

**ADDENDUM AGREEMENT BETWEEN ALACHUA COUNTY AND  
ENERGY AIR INC. FOR ON-CALL MECHANICAL SERVICES, NO. 14454**

This Addendum Agreement (referred as an “Addendum” or “Agreement”) is made by and between Alachua County, Florida, a political subdivision and charter county of the State of Florida, by and through its Board of County Commissioners (the “County”) and Energy Air Inc., a Florida for Profit corporation (“Contractor” or “Vendor”), who are collectively referred to as the “Parties”.

**WITNESSETH:**

**WHEREAS**, the County desires to contract with a vendor to provide mechanical services, as-needed and on-call for Alachua County facilities and buildings; and

**WHEREAS**, the Alachua County Procurement Code defines ‘piggyback’ as a form of intergovernmental cooperative purchasing where an entity extends the pricing and terms of a contract entered into by another entity, with some negotiation to terms not altering the scope; and

**WHEREAS**, pursuant to Section 22.3-302(12) of the Alachua County Procurement Code, the procurement of the goods and services need not be procured through a competitive procurement process when supplies or services are under contract with federal, state or municipal or any other governmental agency or political subdivision provided the vendor extends the same terms and conditions of the contract to the County; and

**WHEREAS**, the Contractor currently provides Mechanical Services to the University of Central Florida following a competitive procurement process completed by the University and the Contractor is under contract with the University for Continuing Mechanical Services, a copy of which incorporated herein and attached hereto as **Exhibit 1** (the “UCF Agreement”); and

**WHEREAS**, per the UCF Agreement the intent is to utilize the Contractor for continuing repairs, modifications, alternations and new other projects with a total annual value of not more than \$4,000,000.00; and

**WHEREAS**, the Contractor is willing and agrees to provide continuing mechanical services to the County, and agrees to extend to the County the same pricing, terms and conditions of the UCF Agreement; and

**WHEREAS**, the Parties agree to the terms and conditions of the UCF Agreement, except as modified herein.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt of which is acknowledged, the Parties agree as follows:

1. **Recitals**. The recitals set forth above are correct and are incorporated into this Addendum Agreement.
2. **Scope of Services**. Pursuant to this Agreement, the Contractor agrees to provide the County all materials, supplies, equipment, supervision, and labor necessary for Mechanical Contractor services for Alachua County facilities and buildings, on an as-needed basis by the County (“Services”, also may be referred to as the “Work”). These Services include, but are not limited to, various continuing repairs, modifications, alterations, and new construction projects commonly encountered in the mechanical trade, and other mechanical related services referenced in the UCF Agreement, attached hereto as **Exhibit 1**.

The Parties agree to be bound by the Terms and Conditions and Pricing of the UCF Agreement, attached hereto, except as modified in Paragraph 4 of this Addendum below. In the event of conflict between the provisions in Paragraph 4 below and the terms and conditions of the UCF Agreement, the provisions of this Addendum Agreement will prevail. Failure to physically attach in Exhibit 1 the UCF Agreement

or its attachments, general terms, and appendixes, whether in part or in whole, shall not invalidate this Addendum, but it shall be construed as if the particular document, provision or part was in fact attached. In the event of conflict, the documents related to the Services will be read in the following order of precedence: (a) this Addendum Agreement, (b) the UCF Agreement, (c) Construction Documents and (d) any Work Order(s) issued by the County.

3. **Term.** This Agreement is effective upon execution by both Parties (“effective date”) and continues through the term of the UCF Agreement, as may be renewed. No amendment of this Agreement shall exceed the term of the UCF Agreement and its renewal periods.
4. **Addendum.** The Parties agree to be bound by the terms and conditions of the UCF Agreement, with respect to the County’s purchase of or request for Services from the Contractor during the term of this Addendum, except for as modified or added below:
  - A. **References.** For the purposes of this Agreement, references in the UCF Agreement to the “Owner” or “University of Central Florida” or “University” or “UCF” any of its divisions, departments, agencies or employees will be read to reference to Alachua County Florida or its divisions, departments, offices, or employees.
  - B. **Authorization for Services.** In regards to the Statement of Work (“SOW”) system provided in the UCF Agreement, the County and Contractor agree that, instead of the SOW process, the order of events for Services by the Contractor for the County will follow the below authorizations and sequences:
    - 1) When needed, the requesting County’s project manager will request all on-call mechanical contractors under contract with the County to provide the County’s Facilities Management with a timeframe and a written quote for the personnel, equipment, and materials needed for the Services for the individual identified project. If the County finds necessary, the County may schedule a pre-construction or site visit for the on-call contractors. Authorization for performance of the Services by the Contractor for the identified project will occur when the County issues a Work Order to Contractor for the project and it is executed by County and signed by Contractor. Each Work Order will state a project name, state the dates for commencement and completion of the Services, and state the quote based upon the pricing of this Agreement for the specific Services. A sample Work Order and Amendment to Work Order are attached as **Exhibit 2** and **Exhibit 2A**. The County Manager or his/her designee is authorized to initiate and sign Work Orders and Amendments to Work Order on behalf of the County. Per the terms of the UCF Agreement, the total cost of the Projects shall not exceed the amount of four million dollars (\$4,000,000.00) annually. If the scope of the Services requires or if directed by the County, the project will be bonded, and the Contractor shall furnish payment and performance bond(s) on forms acceptable to the County and in compliance with Florida law covering the full and faithful performance of the project and obligations arising thereunder.
    - 2) When directed by the County’s project manager, the Contractor, its personnel, subcontractors or representatives will comply with background checks, trainings, dress codes, identification requirements, or other measures required by the County or the Sherriff in order to have access to some secure areas of County facilities.
    - 3) When the Services rendered for the County have been furnished and completed, the County will make a final inspection. Substantial Completion of the Services for the individual project, will same as those in the UCF Agreement’s general terms and conditions. All items that are identified and require correction, are the obligations of the Contractor.
    - 4) The County makes no covenant or promise as to the amount or number of Services or projects to be requested of Contractor under this Addendum, or that Contractor will perform any Services or projects for the County during the term of this Addendum. The Parties acknowledge that there is nothing in this Addendum that precludes County from retaining services of other

contractors, professionals, and consultants for similar or same Services or from independently performing the Services on its own.

C. Pricing and Invoicing Procedures.

- 1) Pricing for the Services timely and completed by the Contractor for the County will be a sum based on the prices listed in the UCF Agreement, a copy of which is attached hereto as **Exhibit 1** and incorporated herein.
- 2) As a condition precedent for any payment, Contractor must submit invoices to the County requesting payment for Services properly rendered and expenses due during the preceding 30 days, unless otherwise agreed in writing by the County. Contractor's invoice must describe the Services rendered, the date performed [*and time expended, if billed by hour*], and the person(s) rendering such Services. Contractor's invoice shall be accompanied by documentation or data in support of expenses, as the County may require. The invoice shall additionally reflect the allocations as provided and shall state the percentage of completion as to each such allocation. Each invoice shall constitute the Contractor's representation to the County that the Services indicated have reached the level stated, have served a public purpose, have been properly and timely performed, that the expenses included in the invoice have been reasonably incurred in accordance with this Agreement, that all obligations of Contractor covered by prior invoices have been paid in full, and that the amount requested is currently due and owing. Submission of the Contractor's invoice for final payment shall further constitute the Contractor's representation to the County that, upon receipt by the Contractor of the amount invoiced, all obligations of the Contractor to others, including its subcontractors, will be paid in full. Contractor shall submit invoices to the County at the address listed in the notice section below. The County shall not be obligated to make payment to the Contractor for amounts that are the subject of a good faith dispute or a claim brought pursuant to §255.05, Florida Statutes.
- 3) The County may, at reasonable times and places, audit the books and records of the Contractor to the extent that such books and records relate to the performance of this Agreement with and the Services to the County. Such books and records shall be maintained by the Contractor for a period of three years from the date of final payment under this Agreement and by the subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing. Contractor agrees to provide such assistance as may be necessary to facilitate the review or audit by the County to ensure compliance with applicable accounting and financial standards.
- 4) The County's performance and obligation to pay under this Agreement is contingent upon a specific annual appropriation by the Alachua County Board of County Commissioners ("Board"). The Parties hereto understand that this Agreement is not a commitment of future appropriations. Continuation of this Agreement beyond the term or the end of any County fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Chapter 129, Florida Statutes; and that the failure of the Board to do so shall not constitute a breach or default of this Addendum.

D. Insurance: During the term, Contractor will procure and maintain insurance of the types and in the minimum amounts detailed in **Exhibit "3"** attached hereto and incorporated herein. A copy of a current Certificate of Insurance (COI) showing coverage of the type and in the amounts required is attached hereto as **Exhibit 3-A**.

E. Exclusions: Paragraph 2.5 of the UCF Agreement regarding "Design Services" is not applicable to the Services which may be provided by Contractor for the County and is excluded from agreement by the Parties. Paragraph 2.9 of the UCF Agreement regarding the University Direct Purchase Program is specific to the University and is not applicable to the Services which may be provided by Contractor for the County and is excluded from this Agreement between the Parties.

- F. Venue: In the event a dispute between the County and the Contractor is not resolved by mediation, the Parties agree that venue for any matter concerning or related to this Agreement or the Services described herein will be in a court of competent jurisdiction in and for Alachua County, Florida and such will be considered the Applicable Courts per the Agreement. If mediation occurs, it shall be held in Alachua County, Florida.
- G. County Property: Contractor agrees to promptly, without delay, notify the County either in phone, email, or orally (1) of any hazardous, dangerous, unsafe, or destructive conditions, trespassers, vandalism or damages that the Contractor or its employees, subcontractors, or agents notices or is made aware of on County property, including inside any County owned or used facility, and (2) if an employee or agent of the Contractor suffers injury or damage to its/his/her person or property while on Alachua County's property, whether owned or leased.
- H. Prevailing Wage: If, as determined by County, the Services to be performed by Contractor are 'Covered Services', as defined under the Alachua County Government Minimum Wage Ordinance ("Wage Ordinance"), then during the term of this Agreement and any renewals, Contractor shall pay its 'Covered Employees', as defined in the Wage Ordinance, no less than the Alachua County Government Minimum Wage ("Minimum Wage"), as may be amended by the County. Contractor will require the same of its subcontractors and subconsultants who provide the Services. If applicable to the Services, Contractor will certify this understanding, obligation, and commitment to County through a certification and Contractor will (a) post a copy of the Minimum Wage Rate in a prominent place of its principal place of business where it is easily seen by Covered Employees; (b) supply a copy to any Covered Employee upon request; (c) make any person submitting a bid for a subcontract for Covered Services aware of these requirements; and (d) include the necessary provisions in subcontracts to ensure compliance. The County shall not be deemed a necessary, or indispensable, party in any litigation between Contractor and subcontractor. At this time of execution of this Agreement, the prevailing Minimum Wage is as follows, which is subject to change during the term of this Agreement, and will be updated, and be applicable, without the necessary of amendment to this Agreement:

- \$18.00 per hour with qualifying health benefits amounting to at least \$2.00 per hour/*
  - \$20.00 per hour without health benefits*

If applicable to the Services under this Agreement and to Contractor, the failure to comply with the provisions of the Wage Ordinance will be deemed a breach this Agreement and County is authorized to withhold payment of funds in accordance with Alachua County Code and Chapter 218, Florida Statutes. Should this section be or become invalid or unenforceable during the term of this Agreement, then such will be severed from this Agreement, and this shall not affect the other sections and remaining terms and conditions of this Agreement.

- I. Indemnification: **THE CONTRACTOR HEREBY WAIVES AND RELEASES, AND AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS ALACHUA COUNTY AND ITS BOARD OF COUNTY COMMISSIONERS, OFFICERS, EMPLOYEES, VOLUNTEERS, AND ATTORNEYS (COLLECTIVELY "ALACHUA COUNTY") FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, PENALTIES, EXPENSES, AND CAUSES OF ACTION OF ANY AND EVERY DESCRIPTION, AND DAMAGES, INCLUDING ATTORNEYS' FEES AND COSTS, BROUGHT AGAINST ALACHUA COUNTY RESULTING FROM ANY ACCIDENT, INCIDENT OR OCCURRENCE ARISING OUT OF OR IN CONNECTION WITH AN ACT, ERROR OR OMISSION OF CONTRACTOR OR CONTRACTOR'S EMPLOYEES, OFFICERS, AGENTS, ASSIGNS OR SUBCONTRACTORS IN CONNECTION WITH THE PERFORMANCE OF THE SERVICES SET FORTH IN THIS ADDENDUM AGREEMENT, INCLUDING THE ATTACHED EXHIBITS, AND ANY AMENDMENTS TO THIS AGREEMENT, AND FROM CONTRACTOR'S ENTRY ONTO PROPERTY**



**OWNED BY ALACHUA COUNTY AND ANY AND ALL IMPROVEMENTS THEREON.**

This obligation shall in no way be limited in any nature by any limitation on the amount or type of Contractor's insurance coverage. In the event the County is alleged to be liable on account of alleged acts or omissions, or both, of Contractor or Contractor's employees, representatives or agents, then Contractor will investigate, respond to and provide a defense for any allegations and claims, at Contractor's sole costs and expense. Furthermore, Contractor will pay all costs, fees and other expenses of any defense, including but not limited to, all attorneys' fees, court costs and expert witness fees and expenses. Contractor and County will jointly cooperate with each other in the event of any litigation, including any request for documentation. This indemnification provision will survive the termination of this Agreement. Nothing contained herein shall constitute a waiver by the County of sovereign immunity or the provisions or limitation of liability of §768.28, Florida Statutes, as may be amended.

