

**General Conditions of the**

**Contract for Construction**

**of the Agreement between**

**Owner and Contractor**

**(Stipulated Lump Sum)**

Edition: February 03, 2021

**USF Facilities Management**

**General Conditions of the Contract for Construction**

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| Project Name: | **Project Name** |
| Project Number: | **USF-000** |

**ARTICLE 1 GENERAL PROVISIONS**

**1.1 BASIC DEFINITIONS**

**1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents consist of the Agreement between Owner and Contractor (herein after the Agreement), Conditions of the Contract (General, Supplementary, Special and other Conditions), Drawings, Specifications, addenda issued prior to execution of the Contract, other (documents listed e Agreement and Modifications issued after execution of the Contract. A Modification is: (1). a written amendment to the Contract signed by both parties, (2). a Change Order, (3). a Construction Change Directive, or (4). a written order for a minor change in the Work issued by the Architect/Engineer. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of addenda relating to bidding requirements).

**1.1.2 THE CONTRACT**

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between: (1).. the Architect/Engineer and Contractor, (2). the Owner and a Subcontractor or Sub-subcontractor or (3). any persons or entities other than the Owner and Contractor. The Architect/Engineer shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect/Engineer’s duties.

**1.1.3 THE WORK**

The term "Work” means the construction services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment· and services provided or to be provided by the Contractor to fulfill ·the Contractor’s obligations. The Work may constitute the whole or a part of the Project.

**1.1.4 THE PROJECT**

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

**1.1.5 THE DRAWINGS**

The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedule and diagrams.

**1.1.6 THE SPECIFICATIONS**

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

**1.1.7 THE PROJECT MANUAL**

The Project Manual is the volume usually assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

**1.2 EXECUTION, CORRELATION AND INTENT**

**1.2.1** Execution of the documents shall be accomplished by: signing six (6) copies of the Agreement within which the Conditions of the Contract, the Drawings and the date of their latest revisions, the Specifications, and all Addenda issued prior to signing of the Agreement are identified. The Contractor shall execute and return all required forms of the Agreement within ten (10) days of their receipt. Failure to return all forms correctly executed within ten (10) days of receipt without written extension by the Owner otherwise, shall constitute an irregularity and shall constitute grounds, at the Owner’s option, either for rejection and forfeiture of Bid Bond or for the deduction on a day for day basis from the time allotted for completion of the Work under **Paragraph 4.1** (Time of Commencement and Completion) of the Agreement. If the Contractor is a firm or company owned by an individual, the Agreement shall be executed in the name of the firm or company by the manual signature of the owner. If the Contractor is a partnership, the Agreement shall be executed in the name of the partnership by the manual signature of the partner or partners. If· the Contractor is a corporation, the Agreement shall be executed in the name of the corporation and shall bear the corporate seal. It may be signed for the corporation by the president attested by the secretary; if signed for the corporation by other officer than the president, the signature of such officer signing shall be attested by the secretary, and the executed Agreement shall be accompanied by a duly authenticated document bearing the seal of the corporation, quoting the section of the by-laws of the corporation authorizing the board of directors to designate such officer and copy of the resolution designating and authorizing him to execute on behalf of the corporation. That document must contain a statement that the authority is in effect on the date of the execution of the Contract, and may not be dated earlier than the date of the execution of the Contract. The same officer may not execute the Contract and authenticate the document of authority.

**1.2.1.1**  Performance and Payment bonds shall be executed on behalf of the Contractor in the same manner and by the same person who executed the Agreement.

**1.2.2** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirement of the Contract Documents.

**1.2.3** The intent of the. Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary and what is required by one shall be as binding as if required by all; ·performance by the Contractor shall be required only· to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

**1.2.3.1** Where reference is made to the Standard Specifications of the American Society for Testing and Materials (ASTM) or other standard specifications in connection with the required quality of materials, methods, etc., then the applicable specifications shall be of the latest revised edition effective as of the date the bids are opened by the Owner, unless otherwise expressly provided the technical specifications.

**1.2.4** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**1.2.5** Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

**1.3 OWNERSHIP AND USE OF ARCHITECT/ENGINEER’S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS**

**1.3.1** The Drawings, Specifications and other documents prepared by the Architect/Engineer are instruments of the Architect/Engineer’s service through which the Work to be executed by the Contractor is described. The Contractor may retain one contract record set, and the Owner may retain two contract record sets. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright of the Drawings, Specifications and other documents prepared by the Architect/Engineer, and unless otherwise indicated the Architect/Engineer shall be deemed the author of them and will retain all common law, statutory and other reserved rights, in addition to the copyright. All copies of them, except the Contractor’s record set and the Owner’s record set, shall be returned or suitably accounted for to the Architect/Engineer, and copies thereof furnished to the Contractor, are for use sorely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other Projects or for addition to this project outside the scope of the Work without the specific written consent of the Owner and Architect/Engineer. The Contractor, Subcontractor, Sub-contractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect/Engineer appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any shown in the Drawings, Specifications and other documents prepared by the Architect/Engineer. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect/Engineer’s or other reserved rights.

**1.4 CAPITALIZATION**

**1.4.1** Terms capitalized in these General Conditions include those are: (1). specifically defined, (2). the titles of numbered articles and identified references to Paragraphs and Subparagraphs in the document or (3). the titles of other documents published by other professional organizations or public entity.

**1.5 INTERPRETATION**

**1.5.1** In the interest of brevity the Contract Documents frequently omit modifying words such as "all” and “any” and articles “the” and “an,” but the fact that a modifier or an article is absent form statement and appears in another is not intended to affect the interpretation of either statement.

**1.6** **CERTIFIED BUSINESS ENTERPRISE REPORT**

**1.6.1** The University of South Florida is an equal opportunity institution, and, as such, strongly encourages the lawful use of Certified Business Enterprise (CBE) including certified Minority (MBE), Women (WBE), and Veteran (VBE) business enterprises in the provision of design and construction-related services by providing a fair and equal opportunity to compete for, or for participation in, design and/or construction-related services.

**1.6.2** CBE participation information for this project shall be provided by the Contractor in response to a request from the University’s Supplier Diversity Program Office. The amount of CBE participation is required to be reported by USF to verify payments made to certified and non-Certified Business Enterprises each fiscal year.

**1.6.3** Assistance is available from the USF Supplier Diversity Program office in support of efforts and outreach process regarding CBE participation.

The USF Supplier Diversity Program

USF Purchasing Services

[www.usf.edu/supplierdiversity](http://www.usf.edu/supplierdiversity)

Telephone: 813-974-2481

Email: [vendorapps@usf.edu](mailto:vendorapps@usf.edu)

**1.7 SPECIAL REQUIREMENTS FOR THRESHOLD BUILDINGS**

**1.7.1 STRUCTURAL INSPECTION PLAN**

**Chapter 553** (Building Construction Standards), Florida Statutes, defines a “Threshold Building” as “any building which is greater than three stories or fifty (50) feet in height, or which has an assembly occupancy classification that exceeds five-thousand (5,000) square feet in area and an occupant content greater than five-hundred (500) persons.” For such buildings the Contractor shall request from the Owner a structural inspection plan prepared by the Architect/Engineer prior to proceeding with the requirements of a Notice to Proceed, and issuance of a building permit. Usually this structural inspection plan will accompany the Notice to Proceed from the Owner. The structural inspection plan shall provide specific inspection procedures and schedules to assure compliance with the permitted plans.

**1.7.2 SHORING AND RESHORING AND INSPECTION**

For a threshold building the Contractor shall provide or shall require his Subcontractor to provide, plans prepared by an engineer licensed to practice in Florida and retained by the Contractor or his Subcontractor for the preparation of plans for the shoring and the reshoring of the Work. These plans shall be filed with the Owner prior to the shoring or reshoring of the Work. The **Section 553.79(8)** (Permits) Florida Statutes identifies the Contractor’s responsibilities as: “The named contractor to whom the building permit is issued shall have the responsibility for supervision, direction, management, and control of the construction activities on the project for which the building permit was issued.” The Contractor shall notify the special inspector when the shoring is ready for inspection for conformance with the shoring and reshoring plans submitted to the Owner; however, such inspection shall not relieve the Contractor from responsibilities under **Section 553.79(8),** Florida Statutes.

**1.8 USF BUILDING CODE ADMINISTRATION PROGRAM**

**1.8.1** The Contractor shall comply with, and adhere to, the requirements of the USF Building Code Administration Program. The following is the USF Building Code Administration Program Policies and Procedures Manual. The cost of the building permit fee and the State Fire Marshal permit fee shall be paid by the University.

**1.9** **SPEICAL PREQUALIFICATION REQUIREMENTS**

**1.9.1** The Contractor and his field staff shall have experience on previous projects similar in scope, complexity, and construction value. Evidence of experience shall be provided upon request of the Owner, and/or the Architect/Engineer.

**ARTICLE 2 OWNER**

**2.1 DEFINITION**

**2.1 1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if: singular in number. The term “Owner” means the Owner or Owner’s authorized representative.

**2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**2.2.1** The Owner shall, at the request of the Contractor, prior to execution of the Agreement furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. (Note: unless such reasonable evidence were furnished or request prior to the execution of the Agreement, the prospective contractor would not be required to execute the Agreement or to commence the Work)

**2.2.2** The Owner shall furnish through the Architect/Engineer, necessary surveys, describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

**2.2.3** Except for permits and fees which are the responsibility of the Contractor under the, Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

**2.2.4** Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in orderly progress of the Work.

**2.2.5** Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such electronic files of Drawings and Project Manuals and complete set of BIM files for execution of the Work as established in the General Conditions.

**2.2.6** The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to **Article 6** (Construction by Owner or by Separate Contractors) and **Article 9** (Payments and Completion) herein.

**2.3 OWNER’S RIGHT TO STOP THE WORK**

**2.3.1** If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by **Paragraph 12.2** (Correction of Work) herein, the Owner by written order signed personally or an agent specifically so empowered by the Owner in writing may order the Contractor to stop the Work, or any portion thereof; until the cause for such order has been eliminated; however, the right of the Owner to stop the shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of any other person or entity, except to the extent required by **Subparagraph 6.1.3** (Coordination of Work by Separate Contractors) herein.

**2.4 OWNER'S·RIGHT TO CARRY OUT THE WORK**

**2.4.1** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven day period after receipt of written notice from the Owner to commence and continue correction of such defects or neglect with diligence and promptness, the Owner may after such seven day period give the Contractor a second written notice to correct such deficiencies within a second seven day period. If the Contractor within such second seven day period after receipt of such second notice fails to commence and continue correct any deficiencies, the Owner may without prejudice to other remedies, the Owner may have, correct such deficiencies. In such case an appropriate Change Order or Construction Change Directive shall be issued deducting from payments then or thereafter due to Contractor the cost of correcting such deficiencies, including compensation for the Architect/Engineer’s additional services expenses made· necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect/Engineer. If payment then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

**2.5 OWNER’S PROJECT REPRESENTATIVES**

**2.5.1** The Owner shall provide a Project Manager to represent the Owner in administration and management of the Contract on the Owner’s behalf.

