

**AGREEMENT FOR DESIGN/BUILD SERVICES  
WITH GUARANTEED MAXIMUM PRICE**

**THIS AGREEMENT FOR DESIGN/BUILD SERVICES** (the “Agreement”) is made and entered into this Numerical Date day of Month, Year, by and between **The Florida Polytechnic University Board of Trustees** (“Owner”), and D/B Name, D/B address, with Federal I.D. No. FEIN# (“Design/Builder”), which is authorized to do business in Florida.

**WITNESSETH:**

**WHEREAS**, Owner solicited statements of qualifications from interested design/builders for the provision of design and construction services related to the project described in **Exhibit A** (the “Project”), and;

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

**WHEREAS**, Owner and Design/Builder desire to enter into this Agreement regarding the design and construction of the Project.

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

**ARTICLE 1. GENERAL DESCRIPTION OF SERVICES**

- 1.1 The Services.** The Design/Builder agrees to furnish or arrange for the architectural, engineering and construction services set forth herein and required for completion of the Project on a Guaranteed Maximum Price (hereinafter defined) basis. Design/Builder represents that it is thoroughly familiar with and understands the requirements of the Project scope and is experienced in the design, administration and construction of building projects of the type and scope contemplated by the Owner’s Facilities Program for the Project. Design/Builder represents to Owner that Design/Builder has all necessary architectural, engineering and construction education, skill, knowledge and experience required for the Project, and will maintain at all times during the term of this Agreement such personnel on its staff to provide the services contemplated hereby within the time periods required hereby. In addition, Design/Builder represents that it or Owner-approved subcontractors performing services under this Agreement have all applicable licenses required by the State of Florida to perform such services.
- 1.2 Project Schedule / Time of the Essence.** Design/Builder has provided Owner with a preliminary overall Project schedule covering the planning, design and construction of the Project, which schedule is attached hereto as **Exhibit B**. This preliminary schedule shall serve as the framework for the subsequent development of all detailed construction schedules described in the Design/Build General Terms and Conditions. The Design/Builder shall at all times carry out its duties and responsibilities as expeditiously as possible and in accordance with the Project schedule, subject to delays in the schedule not the fault of Design/Builder or its consultants. Time is of the essence in the performance of this Agreement.
- 1.3 Cooperation.** The Design/Builder shall endeavor to develop, implement and maintain, a spirit of cooperation, collegiality, and open communication with Owner so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and, upon completion, the Project is deemed a success by all parties.
- 1.4 Preparation/Sufficiency of Site.** Before commencing the design and construction work, the Design/Builder shall:

- (a) visit and thoroughly inspect the Project Site and any structure(s) or other man-made features to be modified and become familiar with local conditions under which the Project will be constructed and operated;
- (b) familiarize itself with the survey, including the location of all existing buildings, utilities, conditions, streets, equipment, components and other attributes having or likely to have an impact on the Project;
- (c) familiarize itself with the Owner's layout and design requirements, conceptual design objectives, and budget for the Project;
- (d) familiarize itself with pertinent Project dates and programming needs, including the Project schedule,
- (e) review and analyze all Project geotechnical, Hazardous Substances structural, chemical, electrical, mechanical and construction materials tests, investigations and recommendations, and;
- (f) gather any other information necessary for a thorough understanding of the Project.

If the Project involves modifications to any existing structure(s) or other man-made feature(s) on the Project site, the Design/Builder shall also review all as-built and record drawings, plans and specifications of which Design/Builder has been informed by Owner about and thoroughly inspect the existing structure(s) and man-made feature(s) to identify existing deficiencies and ascertain the specific locations of pertinent structural components. Claims by Design/Builder resulting from Design/Builder's failure to familiarize itself with the Site or pertinent documents shall be deemed waived.

- 1.5 Project Team.** Design/Builder will use the Project Team identified in **Exhibit C**. Design/Builder will not remove or replace any members of the Project Team except with the written approval of Owner based upon good cause shown or as directed by Owner as provided hereunder. Further, if any member of the Project Team discontinues service on the Project for any reason whatsoever, Design/Builder shall promptly replace such team member with a qualified individual approved by Owner, in writing, which approval will not be unreasonably withheld.
- 1.6 Contract for Design/Build Construction.** The "Contract for Design/Build Construction," which constitutes the entire agreement between Owner and Design/Builder, consists of: this Agreement and all exhibits hereto; the Design/Build General Terms and Conditions; special conditions, if any; proposal(s) submitted by Design/Builder and accepted by Owner, if any; the Construction Documents; any amendments or addenda executed by the Owner and the Design/Builder hereafter; Owner-approved change order(s) or field orders; and the additional documents listed in **Exhibit A**, if any. Documents not included or expressly contemplated in this Section 1.6 do not, and shall not, form any part of the Contract for Design/Build Construction. Without limiting the generality of the foregoing, shop drawings and other submittals from the Design/Builder or its subcontractors and suppliers do not constitute a part of the Contract for Design/Build Construction.
- 1.7 Commissioning.** The Design/Builder shall participate in, and cooperate with, design-phase, construction-phase, and post-occupancy commissioning (including peer review), validation, and other third-party quality assurance and quality control processes that Owner implements, if any.

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

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- 2.1 Project Information.** Design/Builder acknowledges that Owner has provided Design/Builder with information regarding Owner's requirements for the Project as set forth in the Facilities Program.

- 2.2 **Owner's Budget.** The Owner shall establish and update an overall budget for the Project, including amounts allocated for design and construction, the Owner's other costs and reasonable contingencies related to these costs as appropriate.
- 2.3 **Owner's Representative.** The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project.
- 2.4 **Time for Performance.** The Owner shall review and approve or take other appropriate action on all design submittals of the Design/Builder within the timeframes set forth in **Exhibit B**.
- 2.5 **Property Survey.** If required, the Owner shall furnish, or direct the Design/Builder to obtain, at the Owner's expense, surveys describing physical characteristics, legal limitations and utility locations for the Project site, and a written legal description of the Project site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths.
- 2.6 **Geotechnical Testing.** If required, the Owner shall furnish, or direct the Design/Builder to obtain, at the Owner's expense, the services of geotechnical engineers as necessary for the Project. Such services may include, but are not limited to, test borings, test pits, sub-surface imaging, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate Design/Builder recommendations.
- 2.7 **Purpose of Owner's Review.** Owner's review, inspection, or approval of any Work, Design Documents, Applications for Payment or other submittals shall be solely for the purpose of determining whether the same are generally consistent with Owner's Facilities Program, standards, policies and requirements. No review, inspection, or approval by Owner of such Work or documents shall relieve Design/Builder of its responsibility for the performance of its obligations under the Contract for Design/Build Construction or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Work. Approval by any governmental or other regulatory agency or other governing body of any Work, Design Document, or the Construction Documents shall not relieve Design/Builder of responsibility for the performance of its obligations under this Agreement. Payment by Owner pursuant to the Contract for Design/Build Construction shall not constitute a waiver of any of Owner's rights under the Contract for Design/Build Construction or at law, and Design/Builder expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by Owner. Notwithstanding the foregoing, prompt written notice shall be given by the Owner to the Design/Builder if the Owner becomes aware of any fault or defect in the Project or non-conformance with the Contract for Design/Build Construction.
- 2.8 **Status Of Owner.** The Owner shall not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Design/Builder, for any of the foregoing purposes, be deemed the agent of the Owner.
- 2.9 **Owner's Utilities.** The Design/Builder shall be responsible to provide and pay for consumption of, and connections to, utilities required for temporary service and construction.

### ARTICLE 3. DESIGN SERVICES REQUIREMENTS AND STANDARDS

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- 3.1 Quality Of Design Services.** Design/Builder shall be responsible for the quality, completeness, accuracy, and coordination of Design and Construction Documents. Design/Builder shall provide Design Services that meet all environmental and regulatory requirements. Design/Builder shall provide for all testing and inspections required by sound architectural and engineering practices and by governmental authorities having jurisdiction over the Project.
- 3.2 Errors and Omissions.** The Design/Builder shall, at no additional cost to the Owner, immediately make additions, changes and corrections to any documents prepared by Design/Builder necessitated by errors and omissions in the Design/Builder's performance of its services. In addition, Design/Builder shall not be entitled to any compensation or adjustment in the Guaranteed Maximum Price ("GMP") for additional work required as a result thereof, provided, upon Owner's written approval, Design/Builder may use contingency funds to pay for Work not included in the Construction Documents which add value to the Project (but expressly excluding any demolition or other costs related to the substitution of such Work for previously installed Work and associated design fees). The foregoing shall not relieve Design/Builder for liability to Owner for any damages, including costs incurred by Owner after termination in whole or in part of this Agreement, resulting from any error or omissions by Design/Builder in the course of its duties under this Agreement.
- 3.3 Legal Standard.** The Design/Builder shall furnish design/build services in accordance with design/build standards currently practiced by design/builders on projects similar in size, complexity and cost to the Project.
- 3.4 Design Standards.** The Design/Builder shall perform all services in accordance with requirements of governmental agencies having jurisdiction over the Project, the Florida Polytechnic University Design and Commissioning Services Guide, Owner's policies and project management guides, and any other guidelines described in **Exhibit A**. In addition, the Design/Builder's design shall comply with all applicable building codes, accessibility laws and regulations, Florida Polytechnic University Design and Construction Standards, Florida Polytechnic University Telecommunications Standards, and other standards in effect at the time of the design work. To the extent Owner's standards exceed applicable legal requirements, such standards shall be met unless Design/Builder obtains a variance from Owner in writing.
- 3.5 Permits.** Design/Builder shall be responsible for obtaining all necessary permits and other governmental approvals necessary for the development of the Project and shall obtain the same at the times necessary to meet the Project schedule.
- 3.6 Design Software.** The design and construction drawings shall be developed using Building Information Modeling (BIM) software - latest Owner-approved version; see **Exhibit A**.
- 3.7 Notice of Non-Compliance with Law.** If Design/Builder believes or is advised by another design professional retained to provide services on the Project that implementation of any instruction received from Owner would cause a violation of any applicable law, Design/Builder shall promptly so notify Owner in writing.

### ARTICLE 4. BASIC DESIGN AND PRE-CONSTRUCTION SERVICES

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- 4.1 Project Requirements.** The Design/Builder shall meet with the Owner to ascertain the requirements of the Project. The approved Facilities Program shall serve as the basic planning document for the development of plans and specifications.
- 4.2 Program Evaluation.** The Design/Builder shall provide a preliminary evaluation of the Owner's Facilities Program, schedule and construction budget requirements, each in terms of the other.