J. Public Records: In accordance with §119.0701, Florida Statutes, Contractor, *when acting on behalf of the County*, shall, as required by Florida law:

- 1) Keep and maintain public records required by the County to perform the Services.
- 2) Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida law or as otherwise provided by law.
- 3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of this Agreement and following completion of the Agreement if Contractor does not transfer the records to the County.
- 4) Upon completion of the Agreement, transfer, at no cost, to the County all public records in possession of Contractor or keep and maintain public records required by the County to perform the Services. If Contractor transfers all public records to the County upon completion of the Agreement, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of the Agreement, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the County's information technology systems.

**IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE COUNTY'S PUBLIC RECORDS CUSTODIAN AT [publicrecordsrequest@alachuacounty.us](mailto:publicrecordsrequest@alachuacounty.us) OR (352) 264-6906 OR 12 SE 1<sup>ST</sup> STREET, GAINESVILLE, FL 32601.**

If Contractor fails to comply with this section, Contractor will be deemed in default under this Agreement. The County may enforce as set forth in §119.0701, Florida Statutes. Contractor who fails to provide the public records in response to a request within a reasonable time may be subject to penalties imposed under §119.10, Florida Statute, and costs of enforcement, including fees, under §119.0701 and §119.12, Florida Statutes.

The County and the Contractor will take reasonable measures to protect, secure and maintain any data held by Contractor in an electronic form that is or contains proprietary, exempt, confidential, personal, or protected information, as defined by Florida or federal law, related to or in connection with performance of the Services. If Contractor suspects or becomes aware of a security breach or

unauthorized access to such data by a third party, Contractor shall immediately notify the County in writing and will work, at Contractor’s expense, to prevent or stop the data breach.

5. Termination.

- A. This Addendum may be terminated by the County due to (a) the failure of the Contractor to provide the Services within time specified, or (b) failure of the Contractor to carry out any obligation, term, or condition of this Addendum, or (c) the Contractor violates any of the covenants, agreements, terms or stipulations of this Addendum. If the County finds the Contractor in default, the County will give written notice to the Contractor (i) terminating this Addendum Agreement effective 7 days from the date of notice or (ii) setting forth the nature of the default and requesting the Contractor cure the default within 7 days from the date of notice. The County Manager and his/her designee is authorized to provide notice of default on behalf of County. Failure to adequately address all issues of concern may result in termination. Termination shall be effective by delivery of notice to the Contractor specifying the date of termination.
- B. The County may at any time give written notice to the Contractor terminating this Agreement or suspending the project, in whole or in part, for the County’s convenience and without cause. The County Manager is authorized to provide notice of termination for convenience on behalf of County. Termination shall be effective by delivery of notice to the Contractor specifying the date of termination.
- C. If funds to finance the Services become unavailable, as determined by the County, County may terminate this Agreement upon written notice to Contractor. County Manager and his/her designee is authorized to provide notice of termination on behalf of the County. The effective date of termination of this Agreement will be the date specified in the notice of termination or, if date specified in the notice, then the effective date of termination will be the date that the notice of termination is received by the Contractor.

6. Amendment and Assignment. This Agreement may not be modified or amended without the written agreement by the County and the Contractor. This Agreement shall not be assigned without the written consent of the County.

7. Notice. Except as otherwise provided in this Agreement, any notice from either Party to the other Party must be in writing and delivered by hand delivery with receipt or sent by certified mail, return receipt requested, to the addresses below. All notices will be deemed delivered five (5) business days after mailing. Each Party may change its mailing address by giving the other Party, written notice of election to change the address.

To Contractor:

ENERGY AIR, INC.  
5401 ENERGY AIR COURT  
ORLANDO, FL 32810

To County:

Facilities Management  
915 SE 5<sup>th</sup> Street  
Gainesville, Florida, 32601  
(352) 374-5286  
[FacFiscal@alachuacounty.us](mailto:FacFiscal@alachuacounty.us)

cc: With a copy electronically sent to:

Alachua County Procurement, Attn: Contracts  
[acpur@alachuacounty.us](mailto:acpur@alachuacounty.us)

Clerk of Court, Attn Finance & Accounting  
[dmw@alachuaclerk.org](mailto:dmw@alachuaclerk.org)

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed on the respective dates under each signature: Alachua County, Florida, through its Chair of the Board of County Commissioners who is authorized to sign, and by Contractor, through its duly authorized representative.

**ENERGY AIR, INC.**

Signed by:  
By: John M. Bartkovich  
7EE299C470E6460...  
Print: John M. Bartkovich  
Title: President  
Date: 11/7/2024

**IF THE CONTRACTOR IS NOT A NATURAL PERSON, PLEASE PROVIDE A CERTIFICATE OF INCUMBENCY AND AUTHORITY, OR A CORPORATE RESOLUTION, LISTING THOSE AUTHORIZED TO EXECUTE CONTRACTS ON BEHALF OF YOUR ORGANIZATION. IF ARE A NATURAL PERSON, THEN YOUR SIGNATURE MUST BE NOTARIZED.**

**ALACHUA COUNTY, FLORIDA**

By: \_\_\_\_\_  
\_\_\_\_\_, Chair  
Board of County Commissioners  
Date: \_\_\_\_\_

ATTEST

Approved as to form:

\_\_\_\_\_  
J.K. "Jess" Irby, Esq., Clerk  
(SEAL)

\_\_\_\_\_  
Alachua County Attorney's Office

## Exhibit 1 – UCF Agreement



UNIVERSITY OF  
CENTRAL FLORIDA

### AGREEMENT FOR CONTINUING MECHANICAL SERVICES

This Agreement For Continuing Mechanical Services (this “**Agreement**”), effective as of the date last signed below, (the “**Effective Date**”), by and between The University of Central Florida Board of Trustees (“**Owner**”) and **Energy Air, Inc., 5401 Energy Air Court Orlando, FL 32810, and FEID 59-2040096**, (“**Contractor**”), which is authorized to do business in the State of Florida. Owner and Contractor shall from time to time hereinafter be referred to individually as a “**Party**” and together as the “**Parties.**”

#### RECITALS

**WHEREAS**, Owner competitively selected contractors for various continuing repairs, modifications, alterations, and new construction projects at the University of Central Florida, with construction cost not exceeding \$4,000,000; and

**WHEREAS**, Owner may engage one or more Professionals to design components and/or develop specifications and statements of work for each project;

#### AGREEMENT

**NOW THEREFORE**, in consideration of the foregoing Recitals, which are incorporated herein by reference, the terms and conditions contained herein and other good and valuable consideration, the receipt and sufficiency, of which is hereby acknowledged, the Parties agree as follows:

#### ARTICLE 1. THE CONTRACT DOCUMENTS

**1.1** The “**Contract Documents**” consist of: (a) this Agreement and all exhibits hereto; (b) proposal(s) submitted by Construction Manager and accepted by Owner in writing; (c) the plans, drawings and specifications for the Work (“**Construction Documents**”); (d) any amendments or addenda executed by Owner and Contractor hereafter; (e) Owner approved Change Orders; and (f) (i) “UCF Design, Construction, and Renovation Standards”, (ii) “UCF Professional Services Guide”, (iii) “UCF IT Telecommunication Design Standards”; (iv) “UCF Green Building Construction and Renovation Requirements”; and (v) “UCF Office of Institutional Resources Standards” (items (f)(i)-(v) as appearing on Owner’s website at fp.ucf.edu); (g) all other standards of Owner in effect at the time of the performance of the Work (the standards described in the foregoing clauses (a) through (g) being, collectively, “**Owner Standards**”); (h) “UCF Building Energy Systems Commissioning Procedure”; and (i) all other policies applicable to this Agreement in effect at the time of issuance of a project specific Purchase Order, as set forth at fs.ucf.edu/policies.

**1.2** To the extent Owner’s standards are stricter than applicable legal requirements; such Owner’s standards shall be met unless Contractor obtains Owner’s written consent to a deviation, which consent may be granted or withheld in Owner’s sole and absolute discretion. For the purposes of this Agreement, “Applicable Laws” means all federal, state, local, municipal, judicial and quasi-governmental laws, statutes, ordinances, orders, decrees, judgments, codes and regulations, governing or applicable to the project(s), the

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Work or Contractor, as the same may be amended, interpreted or enforced from time to time. The term “Applicable Law” also includes all rules and requirements of any utility company serving the project site.

**ARTICLE 2. THE WORK**

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**2.1** Each project will be defined in a separate Statement of Work (“SOW”), which will not exceed the maximum construction cost of \$4,000,000. Contractor may be requested to perform several SOWs concurrently. Any modifications to the SOW must be in writing and executed by an authorized representative of each party.

**2.2** The Contractor represents and warrants that it will (i) thoroughly review the Construction Documents, if any, for each project and all other documents related thereto made available on Owner’s website(s); (ii) visit and thoroughly inspect the project site and any structure(s) or other man-made features to be modified and familiarize itself with local conditions under which each project will be constructed and operated; (iii) familiarize itself with surveys and other as-built drawings provided by Owner or the Professional that indicate the location of all existing buildings, utilities, conditions, streets, equipment, components and other attributes having or likely to have an impact on each project; (iv) familiarize itself with pertinent project dates and special requirements, including the project schedule; (v) review and analyze all project geotechnical, Hazardous Substances, structural, chemical, electrical, mechanical and construction materials tests, investigations and recommendations provided by Owner or the Professional; and (vi) gather any other information necessary for a thorough understanding of each project. If a project involves modifications to any existing structure(s) or other man-made feature(s) on the project site, the Contractor represents that it will also review all as-built and record drawings, plans and specifications provided by Owner or the Professional and thoroughly inspect the existing structure(s) and man-made feature(s) to identify existing deficiencies and ascertain the specific locations of pertinent structural components. Claims by Contractor resulting from Contractor’s failure to familiarize itself with the project site or pertinent documents shall be deemed waived.

**2.3** The Contractor agrees to provide all services required to professionally complete the Work in an expeditious and economical manner consistent with the Contract Documents, and in the best interest of the Owner.

**2.4** In consultation with the Owner, any Professional(s), and any subcontractors, Contractor shall endeavor to develop, implement and maintain a spirit of cooperation, collegiality, and open communication among the parties so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and, upon completion, the project is deemed a success by all parties.

**2.5 Design Services**

**2.5.1** If Owner elects to include design services in the SOW, all design documents shall be developed using BIM software – latest Owner-approved version. Any deviation from the use of BIM must be approved in writing by Owner’s project Manager. The implementation and use of BIM shall be discussed by Contractor and Owner at a BIM kickoff meeting as early in design as possible, with the agreed-upon

parameters captured in a document entitled "BIM Execution Plan." The BIM Execution Plan shall be updated and augmented by Contractor, with concurrence and agreement by Owner, throughout design and construction as needed to solidify details regarding terminology, schedule, content, format, risk allocation, and use of the model(s). BIM model(s) shall be developed by Contractor throughout design and construction— subject to the limitations outlined in the BIM Execution Plan – for scheduling, coordination, resource management, estimating, and other uses deemed beneficial to Owner for delivery of the project. Contractor may elect to use the model(s) in their native format(s) or in conjunction with other third-party applications that facilitate such use. Contractor shall conduct BIM coordination meetings with its sub-consultants and other Subcontractors and manage a central BIM model for all primary trades with the intent of detecting clashes of building systems prior to their final approval and fabrication. The BIM Model(s) shall not become a part of the Contract Documents.

**2.5.2** Contractor shall provide all design services necessary to completely design the project and prepare Construction Documents that fully indicate the requirements for construction of the Work, whether or not those services are individually listed or referred to in this Agreement. Contractor shall make verbal and graphic presentations of the design to Owner at the completion of each of the design phases (Schematic, 50% and 100%) and at other times and to such persons as Owner shall request. Contractor shall submit Construction Documents to Owner at intervals appropriate to the design process for purposes of evaluation and approval by Owner. With respect to the design phases (Schematic, 50% and 100%), Contractor shall not proceed from the then current phase to the next phase without Contractor's prior written consent. Owner will review and take other appropriate action on Contractor's design submittals within the timeframes set forth in the project schedule, or, if no timeframe is set forth, then within a reasonable time.

**2.5.3** With Contractor's submittal of 50% Construction Documents, Contractor shall provide to Owner for Owner's approval, a list of all tests, inspections and reports that are required in the Contract Documents, including those to be provided by Contractor. Such list shall designate the party responsible for the engagement of and payment to providers of those services.

**2.5.4** Contractor shall submit to Owner a correct set of Construction Documents incorporating all design review comments, revisions or suggestions elicited during pre-bid inquiries and other modifications made after the 100% complete Construction Documents have been submitted to Owner.

**2.6 Errors and Omissions.** Contractor certifies that its design services shall conform to Applicable Laws, notwithstanding that a portion thereof may have been performed by one or more sub-consultants. Contractor shall promptly correct any documents prepared or furnished by Contractor or its sub-consultants that contain errors, conflicts or omissions at no additional cost to Owner. In addition, Contractor shall not be entitled to any compensation or adjustment for additional work required as a result of such errors, conflicts or omissions. The foregoing shall not relieve Contractor for liability to Owner for any damages, including costs incurred by Owner after termination in whole or in part of this Contract, resulting from errors, conflicts or omissions.

