

**CONTRACT GENERAL TERMS AND CONDITIONS APPLICABLE TO
AGREEMENT FOR AT RISK CONSTRUCTION MANAGEMENT SERVICES**

Addendum - A document issued by the Architect or Owner which modifies or supersedes portions of the Contract Documents and is hereby incorporated into the Contract Documents.

Architect - The person or organization, including the authorized representatives thereof, commissioned by the Owner for the Project to do design work and to provide all aspects of design relative to the Project. For projects on which an engineer or landscape architect is commissioned instead of an architect, the term "Architect" shall mean the design professional so commissioned for the project. In the event no Architect is hired for a project, Owner will be deemed to be the Architect.

Change Order - A written agreement entered into after the award of the Contract which alters or amends the executed Contract.

Contract - The Contract Documents form the contract between the Owner and the Construction Manager. The Contract represents the entire and integrated agreement between the Owner and Construction Manager and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by written amendment, Addendum or Change Order executed by both parties. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Owner or Construction Manager and any third party. However, it is understood and agreed that the Owner is an intended third-party beneficiary of all Contracts, Subcontracts, purchase orders and other agreements related to the Project between Construction Manager and third parties. Construction Manager shall incorporate the terms and obligations of the Contract into its respective subcontracts, supply agreements and purchase orders.

Contract Documents – The Agreement for At-Risk Construction Management Services, the Construction Manager's Guaranteed Maximum Price Proposal, if any, bonds, insurance certificates, plans, specifications, amendments, addenda, contract for construction, these General Terms and Conditions, progress schedules and approved Change Orders.

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Construction Manager. Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Performance by the Construction Manager shall be required to be consistent with the Contract Documents and the highest standard of care. In the case of an inconsistency between, or perceived omission or error in the Drawings, Specifications, or other Contract Documents which is not clarified by Addendum, or should the Construction Manager be in doubt as to their exact meaning, the Construction Manager shall immediately notify the Architect and the Owner. The Owner shall not be responsible for oral instructions or for the Construction Manager's misinterpretations of Drawings and Specifications and/or other Contract Documents.

Construction Documents – All plans, Specifications, Drawings and all other written documents prepared or used by the Construction Manager to complete the Work on the Project.

Construction Manager - The person or business entity that has entered into this Contract with the Owner, and the term applies to the Construction Manager or the Construction Manager's authorized representative.

Construction Manager's Fee - The total fixed fee paid to the Construction Manager for its performance of Work under the Contract and calculated as provided in the Contract. The fee shall be included in the applications for payment in proportion to the Work completed.

Day - "Day" or "days" means calendar days unless specifically provided otherwise.

Design Development Documents - The design development documents prepared by the Architect as that term is defined in the Owner/Architect Contract.

Drawings - The drawings prepared by the Architect as that term is defined in the Owner/Architect Contract.

Final Completion - "Final Completion" means the completion of the Work in accordance with the Contract Documents and the acceptance thereof by the Owner.

Guaranteed Maximum Price - The term Guaranteed Maximum Price or GMP shall be the maximum price to the Owner for the Work and shall include (1) the Cost-of-the-Work and (2) the Construction Manager's Fee. The GMP shall be reviewed, approved and agreed to by the Owner, Architect and Construction Manager. In no event shall the sum of items (1) and (2) referenced above exceed the GMP, except as may be modified by an approved Change Order.

Knowledge - The terms "knowledge," "recognize" or "discover," and their respective derivatives and similar terms in the Contract Documents, as used in reference to the Construction Manager, shall be interpreted to mean that which the Construction Manager knows or should reasonably know, recognizes or should reasonably recognize and discovers or should reasonably discover in exercising the care, skill and diligence required by the Contract Documents.

Notice to Proceed - A written notice given by the Owner to the Construction Manager fixing the date on which Construction Manager shall start to perform construction phase services under the Contract Documents.

Owner - Oakland University, including its Board of Trustees, President, officers and employees acting within the scope of their duties.

Owner Representative - The person designated by the Owner to manage the construction phase of the Project, and who is authorized to approve changes to the Contract Documents. The Owner shall not be responsible for any acts or omissions of such representative outside the scope of the representative's authority.

Persistently fails - The phrase "persistently fails" and other similar expressions, as used in reference to the Construction Manager, shall be interpreted to mean any acts or omissions, which cause the Owner to reasonably conclude that the Construction Manager will not complete the work within the required time, for the agreed fee or price or in substantial compliance with the requirements of the Contract Documents.

Plans - The Drawings prepared by the Architect and approved by the Owner which include elevations, sections, details, schedules, diagrams, information, notes, or reproductions or any

of these, and which show the location, character, dimension, or details of the work. These include the graphic and pictorial portions of the Contract Documents.

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

Project Cost - The Project Cost, applicable to either an estimated or actual cost, is the sum of all costs for a completely constructed, functionally ready for use Project, designed in accordance with the scope, scheme, concept, and statement, as developed, documented and accepted by the Owner and as constructed by the accepted contracting method or methods. Project Cost shall include all costs and expenses. The Project Cost, once established and accepted by the Owner is relied upon by the Owner for its subsequent budgetary planning and financial needs for the Project.

Reasonably inferable - The phrase "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a Construction Manager familiar with the Project and exercising the care, skill and diligence required by the Contract Documents.

Schematic Design Documents - The schematic design documents prepared by the Architect as that term is defined in the Owner/Architect Contract.

Site - The area specified in the Contract for the Project and the area made available for the Construction Manager's operation.

Specifications - The written instructions and requirements prepared by the Architect which complement the plans and which describe the manner of performing the work or the quantities, qualities and types of materials to be furnished.

Subcontractor - Any person or business entity which contracts with Construction Manager or any tier of Subcontractor to furnish either labor and materials or equipment, or labor only, on the Project.

Supplier or Vendor - Any person or business entity, which Contracts with the Construction Manager or any tier of Subcontractor to provide materials or equipment on the Project. The terms "Supplier" and "Vendor" have the same meaning in the Contract Documents.

University – The Oakland University campus, the University property upon which the Project is located, and may include the University's Board of Trustees, President and other University officers and employees acting within the scope of their duties.

Work - The term "Work" means the construction and services required by the Contract Documents and includes all other labor, materials, equipment, licenses, permits, insurance and services provided or to be provided by the Construction Manager to fulfill the Construction Manager's obligations. The Work may constitute the whole or a part of the Project.

(a) Pre-Award

1. Duty to Carefully Examine These Instructions.

The Construction Manager for this Project shall carefully examine the instructions and terms contained herein and be cognizant of and satisfied with the conditions.

2. Availability of Plans and Specifications

The Construction Manager will be given one set of reproducible drawings issued for construction and one copy of Specifications. Any further reproduction for construction purposes shall be at the Construction Manager's expense. Alternatively, an electronic document management system employed and managed by the architect may be utilized in conjunction with a document printing company.

3. Necessity for Careful Examination of Site, Plans, and Specifications

A. Generally

The Construction Manager shall carefully examine the Site and the Plans and Specifications for the Project and shall investigate and be satisfied as to the conditions to be encountered, the character and quantity of surface and subsurface materials or obstacles to be encountered, rights of way and easements at or near the Site, the Work to be performed, and materials to be furnished and as to the requirements of the proposal, Plans, and Specifications for the Project. It is understood that the Construction Manager is not obligated to separately perform any subsurface investigation other than those specified in the Contract Documents and can reasonably rely upon the written subsurface investigation reports supplied by Owner's Consultants.

Any failure by the Construction Manager to acquaint itself with information which is available, or with reasonable investigation may be available, will not relieve it from responsibility to properly estimate the difficulty or cost to perform the Work. Such examination does not require independent underground soil boring unless otherwise stated elsewhere in the Contract documents.