- 4.3 **Recommended Testing and Surveys.** After reviewing the Project requirements, the Design/Builder shall advise the Owner of the tests and surveys that should be conducted prior to the development of plans and specifications.
- 4.4 **Project Alternatives.** The Design/Builder shall review with the Owner alternative approaches to design and construction of the Project.
- 4.5 **Submittal Requirements.** When the Design/Builder makes submittals to the Owner at the various phases of design, the Design/Builder shall comply with the requirements for such submittals set forth on **Exhibit D.**
- 4.6 **On-Site Program and Budget Verification.**
- 4.6.1 During the design phases, Design/Builder agrees to provide, as part of Basic Services, on-site program and budget verification, development and review workshops necessary or desirable to develop a design, acceptable to Owner and its user groups, which is within Owner's budget. Such workshop(s) will be conducted with representatives of Owner's user groups and the University Review Committees with jurisdiction over the Project, utilizing the charrette format. Without limitation of the foregoing, at the Concept Schematic Design, Advanced Schematic Design and Design Development phases, the Design/Builder shall support and attend presentations and shall include drawings, models, renderings, animations, and other tools as necessary to illustrate and convey information on particulars of the design intent. This shall include site plans with building footprint, landscape and tree removal plans, building elevations, "fly-through" digitized renderings, and architectural details as needed. At such presentation the Design/Builder shall also address all issues and concerns previously identified but not yet addressed by the Design/Builder to the University Review Committees' satisfaction.
- 4.6.2 In accordance with Owner's policies and Design and Commissioning Services Guide, the Design/Builder shall develop a Basis of Design document (BOD). The BOD shall be developed initially during the first phase of the design, updated during each subsequent design phase and finalized on or before Substantial Completion. The BOD shall include detail appropriate to each respective phase of the design.
- 4.7 **Quality Control Programs.** The Design/Builder shall establish and submit for Owner review within thirty (30) calendar days of the Owner's execution of this Agreement:
- (a) Project reporting procedures;
  - (b) Quality Control and Testing Program; and
  - (c) Safety program.
- 4.8 **Jobsite Management & Logistics Plan.** The Design/Builder shall develop a comprehensive jobsite management and logistics plan for the Owner's review. This plan shall be submitted no later than the date set forth in **Exhibit E.**
- 4.9 **Conceptual Schematic Design (CSD).** Based on the approved Facilities Program, schedule and construction budget requirements, the Design/Builder shall prepare several alternative design solutions. The Design/Builder shall present these alternatives to the Owner, making submittals of studies, consisting of sketches and initial concepts in accordance with schedule requirements. After receiving the Owner's comments, the Design/Builder shall prepare, for approval by the Owner, Conceptual Schematic Design Studies which shall represent one or more recommended solutions. The submittal shall consist of documents, including sketches, initial concepts, orientation, and relationships to existing and future programmed projects.

- 4.10 Advanced Schematic Design (ASD).** Based upon the approved Conceptual Schematic Design studies, the Design/Builder shall prepare, for approval by the Owner, Advanced Schematic Design Documents consisting of drawings, 3-dimensional renderings and other documents illustrating the scale and relationship of Project components, energy conservation approach and building systems parameters. The Design/Builder shall submit to the Owner the Advanced Schematic Design Documents for review in accordance with schedule requirements.
- 4.11 Design Development Phase (DD).** Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the Facilities Program, schedule or construction budget, the Design/Builder shall prepare, for approval by the Owner, Design Development Documents consisting of drawings, three dimensional renderings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical, plumbing, fire protection and electrical systems, materials and such other elements as may be appropriate. The Design/Builder shall submit the Design Development Documents to the Owner for review in accordance with schedule requirements.
- 4.11.1 If a life-cycle cost computer analysis is authorized by Owner under **Exhibit C** or by Additional Services Authorization, the necessary documentation will be submitted with the Advanced Schematic Design Documents in accordance with **Exhibit D**. The Design/Builder shall prepare data, make the input and run a life-cycle cost computer program analysis approved by the Owner. Before preparing the data, the Design/Builder shall discuss the energy-saving schemes proposed for the Project with the Owner's project manager. When an agreement has been reached, the Design/Builder shall document the approved energy-saving schemes and obtain the written concurrence of the Owner's project manager. The Design/Builder shall make the input and run the computer program using the following economic factors:
- (a) Discount rate = 7%;
  - (b) Operating & Maintenance cost escalation = 0%;
  - (c) Energy Replacement costs escalation = 1%;
  - (d) Project Life = 25 years.
- 4.12 Construction Documents Phase (CDs).** Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Design/Builder shall prepare and submit to Owner Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project. Construction Documents shall be provided to Owner at the 60% stage and when 100% in accordance with schedule requirements. In the event Owner elects to fast-track the design of certain portions of the Project, Design/Builder shall submit only 100% Construction Documents for such fast-tracked portions (such portions being described on **Exhibit E** and hereinafter referred to as "Phase 1"), and 60% and 100% Construction Documents for the remainder of the Project (such portion hereinafter referred to as "Phase 2"). Any fees associated with fast-tracking Phase 1 of the Project are included in the fee schedule.
- 4.12.1 For a threshold building as defined in Chapter 553, Florida Statutes, a structural inspection plan shall be included in the Construction Documents.
- 4.13 Construction Reports.** At each phase of preliminary design, the Design/Builder shall provide, in addition to design drawings, a report detailing construction issues and concerns relating to the design, in light of Owner's goals and the Facilities Program for the Project, with detail appropriate to the level of design. Without limitation of the foregoing, the construction report shall:

- 4.13.1 include an estimate of overall construction cost, with Design/Builder's contingency associated with the Cost of the Work no greater than the percentages set forth on **Exhibit E**;
- 4.13.2 identify conceptual decisions that were made or will need to be made which are necessary to prepare accurate cost reports with the fewest assumptions, qualifications and exclusions;
- 4.13.3 provide an analysis and evaluation of jobsite management, site logistics, budget and schedule considerations considered in preparation of the design drawings;
- 4.13.4 provide an analysis and evaluation of the constructability issues which were addressed in preparing the design drawings or which need to be addressed during future design phases, and;
- 4.13.5 provide an analysis and evaluation of each of the design drawings in regard to the completeness of intended bid categories, conflicts or overlaps in the divisions of the Work, design details affecting construction, value engineering, identification of long-lead materials affecting the Construction Schedule, availability of labor and other factors affecting construction.

#### **4.14 Construction Schedules.**

Design/Builder shall submit an initial Construction Schedule by the date set forth on **Exhibit E**; a final Construction Schedule with the Guaranteed Maximum Price proposal; and revised Construction Schedules in accordance with the Design/Build General Terms and Conditions.

#### **4.15 GMP Proposal.**

- 4.15.1 At the time set forth on **Exhibit E**, the Design/Builder shall prepare and deliver to the Owner, a Guaranteed Maximum Price ("GMP") proposal. The Design/Builder shall, at a minimum, include in the GMP proposal:
  - (a) a recital of the specific Construction Documents, including drawings, specifications, and all addenda thereto, used in preparation of the GMP proposal;
  - (b) the five (5) elements of the Guaranteed Maximum Price:
    - (i) Guaranteed Maximum Cost of the Work (hereinafter defined), detailed by each subcontract, trade, or bid division;
    - (ii) the Design/Builder's Contingency for the Work;
    - (iii) Guaranteed Maximum Design/Builder's Staffing Cost (hereinafter defined), detailed by expense category;
    - (iv) Guaranteed Maximum General Conditions Cost (includes bond & insurance costs) (hereinafter defined), detailed by expense category; and
    - (v) Guaranteed Maximum for Design/Builder's Overhead and Profit.
  - (c) a draft schedule of values;
  - (d) a description of all other inclusions to, or exclusions from, the GMP;
  - (e) all assumptions and clarifications; and
  - (f) the final Construction Schedule.

- 4.15.2 The Design/Builder acknowledges that the Construction Documents may be incomplete at the time the Design/Builder delivers the GMP proposal, and that the Construction Documents may not be completed until after commencement of the Work. Nevertheless, the GMP proposal shall include all costs for the Work required by the completed Construction Documents, and if the GMP proposal is accepted by the Owner, the Design/Builder shall be entitled to no increase in the GMP if the Work required by the completed Construction Documents (i) is required by the Contract for Design/Build Construction, (ii) is reasonably inferable from the incomplete documents, (iii) is consistent with the Owner's programmatic goals and objectives, (iv) is consistent with the Owner's Design and Construction Standards and the general industry standards for completion of the Work, (v) is not a substantial enlargement of the scope of Work or (vi) substantially conforms to the nature, type, kind or quality of Work depicted in the incomplete documents.
- 4.15.3 If the GMP proposal is unacceptable to the Owner, the Owner shall promptly notify the Design/Builder in writing. Within fourteen (14) calendar days of such notification, the Owner, and Design/Builder shall meet to discuss and resolve any differences, inconsistencies, or misunderstandings and to negotiate recommended adjustments to the Work and/or to the GMP.
- 4.15.4 The Owner may, at its sole discretion and based upon its sole judgment, (i) indicate its acceptance of a GMP proposal; (ii) reject a GMP proposal; (iii) terminate the Project; or (iv) proceed to construct the Project using a party or parties other than the Design/Builder.
- 4.15.5 If the Owner rejects a GMP proposal, neither party shall have any further obligation pursuant to this Agreement.
- 4.15.6 If the Owner accepts a GMP proposal, the parties shall complete and execute **Exhibit F**, and the Owner shall issue a written Notice to Proceed to the Design/Builder establishing the date construction is to commence (the "Commencement Date"). The Design/Builder shall not expend any monies for construction prior to receipt of such Notice to Proceed without the written approval of the Owner.
- 4.15.7 Price Guarantees.
- (a) Upon execution of **Exhibit F** the Design/Builder guarantees that the sum of the actual Cost of the Work, (i) Design/Builder's Contingency, (ii) Design/Builder's Staffing Costs, (iii) General Conditions Cost, and (iv) Design/Builder's Overhead and Profit, shall not exceed the amount set forth in the agreed upon GMP. All costs or expenses that would cause this sum to exceed the GMP shall be borne by the Design/Builder unless adjusted by Owner approved change order.
- (b) Upon execution of **Exhibit F** the Design/Builder guarantees that the actual Cost of the Work, Design/Builder's Staffing Costs, General Conditions Cost and Design/Builder's Overhead and Profit shall not exceed the guaranteed maximum for each such category and that all costs or expenses that would cause any of these individual categories to exceed the guaranteed maximum for each such category in the agreed upon GMP shall be borne by the Design/Builder unless adjusted by Owner approved change order.



