

STANDARD TERMS AND CONDITIONS FOR PARK UNIVERSITY CONSTRUCTION CONTRACTS

These Standard Terms and Conditions for Park University's Construction Contracts and Subcontracts, et. al. ("Standard Terms and Conditions") are an integral part of each Construction Contract, any other Park University agreement or lease related to the Campus and any other University Construction Projects in Platte County, Missouri, into which they are incorporated by reference, except to the extent that such a Construction Contract or other agreements otherwise provide.

1.0 **Defined Terms.** Capitalized words or phrases used in these Construction Contract Standard Terms and Conditions, and each Construction Contract into which they are incorporated, will have the meanings indicated below, unless otherwise defined in a Construction Contract. The fact that this list of Construction Contract Terms and Conditions is incorporated into a Construction Contract does not mean that every defined term is issued in every Construction Contract into which then incorporated.

"Academic Underground" means the mined space within the Argentine limestone ledge under or near the Campus, portion of which is utilized or to be utilized by the University for its educational purposes.

"Campus" means the portion of University Real Property that is owned by the University and upon which the University carries out its educational mission and from which it administers its programs around the world.

"Campus Safety" means the Park University Department of Campus Safety.

"Campus Safety Officer" means a person, whether an employee of the University, or of a University selected independent Construction Contractor, who is supervised directly or indirectly by the Park University Director of Campus Safety, and who is identified by uniform, identification card or otherwise as a Campus Safety Officer.

"Construction Commencement Date" means the date the Construction Contractor commences delivery of services under a Construction Contract.

"Construction Contract Termination Date" means the date and time a Construction Contract ends as stated in a Construction Contract, subject to possible earlier termination as provided in that Construction Contract.

"Construction Contract" means a contract between the University and a Construction Contractor pursuant to which a Construction Contractor agrees to provide services necessary to the partial or complete construction of a Construction Project, as provided in the Construction Contract Documents.

"Construction Contract Documents" means the Initial Construction Agreement, its attachments, all amendments, change orders and other document evidencing the

agreement of the parties regarding a Construction Project covered by an Initial Construction Agreement.

“Construction Contractor” means a person, business entity, corporation, limited liability company, partnership or other legal entity that enters into a Construction Contract with the University to perform construction services as part of a Construction Project.

“Construction Contractor Emergency Contact” means a person designated by a Construction Contractor to whom the University is entitled to rely upon to receive from the University, and communicate on behalf of the Construction Contractor to the University regarding emergencies and reportable events.

“Construction Contractor Personnel” means employees, agents, invitees, Subcontractors, material providers and their respective employees, agents and invitees.

“Construction Contractor Personal Property” means any equipment or other tangible personal property brought onto University Property, that belongs to a Construction Contractor, Construction Contractor’s Personnel or any other third party whose presence on University Real Property results from a Construction Contract.

“Construction Contractor Representative” means the person named in a Construction Contract as the Construction Contractor’s authorized representative, with whom the University is entitled to communicate regarding the a Construction Contract, and whose agreements, commitments and statements (written or oral) are legally binding upon the Construction Contractor. The same person may be designated as both the Construction Contractor Representative and the Construction Contractor Emergency Contact.

“Construction Project” means a project to be built or constructed on real property owned or leased by the University.

“Contraband Items” means Weapons, alcoholic beverages, tobacco, controlled substances, poisons, illegal drugs, and other items prohibited in a Construction Contract.

“Contract Price” means the price to be paid to Construction Contractor pursuant to a Construction Contract.

“Designated Parking Lots” means the location of the parking places that Construction Contractor Personnel are required to use while performing Work under a Construction Contract.

“Designated Roads” means the roads, and driveways that the Construction Contractor Personnel are entitled to use under a Construction Contract.

“Effective Date” means the date so designated in a Construction Contract.

“Initial Construction Agreement” means the initial agreement entered into by the University and a Construction Contractor for a Construction Project.

“Laws” means all federal, state and local laws, statutes, ordinances, rules, regulations, orders and notice requirements including, but not limited to those pertaining to the use of alcohol, drugs, explosives, fireworks and firearms; those governing the collection, transportation, storage, treatment, discharge, release and disposal of hazardous or non-hazardous waste or substances, including, without limitation: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§9601 *et seq.*), as amended from time to time (“CERCLA”) (including, without limitation, as amended pursuant to the Superfund Amendments and Reauthorization Act of 1986), and such regulations promulgated under CERCLA, (ii) the Resources Conservation and Recovery Act of 1976 (42 U.S.C. §§6901 *et seq.*), as amended from time to time (“RCRA”), and such regulations promulgated under RCRA, (iii) any applicable federal, state or local laws or regulations relating to the environment, the Fair Labor Standards Act, Missouri Minimum Wage Law, (iv) Missouri Child Abuse laws, (v) all immigration laws and regulations of the United States of America, (vi) all applicable laws, codes, regulations, ordinances and rules with respect to the work to be performed by its employees, agents and other Construction Contractor Personnel, (vii) fire codes, building codes, zoning ordinances, and special use permits.

