

**General Conditions of the**

**Contract for Construction**

**of the Agreement between Owner and**

**Design/Construction Services Team**

Edition: March 29, 20o21

**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 consist of the Agreement between the Owner and Design/Construction Services Team (hereinafter, the Agreement), Conditions of the Contract for Construction (General, Special, Supplementary, and other Conditions), Special Conditions, Supplementary Conditions, Drawings, Specifications, Addenda issued prior to the execution of the Agreement, other documents listed in the Agreement and Amendments issued after the execution of the Agreement. The Contract Documents form the Agreement between Owner and Design/Construction Services Team. The Agreement represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Agreement may be amended or modified only by written Amendment signed by both the Owner and the Team.

**1.1.2** The term "Work" means the construction and design services provided by the Design/Construction Services Team (DCST) to fulfill the DCST's obligations.

**1.1.3** The term “Project” is the total Design/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 separate contractors.

**1.1.4** The term “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, schedules and diagrams.

**1.1.5** The term “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.

**1.1.6** The term “Project Manual” is the volume usually assembled for the Work that may include Project requirements, sample forms, General Conditions, Special & Supplementary Conditions, and Specifications.

**1.1.7** Wherever there is reference made to the term “Owner” in the General Conditions, this shall be construed to mean the Owner’s Agent and such terms shall be interchangeable.

**1.1.8** Wherever in the General Conditions there is made reference to the “Design/Builder” and/or “Team” and/or “DCST,” this shall be construed to mean the Design/Construction Services Team and such terms shall be interchangeable.

**1.1.9** Wherever in the General Conditions there is made reference to the “Contract” and/or “Agreement,” this shall be construed to mean the Agreement Between Owner and Design/Construction Services Team and such terms shall be interchangeable.

**1.2 EXECUTION, CORRELATION AND INTENT**

**1.2.1** It is the intent of the Owner and the DCST that the Contract Documents include all items necessary for proper execution and completion of the Work. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the DCST shall be required only to the extent consistent with and reasonably inferable from the Contract Documents as being necessary to produce the intended results. Words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

**1.2.1.1** Where reference is made to the Standard Specifications of the American Society for Testing and Materials (A.S.T.M.) 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 Agreement is executed, unless otherwise expressly provided in the technical specifications.

**1.2.2** If the DCST believes or is advised by the Architect or by another design professional retained to provide services on the Project that implementation of any instruction received from the Owner would cause a violation of any applicable law, the DCST shall notify the Owner in writing. Neither the DCST nor the Architect shall be obligated to perform any act which either believes will violate any applicable law.

**1.2.3** Nothing contained in this General Conditions shall create a contractual relationship between the Owner and any person or entity other than the DCST.

**1.2.4** Execution of the documents shall be accomplished by: signing multiple copies of the Agreement within which the Conditions of the Contract for Construction, and all Addenda issued prior to the signing of the Agreement are identified. The Team shall execute and return all required forms of the Agreement within 10 calendar days of their receipt. Failure to return all forms correctly executed within 10 calendar 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, if applicable, or for the deduction on a day for day basis from the time allotted for completion of the Work under the Agreement. If the Team is a firm or company owned by an individual, the Agreement shall be executed in the name of the firm or company by manual signature of partner or partners. If the Team 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 and attested by the Corporate Secretary; if signed for the Corporation by any other officer than the President, the signature of such officer signing shall be attested by the Corporate Secretary, and the executed Agreement shall be accompanied by a duly authenticated document bearing the seal of the Corporation, quoting the section of the bylaws of the corporation authorizing the Board of Directors to designate such officer and a 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 Agreement, and may not be dated later than the date of the execution of the Agreement. The same officer may not execute the Agreement and authenticate the document of authority.

**1.2.4.1** Performance and Payment Bonds shall be executed, on behalf of the Team, in the same manner and by the same person who executed the Agreement.

**1.3 OWNERSHIP AND USE OF DOCUMENTS**

**1.3.1** Drawings, specifications, and other documents and electronic data (including BIM models) furnished by the DCST are instruments of service. The DCST's Architect and other providers of professional services shall retain all common law, statutory and other reserved rights, including copyright in those instruments of service furnished by them. Drawings, specifications, and other documents and electronic data are furnished for use solely with respect to the Agreement. The Owner shall be permitted to retain copies, including reproducible copies, of the drawings, specifications, and other documents and electronic data furnished by the DCST for information and reference in connection with the Project except as provided in **Subparagraphs 1.3.2** and **1.3.3** herein.

**1.3.2 Paragraphs 8.1**, **8.2** and **8.3** of the Agreement between the Owner and Team shall prevail over the General Conditions.

**1.3.3** If the DCST defaults in the DCST's obligations to the Owner, the Architect shall grant a license to the Owner to use the drawings, specifications, and other documents and electronic data furnished by the Architect to the DCST for the completion of the Project, conditioned upon the Owner's execution of an agreement to cure the DCST's default in payment to the Architect for services previously performed and to indemnify the Architect with regard to claims arising from such reuse without the Architect's professional involvement.

**1.3.4** Submission or distribution of the DCST's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in **Subparagraph 1.3.1** herein.

**1.4**  **PROJECT DOCUMENTS AND FORMS**

**1.4.1** The University of South Florida Guides, Standards, and Forms are part of the Agreement as if fully incorporated therein, and shall be enforced and strictly adhered to, and all submittals shall be completed by the DCST as specified. (The latest versions of these documents are available to the DCST on the USF Facilities Planning and Construction website, unless otherwise noted).