- (c) Upon execution of **Exhibit F** the Design/Builder certifies that all factual unit costs supporting the GMP proposal are accurate, complete and current at the time of negotiations; and that any other factual unit costs that may be furnished to the Owner in the future to support any additional amounts that may be authorized will also be accurate and complete. Payments to the Design/Builder shall be reduced if the Owner determines such amounts were originally included due to materially inaccurate, incomplete, or non-current factual unit costs.
- (d) Upon execution of **Exhibit F** the Design/Builder guarantees that to the extent the accepted GMP includes contingency, use of contingency shall be approved by Owner by change order prior to expenditure by the Design/Builder.

**4.16** **Corrected/Conformance Document Set (CCD)**. The Design/Builder shall submit to the Owner a Corrected/Conformance Document Set incorporating all design review comments, revisions or suggestions elicited during development of the Guaranteed Maximum Price Proposal, pre-bid inquiries, and other modifications made after the 100% complete Construction Documents have been submitted to the Owner in accordance with schedule requirements.

**4.17** **Sustainable Building and Energy Initiatives**. The Design/Builder shall work with Owner to pursue Owner's goal, for the Project, at the level set forth on **Exhibit E to utilize a sustainable rating system approved in section 255.53 Florida Statutes**.

## **ARTICLE 5. ADDITIONAL DESIGN SERVICES**

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**5.1** **Additional Services**. If the services described in this Article 5 are not included in Basic Services or reasonably inferable therefrom, they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. The Additional Services shall be performed only if authorized in writing by the Owner prior to their performance. Providing additional design services made necessary by defects or deficiencies in the Work by Design/Builder shall not entitle Design/Builder to compensation.

**5.2** **Additional Services Mark-up**. For Additional Services being provided by consultants not included on the original Project Team, which require no work on the part of the Design/Builder other than administering the work thereof (i.e., securing the services, approving the work, and invoicing on behalf of the consultant), the Design/Builder may request a mark-up not to exceed six percent (6%) on the consultant's fee to cover the Design/Builder's administrative costs. This mark-up will be based on the complexity and time spent.

**5.3** **Fees**. For Additional Services described in this Article 5, a lump sum or not-to-exceed amount which is satisfactory to both parties shall be negotiated on each occasion of activating a specific additional services authorization. The Design/Builder's staff costs associated therewith shall be based on the hourly rates set forth on **Exhibit G**.

**5.4** **Certain Traditional Additional Services Considered Basic Services**. If Owner has determined that Owner requires certain services which are traditionally considered Additional Services for the purpose of calculating the Design/Builder's fees, such services are described on **Exhibit C** and compensation for such services is included in the schedule set forth on **Exhibit G**. For purposes of this Agreement, such services constitute Basic Services.

### **5.5** **Additional Design Services**

5.5.1 Design professional representation at the Project site more extensive than that described in Article 6.

5.5.2 Making revisions in Drawings, Specifications or other documents but if, and only if, such revisions are:

- 5.5.2.1 inconsistent with approvals or instructions previously given by the Owner; or
- 5.5.2.2 required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents and not reasonably foreseeable at the time of the preparation of such documents.
- 5.5.3 Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity and the Owner's schedule.
- 5.5.4 Preparing Drawings, Specifications and other documentation and supporting data in connection with Change Orders which require design or redesign, and which are not required to correct the Construction Documents or which are not due to oversights of the Design/Builder.
- 5.5.5 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work not covered by Design/Builder's insurance.
- 5.5.6 Providing services in connection with a public hearing or legal proceeding except where the Design/Builder is party thereto.
- 5.5.7 When required by the Owner, preparing documents for alternate, separate or sequential bids, except issuing early bid packages in support of fast-track construction delivery process.
- 5.5.8 Programming the requirements of the Project.
- 5.5.9 Providing planning surveys, site evaluations or comparative studies of prospective sites.
- 5.5.10 Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.
- 5.5.11 Providing services relative to future facilities, systems and equipment, when not specifically included in the original Facilities Program for the Project.
- 5.5.12 Making measured drawings of existing construction when required for planning additions or alterations thereto.
- 5.5.13 Providing coordination of construction performed by separate contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.
- 5.5.14 Providing interior design and other similar services required for, or in connection with, the selection, procurement or installation of furniture, furnishings and related equipment.
- 5.5.15 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.
- 5.5.16 Preparing Mylar reproducible record drawings.
- 5.5.17 Providing design services after issuance by the Owner of the final payment to the Design/Builder, except for those services described in Article 6.
- 5.5.18 Providing services of consultants other than those described in Exhibit C.
- 5.5.19 Preparing data, making the input, and running energy modeling and/or life-cycle cost analysis programs.
- 5.5.20 Providing site surveys, geotechnical testing services or other special tests.

- 5.5.21 Providing special inspection on threshold buildings as defined in Chapter 553, Florida Statutes.
  - 5.5.22 Providing prolonged contract administration and construction observation should the construction time specified for final completion be exceeded by more than 60 days through no fault of Design/Builder.
  - 5.5.23 Providing services relating to LEED certification if such services are in addition to services otherwise being provided and are required solely for the LEED certification.
  - 5.5.24 Providing any other services not otherwise included in this Agreement.
- 5.6 Notwithstanding anything to the contrary herein, Design/Builder shall not be entitled to additional design fees if the same are necessitated by the fault of Design/Builder.

## **ARTICLE 6. CONSTRUCTION PHASE SERVICES**

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- 6.1 **General Intent.** Design/Builder shall perform all Work and construction administration services necessary to construct the Project in accordance with the Contract for Design/Build Construction and to render the Project and all of its components operational and functionally and legally usable.
- 6.2 **Trade Contractor Selection Bidding and Negotiation.**
- 6.2.1 Design/Builder shall prepare and assemble document packets for use in bidding the subcontracts. Such packaging of the Work shall be broken down to maximize both competition and the involvement of small businesses.
  - 6.2.2 The Design/Builder shall develop subcontractor and supplier interest for each division of the Work. The Design/Builder shall pre-qualify proposed subcontractors using a pre-qualification form approved by the Owner, which shall include, at a minimum, proof of licensure where applicable. A design professional on the Project Team shall attend all pre-bid meetings with potential subcontractors and be available to respond to questions regarding the Construction Documents.
  - 6.2.3 The Design/Builder shall competitively bid each trade category or, if approved by Owner, negotiate for the performance of a particular trade category.
  - 6.2.4 The Design/Builder shall use its best efforts to obtain bids which are less than the final GMP estimates.
  - 6.2.5 The Design/Builder shall conduct bid openings in the presence of the Owner's Representative. The Design/Builder shall provide the Owner with a copy of its preliminary bid tabulation and a copy of all bids.
  - 6.2.6 The Design/Builder shall, for each subcontract, trade or bid division:
    - (a) determine the final bid amounts, having reviewed and clarified the scope of Work in detail with the apparent low responsive bidders to determine that their bids are complete but do not include duplicate scope items;
    - (b) prepare and furnish to the Owner a final bid tabulation summary which includes by subcontract, trade and/or bid division, the applicable final GMP estimate and the related final bid amount and the details of all scope clarifications for Owner's review and approval;
    - (c) if requested by Owner, provide a list of all potential Direct Purchase Materials (hereinafter defined);

- (d) identify to the Owner in writing the subcontractors to which the Design/Builder recommends award of subcontracts, and;
  - (e) award and enter into a subcontract between itself and each subcontractor which it has recommended in accordance with this Agreement unless otherwise notified by the Owner.
- 6.2.7 No portion of the Work may be performed by the Design/Builder or its affiliates except with Owner's approval.
- 6.2.8 The Design/Builder shall buy out Trade Contracts representing ninety percent (90%) of the Cost of the Work or more, within the timeframe outlined in **Exhibit F**.

**6.3 Design Professional's Role During and After Construction.** Although the design and construction of the Project are being provided through a design/build delivery method, because no additional design professionals have been retained by Owner to provide oversight during construction and warranty phase services, the lead design professionals on the Project Team shall be responsible for providing the services described herein. Such services shall be provided by the lead design professionals without regard to the conflict of interests associated with the design/build delivery method.

- 6.3.1 The design professionals shall carry out the Construction Administration services set forth herein and in the Florida Polytechnic University Design and Commissioning Services Guide. To the extent the terms of this Agreement, the Design and Commissioning Services Guide, and the Design/Build General Terms and Conditions are inconsistent, the terms of this Agreement shall govern.
- 6.3.2 The design professionals shall be a representative of, and shall advise and consult with, the Owner during construction until final payment is made. The Design/Builder shall have authority to act on behalf of the Owner only to the extent provided in this Agreement.
- 6.3.3 The design professionals on the Project Team shall attend regularly scheduled construction meetings at the Site and shall provide such representation as may be required to fulfill the intent and interpretation of the plans and specifications for the Project. In any event, the design professionals shall visit the site the minimum number of times required in **Exhibit E** or at more frequent intervals appropriate to the stage of construction, or as otherwise agreed by the Owner and Design/Builder, in writing, to become familiar with the progress and quality of the Work completed and to determine if the Work is being performed in a manner indicating that the Work when completed will be in accordance with the Construction Documents. On the basis of on-site observations as an architect or as an engineer, the design professional shall keep the Owner informed of the progress and quality of the Work and shall guard the Owner against defects and deficiencies in the Work.

- 6.3.4 Based on the design professionals' observations and evaluations of the Design/Builder's Applications for Payment, the design professional shall review and certify the amounts due the Design/Builder. The design professional's certification for payment shall constitute a representation to the Owner, based on the design professional's observations at the Project site and on the data comprising the Design/Builder's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the design professional's knowledge, information and belief, the quality of the Work is in accordance with the Construction Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Construction Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Construction Documents correctable prior to completion and to specific qualifications expressed by the design professional. The issuance of a Certificate for Payment shall further constitute a representation that the Design/Builder is entitled to payment in the amount certified.
- 6.3.5 The design professional shall reject Work which does not conform to the Construction Documents. Whenever the design professional considers it necessary or advisable for implementation of the intent of the Construction Documents, the design professional will have authority to require additional inspection or testing of the Work in accordance with the provisions of the Design/Build Contract for Construction, whether or not such Work is fabricated, installed or completed.
- 6.3.6 The design professional shall review, approve, reject or take other appropriate action of construction-related inquiries and submittals, such as shop drawings, product data and samples. The design professional shall not approve any such submittals unless such submittals conform with:
- (a) the Facilities Program and design concept;
  - (b) the Construction Documents;
  - (c) the Owner's total budgeted Construction Cost;
  - (d) the Florida Polytechnic University Design and Construction Standards, and;
  - (e) governing codes and authorities having jurisdiction.
- In the event the Florida Polytechnic University Design and Construction Standards exceed applicable legal requirements, those Florida Polytechnic University standards shall govern. The design professional's review shall be completed so that all Work can be performed without delay and all products or materials may be ordered or fabricated with sufficient time to meet the Project schedule.
- 6.3.7 The design professional shall prepare Change Orders, with supporting documentation and data, if the design professional determines the same is necessary for the Owner's approval and execution in accordance with the Design/Build Contract for Construction.
- 6.3.8 Interpretations and decisions of the design professionals shall be consistent with the intent of, and reasonably inferable from, the Construction Documents and shall be in writing or in the form of drawings.
- 6.3.9 The design professionals' decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Construction Documents, and if concurred with by the Owner.

