials, equipment or supplies may be instituted against the Construction Manager or the Surety after one year from the date performance of the labor is completed or delivery of the materials, equipment or supplies is completed.
4. An action against the Surety or the Construction Manager, or both, may be brought in the county in which the public building or public work is being constructed or repaired or in any other place authorized by the provisions of Chapter 47, Florida Statutes.
5. The amount of this bond shall be changed only to the extent that the Contract Sum is changed in accord with applicable provisions of the Contract for Construction.
6. Neither any change in or under the Contract Documents, nor any compliance or noncompliance with any formalities provided in the Agreement or the change shall relieve the Surety of its obligations under this Bond.

SIGNED AND SEALED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_\_.

\*\*\*\*\*CONSTRUCTION MANAGER\*\*\*\*\*

As Witnessed By:

(Firm name) (Seal)

\_\_\_\_\_

By:\_\_\_\_\_

\_\_\_\_\_  
Type name and Title

\*\*\*\*\* SURETY \*\*\*\*\*

As Witnessed By:

\_\_\_\_\_ (Seal)

\_\_\_\_\_

By: \_\_\_\_\_  
Resident Agent as Attorney-in-Fact

\_\_\_\_\_  
Type name and Address

(Power of Attorney attached hereto)

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PERFORMANCE BOND

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**THIS BOND IS ISSUED SIMULTANEOUSLY WITH PAYMENT BOND (FOR LABOR & MATERIALS) IN FAVOR OF THE OWNER CONDITIONED ON THE FULL AND FAITHFUL PERFORMANCE OF THE CONTRACT AS PROVIDED BY SECTION 255.05, F.S.**

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**KNOW ALL MEN BY THESE PRESENTS:** that (Firm name/address), as Principal, hereinafter called Construction Manager and \_\_\_\_\_, hereinafter called Surety, are held and firmly bound between Florida Atlantic University for and on behalf of it's Board of Trustees, of the State of Florida, hereinafter called Owner, for the use and benefit of claimants as herein below defined, in the amount of \$\_\_\_\_\_ (Dollars), for the payment whereof Construction Manager and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

**WHEREAS,**

Construction Manager has by written agreement dated \_\_\_\_\_, entered into a contract with Owner for construction of (Project title/number) on the (campus name), in accordance with Drawings and Specifications prepared by (A/E firm name/address), which Owner-Construction Manager Agreement is by reference made a part hereof, and is hereinafter referred to as the Agreement.

**NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION** is such that, if Construction Manager shall promptly and faithfully perform said Agreement, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Construction Manager is in default under the Agreement, and the Owner has performed its obligations thereunder, the Surety shall promptly remedy the default, in accordance with Section 255.05, Florida Statutes, or shall promptly obtain a bid or bids for completing the Agreement in accordance with its terms and conditions, and arrange for a contract between such bidder and the Surety, and pay as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) the cost of completion less the balance of the Contract Sum; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract Sum", as used in this paragraph, shall mean the total amount payable by Owner to Construction Manager under the Agreement and any amendments thereto, less the amount properly paid by Owner to Construction Manager.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrator or successors of the Owner.

SIGNED AND SEALED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_\_.

\*\*\*\*\* CONSTRUCTION MANAGER\*\*\*\*\*

As Witnessed By:

(Firm name) (Seal)

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Type name and Title

\*\*\*\*\* SURETY\*\*\*\*\*

As Witnessed By:

\_\_\_\_\_ (Seal)

\_\_\_\_\_

By: \_\_\_\_\_  
Resident Agent as Attorney-in-Fact

\_\_\_\_\_  
Type name and Address

(Power of Attorney attached hereto)

**MEMORANDUM**

**TO:** (Name) General Counsel

**FROM:** Associate Vice President Facilities Management

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

**RE:** BT-\_\_\_\_\_ (Project Name)  
CM GMP Amendment No. \_\_\_\_

SAMPLE

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Find attached a copy of a highlighted standard base Amendment # \_\_\_\_ to (Name of Firm) for the above-referenced project.

Please review and contact me with any comments you may have. Should this meet with your approval, please sign the (3) signature pages (attached) within (7) days from receipt of this memo.

Attachments

cc: DCS Director

**ATTACHMENT "H"**

(Date)

(Firm Name & Address)

RE: BT-\_\_\_\_ (Project Name)

Dear \_\_\_\_\_:

Enclosed are three (3) original sets of Amendments No. 1, including performance and labor and material payment bonds, which accepts the Guaranteed Maximum Price for the above referenced project. Please execute the Amendment as follows:

1. Have your president or other authorized officer execute each original, have a second officer attest the signature and seal the agreements, and have a witness sign the agreements. Do **not** fill in the date on the first page of the Agreement.
2. All three (3) sets of the Payment and Performance Bonds must be signed and the corporate seal affixed thereto. The resident agent for the surety company must sign and seal each copy. A power of attorney must be included for each copy of both bonds, and the power of attorney must be dated the same as the date appearing on the bond signature page.
3. Please return a Certificate of Insurance, ensuring that the Certificate includes the coverages required by Section E, Article 11, and that the Certificate specifies that notification will be given to the Owner of cancellation of insurance. If the standard "ACORD" certificate of insurance is used, the Existing Cancellation Provision **should be modified** to comply with Section E, Article 11.1.3 of the project manual as follows: "Should any of the above described policies be canceled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the below named certificate holder. ~~but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.~~" The modification should be initialed by an authorized representative of the Insurance Company. In addition, please include a Builder's Risk policy for the amount of the contract. Please note that all insurance documents are to name both Florida Atlantic University and it's Board of Trustees and as additional insured.

Please return all three (3) originals of the Amendment, each bond, and include a certificate of insurance. Upon final execution, we will send you a set of documents for your files. If you have any questions regarding the execution of this Agreement, please call me at 561-297-2663.

Sincerely,

Associate Vice President Facilities Management

Attachments

cc: DCS Director

**ATTACHMENT "I"**



SAMPLE

**MEMORANDUM**

**TO:** Vice President Administrative Affairs  
**FROM:** Associate Vice President Facilities Management  
**DATE:** \_\_\_\_\_  
**RE:** BT-\_\_\_\_\_ (Project Name)  
(Firm Name)- Amendment #\_\_\_\_

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Attached find three (3) original Amendments which have been executed by (Name of Firm) for the above-referenced project. Please have the Vice President Financial Affairs execute all three (3) Amendments and return the documents to our office for final distribution.

Thank you.

Attachments

**ATTACHMENT "J"**

(Date)

(Firm Name & Address)

RE: BT-\_\_\_\_\_ (Project Name)  
Amendment #\_\_\_\_

Dear \_\_\_\_\_:

Notice to Proceed with the referenced project is hereby granted effective today (Enter the date of this letter).

Attached is a fully-executed Amendment No. \_\_\_\_ to the Agreement for your files. (If the insurance documents have all been approved by the insurance consultant, include these in this letter)

Sincerely,

Associate Vice President Facilities Management

Attachments

pc-w/attachments:  
DCS Director  
Controller's Office  
Purchasing  
A/E Firm

**ATTACHMENT "K"**