**2.5.2** The Owner shall provide a construction coordinator inspector to represent the Owner in the Construction of the project on the Owner’s behalf.

**2.5.3** The Owner’s Project Manager and/or Construction Coordinator/Inspector are not the Owner’s Authorized Designee.

**2.6 CONSTRUCTION SERVICES EVALUATIONS**

**2.6.1** The Contractor will be evaluated by the university while under contract; annually for major projects, at the completion of the project for minor projects, and at additional times if determined by the University to be beneficial in the development of a project. See sample evaluation forms **PMG-28B** (Contractor Evaluation Form).

**ARTICLE 3 CONTRACTOR**

**3.1 DEFINITION**

**3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term “Contractor” means the Contractor or ·the Contractor's authorized representative.

**3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

**3.2.1** The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to **Subparagraph 2.2.2** (Owner furnished Surveys) herein, and shall at once report to the Architect/Engineer errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner or Architect/Engineer for damage resulting from errors, inconsistency or omissions in the Contract Documents unless the Contractor recognized such error, inconsistency or omission and knowingly failed to report to the Architect/Engineer. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect/Engineer, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

**3.2.2** The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported to the Architect/Engineer at once.

**3.2.3** The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to **Paragraph 3.12** (Shop Drawings, Product Data and Samples) herein.

**3.3. SUPERVISION AND CONSTRUCTION PROCEDURES**

**3.3.1** The Contractor shall supervise and direct the Work, using the Contractor’s skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work and the Contract, unless Contract Documents give other specific instructions concerning these matters.

**3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor’s employees, Subcontractors and their agents and employees, and other persons performing portions of the Work ·under a contract with to the Contractor.

**3.3.3** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect/Engineer in the Architect/Engineer's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

**3.3.4** The Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

**3.3.5** The Architect/Engineer will schedule periodic construction meetings; which the Contractor shall be required to attend.

**3.3.6** The Contractor shall be responsible for coordinating the work with the A/E and the Owner’s Representatives to assure performance of the work in a manner that is safe, and protects the health and well-being of the University occupants, without unacceptable interruptions or impacts on the University. The Contractor shall obtain prior approval and provide advance notification to the University for coordination and approval prior to implementing work that would impact the University including delivery of materials, staging, power or telecommunications interruptions, etc.

**3.4 LABOR AND MATERIALS**

**3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**3.4.1.1** It shall be the responsibility of the Contractor to provide at the Contractor’s expense, the power, fuel and equipment necessary to maintain climate conditions including humidity and specified or necessary for Work in progress.

**3.4.2** The Contractor shall enforce strict discipline and good order among the Contractor’s employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit person or persons not skilled in tasks assigned to them.

**3.5 WARRANTY**

**3.5.1** The Contractor warrants to the Owner and the Architect/Engineer that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contactor’s warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under oral usage. lf required by the Architect/Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**3.5.2** As required in **Subparagraph 12.2.2** (Correction of Work) herein, the Contractor shall warrant all materials and equipment in accordance with the conditions of the contract. The Contractor shall correct all work found to be defective, or not in accordance with the requirements of the contract documents, for a period of one (1) year from the date of Substantial Completion, or for such longer periods of time for specific warranties required by the contract documents and for the list of items to be completed or corrected at Substantial Completion, unless otherwise agreed to in writing, at no additional cost to the Owner. The Contractor shall conduct, jointly with the Architect and Owner, a warranty inspection forty-five (45) days prior to the end of the warranty periods to address completion of warranty obligations. The Owner shall provide notice to the Contractor of work that requires correction during the warranty periods.

**3.5.3** The Contractor shall be responsible to assure that Asbestos Containing Materials (ACM) are not incorporated in the scope of work for the project. The Contractor shall provide Material Safety Data Sheets for all products and materials for the project and shall certify that Asbestos Containing Materials have not been incorporated in the scope of work.

**3.6 TAXES**

**3.6.1** The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

**3.6.2** The Owner reserves the right to require the Contractor to develop, manage and administer a sales tax exempt purchasing program by Change Order to this contact if it is determined to be in the best interest of the University, in accordance with the requirements of the Department of Revenue and in adherence with **DOPO** (USF Owner Direct Purchase Order Program). If Implemented, the Contractor shall name the Owner as an additional insured on the Contractor’s Builder’s Risk Insurance to continue to cover the direct purchase materials and the Owner shall pay for the cost of such insurance.

**.1** The anticipated savings for the Direct Owner Purchase Program shall be established as an allowance under the provisions of **Article 3.8** below and will be adjusted at contract completion to reflect the actual amount realized.

**3.7 PERMITS, FEES AND NOTICES**

**3.7.1** Building permit and State Fire Marshal inspection fees are provided by the Owner. Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work, including any connection permits required which are customarily secured after execution of the contract and which are legally required when bids are received or negotiations concluded.

**3.7.2** The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work.

**3.7.3** It is not the Contractor’s responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect/Engineer and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

**3.7.4** If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect/Engineer and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

**3.8 Allowances**

**3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against which the Contractors makes reasonable objection.

**3.8.2** Unless otherwise provided in the Contract Documents:

**.1** materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay in the Work;

**.2** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

**.3** Contractor’s costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and not in the allowances;

**.4** whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1). the difference between actual costs and the allowances under **Subparagraph 3.8.2.2** (Contractor’s Cost) and (2). changes in Contractor’s costs under **Subparagraph 3.8.2.3** (Unloading and Handling) herein;

**.5** the Contractor shall solicit from information provided by the Architect/Engineer at least three bids for all allowance items from Subcontractors or material suppliers acceptable to the Owner, the Contractor and the Architect/Engineer. The Architect/Engineer shall review the bids and recommend to the Owner the acceptance or rejection of the lowest bid. If accepted the Architect/Engineer shall issue a change order to the Contractor as provided in **Subparagraph 3.8.2.4** (Adjustment of Contract Sum) herein.

**3.9 PROJECT STAFF**

**3.9.1** The Contractor shall employ a competent Field Staff including a Project Manager, a Superintendent, a Secretary/Assistant, and if necessary due to the needs of the Project, additional assistants, all to be acceptable to the Owner, who shall be in attendance at the Project site during performance of the Work. The Contractor shall provide required resources at the Project site to assist the Field Staff to meet the requirements of the Contract Documents. The Field Staff shall represent the Contractor, and communications given to the Field Staff shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The Field Staff qualifications shall meet or exceed the experience, expertise and ability required for this project.

**3.9.2** The Contractor shall employ Home or Branch office employees and provide required resources to support the project and the Field Staff to meet the requirements or the Contract Documents.

**3.10 Contractor’s Construction Schedules**

**3.10.1** The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner’s and Architect/Engineer’s information a Contractor’s construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

**3.10.2** The Contractor shall prepare and keep current, for the Architect/Engineer’s approval, a schedule of submittals which is coordinated with the Contractor’s construction schedule and allows the Architect/Engineer reasonable time to review submittals. The schedule of submittals shall indicate the dates by which the Architect/Engineer must notify the Contractor of the outcome of the review in order to avoid extension of the Contract Time.

**3.10.3** The Contractor shall conform to the most recent schedules.

**3.10.4** Within thirty (30) days after the date of the Owner’s issuance of a Notice to Proceed with performance of the Work, the Contractor shall prepare and submit to the Architect/Engineer a construction schedule in quadruplicate. This schedule shall graphically depict the contemplated activities which are necessary incidents to performance of the Work, showing the sequence the Contractor proposes for each activity to occur and the duration (dates of commencement and completion, respectively) of each such activity.

The Construction schedule shall be a critical path schedule that identifies, in detail, the start dates, end dates and critical dates of each subcontract activity and work requirement within the overall project development. The Construction schedule shall include milestone dates, dates to coordinate utility, road, etc. work that impacts the Owner for interruptions, shutdowns, etc. and benchmark dates to assure that the work is being performed to meet Contract Document requirements.

**3.10.5** Following development and submittal of the construction schedule as aforesaid, the Contractor shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the subject Work or at such earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the Work performed and the occurrence of all events which have affected the progress of performance of the Work already performed or which will affect the progress of performance of the Work yet to be performed. Each such update and/or revision to the construction schedule shall be submitted to the Architect/Engineer in quadruplicate. Failure of the Contractor to update, revise and submit the construction schedule as aforesaid shall be sufficient grounds for the Architect/Engineer to find the Contractor in substantial default and certify to the Owner that sufficient cause exists to terminate the Contract or to withhold payment to the Contractor until a schedule or schedule update acceptable to the Architect/Engineer is submitted.

**3.10.6** The Contractor shall have the option of scheduling a Substantial Completion date occurring earlier than the date established by the Contract Documents for Substantial Completion; provided, however, in such event, such earlier Substantial Completion date will be recognized by the Owner only as a matter of convenience to the Contractor and shall not change the date for Substantial Completion established by the Contract Documents or be otherwise binding on the Owner or anyone under the Owner’s control; and provided further, however, in such event, should events occur during performance of the Work which would justify the granting to the Contractor of an extension of the Contract Time pursuant to the provisions of **Article 8** (Time) herein, the Contractor shall be entitled to receive only such an extension of Contract Time as is determined by the Architect/Engineer to be due the Contract or as follows:

**.1** In the event the current Contractor’s construction schedule indicates completion ahead of the contractually established date for Substantial Completion, the revised Substantial Completion date shall be determined by adding the total time directly affecting the critical path of the schedule to the end date of the current schedule. No extension of time beyond the contractually established date shall be granted until the aggregate of the current Contractor’s construction schedule plus approved extension exceeds the date established by the Contract Documents, at which time the time extension granted will be the net difference between the contractually established date and the aggregate of the current Contractor’s construction schedule plus approved extensions thereto.

**.2** In the event the current Contractor’s construction schedule indicates completion at or after the contractually established date for Substantial Completion, the time extension shall only be added to the contractually established date for Substantial Completion.

**.3** The Owner will not grant time extensions based on improper scheduling of the Work.

**3.11 Documents and Samples at the Site**

**3.11.1** The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These Drawings, Product Data, Samples and similar required submittals shall be available to the Architect/Engineer and shall be delivered to the Architect/Engineer for submittal to the Owner upon completion of the Work.

**3.11.2** The Contractor shall provide a record copy of the drawings that reflect as-built conditions for the Project for use in developing record drawings to facilitate the University’s Space Management Program, in addition to use for maintenance and future renovation work. The Owner may withhold payments due and/or reject payment requests for failure of the Contractor to submit a record copy of the drawings.

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

**3.12 Shop Drawings, Product Data and Samples**

**3.12.1** Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

**3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**3.12.3** Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

**3.12.4** Shop Drawings, Project Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect/Engineer is subject to the limitations of **Subparagraph 4.2.7** (Architect/Engineer Review) herein.