- 6.3.10 The design professionals shall conduct inspections to determine the dates of Substantial Completion and Final Completion, shall receive and forward to the Owner for the Owner's review and records, written warranties and related documents required by the Design/Build Contract for Construction and assembled by Design/Builder, and shall issue a final Certificate for Payment upon compliance by the Design/Builder with the requirements of the Design/Build Contract for Construction. The design professionals shall perform all services relating to Substantial Completion and Final Completion in accordance with Florida Polytechnic University policies and procedures.
- 6.3.11 As-Built Drawings. The Design/Builder shall prepare "As-Built" or record drawings at Project completion in accordance with the requirements set forth on **Exhibit A** and **Exhibit D**. These drawings shall include changes made to the Project by Change Orders, Addenda to the Construction Documents, Architect's Supplemental Information, field orders, field reports, Requests For Information, shop drawings, other directives and submittals and information provided by the Design/Builder.
- 6.3.12 The design professionals shall respond to Owner's requests to review design and construction issues during the construction warranty period; coordinate and participate in the end of the warranty period inspection in accordance with the Florida Polytechnic University Design and Commissioning Services Guide; and produce a summary report documenting deficiencies, problems, or other outstanding items.

#### **6.4 Construction Supervision.**

- 6.4.1 Commencing with the award of the first subcontract and terminating on the date of Final Completion, the Design/Builder shall provide the services described herein.
- 6.4.2 The Design/Builder shall, as the Owner's construction representative during construction, advise and consult with the Owner, and provide administration of the Construction Documents.
- 6.4.3 The Design/Builder shall supervise and direct the Work at the Site. The Design/Builder shall, at a minimum, staff the Project Site with personnel who shall:
- (a) supervise and coordinate the Design/Builder's personnel and act as its primary liaison with the Owner;
  - (b) coordinate trade contractors and suppliers, and supervise Site construction management services;
  - (c) be familiar with all trade divisions and trade contractors' scopes of Work, all applicable building codes and standards, and the Contract for Design/Build Construction;
  - (d) check, review, coordinate and distribute shop drawings and check and review materials delivered to the Site, regularly review the Work to determine its compliance with the Construction Documents and this Agreement, confer with the appropriate Owner's consultant(s) as necessary to assure acceptable levels of quality;
  - (e) prepare and maintain Project records and process documents;
  - (f) schedule and conduct weekly progress meetings with subcontractors to review such matters as jobsite safety, job procedures, construction progress, schedule, shop drawing status and other information as necessary and provide notification of, and minutes from, such meetings to Owner;

- (g) schedule and conduct weekly progress meetings with the Owner to review such matters as construction progress, schedule, shop drawing status, and other information as necessary, and;
- (h) make provision for Project security to protect the Project site and materials stored off-site against theft, vandalism, fire and accidents as required by the Design/Build General Terms and Conditions.

**6.5 Direct Purchase Program.** The Owner may elect to implement a direct purchase program whereby it may purchase materials and equipment included in any Subcontractor's bid for a portion of the Work directly from the supplier of such materials or equipment in order to achieve sales tax savings. Such materials and equipment are referred to as "Direct Purchase Materials". If Owner elects to implement a direct purchase program, it shall so notify Design/Builder in writing, and the terms of this paragraph shall govern, along with any Owner policy on Direct Purchase Materials. Design/Builder shall obtain Design/Builder's risk insurance on the Direct Purchase Materials naming Owner as the insured or an additional insured, provided Owner shall reimburse Design/Builder for the cost of such insurance as provided by this Agreement. Design/Builder shall act as Owner's agent and be responsible for safeguarding all Direct Purchase Materials.

**6.6 Reporting.** The Design/Builder shall provide a monthly report in searchable PDF format summarizing the progress of the Project to the Owner and Owner's user group representatives including information on the subcontractors' Work, percentage of completion of the Work, current estimating, subcontract buyouts, computerized updated monthly Critical Path Method scheduling and Project accounting reports, including projected time to completion and estimated cost to complete the Work, progress photographs; project directory, logs for Requests for Information, submittals and shop drawings, Change Orders, cost change proposals, field directives, safety meetings, deficiencies, weather conditions and meeting minutes.

**6.7 Energy Rebate Program.** Design/Builder shall gather product data and other information as needed to assist Owner with its application for energy rebates based on the materials and products installed in the facility.

## **ARTICLE 7. COMPENSATION**

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**7.1 Project Budget.** Owner shall pay Design/Builder for the performance of the Design Services, Pre-Construction Services, the Work and the Reimbursable Expenses permitted hereunder an amount not to exceed Project Budget which shall in no event exceed the amount set forth on **Exhibit A**, Owner's budget for the design and construction of the Project, subject to adjustments permitted hereunder. There shall be no re-allocation of amounts among such categories, without Owner's written consent. The Project Budget shall be comprehensive in scope in that all costs of the Design/Builder necessary for the proper execution of the Design Services and the Work shall be clearly identified and no other cost shall be allowed, subject to adjustments permitted hereunder. In the event that upon full completion of the Design Services and Work for the Project, the actual cost thereof is less than the Project Budget, Owner shall be entitled to such difference.

- 7.2 **Payment for Design Services.** The amount of the Project Budget allocated to Basic Design Services shall be paid based on Design/Builder's achievement of each of the design milestones described on **Exhibit G**. Upon achievement of each such milestone, Design/Builder shall submit an Application for Payment with appropriate back-up documentation. If Owner's budget for the Project increases or Owner's Facilities Program for the Project changes and Owner requests additional design services in connection therewith, then Design/Builder shall be compensated by Owner for such additional design services pursuant to an agreement to be entered into by Owner and Design/Builder at the time Owner requests such additional design services pursuant to Article 5. Except as permitted in the foregoing sentence, the fees for basic Design Services shall not increase as a result of increases in Owner's budget or changes in Owner's Facilities Program for the Project.
- 7.2.1 **Reimbursable Expenses.** Design/Builder shall be entitled to compensation for the following reimbursable expenses as authorized by this Agreement in **Exhibit G** or by way of an Additional Services Authorization:
- 7.2.1.1 Expenses of transportation, meals and lodging of principals and employees, when traveling in connection with services and duties specifically related to this Project – other than those services and duties defined in Articles 4 and 6 – and when authorized in writing by the Owner. Rates for transportation and meals are as set forth in §112.061, Florida Statutes, on the effective date of this Agreement. Rates for lodging are as set forth by the General Services Administration (GSA) on the effective date of this Agreement. See **Exhibit E**.
- 7.2.1.2 Expenses associated with reproduction of Drawings and Specifications, excluding copies for Design/Builder's office use and sets required at each phase for the Owner's review and approval as set forth on **Exhibit D**.
- 7.2.1.3 If authorized in advance by the Owner in writing, the actual expense of overtime work requiring higher than regular rates.
- 7.2.1.4 If authorized in advance by the Owner in writing, the additional expense of renderings, models, and mock-ups more extensive than those required as part of Basic Services.
- 7.2.1.5 Fees paid for securing approval of authorities having jurisdiction over the Project, if any.
- 7.2.2 **Additional Design Services.** Payments for Additional Services shall be made according to the terms of the authorization upon presentation of a detailed invoice prepared in accordance with requirements set forth in the Florida Polytechnic University Design and Commissioning Services Guide.
- 7.2.3 **Timeliness of Payments.** Undisputed payments owed shall be paid by Owner within thirty (30) days of receipt of a payment request which meets the requirements of this subsection.
- 7.3 **Payment for Pre-Construction Services.** The amount of the Project Budget allocated to pre-construction services shall be paid based on the schedule attached hereto and incorporated herein by reference as **Exhibit G**. Design/Builder shall submit an Application for Payment with appropriate back- up documentation.
- 7.4 **Payment for Construction Services.** The Owner shall pay, and the Design/Builder shall accept, as full and complete payment for the Construction Services, only the sum of the following items, which sum shall not exceed the GMP for the Work:



- (a) the aggregate net cost directly paid by the Design/Builder to subcontractors pursuant to written subcontracts to perform the Work (CSI Divisions 2-17) (the “Cost of the Work”), not to exceed the guaranteed maximum set forth on **Exhibit F**;
- (b) the compensation for the Design/Builder’s provision of management services (the “Design/Builder’s Staffing Costs”), not to exceed the guaranteed maximum set forth on **Exhibit F**;
- (c) the aggregate net cost of the Design/Builder’s General Conditions (the “General Conditions Cost”), not to exceed the guaranteed maximum set forth on **Exhibit F**; and
- (d) Design/Builder’s Overhead and Profit, not to exceed the guaranteed maximum set forth on **Exhibit F**.

7.4.2 Staffing Costs. Design/Builder’s Staffing Costs include and are limited to actual expenditures or negotiated amounts for the following items as authorized in the GMP Proposal approved by Owner:

- (a) The cost of its supervisory, technical, administrative and clerical personnel engaged in supervision and management of the Work on the Project site;
- (b) the cost of periodic site visits for supervisory, inspection, oversight, or management of the Project by specific “home office” personnel as agreed upon and identified in the GMP proposal;
- (c) direct costs incurred in the Work with the exception of those specifically enumerated compensable as a General Conditions Cost or a Cost of the Work;
- (d) reasonable expenses of the Design/Builder’s personnel incurred while traveling in discharge of duties directly connected with the Work;
- (e) expenses incurred for relocation and temporary living allowances of personnel required for the Work, if required by the Project; and
- (f) any costs or expenses incurred by the Design/Builder, not included in the General Conditions Cost, for provision of management services necessary to complete the Project in an expeditious and economical manner consistent with this Agreement and the best interests of Owner.