**1.4.1.1** Guides, Guidelines and Standards include:

**.a** Facilities Program Guide (FPG)

**.b** Design and Construction Guidelines (DCG)

**.c** Cost Containment Guide (CCG)

**.d** Computer-Aided Design Guidelines and Standards (USF-CAD)

**.e** Building Information Model Guidelines and Standards (USF-BIM)

**.f** BIM Project Execution Plan (USF-BIM-EP)

**.g** Building Code Administration Program (BCA)

**.h** Professional Services Guide (PSG)

**.i** Construction Administration Guide (CAG)

**.j** Direct Owner Purchase Order Program (DOPO)

**1.4.1.2** Contract Document Forms (CDF) include:

**.a** Payment Bond for Labor and Materials (CDF-DB Exhibit F1)

**.b** Performance Bond (CDF-DB Exhibit F2)

**.c** Certificate of Non-Segregated Facilities (CDF-DB Exhibit F3)

**.d** Payment Requisition Routing Slip (CDF-DB Exhibit F4)

**.e** Certificate of Partial Payment (CDF-DB Exhibit F5)

**.f** Change Order Summary (CDF-DB Exhibit F6)

**.g** Schedule of Contract Values- Construction (CDF-DB Exhibit F7)

**.h** Schedule of Contract Values & Supporting Documentation- Fee Reimb. (CDF-DB Ex F8)

**.i** Schedule of Contract Values & Supporting Documentation- Gen. Cond. (CDF-DB Ex F9)

**.j** Construction Contract Change Order (CDF-DB Exhibit F10)

**.k** Construction Contract Change Order Justification (CDF-DB Exhibit F11)

**.l** Construction Change Directive (CDF-DB Exhibit F12)

**.m** Certificate of Substantial Completion (CDF-DB Exhibit F13)

**.n** Assignment of Antitrust Claims (CDF-DB Exhibit F14)

**.o** Consent of Surety to Final Payment (CDF-DB Exhibit F15)

**.p** Affidavit of Release of Liens and Payment of Debts and Claims (CDF-DB Exhibit F16)

**.q** CBE Participation Status Report (CDF-DB Exhibit F17)

**.r** Certificate of Contract Completion (CDF-DB Exhibit F18)

**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 DCST 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 DCST shall provide or shall require his Subcontractor to provide, plans prepared by an engineer licensed to practice in Florida and retained by the DCST 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 DCST 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 DCST from responsibilities under **Section 553.79(8),** Florida Statutes.

**1.8 USF BUILDING CODE ADMINISTRATION PROGRAM**

The DCST 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 USF OWNER DIRECT PUCHASE ORDER PROGRAM**

The Owner reserves the right to require the DCST 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 DCST shall name the Owner as an additional insured on the DCST’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 8.2** and **8.3** below and will be adjusted at contract completion to reflect the actual amount realized.

**ARTICLE 2 OWNER**

**2.1** The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall examine documents submitted by the DCST and shall render decisions in a timely manner and in accordance with the schedule accepted by the Owner. The Owner may obtain independent review of the Contract Documents by a separate architect, engineer, contractor or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work.

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

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

**2.1.3** The Owner’s Project Manager and/or Construction Coordinator/Inspector are not authorized to execute agreements, change orders, etc.

**2.2** The Owner may appoint an on-site project representative to observe the Work and to have such other responsibilities as the Owner and the DCST agree in writing.

**2.3** The Owner shall cooperate with the DCST in securing building and other permits, licenses and inspections. The Owner shall not be required to pay the fees for such permits, licenses and inspections unless the cost of such fees is excluded from the DCST's Proposal.

**2.4** The Owner shall furnish services of land surveyors, geotechnical engineers and other consultants for subsoil, air and water conditions, in addition to those provided under the Agreement, when such services are deemed necessary by the DCST to properly carry out the design services required by these General Conditions.

**2.4.1** Such services outlined in **Paragraph 2.4** above are as outlined in **Paragraphs 4.5** of the Agreement. Additional services to confirm that which is furnished by the Owner are at the Team’s expense.

**2.5** The Owner shall disclose, to the extent known to the Owner, the results and reports of prior tests, inspections or investigations conducted for the Project involving: structural or mechanical systems; chemical, air and water pollution; hazardous materials; or other environmental and subsurface conditions. The Owner shall disclose all information known to the Owner regarding the presence of pollutants at the Project's site.

**2.5.1** Use of such information is at the Team’s risk.

**2.6** The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including such auditing services as the Owner may require to verify the DCST's Applications for Payment.

**2.7** Those services, information, surveys and reports required by **Paragraphs 2.4** through **2.6** which are within the Owner's control shall be furnished at the Owner's expense, and the DCST shall be entitled to rely upon the accuracy and completeness thereof, except to the extent the Owner advises the DCST to the contrary in writing.

**2.8** If the Owner requires the DCST to maintain any special insurance coverage, policy, amendment, or rider, the Owner shall pay the additional cost thereof, except as otherwise stipulated in these General Conditions.

**2.9** If the Owner observes or otherwise becomes aware of a fault or defect in the Work or nonconformity with the DCST's Proposal or the Construction Documents, the Owner shall give prompt written notice thereof to the DCST.

**2.10** The Owner shall communicate with persons or entities employed or retained by the DCST through the DCST, unless otherwise directed by the DCST.