**2.7 Assignment.** Contractor hereby expressly assigns to Owner, without reservation except that which is expressly allowed in this Article, all of Contractor's right, title and interest in and to all Construction Documents, including all patent, copyright, trademark, trade secret, design and any other proprietary rights therein or appurtenant thereto, now or in the future, whether in oral, written graphic, electronic, machine readable, human readable or any other form and in whatsoever medium now known or hereinafter developed, and all copies of the foregoing and all information, data and knowledge incorporating, based upon or derived from the foregoing. ALL DOCUMENTS SHALL BE AND AT ALL TIMES SHALL REMAIN THE SOLE AND EXCLUSIVE PROPERTY OF OWNER. All Construction Documents shall be, where applicable, considered "works made for hire" as provided by Applicable Laws. Owner, in return, hereby grants Contractor a revocable, nonexclusive license to reproduce the Construction Documents for purposes relating directly to Contractor's performance of the Work, and for Contractor's archival records. This nonexclusive license shall terminate automatically upon the occurrence of either a breach of this Agreement by Contractor or upon termination of this Agreement. This nonexclusive license is granted to Contractor alone and shall not be assigned by Contractor to any other person or entity, except that the nonexclusive license granted in this Agreement to Contractor for purposes of Contractor's performance under this Agreement may be sub-licensed to Contractor's sub-consultants (with the same limitations). Subject to the foregoing, this nonexclusive license shall terminate automatically upon an attempted assignment of this license in violation of this **Section 2.7**. Contractor will mark all Construction Documents with Owner's copyright or other proprietary notice and will take all actions deemed necessary by Owner to protect Owner's rights therein. In the event that any Construction Document is ever deemed not to constitute works made for hire, or in the event that Contractor is ever deemed, by operation of law or otherwise, to retain any rights in or to any Construction Documents, Contractor shall promptly assign all of Contractor's right, title and interest in and to such documents to Owner. Contractor shall execute any documents of assignment or registration of proprietary or other rights requested by Owner and will perform any and all further acts deemed necessary or desirable by Owner in order to confirm, exploit or enforce the rights herein granted and assigned by Contractor to Owner, and should Contractor fail to do so upon Owner's request, Contractor hereby expressly authorizes Owner and its agents and/or representatives to execute all such documents in Contractor's name and on Contractor's behalf, and make appropriate disposition of them, including filing and/or recording such documents in appropriate governmental or administrative offices anywhere throughout the world. Owner's obligation to pay Contractor is expressly conditioned upon Contractor's obtaining a valid written assignment of all right, title and interest from Contractor's sub-consultants as to their respective Construction Documents in terms identical to those that obligate Contractor to Owner as expressed in this **Section 2.7**, which right, title and interest Contractor hereby assigns to Owner.

**2.8 Mechanical Services**

2.8.1 The Contractor shall supervise and direct the work at the project site. The Contractor shall, at a minimum, staff the project site with personnel who shall:

- (i) supervise and coordinate the Contractor's personnel and act as its primary liaison with the Owner and Professional, if any;



- (ii) be familiar with Contractor's trade division and scopes of the Work, all applicable building codes, and the Contract Documents;
- (iii) check, review and coordinate shop drawings and materials delivered to the project site, regularly review the Work to determine its compliance with the Contract Documents, periodically confer with the Professional, if any, and any other Owner consultants, to assure acceptable levels of quality;
- (iv) prepare and maintain project records, including process documents and daily logs;
- (v) schedule and conduct weekly progress meetings with the Owner and Professional, if any, to review such matters as construction progress, schedule, shop drawing status, and other information as necessary;
- (vi) make provision for project security to protect the project site and materials stored off-site against theft, vandalism, fire and accidents; and
- (vii) provide necessary documentation and otherwise assist the Professional, if any, with the preparation of the final "as-built" or record drawings.

2.8.2 The Contractor shall promptly reject any Work (i) which does not conform to the SOW or Construction Documents, if any; or (ii) which does not comply with any applicable law, statute, building code, rule or regulation of any public authority or agency of which it is aware.

2.8.3 The Contractor shall cause its subcontractors and suppliers to comply with the project Schedule and applicable sub-schedules. The Contractor shall obtain and review schedules from subcontractors and suppliers, coordinate sub-schedules with the Construction Schedule, and enforce compliance with all applicable schedules to ensure timely completion of the Work. If at any time a project is delayed, the Contractor shall immediately notify the Owner of the probable cause(s) and possible alternatives, and make recommendations to minimize expense and/or delay to the Owner.

## **2.9 Owner Direct Purchase Program.**

2.9.1 Owner has elected to participate in a direct purchase program whereby it purchases materials and equipment costing \$5,000 and over directly from the supplier of such materials or equipment in order to achieve sales tax savings. Such materials and equipment purchased through this program are referred to as "ODP." Owner shall prepare purchase orders to the supplier(s) of the ODP. Construction Manager shall allow three (3) weeks for execution of all such purchase orders by Owner. Construction Manager shall provide Owner an ODP matrix (including CSI division, description of materials, cost, lead time of material, potential tax savings, date ODP request will be submitted to Owner, date which purchase order must be issued in order not to cause delay) together with the GMP. Any delay caused by improper paperwork/documentation by the Construction Manager, or its subcontractors, vendors or suppliers, shall be the responsibility of Construction Manager. Construction Manager use its best efforts to maximize cost savings for the project and to cooperate with Owner in utilizing its sales tax savings program. Within thirty (30) days after the GMP is established, Construction Manager will process one (1) or more deductive Change Orders under the Contract for the entire estimated amount of ODP, inclusive of sales taxes.



Prior to the final payment, a final reconciliation against the GMP will be performed and, if necessary, a Potential Change Order (hereinafter defined) will be prepared for Owner's review and approval.

2.9.2 With respect to all ODP, Construction Manager shall remain responsible for coordinating, ordering, inspecting, accepting delivery, storing, handling, installing, warranting and quality control for all ODP, and such obligations shall remain subject to the Bonds (hereinafter defined). Notwithstanding anything herein to the contrary, Construction Manager expressly acknowledges and agrees that any materials or equipment directly purchased by Owner pursuant this **Section 2.9.2** shall be included within and covered to the same extent as all other warranties provided by Contractor pursuant to the terms of the Contract Documents. Contractor shall be responsible for safeguarding all ODP on the project site on Owner's behalf.

**ARTICLE 3. THE PROFESSIONAL**

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The Professional, if any, for each project shall be set forth in the SOW provided to Contractor. The Professional will be the Owner's representative in dealing with the Contractor on all design and technical matters, and will administer the Contract Documents. Unless otherwise directed by Owner, the Owner and Contractor shall communicate with each other through the designated Professional. The Owner's instructions to the Contractor will be issued through the designated Professional.

**ARTICLE 4. TERM, COMMENCEMENT, TERMINATION OR SUSPENSION**

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**4.1** Unless sooner terminated as provided herein, this Agreement shall remain in effect until July 31, 2025, and may be renewed at Owner's option for four (4) additional one-year periods.

**4.2** Contractor shall commence the Work as of the date indicated on the project specific Purchase Order and shall complete the Work by the date set forth in the Statement of Work.

**4.3** Termination/Default by Contractor. If the Contractor defaults by failing to substantially perform, in accordance with the terms of this Agreement, as reasonably determined by Owner, the Owner may give written notice to the Contractor (i) terminating this Agreement effective seven (7) calendar days from the date of notice; or (ii) setting forth the nature of the default and requesting the Contractor initiate cure within seven (7) calendar days from the date of notice. At any time thereafter, if the Contractor fails to initiate cure upon the request of the Owner and continue such cure until complete, the Owner may give notice to the Contractor of immediate termination. If the Owner terminates this Agreement pursuant to this **Section 4.3**, and it is subsequently determined by a court of competent jurisdiction that the Contractor was not in default, then in such even said termination shall be deemed a termination for convenience as set forth in **Section 4.5**.

**4.4** Termination/Default by Owner. If the Owner defaults by failing to substantially perform in accordance with the terms of this Agreement, the Contractor shall give written notice to the Owner setting

forth the nature of the default and requesting cure within seven (7) calendar days from the date of notice. If the Owner fails to cure within seven (7) calendar days from the date of notice Contractor may give notice to the Owner of immediate termination.

**4.5 Other Termination or Suspension by Owner.** The Owner may at any time give written notice to the Contractor terminating this Agreement or suspending the project, in whole or in part, for the Owner's convenience and without cause. If the Owner terminates this Agreement or suspends the project, the Contractor shall immediately reduce its staff, services and outstanding commitment in order to minimize the cost of termination or suspension.

**4.6 Payment After Termination/Suspension.** If the Agreement is terminated by the Owner pursuant to **Section 4.3**, no further payment shall be made to the Contractor until completion of the project. At such time, the Contractor's compensation shall, at Owner's option, be calculated on the basis of services actually performed and expenses actually incurred prior to the effective termination date, or (ii) on the basis of the payment terms set forth elsewhere herein. In either case, the Contractor's compensation shall be reduced by all costs and damages incurred by Owner as a result of the default of Contractor. If the Agreement is (i) terminated by the Contractor pursuant to **Section 4.4**; (ii) terminated by the Owner pursuant to **Section 4.5**; or (iii) suspended more than ninety (90) days by the Owner pursuant to **Section 4.5**, the Contractor's compensation shall be calculated on the basis of services actually performed and expenses actually incurred prior to the effective termination or suspension date and reasonable costs associated with the termination or suspension.

#### **ARTICLE 5. SUBSTANTIAL AND FINAL COMPLETION**

**5.1 "Architect's Substantial Completion"** of the Work shall be achieved when the Work has been completed to the point where Owner can lawfully occupy or utilize the Work for its intended purpose under a Certificate of Occupancy (**CO**), Temporary Certificate of Occupancy (with conditions acceptable to Owner in its sole discretion) (**TCO**), or Certificate of Completion (**CC**). Professional shall certify the date Substantial Completion of the Work is achieved using AIA Form-G704 Certificate of Substantial Completion, fully executed by the Owner, Architect and Contractor. When the entire Work (or any portion thereof designated in writing by Owner) is substantially complete, Contractor shall notify Owner and Professional in writing that the entire Work (or such designated portion) is substantially complete and request that Professional issue a Certificate of Substantial Completion (or Certificate of Partial Substantial Completion). Contractor shall give Owner and Professional thirty (30) days' notice prior to the predicted Substantial Completion inspection date. The issuance of a Certificate of Substantial Completion for the Work shall be an express condition precedent to Contractor's right to request a CO/TCO/CC. The written notice from Contractor shall include a proposed punch list of all items of Work to be completed or corrected by Contractor. Within a reasonable time thereafter, Owner, Contractor and Professional shall inspect the Work (or designated portion thereof) to determine the status of completion. If Owner and Professional do not consider the Work (or designated portion) substantially complete, Professional shall notify Contractor in writing giving the reasons therefor and the inspection process shall be repeated at no additional cost to Owner until the Work is determined to be substantially complete. In such case, Contractor shall pay the costs (including those of Professional) of all additional Substantial Completion inspections. If Owner and

Professional consider the Work (or designated portion) substantially complete, Professional shall prepare and deliver to Contractor a Certificate of Substantial Completion (or Certificate of Partial Substantial Completion) which shall fix the date of Substantial Completion for the entire Work (or designated portion thereof) is actually achieved by Contractor and include a final punch list of items to be completed or corrected by Contractor before final payment. The final punch list shall comply with the Contract Documents and all Applicable Laws. Accordingly, Professional shall provide the final punch list to Contractor within seven (7) days after Contractor has achieved Architect's Substantial Completion. Contractor acknowledges and agrees that the failure to include any corrective work or pending items not yet completed on the punch list does not alter the responsibility of Contractor to complete all the Work required under the Contract and does not waive Owner's right to demand completion of the item pursuant to the Contract Documents prior to or after final payment. Additionally, if the Contract involves Work on more than one building or structure, or involves a multi-phased project, a punch list shall be developed in accordance with the timelines set forth in this **Section 5.1** for each building, structure, or phase of the project. Owner shall have the right to exclude Contractor from the Work and project site (or designated portion thereof) after the date of Architect's Substantial Completion (or partial Substantial Completion), but Owner shall allow Contractor reasonable access to complete or correct items on the final punch list. Following the issuance of the Certificate of Substantial Completion and submittal of other documents required by Owner, Contractor may apply to Owner's Building Code Office for the CO/TCO/CC. At Architect's Substantial Completion, Contractor shall submit an updated certified as-built survey of all applicable utilities (electric, natural gas, chilled water, potable water, and domestic wastewater) to Owner for updating of Owner's Utility Mapping System.

**5.2 "Owner's Substantial Completion"** of the Work shall be achieved once (a) the Contractor has submitted all documentation required in Owner's project management software, in the format specified by the Owner and (b) all stakeholders involved in Owner's Substantial Completion process have approved such documents. Contractor shall upload such documentation within thirty (30) days after Contractor has received (x) the Architect's Substantial Completion Certificate and (y) the CO/TCO/CC from Owner's Building Code Office. At this time, Contractor may also submit to Owner's project management software a payment application to reduce retainage from five percent (5%) to two percent (2%). Contractor shall receive notification from Owner's project management software once it has obtained Owner's Substantial Completion.