B. The issuance, or the express or implied approval by the Owner or the Architect of the Contract Documents shall not relieve the Construction Manager of the continuing duties imposed hereby, nor shall any such approval be evidence of the Construction Manager's compliance with the Contract. The Owner has requested the Architect to prepare Contract Documents for the Project, including the Drawings and Specifications for the Project, which are constructible within the Project budget, accurate, adequate, consistent, coordinated and sufficient for construction. The Construction Manager acknowledges that the Architect practices in its own specialized field of discipline and training and that the Owner does not have the duty or knowledge or training necessary to determine the accuracy, adequacy, consistency, coordination or sufficiency for construction of such Contract Documents and the Owner makes no representation or warranty of any nature whatsoever to the Construction Manager concerning such Contract Documents. The Construction Manager and Owner acknowledge that its contractual duty with regard to design errors is to report identified or known errors, inconsistencies, ambiguities and omissions to the Owner for the sole purpose of keeping the Owner advised of the Architect's errors or omissions as to constructability, as perceived by the Construction Manager.

C. Subsurface Investigations

Where investigations of subsurface conditions have been made by the Owner and that information is made available to the Construction Manager, such information is limited in scope to that which has been actually encountered in the investigations, and is

included only for the Construction Manager to use in bidding and constructing the Project.

Subject to Article g(5) of these Contract General Terms and Conditions, There is no guarantee or warranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the site or that unforeseen conditions or developments may not occur.

4. Clarification

The Construction Manager shall examine the Plans and Specifications and shall immediately report to the Architect any omissions, discrepancies, or apparent errors in the Plans and Specifications which Construction Manager discovers.

Unless otherwise set forth in the Contract Documents, only the Architect is authorized to answer questions or to prepare addenda relative to the Project. Information obtained from other sources is unauthorized, may not be relied upon, and shall have no standing in any event that may occur.

5. Mistake in Proposal

The Construction Manager shall not be relieved of any fee proposal without consent of the Owner nor shall any change be made in the fee or fee proposal because of mistakes unless such mistake is based on mutual mistake of fact.

6. Non-Discrimination

The Construction Manager shall not discriminate against any employee or applicant for employment because of any characteristic or classification protected by law. The Construction Manager will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their characteristics or classification protected by law. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

The Construction Manager shall, in any solicitation or advertisements for employees placed by or on behalf of the Construction Manager, state that all qualified applicants will receive consideration for employment without regard to any characteristic or classification protected by law.

The Construction Manager shall comply with all requirements of the Elliott-Larsen Civil Rights Act being 1976 PA 453, as amended.

The Construction Manager shall also comply with the Persons with Disabilities Civil Rights Act being 1976 PA 220, as amended.

The Construction Manager shall include, or incorporate by reference, the provisions of this section in each and every subcontract or purchase order and shall provide in each and every subcontract or purchase order that said provisions will be binding upon each and every Subcontractor and Supplier and Vendor.

Any breach of the requirements and covenants of this section may constitute a material breach of the Contract Documents.

7. Governmental Requirements and Risk Wages

This Contract is subject to the prevailing wage provisions of Act No. 10 of Michigan Public Acts of 2023 (“The Act”) and the Contractor shall pay prevailing wages, that is, the rates of wages and fringe to be paid to each class of mechanics by the Contractor and all Subcontractors shall be not less than the wage and fringe benefit rates prevailing in the locality in which the work is to be performed. The prevailing wages and fringe benefits determined by the Michigan Department of Labor for the Project are attached hereto and made a part hereof by this reference and are a part of the Specification of the Work to be performed. If the Contract is not awarded or Work undertaken within ninety (90) days of the date of the Michigan Department of Labor’s wage and fringe benefit determination as shown on the attachment, the Michigan Department of Labor shall make a re-determination before the Contract is awarded and the new determination shall become part of the Specifications of the Work to be performed. Construction Mechanics are the intended beneficiaries of the contractual prevailing wage, fringe benefit, and nondiscrimination nonretaliation requirements of the Act. Any construction mechanic aggrieved by the failure of a contractor or subcontractor to pay prevailing wages or benefits as specified in the contract, or by a violation of section 7 of the Act, in addition to any other remedies provided in this act or by law, may bring an action in a court of competent jurisdiction against the contractor or subcontractor for damages or injunctive relief and may be awarded reinstatement or other appropriate relief, and all damages sustained, together with actual costs and attorney fees at trial and on appeal.

The Parties acknowledge that if the Project is being funded by project specific governmental funds, and Construction Manager agrees to comply with, and to ensure that any tier of Subcontractors, Suppliers, and Vendors comply with, any and all obligations, contractual or legal, requirements, expectations, or directives given to, or placed upon, the University by the applicable governmental entity/agency as a condition to receive funding for the Project and that any such obligations, requirements, expectations, or directives are incorporated herein.

8. Contract Bonds and Insurance

Construction Manager shall provide performance and payment bonds for 100% of the Project Cost through a combination of selected Subcontractor dual obligee bonds and Construction Manager’s own bonds provided that all bonds will be issued by a surety company licensed to do business in the State of Michigan and has a Best rating of A- or better in compliance with the Public Works Bonding Act, MCLA 129.201 et seq. The bond form shall be on A.I.A. Form A-311 or its equivalent subject to the acceptance and approval of the Owner.

Construction Manager shall present to the Owner, in an acceptable form, evidence of the insurance as required by the Contract Documents. Actual Work shall not commence until the bond and evidence of insurance is received by the Owner. Failure to provide the bond and evidence of insurance in the time-frame allowed will not be cause for delay.

Whenever the Owner has cause to believe that the surety has become insufficient, the Owner may demand in writing that the Construction Manager provide such further bonds or additional surety, not exceeding that originally required, as in the Owner's opinion is necessary, considering the extent of the Work remaining to be done. Thereafter no payment shall be made to the Construction Manager or any assignee of the Construction Manager until the further bonds or additional surety has been furnished.

9. Execution of Contract

No Contract shall be binding upon the Owner until it has been executed by the Construction Manager and the Owner.

(d) Conduct of the Work

1. Owner

- A. The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative. Any reference to "Trustee" or "Trustees" shall be considered to mean "Owner."
- B. The Owner may furnish available surveys describing physical characteristics, legal limitations and utility locations for the Site of the Project.

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

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

Unless otherwise provided in the Contract Documents, the Construction Manager will be furnished, free of charge, one set of reproducible documents for construction purposes. All reproduction required for construction is the obligation of the Construction Manager. Alternatively, an electronic document management system employed and managed by the architect may be utilized in conjunction with a document printing company.

The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein.

- C. If the Construction Manager fails to correct Work which is not in accordance with the requirements of the Contract Documents as required or persistently fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Construction Manager to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Construction Manager or any other person or entity.

- D. If the Construction Manager defaults, neglects or fails to carry out the Work in accordance with the Contract Documents and fails within a three business (3) day period after receipt of written notice from the Owner to commence and continue correction of such default, neglect or failure with diligence and promptness, the Owner may after such three business (3) day period, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Construction Manager the cost of correcting such deficiencies, including compensation for the Architect's additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due the Construction Manager are not sufficient to cover such amounts, the Construction Manager shall pay the difference to the Owner.

2. Construction Manager

- A. The Construction Manager recognizes the relationship of mutual trust and confidence established between the Owner and the Construction Manager by this Contract. The Construction Manager shall furnish the Owner with its reasonable skill and judgment and fully cooperate with the Owner in forwarding the reasonable interests of the Owner. All the work is to be done in the reasonable manner by persons skilled in the type of Work to be performed.
- B. The Construction Manager shall have a continuing duty to read, carefully study and compare the Contract Documents and product data with each other and with information furnished by the Owner and shall at once report to the Architect and the Owner errors, inconsistencies, ambiguities and omissions, relating to constructability, discovered before proceeding with the affected Work. The Construction Manager shall be liable to the Owner for damage resulting from errors, inconsistencies, ambiguities, or omissions in the Contract Documents, relating to constructability, if the Construction Manager recognized or should have reasonably recognized such error, inconsistency, ambiguity or omission and failed to report it to the Architect and the Owner. If the Construction Manager performs any construction activity which involves such error, inconsistency, ambiguity or omission in the Contract Documents relating to constructability, without such notice to the Architect and the Owner, the Construction Manager shall assume responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

The Construction Manager shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Construction Manager with the Contract Documents before commencing activities. Errors inconsistencies or omissions discovered shall be reported to the Architect and Owner at once.