**3.12.4.1** Information submitted shall show the capacity, operating conditions and all engineering data and descriptive information necessary for comparison and to enable the Architect/Engineer to determine compliance with the specifications.

**3.12.5** The Contractor shall review, approve and submit to the Architect/Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action.

**3.12.5.1** Shop Drawings shall be fully identified by Project Name, location, supplier’s name, date, drawing number and specifications section reference. The Contractor shall submit electronic copies of all Shop Drawings and schedules, or any required resubmission thereof required for the Work of the various trades, to the Architect/Engineer for approval. The Contractor shall make no deviation from the approved drawings, and the changes made thereto by the Architect/Engineer, if any.

**3.12.5.2** It shall be the responsibility of the Contractor to properly schedule the submission of Shop Drawings for approval to allow adequate time for checking of drawings, manufacture and shipment of items to job site in sufficient time to prevent delay in the construction schedule.

**3.12.5.3** It shall also be the responsibility of the Contractor to coordinate the preparation of Shop Drawings of items which will be furnished by more than one manufacturer but are designed to interface when installed.

**3.12.5.4** If and when required by the Architect/Engineer, the Contractor shall prepare and submit in triplicate to the Architect/Engineer a completely itemized Schedule of Shop Drawings, brochures and other descriptive literature, listing each and all such items as required under these specifications, which schedule shall indicate for each required item:

**.1** Identification as to pertinent Specification Division.

**.2** Item(s) involved.

**.3** Name of pertinent Subcontractor or supplier and the name of pertinent manufacturer.

**.4** Scheduled date of delivery of pertinent items to the project.

**3.12.5.5** The Contractor shall require all Subcontractors to submit to the Architect/Engineer through the Contractor complete brochures covering all materials and/or equipment proposed for use in the execution of the Work as required by their respective Divisions of the Specifications. These brochures shall be indexed and properly cross-referenced to the plans and specifications for easy identification.

**3.12.5.6** A list of all materials and equipment, together with manufacturers’ drawings and catalog information shall be submitted to the Architect/Engineer for approval prior to ordering material or equipment but not later than forty-five (45) days after the date of the Notice to Proceed. Information submitted shall show the capacity, operating conditions and all engineering data and descriptive information. The Architect/Engineer’s approval will not relieve the Contractor of the responsibility for performance of any terms of the Contract Documents.

**3.12.6** The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect/Engineer. Such Work shall be in accordance with approved submittals.

**3.12.7** By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**3.12.7.1** Shop Drawings submitted to the Architect/Engineer for approval shall first be checked and approved by the Contractor, the evidence of which shall be a “checked” stamp marked “Approved”, or “Approved as Noted” on each copy of each Shop Drawing, placed thereon by the Contractor. Shop Drawings received without the Contractor’s “checked” stamp will be cause for immediate return without further action. Each drawing correctly submitted will be checked by the Architect/Engineer and marked “Approved” or “Not Approved”.

**3.12.7.2** Resubmittals necessitated by required corrections due to Contractor’s errors or omissions shall not be cause for extension of Contract Time.

**3.12.7.3** At no time shall Shop Drawings which have not been approved by the Architect/Engineer be allowed on the site.

**3.12.8** The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect/Engineer’s approval of Shop Drawings, Project Data, Samples or similar submittals unless the Contractor has specifically informed the Architect/Engineer in writing of such deviation at the time of submittal and the Architect/Engineer has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect/Engineer’s approval thereof.

**3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect/Engineer on previous submittals.

**3.12.10** Informational submittals upon which the Architect/Engineer is not expected to take responsive action may be so identified in the Contract Documents.

**3.13 Use of Site**

**3.13.1** The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

**3.13.2** Make provisions for Project security acceptable to the Owner, to protect the Project site and materials stored off-site against theft, vandalism, fire and accidents, etc., as required by job and location conditions. Mobile equipment and operable equipment at the site, and hazardous parts of new construction subject to mischief, shall be locked or otherwise made inoperable or protected when unattended.

**3.14 Cutting and Patching**

**3.14.1** The Contractor shall by responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

**3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor’s consent to cutting or otherwise altering the Work.

**3.14.3** Existing structures and facilities, including but not limited to buildings, utilities, topography, streets, curbs, walks, landscape materials, and other improvements that are damaged or removed due to required excavations or Contractor’s Work, shall be patched, repaired, or replaced by the Contractor to the satisfaction of the Architect/Engineer, the owner of such structures and facilities, and authorities having jurisdiction. In the event that local authorities having jurisdiction require that such repairing and patching be done with their own labor and materials, the Contractor shall abide by such regulations and pay for such work.

**3.15 Cleaning Up**

**3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor’s tools, construction equipment, machinery and surplus materials.

Removal and disposal of all debris, waste materials, or rubbish due to demolition and construction, including clean up and trash removal is required to comply with all applicable ordinances, in the County where the construction site is located, that effect the disposal of solid wastes in the County including use of County franchise collection companies.

**3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

**3.16 Access to Work**

**3.16.1** The Contractor shall provide the Owner and Architect/Engineer access to the Work in preparation and progress wherever located.

**3.17 Royalties and Patents**

**3.17.1** The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of patent rights and shall hold the Owner and Architect/Engineer harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contractor Documents. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect/Engineer.

**3.18 Indemnification**

**3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect/Engineer, Architect/Engineer’s consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys’ fees and court costs, arising out of or resulting from performance or non-performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this **Paragraph 3.18** (Indemnification) herein.

**3.18.2** In claims against any person or entity indemnified under this **Paragraph 3.18** (Indemnification) by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this **Paragraph 3.18** (Indemnification) shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers’ or workmen’s compensation acts, disability benefit acts or other employee benefit acts.

**3.18.3** The obligations of the Contractor under this **Paragraph 3.18** (Indemnification) shall not extend to the liability of the Architect/Engineer, the Architect/Engineer’s consultants, and agents and employees of any of them arising out of: (1). the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2). the giving of or the failure to give directions or instructions by the Architect/Engineer, the Architect/Engineer’s consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

**3.18.4** Prior to commencing any excavation or grading the Contractor shall become satisfied as to the accuracy of all survey data as indicated in the Contract Documents and/or as provided by the Owner. Should the Contractor discover any inaccuracies, errors, or omissions in the survey data, the Contractor shall immediately notify the Architect/Engineer in writing in order that proper adjustments can be made. Commencement by the Contractor of any excavation or grading shall be held as an acceptance of the survey data by the Contractor after which time the Contractor has no claims against the Owner resulting from alleged errors, omissions or inaccuracies of the said survey data except for conditions as described in **Subparagraph 4.3.6** (Claims for Concealed or Unknown Conditions) herein.

**3.18.5** The Contractor acknowledges that ten dollars has been included in the Contractor’s base bid, which represents the cost to the Owner for the provision of the indemnification required in accordance with this **Paragraph 3.18** (Indemnification) herein.

**3.18.6** The Contractor agrees that, upon receiving award of the Contract for construction, the Contractor will execute and deliver to the Owner an Assignment of Antitrust Claims as set forth in **Section H** of the Project Manual.

**3.18.7** **Assignment of Antitrust Claims**

**.1** The Contractor agrees that, after completion of all Work under this Contract and all amendments thereto and prior to final payment, the Contractor will execute and deliver to the Owner an Assignment of Antitrust Claims in the form provided in Section H of the Project Manual.

**.2** The Contractor also agrees that prior to final payment, the Contractor will cause each of the suppliers and Subcontractors who have furnished services, goods or materials in connection with the performance of this Contract to execute and deliver to the Owner an Assignment of Antitrust Claims in the same form as specified in Subparagraph 3.18.7.1 herein.

**3.19 Substitutions**

**3.19.1** Substitutions for a specified system, product or material may be requested of the Architect/Engineer, and the Architect/Engineer’s written approval must be issued as an addendum before substitutions will be allowed. All requests for substitutions must be submitted prior to the opening of bids, and approvals shall be granted no less than seven (7) days prior to the bid date. Substitutions requested after that date will receive no consideration. Substitutions are changes in materials, equipment, methods or sequences or construction, design, structural systems, mechanical, electrical, air conditioning controls, or other requirements of the Drawings or the Specifications.

**3.19.2** In substituting materials or equipment, the Contractor assumes responsibility for any changes in systems or for modifications required in adjacent or related work to accommodate such substitution, despite the Architect/Engineer approval, and all costs growing out of the approval shall be the responsibility of the Contractor. None of the extra costs resulting from such approval shall devolve upon the Owner, the Architect/Engineer or other contractors. The Architect/Engineer will be responsible for all architectural or engineering revisions to the drawings and shall be reimbursed by the Contractor for the costs of effecting such revisions.

**3.19.3** In making requests for substitutions the Contractor shall list the particular system, product, or material for which a substitution is requested and the justification for such request. Requests submitted shall include any and all adjustments required by the substitution and any other Work affected thereby. The Architect/Engineer may reject a substitution for material reasons or the rejections may be based on aesthetics for which the Architect/Engineer shall be the sole judge.

**3.20 CONSTRUCTION FACILITIES**

**3.20.1 FIELD OFFICES**

Contractor’s Field Office: Trailers may be used for field offices. The Contractor shall have a telephone installed in the Contractor’s office and shall permit business use of it to Subcontractors and other trades who shall reimburse the Contractor for such use if so directed by the Contractor. Trades or Subcontractors wishing to install their own telephone service may do so at their own expense. The Architect/Engineer shall be informed of the job telephone numbers and a directory of all trades shall be installed adjacent to the phone in the Contractor’s field office.

The Contractor’s field office shall provide a meeting room space suitable to conduct the weekly progress meetings, including, but not limited to, a conference table, seating for a minimum of twelve (12) people, heated and air conditioned, and restroom facilities.

**3.20.2 STORAGE AND WORK AREAS**

At the start of the operations the Contractor shall make arrangements with the Architect/Engineer’s Project Representative and the Owner’s authorized representative for the assignment of storage and work areas. During construction the Contractor shall maintain the areas in a neat condition.

**3.20.3 SANITARY PROVISIONS**

The Contractor shall provide and maintain in a neat and sanitary condition such accommodations for the use of the Contractor’s and Architect/Engineer’s employees as may be necessary to comply with regulations of the State Board of Health, and the University requirements.

**3.20.4 TELEPHONE**

The Contractor shall be responsible for the installation of a telephone in the Contractor’s field office, and it shall remain until the full completion of the Work. Charges for long distance calls shall be paid for by the persons making the calls. All other charges in connection with the telephone shall be paid for by the Contractor.

**3.20.5 WATER**

Water necessary to carry out the Work and for testing its plumbing and mechanical systems shall be provided by the Owner. The Contractor shall make all connections, install a meter, take out and pay for all permits necessary, do all piping and clear away all evidence of same after the Work is completed. The Contractor shall assure that the water usage is utilized in a responsible manner with water conservation as a primary goal.