**2.11** The DCST 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) and **PMG-27** (Consultant Evaluation Form).

**ARTICLE 3 DESIGN/CONSTRUCTION SERVICES TEAM**

**3.1 SERVICES AND RESPONSIBILITIES**

**3.1.1** Design services required by these General Conditions shall be performed by qualified architects and other design professionals. The contractual obligations of such professional persons or entities are undertaken and performed in the interest of the DCST.

**3.1.2** The agreements between the DCST and the persons or entities identified in these General Conditions, and any subsequent modifications, shall be in writing. These agreements, including financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner upon request.

**3.1.3** The DCST shall be responsible to the Owner for acts and omissions of the DCST's employees, subcontractors and their agents and employees, and other persons, including the Architect and other design professionals, performing any portion of the DCST's obligations under these General Conditions.

**3.1.4** The Team shall be responsible to coordinate the work with 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 Team 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.

**3.2 BASIC SERVICES**

**3.2.1** The Team’s Basic Services are as described in **Paragraph 2.1** of the Agreement.

**3.2.2** The DCST shall designate a representative authorized to act on the DCST's behalf with respect to the Project.

**3.2.3** The DCST shall submit Construction Documents for review and approval by the Owner. Construction Documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

**.1** be consistent with the intent of the DCST's Proposal;

**.2** provide information for the use of those in the building trades; and

**.3** include documents customarily required for regulatory agency approvals.

**3.2.4** The DCST, with the assistance of the Owner, shall file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

**.1** The Owner’s assistance shall be limited to providing basic information required by the Team to complete the application process.

**3.2.5** Unless otherwise provided in the Contract Documents, the DCST shall provide or cause to be provided and shall pay for design services, 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.

**3.2.6** The DCST shall be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under these General Conditions.

**3.2.7** The DCST shall keep the Owner informed of the progress and quality of the Work. DCST shall submit written monthly progress reports to the Owner 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. Report and record such additional information related to construction as may be requested by the Owner

**3.2.8** The DCST shall be responsible for correcting Work which does not conform to the Contract Documents.

**3.2.9** The DCST warrants to the Owner 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 construction will be free from faults and defects, and that the construction will conform to the requirements of the Contract Documents. Construction not conforming to these requirements, including substitutions not properly approved by the Owner, shall be corrected in accordance with **Article 9** (Correction of Work), herein.

**3.2.10** The DCST shall pay all sales, consumer, use and similar taxes which had been legally enacted at the time the DCST's Proposal was first submitted to the Owner, and shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are either customarily secured after execution of a contract for construction or are legally required at the time the DCST's Proposal was first submitted to the Owner.

**.1** Owner shall pay all fees related to the Building Permit and Fire Marshal submittals.

**3.2.11** The DCST shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.

**3.2.12** The DCST shall pay royalties and license fees for patented designs, processes or products. The DCST shall defend suits or claims for infringement of patent rights and shall hold the Owner 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 is required by the Owner. However, if the DCST has reason to believe the use of a required design, process or product is an infringement of a patent, the DCST shall be responsible for such loss unless such information is promptly furnished to the Owner.

**3.2.13** The DCST shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under these General Conditions. At the completion of the Work, the DCST shall remove from the site waste materials, rubbish, the DCST's tools, construction equipment, machinery, and surplus materials.

**3.2.14** The DCST shall notify the Owner when the DCST believes that the Work or an agreed upon portion thereof is substantially completed. If the Owner concurs, the DCST shall issue a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibility of each party for security, maintenance, heat, utilities, damage to the Work and insurance, shall include a list of items to be completed or corrected and shall fix the time within which the DCST shall complete items listed therein. Disputes between the Owner and DCST regarding the Certificate of Substantial Completion shall be resolved in accordance with provisions of **Article 10**,Dispute Resolution, Mediation and Arbitration, herein.

**3.2.15** The DCST shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders, Bulletins and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals, which are regularly updated to record the completed construction. These shall be delivered to the Owner upon completion of construction as a record of the Work as constructed and prior to final payment.

**3.3 ADDITIONAL SERVICES**

**3.3.1** Additional services will be determined per **Article 3** of the Agreement.

**ARTICLE 4 TIME**

**4.1** Unless otherwise indicated, the Owner and the DCST shall perform their respective obligations as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Project.

**4.2** Time limits stated in the Contract Documents are of the essence. The Work to be performed under this Agreement shall commence upon receipt of a notice to proceed unless otherwise agreed and, subject to authorized Modifications, Substantial Completion shall be achieved on or before the date established in the Agreement.

**4.3** 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.

**4.4** Based on the Team’s Proposal, a construction schedule shall be provided consistent with **Article 5** of the Agreement.

**4.5** If the DCST is delayed at any time in the progress of the Work by an act or neglect of the Owner, Owner's employees, or separate contractors employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, adverse weather conditions not reasonably anticipatable, unavoidable casualties or other causes beyond the DCST's control, or by delay authorized by the Owner pending arbitration, or by other causes which the Owner and DCST agree may justify delay, then the Contract Time shall be reasonably extended by Change Order.

**4.6** All delays in time must be substantiated on the Critical Path Schedule.

**ARTICLE 5 PAYMENTS**

**5.1 PROGRESS PAYMENTS**

**5.1.1** DCST shall deliver to the Owner itemized applications for payment in such detail as indicated in **Article 12** of the Agreement.