The Construction Manager shall perform the Work in accordance with the Contract Documents.

- C. The Construction Manager shall perform, supervise, and direct the Work, using the Construction Manager's reasonable skill and attention. The Construction Manager shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work, unless Contract Documents give other specific instructions concerning these matters.

The Construction Manager shall be responsible to the Owner for acts and omissions of the Construction Manager's employees, Subcontractors and suppliers and their agents and employees and their Subcontractors and suppliers, and other persons performing portions of the Work under a contract with the Construction Manager.

The Construction Manager shall not be relieved of obligations for performing the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Construction Manager.

- D. The Construction Manager shall furnish efficient business administration, coordination, supervision and superintendence of the Work and shall furnish at all times a competent and adequate administrative and supervisory staff and an adequate supply of workmen and materials to perform the Work in the best and most sound way in the most expeditious and economical manner consistent with the interests of the Owner. The Construction Manager agrees from time to time at the Owner's request to furnish estimates and technical advice as to proposed changes to the Work to Owner and Architect. The Construction Manager agrees to evaluate for coordination of the Plans and Specifications, Shop drawings, landscaping drawings, furniture, fixtures, and equipment Plans and Specifications, and any other drawings, Plans and Specifications developed with respect to the Project, as they are being developed and to advise and make recommendations with respect to such factors as construction feasibility, cost saving, availability of material and labor, time requirements for procurement and construction and projected costs. The Construction Manager shall assist in the coordination of all sections of the Plans and Specifications without, however, assuming any of the Architect's customary responsibilities for design or any liability therefore.

The Construction Manager agrees to cooperate with the Architect, Owner's Representative, separate contractors, and all persons or entities retained by the Owner to provide consultation and advice, and to coordinate the Work with the work of such parties so that the Project shall be completed in accordance with Plans and Specifications and in the most efficient and expeditious manner.

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

The Construction Manager shall enforce strict discipline and good order among the Construction Manager's employees and other persons performing the Work. The Construction Manager shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

Wherever any provision of any section of the Plans and Specifications conflicts with any agreement or regulation of any kind at any time in force among members of any Trade Associations, Unions or Councils which regulate or distinguish what work shall or shall not be included in the work of any particular trade, the Construction Manager shall make all necessary arrangements to reconcile any such conflict without delay, damage, increase to the Project Cost or recourse to the Architect or the Owner.

In case the progress of the Work is affected by any undue delay in furnishing or installing any items of material or equipment required under the Contract Documents because of conflict involving any agreement or regulation of the type described above, the Owner and Construction Manager may specify that other material or equipment of equal kind and quality be provided.

- F. The Construction Manager warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Construction Manager's warranty excludes remedy for damage or defect caused by abuse, modifications made by the Owner, improper or insufficient maintenance, improper operations, or normal wear and tear under normal usage. Construction Manager shall furnish satisfactory evidence as to the kind and quality of materials and equipment and a limited warranty for completed operations for one year after Substantial Completion.
- G. The Construction Manager shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Construction Manager which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect and such taxes are included in the Project Cost.
- H. The Construction Manager shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work, including, without limitation, Owner's policies and ordinances.

It is not the Construction Manager's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Construction Manager observes that portions of the Contract Documents are at variance therewith, the Construction Manager shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Change Order.

If the Construction Manager performs Work it knows, or should reasonably know, to be contrary to laws, statutes, ordinances, building codes, or rules and regulations without such notice to the Architect and Owner, the Construction Manager shall assume full responsibility for such Work and shall bear the attributable costs for correction.

- I. The Construction Manager shall include in the Project Cost all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Construction Manager shall not be required to employ persons or entities against which the Construction Manager makes reasonable objection.

Unless otherwise provided in the Contract Documents:

- (i) materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay in the Work;

- (ii) the allowance shall cover the cost to the Construction Manager of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
 - (iii) the Construction Manager's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated material allowance amounts shall be included in the Project Cost and not in the material allowances;
 - (iv) whenever costs are more than or less than allowances, the Project Cost may be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual costs and the allowances.
- J. The Construction Manager shall confine operations at the Site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Site with materials or equipment.
- K. The Construction Manager shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

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

- L. The Construction Manager shall provide the Owner and Architect access to the Work in preparation and progress wherever located.
- M. The Construction Manager acknowledges that during the performance of the Work, the surrounding buildings and/or areas may be occupied and will require access by the public. The Construction Manager further acknowledges that other construction managers or contractors may be working on or near the Project Site to accomplish the Owner's purposes and projects. To the greatest extent possible, the Construction Manager shall cooperate fully with the Owner and its guests, students, employees, invitees, and other construction managers and contractors in performing the Work required under the Contract, and the fee/price will include the Construction Manager's costs in taking whatever reasonable steps are necessary to minimize interference with their activities, and coordinating schedules with other construction manager's projects as required by the Owner.

3. Architect

- A. The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

In case of termination of employment of the Architect, the Owner shall appoint an architect against whom the Construction Manager makes no reasonable objection and whose status under the Contract Documents shall be that of the former Architect.

- B. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Architect and Construction Manager shall endeavor to communicate through the Owner. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors, Suppliers, and/or Vendors shall be through the Construction Manager. Communications by and with separate contractors shall be through the Owner.
- C. The Architect will have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of the Work, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager, Subcontractor, Suppliers or Vendors, their agents or employees, or other persons performing portions of the Work.

The Architect will review and take appropriate action upon the Construction Manager's submittal such as Shop Drawings, product data and samples.

The Architect will interpret and render an opinion on matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or Construction Manager. The Architect's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until fifteen (15) Days after written request is made for them.

Interpretations and opinions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and opinions, the Architect will endeavor to secure faithful performance by both Owner and Construction Manager, and will not be liable for results of interpretations or opinions so rendered in good faith.

4. Delegation of Performance and Assignment of Money Earned

The performance of all or any part of this Contract may not be delegated without the written consent of the Owner. Consent will not be given to any proposed delegation which would relieve the Construction Manager or its surety of their responsibilities under the Contract Documents.

The Construction Manager may assign monies due or to become due under the Contract Documents, only upon prior written consent of the Owner. Assignments of monies earned by the Construction Manager shall be subject to proper retention in favor of the Owner and to all deductions provided for in the Contract Documents and such monies shall be subject

to being used by the Owner for the completion of the Work in the event the Construction Manager is in default.

5. Construction Manager's Insurance

The Construction Manager shall not commence Work under this Contract until it has obtained all the insurance required by the Contract Documents and such insurance has been approved by the Owner; nor shall the Construction Manager allow any Subcontractor to commence Work on its subcontract until the insurance required of the Subcontractor has been obtained. The Construction Manager shall, at its expense, purchase and maintain in full force and effect such insurance as will protect itself and the Owner from claims, such as for bodily injury, death, and property damage, which may arise out of or result from the Work required by the Contract Documents, whether such Work is done by the Construction Manager, by any Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

A. Policies and Coverage

The following policies and coverages shall be furnished by the Construction Manager:

Commercial General Liability coverage in the amount of \$1,000,000 per occurrence and \$2,000,000 aggregate (including Premises-Operations; Independent Contractors; Products and Complete Operations; Broad Form Property Damage)

Business Automobile Liability coverage in the amount of \$1,000,000 per occurrence

Worker's Compensation and Employer's Liability Insurance – Statutory Limits

Umbrella Excess Liability coverage in the amount of \$10,000,000

Pollution Liability coverage in the amount of \$10,000,000 per claim

Builders Risk Coverage in the amount set forth in Exhibit A. Costs associated with Builder Risk Insurance program are the responsibility of the Construction Manager and must include replacement cost coverage for the entire value of the building both for the Building part not being renovated, property under construction, and the renovation of the existing building. The Builders Risk coverage must also include: a) coverage on a primary basis and be non-contributory of the Firms' existing property insurance coverage, b) extend coverage for permission to occupy while the building is under construction, and c) Time Element coverage for business income, including all off premises facilities supplying the project with materials, extra expense and expediting expenses. The Builders Risk coverage should also include coverage for delay in startup and must carry soft costs. Program must carry soft costs for all interested parties including but not exclusive of the following:

General Overhead Developer – General overhead and administration expenses incurred, including but not limited to additional clerical personnel, consultant fees, temporary office space, additional security and similar expenses.