“Lien Waiver Form” means one of the forms which are available on attached Exhibits C and D, which forms as incorporated by reference and made part of this defined term.

“Parkville Commercial Underground” means the mined space within the Argentine limestone ledge under or near the Campus, which is leased, or to be leased, by the University to third party tenants.

“Payment Application” means that Application and Certificate of Payment, upon which a Construction Contractor requests payment pursuant to a Construction Contract.

“Smoking” means the inhaling of smoke from the burning of tobacco and other plants and substances, organic or inorganic, in pipes, cigars, cigarettes, hookahs and other mechanisms or devices, and the inhaling of vapors, gases produced by the use of electronic cigarettes, pipes, cigars or other electronic devices.

“Subcontract” means a contract between a Construction Contractor and a third party pursuant to which that third party will provide labor, services, goods or materials for a Construction Project.

“Subcontractor” means a third party that has entered into a Subcontract.

“Subcontractor Personnel” means employees, officers and agents of a Subcontractor.

“Subcontractor Standard Terms and Conditions” means the Standard Terms and Conditions located at _____, required by Park University to be

incorporated by reference into, and made a part of, any Subcontract as a condition of the consent by the University to a Subcontract that has been requested by Construction Contractor, which Subcontractor Standard Terms and Conditions the University reserves the right to modify and revise at any time, and which modified or revised Subcontractor Standard Terms and Conditions will be posted at the above location.

“University Emergency Contact” means the person designated by the University to whom the University may communicate with in case of emergencies or reportable events; if no such person is named, the Construction Contractor will contact the University Primary Representative.

“University Primary Representative” means a person designated in a Construction Contract to manage the construction of a Project on behalf of the University.

“University Property” means University Real Property and the personal property of the University.

“University Protected Parties” means the University and its subsidiaries and affiliates, and their respective trustees, directors, officers, employees, students, independent contractors and agents.

“University Real Property” means the land, the legal description of which is available at: <http://www.park.edu/terms-and-regulations/documents/University-Land-Legal-Description.pdf>, which legal description is incorporated by reference, and made a part of this defined term, that legal description includes the Campus, the Academic Underground, and the Parkville Commercial Underground. It will also include any other University land described in an individual Subcontract.

“University” means Park University, a Missouri nonprofit corporation.

“Weapons” means firearms, knives, swords, explosives and other weapons as that word is commonly defined.

“Work” means the construction work which a Construction Contractor agrees to perform pursuant to a Construction Contract.

“Work Schedule” means the schedule for performance of the Work as determined pursuant to a Construction Contract.

“Work Site” means the physical location of the Construction Project.

2.0 **Work.** “Work” means the construction work which a Construction Contractor contracts to perform pursuant to a Construction Contract, including:

2.1 **Protection.** Each Construction Contractor shall protect existing facilities of the University during the performance of a Construction Contract.

- 2.2 **Cost Escalation.** Each Construction Contractor shall pay the cost of any material or labor escalation required for the Work to be properly completed.
- 2.3 **Tie-In.** As determined by University Primary Representative, the Construction Contractor shall perform all necessary “tie-ins” that must be performed before, or after, normal working hours, or on weekends or holidays in order to maintain a continuity of the operations of the University, the University’s Tenants, or other Construction Contractor without additional cost to University.
- 2.4 **Expedited Delivery.** Each Construction Contractor shall pay all costs associated with “expedited deliveries”) necessary to maintain the Construction Schedule, as defined in these Standard Terms and Conditions.
- 2.5 **Construction Schedule.** Each Construction Contractor shall submit to University Primary Representative a proposal detailing the Construction Schedule including, but not limited to, manpower loading information, within two (2) weeks after the award of a Construction Contract.
- 2.6 **Lump Sum for Additional Work.** If the University increases or decreases the Work and University elects to request a lump sum proposal from a Construction Contractor, that Construction Contractor shall provide sufficient substantiating data to permit evaluation by the University. Sufficient substantiating data consists of legible copies of the Construction Contractor’s detailed estimate sheets indicating material units, labor units, and mathematical calculations used to prepare lump sum price.
- 2.7 **Additional Work Provisions.** The following services shall be provided by a Construction Contractor as part of the Work:
- 2.7.1 All necessary hoisting required for the Work.
- 2.7.2 Securing and paying for all permits required for completion of the Work.
- 2.7.3 Arrangements for and payment of any temporary water required for the Work.
- 2.7.4 Providing a safe working environment for the workers of the Construction Contractor and any Subcontractor.
- 2.7.5 Paying the deductible portion of any claim the Construction Contractor submits under any risk/builder’s risk insurance policy carried by the University.
- 2.7.6 Providing and paying for any necessary temporary toilet facilities.