**3.20.6 ELECTRICITY**

All electricity for light and power necessary to carry out the Work and to test its electrical and mechanical systems shall be provided by the Owner. The Contractor shall make all connections, install the meter, obtain all necessary permits, and provide all work to provide the required electrical service for the construction of the project. The Contractor shall assure that use of electricity is in a responsible manner, with energy conservation as a primary goal.

**3.20.7 TEMPORARY WIRING**

Wiring shall meet all safety requirements of the National Electric Code and local requirements. In addition, all wire shall be so sized that it is not overloaded according to the National Electric Code and O.S.H.A. Standards, and any wire used shall be fused to adequately protect that wire according to the most restrictive applicable Code. The Contractor shall have an adequate number of outlets and each outlet shall be properly and clearly labeled with the maximum voltage and fuse protection. Where temporary lighting is used, outlets shall consist of weatherproof sockets insulated and provided with a locking type wire guard. All devices shall be provided with ground-fault protection.

**3.20.8 PROJECT SIGN**

A sign shall be erected at the site by the Contractor and shall be 3/4” x 4’-0” x 8’-0” exterior grade plywood, mounted on 4”’ x 4” wood posts (P.T.), located in a prominent location approved by the Architect/Engineer and Owner. The sign shall be painted in a professional manner and conform to the size, colors and design as illustrated in **Section H** of the Project Manual.

**3.21 PRE-CONSTRUCTION CONFERENCE**

Before beginning Work at the site the Contractor shall attend a pre-construction conference and be accompanied by the field staff employed for the Work. This conference will be scheduled by the Owner’s representative who will arrange for the Architect/Engineer, and other interested parties to be present. At this time all parties concerned will discuss the Work and prepare a program of procedure in keeping with requirements of the Contract Documents. The field staff shall thereafter make every effort to expeditiously coordinate all segments of the Work, including the required reporting procedure, to obtain the end result within the full purpose and intent of the plans and specifications for the Work.

**3.22 PROJECT DRAWINGS – COPIES FURNISHED TO CONTRACTORS**

The Architect/Engineer will provide the Contractor electronic files of drawings and specifications upon Contract award. If additional sets are required by the Contractor, they will be furnished upon request for the cost of printing and handling.

**3.23 BUILDING PLAQUE**

If a building plaque is to be provided, the Architect/Engineer shall include the specification requirements here. The area of the plaque shall not exceed four-hundred-thirty-two (432) square inches. It shall contain only lettered information, and a border (if specified by the Architect/Engineer). Information to be provided on the plaque will be limited to the following: (All individuals listed shall be those who were in their positions on the date of construction contract award.)

**.1** Chairperson of the Board of Trustees,

**.2** Vice Chairperson of the Board of Trustees,

**.3** Members of the Board of Trustees,

**.4** University President,

.**5** Contractor,

**.6** Architect/Engineer, and

**.7** Date (Year of Completion).

**Article 4 Administration of the Contract**

**4.1 Architect/Engineer**

**4.1.1** The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Engineer is the person lawfully licensed to practice engineering or an entity lawfully practicing engineering identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term “Architect/Engineer” means the Architect or the Engineer or the authorized representative of either.

**4.1.2** In case of termination of employment of the Architect/Engineer, the Owner shall appoint an architect or an engineer whose status under the Contract Documents shall be that of the former Architect/Engineer.

**4.2 Architect/Engineer’s Administration of the Contract**

**4.2.1** The Architect/Engineer will provide administration of the Contract as described in the Contract Documents, and will be the Owner’s representative (1). during construction, (2). until final payment is made and (3). with the Owner’s concurrence, from time to time during the correction period described in **Paragraph 12.2** (Correction of Work) herein. The Architect/Engineer will advise and consult with the Owner. The Architect/Engineer will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Contract.

**4.2.2** The Architect/Engineer will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Architect/Engineer will not be required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work. On the basis of on-site observations as an architect or as an engineer, the Architect/Engineer will keep the Owner informed of progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

**4.2.3** The Architect/Engineer will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor’s responsibility as provided in **Paragraph 3.3** (Supervision and Construction Procedures) herein. The Architect/Engineer will not be responsible for the Contractor’s failure to carry out the Work in accordance with the Contract Documents. The Architect/Engineer will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

**4.2.4** Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate through the Architect/Engineer. Communications by and with the Architect/Engineer’s consultants shall be through the Architect/Engineer. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

**4.2.5** Based on the Architect/Engineer’s observations and evaluations of the Contractor’s Applications for Payment, the Architect/Engineer, will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**4.2.5.1** The authorized representatives and agents of the Architect/Engineer, Owner, and such other persons as the Owner may designate shall have access to and be permitted to inspect all Work, subcontracts, materials, payrolls, records of personnel, invoices of materials and other relevant data and records wherever they are in preparation and progress. The Contractor shall provide proper facilities for such access and inspection and, when required, exact duplicate copies of the aforementioned data shall be furnished.

**4.2.6** The Architect/Engineer will have authority to reject Work which does not conform to the Contract Documents. Whenever the Architect/Engineer considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect/Engineer will have authority to require additional inspection or testing of the Work in accordance with **Subparagraphs 13.5.2** (Additional Testing and Inspections) and **13.5.3** (Contractor’s Costs) herein, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect/Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect/Engineer to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

**4.2.7** The Architect/Engineer will review and approve or take other appropriate action upon the Contractor’s submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect/Engineer’s action will be taken with such reasonable promptness as to cause no delay in the Work, or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect/Engineer’s professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect/Engineer’s review of the Contractor’s submittals shall not relieve the Contractor of the obligations under **Paragraphs 3.3** (Supervision and Constriction Procedures), **3.5** (Warranty) and **3.12** (Shop Drawings and Samples at the Site) herein. The Architect/Engineer’s review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect/Engineer, of any construction means, methods, techniques, sequences or procedures. The Architect/Engineer’s approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**4.2.8** The Architect/Engineer will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in **Paragraph 7.4** (Minor Changes in the Work) herein.

**4.2.9** The Architect/Engineer will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner for the Owner’s review and records written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

**4.2.10** If the Owner and Architect/Engineer agree, the Architect/Engineer will provide one or more project representatives to assist in carrying out the Architect/Engineer’s responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in **Subparagraphs 4.2.10.1** and **4.2.10.2** (Project Representative) herein.

**4.2.10.1** The Architect/Engineer’s Project Representative(s) will:

**.1** Assist the Contractor in obtaining interpretation of the Contract Documents from the Architect/Engineer.

**.2** Conduct daily on-site observations for determining conformance to the Contract Documents in regard to Work, materials and equipment, etc.

**.3** Request additional detail and/or information from the Architect/Engineer when needed by the Contractor.

**.4** Evaluate suggestions and/or modifications submitted by the Contractor and transmit these to the Architect/Engineer with recommendations.

**.5** Observe problems which may create delays in construction and report these to the Architect/Engineer.

**.6** Maintain official relationship only with the Contractor and his job superintendent(s) regardless of which Subcontractor’s Work is involved.

**.7** Attend all required construction conferences and participate in discussions of the Work.

**.8** Maintain a daily log of Work activity including but not limited to: hours on the job site, weather conditions, daily construction activity, number of men in each trade on the site, with specific identification of ongoing Certified Business Enterprises (**CBE**) activities, general observations, written directives to the Contractor, and visitors.

**.9** If, upon inspections or observations, Work is found not to be in accordance with Contract Documents, advise Contractor verbally and in writing, that the Work is not in accordance with the Contract Documents. Consult with Architect/Engineer for further directions if the Contractor refuses to correct the Work.

**.10** Observe and record that tests and inspections required to be performed by others, in addition to those performed by Architect/Engineer’s representative and/or the Architect/Engineer, are actually performed, in accordance with the Contract Documents.

**.11** When requested by the Owner, accompany all state and federal officials on inspections of construction and record the inspection in the log.

**.12** Cooperate with university’s authorized representative and provide the representative with all required information about the Work.

**.13** Accept no directions or instructions from anyone other than the Architect/Engineer.

**.14** Maintain in an orderly manner, files of correspondence, reports of job conferences, shop drawings and samples, copies of Contract Documents, change orders, addenda, supplemental drawings, and job log.

**.15** Review Applications for Payment submitted by Contractor and recommend to the Architect/Engineer for appropriate action.

**.16** Participate in the observations of construction with the Architect/Engineer and the university’s authorized representative at regular intervals and at Substantial Completion.

**.17** Refer all communications from university’s authorized representative to the Architect/Engineer.

**.18** Copy university’s authorized representative on all correspondence related to the Project.

**.19** Review plans, specifications and approved shop drawings on a regular basis. Advise the Architect/Engineer immediately upon discovery of any errors and omissions in the Contract Documents, or of construction problems.

**.20** Advise Contractor and Architect/Engineer of Work being performed without approved shop drawings when such shop drawings are required by specifications.

**.21** Check materials and equipment delivered to the job site against specifications, approved samples, shop drawings and related correspondence. When observed to be in conflict, advise Contractor and Architect/Engineer.

**.22** Check that Contractor is maintaining record drawings of as-built conditions, from which contract record sets are to be developed.

**.23** Act as liaison between the Contractor and the university’s authorized representative in the coordination of the Contractor’s schedule and the University’s requirements.

**.24** Provide such other services as may be required in the Owner’s or Architect/Engineer’s interests or in the advancement of the Work.

**4.2.10.2** The Architect/Engineer’s Project Representative is not authorized to do the following:

**.1** Authorize deviations from the Contractor Documents (unless approved in writing by Architect/Engineer).

**.2** Expedite the Work for the Contractor.

**.3** Advise the Contractor on building techniques or scheduling.

**.4** Approve Shop Drawings.

**.5** Issue Certifications for Payment.

**.6** Approve Substitutions.

**.7** Get involved in disputes or problems between Subcontractor and Sub-subcontractor.

**.8** Get involved in disputes or problems between Contractor and Subcontractor.

**.9** Offer advice to Contractor or Subcontractors on how to perform the Work whether solicited from the Contractor or not.

**.10** Shut down the job except in extreme emergencies and except under certain conditions as authorized by the Architect/Engineer.

**4.2.11** The Architect/Engineer will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or Contractor. The Architect/Engineer’s response to such requests will be made within fifteen (15) days after written request is made for them.