Miscellaneous Operating Expenses – Miscellaneous operating expenses may include such items as general overhead and administrative expenses, advertising, taxes and other similar expenses incurred as a result of delay in completion.

Fixed Operational and Maintenance Expenses – Those costs incurred by the project owner whether or not the project is operating, less any income derived from the project operations. Such items include salaries, wages, taxes, maintenance and other ongoing expenses which cannot be reasonably avoided during such delay.

Wheeling Charges – Those fixed cost payments due to another electric utility for availability to wheel power through that utilities transmission system which are due whether or not power is being generated by the project.

Additional Interest Expense – The additional interest that may be charged by lenders for the extension or renewal of interim financing necessary for the completion of the project.

Debt Service Payments – Interest payments and/or principal payments which become due and must be paid whether the project is operational or not.

Bond Interest – Bond interest payments which become due and must be paid whether the project is habitable or not.

Construction Loan Fees – Additional commissions or loan fees incurred in rearranging financing necessary for completion of the project.

Refinancing Charges – The additional cost expended solely to obtain new financing for the project, should the financing expire or failed to be renewed.

Fees for Letters of Credit, Trustee, Remarketing of Bonds – Additional costs incurred in the event it becomes necessary to refinance the project as a result of the delay in completion.

Real Estate Taxes – Additional realty taxes and other assessments actually incurred for the period of time that construction has been extended beyond the original completion date.

Marketing Expenses – Additional advertising, promotion and such additional expenses as are incurred as a result of delay in scheduled completion of the project.

Legal/Professional fees – Additional accounting work incurred in renewing or restructuring the financing, other professional fees as a result of additional costs and expenses of the project and additional legal work incurred in renegotiating and preparing revised contracts and other documents

Leasing Expenses – Additional costs of renegotiating and preleasing of the project as a result of a delay in the scheduled opening date.

Founders Fee Refunds – Founders fees refunds are defined as deposits made by prospective occupants, and a refund of said deposits may become necessary if the project is delayed. If payment by the insurer is necessary for founder's fee refunds, any new founder's fees later collected by the insured on the same property will be applied to reduce the loss payment made by the insurer.

Insurance Premiums – Additional premiums charged under insurance policies for renewing or extending policies to continue coverage during the period of delay.

Loss of Earnings – total revenue and other items derived from operations of the project less 1) cost of materials and supplies consumed directly in manufacturing the product or supplying the services sold by the insured; 2) Or service purchased from outsiders for resale which do not continue under contract; 3) Charges and expenses which do not necessarily continue during the delay.

Loss of Rents – The actual loss of net rental income sustained as a direct result of delay but not exceeding the reduction in rentals less charges and expenses which do not necessarily continue or arise because of said delay.

Additional delay items – Real Estate Taxes, Leasing Commissions, Ground Rent, City Inspection fees, space planning, soil testing, building permits and fees, excess facility charges such as electrical company set up fee, architect and engineering fees, survey, steel, concrete and geotech.

B. Proof of Coverage

Certificates of Insurance, as evidence of the insurance required by these Contract Documents, shall be submitted by the Construction Manager to the Owner. The scope of coverage and deductible shall be shown on the Certificates of Insurance. Any deductible shall be the Construction Manager's liability. The Certificates of Insurance shall provide for no cancellation or modification of coverage without thirty (30) Days prior written notice to the Owner. Acceptance of Certificates of Insurance by the Owner shall not in any way limit the Construction Manager's liabilities under the Contract Documents. In the event the Construction Manager does not comply with these insurance requirements, the Owner may, at its option, provide insurance coverage to protect the Owner; and the cost of such insurance shall be paid by the Construction Manager and may be deducted from the payments due Construction Manager. Renewal certificates shall be filed timely for all coverage until the Project is accepted as complete.

C. Subcontractor's Insurance

The Construction Manager shall either require Subcontractors to carry the insurance or the Construction Manager shall insure the activities of the Subcontractors in the amounts set forth below. If the Construction Manager elects to have its Subcontractors purchase individual insurance policies, the Construction Manager shall cause its Subcontracts to include a clause requiring that copies of any insurance policies, which provide coverage to the Work, shall be furnished to the Owner upon request.

The Construction Manager shall supply the Owner with a list of all Subcontractors showing whether or not they have individual insurance policies and certifying that those Subcontractors without individual insurance policies are insured by the Construction Manager.

Commercial General Liability coverage in the amount of \$1,000,000 per occurrence and \$2,000,000 aggregate (including Premises-Operations; Independent Contractors; Products and Complete Operations; Broad Form Property Damage)

Business Automobile Liability coverage in the amount of \$1,000,000 per occurrence

Worker's Compensation and Employer's Liability Insurance – Statutory Limits

Umbrella Excess Liability coverage as follows:

In the amount of \$5,000,000 for subcontractors performing the following: Asphalt Paving, Curtain Walls and Windows, Demolition, Drywall, Electrical, Elevator, Erection, Excavation, Fencing, Fireplace, Fire Protection, Masonry, Mechanical, Plumbing including excavation, Pool, Roofing, Rough Carpentry, Concrete Flatwork, Sewer/Water, Structural Steel, Underground Utilities, and similar work.

In the amount of \$2,000,000 for subcontractors performing the following: Cabinets, Caulking, Finish Carpentry, EIFS, Flagpoles, Floor Covering, Floor Finishes, Glass and Aluminum, Insulation, Kitchen Equipment, Landscaping, Metal or Vinyl Siding, Millwork, Miscellaneous Specialties, Overhead Doors, Painting, Plastering, Plumbing without excavation, Signs, Telephone/Security/Audio Systems, Tile, Toilet Partitions, Wallpaper, Waterproofing, and similar work.

D. Scope of Insurance Coverage

The Construction Manager's insurance as required by the Contract Documents (including Subcontractor's insurance), by endorsement to the policies and the Certificates of Insurance, shall include the following and may be presented in the form of a rider attached to the Certificates of Insurance:

- (i) The Trustees of Oakland University, the University, their officers, employees, and authorized agents, shall be included as additional insureds for and relating to the Work to be performed by the Construction Manager and Subcontractors. This shall apply to all claims, costs, injuries, or damages.
- (ii) A Severability of Interest Clause stating that, "The term 'insured' is hereby used severally and not collectively, but the inclusion herein of more than one

insured shall not operate to increase the limits of the insurer's or insurers' liability."

- (iii) A Cross Liability Clause stating that, "In the event of claims being made under any of the coverages of the policy or policies referred to herein by one or more insured hereunder for which another or other insured hereunder may be liable, then the policy or policies shall cover such insured or insureds against whom a claim is made or may be made in the same manner as if separate policies had been issued to each insured hereunder. Nothing contained herein, however, shall operate to increase the insurer's limits of liability as set forth in the insuring agreements."
- (iv) The Trustees of Oakland University, the University, their officers, employees, representatives and agents, shall not by reason of their inclusion as additional insureds incur liability to the insurance carriers for payment of premiums for such insurance. However, the Owner may, in its sole discretion after receiving a notice of cancellation for nonpayment, elect to pay the premium due and deduct such payment from any sums due to the Construction Manager or recover the amount paid from the Construction Manager if the sums remaining are insufficient.
- (v) Coverage provided is primary and is not in excess of or contributing with any insurance or self-insurance maintained by the Trustees of Oakland University, the University, its officers, or employees.