- 2.7.7 Complying with the University's security policies and procedures, and its traffic and parking regulations and instructions.
- 2.7.8 Testing of construction materials and inspections required by the Construction Contract Documents.
- 2.7.9 Meeting or improving the Work Schedule.
- 2.7.10 Maintaining amicable labor relations within its labor force and between its labor force and others employed on the Construction Project.
- 2.7.11 Assembling crews in a manner consistent with local jurisdictional divisions of the scope of the Work.
- 2.7.12 Paying damages for all losses incurred by the University due to strikes or other work stoppages or slowdowns on the Construction Project that result from jurisdictional disputes.
- 2.7.13 At its own cost, taking whatever measures are necessary to resolve all jurisdictional disputes related to the Work.
- 2.7.14 Providing any required surface water (surface drainage and dewatering), and dust control on the Work Site through completion of the Work.
- 2.7.15 Performing layout of its work from control points established by University Primary Representative.
- 2.7.16 Proposing voluntary cost reductions and value engineering related to the Work.
- 2.7.17 Performing the Work in an environmentally responsible manner, and in compliance with all applicable Laws.
- 2.7.18 Providing flagmen and/or traffic control necessary for the safe performance of the Work.
- 2.7.19 Providing a one-year materials and workmanship warranty covering all aspects of the Work, which warranty shall be in addition to any other remedy or cause of action, accruing to the University under a Construction Contract or at law, and enforcement of this warranty shall not constitute an election of remedies and shall not waive or void any other right, remedy or cause of action of the University.

3.0 **Taxes.** Since the University is exempt from the payment of Missouri sales and use taxes, the Contract Price shall not include sales or use taxes. Each Construction Contractor shall be liable for all and shall pay all consumer, excise, business and occupation, and

other similar taxes required by law, whether enacted or imposed before or after execution of each Construction Contract. Except as otherwise provided in a Construction Contract, all federal, state and local taxes (excluding sales and use taxes) are included in the Construction Contract Price.

4.0 **University Personal Property.** Unless otherwise set forth in a Construction Contract, each Construction Contractor shall provide all of equipment and other items of personal property that the Construction Contractor deems necessary for Construction Contractor to properly complete the Work, and the University shall be under no obligation to provide any kind of University Personal Property for use by the Construction Contractor unless it, in its sole discretion, the University so agrees, that obligation shall be evidenced by a written amendment to a Construction Contract Document.

5.0 **Construction Project Condition/Clean-Up.**

5.1 **University Property Condition.** Unless otherwise provided in a Construction Contract, each Construction Contractor shall inspect and accept the condition of the Work Site existing on the Effective Date.

5.2 **Clean-Up.** During construction the Construction Contractor shall keep the Work Site in as clean as condition as is reasonably possible including proper disposal of trash, construction debris and excess materials. Upon termination of a Construction Contract, the Construction Contractor shall cease its use or occupancy of the Work Site and all other University Property, expeditiously remove from all University Real Property all of Construction Contractor's Personal Property, materials, construction debris and trash. Any of the Construction Contractor's Personal Property that is not removed on or before the Construction Contract Termination Date shall be deemed to have been abandoned, and the University may dispose of the Construction Contractor's Personal Property as the University sees fit, without any obligation to pay the Construction Contractor, any other Construction Contractor Personnel, anything for the abandoned Construction Contractor's Personal Property or its disposition.

6.0 **Title to Work.** The Construction Contractor warrants and guarantees that title to all Work, materials and equipment covered by its Payment Application ("Payment Application") will pass to the University upon receipt of such payment by the Construction Contractor, free and clear of all liens, claims, security interests, or encumbrances ("Liens"). The Construction Contractor in good faith may contest any Liens and the University shall not withhold payments on account thereof provided. The Construction Contractor shall submit with each Payment Application, lien waivers, waivers of lien condition upon payment if payment of the last application has not been made, or other such documentation satisfactory to the University for Work done since the immediately preceding Payment Application.

7.0 **Lien Waivers.** Lien waivers to be submitted by the Construction Contractor shall be in the forms of attached Exhibits A and B.