**5.3 "Final Completion"** of the Work shall be achieved once (a) the Work passes a Final Completion inspection, (b) the Contractor has submitted all documentation required in Owner's project management software, in the format specified by the Owner (c) and all stakeholders involved in the Final Completion process have approved such documents. When Contractor believes it has fully performed all of the Work, including all punch list items, Contractor shall deliver to Owner a Final Payment Affidavit from Contractor certifying that all Work has been completed in accordance with the requirements of the Contract Documents. Such written affidavit shall be submitted to Owner by Contractor at the same time it submits its final Payment Application. After receipt of such Affidavit, the final Payment Application and all other documents required for project close-out, Professional and Owner shall promptly inspect the Work to determine if all of the Work has been completed and is ready for final acceptance by Owner. If Owner and

Professional determine Contractor has completed the entire Work, Professional shall promptly issue a final Certificate for Payment, stating that, to the best of its knowledge, information and belief, and on the basis of its observations and inspections: (x) all of the Work has been completed in accordance with the requirements of the Contract Documents; (y) the final balance due Construction Manager, as noted in the final Certificate for Payment, is due and payable; and (z) all conditions precedent to Construction Manager's entitlement to final payment have been satisfied. Neither the final payment nor the retainage shall become due and payable until Contractor submits: (i) the duly executed and notarized final Waiver and Release of Lien in the form acceptable to Owner and in compliance with Applicable Laws, (ii) written consent of surety to final payment, (iii) all close-out documentation and information required by the Contract Documents to be provided by Contractor prior to its entitlement to final payment, (iv) if required by Owner, other data establishing payment or satisfaction of all obligations, such as receipts, releases and waivers of liens, arising out of the Contract Documents, to the extent and in such form as may be designated by Owner, (v) Certificate of Final Completion in form approved by Owner, (vi) all operation and maintenance manuals not previously produced, (vii) Owner maintenance or "attic" stock as prescribed in the technical specifications, (viii) one (1) set of as-built plans and specifications, (ix) certification and affidavit that all insurance required of Contractor beyond final payment, if any, is in effect and will not be canceled or allowed to expire without notice to Owner, (x) full, final and unconditional waivers of construction liens, from each contractor, subcontractor, supplier or other person or entity who has, or might have a claim, (xi) full, final and unconditional certification and affidavit that all of Construction Manager's obligations to contractors, subcontractors, suppliers and other third parties for payment for labor, materials or equipment related to the project have been paid or otherwise satisfied, (xii) all written warranties and guarantees relating to the labor, goods, products, materials, equipment and systems incorporated into the Work, endorsed, countersigned, and assigned as necessary; affidavits, releases, bonds, waivers, permits and other documents necessary for final close-out of Work, (xiii) a list of any item(s) due but unable to be delivered and the reason for non-delivery; and (xiv) any other documents reasonably and customarily required or expressly required herein for full and final close-out of the Work. Owner reserves the right to inspect the Work and make an independent determination as to the Work's acceptability, even though Professional may have issued its recommendations. Unless and until Owner is completely satisfied that Final Completion has been achieved, neither the final payment nor the retainage shall become due and payable; provided, however, that if a good faith dispute exists as to whether one or more punch list items have been properly completed, but all other conditions precedent to final payment have been satisfied, Owner shall make final payment less an amount not to exceed 150 percent (150%) of the total costs to complete such items and less any other amounts that the Contact Documents or Applicable Laws entitle Owner to withhold.

**ARTICLE 6. COMPENSATION**

**6.1** The Owner shall pay and the Contractor shall accept, as full and complete payment for the Contractor's timely and complete performance of its obligations hereunder, a sum to be determined on a per project basis, in accordance with the Labor Rates (which include the Contractor's General Conditions) attached as **Exhibit B**, and Overhead and Fee per the attached **Exhibit C**.

**6.2** Progress Payment Applications shall be submitted in detail sufficient for an audit thereof in accordance with Owner's policies on the subject in effect at the time the Contractor commences construction of the Work.

**6.3** Owner shall pay the Contractor within thirty (30) calendar days after receipt by Owner of Contractor's pay application, properly prepared pursuant to Owner's policies on the subject in effect at the time, unless there is a dispute about the Work or the amount of compensation claimed due to the Contractor.

**6.4** As an express condition precedent to final payment, Contractor shall provide all required guarantees, warranties, affidavits, releases, consent of surety to final payment, bonds, waivers, manuals, as-built drawings, and maintenance books. Contractor shall provide:

a. an indexed, readable and searchable electronic copy, in format acceptable to Owner and, if requested, hard copies of all operation and maintenance manuals, permits, and temporary and final certificates of completion or occupancy, as applicable, and third-party warranty documents applicable to the Work;

b. a warranty matrix, in spreadsheet or database format, which includes the following information: Contractor's name, description of asset, building, room number, asset criticality, status, part number, serial number, manufacturer name, and warranty start and end date.

#### **ARTICLE 7. CONTRACT TIME, EXTENSION AND LIQUIDATED DAMAGES FOR DELAY**

**7.1 Diligent Prosecution.** Contractor shall diligently pursue the completion of the Work and coordinate the Work being done on the project by its subcontractors and suppliers, as well as coordinating its Work with all work of others at the project Site, so that its Work or the work of others shall not be delayed or impaired by any act or omission by Contractor or anyone for whom Contractor is responsible or liable. Unless expressly noted otherwise in the Contract Documents, Contractor shall be solely responsible for all construction means, methods, techniques, sequences, and procedures, as well as coordination of all portions of the Work under the Contract Documents, coordination of trades and subcontractors, coordination of drawings to existing as-built conditions and site conditions, and the coordination of Owner's suppliers and contractors.

**7.2 Excusable Delay.** Should Contractor actually be obstructed or delayed in the critical path of the prosecution of, or completion of, the Work as a result of unforeseeable causes: (a) beyond the control of Contractor, (b) not due to Contractor's fault or neglect, and (c) which could not be avoided by the exercise of reasonable diligence, including: (i) acts of God or of the public enemy, (ii) acts of government, (iii) fires, (iv) floods, (v) epidemics, (vi) quarantine regulation, (vii) strikes, (viii) lockouts, or (ix) weather conditions abnormal for the period of time (as defined below) which exceed the aggregate number of days allotted for adverse weather conditions in Contractor's Construction Schedule approved by Owner, Contractor shall notify Owner and Professional, if any, in writing within forty-eight (48) hours after the commencement of such delay (which time period shall control over any conflicting time periods specified elsewhere herein) stating the cause or causes thereof, or be deemed to have waived any right which Contractor may have had

to request a time extension therefor. “**Abnormal for the period of time**” for purposes of this Section means rain or bad weather (e.g. named tropical storms or hurricanes), only when such rain or bad weather is in excess of the ten (10) year average for that specific period of time (from its commencement to its conclusion, as compared with the historical data for that same period) as published by the National Oceanic and Atmospheric Administration, Ashville, North Carolina, for Metropolitan Orlando, Florida, Reporting Station. Contractor’s schedule shall allow the number of days it deems necessary for rain and bad weather when Contractor prepares its schedule and not every day of adverse weather conditions abnormal for the period of time shall be grounds for an extension of time. Contractor and Owner acknowledge that any project site rain gauge measurements will not be relied upon for determining rain fall amounts. Contractor shall use commercially reasonable efforts to mitigate the effects of any delays described in this Section so as to minimize any effect on the schedule for completion of the Work.

**7.3 Acceleration.** Owner shall have the right, at any time, whether or not Contractor is behind schedule, to order Contractor to accelerate its Work. In the event that Owner orders Contractor to accelerate its Work and Construction (a) is not behind schedule, and (b) believes that acceleration will increase the cost of performance, Contractor, shall be required to submit a Claim for increase pursuant to **Article 18**. Any such Claim shall be based exclusively and solely on actual and direct increased field costs associated with the acceleration.

**7.4 Delays Related to Hazardous Substances.** If Contractor encounters on the project site a Hazardous Substance(s), as set forth below, Contractor shall (a) immediately stop Work in the area affected; (b) take all reasonable precautions to prevent foreseeable bodily injury or death to persons; and (c) notify Owner and Professional(s), both orally and in writing, of the presence and location of any physical evidence of, or information regarding, such Hazardous Substance(s) on the project site. If the Work is so stopped and a Hazardous Substance is found, the Work in the affected area shall not thereafter be resumed until the Site is fully remediated and approved by Owner. A Change Order shall be issued, which shall include an adjustment to the Contract Time and compensation for any out of pocket costs incurred by Contractor as a result of the stoppage. If no Hazardous Substance is found after the Work is stopped, no Change Order will be issued. Further, if the Hazardous Substance was introduced to the project site or caused by Contractor or any of its Personnel, subcontractors, or material suppliers, no Change Order will be issued for an adjustment in the Contract Time, and Contractor shall indemnify Owner and hold Owner harmless for any costs incurred by Owner with respect to such Hazardous Substance. “**Hazardous Substances**” means all hazardous or toxic substances, materials, wastes, pollutants and contaminants which are listed, defined, or regulated under Applicable Laws pertaining or related to health, safety or the environment, including the Comprehensive Environmental Response Compensation and Liability Act as amended, (42 U.S.C. § 9601 et seq), the Resource Conservation and Recovery Act as amended, (42 U.S.C. §6901 et seq), the Federal Water Pollution Control Act (33 U.S.C.A. §§ 1251 to 1387), the Clean Air Act (42 U.S.C.A. §§ 7401 to 7671q), the Emergency Planning and Community Right to Know Act (42 U.S.C.A. §§ 11001 to 11050), the Toxic Substances Control Act (15 U.S.C.A. §§ 2601 to 2692), the Solid Waste Disposal Act (42 U.S.C.A. §§ 6901 to 6992k), the Oil Pollution Act (33 U.S.C.A. §§ 2701 to 2761) and all rules and regulations promulgated pursuant thereto. Without limiting the generality of the foregoing, “Hazardous Substances” shall include polychlorinated biphenyl, asbestos (friable and non-friable), radon, urea



formaldehyde, gasoline, diesel, oil, hydrocarbons, petroleum derived constituents, biomedical waste, or hazardous or toxic residue.

**7.5 Compensation for Delay.** No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work from any cause whatever, including those for which Owner and Professional may be responsible, in whole or in part, shall relieve Contractor of its duty to perform or give rise to any right to damages or additional compensation from Owner. Contractor expressly acknowledges and agrees that it shall receive no damages for delay. Contractor's sole remedy, if any, against Owner will be the right to seek an extension to the Contract Time; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damage For Delay" provision. This Section shall expressly apply to claims for early completion, as well as to claims based on late completion. Notwithstanding the foregoing, if the Work is delayed due to the fault or neglect of Owner or anyone for whom Owner is liable, and such delays have a cumulative total of more than twenty-one (21) days after receipt by Owner of written notice from Contractor of such fault or neglect, Contractor may make a Claim for its actual and direct delay damages accruing after said twenty-one (21) days; provided, however, Contractor expressly acknowledges and agrees that its actual and direct delay damages shall not exceed, and shall be limited to no more than, One Thousand and No/100 Dollars (\$1,000.00) per day. In no event shall Owner be liable to Contractor whether in contract, warranty, tort (including negligence or strict liability) or otherwise for any acceleration, soft costs, lost profits, punitive, special, indirect, incidental, or consequential damages of any kind or nature whatsoever. For the avoidance of doubt, Owner's exercise of its reserved right to change, increase or decrease the Work shall not be deemed to be "fault or neglect of Owner" serving as the basis for additional compensation under this **Section 7.5**. Claims for increased compensation or extension of time for such changes, increases or decreases shall be governed by **Article 18**.

**7.6 Liquidated Damages for Failure to Achieve Substantial Completion and/or Final Completion.** Contractor shall achieve Substantial Completion and Final Completion of the Work within the time prescribed in the SOW (as may be adjusted in accordance with the Contract Documents). Inasmuch as failure to achieve Substantial Completion and Final Completion of the Work within the time prescribed in the SOW will result in damages to Owner, and as the damages arising from such failure cannot be calculated with any degree of certainty, it is agreed that if Contractor does not achieve Substantial Completion and/or Final Completion of the Work within the time prescribed in the SOW, or within such further time, if any, as shall be allowed for time extensions in accordance with the provisions of the Contract Documents, Contractor shall be required to pay to Owner as liquidated damages for such delay, and not as a penalty, the amount of **construction cost x .07/365 or \$100, whichever is greater**, for each day elapsing between the date fixed for Substantial Completion and/or Final Completion and the date Substantial Completion and/or Final Completion is fully achieved. The Parties agree that said liquidated damages are reasonable given existing circumstances, including the range of harm that is foreseeable and the anticipation that proof of damages would be costly and impractical. Contractor hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty. It is further mutually understood and agreed that Owner's assessment of liquidated damages for delays pursuant to this **Section 7.6** is intended to compensate Owner solely for Contractor's failure to achieve Substantial

Completion and/or Final Completion of the Work within the time prescribed in the SOW, and shall not release Contractor from liability from any other breach of requirements of the Contract Documents. If the liquidated damages set forth herein are deemed unenforceable for any reason, Owner instead shall be entitled to recover those actual delay damages that it sustained as a result of Contractor's failure to achieve Substantial Completion and/or Final Completion of the Work. Liquidated Damages for failure to achieve Final Completion shall not be stacked on top of Liquidated Damages for failure to achieve Substantial Completion. Liquidated Damages shall not be assessed against Contractor in the event of Owner delay; however, in event of concurrent delay by Owner and Contractor, Liquidated Damages shall still be assessed.

**7.7 Withholding of Liquidated Damages.** Owner may deduct liquidated damages prescribed in this **Article 7** from any unpaid amounts then or thereafter due Contractor under this Agreement and any liquidated damages not so deducted shall be payable to Owner by Contractor upon demand by Owner plus interest from the date of demand at the maximum legal rate of interest until paid. Further, when Owner reasonably believes (a) that Substantial Completion will be inexcusably delayed; or (b) that Contractor will fail to achieve Final Completion by the Final Completion Date, Owner shall be entitled, but not required, to withhold from any amounts otherwise due Contractor the daily amount specified for liquidated damages in this **Article 7** for each day of the anticipated unexcused delay. If and when Contractor overcomes the delay in timely achieving Substantial Completion or Final Completion, or any part thereof, for which Owner has withheld payment, Owner shall release to Contractor only those funds withheld but no longer applicable, as liquidated damages, subject to the satisfaction of all other conditions precedent to release of such funds.