E. Miscellaneous Insurance Provisions

The form and substance of all insurance policies required to be obtained by the Construction Manager shall be subject to approval by the Owner. All such policies shall be issued by companies lawfully authorized to do business in Michigan and be acceptable to the Owner. All property insurance policies to be obtained by the Construction Manager shall name the Owner as loss payee as its interest, from time to time, may appear. Professional Liability Insurance coverage will not be altered for a minimum of three (3) years from Substantial Completion of the Project. Coverages (or coverage limit increases) purchased and/or maintained by Construction Manager specifically for the Project will contain endorsements stating that such coverages (or coverage limit increases) shall not be subject to claims unrelated to the Project.

The Construction Manager shall, upon mutual agreement with the Owner and at the Construction Manager's cost, furnish any additional insurance as may be requested by the Owner. The Construction Manager shall provide Certificates of Insurance evidencing such additional insurance.

At the request of the Owner, the Construction Manager shall submit to the Owner copies of the policies obtained by the Construction Manager.

The Construction Manager acknowledges that the Owner is self-insured and participates in the Michigan Universities Self-Insurance Corporation program and the Construction Manager agrees that the Owner is not required to provide or purchase any additional insurance with respect to this Project or the Work required by the Construction Manager for the Project.

6. Indemnification

- A. To the fullest extent permitted by law, the Construction Manager shall hold harmless, defend, and indemnify the Board of Trustees of Oakland University, the University, and its officers, employees from and against any and all claims demands, damages, liability, actions, causes of action, losses, judgments, costs and expenses of every nature (including investigation costs and/or expenses, settlement costs, and attorney fees and expenses incident thereto) actually or allegedly arising out of, resulting from, or attributable to (1) the failure of the Construction Manager to perform its obligations under the Contract (2) Construction Manager's negligent acts or omissions or willful misconduct; (3) the inaccuracy of any representation or warranty by the Construction Manager given in accordance with or contained in the Contract Documents (4) any claim of damage or loss by the Construction Manager, Subcontractor or Supplier, laborer or Vendor, against the Owner arising out of any negligent act or omission of the Construction Manager or any other Subcontractor, or anyone directly or indirectly employed by the Construction Manager or any Subcontractor, including, but not limited to, (a) any personal or bodily injury illness or disease, including death at any time resulting therefrom of any person, including, but not limited to, employees of the Owner, the Construction Manager, any Subcontractor, supplier or vendor (b) any loss, damage or destruction of any property (c) any loss or damage to the Owner's operations (d) any payment allegedly owed to Subcontractors, Suppliers or Vendors, except to the extent of wrongful nonpayment by the Owner (e) any loss, damage, or claim relative to conditions of safety and protection of persons on the Project Site under the control of the Construction Manager, or (f) any loss, damage, or claim relative to Construction Manager's breach of obligations regarding non-discrimination as set forth in the Contract General Terms and Conditions. The Construction Manager's duty to fully indemnify and defend the Owner shall not be limited in any way by the existence of insurance coverage
- B. The Construction Manager shall also be liable for and hereby agrees to pay, reimburse, fully indemnify and hold the Owner harmless from and against all costs and expenses of every nature (including attorney fees and expenses incident thereto) incurred by the Owner in collecting the amounts due from the Construction Manager, or otherwise enforcing its rights, under the indemnifications described in this paragraph. Such obligation to indemnify shall not be construed to negate, abridge, or otherwise reduce, but shall be in addition to, any and all other rights which otherwise exist as to the Owner, including the Owner's rights relative to insurance coverage required of the Construction Manager under the Contract.
- C. In claims against any person or entity indemnified under this Article made by an employee of the Construction Manager or a Subcontractor, or indirectly employed by either of them, or anyone for whose acts either 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 the Construction Manager or a Subcontractor under workers compensation laws, disability benefit laws, or other laws providing employee benefits.

- D. The indemnification obligations under this Article shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty or otherwise.
- E. The Construction Manager shall hold harmless, defend, and indemnify the Owner from and against any claim of damage made by any separate contractor of the Owner against the Owner actually or allegedly arising out of any negligent or improper acts or omissions of the Construction Manager, a Subcontractor, anyone directly or indirectly employed by either the Construction Manager or Subcontractor, or anyone for whose acts either the Construction Manager or Subcontractor may be liable.

The Construction Manager shall hold harmless, defend, and indemnify the separate contractors of the Owner from and against losses arising out of the negligent or improper acts or omissions or willful misconduct of the Construction Manager, a Subcontractor, anyone directly or indirectly employed by the Construction Manager or Subcontractor, or anyone for whose acts the Construction Manager or Subcontractor may be liable.

7. Construction Manager's Responsibility for the Work

A. Generally

The Construction Manager shall be responsible for all Work performed under the Contract Documents. For purposes of assessing responsibility to the Construction Manager, all persons engaged in the Work shall be considered the responsibility of the Construction Manager. The Construction Manager shall give its personal attention to the fulfillment of the Contract and keep all phases of the Work under its control.

The Owner will not arbitrate disputes among Subcontractors nor between the Construction Manager and one or more Subcontractors concerning responsibility for performing any part of the Work.

B. Quality Control

The Construction Manager shall be fully responsible for the quality of materials and workers' skill used in performance of the Work. The Construction Manager shall not rely upon the inspection and testing provided by the Owner other than those for which there are written reports.

C. Burden for Damage

From the issuance of the Notice to Proceed until the formal acceptance of the Project by the Owner, the Construction Manager shall have the charge and care of and shall bear the risk of damage to the Project and materials and equipment for the Project.

The Construction Manager shall promptly remedy damage and loss to property caused in whole or in part by the negligent or improper acts or omissions of the Construction Manager, a Subcontractor (or any tier thereof) or Supplier/Vendor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Construction Manager is responsible. The foregoing obligations of the Construction Manager are in addition to the Construction Manager's other obligations.

If the Construction Manager damages any property belonging to Owner, the Owner may, in addition to other remedies available to the Owner, retain from the money due to the Construction Manager an amount sufficient to ensure repair of the damage or an amount to contribute toward repair of the damage.

The parties acknowledge that Construction Manager will maintain Builder's Risk insurance for the Project as outlined in the insurance provisions above.

D. Protection of Adjoining Facilities

The Construction Manager shall protect adjoining property and nearby buildings, roads, and other facilities and improvements from dust, dirt, debris and other nuisances arising out of Construction Manager's operations or storing practices. Dust shall be controlled by sprinkling or other effective methods acceptable to Owner. An erosion and sedimentation control program shall be initiated, which includes measures addressing erosion caused by wind and water and sediment in runoff from Site. A regular watering program shall be initiated to adequately control the amount of fugitive dust.

E. Safety

The Construction Manager shall exercise precaution at all times for the protection of persons and their property. The Construction Manager shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (1) employees on the Site and other persons who may be affected thereby; (2) the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site, under care, custody or control of the Construction Manager or the Construction Manager's Subcontractors; and (3) other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. The Construction Manager shall install adequate safety guards and protective devices for all equipment and machinery, whether used in the Work or permanently installed as part of the Project. The Construction Manager shall also provide and adequately maintain all proper temporary walks, roads, guards, railings, lights, and warning signs. The Construction Manager shall comply with all applicable laws relating to safety precautions. The Construction Manager shall establish and maintain and update as required a Project specific safety program.

The Construction Manager shall designate a responsible member of the Construction Manager's organization at the Site whose duty shall be the prevention of accidents. This person shall be the Construction Manager's superintendent unless otherwise designated by the Construction Manager in writing to the Owner and Architect.

The Construction Manager shall require each and every one of its Subcontractors to comply with all of the provisions of this Section.

In an emergency affecting safety or persons or property, the Construction Manager shall act, at the Construction Manager's discretion, to prevent threatened damage, injury or loss.

The Owner and/or the Architect may bring to the attention of the Construction Manager a possible hazardous situation in the field regarding the safety of personnel on the

Site. The Construction Manager shall be responsible for verifying that all local, state, and federal workplace safety guidelines are being observed. In no case shall this right to notify the Construction Manager absolve the Construction Manager of its responsibility for monitoring safety conditions. Such notification shall not imply that anyone other than the Construction Manager has assumed any responsibility for field safety operations.