- 8.0 **Payment Application.** The Payment Application(s) to be submitted by the Construction Contractor shall be in the form of attached Exhibit C.
- 9.0 **Compliance With the Law.** Construction Contractor shall comply with all Laws applicable to the Construction Project and to the Construction Contract.
- 10.0 **Employment Status of Construction Contractor Personnel.** During the term of each Construction Contract and thereafter, Construction Contractor Personnel shall not be deemed or construed to be “loaned employees” working for or at the direction of the University, or "fellow servants" of the University. Each Construction Contractor acknowledges and agrees that the University is not a “joint employer” of the employees of the Construction Contractor. Construction Contractor shall be solely responsible and liable for the performance of all duties, obligations, and responsibilities as an employer of individuals hired or retained by Construction Contractor to provide services to the University, including, but not limited to, recruitment, interviewing, hiring, maintenance of personnel records, compliance with Form 1-9 Employment Eligibility Verifications, drug testing, payment of wages, setting wage rates and supervision. Each Construction Contractor agrees and acknowledges that the University does not hire, fire, supervise, or control the rate and method of payment to Construction Contractor Personnel.
- 11.0 **Title IX.** As required by Title IX of the Education Amendments of 1972, the University prohibits sex discrimination, sexual harassment, and sexual violence in its programs and activities and strives to maintain a campus environment free of such conduct. Subcontractor will ensure that Construction Contractor’s Personnel do not engage in any conduct that violates Title IX while on the Campus and any other University Real Property. Such conduct by any Construction Contractor Personnel will result in the University taking any action it deems necessary to resolve the situation, to eliminate the conduct and prevent its recurrence, and to provide a safe environment for its students, employees, trustees, officers and guests, including, but not limited to, disallowing the offending employee(s) of Subcontractor and any person included within the definition of “Construction Contractor Personnel” from returning to the Campus or any other University Real Property. The University will provide a copy of its Title IX policy and complaint resolution procedures to Construction Contractor and its Subcontractors upon request.
- 12.0 **Missouri Child Abuse Laws.** Each Construction Contractor represents, warrants and agrees that said Construction Contractor is aware of the Missouri Child Abuse Laws that protect any person under eighteen (18) years of age (“Child”), and the Construction Contractor and all Construction Contractor Personnel who enter the Work Site or other University Real Property, pursuant to a Construction Contract must comply with the Missouri Child Abuse Laws, including but not limited to the required reporting of suspected Child abuse or neglect. Each Construction Contractor shall expressly require all of its Construction Contractor Personnel who have reasonable cause to suspect that any Child is being, or has been, subjected to abuse or neglect should report the abuse or suspected abuse to: (i) the Missouri Child Abuse and Neglect Hotline described below, and (ii) to the University Campus Safety Office at (816) 584-6444.

MISSOURI CHILD ABUSE AND NEGLECT HOTLINE INFORMATION

The Missouri Department of Social Services, Children's Division, operates the Children's Division Child Abuse and Neglect Hotline Unit (CA/NHU) accepts confidential reports of suspected child abuse, neglect, or exploitation. Reports are received through a toll-free telephone line which is answered seven days a week, 24 hours a day. The toll-free number is 1-800-392-3738. Persons calling from outside Missouri should dial 573-751-3448. Text telephone number: 1-800-669-8689.

- 13.0 **Monitoring.** University personnel, including the University's Primary Representative and any other University construction managers, Campus Safety Officers and University officers, shall monitor the performance of the Construction Contract. Other University management, supervisory or environmental services personnel may also inspect the Work Site at any time to assure a Construction Contractor's performance of the Construction Contract. Each Construction Contractor shall direct that Construction Contractor's Personnel to follow all instructions given by the Campus Safety Officers and University administrative and maintenance personnel. If at any time the Construction Contractor Personnel violate any Law or if it otherwise violates a Construction Contract, that Construction Contractor Personnel shall either cease and desist from continuing such non-permitted use and forthwith upon demand of Campus Safety Officers or the University Vice President for Administration and Enrollment that person may be escorted from the Campus or other University Real Property and may be prohibited from returning to the University Real Property. Such a prohibition of the return of such a person shall not constitute breach of a Construction Contract.
- 14.0 **University Rights including Damages and Indemnification.**
- 14.1 **University Damages Reimbursement.** Each Construction Contractor shall, upon demand by the University, reimburse the University and University Protected Parties for *all* damages, costs and expenses, including attorneys fees and litigation costs, caused by the actions of the Construction Contractor, and any Construction Contractor Personnel.
- 14.2 **University Indemnification.** Each Construction Contractor shall indemnify, hold harmless and defend the University and University Protected Parties against and from: (i) all claims arising out of the presence of that Construction Contractor and that Construction Contractor Personnel in/on the other University Real Property, (ii) all claims arising out of any breach or default in the performance of any obligation on the part of the Construction Contractor to be performed under a Construction Contract, (iii) all vandalism and property damage caused to any University Property by the Construction Contractor and the Construction Contractor Personnel, (iv) violations of all Laws, including but not limited to the Missouri Child Abuse Laws and Title IX of the Education Amendments of 1972, (v) the University's removal of

any Construction Contractor's Personal Property that is not removed from the University Real Property by the Construction Contractor on or before the Construction Contract termination date, and (vi) all costs, attorneys' fees, expenses and liabilities incurred in connection with any claim or any action or proceeding brought by the University on any such claim.