**7.8 Other Damages.** The liquidated damages prescribed in this **Article 7** shall be payable in addition to any other expenses or costs payable by Contractor to Owner under this Agreement, and shall not preclude the recovery of damages by Owner under other provisions of the Contract Documents. Owner's right to received liquidated damages shall in no manner affect Owner's right to terminate this Agreement. Owner's exercise of the right to terminate shall not release Contractor from the obligation to pay said liquidated damages.

**ARTICLE 8. PERSONNEL AND SUBCONTRACTOR**

**8.1** The Contractor will use the project team identified in **Exhibit A**. Contractor will not alter the project team except with the written approval of Owner based upon good cause shown or as directed by Owner, except in an instance when any member of Contractor's Team makes any inappropriate religious, racial, sexual or ethnic comment, statement or gesture towards any individual, at which time Contractor shall immediately remove said individual from the Contract for the duration of the Contract and provide immediate written notice of removal to Owner. Further, if any member of the project team discontinues service on the project for any reason whatsoever, Contractor shall promptly replace such team member with a qualified individual approved by Owner, in writing, which approval will not be unreasonably withheld.

**8.2** The Contractor (i) shall not enter into any agreement with any subcontractor or supplier to which the Owner raises a reasonable, timely objection; and (ii) shall promptly inform the Owner in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed



replacement(s). The Owner shall have the right, in its reasonable discretion, to reject any proposed replacement.

**8.3** Unless otherwise expressly agreed to by Owner in writing, all subcontracts shall provide:

**LIMITATION OF REMEDIES - NO DAMAGES FOR DELAY**

That the subcontractor's exclusive remedy for delays in the performance of the subcontract caused by events beyond its control, including delays claimed to be caused by Owner or Professional or attributable to Owner or Professional and including claims based on breach of contract or negligence, shall be an extension of its contract time.

In the event of a change in the work, the subcontractor's claim for adjustments in the contract sum is limited exclusively to its actual costs for such changes, plus no more than a five percent (5%) markup.

The subcontract shall require the subcontractor expressly agree that the foregoing constitute its sole and exclusive remedies for delays and changes in the Work and thus eliminate any other remedies for claim for increase in the subcontract price, damages, losses or additional compensation.

**PAYMENT TO SUBCONTRACTORS**

In accordance with §255.073(3), Florida Statutes, [w]hen a contractor receives payment from a public entity for labor, services, or materials furnished by subcontractors and suppliers hired by the contractor, the contractor shall remit payment due to those subcontractors and suppliers within 10 days after the contractor's receipt of payment. When a subcontractor receives payment from a 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 within 7 days after the subcontractor's receipt of payment. This Section does not prohibit a contractor or subcontractor from disputing, pursuant to the terms of the relevant contract, all or any portion of a payment alleged to be due to another party if the contractor or subcontractor notifies the party whose payment is disputed, in writing, of the amount in dispute and the actions required to cure the dispute. The contractor or subcontractor must pay all undisputed amounts due within the time limits imposed by this Section.

**ARTICLE 9. CHANGES IN THE WORK**

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**9.1** A "**Potential Change Order (PCO)**" is a notification to the Owner, through Owner's project management software, that the Contractor has become aware of a circumstance that, in its opinion, could be a change in the scope of the Work that justifies a change to the Contract Price and/or Contract Time.

**9.2** A "**Change Order**" is an instrument approved by Owner, Contractor and Professional, stating their agreement upon all of the following: (a) the change in the Work; (b) the amount of the adjustment, if any, in the Contract Price; and (c) the extent of the adjustment, if any, in the Contract Time. A Change Order shall be issued through Owner's project management software, and shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including all direct and indirect costs associated with such change and any and all adjustments to the Contract Price and/or Contract

Time. For purposes of this Agreement, “direct costs” include any costs that Owner would have paid if the item(s) had originally been included in the scope of the Work, and “indirect costs” include any additional costs which result from the item(s) not having been included in the original scope.

9.3 Owner shall have the right at any time during the progress of the Work, without invalidating the Contract, to change, increase or decrease the Work. Except in an emergency endangering life or property, no addition or changes to the Work shall be made except upon written order of Owner, and Owner shall not be liable to Contractor for any increased compensation or adjustment to the Contract Time without such written order. Accordingly, no course of conduct or dealings between the Parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be a basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided in the Contract Documents. No officer, employee or agent of Owner is authorized to direct any extra or changed work orally. Contractor shall familiarize itself with Owner’s Change Order approval process and shall manage progress of the Work accordingly.

**9.4 PCO Process**

9.4.1 Contractor must initiate a PCO within fourteen (14) days of Contractor becoming aware of a circumstance giving rise to a change the Work. Contractor may request additional compensation and/or time through a PCO, but not for instances that Contractor knew, or reasonably should have known, occurred more than fourteen (14) days prior to the date the PCO is initiated. A PCO must include: a) an itemized estimate, including an analysis of impacts to cost and time, if any, to perform the change in the Work, including the effects and impacts, if any, on unchanged Work; b) Contractor’s proposed methods to minimize costs, delay, and disruption of the performance of the Work; and c) all substantiating data. If Contractor fails to initiate a PCO within said fourteen (14) day time period (unless Owner has agreed in writing to a longer period of time), Contractor shall nevertheless be required to perform such change in the Work, without additional compensation and/or time.

9.4.2 Contractor shall negotiate PCOs with all affected subcontractors and shall review the costs of those proposals and advise Owner and Professional of their validity and reasonableness, acting in Owner’s best interest, prior to requesting approval of each PCO.

9.4.3 Owner’s request for a proposed change in the Work does not authorize Contractor to commence performance of the change. Contractor shall be authorized to proceed through an executed Change Order.

9.4.4 Once a PCO becomes an executed Change Order, Contractor shall promptly perform the changes authorized by such Change Order.

9.5 **Disagreement on PCOs.** If Owner and Contractor are unable to agree on the adjustment to the price and/or time for a potential change in the Work, Contractor shall, nevertheless, promptly perform the change as directed by Owner in writing. In that event, Contract Time shall be adjusted as directed by

Owner. Contract Price shall be limited to the amount of the increase or decrease of Contractor's actual and direct (a) Personnel and labor expenses, (b) material and equipment costs, and (c) extended general conditions expenses (including bond premiums), reasonably incurred as a result of the change, plus a maximum five percent (5%) markup for overhead and fee; provided, however, there shall be no additional general conditions expenses payable to Contractor on the first Fifty Thousand Dollars (\$50,000.00) of Change Order. In the event such change Work is performed by subcontractors or sub-subcontractors, a maximum five percent (5%) markup for each of those subcontractors or sub-subcontractors for all overhead and fee on their direct labor and material costs shall be permitted, with a maximum five percent (5%) markup thereon by Contractor for its overhead and fee, for a total maximum markup of ten percent (10%).

9.6 **Denial of PCOs.** If Owner determines that the Work in question is not a change in the scope of the Work, and denies the PCO, but Contractor believes that the PCO does have merit, the Contractor may submit a Claim in accordance with **Article 18**. Contractor shall, nevertheless, promptly perform the disputed work as directed by Owner in writing.

9.7 **Records Regarding Changes.** Owner shall have the right to conduct an audit of Contractor's books and records, as well as those of its subcontractors and suppliers, to verify the accuracy of Contractor's claim with respect to Contractor's costs associated with any Change Order.

**ARTICLE 10. AUDIT RIGHTS**

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10.1 Owner or its designees may, upon reasonable notice, audit the records of its Contractor and its subcontractors and suppliers during regular business hours, during the term of this Agreement and for a period of three (3) years after final payment is made by Owner to Contractor under this Agreement or longer, if required by law. Such audits may be performed by an Owner's representative or an outside representative engaged by Owner. Contractor shall retain all records for the project during performance of the project and for at least three (3) years after Final Completion.

10.2 For purposes hereof, Contractor's "records" means any and all information, materials and data of every kind and character, whether hard copy or in electronic form, which may, in Owner's judgment have any bearing on or pertain to the Contract Documents, including, without limitation, books, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, written policies and procedures, time sheets, payroll registers, payroll records, cancelled payroll checks, subcontract files (e.g., including proposals of successful and unsuccessful bidders, bid recap), original estimates, estimating work sheets, correspondence, change order files (including documentation covering negotiated settlements), back-charge logs and supporting documentation, invoices and related payment documentation, general ledgers, records detailing cash and trade discounts earned, insurance rebates and dividends, superintendent reports, drawings, receipts, vouchers and memoranda.

10.3 Owner's authorized representative shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former Personnel to discuss matters pertinent to the Contract Documents, shall be provided adequate and appropriate work space at Contractor's facilities, may count

Personnel at the Site, may be present for the distribution of payroll and shall have such other rights of access as may be reasonably necessary to carry out an audit.

**10.4** If an audit discloses overpricing or overcharges of five percent (5%) of the total amount paid hereunder or \$200,000 whichever is less, in addition to adjusting for the overcharges, the reasonable actual cost of the Owner's audit shall be reimbursed to the Owner by the Contractor. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Contractor's records shall be made within ninety (90) calendar days from presentation of Owner's findings to Contractor.

**10.5** Contractor shall ensure notice of Owner's audit rights is provided to its subcontractors, suppliers and any other vendor providing services or materials for the project and shall ensure that each agreement it enters into with such parties includes the provisions of this **Article 10**.

#### **ARTICLE 11. WARRANTIES**

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**11.1** The Contractor agrees that commencing on the date of Substantial Completion of the Work there shall be a minimum one (1) year warranty on all building components, commencing on the date a CO/TCO/CC is issued by Owner's Building Code Office, unless otherwise explicitly documented on the Architect's Certificate of Substantial Completion, fully executed by the Owner, Architect, and Contractor. This warranty shall in no way limit, reduce or shorten any warranty guaranteed by law, issued by manufacturers, or accepted as a general contracting or construction practice.

#### **11.2 Building Envelope Warranty.**

**11.2.1** Contractor shall provide a 5-year building envelope warranty commencing on the date of date a CO/TOC/CC is issued for the Work, unless otherwise explicitly documented on the Architect's Certificate of Substantial Completion, fully executed by the Owner, Architect, and Contractor. During this warranty period:

- a) If water intrusion occurs, and such water intrusion causes mold, fungus, or bacterial growth or damage, Contractor will be responsible for the cost of removing the mold, fungus, or bacterial growth and repairing any damage.
- b) Owner shall be responsible for relevant maintenance and maintenance logs;
- c) Contractor will be responsible for all manufacturer or installer warranty requirements, unless otherwise stipulated;
- d) All claims reported to Contractor by Owner will be investigated, executed, and managed by Contractor on behalf of Owner until the claim is resolved; and
- e) A mutually acceptable third-party building envelope consultant, at Owner's expense, will determine if the repair is satisfactory.

**11.2.2** The warranty given in this **Section 11.2** shall in all relevant cases be superseded by Section 95.11 (3)(c), Florida Statutes, concerning latent defects. If the failure is determined to be a latent

defect, the cost of the third-party building envelope consultant will be the responsibility of the Contractor and/or its sub-contractor. The warranty given in this **Section 11.2** is in addition to all other warranties given hereunder or implied by Applicable Law.

**11.2.3 Notice of Defect.** If Contractor becomes aware of a design flaw, building practice, material unreliability or any other reason that the completed project could be subject to water intrusion, mold, fungus, or bacterial growth, Contractor shall notify Owner in writing within twenty-four (24) hours.

**11.2.4 Correction, Repair, Replacement.** Correction, repair, or replacement of warranted or guaranteed Work described in this **Article 11**, or found elsewhere in the Contract Documents, shall be done without any additional expense to Owner during the warranty period. If correction or repair of the same Work fails to result in a permanent fix or solution on more than two (2) occasions during the warranty period, Owner may at its sole discretion, demand replacement of the Work without any additional expense to Owner.

**11.2.5 Exclusion.** Warranties in this **Section 11.2** exclude design flaws and material selection made by the Professional. Should Contractor assert that the required warranty work is due to such design flaw or material selection, Owner, in addition to all of Owner’s other rights and remedies, may retain an independent third-party to decide as to the nature of the flaw. Should the third party determine that the flaw is not due to the Professional’s design or material selection, Contractor shall be responsible for all costs incurred in obtaining such third-party determination, as well as all resulting corrections, repairs or replacements.

**ARTICLE 12. INTENTIONALLY DELETED**

**ARTICLE 13. BACKGROUND CHECK, CIVIL LITIGATION AND E-VERIFY**

**13.1 Background Check.**

**13.1.1** Contractor shall perform, at Contractor’s expense, a criminal background screening for each employee, subcontractor, consultant, agent or representative (collectively “**Personnel**”) intended to perform work or services at a site owned or controlled by Owner, which criminal background screening will have been performed no more than ninety (90) days prior to the assignment of Personnel to Owner’s site for work. Contractor acknowledges that this obligation may require re-screening of previously screened Personnel. Background screening shall require that Personnel shall not have been convicted of, found guilty of, regardless of adjudication, or have entered a plea of *nolo contendere* or guilty to any offense prohibited under Section 435.04(2), Fla. Stat. Contractor shall not permit any Personnel to provide services or work under this Agreement who does not meet the criminal background screening requirements set forth herein.