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

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

EXHIBIT V - DESIGN BUILD CONTRACT

- (d) costs of document reproduction including bid sets, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office;
- (e) that portion of insurance and bond premiums directly attributable to this Contract for Design/Build Construction. Premiums shall be net of trade discounts, volume discounts, dividends and other adjustments;
- (f) sales, use or similar taxes imposed by a governmental authority and paid by the Design/Builder, and directly related to the Work;
- (g) fees and assessments for the building permit and for other permits, licenses and inspections for which the Design/Builder is required by this Agreement to pay, including deposits lost for causes other than Design/Builder's fault, but expressly excluding any legal costs and expenses, including attorneys' fees and costs associated with the Project;
- (h) the cost of obtaining and using all utility services required for the Work;
- (i) the cost of crossing or protecting any public utility, if required, and as directed by the Owner;
- (j) all reasonable costs and expenditures necessary for the operation of the Site office, such as stationary, supplies, furniture, fixtures, office equipment and field computer services provided that quantity and rates are subject to Owner's prior written approval;
- (k) the cost of secure off-site storage space or facilities approved in advance by Owner;
- (l) printing and reproduction of the Construction Documents;
- (m) rental charges for temporary facilities, and for machinery, equipment, and tools not customarily owned by construction workers; however any rental charge shall not exceed the purchase price of such facilities, machinery, equipment or tools;
- (n) cost of surveys, measurements and layout work reasonably required for the execution of the Work or by the Construction Documents; and
- (o) other expenses or charges properly incurred and paid in the prosecution of the Work, with the prior written approval of the Owner, but specifically excluding legal costs, including attorneys' fees and court costs.

7.4.4 Design/Builder's Overhead and Profit. The Design/Builder's Overhead and Profit is a fixed percentage of the:

- (a) Guaranteed Maximum Cost of the Work;
- (b) Design/Builder's Contingency;
- (c) Guaranteed Maximum Design/Builder Staffing Costs, and;
- (d) Guaranteed Maximum General Conditions Cost (excluding bond and insurance costs), as agreed upon in **Exhibit E**.

- (e) Overhead and Profit covers the costs of all of Design/Builder's overhead and expenses related to the Work, including home or branch office employees or consultants not at the Project site (except those staffing costs paid pursuant to Section 7.4.2) and general operating expenses of the Design/Builder's principal and branch offices related to the Work (non-field offices), such as internet service, telephone service and long-distance and zone telephone charges, postage, office supplies, expressage, and other similar expenses.

7.4.5 Design/Builder's Contingency. The Design/Builder's Contingency, established in the GMP, may be utilized, with the Owner's concurrence, for the following reasons:

- (a) Errors and omissions in the Design/Builder's design, bidding and scoping processes provided the additional work adds previously excluded value to the Project (but expressly excluding any demolition or other costs related to the substitution of such work for previously installed work and associated design fees);
- (b) reasonable schedule recovery;
- (c) means, methods, and materials reasonably inferred from the Construction Documents;
- (d) subcontractor non-performance or default;
- (e) work not included in the Construction Documents which is necessary to cause the Project to conform to applicable building codes but was not identified as missing during the review of Construction Documents (through no fault of the Design/Builder), but expressly excluding any legal costs and expenses, including attorneys' fees and costs associated with the Project;
- (f) other costs incurred by the Design/Builder that are not Cost of the Work, General Conditions Cost or Design/Builder Staffing Costs, but expressly excluding any legal costs and expenses, including attorneys' fees and costs associated with the Project; and
- (g) costs and expenses incurred by the Design/Builder, not included in the General Conditions Cost, for provision of management services necessary to complete the Project in an expeditious and economical manner consistent with this Agreement and the best interests of Owner, but expressly excluding any legal costs and expenses, including attorneys' fees and costs associated with the Project.
- (h) If upon completion of 75% of the Work, the remaining amount of contingency exceeds one-half of the amount of the initial post-buyout contingency, such excess shall be transferred via Change Order to the Owner.

7.4.6 Buyout Savings.

- (a) If Design/Builder receives bids for portions of the Work which are less than the amounts budgeted in the GMP proposal approved by Owner for such portions of the Work, such buyout savings shall first be utilized to offset shortfalls on other bid packages.
- (b) If, after offsetting any shortfalls, buyout savings remain, at the time provided on **Exhibit F** for the award of subcontracts, all buyout savings shall be returned to the Owner via "no cost" change order.

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

- (a) Customer or designer-requested changes;
- (b) additive bid alternates and deductive credits; and
- (c) differing/unforeseen existing conditions as described in the Design/Build General Terms and Conditions.

7.4.8 Compensation for Change Orders. Amount owed by the Owner to the Design/Builder for the Work shall be adjusted by duly authorized change order in accordance herewith and the Design/Build General Terms and Conditions.

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

7.4.8.2 Decrease in Cost of Work. If the Cost of the Work is decreased by change order, payment due from the Owner to the Design/Builder shall be reduced by the amount the Design/Builder is no longer obligated to pay subcontractors or suppliers for performance of the Work. Decreases in the Cost of the Work shall inure to the benefit of the Owner and shall not become part of the Design/Builder's Contingency.

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

7.4.9 Applications for Payment for the Work. Applications for payment shall be submitted in detail sufficient for an audit thereof. Within twenty (20) days of receipt of the Design/Builder's application for payment, properly prepared pursuant to Owner's Policy, the Owner shall pay the Design/Builder the amount approved by Owner, less retainage, unless there is a dispute about the amount of compensation due to the Design/Builder.

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

7.5 **Vendor Ombudsman.** A Vendor Ombudsman has been established within the Owner's Office of Business Affairs. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from the Owner. The Vendor Ombudsman may be contacted at 352-392-1241.

**ARTICLE 8. LIQUIDATED DAMAGES FOR DELAY**

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- 8.1** Inasmuch as failure to Substantially Complete the Work within the time fixed in **Exhibit F** will result in injury to the Owner, and as damages arising from such failure cannot be calculated with any degree of certainty, it is agreed that if the Work is not Substantially Completed within the time provided Exhibit F, or within such further time, if any, as shall be allowed for time extensions in accordance with the provisions of this Agreement, the Design/Builder shall pay to the Owner as liquidated damages for such delay, and not as a penalty, the amount set forth in Exhibit E for each calendar day elapsing between the date fixed for Substantial Completion and the date such Substantial Completion is fully accomplished. The parties agree that said liquidated damages are reasonable given existing circumstances, including, without limitation, the range of harm that is foreseeable and the anticipation that proof of damages would be costly and impractical.
- 8.2** The liquidated damages shall be payable in addition to any excess expenses or costs payable by the Design/Builder to the Owner under the Design/Build General Terms and Conditions, and shall not preclude the recovery of damages by the Owner under other provisions of this Agreement, except claims related to Design/Builder's delays in Substantial Completion. Owner's right to receive liquidated damages shall in no manner affect the Owner's right to terminate the Agreement. The Owner's exercise of the right to terminate shall not release the Design/Builder from the obligation to pay said liquidated damages.
- 8.3** When it reasonably believes (i) that Substantial Completion will be inexcusably delayed; or (ii) that the Design/Builder will fail to achieve Final Completion by the date of Final Completion, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Design/Builder the daily amount specified for liquidated damages in this Article for each calendar day of the unexcused delay. If and when the Design/Builder overcomes the delay in timely achieving Substantial Completion or Final Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Design/Builder those funds withheld, but no longer applicable, as liquidated damages.

**ARTICLE 9. INSURANCE AND BONDS**

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**9.1 General Requirements for All Insurance.**

- 9.1.1 All insurance policies shall require that the insurer shall provide at least thirty (30) calendar days written notice to Owner if a policy is to be canceled, modified, or the coverage thereunder reduced before the expiration date thereof. Design/Builder shall provide Owner with a copy of endorsement(s) to the policies and cancellation and/or non-renewal notices evidencing the same.
- 9.1.2 All Certificates of Insurance provided to Owner shall be dated and show the name of the insurer, the number of the policy, its effective date, and its termination date.
- 9.1.3 The Florida Polytechnic University Board of Trustees and the Florida Board of Governors shall be named as additional insureds on both the General Liability and Auto Liability policies.
- 9.1.4 All policies shall include a waiver of subrogation endorsement and a severability of interests endorsement.
- 9.1.5 Owner shall not be liable for amounts that may represent a deductible in any insurance policy, and the payment of such deductibles shall be the sole responsibility of the Professional or consultant providing such insurance. Design/Builder and its consultants shall reveal the amount of such deductibles, if any, for each policy.

9.1.6 Design/Builder shall, simultaneous with Design Builder's execution of this Agreement (and thereafter on or before the expiration date of an expiring policy, or upon Owner's request), provide to Owner copies of each insurance policy required by this Agreement, including all endorsements, riders, etc., in order to verify that the contractual insurance requirements set forth herein are being satisfied. .

**9.2 Design Phase.** In conjunction with the design phase of the Project (and continuing for as long as specified herein), Design/Builder shall carry insurance as prescribed herein. All insurance policies shall be with a company or companies lawfully authorized to do business in Florida, and with an A.M. Best rating of no less than A/XV. 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.

9.2.1 Professional Liability.

9.2.2 Design/Builder, and the consultants identified in **Exhibit C**, shall each carry a policy or policies of professional liability insurance protecting them and Owner from liability resulting from Design/Builder's or its consultants' professional errors or omissions which may arise from, or in connection with, the performance of Design/Builder's professional services under this Agreement, or from or out of any act or omission of Design/Builder, its consultants, or their respective officers, directors, agents, and employees. Such coverage shall be maintained during the term of the Agreement and for at least three years following completion of all operations to be performed. The policy or policies shall have a limit of liability not less than the amount set forth in **Exhibit E**. The policy retroactive date will coincide with or precede the start of design services being provided hereunder (including subsequent policies purchased as renewals or replacements). The Design/Builder shall make every effort, and cause its consultants to make every effort, to maintain similar insurance for at least three (3) years following Project completion. If the insurance is terminated for any reason, the Design/Builder agrees, and will cause its consultants to agree, to purchase an extended reporting provision of at least three years to report claims arising from work that is being performed. The policy will allow for reporting of circumstances or incidents that might give rise to future claims.

9.2.3 Other Liability Insurance. Design/Builder shall also carry and maintain the following policies:

- (a) Occurrence basis comprehensive general liability insurance (including broad form contractual coverage) and automobile liability insurance, with minimum limits of \$1,000,000 and \$1,000,000, respectively, combined single limit per occurrence, protecting it and Owner from claims for bodily injury (including death) and property damage which may arise from or in connection with the performance of Design/Builder's services under this Agreement, or from or out of any act or omission of Design/Builder, its officers, directors, agents, and employees. The general liability and automobile liability insurance policies shall provide for cross-liability coverage.
- (b) Workers' compensation insurance as required by applicable Florida law (or employer's liability insurance, with minimum limits of \$100,000, with respect to any employee not covered by workers' compensation).

- 9.3** **Construction Phase.** In conjunction with the construction phase of the Project, Design/Builder shall carry insurance in such forms and amounts, and for such periods, as are set forth in the Design/Build General Terms and Conditions. Design/Builder shall also, prior to the initiation of the construction phase of the Project, obtain the payment and performance bonds described in the Design/Build General Terms and Conditions.