Explosives shall not be used without first obtaining written permission from the Owner and then shall be used only with the utmost care and within the limitations set in the written permission and in accordance with prudence and safety standards required by law. Storage of explosives on the Project Site or University is prohibited. Powder activated tools are not explosive for purposes of this Article; however, such tools shall only be used in conformance with State safety regulations.

The Construction Manager shall report to the Owner's Representative, within one (1) hour, with written notice to follow within twenty-four (24) hours, all accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or off the Site, which caused death, personal injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger. If any claim is made by anyone against the Construction Manager or any Subcontractor Manager on account of any accident, the Construction Manager shall report promptly the facts in writing to the Owner's Representative, giving full details of the claim.

F. Utilities

- (i) The Construction Manager shall refer to and abide by the Excavation Policy and Procedures set forth herein.
- (ii) The Construction Manager shall provide as-built drawings of all utilities encountered and constructed to the Architect and Owner, indicating the size, horizontal location, and vertical location based on the Project benchmark or a stable datum.

G. Asbestos

The Construction Manager is prohibited from installing any asbestos containing materials or products in any facility without express written approval of Owner and Architect. The Construction Manager shall be responsible for removal and replacement costs should it be determined this provision has been violated, regardless of whether the Project has been completed.

8. Occupancy by Owner Prior to Acceptance

The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Construction Manager, provided such occupancy or use is consented to by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Construction Manager have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of

the Work and commencement of warranties required by the Contract Documents. When the Construction Manager considers a portion substantially complete, the Construction Manager shall prepare and submit a list to the Architect. Consent of the Construction Manager to partial occupancy or use shall not be unreasonably withheld.

The stage of the progress of the Work shall be determined by written agreement between the Owner and Construction Manager or, if no agreement is reached, by the Architect and the Owner.

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

Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of the remaining Work.

9. Responsibility to Secure and Pay for Permits, Licenses, Utility Connections, Etc.

The Construction Manager shall secure all permits and licenses required for any operations required by the Contract Documents and shall pay all costs relating thereto as well as all other fees and charges that are required by the United States, the State, the county, a city, a public utility, telephone company, special district, or quasi-governmental entity. It is the responsibility of the Construction Manager to ascertain the necessity of such permits and licenses in preparing its proposal and include in its proposal the cost thereof as well as adjustments for any reasonably foreseeable delays, which may be caused by securing permits and licenses.

10. Patented or Copyrighted Materials

The Construction Manager shall pay all royalties and license fees required by performance of the Work and shall defend suits or claims for infringement and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if the Construction Manager has actual notice that the required design, process or product is an infringement of an intellectual property right, the Construction Manager shall be responsible for such loss unless such information is promptly furnished to the Architect.

11. Property Rights in Materials, Equipment, and Documents

Nothing in the Contract shall be construed as vesting in the Construction Manager any property right in the materials or equipment after they have been attached to or permanently placed in or upon the Work or the Site or after payment has been made for fifty percent (50%) or more of the value of the materials or equipment delivered to the Site whether or not they have been so attached or placed or incorporated into the Work. All such materials or equipment shall become the property of Owner upon being so attached or placed or upon payment of fifty percent (50%) or more of the value of the materials or equipment delivered on the Site but not yet installed, and the Construction Manager warrants that all such property shall pass to Owner free and clear of all liens, claims, security interests, or encumbrances, except in the event of wrongful nonpayment by the Owner.

The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Construction Manager, are for use solely with respect to the Project. They are not to be used by the Construction Manager, Subcontractors, or suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of the Owner and Architect. The Construction Manager, Subcontractors, and Suppliers and Vendors are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of the Work under the Contract Documents.

12. Taxes

The Construction Manager shall pay all taxes imposed by law which are levied or become payable as a result of the Construction Manager's performance of the Work, and all such taxes are included in the Project Cost and Cost-of-the-Work.

13. Contract Time

A. Time of the Essence

All time limits specified in the Contract Documents are of the essence.

B. Starting and Completion Date

The Owner shall designate in the Notice to Proceed the starting date on which the Construction Manager shall immediately begin and thereafter diligently prosecute the construction to completion. Construction Manager will not commence any construction prior to the issuance of the Notice to Proceed. The Construction Manager agrees to complete the Work by the date specified for completion of the Construction Manager's performance in the Contract Documents unless such time is adjusted, in writing, by Change Order by the Owner. The Construction Manager may complete the Work before the completion date if it will not interfere with the Owner or its other construction managers or contractors engaged in related or adjacent work. This date shall be used as the date the guarantee period begins.

C. Adjustment of Contract Time

If the Construction Manager is delayed, obstructed or hindered at any time in the progress of the Work by any gross neglect or willful misconduct of the Owner or by any separate contractor employed by the Owner, or by changes ordered in the scope of the Work, or by fire, adverse weather conditions not reasonably anticipated, or any other causes beyond the reasonable control of the Construction Manager with the exception of labor disputes or strikes, then the duration set forth in the construction progress schedule may be extended as agreed to by the Owner and the Construction Manager. The Owner recognizes labor disputes, strikes, work stoppages, picketing or boycotting may be cause for extending the construction progress schedule or the Contract time. The Construction Manager agrees to attempt in good faith to finish the Project within the Contract time without any additional costs to the Owner because of strikes, work stoppages, picketing, labor disputes, and/or boycotts wherever occurring, but in no event will the Construction Manager be required to violate any applicable law or existing contract.

Within seven (7) Days from the commencement of a delay, Construction Manager shall submit to the Owner's Representative, in writing, a notice of the delay. Such notice of delay shall, at a minimum, describe the nature and cause of the delay, provide a preliminary estimate of the impact of said delay on the construction progress schedule and provide a recovery plan to mitigate the delay. The Construction Manager's failure to give such notice to the Owner shall deprive the Construction Manager of his ability to request an extension of time. In the case of a continuing cause of delay, only one claim shall be necessary. The giving of such notice shall not of itself establish the validity of the cause of delay or of the extension of the time for completion. Submission of reports and/or updates required at regularly scheduled meetings or as a part of a regularly submitted report shall not constitute such notice.

Within fourteen (14) Days from the submittal to the Owner of the notice of delay detailed in the previous paragraph, Construction Manager shall submit to the Owner's Representative a claim for an extension of time which shall include all documentation supporting the claim. Such submittal shall include a detailed description of all changes in activity durations, logic, sequence, or otherwise in the construction progress schedule. The filing of such a claim for an extension of time shall not of itself establish the validity of the cause of delay or of the extension of time for completion. Submission of construction reports and/or updates required by the Contract Documents shall not constitute such a claim.

No delay, obstruction, interference, hindrance, or disruption in the progress of the Construction Manager's Work shall be a basis for an extension of time to the extent the delay, obstruction, interference, hindrance, or disruption is the fault or the responsibility of the Construction Manager and directly affects the overall completion of the Work, as reflected in the Construction Manager's updated and accepted construction progress schedule. No significant delay, obstruction, interference, hindrance, or disruption, from whatever source or cause, in the progress of Construction Manager's Work shall be a basis for an extension of time for an interim milestone date, if any, to the extent that the delay, obstruction, interference, hindrance, or disruption is the fault or the responsibility of the Construction Manager and directly affects the overall completion of such interim milestone, as reflected in the Construction Manager's updated and accepted construction progress schedule.

D. Construction Manager to Fully Prosecute Work

No extension of time will be granted for any of the causes for which extensions may be granted unless the Construction Manager demonstrates to the reasonable satisfaction of the Owner that the Construction Manager has, as of the date of the request for the extension of time, made every reasonable effort to complete all Work under the Contract not later than the date prescribed, or as soon as possible thereafter, notwithstanding delay in the Work due to any such cause.

E. Owner's Adjustment of Contract Time

Even though the Construction Manager has no right to an extension of time for completion, the Owner may, in the exercise of its sole discretion, extend the time at the request of the Construction Manager if it determines it to be in the best interest of the Owner.