**5.1.2** Process for Applications for Payment is outlined in **Article 12** of the Agreement.

**5.1.3** The Application for Payment shall constitute a representation by the DCST to the Owner that the Design/Construction have progressed to the point indicated, the quality of the Work covered by the application is in accordance with the Contract Documents, and the DCST is entitled to payment in the amount requested.

**5.1.4** The Owner shall have no obligation under these General Conditions to pay or to be responsible in any way for payment to the Architect, another design professional or a contractor performing portions of the Work.

**5.1.5** Neither progress payment nor partial or entire use or occupancy of the Project by the Owner shall constitute an acceptance of Work not in accordance with the Contract Documents.

**5.1.6** The DCST warrants that title to all construction covered by an Application for Payment will pass to the Owner no later than the time of payment. The DCST further warrants that upon submittal of an Application for Payment all construction for which payments have been received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the DCST or any other person or entity performing construction at the site or furnishing materials or equipment relating to the construction.

**5.1.7** At the time of Substantial Completion, the Owner shall pay the DCST the retainage, if any, less the reasonable cost to correct or complete incorrect or incomplete Work. Final payment of such withheld sum shall be made upon correction or completion of such Work.

**5.1.8** Liquidated damages, if any, to the date of Substantial Completion shall be deducted by Construction Change Directive from the Contract Sum and from the Substantial Completion Payment.

**5.1.9** Retainage shall be withheld from each monthly payment request in an amount not to exceed five percent (5%) of the approved payment until fifty percent (50%) of the construction payments are made. After the Work is considered to be fifty percent (50%) complete, retainage thereafter not to exceed five percent (5%)of the request, may or may not be withheld at the discretion of the Owner.

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

**5.2 FINAL PAYMENT**

**5.2.1** Neither final payment nor any amounts retained, if any, shall become due until the DCST submits to the Owner (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 to be 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 thirty (30) days prior written notice has been given to the Owner; (3) a written statement that the DCST knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contact Documents; (4) consent of surety, if any, to the 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, 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 contractor or other person or entity entitled to assert a claim against the Owner’s property refuses to furnish a release or waiver required by the Owner, the DCST 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 DCST shall indemnify the owner for all loss and costs, including reasonable attorneys’ fees incurred as a result of such claim.

**5.2.2** When the Work has been completed and the contract fully performed, the DCST shall submit a final application for payment to the Owner, who shall make final payment in accordance with the Agreement.

**5.2.3** The making of final payment shall constitute a waiver of claims by the Owner except those arising from:

**.1** liens, claims, security interests 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.

**5.2.4** Acceptance of final payment shall constitute a waiver of all claims by the DCST except those previously made in writing and identified by the DCST as unsettled at the time of final Application for Payment.

**5.3 PARTIAL OCCUPANCY OR USE**

**5.3.1** 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 Team, provided such occupancy or use is consented to by the insurer as required 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, or has reached beneficial occupancy, provided the Owner and Team 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 Team considers a portion substantially complete, the Team shall prepare and submit a list of outstanding construction items to the Owner. Consent of the Team 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 Team.

**5.3.2** Substantial Completion is the stage in the process of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. This includes compliance with all Life Safety requirements. Areas shall be sufficiently complete to be considered “leasable”, including all furnishings in place, either permanent or approved temporary furnishings, with all appliances in working order and operable. Beneficial occupancy is deemed achieved when all conditions of substantial completion are met, plus completion of all punchlist items.

**5.3.3** Immediately prior to such partial occupancy or use, the Owner and Team 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.

**5.3.4** 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.

**ARTICLE 6 PROTECTION OF PERSONS AND PROPERTY**

**6.1** The DCST shall be responsible for initiating, maintaining and providing supervision of all safety precautions and programs in connection with the performance of these General Conditions.

**6.2** The DCST shall take reasonable precautions for the 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 DCST or the DCST's contractors; and (3). other property at 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.

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

**6.4** The DCST shall promptly remedy damage and loss (other than damage or loss insured under property insurance provided or required by the Contract Documents) to property at the site caused in whole or in part by the DCST, a contractor of the DCST or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

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

**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.

**ARTICLE 7 INSURANCE AND BONDS**

**7.1 DCST'S LIABILITY INSURANCE**

**7.1.1** The DCST shall purchase from, and maintain in, a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, such insurance as will protect the DCST from claims set forth below which may arise out of or result from operations under these General Conditions by the DCST or by a contractor of the DCST, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

**.1** claims under workers' compensation, disability benefit and other similar employee benefit laws that are applicable to the Work to be performed;

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

**.3** claims for damages because of bodily injury, sickness or disease, or death of persons other than the DCST's employees;

**.4** claims for damages covered by usual personal injury liability coverage which are sustained (1). by a person as a result of an offense directly or indirectly related to employment of such person by the DCST 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 DCST's obligations under **Paragraph 11.5** (Indemnification), herein.

**.8** 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 ISO standard forms or their equivalents. The insurance shall be provided by carriers rated at least “A” by S&P. The Team 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 under the Agreement, shall provide the Severability of Insured’s Provision, and shall provide a waiver or subrogation in favor of the Owner. The Owner shall be exempt from, and in no way liable for, any sums of money that may represent a deductible in any insurance policy. The payment of such deductible shall be the responsibility solely of the Team and/ or Trade Contractor providing such insurance.

**7.1.2** The insurance required by **Subparagraph 7.1.1** herein shall be written for not less than limits of liability specified in these General Conditions or required by law, whichever coverage is greater. 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.