**4.2.12** Interpretations and decisions of the Architect/Engineer will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect/Engineer will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

**4.2.13** The Architect/Engineer’s decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

**4.3 Claims and Disputes**

**4.3.1 Definition**. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term “Claim” also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

**4.3.2 Decision of Architect/Engineer**. Claims, including those alleging an error or omission by the Architect/Engineer, shall be referred initially to the Architect/Engineer for action as provided in **Paragraph 4.4** (Resolution of Claims and Disputes) herein. A decision by the Architect/Engineer, as provided in **Subparagraph 4.4.4** herein, shall be required as a condition precedent to litigation of a Claim between the Contractor and Owner as to all such matters arising prior to the date final payment is due, regardless of (1). whether such matters relate to execution and progress of the Work or (2). the extent to which the Work has been completed. The decision by the Architect/Engineer in response to a Claim shall not be a condition precedent to litigation in the event (1). the position of Architect/Engineer is vacant, (2). the Architect/Engineer has not received evidence or has failed to render a decision within agreed time limits, (3). the Architect/Engineer has failed to take action required under **Subparagraph 4.4.4** herein, within thirty (30) days after the Claim is made, or forty-five (45) days have passed after the Claim has been referred to the Architect/Engineer.

**4.3.3** **Time Limits on Claims**. Claims by either party must be made within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Charge Order will not be considered unless submitted within the time limits provided in this **Subparagraph 4.3.3** (Time Limits on Claims) herein.

**4.3.4 Continuing Contract Performance**. Pending final resolution of a Claim including litigation, unless otherwise agreed in writing the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

**4.3.5** **Waiver of Claims: Final Payment**. The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

**.1** Claims, security interest or encumbrances arising out of the Contract and unsettled;

**.2** failure of the Work to comply with the requirements of the Contract Documents; or

**.3** terms of special warranties required by the Contract Documents.

**.4** damages including attorneys’ fees and costs incurred by the Owner resulting from lawsuits brought against the Owner, the Architect/Engineer or their agents, employees or representatives because of acts or omissions on the part of the Contractor, any Subcontractor, or any of their employees, agents or representatives.

**4.3.6 Claims for Concealed or Unknown Conditions**. If conditions are encountered at the site which are (1). subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2). unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than twenty-one (21) days after first observance of the conditions. The Architect/Engineer will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor’s cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect/Engineer determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect/Engineer shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within twenty-one (21) days after the Architect/Engineer has given notice of the decision. If the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect/Engineer for initial determination, subject to further proceedings pursuant to **Paragraph 4.4** (Resolution of Claims and Disputes) herein.

**4.3.7** **Claims for Additional Cost**. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under **Paragraph 10.3** (Emergencies) herein. If the Contractor believes additional cost is involved for reasons including but not limited to (1). a written interpretation from the Architect/Engineer, (2). an order by the Owner to stop the Work where the Contractor was not at fault, (3). a written order for a minor change in the Work issued by the Architect/Engineer, (4). failure of payment by the Owner, (5). termination of the Contract by the Owner, (6). Owner’s suspension or (7). other reasonable grounds, Claim shall be filed in accordance with the procedure established herein.

**4.3.8** **Claims for Additional Time**

**4.3.8.1** If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor’s Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

**4.3.8.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.

**4.3.9** **Injury or Damage to Person or Property**. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party’s employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding twenty-one (21) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in **Subparagraphs 4.3.7** (Claims for Additional Costs) or **4.3.8** (Claims for Additional Time) herein.

**4.4 Resolution of Claims and Disputes**

**4.4.1** The Architect/Engineer will review Claims and take one or more of the following preliminary actions within ten days of receipt of a Claim: (1). request additional supporting data from the claimant, (2). submit a schedule to the parties indicating when the Architect/Engineer expects to take actions, (3). reject the Claim in whole or in part, stating reasons for rejection, (4). recommend approval of the Claim by the other party or (5). suggest a compromise. The Architect/Engineer may also, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim.

**4.4.2** If a Claim has been resolved, the Architect/Engineer will prepare or obtain appropriate documentation.

**4.4.3** If a Claim has not been resolved, the party making the Claim shall, within ten days after the Architect/Engineer’s preliminary response, take one or more of the following actions: (1). submit additional supporting data requested by the Architect/Engineer, (2). modify the initial Claim or (3). notify the Architect/Engineer that the initial Claim stands.

**4.4.4** If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect/Engineer, the Architect/Engineer will notify the parties in writing that the Architect/Engineer’s decision will be made within seven days, which decision shall be final and binding on the parties but subject to resolution as provided in **Paragraph 4.5**, (Legal Recourses) herein. Upon expiration of such time period, the Architect/Engineer will render to the parties the Architect/Engineer’s written decision relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor’s default, the Architect/Engineer may, but is not obligated to, notify the surety and request the surety’s assistance in resolving the controversy.

**4.5 Legal Recourse**

**4.5.1** The finding of the Architect/Engineer shall be a required condition precedent to further action by the Owner or Contractor as follows:

**.1** Claims of one-hundred-thousand dollars ($100,000.00) or less in value shall be conducted pursuant to and under the procedures of the **Chapter 120** (Administrative Procedures Act), Florida Statutes;

**.2** All other claims, disputes and other matters not governed by the foregoing shall be determined under the judiciary system of the State of Florida.

The **Chapter 558** (Construction Defects), Florida Statutes, contains important requirements you must follow before you may bring any legal action for an alleged construction defect. Sixty (60) days before you bring any legal action, you must deliver to the other party to this contract a written notice, referring to **Chapter 558**, Florida Statues of any construction conditions you allege are defective and provide such person the opportunity to inspect the alleged construction defects and to consider making an offer to repair or pay for the alleged construction defects. You are not obligated to accept any offer which may be made. There are strict deadlines and procedures under this Florida law which must be met and followed to protect your interests.

**Article 5 Subcontractors**

**5.1 Definitions**

**5.1.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term “Subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term “Subcontractor” does not include a separate contractor or subcontractors of a separate contractor.

**5.1.2** A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term “Sub-subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

**5.2 Award of Subcontracts and Other Contracts for Portions of the Work**

**5.2.1** List of major subcontractors should be submitted as part of the bid documents.Within thirty (**30**) days after the date of the Notice to Proceed, the Contractor, in compliance with the requirements of the Contract Documents, shall furnish in writing to the Owner and through the Architect/Engineer the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect/Engineer will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect/Engineer, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Architect/Engineer to reply promptly shall constitute notice of no reasonable objection.

**5.2.2** The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect/Engineer has made reasonable and timely objection. The Contractor shall not contract with any subcontractor which does not hold the proper contractor’s license as required by the State of Florida. Inclusion of the Subcontractor’s name in the list provided in accordance with **Subparagraph 5.2.1** shall constitute a certification by the Contractor that the Subcontractor is properly licensed. Thereafter, by signing the monthly University of South Florida’s Certificate of Partial Payment, the Contractor will certify that all Subcontractors providing services for the Work are properly licensed. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**5.2.3** If the Owner or Architect/Engineer has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect/Engineer has no reasonable objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued. However, no increase in the Contract Sum shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

**5.2.4** The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner or Architect/Engineer makes reasonable objection to such change including, but not limited to, objections related to **CBE** participation.

**5.2.5** The Contractor and the Subcontractors shall, within forty-five (45) days of the date of the Notice to Proceed, provide the names of all major Sub-subcontractors and/or material and equipment manufacturers. The following list is suggested but can be reduced or expanded at the discretion of the Architect/Engineer or as directed by the Owner.

**.1** landscaping

**.2** paving contractor (concrete, asphaltic concrete)

**.3** concrete supplier

**.4** masonry – concrete/brick

**.5** structural and miscellaneous iron

**.6** millwork (architectural)

**.7** thermal and moisture protection below and above including roof

**.8** windows, curtainwall, hollow metal doors and frames, hardware

**.9** floor, wall and ceiling finishes and systems

**.10** major specialties

**.11** major equipment

**.12** furniture, movable screens, fixed seating

**.13** special construction

**.14** elevators, escalators

**.15** plumbing fixtures, special piping, traps, sumps, etc., mechanical equipment, monitoring and automation controls, etc.

**.16** electrical fixtures, controllers, switchgears, devices, transformers, etc.

**5.2.6** The Contractor understands and agrees that the Contractor alone is responsible to the Owner for all of the Work under the Contract and that any review of Subcontractors or Sub-subcontractors by the Owner or Architect/Engineer will not in any way make the Owner responsible to any Subcontractor or Sub-subcontractor, nor will it make the Owner responsible for the actions or omissions of any Subcontractor or Sub-subcontractor.

**5.3 Subcontractual Relations**

**5.3.1** By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner and Architect/Engineer. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect/Engineer under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-Subcontractors.

**5.4 Contingent Assignment of Subcontracts**

**5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

**.1** assignment is effective only after termination of the Contract by the Owner for cause pursuant to **Paragraph 14.2** (Termination by the Owner for Cause) herein, and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and

**.2** Assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

**Article 6 Construction by Owner or by Separate Contractors**

**6.1 Owner’s Right to Perform Construction and to Award Separate Contracts**

**6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner’s own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided elsewhere in the Contract Documents.

**6.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term “Contractor” in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

**6.1.3** The Owner shall provide for coordination of the activities of the Owner’s own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule and Contract Sum deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

**6.1.4** Whenever Owner-Furnished Contractor-Installed (OFCI) materials or equipment are shipped to the Project site, the Contractor shall notify the Owner and shall be responsible for their acceptance, proper storage, and incorporation into the Work provided the scope of the Owner-Furnished Contractor-Installed (OFCI) work is included in the Contract Documents.

**6.2 Mutual Responsibility**

**6.2.1** The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor’s construction and operations with theirs as required by the Contract Documents.

**6.2.2** If part of the Contractor’s Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect/Engineer apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner’s or separate contractors’ completed or partially completed construction is fit and proper to receive the Contractor’s Work, except as to defects not then reasonably discoverable.

**6.2.3** Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

**6.2.4** The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in **Subparagraph 10.2.5** (Prompt Remedy) herein.

**6.2.5** Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of **Paragraph 4.3** (Claims and Disputes) herein, provided the separate contractor has reciprocal obligations.

**6.2.6** The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in **Paragraph 3.14** (Cutting and Patching) herein.

**6.3 Owner’s Right to Clean Up**

**6.3.1** If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in **Paragraph 3.15** (Cleaning Up) herein, the Owner may clean up and allocate the cost among those responsible as the Architect/Engineer determines to be just.

**Article 7 Changes in the Work**

**7.1 Changes**

**7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this **Article 7** (Changes in the Work) herein, and elsewhere in the Contract Documents.

**7.1.2** A Change Order shall be based upon agreement among the Owner, Contractor and Architect/Engineer; a Construction Change Directive requires agreement by the Owner and Architect/Engineer and may or may not be agreed to be the Contractor; an order for a minor change in the Work may be issued by the Architect/Engineer as provided in **Paragraph 7.4** (Minor Changes in the Work) herein.

**7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

**7.1.4** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

**7.2 Change Orders**

**7.2.1** A Change Order is a written instrument prepared by the Architect/Engineer and signed by the Owner, Contractor and Architect/Engineer, stating their agreement upon all of the following:

**.1** a change in the Work;

**.2** the amount of the adjustment in the Contract Sum, if any; and

**.3** the extent of the adjustment in the Contract Time, if any.

**7.2.2** Methods used in determining adjustments to the Contract Sum may include those listed in **Subparagraph 7.3.3** (Change Directive) herein.