F. Adjustment of Contract Time Due to Reasons Beyond Owner Control

Should the Owner be prevented or enjoined from proceeding with Work either before or after the start of construction by reason of any litigation, loss of funding, or other reason beyond its control, the Construction Manager shall not be entitled to make or assert any claim for damage by reason for said delay; but time for completion of the Work will be extended to such reasonable time as the Owner may determine and will compensate the Construction Manager for time lost and reasonable direct costs attributable to such delay, and/or adjust the fee/price for such delay. Any such determinations will be set forth in writing.

14. Labor Force and Superintendent

The Construction Manager shall, prior to commencement of the Work, submit to the Owner's Representative the resume of the designated Project Manager and Project Superintendent. The Construction Manager shall also submit the names of key members of its firm who will be directly connected with the Project and outline the duties and authority of each.

The Construction Manager shall have at the Project Site, at all times, an approved, competent, full-time Project Manager and Superintendent, and any necessary assistants, all satisfactory to the Owner. The Project Manager or the Superintendent shall not be changed, except with the written consent of the Owner unless the Project Manager or the Superintendent ceases to be in the employ of the Construction Manager. The Project Manager or the Superintendent shall represent the Construction Manager and all directions given to either of them by the Owner or the Owner's Representative shall be as binding as if given to the Construction Manager. If a Project Manager or a Superintendent approved by the Owner ceases to be in the Construction Manager's employ, the Construction Manager shall immediately replace that person with a person acceptable to the Owner.

The Construction Manager shall at all times enforce strict discipline and good order among its employees and shall not employ on the Work any unfit person, or anyone not skilled in the Work assigned to that person.

15. Limitation of Construction Operations

The Construction Manager shall limit the area and nature of the construction operations to that which is authorized in the Plans or Specifications or approved by the Owner.

16. Coordination With Other Work

The Owner reserves the right to do other work in connection with the Project or adjacent thereto by contract or otherwise, and the Construction Manager shall at all times conduct the Work so as to impose no unreasonable hardship on the Owner, or others engaged in the Owner's work, nor to cause any unreasonable delay or hindrance thereto.

Where two or more construction managers and/or contractors are employed on related or adjacent work, each shall conduct their operation in such a manner as not to cause unreasonable delay or additional expense to the other.

The Construction Manager shall coordinate its Work with the work of others so that no discrepancies or delays shall result in the Work.

17. Drawings Reflecting Actual Construction

During the course of construction, the Construction Manager shall maintain drawings to show the Project as it is actually constructed. Every sheet of the Plans and Specifications which differs from the actual construction shall be marked and sheets so changed shall be noted on the title sheets of the Plans and Specifications. The Construction Manager shall review the "As-built" drawings with the Owner and Architect at least once a month to demonstrate that all changes that have occurred are being fully and accurately recorded. The altered Contract drawings shall be sufficiently detailed so that future work on the Project or in adjacent areas may be conducted with a minimum of difficulty. Prior to the completion of the Project, and prior to release of the final payment, the "As-built" drawings and Specifications shall be transmitted to the Architect for further handling. A copy of the transmittal shall be sent to the Owner and included in the formal closeout documents.

18. Access for Inspection

The Construction Manager shall at all times permit the Owner and the Architect to visit and inspect the Work and the shops where Work is in preparation and shall maintain proper facilities and provide safe access for such inspection. Work requiring testing, inspection or verification shall not be covered up without such test, inspection, or approval. Whenever the Construction Manager intends to perform Work on a Saturday, Sunday, or Holiday, it shall provide a minimum of forty-eight (48) hours written notice to Owner and Architect of such intention prior to performing such Work.

19. Cleanup of Project and Site

The Construction Manager shall keep the premises and surrounding area free from accumulation of waste materials or rubbish. At completion of the Work the Construction Manager shall remove from and about the Project waste materials, rubbish, the Construction Manager's tools, construction equipment, machinery and surplus materials.

When two or more construction managers and/or contractors are engaged in work at or near the Site, each shall be responsible for cleanup and removal of its own rubbish, equipment, and any waste materials not previously disposed. In the event the Construction Manager does not maintain the Project or the Site clear of debris and rubbish in a manner acceptable to the Owner or the Architect, the Owner may, at its option, cause the Project or Site to be properly cleaned and may withhold the expense incurred therefore from payments due the Construction Manager.

20. Project Sign, Advertising

The Construction Manager shall furnish and install, at a location to be determined by Owner, a Project sign designed by the Architect required as part of the Work under the Contract Documents. At a minimum, the sign shall be four (4) feet by eight (8) feet, made from three-quarter (3/4) inch plywood. The sign shall identify the Project name, the Owner, the Architect, and the Construction Manager. No advertising is permitted on the Project or Site without prior written permission from the Owner. The sign shall be ordered and installed on Site promptly upon receipt of design by the Architect.

21. Personnel, Subcontractor, and Visitor Identification

The Construction Manager shall provide an Owner approved badge that identifies all personnel, subcontractors and anyone visiting the construction Site. Construction Manager shall be responsible for enforcing this identification policy.

(e) Interpretation of Adherence of Contract Requirements

1. Interpretation of Contract Requirements

A. Correlation

Contract Documents shall be interpreted as being complementary, requiring a complete Project. Any requirement occurring in any one of the Contract Documents is as binding as though occurring in all Contract Documents. Generally, the Specifications address quality, types of materials and Contract conditions while the Drawings show placement, sizes, and fabrication details of materials.

B. Conflicts

In the event of conflict in the Contract Documents, the priorities stated below shall govern:

- (i) Addenda shall govern over all other Contract Documents and subsequent Addenda shall govern over prior Addenda only to the extent modified.
- (ii) In case of conflict between Plans and Specifications, the Specifications take precedence over Drawings for the specific type or quality of materials or the quality of installation; the Drawings take precedence over the Specifications with regard to quantities, locations or detail of installation.
- (iii) Conflicts within the plans:
 - a. Schedules, when identified as such, shall govern over all other portions of the Plans.
 - b. Specific notes shall govern over all other notes and all other portions of the Plans except the schedules described above.
 - c. Larger scale Drawings shall govern over smaller scale Drawings.
 - d. Figured or numerical dimensions shall govern over dimensions obtained by scaling.

(iii) Conflicts within the Specifications:

The Contract General Conditions section shall govern over all sections of the Specifications except for specific modifications thereto that may be stated in the Contract or Addenda. No other section of the Specifications shall modify the Contract General Conditions.

- (v) In the event provisions of codes, safety orders, Contract Documents, referenced manufacturers specifications or industry standards are in conflict, the more restrictive or higher quality shall govern.
- (vi) Notwithstanding the foregoing or any other provision herein, in the event of any conflict, discrepancy, or inconsistency in the terms and conditions contained in or among any of Contract Documents, the terms and conditions most favorable to the Owner as determined by the Owner shall control.

C. Omissions

If the Contract Documents are not complete as to any minor detail of a required construction system or with regard to the manner of combining or installing of parts, materials, or equipment, but there exists an accepted trade standard for good and skillful construction, such detail shall be deemed to be an implied requirement of the Contract Documents in accordance with such standard.

“Minor Detail” shall include the concept of substantially identical components, where the price of each such component is small even though the aggregate cost or importance is substantial, and shall include a single component which is incidental, even though its cost or importance may be substantial.

The quality and quantity of the parts or material so supplied shall conform to trade standards and be compatible with the type, composition, strength, size, and profile of the parts of materials otherwise set forth in the Contract Documents.

D. Miscellaneous

Portions of the Work which can be best illustrated by the Drawings may not be included in the Specifications and portions best described by the Specifications may not be depicted on the Drawings.

If an item or system is either shown or specified, all material and equipment normally furnished with such items and needed to make a complete operating installation shall be provided whether mentioned or not, omitting only such parts as are specifically excepted. The Owner shall not be held responsible for the absence of any detail that the Construction Manager may require for any construction which may be found necessary as the Work progresses. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

All drawings, Project Plans and Specifications, renderings and models or other documentation, and copies thereof, furnished by the Owner or any agent, employee or consultant of the Owner, or Architect, are and shall remain the property of the Owner. They are to be used by Construction Manager only with respect to this Project and are not to be used on any other project. With the exception of one set for the Construction Manager, such documents furnished to the Construction Manager are to be returned or suitably accounted for to the Owner on request at the completion of the Work.