**7.1.2.1** The insurance required by **Subparagraph 7.1.1** herein shall be written for not less than limits of one-million dollars ($1,000,000.00) per occurrence with an excess coverage at a minimum of $2,000,000 (Two Million Dollars). Coverage’s, 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 7.1.1** herein shall include contractual liability insurance applicable to the Contractor’s obligations and coverage for the “XCU” exposure. The University of South Florida shall be named as an additional insured and a waiver of subrogation in favor of the Owner shall be included in all liability policies. Policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by the acquisition, installment or operation of the Projects. The Net Proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the Net Proceeds of such insurance shall have been paid.

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

**7.1.2.3** Automobile Liability: The Team shall secure and maintain, during the life of this Agreement, Automobile Liability insurance on all vehicles against bodily injury and property damage not less than one-million dollars ($1,000,000.00) out of any one occurrence and in at least the amount of not less than two-million dollars ($2,000,000.00) in aggregate. The University of South Florida shall be named as an additional insured and a waiver of subrogation in favor of the Owner shall be included in all liability policies.

**7.1.3** Certificates of Insurance acceptable to the Owner shall be filed with the Owner at the time of execution of the Agreement. These Certificates and the insurance policies required by this **Paragraph 7.1** shall contain a provision that coverages afforded under the policies will not be cancelled or allowed to expire until at least thirty (30) calendar days prior 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. The Team shall furnish one copy each of Certificates of Insurance for each copy of the Agreement that 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 insurer, the number of the policy, its effective date, and its termination date. The Team shall furnish a copy of the insurance policy to the Owner within 60 calendar days following the execution of the Agreement.

**7.2 PERFORMANCE AND PAYMENT BOND**

**7.2.1** The Team shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as required.

**7.2.2** Surety companies acceptable to the Owner.

**7.2.2.1** The Team, shall furnish the Owner with a State of Florida one-hundred percent (100%) Labor and Materials Payment Bond and a Performance Bond written by a Surety Company acceptable to the Owner and authorized to do business in the State of Florida and signed or countersigned by a Florida Licensed Resident Agent who holds a current Power of Attorney from the Surety issuing the Bond. The required forms of the Labor and Material Payment Bond, and the Performance Bond are to be provided by the Owner.

**7.2.2.2** The cost of the Bonds shall be borne by the Contractor. The Bonds shall be accompanied by a duly authenticated or certified document, evidencing that the person executing the Bonds in behalf of the Surety had the authority to do so on the date of the Bonds. In the usual case the conferring of that authority has occurred prior to the date of the Bonds, and the document showing the date of appointment and enumeration of powers of the person executing the Bonds is accompanied by a certification that the appointment and powers have not been revoked and remain in effect. The date of that certification cannot be earlier than the date of the Bonds. The Bonds shall not be dated earlier than the Agreement.

**7.2.2.3** To be acceptable to the Owner as Surety for Performance and Labor and Materials Payment Bonds, a Surety Company must meet the following requirements.

**.1** Be in good standing with the Florida Department of Insurance.

**.2** Authorized or approved to do business in the State of Florida

**.3** Authorized to write Surety Bonds in the State of Florida

**.4** For projects for which the contract amount is five-hundred-thousand dollars ($500,000.00) or less:

* 1. Have twice the minimum surplus and capital required by the Florida Insurance Code.
  2. Be in compliance with all other provisions of Florida Insurance Code (No violation).
  3. Hold a current valid certificate of authority issued by the **Title 31**, United States Code **9304-9308**.

**.5** For projects for which the contract amount is five-hundred-thousand dollars ($500,000.00) or greater:

1. The Surety Company shall have been in business and have a record of successful continuous operation for at least five years, unless this provision is expressly deleted by addendum or by the Special Conditions to this Project Manual; and
2. Except for asbestos contracts, for which a B rating is acceptable, the Surety Company shall have at least the following minimum ratings:

| **CONTRACT AMOUNT** | **BEST RATING** | **REQUIRED FINANCIAL SIZE** |
| --- | --- | --- |
| $500,000 TO 749,999 | A | Class V |
| $750,000 TO 999,999 | A | Class VI |
| $1,000,000 TO 1,499,999 | A | Class VII |
| $1,500,000 TO 9,999,999 | A | Class VIII |
| $10,000,000 OR MORE | A | Class IX |

**7.3 PROPERTY INSURANCE**

**7.3.1** The Team shall purchase and maintain, with an admitted carrier in the State of Florida rated at least “A” by S&P, 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 7.3.1.1** 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 5.2** (Final Payments) or until no person or entity other than the Owner has an insurable interest in the property required by this **Paragraph 7.3** (Property Insurance) herein to be covered, whichever is earlier. This insurance shall include interests of the Owner, the Team, Subcontractors and Sub-subcontractors in the Work. The University of South Florida shall be named as additional insured on the policies.

**7.3.1.1** 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, Team, 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 but not limited to fire or lightning, with extended coverage and vandalism and malicious mischief insurance. Such extended coverage insurance shall, as nearly as practicable, also cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke, terrorism and such other hazards as are normally covered by such insurance, and shall include reasonable compensation for Owner services and expenses required as a result of such insured loss.

**7.3.1.2** Any special insurance requirements will be addressed in the Special Conditions or in the Supplementary General Conditions.

**7.3.1.3** If the property insurance provides deductibles, the Team 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 Team.

**7.3.1.4** 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.

**7.3.2** 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, Team, Subcontractors and Sub-subcontractors in the Work, and the Owner and Team shall be named insureds.