#### **ARTICLE 10. AUDIT RIGHTS**

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- 10.1** Owner may, upon reasonable notice, audit the records of the Design/Builder and its subcontractors and suppliers during regular business hours, during the term of this Agreement and for a period of three (3) years after final payment is made by Owner to Design/Builder under this Agreement or longer, if required by law. Such audits may be performed by an Owner's representative or an outside representative engaged by Owner. Design/Builder shall retain all records for the Project during performance of the Project and for at least three (3) years after Final Completion.
- 10.2** For purposes hereof, Design/Builder's "records" means any and all information, materials and data of every kind and character, whether hard copy or in electronic form, which may, in Owner's judgment have any bearing on or pertain to the Contract for Design/Build Construction, including, without limitation, books, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, written policies and procedures, time sheets, payroll registers, payroll records, cancelled payroll checks, subcontract files (e.g., including proposals of successful and unsuccessful bidders, bid recap), original estimates, estimating work sheets, correspondence, change order files (including documentation covering negotiated settlements), back-charge logs and supporting documentation, invoices and related payment documentation, general ledgers, records detailing cash and trade discounts earned, insurance rebates and dividends, superintendent reports, drawings, receipts, vouchers and memoranda.
- 10.3** Owner's authorized representative shall have reasonable access to the Design/Builder's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the Contract for Design/Build Construction, shall be provided adequate and appropriate work space at Design/Builder's facilities, may count employees at the Site, may be present for the distribution of payroll and shall have such other rights of access as may be reasonably necessary to carry out an audit.
- 10.4** If an audit discloses overpricing or overcharge, then Design/Builder shall refund the overpayment. If an audit discloses overpricing or overcharges of one percent (1%) of the total amount paid hereunder or \$200,000 whichever is less, in addition to making adjustments for the overcharges, the reasonable actual cost of the Owner's audit shall be reimbursed to the Owner by the Design/Builder. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Design/Builder's invoices and/or records shall be made within ninety (90) calendar days from presentation of Owner's findings to Design/Builder.
- 10.5** Design/Builder shall ensure notice of Owner's audit rights is provided to its subcontractors, suppliers, and any other vendor providing services or materials for the Project and shall ensure that each agreement it enters into pursuant hereto includes the provisions of this Article 10.

**ARTICLE 11. USE OF DESIGN/BUILDER'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS**

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- 11.1 The Drawings, specifications and other documents prepared by the Design/Builder for this Project are instruments of the Design/Builder's service for use solely with respect to this Project, except as may be expressly permitted herein. The Design/Builder shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including the copyright. The Owner shall be permitted to retain copies, including electronic format and reproducible copies, of the Design/Builder's Drawings, specifications and other documents and may use the same, without compensation to the Design/Builder, as may be necessary or desirable in the operation, maintenance, construction and renovation of the Project and the remainder of Owner's campus, including, without limitation, additions or renovations to this Project and submittals or distribution of the same to meet official regulatory requirements or other similar requirements, provided in no event may the Owner use the Design/Builder's Drawings, specifications, or other documents for the construction of a new facility unless agreed to in writing by the Design/Builder and as otherwise permitted by Florida law.
- 11.2 The Design/Builder shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Design/Builder's promotional and Design/Builder materials. The Design/Builder's materials shall not include the Owner's confidential or proprietary information.

**ARTICLE 12. MISCELLANEOUS**

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- 12.1 **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without regard to its choice of law provisions and venue shall lie in the courts in Alachua County, Florida.
- 12.2 **Integration.** This Agreement represents the entire and integrated agreement between the Owner and the Design/Builder, and supersedes all prior negotiations, representations or agreements, either written or oral, for the Project. This Agreement may be amended only by written instruments signed by both the Owner and the Design/Builder.
- 12.3 **Severability.** If any provision of this Agreement, or the application thereof, is determined to be invalid or unenforceable, the remainder of that provision and all other provisions shall remain valid and enforceable.
- 12.4 **Waiver.** No provision of this Agreement may be waived except by written agreement of the parties. A waiver of any provision on one occasion shall not be deemed a waiver of that provision on any subsequent occasion, unless specifically stated in writing. A waiver of any provision shall not affect or alter the remaining provisions of this Agreement.
- 12.5 **Strict Compliance.** No failure of the Owner to insist upon strict compliance by the Design/Builder with any provision of this Agreement shall operate to release, discharge, modify, change or affect any of the Design/Builder's obligations.
- 12.6 **Successors and Assigns.** Owner and Design/Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors and assigns of such other party with respect to all covenants of this Agreement. Design/Builder shall not assign (whether partially or wholly) this Agreement whether by operation of law or otherwise, without the written consent of Owner. If Design/Builder makes an assignment in accordance with this provision, Design/Builder shall nevertheless remain legally responsible for all obligations arising under the Agreement, unless otherwise agreed by Owner.



- 12.7 **Third-Party Beneficiaries.** This Agreement shall inure solely to the benefit of the parties hereto and their successors and assigns, and, except as otherwise specifically provided in this Agreement, nothing contained in this Agreement is intended to or shall create a contractual relationship with, or any rights or cause of action in favor of, any third party against either the Owner or the Design/Builder.
- 12.8 **Assignment of Anti-Trust Claims.** In consideration for this Agreement, the Design/Builder hereby conveys, sells, assigns and transfers to the Owner all of its right, title and interest in and to any and all causes of action it may now have or may hereafter acquire under the antitrust laws of the United States and the State of Florida for price fixing, relating to the goods or services purchased or acquired by the Owner under this Agreement.
- 12.9 **Drug Free Workplace.** If required pursuant to 440.102(15), Florida Statutes, Design/Builder shall implement, and cause its applicable subcontractors to implement, a drug-free workplace program.
- 12.10 **Access.** Design/Builder shall provide Owner and its representatives access to the Work in preparation and progress wherever located.
- 12.11 **Ownership of Records; Public Access to Documents.** Any books, documents, records, correspondence or other information kept or obtained by the Owner or furnished by the Design/Builder to Owner in connection with the services contemplated herein are property of Owner. Design/Builder acknowledges and agrees that any and all such books, documents, records, correspondence or other information may be public records under Chapter 119, Florida Statutes. Design/Builder agrees to promptly comply with any order of a Court having competent jurisdiction which determines that records maintained by Design/Builder are “public records” which must be available to the public. Design/Builder acknowledges and agrees that any and all such books, documents, records, correspondence or other information may also be subject to inspection and copying by members of the public pursuant to Chapter 119, Florida Statutes. This Agreement may be unilaterally canceled by the Owner if the Design/Builder or its consultants refuse to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, which are made or received by the Design/Builder or its consultants in conjunction with this Agreement.
- 12.12 **Annual Appropriations.** The Owner’s performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.
- 12.13 **Public Entity Crime.** Design/Builder represents and warrants that it is not on the convicted vendor list for a public entity crime committed within the past 36 months. Design/Builder further represents and warrants that it will neither utilize the services of, nor contract with, any supplier, subcontractor, or consultant for an amount in excess of \$15,000.00 in connection with this Project if such supplier, subcontractor or consultant has been placed on the convicted vendor list within the past 36 months.
- 12.14 **No Contingency Fee.** The Design/Builder represents and warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the Design/Builder) 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 Design/Builder) any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.
- 12.15 **No Bribes or Kickbacks.** The Design/Builder shall not by any means:
- (a) induce any person or entity employed in the construction of the Project to give up any part of the compensation to which that person or entity is entitled;

- (b) offer nor accept any bribes or kick-backs in connection with the Project from or to any individual or entity, including any of its trade contractors, subcontractors, consultants, suppliers or manufacturers of Project goods and materials; or
- (c) without the express written permission of the Owner, call for or by exclusion require or recommend the use of any subcontractor, consultant, product, material, equipment, system, process or procedure in which the Design/Builder has a direct or indirect proprietary or other pecuniary interest.

- 12.16 Independent Contractor.** Design/Builder is an independent contractor to Owner.
- 12.17 Exhibits.** All exhibits referenced herein are attached hereto and incorporated herein by reference.
- 12.18 Modifications.** Any modifications to the Contract for Design/Build Construction are set forth on **Exhibit H.**
- 12.19 Small Businesses.** Owner is an equal opportunity institution and as such, encourages the use of small businesses including women and minority-owned small businesses in the provision of construction related services. Small businesses should have a fair and equal opportunity to compete for dollars spent by the Florida Polytechnic University to procure construction-related services. Competition ensures that prices are competitive and a broad vendor base is available. Design/Builder shall use good faith efforts to ensure opportunities are available to small businesses, including women and minority-owned businesses, on the Project.
- 12.20 Indemnification; Hold Harmless.** To the maximum extent permitted by law, Design/Builder hereby agrees to indemnify and hold Owner and its officers and employees harmless for, from and against all liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by (i) the negligence, recklessness, or intentionally wrongful conduct of the Design/Builder and other persons employed or utilized by the Design/Builder, including its consultants, in the performance of the Agreement; or (ii) Design/Builder's breach of any covenant, term, or provision of this Agreement.
- 12.21 Breach Remedies.** Owner's selection of one or more remedies for breach of this Agreement shall not limit the Owner's right to invoke any other remedy available to the Owner under this Agreement or by law.
- 12.22 Survival.** All provisions of this Agreement which contain continuing obligations shall survive its expiration or termination.
- 12.23 Capitalized Terms.** Capitalized terms used herein but not defined herein shall have the meaning ascribed thereto in the Design/Build General Terms and Conditions.
- 12.24 Sovereign Immunity.** Design/Builder acknowledges and agrees that nothing contained herein shall be construed or interpreted as (i) denying to Owner any remedy or defense available to it under the laws of the State of Florida; (ii) the consent of the Owner or the State of Florida or their agents and agencies to be sued; or (iii) a waiver of sovereign immunity of the Owner or of the State of Florida beyond the limited waiver provided in section 768.28, Florida Statutes.
- 12.25 Waiver of Certain Claims, Damages.** The Design/Builder shall not be entitled to, and hereby waives any monetary claims for, or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any indirect or consequential damages.