- 14.3 **Limitation of University Liability.** In any suit against the University, or other University Protected Parties, under no circumstances, including the negligence of University Protected Parties, shall the University or University Protected Parties be liable for any lost revenue or profits or any incidental, indirect, special, or consequential damages that result from a Construction Contract, even if the University or University Protected Parties have been advised of the possibility of such damages; and in no event shall the University's total liability to the Construction Contractor for all damages, losses, claims, and causes of action, whether in contract, tort (including negligence) or otherwise, arising from the Construction Contractor Personnel or from the presence of construction on University Real Property exceed the amount to be paid by the University pursuant to a Construction Contract.
- 14.4 **Payment of University Litigation Fees and Expenses.** The University shall have the right to maintain an action in the court identified in Section 23.6, or in any other court of competent jurisdiction to enforce and/or to recover damages for Construction Contractor's breach of the rights and/or obligations created by, or provided pursuant to, a Construction Contract. If the University prevails in any court action against a Construction Contractor, that Construction Contractor shall upon demand, reimburse the University for all fees and expenses (including reasonable attorneys' fees) actually and reasonably incurred in connection with the action (including, without limitation, the investigation, defense, settlement or appeal of the action).
- 14.5 **Cumulative Remedies.** No remedy or election available to the University under a Construction Contract shall be deemed exclusive but shall be cumulative with all other remedies at law or in equity that are available to the University.
- 15.0 **Notice to the University of Prohibited Actions and Other Violations of a Construction Contract.** The Construction Contractor shall immediately notify the Primary University Representative and a Campus Safety Officer in writing of the occurrence of any actions or conduct prohibited by a Construction Contract.
- 16.0 **Alterations and Damages.** Except for actions required by a Construction Contract, neither a Construction Contractor nor Construction Contractor Personnel shall make or cause any alterations, improvements, physical damages, attachments to, or other changes of any kind, including vandalism to University Property.
- 17.0 **Disturbing the Peace.** The Construction Contractor and all Construction Contractor Personnel on the University Real Property shall behave in a manner that does not disturb

the peace of other persons in, on or near Construction Projects and otherwise on University Real Property.

- 18.0 **Tobacco.** Tobacco is a Contraband Item and its use (whether it is smoked, chewed, snuffed or otherwise used), is prohibited within University Facilities, except in designated portions of the Campus. Smoking is permitted outdoors but no closer to a building than 50 feet. In addition, a Parkville City Smoking Ordinance applies to, and prohibits tobacco smoking in all buildings on University Real Property, including the entirety of the Academic Underground and the Parkville Commercial Underground. Construction Contractor Personnel are prohibited from violating the foregoing tobacco restrictions. Each Construction Contractor shall assure that Construction Contractor Personnel shall not violate the University's Contraband Policies or the Parkville City Smoking Ordinance.
- 19.0 **Vandalism.** Neither a Construction Contractor nor that Construction Contractor's Personnel shall destroy or vandalize any University Property or any other property on University Real Property.
- 20.0 **Vehicles.** Construction Contractor Personnel driving motor vehicles of any kind of University Real Property shall observe all posted speed limits, stop and yield signs, no parking signs and other traffic signs on the Campus, and other portions of the University Real Property, must operate vehicles, including bicycles, in a safe and reasonable manner, and shall obey the instruction of all Campus Safety Officers and other University employees.
- 21.0 **Weapons and Contraband.** All Weapons, except: (i) firearms carried by law enforcement officers who are on duty, (ii) law enforcement officers who are required by law to carry firearms when off-duty, or (iii) who otherwise have the prior written permission of the University to possess firearms, are "Contraband Items" and prohibited on University Real Property. This prohibition expressly applies to both concealed and unconcealed weapons. Each Construction Contractor shall expressly prohibit Construction Contractor Personnel from possessing any Contraband Items on University Real Property.
- 22.0 **University Property Leased to Third Parties.** Each Construction Contractor shall assure that all of that Construction Contractor's Personnel on the Campus or on University Real Property, do not trespass upon or otherwise enter the premises of the University including those leased, rented or otherwise being used with the permission of the University to third parties, including the Parkville Commercial Underground and any other University Property (including the operating limestone mine accessed via Coffey Road).