**7.2.3** All Change Orders must be on the University of South Florida Change Order form, included in **Section H** of the Project Manual.

**7.3 Construction Change Directives**

**7.3.1** A Construction Change Directive is a written order prepared by the Architect/Engineer and signed by the Owner and Architect/Engineer, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly. The Construction Change Order Directive form is provided in **Section H** of the Project Manual.

**7.3.2** If the Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

**.1** mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

**.2** a not-to-exceed amount based on unit prices stated in the Contract Documents or subsequently agreed upon;

**.3** cost to be determined in a manner agreed upon by the parties and a percentage fee as provided in **Subparagraph 7.3.12** (Overhead & Profit); or

**.4** as provided in **Subparagraph 7.3.6** (Adjustment to Contract Sum) herein.

**7.3.4** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect/Engineer of the Contractor’s agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**7.3.5** A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

**7.3.6** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment and the not-to-exceed amount shall be determined by the Architect/Engineer on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, the stipulated allowance for overhead and profit as stated in **Subparagraph 7.3.12** (Overhead and Profit) herein. In such case, and also under **Subparagraph** **7.3.3.3** (Determining Costs) herein, the Contractor shall keep and present, in such form as the Architect/Engineer may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this **Subparagraph 7.3.6** (Adjustments to Contract Sum) herein, shall be limited to the following:

**.1** costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers’ or workmen’s compensation insurance;

**.2** costs of materials, supplies and equipment, including sales tax and cost of transportation, whether incorporated or consumed;

**.3** rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

**.4** costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

**.5** additional costs of supervision and field office personnel directly attributable to the change.

**7.3.7** Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect/Engineer. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

**7.3.8** If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Architect/Engineer for determination.

**7.3.9** When the Owner and Contractor agree with the determination made by the Architect/Engineer concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

**7.3.10** The Cost of the Change shall not include any of the following items:

**.1** Salaries or other compensation of the Contractor’s personnel at the Contractor’s offices, including the field office, unless direct additional expense has been incurred exclusively because of the change;

**.2** Expenses of the Contractor’s offices, including the field office;

**.3** Any part of the Contractor’s capital expenses, including interest on the Contractor’s capital;

**.4** Costs due to the negligence of the Contractor, any Subcontractor, and Sub-subcontractor, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including, but not limited to, the correction of defective or nonconforming Work, disposal of materials and equipment wrongly supplied, or making good any damage to property; or,

**.5** Overhead, general expense, and the cost of any item not specifically or reasonably inferable as included in the items described in **Subparagraph 7.3.6** (Adjustments to Contract Sum) herein.

**7.3.11** The Contractor shall check all materials, equipment and labor entering into the Work as a result of changes in the Work and shall keep such full and detailed accounts as may be necessary for proper financial management under the Contract, and the system shall be satisfactory to the Owner. The Owner shall be afforded access to all the Contractor’s records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to changes in the Contract.

**7.3.12** The percentage fee for overhead and profit combined, to be added to the cost of the change in determining the total cost to the Owner, shall be negotiated based upon the following schedule:

**.1** For any work performed by the Contractor’s own forces, a maximum of fifteen percent (15%) of the cost of the change;

**.2** For any work performed by a Subcontractor or forces under the Subcontractor including any Sub-subcontractors or other persons not in the direct employ of the Subcontractor, a maximum total of twenty-two and one half percent (22.5%) of the cost of the change, with a maximum of fifteen percent (15%) to be assigned to the Subcontractor and any forces under him and a maximum of seven and one-half percent (7.5%) to be assigned to the Contractor.

**7.3.13** If a change in the Work results in a credit to the Owner, the credit shall be the net Cost of the Charge as defined in **Subparagraphs 7.3.6** Adjustments to Contract Sum) and **7.3.10** (Cost of Change) herein, and shall not include any allowance for the Contractor’s or Subcontractors’ overhead and profit.

**7.4 Minor Changes in the Work**

**7.4.1** The Architect/Engineer will have authority, after receiving the Owner’s approval, to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

**Article 8 Time**

**8.1 Definitions**

**8.1.1** Unless otherwise provided, Contract Time is the Period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

**8.1.2** The date of commencement of the Work is the date established in the notice to proceed. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

**8.1.3** The date of Substantial Completion is the date certified by the Architect/Engineer in accordance with **Paragraph 9.8** (Substantial Completion) herein.

**8.1.4** The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

**8.2 Progress and Completion**

**8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by **Article 11** (Insurance and Bonds) herein, to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.

**8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

**8.3 Delays and Extensions of Time**

**8.3.1** If the Contractor is delayed at any time in progress of the Work by an act or neglect of the Owner or Architect/Engineer, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor’s control, or by delay authorized by the Owner pending resolution of Claims or other matters in question, or by other causes which the Architect/Engineer determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect/Engineer may determine.

**8.3.2** Claims relating to time shall be made in accordance with applicable provisions of **Paragraph 4.3** (Claims and Deputes) herein.

**8.3.3** This **Paragraph 8.3** herein does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents, except that in instances of delays due to adverse weather conditions and labor disputes, Claims for extended overhead costs will not be allowed.

**Article 9 Payments and Completion**

**9.1 Contract Sum**

**9.1.1** The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

**9.2 Schedule of Values**

**9.2.1** Before the first Application for Payment, the Contractor shall submit to the Architect/Engineer a schedule of values allocated to various portions of the Work, prepared in the form as provided in **Section H** of the Project Manual, and supported by such data to substantiate its accuracy as the Architect/Engineer may require. This schedule, unless objected to by the Architect/Engineer, shall be used as a basis for reviewing the Contractor’s Applications for Payment.

**9.3 Applications for Payment**

**9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect/Engineer an itemized preliminary draft of the Application for Payment with complete supporting data on the University of South Florida Certificate of Partial Payment form. Upon approval of the preliminary draft, the Contractor shall submit to the Architect/Engineer the Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarizedand supported by such data substantiating the Contractor’s right to payment as the Owner or Architect/Engineer may require, such as copies of requisitions from Subcontractors and materials suppliers, and reflecting retainage. Applications for payments shall be made monthly beginning within 30 days after the notice to proceed.

**9.3.1.1** With the exception of Work which may be exempted from this requirement by a provision in the Special Conditions of this Project Manual, retainage shall be withheld from each monthly payment request, in an amount not to exceed ten percent (10%) of the approved payment until fifty percent (50%) of construction payments are made. After the Work is considered to be fifty percent (50%) complete, retainage thereafter not to exceed ten percent (10%) of the request, may or may not be withheld at the discretion of the Owner.

Withholding of the retainage shall be subject to the provisions of the **Paragraph 6.3** (Payments Withheld) and **Subparagraph 6.3.1.2** of the Owner Contractor Agreement.

**9.3.1.2** If securities are substituted in lieu of retainage as permitted by **Section 255.052** (Substitution of Securities for Retainage), Florida Statues, the securities must be free of all encumbrances, and the Contractor must assign all its rights to the securities to the Owner, enabling the Owner to use those securities as it would retainage.

**9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner’s title to such materials and equipment or otherwise protect the Owner’s interest, and shall include applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

**9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor’s knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

**9.4 Certificates for Payment**

**9.4.1** The Architect/Engineer will, within seven days after receipt of the Contractor’s Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect/Engineer determines is properly due, or notify the Contractor and Owner in writing of the Architect/Engineer’s reasons for withholding certification in whole or in part as provided in **Subparagraph 9.5.1** (Withholding Certification) herein.

**9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect/Engineer to the Owner, based on the Architect/Engineer’s observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect/Engineer’s knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Architect/Engineer. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect/Engineer has (1). made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2). reviewed construction means, methods, techniques, sequences or procedures, (3). reviewed copies of requisitions received from Subcontractors and materials suppliers and other data requested by the Owner to substantiate the Contractor’s right to payment or (4). made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**9.5 Decisions to Withhold Certification**

**9.5.1** The Architect/Engineer may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect/Engineer’s opinion the representations to the Owner required by **Subparagraph 9.4.2** (Certificate for Payment) herein cannot be made. If the Architect/Engineer is unable to certify payment in the amount of the Application, the Architect/Engineer will notify the Contractor and Owner as provided in **Subparagraph 9.4.1** herein. If the Contractor and Architect/Engineer cannot agree on a revised amount, the Architect/Engineer will promptly issue a Certificate for Payment for the amount for which the Architect/Engineer is able to make such representations to the Owner. The Architect/Engineer may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect/Engineer’s opinion to protect the Owner from loss because of, but not limited to:

**.1** defective Work not remedied;

**.2** third party claims filed or reasonable evidence indicating probable filing of such claims;

**.3** failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;

**.4** reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

**.5** damage to the Owner or another contractor;

**.6** reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

**.7** persistent failure to carry out the Work in accordance with the Contract Documents.

**9.5.2** When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**9.6 Progress Payments**

**9.6.1** After the Architect/Engineer has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and may so notify the Architect/Engineer.

**9.6.2** The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor’s portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor’s portion of the Work. When the Contractor receives payment from the Owner for labor, services or materials furnished by subcontractors and suppliers hired by the Contractor for the project, the Contractor shall remit payment due to those subcontractors and suppliers, less the value of any item contested in accordance with the Contract, within ten (10) days after the Contractor’s receipt of payment from the Owner. When the payment due the subcontractor is for final payment, including retainage, the subcontractor must include with the invoice for final payment a conditional release of lien and all appropriate warranties and closeout documentation. When the subcontractor receives payment from the Contractor for labor, services or materials furnished by subcontractors and suppliers hired by the subcontractor, the subcontractor shall remit payment due to those subcontractors and suppliers, less the value of any item contested in accordance with the Contract, within ten (10) days after the subcontractor’s receipt of payment.

**9.6.3** The Architect/Engineer will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect/Engineer and Owner on account of portions of the Work done by such Subcontractors.

**9.6.4** Neither the Owner nor Architect/Engineer shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

**9.6.5** Payment to material suppliers shall be treated in a manner similar to that provided in **Subparagraphs 9.6.2**, **9.6.3** and **9.6.4** herein.

**9.6.6** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

**9.7 Failure of Payment**

**9.7.1** If the Architect/Engineer does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor’s Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect/Engineer or awarded by litigation then the Contractor may, upon seven additional days’ written notice to the Owner and Architect/Engineer, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor’s reasonable costs of shut-down, delay and start-up, which shall be accomplished as provided in **Article 7** (Changes in the Work) herein.

**9.8 Substantial Completion**

**9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

**9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect/Engineer a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor’s list, the Architect/Engineer will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect/Engineer’s inspection discloses any item, whether or not included on the Contractor’s list, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect/Engineer. The Contractor shall then submit a request for another inspection by the Architect/Engineer to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect/Engineer will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

**9.8.3** Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect/Engineer, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents. Liquidated damages to the date of Substantial Completion shall be deducted by Construction Change Directive from the Contract Sum and from the Substantial Completion payment.