**7.3.3** Prior to commencement of the Work, the Team shall provide the Owner with a Certificate of Insurance which evidences the property insurance (Builder’s Risk) provided by the Team. 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. The University of South Florida shall be named as an additional insured on the policy. Upon receipt of the policy, the Team shall file with the Owner a copy of each policy that includes insurance coverages required by this Paragraph. 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.

**7.3.4** A loss or losses insured under this insurance shall be adjusted by the Team and its insurance company. The Team shall repair or replace the damaged property with the proceeds from the Builder’s Risk policy. The Team shall be responsible for all damages and necessary repairs whether or not the loss is covered by the Builder’s Risk policy. The Owner reserves the right to purchase Builder’s Risk insurance on its own behalf and to adjust the contract cost accordingly.

7.3.5 Partial occupancy or use in accordance with Paragraph 5.3 (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 Team 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.

**ARTICLE 8 CHANGES IN THE WORK**

**8.1 CHANGES**

**8.1.1** Changes in the Work may be accomplished after execution of these General Conditions, without invalidating these General Conditions, by Change Order, Construction Change Directive, or order for a minor change in the Work, subject to the limitations stated in the Contract Documents.

**8.1.2** A Change Order shall be based upon agreement between the Owner and the DCST; a Construction Change Directive may be issued by the Owner without the agreement of the DCST; an order for a minor change in the Work may be issued by the DCST alone.

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

**8.1.4** 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 the DCST, the applicable unit prices shall be equitably adjusted.

**8.2 CHANGE ORDERS**

**8.2.1** A Change Order is a written instrument prepared by the DCST and signed by the Owner and the DCST, stating their agreement upon all of the following:

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

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

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

**8.3 CONSTRUCTION CHANGE DIRECTIVES**

**8.3.1** A Construction Change Directive is a written order prepared and signed by the Owner, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both.

**8.3.2** Except as otherwise agreed by the Owner and the DCST, the adjustment to the Contract Sum shall be determined on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including the expenditures for design services and revisions to the Contract Documents. In case of an increase in the Contract Sum, the cost shall include a reasonable allowance for overhead and profit. In such case, the DCST shall keep and present an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in the Contract Documents, costs for these purposes 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' compensation insurance;

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

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

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

**.5** additional costs of supervision and field office personnel directly attributable to the change; and fees paid to the Architect, engineers and other professionals.

**8.3.3** 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 DCST to the Owner for deletion or change which results in a net decrease in the Contract Sum will be actual net cost. 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 the net increase, if any, with respect to that change.

**8.3.4** When the Owner and the DCST agree upon the adjustments in the Contract Sum and Contract Time, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order or Amendment.

**8.4 MINOR CHANGES IN THE WORK**

**8.4.1** The Team will have the authority after receiving the Owner’s written 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 the Team. The Team shall carry out such written orders promptly.

**8.5 CONCEALED CONDITIONS**

**8.5.1** 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 Contract Sum shall be equitably adjusted for such concealed or unknown conditions by Change Order upon claim by either party made within twenty-one (21) days after the claimant becomes aware of the conditions.

**8.6 REGULATORY CHANGES**

**8.6.1** The DCST shall be compensated for changes in the construction necessitated by the enactment or revision of codes, laws or regulations subsequent to the submission of the DCST's Guaranteed Maximum Proposal (GMP).

**ARTICLE 9 CORRECTION OF WORK**

**9.1** The DCST shall promptly correct Work rejected by the Owner or known by the DCST to be defective 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 DCST shall bear costs of correcting such rejected Work, including additional testing and inspections.

**9.1.1** The Team shall commence correction of the Work within seven calendar days after the date of written notice from the Owner.

**9.2** If, within one (1) year after the date of Substantial Completion of the Work or, after the date for commencement of warranties established in a written agreement between the Owner and the DCST, 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 DCST shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Design/ Builder a written acceptance of such condition.

**9.2.1** This period of one year shall be extended with respect to portions of the Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation under **Paragraph 9.2** 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.

**9.3** Nothing contained in this **Article 9** (Correction of Work) herein shall be construed to establish a period of limitation with respect to other obligations which the DCST might have under the Contract Documents. Establishment of the time period of one (1) year as described in Subparagraph relates only to the specific obligation of the DCST 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 DCST's liability with respect to the DCST's obligations other than specifically to correct the Work.

**9.4** If the DCST fails to correct nonconforming Work as required or fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the DCST to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the Owner's right to stop the Work shall not give rise to a duty on the part of the Owner to exercise the right for benefit of the DCST or other persons or entities.

**9.5** If the DCST is in default for any of the following reasons: failure to correct Work which is not in accordance with the Contract Documents, failure to correct defective Work, failure to complete the Work on time, neglecting to perform and carry out the Work in accordance with the Contract Documents, or defaults under any of its contractual obligations, and fails within a seven (7) day period after receipt of written notice from the Owner of such default to provide a recovery plan which is acceptable to the Owner and cure its default under the contract, then 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 the DCST the reasonable cost of correcting such deficiencies, including Owner’s expenses and compensation for any additional services made necessary by such default, neglect, or failure. The amounts to be charged to the DCST are subject to prior approval of the Architect/Engineer. If payments then or thereafter due the DCST are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

**ARTICLE 10 DISPUTE RESOLUTION, MEDIATION AND ARBITRATION**

**10.1** Claims, Disputes or other matters in question between parties of the Agreement shall be resolved as outline in **Article 9** of the Agreement.