23.0 **Miscellaneous.**

- 23.1 **Amendments.** No amendment to a Construction Contract shall be effective unless in writing and signed by authorized representatives of the University and a Construction Contractor.
- 23.2 **Assignment; Sublicensing.** Each Construction Contract is personal to the University and to the Construction Contractor named in that Construction Contract and the Construction Contractor shall not assign, subcontract or in any way transfer any of its rights or obligations under a Construction Contract, in whole or in part, without obtaining the University's prior written consent, which consent may be withheld or conditioned by the University in the University's sole discretion.
- 23.3 **Counterparts and Facsimile Signatures.** Any Construction Document may be executed in counterparts, and each counterpart shall be deemed an original and both of which, when taken together, shall constitute one and the same instrument. A Construction Document may be executed by facsimile signature which shall be deemed to be an original signature.
- 23.4 **Entire Agreement.** Each Initial Construction Agreement shall include these Standard Terms and Conditions and the Initial Construction Agreement into which these Standard Terms and Conditions are incorporated, together with any other Construction Contract Documents, shall constitute the entire agreement between a Construction Contractor and the University about its subject matter, and no prior or contemporaneous representations, agreements, or understandings, written or oral, pertaining to any such matters is a part of a Construction Contract. A Construction Contract Document may not be amended except in a writing signed by the parties. Each Construction Contract Document is effective or binding on the University and the Construction Contractor as of the Effective Date.
- 23.5 **Force Majeure.** The University shall not be deemed in default under a Construction Contract due to the inability of the University to perform its obligations by reason of any fire, earthquake, flood, snowstorm, epidemic, accident, explosion, casualty, strike, lockout, controversy, riot, civil disturbance, act of a public enemy, embargo, war, act of God, or any municipal, county, state or national ordinance or law, or any executive, administrative, or judicial order (which order is not the result of any act or omission which would constitute a default under a Construction Contract), or any failure or delay of any transportation, electrical, natural gas, water, telephone, or communications system, or any other cause whatever that is beyond the University's reasonable control.
- 23.6 **Governing Law; Venue.** Each Construction Contract shall be governed by the laws of the State of Missouri without regard to its conflicts of law provisions. Venue for all permitted action(s) or proceeding(s) related to any Construction Contract, the Campus and other University Property, including actions by the University to

enforce any provision of, or based on any right arising out of, a Construction Contract or otherwise, must be brought in the Circuit Court of Platte County, Missouri, and each Construction Contractor and Construction Contractor Personnel consents to the exclusive jurisdiction of the Missouri courts (and of the appropriate Missouri appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on a party anywhere in the world.

- 23.7 **Joint and Several Liability.** If two (2) or more persons or legal entities have signed or caused to be signed a Construction Contract as Construction Contractor(s), they are and shall be jointly and severally liable under such Construction Contract.

- 23.8 **No Partnership or Joint Venture.** Neither a Construction Contract nor any act of the Construction Contractor or any Construction Contractor Personnel shall be construed to create any partnership, joint venture, or agency relationship between the Construction Contractor and the University, nor shall a Construction Contractor or that Construction Contractor Personnel hold themselves out to be vested with any power or right to bind the University contractually or to act on behalf of the University. If during the Construction Contract term the parties use the terms "partner," "partnership," "alliance," "affiliation," or other similar terms, those terms or references refer to a spirit of cooperation between the parties and do not describe expressly or by implication create a legal partnership, joint venture or agency relationship, any responsibility by one party of the actions of the other, or any fiduciary or other duty owed by one party to the other.

- 23.9 **No Third Party Beneficiary.** Each Construction Contract is intended solely for the mutual benefit of the parties, and there is no intention, express or otherwise, to create any rights or interests to or for any party or person other than the named Construction Contractor and the University.

- 23.10 **Notices.** Any notice or demand required or given in connection with any Construction Contract must be in writing and sent by certified mail, return receipt requested, postage prepaid to the notice address for the party set out below:

If to Park University: Park University
Attention: Chief Financial Officer
8700 N.W. River Park Drive, CMB 25
Parkville, MO 64152

And to: Park University
Attention: Vice President & General Counsel
8700 N.W. River Park Drive, CMB 93
Parkville, MO 64152

If to a Construction Contractor: Addressed to the Construction Contractor, care of the Construction Contractor's Representative at the address shown in a Construction

Contract.

23.11 **Partial Invalidity.** Any provision in any Construction Contract that proves to be invalid, void, or illegal shall in no way alter, impair, or invalidate any other provisions, and such other provisions shall remain in full force and effect.