**9.8.4** The acceptance of Substantial Completion payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the Application for Payment for Substantial Completion, and except for the retainage sums due at final acceptance.

**9.8.5** The Contractor shall be responsible for collecting, identifying, indexing and collating the following materials from the Subcontractors, and will deliver four copies of the finished document to the Architect/Engineer to verify completeness. The Architect/Engineer will deliver three copies of the following to the Owner:

**.1** Complete equipment diagrams, operating instructions, maintenance manuals, parts lists, wiring diagrams, pneumatic and/or electrical control diagrams, test and balance reports, inspection reports, guarantees and warranties, as applicable, for each and every piece of fixed equipment furnished under this Contract to be supplied in a ring binder, hard-cover book, properly indexed for ready reference. Also, specific information regarding manufacturer’s names, addresses, office and home phone numbers, make and model numbers, operating design and characteristics, etc., will be required. All information submitted shall be current as of the time of submission.

**9.8.6** Subsequent to the time of Substantial Completion and receipt of contract record sets and operations and maintenance books, but prior to the date of final acceptance, the Contractor and/or Subcontractor shall provide a competent and experienced person (or persons) thoroughly familiar with the Work for a reasonable period of time but not less than forty (40) hours to instruct the Owner’s personnel in operation and maintenance of equipment and control systems. This instruction will include normal start-up, run, stop, and emergency operations, location and operation of all controls, alarms and alarm systems, etc. This instruction will include tracing the system in the field and on the diagrams in the instruction booklets so that operating personnel will be thoroughly familiar with both the system and the data supplied.

**9.9 Partial Occupancy or Use**

**9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under **Paragraph 11.3** (Property Insurance) herein, and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect/Engineer as provided under **Subparagraph 9.8.2** (Substantial Completion) herein. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect/Engineer.

**9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect/Engineer shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

**9.10 Final Completion and Final Payment**

**9.10.1** Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect/Engineer will promptly make such inspection and, when the Architect/Engineer finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect/Engineer will promptly issue a final Certificate for Payment stating that to the best of the Architect/Engineer’s knowledge, information and belief, and on the basis of the Architect/Engineer’s observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in said final Certificate is due and payable. The Architect/Engineer’s final Certificate for Payment will constitute a further representation that conditions listed in **Subparagraph 9.10.2** herein, as precedent to the Contractor’s being entitled to final payment have been fulfilled. Liquidated damages assessed subsequent to Substantial Completion shall be deducted by Construction Change Directive from the Contract Sum and from the final payment.

**9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect/Engineer (1). an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner’s property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2). a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) days’ prior written notice has been given to the Owner, (3). a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4). consent of surety (**UPM-Exhibit F-4**), if any, to final payment and (5). if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such claim. If such claim remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such claim, including all costs and reasonable attorneys’ fees.

**9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect/Engineer so confirms, the Owner shall, upon application by the Contractor and certification by the Architect/Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect/Engineer prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims. The making of final payment shall constitute a waiver of claims by the Owner as provided in **Subparagraph 4.3.5** (Waiver of Claims) herein.

**9.10.4** Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment. Such waivers shall be in addition to the waiver described in **Subparagraph 4.3.5** herein.

**9.10.5** The Contractor’s application for final payment shall be accompanied by a completed and notarized “Certificate of Contract Completion” as provided in **Section H** of the Project Manual. Any items required by the Contract Documents not previously submitted shall accompany the application for final payment.

**Article 10 Protection of Persons and Property**

**10.1 Safety Precautions and Programs**

**10.1.1** The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

**10.1.2** Unless asbestos abatement is specifically included as part of the Work elsewhere in the Contract Documents, then in the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Architect/Engineer in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor, or in accordance with final determination by the Architect/Engineer on which legal recourse has not been demanded, or by legal recourse under **Article 4** (Administration of the Contract) herein.

**10.1.2.1** The Contractor shall be responsible to insure that Asbestos Containing Materials (ACM) are not incorporated in the scope of work for the project. The Contractor shall provide Material Safety Data Sheets for all products and materials for the project and shall certify that Asbestos Containing Materials have not been incorporated in the scope of work.

**10.1.2.2** The Contractor shall be responsible for notification of the proper agencies, and for the cost of the removal, encapsulation, transportation and disposal of any hazardous material, including, without limitation, any asbestos or asbestos-related products as substitutions per **Paragraph 3.19** (Substitutions) in connection with the Work. Hazardous material, described by Federal guidelines brought by the Contractor or the Subcontractors shall remain their responsibility for proper disposal. Any hazardous material on the site prior to proceeding with the work and not specifically shown on the documents shall be considered a concealed condition.

**10.1.2.3** Any hazardous material removal including asbestos abatement Work required in connection with the Work shall only be performed by an approved Contractor for asbestos, etc., which has been pre-qualified by the Owner.

**10.1.3** The Contractor shall not be required pursuant to **Article 7** (Changes in the Work) herein, to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB).

**10.2 Safety of Persons and Property**

**10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

**.1** employees on the Work and other persons who may be affected thereby;

**.2** The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor’s Subcontractors or Sub-subcontractors; and

**.3** other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

**10.2.2** The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

**10.2.3** The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

**10.2.4** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in **Subparagraphs** **10.2.1** (Safety of Persons and Property) and **10.2.1.2** herein, caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under **Subparagraphs 10.2.1.2** and **10.2.1.3** herein. except damage or loss attributable to acts or omissions of the Owner or Architect/Engineer or anyone directly or indirectly employed by either of them, or by anyone for whose act either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor’s obligation under **Paragraph 3.18** (Indemnification) herein.

**10.2.6** The Contractor shall designate a responsible member of the Contractor’s organization at the site whose duty shall be the prevention of accidents. This person shall be a dedicated Safety Officer or the Contractor’s superintendent designated by the Contractor in writing to the Owner and Architect/Engineer.

**1.** The Safety Officer shall be responsible for development of the safety program, training and inspections in accordance with the provisions of the Contract Documents.

**10.2.7** The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

**10.3 Emergencies**

**10.3.1** In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor’s discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in **Paragraph 4.3 (**Claims and Disputes) and **Article 7** (Changes in the Work) herein.

**Article 11 Insurance and Bonds**

**11.1 Contractor’s Liability Insurance**

**11.1.1** The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in Florida such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor’s operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable~~:~~. All insurance policies shall be issued and countersigned by representatives of such companies duly authorized for the State of Florida and shall be written on Insurance Services Office, Inc. (ISO) standard forms or their equivalents. The Contractor shall provide the ISO Commercial General Liability policy for general liability coverages. All liability policies shall provide that the Owner is a named additional insured as to the operations of the Contractor under the Agreement and shall provide the Severability of Insured’s Provision. The Owner shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the responsibility solely of the Contractor and/or Subcontractor providing such insurance. This insurance shall protect the Contractor from the following claims:

**.1** claims under workers’ or workmen’s compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;

**.2** claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor’s employees;

**.3** claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor’s employees;

**.4** claims for damages insured by usual personal injury liability coverage including claims which are sustained (1). by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (2). by another person;

**.5** claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

**.6** claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and

**.7** claims involving contractual liability insurance applicable to the Contractor’s obligations under **Paragraph 3.18** (Indemnification) herein.

**11.1.2** The insurance required by **Subparagraph 11.1.1** herein, shall be written for not less than limits of five-hundred-thousand dollars ($500,000.00) per person, one-million dollars ($1,000,000.00) per occurrence or a minimum of one-million dollars ($1,000,000.00) combined single limit. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment. The insurance required by **Subparagraph 11.1.1** herein, shall include contractual liability insurance applicable to the Contractor’s obligations under **Paragraph 3.18** (Indemnification) herein, and coverage for the “XCU” exposure.

The University of South Florida, Board of Trustees shall be named as an additional insured and a waiver of subrogation in favor of the Owner shall be included in all liability policies.

**11.1.2.1 Worker’s Compensation:** The Contractor shall secure and maintain for the life of this Agreement, valid Worker’s Compensation Insurance as required by **Chapter 440** (Worker’s Compensation), Florida Statutes. Copies of the insurance policy shall be filed with the Owner no later than sixty (**60**) days after execution of the Owner-Contractor Agreement.

**11.1.2.2 Automobile Liability:** The Contractor shall secure and maintain, during the life of this Agreement, Automobile Liability insurance on all vehicles against bodily injury and property damage in at least the amounts of five-hundred-thousand dollars ($500,000.00) per person, one-million dollars ($1,000,000.00) per occurrence and property damage in at least the amount of five-hundred-thousand dollars ($500,000.00); or combined single limit of one-million dollars ($1,000,000.00) for bodily injury and property damage. The University of South Florida, Board of Trustees shall be named as an additional insured and a waiver of subrogation in favor of the Owner shall be included in all liability policies.

**11.1.3** Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These Certificates and the insurance policies required by this **Paragraph 11.1** (Contractor’s Liability Insurance) herein, shall contain a provision that coverages afforded under the policies will not be cancelled or allowed to expire until at least thirty (30) days’ prior to written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by **Subparagraph 9.10.2** (Final Payment) herein. The Contractor shall furnish one copy each of Certificates of Insurance for each copy of the Agreement which shall specifically set forth evidence of all insurance coverage required by the Contract Documents. The Certificate of Insurance shall be dated and show the name of the insured Contractor, the specific job by name and job number, the name of the insurer, the number of the policy, its effective date, and its termination date. The Contractor shall furnish a copy of the insurance policy to the Owner within sixty (**60**) days following execution of the Agreement.

**11.2 Owner’s Liability Insurance**

**11.3 Property Insurance**

**11.3.1** Unless otherwise directed by the Owner, the Contractor shall purchase and maintain, with an admitted carrier in the State of Florida, property insurance in the amount of the initial Contract Sum as well as subsequent modifications thereto for the entire Work at the site on a replacement cost basis, including, where applicable, the existing structure. Coverage for existing structures shall include all perils described in **Subparagraph 11.3.1.1** below. Such property insurance (builder’s risk) shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in **Paragraph 9.10** (Final Completion and Final Payment) or until no person or entity other than the Owner has an insurable interest in the property required by this **Paragraph 11.3** (Property Insurance), herein to be covered, whichever is earlier. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Work.

**11.3.1.1** Property insurance shall be written on a Builder’s Risk form or its equivalent and shall include coverage on a replacement value basis. Property covered by this insurance shall include property of the Owner, Contractor, Subcontractors and Sub-subcontractors, consisting of materials, supplies, machinery, equipment and fixtures which will become a permanent part of the Work at the project site. Property covered by this insurance shall also include temporary building(s) or structure(s) at the site other than office trailer(s). The perils insured under this insurance shall be at least equivalent to the insured perils of the Causes of Loss – Special form as published by the Insurance Services Office, Inc. including reasonable compensation for Architect/Engineer’s services and expenses required as a result of such insured loss.