**10.2** In addition to and prior to arbitration, the parties shall endeavor to settle disputes by mediation. Demand for mediation shall be filed in writing with the other party to the Agreement and with the American Arbitration Association. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings base on such claim, dispute or other matter in question would be barred by the applicable statutes of repose or limitations.

**10.3** Demand for arbitration shall be filed in writing with the other party to the Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of repose or limitations.

**10.4** An arbitration pursuant to this Article may be joined with an arbitration involving common issues of law or fact between the DCST and any person or entity with whom the DCST has a contractual obligation to arbitrate disputes. No other arbitration arising out of or relating to these General Conditions shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to the Agreement or not a party to an agreement with the DCST, except by written consent containing a specific reference to the Agreement signed by the Owner, the DCST and any other person or entities sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to the Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

**10.5** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**10.6 Chapter 558**, Florida Statutes contains important requirements you must follow before you may bring any legal action for an alleged construction defect. Sixty days before you bring any legal action, you must deliver to the other party to this contract a written notice, referring to **Chapter 558**, 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 11 MISCELLANEOUS PROVISIONS**

**11.1** Unless otherwise provided, these General Conditions shall be governed by the law of the place where the Project is located.

**11.2 SUBCONTRACTS**

**11.2.1** The DCST, within thirty (30) calendar days of the execution of the Notice to Proceed with construction, shall furnish to the Owner, in writing, the remaining names of the persons or entities the DCST will engage as Trade Contractors for the Project that were not previously submitted under the requirements of the Request for Qualifications.

**11.2.2** The Team shall not contract with a proposed person or entity to whom the Owner has made a reasonable objection. The Team shall not contract with any subcontractor that 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 11.2.1** above shall constitute a certification by the Team that the Subcontractor is properly licensed. Thereafter, by signing the monthly Certificate of Partial Payment, the Team will certify that all Subcontractors providing services for the Work are properly licensed. The Team shall not be required to contract with anyone to whom the Team has made a reasonable objection.

**11.3 WORK BY OWNER OR OWNER'S CONTRACTORS**

**11.3.1** 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 insurance and waiver of subrogation identical to the provisions of these General Conditions. If the DCST claims that delay or additional cost is involved because of such action by the Owner, the DCST shall assert such claims as provided in **Paragraph 11.4** (Claims for Damages) herein.

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

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

**11.3.4** 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.

**11.4 CLAIMS FOR DAMAGES**

**11.4.1** Either party to the Agreement 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 twenty-one (21) days after occurrence of the event giving rise to such clam or within twenty-one (21) days after the claimant first recognized or should have reasonably recognized the condition giving rise to the claim, whichever is later. The notice shall provide sufficient detail or enable the other party to investigate the matter. When a claim results in a change order, any additional claims arising out of or relating to the same matter must be submitted within the time limits set forth in this paragraph.

**11.5 INDEMNIFICATION**

**11.5.1** To the fullest extent permitted by law, the DCST shall indemnify and hold harmless the Owner, Owner’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, arising out of or resulting from 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 DCST or anyone directly or indirectly employed by the DCST 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 the **Paragraph11.5** (Indemnification)herein.

**.1** The Team shall also hold harmless those named above in **Subparagraph 11.5.1** from court costs arising from performance or non-performance of the Work. Those named above shall also be held harmless from actions resulting from non-performance of the Work.

**11.5.2** In claims against any person or entity indemnified under this **Paragraph 11.5** (Indemnification) by an employee of the DCST, anyone directly or indirectly employed by the DCST or anyone for whose acts the DCST may be liable, the indemnification obligation under this **Paragraph 11.5** shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the DCST under workers' compensation acts, disability benefit acts or other employee benefit acts.

**11.6 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 11.6.1 herein.

**11.7 SUCCESSORS AND ASSIGNS**

The Owner and Team respectively bind themselves, their partnes, 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 Agreement shall assign the Agreement without written consent of the other. In case the Team, 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 Clause substantially to the effect that it is agreed that the right of the assignee to any money due or to become due the Team 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.

**11.8 TERMINATION OF PROFESSIONAL DESIGN SERVICES**

Prior to termination of the services of the Architect or any other design professional designated in these General Conditions, the DCST shall identify to the Owner in writing another architect or other design professional with respect to whom the Owner has no reasonable objection, who will provide the services originally to have been provided by the Architect or other design professional whose services are being terminated.

**11.9 EXTENT OF AGREEMENT**

The Agreement represents the entire agreement between the Owner and the DCST and supersedes prior negotiations, representations or agreements, either written or oral. The Agreement may be amended only by written instrument and signed by both the Owner and the DCST.

**11.10 OWNER’S RIGHT TO CLEAN UP**

If a dispute arises among the Team, 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, the Owner may clean up and allocate the cost among those responsible.

**11.11 TESTS AND INSPECTIONS**

**11.11.1** Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time and are at the Team’s expense. Unless otherwise provided, the Team 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 Team shall give the Owner timely notice of when and where tests and inspections are to be made so the Owner may observe such procedures.

**11.11.2** If the Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval the Team shall make arrangements for, and bear the cost of, such additional testing, inspection or approval by an entity acceptable to the Owner, and the Team shall give timely notice to the Owner of when and where tests and inspections are to be made so the Owner may observe such procedures.

**11.11.3** If such procedures for testing, inspection, or approval reveals failure of the portions of the Work to comply with requirements established by the Contract Documents, the Team shall bear all costs made necessary by such failure including those of repeated procedures.