23.12 **Representations and Warranties.**

23.12.1 **Construction Contractor's Representations and Warranties.** Each Construction Contractor represents and warrants to the University that: (i) the Construction Contractor has carefully inspected the Work Site, and has determined it is acceptable to the Construction Contractor for performance of the Work, and the Construction Contractor has not relied on any warranty or representation of the University as to the condition of the Work Site, (ii) the Construction Contractor has full right, power and authority to execute and perform its obligations under a Construction Contract, (iii) all internal corporate actions required by the Construction Contractor's bylaws or other corporate documents have been duly performed, including authorizing the persons who sign a Construction Contract on behalf of the Construction Contractor to do so, thus authorizing said signatures to bind the Construction Contractor, (iv) the execution and performance of each Construction Document does not and shall not violate any Law, rule, regulation, order, writ, injunction or decree of any court or government, domestic or foreign, or any commission, bureau or administrative agency, or any agreement or instrument by which the Construction Contractor is bound, and (v) each Construction Contract constitutes the binding obligation of the signatory Construction Contractor, enforceable against that Construction Contractor in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting the enforcement of creditors' rights generally or by limitations on the availability of equitable remedies. If a Construction Contractor is a legal entity, the Construction Contractor further represents and warrants that: (vi) the Construction Contractor is the type of legal entity shown with the Initial Construction Agreement Construction Contract, (vii) is organized, existing and in good standing under the laws of the State indicated in a Construction Contract, (viii) to the extent required by Missouri law the Construction Contractor is authorized to do business in Missouri, and (ix) the Construction Contractor's representative possesses the authority to legally bind the Construction Contractor.

23.12.2 **University's Representations and Warranties.** The University represents and warrants that it is a nonprofit corporation organized, existing and in good standing under the laws of the State of Missouri, and that the University has the authority to enter into a Construction Contract.

Except as expressly provided in a Construction Contract the University makes no representations or warranties.

- 23.13 **Section Captions.** Section captions in each Construction Contract and in these Standard Terms and Conditions are for convenience only and neither limit nor amplify the provisions of that Construction Contract.
- 23.14 **Survival of Representations, Warranties, Covenants and Agreement.** All representations, warranties, covenants and agreements made by each party to a Construction Contract shall survive the expiration of the Construction Contract.
- 23.15 **Waiver.** A waiver by the University of any term, covenant, or condition in a Construction Contract shall not be deemed to be a waiver of the same or any other term, covenant, or condition on any subsequent occasion.

EXHIBIT A
PARTIAL LIEN WAIVER

**PARTIAL RECEIPT AND WAIVER OF
MECHANIC'S LIENS ("Partial Lien Waiver")**

_____ ("Date")

Payment History

Project Amount: \$ _____
Prior Payments: \$ _____
Current Amount: \$ _____
Project Balance: \$ _____

1. The undersigned contractor ("Contractor") warrants and represents that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which University or the Construction Project might in any way be responsible, have been paid or otherwise satisfied.
2. Contractor acknowledges receipt of \$ _____ as a partial draw for payment of labor and/or materials that the Contractor has provided or will provide for improvements that are described on Exhibit A ("Project") constructed or to be constructed on the real property ("Property") of Park University ("Owner") that is described on attached Exhibit B. As to labor, materials, and services of the kinds described in Section 2 below, the Contractor waives all rights to claim a mechanic's, supplier's or any other lien against the Property or any improvement thereon that the Contractor has paid for or will pay for from the Current Amount and all Prior Payments. Owner's payment of the Current Amount constitutes full payment for the Contractor's invoice that is attached as Exhibit C.
3. Contractor agrees to pay the Owner, its successors and assigns, on demand all Project-related claims, together with all costs, loss and attorney's fees that the Owner may incur in connection with any such claims by, or liens of, all: (i) employees of the Contractor who work on the Project, (ii) subcontractors of the Contractor who work on the Project, (iii) suppliers who provide or will provide materials used or to be used in the Project that the Contractor is obligated to pay pursuant to its Project-related agreements with the Owner, and, (iv) all other third parties who at the behest of the Contractor provided labor, services, goods, materials, related to, or incorporated into, the Project.
4. The person signing this Partial Lien Waiver upon behalf of the Contractor, represents and warrants that: (i) he/she is duly authorized to do so, (ii) all labor performed on the Project to Date has been done in a good and workmanlike manner, and, (iii) all materials and equipment used in the Project to Date, are of good quality and meet Owner's specifications and requirements. The Contractor understands that Owner is relying upon all of the representations, warranties and agreements of the Contractor and its signatory hereto as stated in this Partial Lien Waiver.

Give under my hand and seal this ___ day of _____, 20__.

By: _____
Name: _____
Title: _____

STATE OF MISSOURI)
)ss.
COUNTY OF PLATTE)

On this ___ day of _____, 20__, before me, a Notary Public in and for said State, personally appeared _____, the _____, a _____ corporation, known to me to be the person who executed the foregoing Partial Lien Waiver on behalf of said corporation, and acknowledged to me that he/she executed the said Partial Lien Waiver for the purposes therein stated, as the free act and deed of said corporation.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said County and State the day and year last above written.