**13.1.2** Contractor shall conduct:

- a) a Level 1 background check through FDLE;

- b) a search of the on-line State of Florida Sex Offender/Predator lists; and
- c) a search of the National Sex Offender website.

Personnel shall be rescreened annually; provided, however, in the event previously screened Personnel ceases to provide work or services to Contractor for more than ninety (90) days, Contractor shall re-screen such Personnel prior to allowing such Personnel to again provide services or work at Owner's site. Contractor shall maintain copies of the results of the criminal background checks for the term of this Agreement.

**13.1.3** In the event Contractor obtains, or is provided, supplemental criminal background information, including police reports or arrest information, after execution of this Agreement, which potentially disqualifies Personnel previously deemed eligible to provide work or services under this Agreement, Contractor shall promptly notify owner of such matter. Contractor shall take immediate action to review the matter; provided, however, during such review time until a determination of eligibility is made, Contractor shall immediately cease allowing said Personnel to provide services or work under the Agreement. Additionally, Personnel shall be required to notify Contractor within forty-eight (48) hours of any arrest which has occurred after such Personnel was deemed eligible to provide services or work under this Agreement.

**13.1.4** Contractor shall submit to owner an affidavit, attached as **Exhibit D**, affirming the Personnel listed in the affidavit have completed the required background check and have been deemed eligible by Contractor to provide services under this Agreement. Within twenty-four (24) hours of a change in the Personnel listed on the affidavit, Contractor shall submit an updated affidavit specifically identifying new or removed Personnel.

- 13.2 E-verify.** Owner is an E-verify employer. To the extent that Contractor meets the definition of "Contractor" or "Subcontractor" under Section 448.095, Florida Statutes, Contractor agrees that it and any subcontractors it utilizes under this Agreement, are registered with and use the E-Verify system as required by Section 448.095, Florida Statutes.
- 13.3 Civil Litigation.** Contractor warrants that it is not plaintiff or defendant in any civil litigation currently pending in the United States and concerning the type of work/services to be performed under this Agreement that would materially impair its ability to perform its obligations under this Agreement. If Contractor becomes either a plaintiff or defendant in such civil litigation during the term of this Agreement, Contractor will inform Owner as soon as practicable.
- 13.4 Flow Through.** The Contractor agrees to incorporate the substance of this **Article 13** in all subcontracts under this Agreement.
- 13.5 Termination.** Owner may terminate this Agreement immediately upon notice to Contractor for violation of this **Article 13** and may pursue all remedies available under FL law.

**ARTICLE 14. INSURANCE, BONDS & INDEMNIFICATION**

**14.1 Required Insurance.** Contractor shall maintain all forms of insurance required by Applicable Laws. Contractor shall also maintain the following insurance for the duration of this Agreement or such longer period of time as may be specified below or required by Applicable Laws:

- a. Commercial General Liability insurance coverage for commercial general liability (including loss or damage because of bodily injury, personal injury, sickness, disease or death of persons and injury to or destruction of property, as a result of the acts or omissions of Contractor or its Personnel), which shall provide a per occurrence coverage amount not less than One Million Dollars (\$1,000,000) and Two Million Dollars (\$2,000,000) in the aggregate;
- b. Automobile Liability insurance covering owned and rented vehicles operated by Contractor with policy limits of not less than One Million Dollars (\$1,000,000) combined single limit and aggregate for bodily injury and property damage;
- c. Workers' Compensation insurance at statutory limits;
- d. Employer's Liability insurance with a policy limit of not less than Five Hundred Thousand Dollars (\$500,000);

**14.2 Builders Risk.** Owner shall carry Builder's Risk, at replacement cost, covering the full value of the construction being performed, including where applicable, the existing structure. Such policy shall be written on a causes of loss special form policy, and shall include coverage for reasonable compensation for the Contractor's services and expenses required as a result of such insured loss. This insurance shall insure the interests of the Owner, Contractor, subcontractors and sub-subcontractors in the Work. Property covered by the insurance shall include temporary building(s) or structure(s) at the project site, other than any of Contractor's office trailer(s) (which shall be covered by the Contractor's insurance policy. In addition, such insurance shall cover portions of the Work stored off the site, after written approval of the Owner, at the value established in the approval, and portions of the Work in transit. When the Work includes the repair, removal, installation and/or testing of live steam boilers, valves, pipes or lines, then such insurance shall include boiler and machinery coverage, written on an ISO form or its equivalent. The Contractor shall be responsible for all damages and necessary repairs that are not covered by the Builder's Risk policy or are due to the Contractor's negligence.

**14.3 Insurance Requirements Generally.** All of the foregoing policies of insurance shall be: (a) issued by an insurance carrier approved in advance by Owner, with a rating from A.M. Best Company of not less than A/XII, and licensed to provide such coverage in the State of Florida, and (b) in a form satisfactory to Owner without unacceptable exclusions or exceptions to coverage. All policies and renewals thereof are to be written for not less than one (1) year. All policy numbers must be clearly identified. All liability policies must provide for claims to be made on an occurrence basis. The insurance policies will name, and the certificates and endorsements will show, Indemnitees as additional insureds on the all liability policies and all certificates of insurance, shall include the following statement: "Indemnitees are added as additional insureds to the Commercial General Liability, and Automobile Liability policies. Owner shall also be



named Additional Insured on the Commercial General Liability policy of any off-site storage premises. Additional Insured status applies on a primary/non-contributory basis. Waiver of Subrogation applies in favor of Indemnitees for Commercial General Liability, Automobile Liability, and Worker's Compensation policies." All insurance policies required of Contractor shall be primary and non-contributory to any other insurance or indemnity as may be available to any additional insured. It shall be the insurance company's responsibility to seek reimbursement from the insured. Contractor for itself and on behalf of its insurance carriers, waives and releases any right of recovery or subrogation for any claim, damage, or loss covered or insured by any insurance policy required of Contractor under this Agreement that Contractor or its insurers may have at any time against Indemnitees and Contractor shall cause its insurance policies to be so endorsed. The required insurance policies shall remain in effect for the benefit of Owner at least through any warranty period covering the project(s) but in no case for less than four (4) years after the date of issuance of the final Certificate for Payment by Contractor or such longer period as may be specified elsewhere herein. The insurance policies required of Contractor shall be endorsed to contain a provision requiring a written notice directly from the producer or insurer to Owner at least thirty (30) days prior to any cancellation, non-renewal or material modification of the policies, provided that only ten (10) days' prior written notice shall be required in the case of cancellation for non-payment of premium.

**14.3 Consultants' Insurance.** Contractor shall ensure that any and all of Contractor's consultants engaged or employed by Contractor also carry and maintain the above-specified policies of insurance meeting the requirements of **Sections 14.1 and 14.2** above and Contractor shall include language in Contractor's consultancy agreements binding Contractor's consultants to the terms and conditions of this **Article 14**.

**14.4 Evidence of Insurance.** Upon execution of this Agreement, and at every date for renewal of a required insurance policy and at such other times as Owner shall request, Contractor and Contractor's consultants shall cause a certified copy of Contractor's and Contractor's consultants' insurance policies or, at Owner's election, Certificates of Insurance, Declarations Pages and Additional Insured Endorsements, to be issued to Owner by an insurance agent licensed in the State of Florida. The maintenance in full current force and effect of the insurance coverage required by this Agreement and provision of a valid evidence of insurance that meets the requirements of this Agreement are conditions precedent to the payment of any amounts due Contractor by Owner. Contractor shall deliver the required evidence of insurance to the following address:

University of Central Florida  
ATTN: Gina Seabrook  
P.O. 163020  
Orlando FL 32816

Copy to: [RiskManagement@ucf.edu](mailto:RiskManagement@ucf.edu)

**14.5 Failure to Maintain Insurance.** The failure of Contractor or any of Contractor's consultants to fully and strictly comply at all times with the insurance requirements set forth herein will be deemed a material breach of this Agreement. In the event that Contractor shall fail or be unable to obtain or maintain



coverage required pursuant to this Article, Owner, in addition to all other rights and remedies available to it and without waiving Contractor's default, shall have the right (but not the obligation) to obtain and/or maintain coverage of the type and amount required hereunder on behalf of Contractor; in which case, Contractor shall furnish to Owner all necessary information and to reimburse Owner for the cost of such coverage. At Owner's option, Owner may deduct the costs and expenses of any coverage obtained by Owner on behalf of Contractor from any amount due to Contractor under this Agreement or under any other agreement between Owner and Contractor.

**14.6 Insurance No Limitation.** Insurance coverage required in this Agreement shall be additional security for the obligations assumed by Contractor and in no event shall the types or limits of coverage required be deemed to limit any obligations or liabilities assumed under this Agreement. The carrying of insurance shall not be deemed to release Contractor or in any way diminish its liability or obligations hereunder, by way of indemnity or otherwise.

**14.7 Effect of Insurance.** Compliance with insurance requirements shall not relieve Contractor of any responsibility to indemnify Owner for any liability to Owner as specified in any other provision of this Agreement, and Owner shall be entitled to pursue any remedy in law or equity if Contractor fails to comply with the contractual provisions hereof. Indemnity obligations specified elsewhere herein shall not be negated or reduced by virtue of any insurance carrier's (i) denial of insurance coverage for the occurrence or event which is the subject matter of the claim; or (ii) refusal to defend any named insured.

**14.8 Owner's Right to Adjust Requirements.** Owner has the right to allow Contractor deviate from any of the above insurance requirements, if Owner, at Owner's sole discretion decides to do so. If Owner decides to allow Contractor to deviate from the above noted insurance requirements, Owner will inform Contractor in writing in those particular circumstances. Unless Owner notifies Contractor in writing that Owner is willing to allow Contractor deviate from the insurance requirements noted above, all of the above insurance requirements shall apply to Contractor.

**14.9 General Bond Requirements.** Any project with a construction cost exceeding \$100,000.00 is required to be bonded pursuant to Section 255.05, Florida Statutes, and the Contractor shall furnish Payment and Performance bonds on the Owner's standard form covering the full and faithful performance of this Agreement and the payment of obligations arising hereunder.

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

**14.11 Indemnification.** To the maximum extent permitted by law, Contractor shall indemnify and hold Owner, University of Central Florida Board of Trustees, and their respective officers, employees and trustees (collectively, "Indemnitees") harmless from and against any and all charges, complaints, actions, suits, proceedings, hearings, investigations, delays, claims, demands, judgments, awards, orders, decrees, stipulations, injunctions, damages, dues, penalties, fines, expenses, amounts paid in settlement, liabilities (whether known or unknown, whether absolute or contingent, whether liquidated or unliquidated, and

whether due or to become due), obligations, taxes, liens, losses, fees and costs, including all attorneys' fees and all court and arbitration costs (at any level or of any type), (collectively, “**Adverse Consequences**”) in connection with Contractor's performance of this Agreement to the extent caused by the negligent acts or omissions, recklessness, or intentional wrongful misconduct of Contractor or anyone for whose acts or omissions Contractor may be liable. The provisions of this **Paragraph 14.11** shall be in addition to, and shall not be construed to negate, abridge, or reduce other rights or obligations of, any other indemnification right that may be available to Indemnitees under this Agreement or Applicable Laws. Contractor's indemnification obligations under this Agreement, including those specified in this **Paragraph 14.11**, shall be deemed part of the project specifications and to fully comply with Section 725.06 or 725.08, Florida Statutes, as applicable, including any amendments thereto, in all respects. If any word, clause or provision of any of the indemnification provisions of this Agreement is determined not to comply with Section 725.06 or 725.08, Florida Statutes, as applicable, including any amendments thereto, it shall be stricken and the remaining words, clauses and provisions shall remain in full force and effect. It is the intent of the parties that Contractor's indemnification obligations comply fully with Section 725.06 and 725.08, Florida Statutes, as applicable, including any amendments, in all respects.

**14.12 Claims Under Indemnity.** In claims against Owner indemnified under this **Article 14** by an employee of Contractor, anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable, the indemnification obligation under this Article shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Contractor under workers' compensation acts, disability benefit acts or other employee benefit acts, nor shall the indemnification obligation be limited by the existence of any insurance policy.

**14.13 Hazardous Substances.** In the event Contractor reasonably believes it has discovered Hazardous Substances on a project site that are not contemplated by the Contract Documents, Contractor shall proceed in accordance with **Section 9.9** above. Contractor shall strictly comply with all Applicable Laws, and secure the project site to prevent access by unauthorized personnel, as directed by Owner. If (a) Contractor fails to comply with this **Section 14.13** and/or **Section 9.9** or (b) Hazardous Substances are knowingly transported (either on or off-site) or (c) material which Contractor or its Personnel should have known were Hazardous Substance(s) is transported (either on or off-site), without notice to Owner, such materials shall become the property of Contractor and Contractor shall be solely responsible for all costs and fines associated therewith.

**14.14 Survival.** Contractor's obligations under this **Article 14** shall survive the expiration or earlier termination of this Agreement and the completion of the Services.

**14.15 Flow Through.** The Contractor agrees to incorporate the substance of this **Article 14** in all subcontracts under this Agreement.

**ARTICLE 15. GOVERNMENT REGULATIONS**

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**15.1 Clean Air Act / Federal Water Pollution Control Act.** Construction Manager certifies that it does, and shall, comply with all applicable standards, orders, or requirements issued under the Clean Air

Act (42 U.S.C. 7401 et.seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et.seq., as amended), and will include a provision in all subcontracts as required under Federal law.