**11.3.1.2** Any special insurance requirements will be addressed in the Special Conditions or in Supplementary Conditions. The Owner reserves the right to purchase Builder’s Risk insurance on its own behalf and to adjust the contract cost accordingly.

**11.3.1.3** If the property insurance provides deductibles, the Contractor shall pay costs not covered because of such deductibles, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the Owner and the Contractor.

**11.3.1.4** Unless otherwise provided in the Contract Documents, this property insurance shall cover portions of the Work stored off the site after written approval of the Owner at the value established in the approval, and also portions of the Work in transit.

**11.3.2** **Boiler and Machinery Insurance.** When the Work includes the repair, removal, installation and/or testing of live steam boilers, valves, pipes or lines, then this insurance shall include coverage at least equivalent to the Boiler and Machinery Coverage Form as published by the Insurance Services Office, Inc. This insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insured’s.

**11.3.3** Prior to commencement of the Work, the Contractor shall provide the Owner with a Certificate of Insurance which evidences the property insurance (builder’s risk) provided by the Contractor. This Certificate of Insurance shall include an Additional Named Insured Provision and a Waiver of Subrogation Provision in favor of the Owner to protect the interests of the Owner. Upon receipt of the policy, the Contractor shall file with the Owner a copy of each policy that includes insurance coverages required by this **Paragraph 11.3** (Property Insurance) herein. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be cancelled or allowed to expire until at least thirty (**30**) days’ prior written notice has been given to the Owner.

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

**11.3.5** Partial occupancy or use in accordance with **Paragraph 9.9** (Partial Occupancy or Use) herein, shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

**11.4 Performance Bond and Payment Bond**

**11.4.1** The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

**11.4.2** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

**Article 12 Uncovering and Correction of Work**

**12.1 Uncovering of Work**

**12.1.1** If a portion of the Work is covered contrary to the Architect/Engineer’s request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect/Engineer, be uncovered for the Architect/Engineer’s observation and be replaced at the Contractor’s expense without change in the Contract Time.

**12.1.2** If a portion of the Work has been covered which the Architect/Engineer has not specifically requested to observe prior to its being covered, the Architect/Engineer may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

**12.2 Correction of Work**

**12.2.1** The Contractor shall promptly correct Work rejected by the Architect/Engineer or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect/Engineer’s services and expenses made necessary thereby. The Contractor shall commence correction of the Work within seven (7) days after the date of written notice from the Architect/Engineer.

**12.2.2** If, within one (1) year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under **Subparagraph 9.9.1** (Owner Occupancy) herein, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation under this **Subparagraph 12.2.2** herein, shall survive acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

**12.2.3** The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**12.2.4** If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with **Paragraph 2.4** (Owner’s right to Carry Out the Work) herein. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect/Engineer, the Owner may remove it and store the salvable materials or equipment at the Contractor’s expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days’ written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect/Engineer’s services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

**12.2.5** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor’s correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

**12.2.6** Nothing contained in this **Paragraph 12.2** (Correction of Work) herein, shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one year as described in **Subparagraph 12.2.2** herein, relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor’s liability with respect to the Contractor’s obligations other than specifically to correct the Work.

**12.3 Acceptance of Nonconforming Work**

**12.3.1** If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

**Article 13 Miscellaneous Provisions**

**13.1 Governing Law**

**13.1.1** The Contract shall be governed by the law of the State of Florida.

**13.2 Successors and Assigns**

**13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. In case the Contractor, on written consent of the Owner, assigns all or any part of any money due or to become due under this Contract, the instrument of assignment shall contain a Subparagraph substantially to the effect that it is agreed that the right of the assignee to any money due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.

**13.3 Written Notice**

**13.3.1** Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

**13.4 Rights and Remedies**

**13.4.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

**13.4.2** No action or failure to act by the Owner, Architect/Engineer or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

**13.5 Tests and Inspections**

**13.5.1** Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or order of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect/Engineer timely notice of when and where tests and inspections are to be made so the Architect/Engineer may observe such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

**13.5.2** If the Architect/Engineer, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under **Subparagraph 13.5.1** herein, the Architect/Engineer will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect/Engineer of when and where tests and inspections are to be made so the Architect/Engineer may observe such procedures. The Owner shall bear such costs except as provided in **Subparagraph 13.5.3** herein.

**13.5.3** If such procedures for testing, inspection or approval under **Subparagraphs 13.5.1** and **13.5.2** herein reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the Architect/Engineer’s services and expenses.

**13.5.4** Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect/Engineer.

**13.5.5** If the Architect/Engineer is to observe tests, inspections or approvals required by the Contract Documents, the Architect/Engineer will do so promptly and, where practicable, at the normal place of testing.

**13.5.6** Test or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

**13.5.7** Where tests are required by the technical specifications for materials, methods or equipment, the Contractor shall pay the cost of initial tests to prove qualities and determine conformance with specification requirements, e.g., mill tests on cement and steel; load testing of piling; sieve analysis and colorimetric tests on sand; strength tests for determining proportions of materials for concrete, moisture content and sound transmission tests of concrete blocks, etc.

**13.5.8** If substitute materials or equipment are proposed by the Contractor, he shall pay the cost of all tests which may be necessary to satisfy the Architect/Engineer that specification requirements are met.

**13.5.9** The Contractor shall pay for all testing costs, including but not limited to, power, fuel, and equipment costs which may be required for complete testing of all equipment and systems for proper operation such as plumbing, heating, ventilation, air conditioning, electrical, elevator, dumbwaiters and conveyors, etc.

The Owner may also employ an independent Commissioning consultant to verify performance and/or quality of certain building systems or components.

**.1** The Contractor shall coordinate the Work and its schedule and activities with the Commissioning consultant and shall act upon the observations and recommendations of same, provided such action does not conflict with the Contract for Construction or specific direction by the Owner or the Professional.

**.2** The Contractor shall perform functional performance testing of items being commissioned under the supervision of the Owner’s Commissioning consultant.

**13.6 Interest**

**13.6.1** Interest shall be paid in certain cases as provided by **Section 215.422** (Payments), Florida Statues.

**13.6.2** The Contractor shall be required to pay interest to Subcontractors and suppliers in certain cases where payments are not within the time constraints of **Section 287.0585** (late Payments), Florida Statues.

**13.7 Commencement of Statutory Limitation Period**

**13.7.1** As between the Owner and Contractor:

**.1 Before Substantial Completion.** As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;

**.2 Between Substantial Completion and Final Certificate for Payment.** As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and

**.3 After Final Certificate for Payment.** As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any warranty provided under **Paragraph 3.5** (Warranty) herein, the date of any correction of the Work or failure to correct the Work by the Contractor under **Paragraph 12.2** (Correction of Work) herein, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

**13.8 Harmony**

**13.8.1** The Contractor shall exert every reasonable and diligent effort to assure that all labor employed by the Contractor and the Subcontractors for Work on the Project shall Work in harmony with and be compatible with all other labor being used on the site of the Project, and representative of the Architect/Engineer and the Owner.

**13.8.2** The Contractor shall include this provision in all contracts with Subcontractors, and the Contractor shall require that such a provision be included in the contracts between the Subcontractors and the Sub-subcontractors, provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by **Article I, Section 6** (Right to Work) of the Florida Constitution.

**13.9 Change of Address**

**13.9.1** If the address of the Contractor changes, the Contractor shall provide written notice to that effect to both the Owner and the Architect/Engineer.

**13.10 Discovery of Valuable Items or Items of Historical Significance**

**13.10** If in the execution of the Work any items of historical significance or any valuable items or materials of any kind are discovered buried or hidden within the Work, such items or materials shall be the property of the Owner. The Contractor shall immediately upon discovery of such items or materials, and before removal thereof, acquaint the Architect/Engineer with such discovery and carry out by Change Order, at the expense of the Owner, the Architect/Engineer’s orders as to the disposal of the items or materials.

**Article 14 Termination or Suspension of the Contract**

**14.1 Termination by the Contractor**

**14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of thirty (**30**) days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor, for any of the following reasons:

**.1** issuance of an order of a court or other public authority having jurisdiction;

**.2** an act of government, such as a declaration of national emergency, making material unavailable;

**.3** because the Architect/Engineer has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in **Subparagraph 9.4.1** (Certification for Payment) herein, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents;

**.4** if repeated suspensions, delays or interruptions by the Owner as described in **Paragraph 14.3** (Suspension of Work for Owner Convenience) herein, constitute in the aggregate more than one-hundred percent (100%) of the total number of days scheduled for completion, or one-hundred-twenty (120) days in any three-hundered-sixty-five (365) day period, whichever is less; or

**.5** the Owner has failed to furnish to the Contractor promptly, upon the Contractor’s request, reasonable evidence as required by **Subparagraph 2.2.1** (Review by Contractor) herein.

**14.1.2** If one of the above reasons exists, the Contractor may, upon seven (7) additional day’s written notice to the Owner and Architect/Engineer, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

**14.2 Termination by the Owner for Cause**

**14.2.1** The Owner may terminate the Contract if the Contractor:

**.1** persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

**.2** fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractor;

**.3** persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or

**.4** otherwise is guilty of substantial breach of a provision of the Contract Documents.

**14.2.2** When any of the above reasons exist, the Owner, upon certification by the Architect/Engineer that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor’s surety, if any, seven (7) days’ written notice, terminate employment of the Contractor and may direct the surety to:

**.1** take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

**.2** accept assignments of subcontracts pursuant to **Paragraph 5.4** (Contingent Assignment of Subcontractors) herein; and

**.3** finish the Work by whatever reasonable method the Owner may deem expedient.

**14.2.3** When the Owner terminates the Contract for one of the reasons stated in **Subparagraph 14.2.1** (Termination) herein, the Contractor shall not be entitled to receive further payment until the Work is finished.

**14.2.4** If the Contractor’s surety is directed to complete the Work, then all payments made after termination shall be made to the Surety until the Work is finished and the Contract Sum has been expended. The surety shall then be responsible for all of the obligations and duties of the Contractor under the Contract and shall be bound by the conditions of the Contract to fulfill all obligations of the Contract for the Contract Sum therein. The Surety may not assign those obligations without the written consent of the Owner. The surety shall be responsible for the payment of all costs relating to the termination of the employment of the Contractor, including compensation for the Architect/Engineer’s services and expenses made necessary thereby. The amount to be paid to the surety or Owner, as the case may be, shall be certified by the Architect/Engineer, upon application, and this obligation for payment shall survive termination of the employment of the Contractor.

**14.3 Suspension by the Owner for Convenience**

**14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

**14.3.2** An adjustment shall be made for increases in the cost of performance of the Contract including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent:

**.1** that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

**.2** that an equitable adjustment is made or denied under another provision of the Contract.

**14.3.3** Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

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