Notary Public

(Printed Name)

My Commission Expires: _____

Effective Date: _____

EXHIBIT B
FINAL LIEN WAIVER

**FINAL RECEIPT AND WAIVER OF
MECHANIC'S LIENS ("Final Lien Waiver")**

_____ ("Date")

Payment History
Project Amount: \$ _____
Prior Payments: \$ _____
Final Amount: \$ _____
Project Balance: \$0.00

1. The undersigned contractor ("Contractor") warrants and represents that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which University or the Construction Project might in any way be responsible, have been paid or otherwise satisfied.
2. Contractor acknowledges receipt of full and final \$ _____ for payment for all labor and/or materials that the Contractor has provided or will provide for improvements that are described on Exhibit A ("Project") constructed on the real property ("Property") of Park University ("Owner") that is described on attached Exhibit B. As to labor, materials, and services of the kinds described in Section 2 below, the Contractor does hereby permanently waive and release all rights it may have to assert a mechanic's, supplier's or any other lien against the Property or any improvement thereon that the Contractor has paid for or will pay for from the Final Amount and all Prior Payments. Owner's payment of the Final Amount constitutes full and final payment owed to the Contractor and reflected on the Contractor's invoice, attached as Exhibit C.
3. Contractor agrees to pay the Owner, its successors and assigns, on demand all Project-related claims, together with all costs, loss and attorney's fees that the Owner may incur in connection with any such claims by, or liens of, all: (i) employees of the Contractor who work on the Project, (ii) subcontractors of the Contractor who work on the Project, (iii) suppliers who provide or will provide materials used or to be used in the Project that the Contractor is obligated to pay pursuant to its Project-related agreements with the Owner, and, (iv) all other third parties who at the behest of the Contractor provided labor, services, goods, materials, related to, or incorporated into, the Project.
4. The person signing this Final Lien Waiver upon behalf of the Contractor, represents and warrants that: (i) he/she is duly authorized to do so, (ii) all labor performed on the Project has been done in a good and workmanlike manner, and, (iii) all materials and equipment used in the Project, are of good quality and meet Owner's specifications and requirements. The Contractor understands that Owner is relying upon all of the representations, warranties and agreements of the Contractor, and its signatory hereto, as stated in this Final Lien Waiver.

Give under my hand and seal this ___ day of _____, 20__.

By: _____
Name: _____
Title: _____

STATE OF MISSOURI)
)ss.
COUNTY OF PLATTE)

On this ___ day of _____, 20__, before me, a Notary Public in and for said State, personally appeared _____, the _____, a _____ corporation, known to me to be the person who executed the foregoing Final Lien Waiver on behalf of said corporation, and acknowledged to me that he/she executed the said Final Lien Waiver for the purposes therein stated, as the free act and deed of said corporation.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said County and State the day and year last above written.

Notary Public

(Printed Name)

My Commission Expires: _____

Effective Date: _____

EXHIBIT C
Payment Application Form

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702 (modified)

Page One of Pages

TO OWNER:
Park University (Martin Properties CM)
8700 NW River Park Dr
Parkville, MO 64152

PROJECT:

APP NO: 1
PERIOD TO:
PROJECT NOS: 0

DISTRIBUTION TO:
OWNER
Const. Manager

FROM CONTRACTOR:

CONTRACT DATE:

CONTRACT FOR:

CONTRACTOR'S APPLICATION FOR PAYMENT

APPLICATION IS MADE FOR PAYMENT, AS SHOWN BELOW, IN CONNECTION WITH THE CONTRACT CONTINUATION SHEET, AIA DOCUMENT G703, IS ATTACHED

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payments were issued and payments received from the Owner, and that current payment shown herein is now due.

1. ORIGINAL CONTRACT SUM	_____	\$0.00
2. Net change by Change Orders	_____	\$0.00
3. CONTRACT SUM TO DATE (line 1 +1-2)	_____	\$0.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	_____	\$0.00
5. RETAINAGE:		
a. % of completed work	0% _____	\$0.00
b. % of Stored materials	0% _____	\$0.00
Total retainage (line 5a+5b or Total in Column I of G703)	_____	\$0.00
6. TOTAL EARNED LESS RETAINAGE (line 4 less line 5 total)	_____	\$0.00
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (line 6 from prior certificate)	_____	\$0.00
8. CURRENT PAYMENT DUE	_____	\$0.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE (line 3 less line 8)	_____	\$0.00

CONTRACTOR:

By: _____ Date _____

State of: Missouri
County of: Jackson

Subscribed and sworn to before me this 19th day of November, 2012.

Notary Public:
My Commission expires: _____

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by owner	\$0	
Total approved this Month	\$0	
NET CHANGES by Change Order	\$0	

Effective Date: _____