**15.2 Executive Order 11246.** Construction Manager certifies that it does, and shall, comply with Executive Order 11246, (Equal Employment Opportunity), as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60).

**15.3 “Anti-kickback” Act.** Construction Manager certifies that it does, and shall, comply with the Copeland “Anti-kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR, Part 3). Construction Manager shall report all suspected or reported violations to the Economic Development Administration.

**15.4 Contract Work Hours and Safety Standards Act.** Construction Manager certifies that it does, and shall, comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5).

**15.5 Civil Rights Act of 1964.** Construction Manager certifies that it does, and shall, comply with Title VI of the Civil Rights Act of 1964 (P.L.88-352).

**15.6 Education Amendments of 1972.** Construction Manager certifies that it does, and shall, comply with Section 112 of P.L. 92-45 and Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686).

**15.7 Rehabilitation Act.** Construction Manager certifies that it does, and shall, comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

**15.8 Age Discrimination Act.** Construction Manager certifies that it does, and shall, comply with the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107).

**15.9 Drug Abuse Office and Treatment Act.** Construction Manager certifies that it does, and shall, comply with the Drug Abuse Office and Treatment Act of 1972 (P.L. 93-255), as amended.

**15.10 Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act.** Construction Manager certifies that it does, and shall, comply with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended.

**15.11 Public Health Service Act.** Construction Manager certifies that it does, and shall, comply with Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290dd-3 and 290ee-3, as amended).

**15.12 Civil Rights Act of 1968.** Construction Manager certifies that it does, and shall, comply with Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et.seq.), as amended.

**ARTICLE 16. SAFETY**

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Contractor shall have its project management and site superintendent attend a one-hour training conducted by UCF Environmental Health & Safety, to be scheduled by Contractor at [ehs.ucf.edu/training](https://ehs.ucf.edu/training).

**ARTICLE 17. REQUIREMENT TO PROVIDE QUOTES**

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Contractor is required to provide quotes for all projects that are solicited by Owner. If Contractor does not intend to submit a quote on a certain project, justification must be provided to Owner. Owner shall take non-responsiveness into consideration when awarding future work and determining whether contract options are to be exercised.

**ARTICLE 18. CLAIMS AND DISPUTES**

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**18.1 Claim Defined.** The term “**Claim**” as used herein shall mean any and all demands made by one Party hereunder against the other Party, whether such demand be for money, time or the assertion of any right or obligation that arises out of the Contract Documents.

**18.2 Notice of Claims.** Unless another time is expressly provided for herein, initial notice of Claims by Contractor shall be made in writing to Owner and Professional within seven (7) calendar days after the first day of the event giving rise to such Claim or else Contractor shall be deemed to have waived the Claim. Unless another time is expressly provided for herein, if initial notice of Claim is properly received by Owner and Professional as stated herein, written supporting data shall be submitted to Owner and Professional within thirty (30) days after the occurrence of the event, unless Owner grants additional time in writing, or else Contractor shall be deemed to have waived the Claim.

**18.3 Continuing Performance.** Contractor shall proceed diligently with its performance as directed by Owner, regardless of any pending Claim, unless otherwise agreed to by Owner in writing. Owner shall continue to make payments of undisputed amounts due in accordance with the Contract Documents during the pendency of any Claim.

**18.4 Negotiation.** Prior to the initiation of any action or proceeding permitted by the Contract to resolve disputes between the Parties, the Parties shall make a good faith effort to resolve any such disputes by negotiation between representatives with decision-making power.

**18.5 Mediation.** Except for claims in which injunctive relief is sought, as a condition precedent to either Party filing any action for a claim, dispute or other matter arising out of or related to this Agreement, the Parties shall submit the dispute to mediation pursuant to the American Arbitration Association Construction Industry Mediation Rules currently in effect. Either Party may file a written request for mediation with the American Arbitration Association and serve a copy on the other Party. The mediation shall be concluded within sixty (60) days of the request, unless otherwise agreed or ordered by the court. Any legal or equitable proceedings shall be stayed pending conclusion of the mediation. The Parties shall share the mediator’s fee and other administrative costs of the mediation equally. The mediation shall be held in Orange County, Florida, unless the Parties agree upon another location. Agreements reached in mediation shall be

enforceable in any court of competent jurisdiction as settlement agreements. To the extent permitted by law, the mediation proceedings shall be confidential and shall be privileged from disclosure in any subsequent proceedings as settlement discussions.

**18.6 Litigation.** For disputes not resolved by mediation in accordance with the preceding **Section 18.5**, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction and, in that regard, each of the Parties hereby (a) irrevocably and unconditionally consents to submit itself to the sole and exclusive personal jurisdiction of any federal or state court located within Orange County, Florida, (the “**Applicable Courts**”), (b) waives any objection to the laying of venue of any such litigation in any of the Applicable Courts, (c) agrees not to plead or claim in any such court that such litigation brought therein has been brought in an inconvenient forum and agrees not otherwise to attempt to deny or defeat such personal jurisdiction or venue by motion or other request for leave from any such court, and (d) agrees that such Party will not bring any action, suit, or proceeding in connection with any dispute, claim, or controversy arising out of or relating to this Agreement or the project(s) in any court or other tribunal other than any of the Applicable Courts. Notwithstanding the foregoing, disputes, claims, questions or disagreements involving monetary claims of \$200,000.00 or less shall be conducted pursuant to, and under, the Administrative Procedures Act, Chapter 120 Florida Statutes.

**18.7 Waiver of Jury Trial.** To the extent allowed by applicable law, the Parties expressly covenant and agree to waive the right to trial by jury in connection with any litigation or judicial proceeding related to or concerning, directly or indirectly, this Agreement, or the conduct, omission, action, obligation, duty, right benefit, privilege or liability of a Party. This waiver of right to trial by jury is separately given and is knowingly, intentionally and voluntarily made by the Parties, and both acknowledge that separate and good and valuable consideration has been provided by each for this waiver. The Parties have had an opportunity to seek legal counsel concerning this waiver. This waiver is intended to and does encompass each instance and each issue as to which the right to a jury trial would otherwise accrue. The Parties further certify and represent to each other that no employee, representative or agent of Contractor or Owner (including their respective counsel) has represented, expressly or otherwise, to Contractor or Owner or to any agent or representative of Contractor or Owner (including their respective counsel) that they will not seek to enforce this waiver of right to jury trial. This waiver shall apply to this Agreement and any future amendments, supplements or modifications hereto.

**18.8 Joinder.** In the event the dispute resolution procedure applicable to another dispute between Owner and another party regarding a project is different from the procedure specified in this Agreement, then Contractor hereby consents, if requested by Owner, to its joinder in such dispute resolution proceeding, provided that the dispute resolution proceeding involves substantially common questions of law or fact.

**18.9 Chapter 558, Florida Statutes.** The Parties specifically opt out of the requirements of Chapter 558, Florida Statutes.

**ARTICLE 19. MISCELLANEOUS PROVISIONS**

**19.1 Governing Law.** The Contract Documents shall be governed by, and construed under, the laws of the State of Florida, without regard to its choices of law provisions.

**19.2 Severability.** If any provision of this Agreement or the Contract Documents, or the application thereof, is determined to be invalid or unenforceable, the remainder of that provision and all other provisions shall remain valid and enforceable.

**19.3 Waiver.** The failure of Owner to enforce at any time or for any period of time any one or more of the provisions of the Contract Documents shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision. Further, the failure of Owner to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of the Contract Documents, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance. Waiver by Owner of a breach of any provision of the Contract Documents shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of the Contract Documents. No approval, consent or waiver by Owner shall be effective unless it is in writing and then only to the extent specifically stated.

**19.4 Strict Compliance.** No failure of Owner to insist upon strict compliance by Contractor with any provision of this Agreement shall operate to release, discharge, modify, change or affect any of Contractor's obligations.

**19.5 Successors and Assigns.** Owner and Contractor, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other Party to this Agreement and to the partners, successors and permitted assigns of such other Party with respect to all covenants of this Agreement. Contractor shall not assign (whether partially or wholly) this Agreement whether by operation of law or otherwise, without the prior written consent of Owner, which Owner may grant or withhold in its sole and absolute discretion. Any attempted assignment in violation of the foregoing prohibition shall be void ab initio and, at Owner's election, a breach of this Agreement. If Contractor makes a permitted assignment in accordance with this provision, Contractor shall nevertheless remain legally responsible for all obligations arising under the Agreement, unless otherwise agreed by Owner.

**19.6 Third-Party Beneficiaries.** This Agreement shall inure solely to the benefit of the Parties and their successors and assigns, and, except as otherwise specifically provided in this Agreement, nothing contained in this Agreement is intended to or shall create a contractual relationship with, or any rights or cause of action in favor of, any third-party against either Owner or Contractor.

**19.7 Annual Appropriations.** Owner's performance and obligation to pay hereunder is contingent upon an annual appropriation by the Legislature.

**19.8 No Bribes or Kickbacks.** Contractor shall not by any means:

- a) induce any person or entity employed in the construction of the project to give up any part of the compensation to which that person or entity is entitled;
- b) offer to accept any bribes or kick-backs in connection with the project from or to any individual or entity, including any of its consultants; or

c) without the express written permission of Owner in accordance with Owner's policy on the subject, call for or by exclusion require or recommend the use of any subcontractor, consultant, product, material equipment, system, process or procedure in which Contractor has a direct or indirect proprietary or other pecuniary interest."

**19.9 Exhibits.** All Exhibits referenced herein and attached hereto are incorporated herein by reference.

**19.10 Equal Employment Opportunity.** Owner is an equal opportunity institution and, as such, encourages the use of small businesses, including women and minority-owned small businesses in the provision of construction related services. Small businesses should have a fair and equal opportunity to compete for dollars spent by Owner to procure construction-related services. Competition ensures that prices are competitive and a broad vendor base is available. Contractor shall use good faith efforts to ensure opportunities are available to small businesses including women and minority-owned businesses on the project.

**19.11 Survival.** All of Contractor's representations, warranties and indemnities made in, required by, or given in accordance with this Agreement and the Contract Documents, as well as all continuing obligations of the Parties indicated in this Agreement and Contract Documents, will survive final payment, completion, and acceptance of Contractor's services and the Work or termination or completion of this Agreement or termination of the services of the Contractor.

**19.12 Remedies Cumulative.** Except as may be expressly stated otherwise herein, the remedies granted to Owner in the Contract Documents are cumulative and not in limitation of any other rights and remedies of Owner at law or in equity.

**19.13 Construction.** This Agreement has been negotiated by the Parties with the advice of counsel. Therefore, this Agreement shall not be interpreted more strictly against one Party than the other, including by virtue of one Party having drafted some or all of this Agreement. The singular shall include the plural, the plural the singular, and the use of any gender shall include all genders. Whenever the word "including", "include" or "includes" is used in this Agreement it shall be deemed to be followed by the words "without limitation". The terms "hereof", "herein", "hereunder", and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement, unless stated otherwise. Caption headings are included for ease of use only and shall not be utilized for purposes of interpreting the provisions of this Agreement. All Section and Article references in this Agreement are to Articles and Sections of this Agreement unless expressly stated otherwise.

**19.14 Notices.** Any notice pursuant to this Agreement shall be given in writing by (a) personal delivery, (b) reputable overnight delivery service with proof of delivery, or (c) legible facsimile or email transmission, sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given upon receipt or refusal to accept delivery, or, in the case of facsimile or email transmission, as of the date of the facsimile or email transmission. Either Party may change its address by giving written notice to the other Party in accordance with the requirements of this Section.



**Owner:**

University of Central Florida  
Planning, Design and Construction  
3528 North Perseus Loop  
Orlando, Florida 32816-3020  
Attention: Ben Davis  
Email: Ben.Davis@ucf.edu

**Contractor:**

Energy Air, Inc.  
5401 Energy Air Court  
Orlando, FL 32810  
Attention: John M. Bartkovich  
Email: CMContracts@EnergyAir.com

**19.15 Sufficiency of Services.** Nothing in the Contract Documents is intended or shall be construed to require Owner to determine the adequacy, accuracy or sufficiency of the Work or Contractor's services and nothing in the Contract Documents shall impose upon Owner a duty to third-parties to assure that Contractor or Contractor's Personnel, Professional or others are adhering to Applicable Laws. Further, Owner's review of, inspection of, acceptance of, or payment for any of the Work or Contractor's services shall not constitute acceptance of, or a waiver of any of Owner's rights or remedies relating to, Work or services that fail to conform to the requirements of this Agreement, unless Owner expressly accepts such non-conforming Work or services in writing.

**19.16 Amendment.** No modification or amendment to the Contract Documents shall be valid or binding upon the Parties unless in writing and executed by the Party or Parties intended to be bound by it.

**19.17 Time of the Essence.** Time is of the essence in the performance of Contractor's duties the Contract Documents. For purposes of the Contract Documents, the term "days" means consecutive calendar days unless a contrary intent is specifically indicated with regard to any reference to the word "days" and the term "business day" shall mean all days of the week excluding Saturdays, Sundays and all legal holidays observed by Owner.

**19.18 No Contingency Fee.** Contractor represents and warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for Contractor) to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm (other than a bona fide employee working solely for Contractor) any fee, commission, percentage, or gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

**19.19 Public Records.** This Agreement may be canceled by Owner for refusal by Contractor to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by Contractor in conjunction herewith.



**19.20 Convicted Vendor List.** Contractor warrants that it is not on the convicted vendor list for a public entity crime committed within the past thirty-six (36) months. Contractor further warrants that it will neither utilize the services of, not contract with, any supplier, subcontractor, or consultant for an amount in excess of Fifteen Thousand Dollars (\$15,000) in connection with this project if the supplier, subcontractor or consultant has been placed on the convicted vendor list within the past thirty-six (36) months.