[Signatures on Following Page]

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

**FOR THE DESIGN/BUILDER:**

**DESIGN/BUILDER NAME**

**AS WITNESSED BY:**

\_\_\_\_\_  
*Name, Title*

X  
\_\_\_\_\_  
*Name, Name*

\_\_\_\_\_  
*Click or tap to enter a date.*  
DATE

**ATTEST:**

X  
\_\_\_\_\_  
*Name, Name*

\_\_\_\_\_  
CORPORATE SEAL

**FOR THE OWNER:**

**FLORIDA POLYTECHNIC UNIVERSITY  
BOARD OF TRUSTEES**

**AS WITNESSED BY:**

\_\_\_\_\_  
*Dr. Randy Avent, President  
Florida Polytechnic University*

X  
\_\_\_\_\_

\_\_\_\_\_  
*Click or tap to enter a date.*  
DATE

X  
\_\_\_\_\_

**REVIEWED:**

**APPROVED:**

\_\_\_\_\_  
*Office of the General Counsel  
Florida Polytechnic University*

\_\_\_\_\_  
*Dr. Allen Bottorff, VP Administration & Finance  
Florida Polytechnic University*

\_\_\_\_\_  
*Click or tap to enter a date.*  
DATE

\_\_\_\_\_  
*Click or tap to enter a date.*  
DATE

**EXHIBIT A**

**PROJECT DESCRIPTION, PROJECT BUDGET, AND DOCUMENTS AND GUIDELINES**

**DESCRIPTION OF PROJECT**

FPU Project No: \_\_\_\_\_  
FPU Project Name: \_\_\_\_\_  
Location/Address: Main Campus of Florida Polytechnic University  
Program: \_\_\_\_\_

**DOCUMENTS AND GUIDELINES**

1. Owner’s policies and project management guides listed under ‘Forms & Standards’ at [www.floridapoly.edu/](http://www.floridapoly.edu/)
2. [Insert description or write "None"]
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_

**BUILDING INFORMATION MODELING (BIM)**

The Professional shall develop the design at each stage using Building Information Modeling (BIM) software and related technologies –specifically, the 2020 or current versions of Autodesk "Revit Architecture" for architectural, Autodesk "Revit Structure" for structural content, and Autodesk "Revit MEP" for mechanical, electrical, and plumbing drawings. These models shall be used by the Professional for design coordination, collision avoidance, and production of traditional two-dimensional drawings, and may be used for energy analysis, day lighting analysis, and other building or systems analysis. The implementation and use of BIM shall be discussed by the Professional, Owner, and Construction Manager at a BIM kickoff meeting as early in design as possible, with the agreed-upon parameters captured by the Professional in a project-specific BIM Execution Plan using Owner’s template. The BIM Execution Plan shall be updated and augmented by the Professional, with concurrence and agreement by the Owner and Construction Manager, throughout design and construction as needed to solidify details regarding terminology, schedule, content, format, risk allocation, and use of the model(s). Professional shall provide the BIM model(s) to the Construction Manager throughout design and construction subject to the limitations outlined in the BIM Execution Plan for scheduling, coordination, resource management, estimating, and other uses deemed beneficial to the Owner for delivery of the Project. Professional shall update the BIM model(s) at the end of construction to reflect the actual, "as-built" conditions per requirements as specified in the BIM Execution Plan. Final as-built model(s) shall be delivered to the Owner in the BIM format(s) as originally developed as linked Revit-based models containing the architectural, structural, and M/E/P content including sheet(s) elements reflecting content and format as depicted in the record drawings.

**BIM 360 POLICIES AND PROCEDURES**

BIM 360 Docs is currently being used for electronic Design Review and the Building Permit Process. Additional BIM 360 Docs features, and other BIM 360 modules, will be implemented over time. Detailed operational policies and procedures will be maintained in a BIM 360 Instruction Manual available at the Owner's [floridapoly.edu](http://floridapoly.edu) website. Projects will be automatically generated in BIM 360 from the FLORIDA POLY Project Tracker system by the FLORIDA POLY Project Manager, who will add team members requiring access to BIM 360. The information needed to start the Building Permit Application process will be electronically transmitted by FLORIDA POLY Project Tracker System to the EH&S Building Department.

**PROJECT BUDGET**

Design Services (including Reimbursable Expenses) <i>Expand as necessary</i>	\$ ###
Pre-Construction Services <i>Expand as Necessary</i>	\$ ###
Construction (“The Work”) <i>Expand as necessary</i>	\$ ###
<b>Total Design/Build Budget</b>	<b>\$ ###</b>

**EXHIBIT B**

**PROJECT SCHEDULE**

Ref #	PHASE	START	END
4.6	(PD) Pre-Design / Programming / Program Verification PD Review		
4.9	(CSD) Concept Schematic Design and Cost Estimate CSD Review		
4.10	(ASD) Advanced Schematic Design and Cost Estimate ASD Review ASHRAE Energy Model <i>[PM Note: Delete/Move to different design phase if needed]</i>		
4.11	(DD) Design Development Phase and Cost Estimate DD Review Life Cycle Cost Analysis		
4.12	(60% CDs) 60% Construction Documents and Cost Estimate 60% CDs Review		
Ex. F	"Fast Track" Design and GMP Proposal - 100% Site, 100% Foundations, etc. "Fast Track" Design Review		
4.12	(100% CDs) 100% Construction Documents and GMP Proposal 100% CDs Review (incl. State Fire Marshall) ASHRAE Energy Model <i>[PM Note: Delete/Move to different design phase if needed]</i>		
4.16	(CCD) Corrected/Conformance Document Set		

**The timeframes below are estimated. Binding timeframes will be established in the Authorization for Construction (Exhibit F).**

Bidding and Award		
Construction		
(SC) Substantial Completion		
(FC) Final Completion		
(PO) Post Occupancy Inspection & Report		

**EXHIBIT C**

**SCHEDULE OF SERVICES, CONSULTANTS, AND PERSONNEL**

**BASIC SERVICES**

*(THIS SCHEDULE LISTS SERVICES INCLUDED IN THE LUMP SUM FEE INITIALLY BASED ON THE FPC DESIGN SERVICES FEE CURVE AND INCLUDED IN THE TOTAL FEES AND SCHEDULE OF PAYMENTS AS SET FORTH IN EXHIBIT G)*

<b>Y</b>	<b>N</b>	<b>SERVICES</b>	<b>CONSULTANTS</b>
		Architectural Design	(name of firm)
		Civil Engineering	(name of firm)
		Landscape Architecture	(name of firm)
		Structural Engineering	(name of firm)
		Mechanical Engineering	(name of firm)
		Electrical Engineering	(name of firm)
		Plumbing Engineering	(name of firm)
		Fire Protection Eng. (incl. hydraulic calcs.)	(name of firm)
		BICSI, Communications, Distribution Designer	(name of firm)
		Cost Estimating & Report	(name of firm)
		Renderings/Models/Animations	(name of firm)
		Audio-Visual Systems Integration & Design	(name of firm)
		Security Systems Integration & Design	(name of firm)

**CERTAIN TRADITIONAL ADDITIONAL SERVICES CONSIDERED BASIC SERVICES [5.4]**

*(THIS SCHEDULE LISTS OTHER SERVICES TO BE INCLUDED IN THE TOTAL FEES AND SCHEDULE OF PAYMENTS AS SET FORTH IN EXHIBIT G)*

<b>Y</b>	<b>N</b>	<b>SERVICES</b>	<b>CONSULTANTS</b>
		Topographical Survey	(name of firm)
		Geotechnical Survey	(name of firm)
		Radon Survey	(name of firm)
		Existing Conditions Survey	(name of firm)
		Threshold Inspection	(name of firm)
		Detailed Cost Estimating	(name of firm)
		Historic Research & Explorative Testing	(name of firm)
		Hazardous Materials Survey / Work Plan	(name of firm)
		Life-Cycle Cost Analysis	(name of firm)
		Furniture Design and Selection	(name of firm)
		Fast-Track Design (early site package)	(name of firm)
		Additional Design Team Site Visits	(name of firm)
		HVAC Commissioning	(name of firm)
		IEQ/IAQ Commissioning	(name of firm)
		Building Envelope Commissioning (incl. roof)	(name of firm)
		Programming, Site Selection, Benchmarking	(name of firm)
		Lab and Cleanroom Design	(name of firm)
		Process Engineering and "Fit-Out"	(name of firm)

EXHIBIT V - DESIGN BUILD CONTRACT

Y	N	SERVICES	CONSULTANTS
		Vibration Analysis	(name of firm)
		Electromagnetic Interference (EMI) and Radio Frequency Interference (RFI) Analysis	(name of firm)
		Cleanroom Certification	(name of firm)
		Validation	(name of firm)
		Energy Model	(name of firm)
		Acoustic Consultation	(name of firm)
		Measurement & Verification Plan	(name of firm)
		Site Master Plan	(name of firm)
		Agency Permits (SWFWMD, FDOT, FDEP or Other)	(name of firm)

**INSERT DESIGN/BUILD PERSONNEL**



**EXHIBIT D**

**REQUIREMENTS FOR SUBMITTALS TO OWNER**

REF#	PHASE	FULL SIZE		1/2 SIZE		PROJECT SPECIFIC REQUIREMENTS
			S & S		S & S	
<b>4.6</b>	Pre-Design Phase ( <b>PD</b> )					
	Revised Facilities Program					BIM360/PDF Electronic
<b>4.9</b>	Concept Schematic Design ( <b>CSD</b> )					
<b>4.13</b>	CSD Construction Report					BIM360/PDF Electronic & Revit
<b>4.10</b>	Advanced Schematic Design ( <b>ASD</b> )					BIM360/PDF Electronic & Revit
<b>4.13</b>	ASD Construction Report					BIM360/PDF Electronic
	FPU Committees – Presentation & Schematic Review					Site plan w/footprint, tree removal plan, parking impact, etc. – electronic PowerPoint Presentation
	ASHRAE Energy Model					including input and output data, BIM360/PDF Electronic
	Life Cycle Costs					BIM360/PDF Electronic
<b>4.11</b>	Design Development Phase ( <b>DD</b> ) & Life Cycle Cost Analysis Report					BIM360/PDF Electronic & Revit
<b>4.13</b>	DD Construction Report					BIM360/PDF Electronic
	FPU Committees Presentation - DD Review					Site plan w/footprint, tree removal plan, parking impact, etc. – electronic PowerPoint Presentation
<b>4.12</b>	60% Construction Documents ( <b>60% CDs</b> )					BIM360/PDF Electronic & Revit
<b>4.13</b>	60% CDs Construction Report					BIM360/PDF Electronic
<b>Ex. F</b>	"Fast Track" Design - 100% Site, 100% Foundations, etc.					BIM360/PDF Electronic & Revit
	"Fast Track" GMP Proposal					BIM360/PDF Electronic
<b>4.12</b>	100% Construction Documents ( <b>100% CDs</b> )					BIM360/PDF Electronic & Revit

EXHIBIT V - DESIGN BUILD CONTRACT

REF#	PHASE	FULL SIZE		1/2 SIZE		PROJECT SPECIFIC REQUIREMENTS
			S & S		S & S	
	ASHRAE Energy Model					including input and output data, BIM360/PDF Electronic
4.15	GMP Proposal					BIM360/PDF Electronic
4.16	Corrected/Conformance Document Set					BIM360/PDF Electronic & Revit
	Addendums, Supplemental Instructions, RFIs					BIM360/PDF Electronic & Revit
4.17	Record drawings & specifications (As- Builts)					Original "red lined" set and updated, As-built Revit Model with all Asset management information, A complete PDF Copy of all corrected sheets and specifications.
	Corrected ASHRAE Energy Model					BIM360/PDF Electronic

## EXHIBIT E

## PROJECT SPECIFIC REQUIREMENTS

4.8 **Jobsite Management and Logistics Plan**

- With **Design Development** Phase submittal or
- no later than **(month dd, yyyy)**

4.12 **Fast Tracked Construction**

Phase 1 portions of the Project are:  
(Itemize scopes or write None)

4.13 **Design/Builder's Contingency** shall be no greater, as a percentage of the estimated Cost of the Work, than the following at each of the following phases:

**ten percent (10 %)** at Pre-Design

**ten percent (10 %)** at Conceptual Schematic Design

**eight percent (8 %)** at Advanced Schematic Design

**six percent (6 %)** at Design Development

**five percent (5 %)** at **(60 %)** Construction Documents

**three percent (3 %)** at the time the GMP proposal is submitted

**two percent (2%)** at the time that Design/Builder has bought out Trade Contracts representing ninety percent (90%) or more of the Cost of Work

4.14 **Initial Construction Schedule Deadline**

- With Advanced Schematic Design submittal or
- no later than Click or tap to enter a date.