**11.11.4** Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Team and promptly delivered to the Owner.

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

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

**11.11.7** Where tests are required by the technical specifications for materials, methods or equipment, the Team 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.

**11.11.8** If substitute materials or equipment are proposed by the Team, they shall pay the cost of all tests which may be necessary to satisfy the Owner that specification requirements are met.

**11.11.9** The Team shall pay for all testing costs, including but not limited to, power, fuel, and equipment costs that 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.

**11.12 COMMENCEMENT OF STATUTORY LIMITATION PERIOD**

**11.12.1** As between the Owner and Team:

**.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 Team pursuant to any warranty, the date of any correction of the Work or failure to correct the Work by the Team, or the date of actual commission of any other act or failure to perform any duty or obligation by the Team or Owner, whichever occurs last.

**.4** None of the foregoing **Subparagraphs 11.11.1.1** through **11.11.1.3** above is intended to limit nor shall they act as a limit on or in any matter reduce a statute of limitations period provided under applicable law.

**ARTICLE 12 TERMINATION OF THE AGREEMENT**

**12.1 TERMINATION BY THE OWNER**

**12.1.1** The Owner may terminate the Contract if the Team:

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

**.2** fails to make payment to Trade Contractors for materials or labor in accordance with the respective agreements between the Team and the Trade Contractors.

**.3** persistently disregards laws, ordinances, or rules, regulations or orders of a public Authority Having Jurisdiction; or

**.4** or its subcontractors fail to perform work in accordance with the Contract Documents,

**.5** or its subcontractors fail to timely perform work in accordance with the project schedule,

**.6** fails to perform any obligation imposed by the Contract Documents,

**.7** becomes insolvent, files bankruptcy or has receiver appointed on its behalf,

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

**12.1.2** When any of the above reasons exist, the Owner, may without prejudice to any other rights or remedies of the Owner and after giving the Team and the Team’s Surety seven calendar days written notice, terminate employment of the Team 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 Team;

**.2** accept the assignments of Trade Contracts; and

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

**12.1.3** If the Team’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 Team.

**12.1.4** When the Owner terminates the Contract for one of the reasons stated in **Subparagraph 12.1.1**, the Team shall not be entitled to receive further payment until the Work is finished under the Contract and shall be bound by the Conditions of the Contract to fulfill all obligations of the Agreement 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 Team. The amount to be paid to the Surety or Owner shall be certified by the Owner upon application and this obligation for payment shall survive termination of the employment of the Team.

**12.2 TERMINATION BY THE DESIGN & CONSTRUCTION SERVICES TEAM**

**12.2.1** The Team may terminate the Contract if the Work is stopped for a period of thirty (30) calendar days through no act or fault of the Contractor or a Trade Contractor or their agents or employees or any other persons performing portions of the Work under contract with the Team, 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 Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

**.4** if repeated suspensions, delays or interruptions by the Owner constitute in the aggregate more than twenty-one percent (100%) of the total number of calendar days scheduled for completion, or one-hundred-twenty (120) calendar days in any three-hundred-sixty-five thousand (365) day period whichever is less.

**12.2.2** If any of the above reasons exists, the Team may, upon seven additional calendar days written notice to the Owner terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials and equipment.

**12.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

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

**12.3.2** 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 Team is responsible; or

**.2** That an equitable adjustment is made or denied under another provision of this Contract.

**12.3.3** Adjustments made in the cost of performance will be based upon the mutually agreed fixed or percentage fee as established in the Contract.

**12.4 TERMINATION BY THE OWNER WITHOUT CAUSE**

**12.4.1** The engagement of Team hereunder may be terminated at Owner’s election and without cause, and upon seven (7) calendar days’ written notice from Owner to Team.

**12.4.2** Upon termination of the Agreement for convenience and without cause, Owner shall promptly:

**.1** At Owner’s sole cost and expense, Owner may at its discretion assume any contracts which may have been entered into by Team, in its own name relating to the Project. Owner shall be responsible for any liability by reason of anything done or required to be done under any such contract by Team from the effective date of such termination, but shall not be responsible for any action that either was taken or by the terms of such contract should have been taken by Team prior thereto.

**.2** Pay for and be responsible for the cost of all services, materials and supplies, if any, which may have been ordered by Team as a result of its obligations arising under this Agreement but which have not been charged to or paid by Team and reimbursed under this Agreement at the time of termination to the extent such services, materials or supplies are required for the Project and are otherwise undisputed costs.

**.3** Pay Team for all unreimbursed and undisputed cost of work in place and stored materials, as provided in the Contract Documents.

**.4 Payment:**

(**a**) all reasonable restocking, cancellation or demobilization costs, expenses and charges (including, without limitation, costs incurred in connection with ending the engagements with contractors) incurred by Team to the extent not encompassed within **Subparagraphs (.1)** through **(.3)** above;

(**b**). reasonable costs of securing the jobsite; and

End of General Conditions of the Agreement between Owner and Design/Construction Services Team

**Supplementary** & **Special Conditions** of the Contract for Construction

of the Agreement between Owner and Design/Construction Services Team

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

The project specific Supplementary and Special Conditions of the Contract for Construction of the Agreement between Owner and Design/Construction Services Team is provided herein. Design/Construction Services Team in consultation with Owner, shall develop these Supplementary Conditions.

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| **Article/Paragraph** | **Description** |
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End of Supplementary and Special Conditions of the Agreement between Owner and Design/Construction Services Team