**19.21 Counterparts.** This Agreement may be executed and delivered in counterparts, each of which shall be deemed to be an original and all of which, taken together, shall be deemed to be one agreement. For purposes of executing this Agreement, a document signed and transmitted by facsimile or by emailed PDF scan shall be treated as an original document. The signature of either Party on a faxed or emailed PDF scanned version of this Agreement shall be considered as an original signature and the document transmitted shall be considered to have the same binding legal effect as if it were originally signed. At the request of either Party, any facsimile or PDF scanned document shall be re-executed by all Parties in original form. Neither Party may raise the use of facsimile, emailed PDF scan or the fact that any signature was transmitted by facsimile or email as a defense to the enforcement of this Agreement or any amendment executed in compliance with this **Section 19.21**.

-Signature page to follow-

IN WITNESS WHEREOF, a duly authorized and validly authorized representative of each Party has affixed his or her respective signature hereto.

**FOR THE CONTRACTOR: ENERGY AIR, INC.**

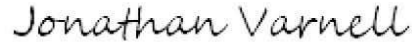
X   
\_\_\_\_\_  
(Signature)

John M. Bartkovich  
\_\_\_\_\_  
(Print Name)

President  
\_\_\_\_\_  
(Title)

On this 22nd day of July, 2024

**FOR OWNER: THE UNIVERSITY OF CENTRAL FLORIDA BOARD OF TRUSTEES**



Signed: Wednesday, July 31, 2024  
\_\_\_\_\_

Jonathan Varnell, Vice President  
Administrative Operations

**EXHIBIT A**

**PROJECT TEAM**

[Insert Contractor's Personnel Chart]

TBD

**EXHIBIT B**  
**LABOR RATES**

HVAC Job Title	Total Rate		
	Straight Time	Half Time	Double Time
Supervisor (Superintendent)	\$ 73.78	\$ 99.27	\$ 124.76
Foreman - Duct	\$ 62.86	\$ 84.40	\$ 105.94
Foreman - Pipe	\$ 62.86	\$ 84.40	\$ 105.94
Journeyman - Duct	\$ 62.01	\$ 83.28	\$ 104.54
Journeyman - Pipe	\$ 62.01	\$ 83.28	\$ 104.54
Junior Mechanic - Duct/Pipe	\$ 48.53	\$ 64.89	\$ 81.25
CAD Detailer	\$ 73.78	\$ 99.27	\$ 124.76

Notes:

All labor rates include burden only. No mark-up or overhead items included.

Half time applies to hours worked over 8 per day and weekend hours.

Double time applies to holidays.

**EXHIBIT C**

**OVERHEAD AND FEE**

<b>GC Overhead and Fee Chart</b>												
	\$1 to \$100k	\$101k to \$200k	\$201 to \$300k	\$301 to \$400k	\$401 to \$500k	\$501 to \$600k	\$601 to \$700k	\$701 to \$800k	\$801 to \$900k	\$901 to \$2 Mil	\$2+ Mil to \$3Mil	\$3+M to \$4Mil
construction cost	12.00%	11.00%	10.00%	9.00%	8.00%	7.50%	7.00%	6.50%	6.00%	5.50%	5.00%	4.50%
\$0												\$0
\$0											\$0	
\$0										\$0		
\$0								\$0				
\$0							\$0					
\$0					\$0							
\$0				\$0								
\$0			\$0									
\$0		\$0										
\$0	\$0											

**EXHIBIT D**

**AFFIDAVIT OF CRIMINAL BACKGROUND CHECK AND E-VERIFY**

CONTRACT: Mechanical Contractor Continuing Service \$4M

CONTRACTOR'S NAME: Energy Air, Inc.

DATE: 07/22/24

By signing this form, I am swearing or affirming that all individuals providing work or services to University of Central Florida ("Owner") under the above-referenced Agreement, on any Owner owned or leased property: (a) have been background screened in accordance with requirements set forth in the Agreement; (b) have been deemed eligible by Contractor to provide work or services to Owner based on the results of such screening; and (c) are legally eligible to work in Florida.

The information contained herein is current, as of the date this Affidavit is furnished to Owner. All individuals providing work of services to Owner under the above-referenced Agreement are listed below.

Each individual is identified by name, date of birth and shall fall into one (1) of the following categories:

- Previously screened and deemed eligible.  
[Attach list of individuals]
- New individuals screened and deemed eligible.  
[Attach list of individuals]
- Individuals no longer providing services for Contractor under the Agreement  
[Attach list of individuals]

X John M. Bartkovich John M. Bartkovich, President  
Signature of Affiant

Jessica Kline  
NOTARY PUBLIC, STATE OF FLORIDA

Sworn to and subscribed before me this 22<sup>nd</sup> day of July, 2024.  
My commission expires



**Standard UCF Addendum for Service Contracts for Purposes of Compliance with Section 119.0701, F.S.**

The following provision shall be added to the contract between the University of Central Florida Board of Trustees ("UCF") and Energy Air, Inc. ("Contractor"), entitled Mechanical Continuing Services \$4,000,000 Agreement ("Contract").

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: Office of the General Counsel, (407) 823-2482, [gcounsel@ucf.edu](mailto:gcounsel@ucf.edu), University Of Central Florida, 4365 Andromeda Loop N., Millican Hall, Suite 360, Orlando, FL 32816-0015.**

**PUBLIC RECORDS, CONTRACT FOR SERVICES**

To the extent that Contractor meets the definition of "Contractor" under Section 119.0701, Florida Statutes, in addition to other contract requirements provided by law, Contractor must comply with public records laws, including the following provisions of Section 119.0701, Florida Statutes:

1. Keep and maintain public records required by the public agency to perform the service.
2. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the contractor of the request, and the contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time. If a contractor does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.

**This Contractor and any subcontractors shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

All other terms and conditions of the Contract remain in full force and effect, unless amended hereby.

UCF Jonathan Varnell  
 By: \_\_\_\_\_  
 Print Name: Signed: Wednesday, July 31, 2024  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

CONTRACTOR  
 By: X John M. Barkovich  
 Print Name: John M. Barkovich  
 Title: President  
 Date: 07/22/24



**Exhibit 2: Work Order (Sample)**

**WORK ORDER, NOTICE TO PROCEED**

**WORK ORDER NO:** \_\_\_\_\_

**BILLING/INVOICE REFERENCE NO.:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**PROJECT DESCRIPTION:**

**County:** Alachua County, a political subdivision of the State of Florida.

**Date Issued:** \_\_\_\_\_

**CONTRACTOR:** \_\_\_\_\_

**CONTRACTOR'S ADDRESS:** \_\_\_\_\_

Execution of the Work Order by County shall serve as authorization for the Contractor to provide for the above project, set out in the certain Agreement of \_\_\_\_\_ between the County and the Contractor and further delineated in the specifications, conditions, and requirements stated in the following listed documents which are attached hereto and made a part hereof.

**ATTACHMENTS:**

- drawings/plans/specifications
- scope of services
- special conditions
- \_\_\_\_\_

The Contractor shall provide said services pursuant to this Work Order, its attachments and the above-referenced Agreement, which is incorporated herein by reference as if it had been set out in its entirety. Whenever the Work Order conflicts with said Agreement, the Agreement shall prevail.

**TIME FOR COMPLETION:** The Work authorized by this Work Order shall be commenced upon the date written above or upon issuance of and shall substantially complete within \_\_\_\_\_ (\_\_\_\_) calendar days of this Work Order with Final Completion occurring \_\_\_\_\_ (\_\_\_\_) calendar days after Substantial Completion.

**METHOD OF COMPENSATION:**

- (a) This Work Order is issued on a fixed fee basis
- (b) The Contractor shall perform all work required by this Work Order for the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_). In no event shall the Contractor be paid more than the Fixed Fee Amount.

The County shall make payment to the Contractor in strict accordance with the payment terms of the above-referenced Agreement.

It is expressly understood by the Contractor that this Work Order, until executed by the County, does not authorize the performance of any Services by the Contractor and that the County, prior to its execution of the Work Order, reserves the right to authorize a party other than the Contractor to perform the Services called for under this Work Order if it is determined that to do so is in the best interest of the County.

**IN WITNESS WHEREOF**, the Parties hereto have made and executed this Work Order on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for the purposes stated herein.

**WORK ORDER NO:** \_\_\_\_\_

**CONTRACTOR:**

\_\_\_\_\_  
Witness

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

Printed Name: \_\_\_\_\_

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

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

**ALACHUA COUNTY, FLORIDA:**

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

Printed Name: \_\_\_\_\_

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

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

**Exhibit 2A: Work Order Amendment (Sample)**

AMENDMENT # \_\_\_\_\_  
 NTP/Project # \_\_\_\_\_  
 Date Issued: \_\_\_\_\_  
 Professional: \_\_\_\_\_  
 Invoicing Reference # \_\_\_\_\_  
 Contract Manager: \_\_\_\_\_  
 Project #: \_\_\_\_\_

<b>Work Order Description:</b>
<b>Deliverable(s):</b>

Original Work Order Price:	
Total of Prior Approved Changes	
Amount of this Change in Work Order Add or (deduct)	
New Work Order Price with This Amendment:	

Original Completion Date: \_\_\_\_\_ (\_\_\_\_\_ days after issuance of  
 this Work Order)  
 New Completion Date: \_\_\_\_\_ (\_\_\_\_\_ days after issuance of  
 this Work Order)  
 Not valid until signed by County

**ALACHUA COUNTY:**  
  
**By:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**CONTRACTOR:**  
  
**By:** \_\_\_\_\_  
**Print Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**Exhibit 3: Insurance**

**TYPE "A" INSURANCE  
REQUIREMENTS "ARTISAN  
CONTRACTORS / SERVICE CONTACTS"**

**The Contractor shall procure and maintain for the duration of this contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the contractor/vendor, his agents, representatives, employees or subcontractors.**

**COMMERCIAL GENERAL LIABILITY**

Coverage must be afforded under a per occurrence form policy for limits not less than \$1,000,000 General Aggregate, \$1,000,000 Products / Completed Operations Aggregate, \$1,000,000 Personal and Advertising Injury Liability, \$1,000,000 each Occurrence, \$50,000 Fire Damage Liability and \$5,000 Medical Expense.

**AUTOMOBILE LIABILITY**

Coverage must be afforded including coverage for all Owned vehicles, Hired and Non-Owned vehicles for Bodily Injury and Property Damage of not less than \$1,000,000 combined single limit each accident.

**WORKERS COMPENSATION AND EMPLOYER'S LIABILITY**

Coverage to apply for all employees at STATUTORY Limits in compliance with applicable state and federal laws; if any operations are to be undertaken on or about navigable waters, coverage must be included for the USA Longshoremen & Harbor Workers Act.

Employer's Liability limits for not less than \$100,000 each accident; \$500,000 disease policy limit and \$100,000 disease each employee must be included.

**BUILDER'S RISK / INSTALLATION FLOATERS (when applicable)**

When this contract or agreement includes the construction of and/or the addition to a permanent structure or building; including the installation of machinery and/or equipment, the following insurance coverage must be afforded:

Coverage Form: Completed Value, All Risk in an amount equal to 100% of the value upon completion or value of equipment to be installed.

When applicable: Waiver of Occupancy Clause or Cessation of Insurance clause. Flood Insurance as available under the

National Flood Insurance Program.

**CYBER LIABILITY COVERAGE (when applicable)**

Vendor shall procure and maintain for the life of the contract in an amount not less than \$1,000,000 per loss for negligent retention of data as well as notification and related costs for actual or alleged breaches of data.

Technology/Professional Liability: with limits of \$1 million. Coverage is for the life of the contract and must continue for five (5) years after contract expiration. This coverage must include Cyber Liability coverage for negligent retention of data as well as notification and related costs for actual or alleged breaches of data.

**EMPLOYEE FIDELITY COVERAGE (only applicable to vendors whose employees handle funds)**

Employee Dishonesty coverage must be afforded for not less than \$500,000 Blanket all employees ISO Form

**OTHER INSURANCE PROVISIONS**

The policies are to contain, or be endorsed to contain, the following provisions:

**I Commercial General Liability and Automobile Liability Coverages**

a. The Alachua County Board of County Commissioners, its officials, employees and volunteers are to be covered as an Additional Insured as respects: Liability arising out of activities performed by or on behalf of the Contractor/Vendor; to include Products and/or Completed Operations of the Contractor/Vendor; Automobiles owned, leased, hired or borrowed by the Contractor.

b. The Contractor's insurance coverage shall be considered primary insurance as respects the County, its officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officials, employees or volunteers shall be excess of Contractor/Vendor's insurance and shall be non- contributory.

**II All Coverages**

The Contractor/Vendor shall provide a Certificate of Insurance to the County with a notice of cancellation. The certificate shall indicate if cover is provided under a "claims made" or "per occurrence" form. If any cover is provided under claims made from the certificate will show a retroactive date, which should be the same date of the contract (original if contact is renewed) or prior.

**SUBCONTRACTORS**

The Contractor/Vendor shall be responsible for all subcontractors working on their behalf as a condition of this agreement. All subcontractors of the Contractor/Vendor shall be subject to the same coverage requirements stated herein.

**CERTIFICATE HOLDER: Alachua County Board of County**

**Commissioners MAIL, EMAIL or FAX CERTIFICATES**

**Exhibit 3-A: Certificate of Insurance**