4.15 **GMP Proposal Submittal Deadline**

- upon completion of **sixty percent (60 %)** of the Construction Documents.
- thirty (30)** days after completion of the Construction Documents.
- no later than Click or tap to enter a date..
- Describe or delete this line**

4.17 **Sustainable rating system per FL Statute 255.53.** (Example, the LEED Certification level is established at **Silver** level.

**6.3.3 Minimum Site Visits Required.** Design/Builder's design professionals shall visit the site no less frequently than **once** per week.

**7.2.1.1 Mileage Rate.** The mileage rate for authorized travel – based on State of Florida rates on the Effective Date of this Agreement – is **\$#.## per mile.**

**Lodging Rate.** The maximum reimbursable rate for lodging in **Lakeland, Florida** – based on General Services Administration (GSA) rates on the Effective Date of this Agreement – is **###.00 per night**, plus applicable taxes. Reference [www.gsa.gov/perdiem](http://www.gsa.gov/perdiem).

**Meals.** The maximum reimbursable rates for meals (only paid when overnight travel is involved) – based on State of Florida rates on the Effective Date of this Agreement – are:

**#### for breakfast**

**#### for lunch**

**#### for dinner**

**#### TOTAL**

**7.4.4** The Design/Builder's Overhead & Profit percentage shall not exceed **0.0** % within the Guaranteed Maximum Price and **0.0** % for add or credit change orders.

An amount equal to 5% from the builder's overhead & profit line item will be retained during the post occupancy period and will be released after the warranty period and upon successful completion of the warranty items.

For all change orders to be performed by the trade subcontractors, the respective subcontractor may add up to 10% of their actual cost of work as their combined overhead and profit.

**8.1 Liquidated Damages for Delay Amount.** **\$x,xxx** per day.

**9.1 Professional Liability Insurance Requirements.** Throughout the Project, the Design/Builder and its architectural, mechanical engineering, electrical engineering, plumbing engineering, fire protection engineering, and structural engineering consultants shall carry, at the Design/Builder's own expense, blanket Professional liability insurance with a coverage amount of **\$x,xxx,xxx.** Design/Builder's civil engineering consultant shall carry same with a coverage amount of **\$x,xxx,xxx.**

*PM: Ensure PL insurance coverage amount matches what was required in the selection process.*

**EXHIBIT F**

**(SAMPLE) AUTHORIZATION FOR CONSTRUCTION (SAMPLE)**

Pursuant to the Agreement for Design/Build Services (“Agreement”) between the Florida Polytechnic University Board of Trustees (“Owner”) and Name of DB Firm (“Design/Builder”), for the construction of name of project, the Owner and the Design/Builder hereby execute this **Authorization for Construction** and further agree as set forth below.

[Optional: Whereas, the Project is being performed in phases as permitted by the Contract for Construction; and Whereas, Owner desires to authorize Construction Manager to commence the [\_\_\_\_\_] phase of the Project.]

1. Design/Builder shall commence [Optional: the \_\_\_ phase] of the Work within ten (10) calendar days after the date indicated on the Notice to Proceed. The date of Substantial Completion for the Project shall be: **Month Date, Year**.
2. The date of Final Completion for the Project shall be **thirty (30)** days after the date of Substantial Completion.
3. The Design/Builder’s Guaranteed Maximum Price (“GMP”) proposal dated **Month date, Year** [Optional: for \_\_\_ phase] is accepted by the Owner.
4. In accordance with Section 6.2.8 of the Agreement, the Design/Builder shall award Trade Contracts representing ninety percent (90%) or more of the Cost of the Work within \_\_\_\_\_ (##) days of issuance of the Notice to Proceed for Construction Services.

Item	Amount
Guar. Max. Cost of the Work	\$
CM Contingency	\$
Guar. Max. Construction Manager Staffing Costs	\$
Guar. Max. General Conditions Cost	\$
<b>SUB-TOTAL</b>	\$
Overhead & Profit	\$
Bonds & Insurance <b>(note: this is part of the General Conditions)</b>	\$
<b>Guaranteed Maximum Price</b>	\$

**[Signatures on Following Page]**

**FLORIDA POLYTECHNIC UNIVERSITY  
BOARD OF TRUSTEES**

**DESIGN/BUILDER NAME**

---

*Dr. Randy Avent, President  
Florida Polytechnic University*

---

*Name, Title*

---

*Click or tap to enter a date.*

---

*Click or tap to enter a date.*

---

*DATE*

---

*DATE*

**REVIEWED:**

**APPROVED:**

---

*Office of the General Counsel  
Florida Polytechnic University*

---

*Dr. Allen Bottorff, VP Administration & Finance  
Florida Polytechnic University*

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*Click or tap to enter a date.*

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*Click or tap to enter a date.*

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*DATE*

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*DATE*

**EXHIBIT G**

**SCHEDULES OF PAYMENT FOR DESIGN SERVICES AND REIMBURSABLE EXPENSES**

PHASE	Fee % <sup>1</sup>	Fee
4.6 (PD) Pre-Design Phase <sup>2</sup>	%	\$
4.9 (CSD) Concept Schematic Design	%	\$
4.10 (ASD) Advanced Schematic Design	%	\$
ASHRAE Energy Model [delete/move to different design phase if needed]	%	\$
4.11 (DD) Design Development Phase & Life Cycle Cost Analysis and Report	%	\$
4.12 (60% CDs) 60% Construction Documents	%	\$
4.12 (100% CDs) 100% Construction Documents	%	\$
ASHRAE Energy Model [delete/move to different design phase if needed]	%	\$
4.16 (CCD) Corrected/Conformance Document Set		
6.2 (B/N) Bidding and Award Phase <sup>3</sup>	%	\$
6.3 (CA) Construction Phase Administration of the Construction Contract <sup>4</sup>	%	\$
6.3.10 (SC) Substantial Completion Deliverables	%	\$
6.3.10 (FC) Final Completion Deliverables	%	\$
ASHRAE Energy Model [delete/move to different phase if necessary]	%	\$
6.3.11 (PO) Post Occupancy Inspection & Report	%	\$
SUB-TOTAL FEES (LUMP SUM)	100%	\$
7.2.1 Not-To-Exceed Allowance for Reimbursable Expenses		\$
TOTAL BASIC SERVICE FEES		\$

<sup>1</sup> Fee % indicates proportion of lump sum items to the Sub-Total.

<sup>2</sup> A portion of the CSD fee may be distributed to pre-design (PD) phase site investigations, program reviews and as-built surveys.

<sup>3</sup> Construction Administration Phase payments to be paid in monthly increments in proportion to payments made for The Work.

<sup>4</sup> Bidding/Negotiation Phase fees will be paid in increments based on actual bid packages. These bid packages will be developed after the Project has progressed, and the payment schedule for Bidding/Negotiation Phase fees will be determined at that time.

The following guideline is for general reference only. Revise the above table as needed, then delete this note and the following table:

<i>PD</i>	<i>Pre-Design Phase</i>	<i>2.0%</i>
<i>CSD</i>	<i>Concept Schematic Design</i>	<i>8.0%</i>
<i>ASD</i>	<i>Advanced Schematic Design</i>	<i>10.0%</i>
<i>DD</i>	<i>Design Development Phase</i>	<i>18.0%</i>
<i>50-80%</i>	<i>50-80% Construction Documents</i>	<i>15.0%</i>
<i>100% CD</i>	<i>100% Construction Documents</i>	<i>15.0%</i>
<i>Bid</i>	<i>Bidding or Negotiation Phase</i>	<i>2.0%</i>
<i>CCD</i>	<i>Corrected/Conformance Document Set</i>	<i>3.0%</i>
<i>CA</i>	<i>Construction Phase Administration of the Construction Contract</i>	<i>21.0%</i>
<i>SC</i>	<i>Substantial Completion Deliverables</i>	<i>2.0%</i>
<i>Sustainability</i>	<i>LEED, GG, FGBC, Well Certification Deliverables</i>	<i>1.0%</i>
<i>Final</i>	<i>Final Completion Deliverables</i>	<i>1.0%</i>
<i>PO</i>	<i>Post Occupancy Work, Inspection &amp; Report</i>	<i>2.0%</i>
	<i>Total</i>	<i>100%</i>

**7.3 Pre-Construction Services Fee**

For pre-construction services, the lump sum amount of \$#####, to be paid at the satisfactory completion of the following phases:

<b>PHASE</b>	<b>FEE</b>
(PD) Pre-design Phase	\$ #####
(SC) Schematic Concept	\$ #####
(ASD) Advanced Schematics	\$ #####
(DD) Design Development	\$ #####
(60% CD) <b>60%</b> Construction Documents	\$ #####
(100% CD) <b>100%</b> Construction Documents	\$ #####
Total:	\$ #####

**5.3 Additional Design Services Rates**

Architect	
Principal Architects	\$
Registered Architects	\$
Intern Architects	\$
CAD Technician	\$
Clerical Support	\$

MEP Engineer	
Principal Engineers	\$
Registered Engineers	\$
Intern Engineers	\$
CAD Technician	\$
Clerical Support	\$
Other Consultant	



EXHIBIT V - DESIGN BUILD CONTRACT

Principal Engineers	\$
Registered Engineers	\$
Intern Engineers	\$
CAD Technician	\$
Clerical Support	\$

**EXHIBIT H**

**PROJECT-SPECIFIC MODIFICATIONS**

**12.18 Modifications to the Contract for Design/Build Construction.**

*[Insert modifications or Write "None"]*

*PM/Author: Out-of-state firms may be entitled to reimbursement of travel expenses related to Basic Services. If so, address here with a modification of paragraph 7.2.1.1*