E. Interpreter of Documents

The Owner's Representative shall be the interpreter, with the advice of the Architect, of the Contract Documents and shall be the judge of the performance of the Construction Manager and Subcontractors. Unless submitted pursuant to the "Claims and Disputes" section below, Claims, disputes and other matters of controversy relating to the Contract Documents or the Work shall be decided by the Owner's Representative and the decision of the Owner's Representative shall be final.

2. Issuance of Interpretations, Clarifications, Additional Instructions

Should the Construction Manager discover any conflicts, omissions, or errors in the Contract Documents or have any question concerning interpretation or clarification of the Contract, the Construction Manager shall request in writing interpretation, clarification, or additional detailed instructions, before proceeding with the Work affected. The written request shall be directed to the Architect in the form of a request for information.

The Architect, with review as required by the Owner, shall, within a reasonable time, not more than five business (5) days, issue in writing the interpretation, clarification, or additional detailed instructions requested. Interpretations not returned within five (5) business days that impact critical path activities, may be basis for a time extension.

Should the Construction Manager proceed with the Work affected before receipt of the interpretation, clarification, or instructions from the Architect, the Construction Manager shall replace or adjust any Work not in conformance therewith and shall be responsible for any resultant damage or added cost.

Should any interpretation, clarification, or additional detailed instructions, in the opinion of the Construction Manager, constitute work beyond the scope of the Contract Documents, the Construction Manager must submit written notice thereof to the Architect within five (5) Days following receipt of such interpretation, clarification, or additional detailed instructions and in any event prior to commencement of work thereon. The Construction Manager shall send copies of such correspondence to the Owner. The Construction Manager shall submit an explanation of how the interpretation, clarification, or additional detailed instruction constitutes work beyond the scope of the Contract, along with a detailed cost breakdown and an explanation of any delay impacts. The Architect shall consider such notice and make a recommendation to the Owner. If, in the judgment of the Owner, the notice is justified, the interpretation, clarification or additional detailed instructions shall either be revised or the extra Work authorized by Change Order or by field instruction with a Change Order to follow. If the Owner decides that the claim is not justified and the Construction Manager still fails to agree, the Construction Manager shall nevertheless perform such Work upon receipt from the Owner of a written order to do so. In such case, the Construction Manager shall have the right to have the claim later determined pursuant to "Claims and Disputes" section below. The Construction Manager shall have no claim for additional compensation because of such interpretation, clarification, or additional detailed instruction, unless it gives written notice to the Architect within five (5) Days as specified above.

3. Product and Reference Standards

A. Product Designation

When descriptive catalog designations, including the manufacturer's name, product brand name, or model number are referred to in the Contract Documents, such designations shall be considered as being those found in industry publications of current issue as of the effective date of the Contract.

B. Reference Standards

When standards of the federal government, trade societies, or trade associations are referred to in the Contract Documents by specific date of issue, these shall be considered a part of this Contract. When such references do not bear a date of issue, the most recently published edition as of the effective date of the Contract shall be considered a part of the Contract.

4. Shop Drawings, Samples, Alternatives or Equals, Substitutions

A. Submittal Procedure

The Construction Manager shall review all shop drawings. "Shop drawings" include drawings, diagrams, illustrations, schedules, performance charts, brochures and catalogs and other data prepared by the Construction Manager or any Subcontractor, manufacturer, Supplier, Vendor or distributor, and which illustrate some portion of the Work. The Construction Manager shall promptly review and mark the Shop Drawing approved and submit the Shop Drawing to the Architect, so as not to cause any delay in the Work, together with samples as required by the Contract and shall also submit any offers of alternatives or substitutions. At least 3 copies of brochures, one copy of Shop Drawings and one reproducible copy of Shop Drawings shall be submitted as well as additional copies as required by Architect. All such submittals shall be sent to Architect. A letter shall accompany the submitted items which shall contain a list of all matters submitted and shall identify all deviations in the Shop Drawings and samples from the requirements of the Contract Documents. Failure by the Construction Manager to identify all deviations may render any action taken by the Architect on the materials submitted to be void. The decision to void such action shall be in the discretion of the Architect. The letter and all items accompanying it shall be fully identified as to Project name and location, the Construction Manager's name, and contact number. By submitting the approved Shop Drawings and samples, the Construction Manager represents that the data contained therein have been verified with conditions as they actually exist and that the Shop Drawings and samples have been checked and coordinated with the Contract Documents. Alternatively, Shop Drawings may be reviewed and submitted electronically via a system and process agreed upon by the Construction Manager, Architect and Owner.

B. Samples

Samples are physical examples furnished by the Construction Manager to illustrate materials, equipment, color, texture, or workmanship, and to establish standards by which the Work will be judged. At least four samples will be submitted for each item requiring samples to be submitted.

The Work shall be in accordance with the samples, submitted as required by the Contract Documents and reviewed by Architect. Samples shall be removed by the Construction Manager from the Site when directed. Samples not removed by the Construction Manager will become the property of the Owner and will be removed or disposed of by the Owner at the Construction Manager's expense.

C. Alternatives or Equals

For convenience in designation on the Plans or in the Specifications, certain materials or equipment may be designated by a brand or trade name or the name of the manufacturer together with catalog designation or other identifying information, hereinafter referred to generically as "designated by brand name." Alternative material or equipment which is of equal quality and of the required characteristics for the purpose intended may be proposed for use provided the Construction Manager complies with the following requirements:

The Construction Manager shall submit its proposal to Architect for an alternative in writing within the time limit designated in the Contract Documents, or if not so designated, then within a period which will cause no delay in the Work. In exceptional cases where the best interests of the Owner so requires, the Architect may give written consent to a submittal or resubmittal received after the expiration of the time limit designated.

No such proposal will be considered unless accompanied by information necessary to permit determination of the equality of the offered materials or equipment. Samples shall be provided when requested by the Architect and/or the Owner. The burden of proof as to the comparative quality and suitability of the offered materials or equipment shall be upon the Construction Manager. Where the material is specified by capacity or performance, the burden of proof shall be on the Construction Manager to show that any particular equipment or materials meet the minimum capacities or the performance requirements specified. The Construction Manager shall furnish at its own expense all information necessary for a determination as to whether the minimum capacities or performance requirements will be met. Such information shall be submitted so as to not cause a delay in delivery and/or progress of the Work. The Architect shall be the judge of such matters. If the Architect rejects the use of any alternative materials or equipment, then one of the products designated by brand name shall be furnished.

If changes or delays are required for proper installation or fit of alternative materials, articles, or equipment, or because of deviations from Contract Documents, such changes or delays shall be made at the Construction Manager's expense without recourse for reimbursement from the Owner.

D. Substitutions

If the Construction Manager proposes a product that is of lesser or greater quality or performance than the specified material or equipment, it must comply with these provisions, and, in addition, the Construction Manager must submit any cost impact. By submitting a substitute, the Construction Manager waives any rights to claim a delay due to the processing of the substitution.

The Construction Manager may offer a substitution of a specified or indicated item if it presents complete information concerning the substitution and the benefits thereof to the Owner by reason of lower cost or improved performance, or both, over the specified or indicated item. However, such submission of a proposed substitution does not relieve the Construction Manager from its obligations under the Contract Documents. In proposing a substitution, the Construction Manager warrants that the substitution is, at a minimum, equivalent in performance to the specified or indicated item. A substitution shall not be effective unless accepted in writing by the Owner. The Owner will accept a proposed substitution only if such acceptance will benefit the Owner.

Any additional costs and changes to the Work (including, but not limited to the work of subcontractors and additional design costs which may be affected thereby) which may result from the proposed substitution shall be disclosed at the time the substitution is proposed to the Owner. Changes to the Work and any additional costs therefrom shall be the sole responsibility of the Construction Manager and shall not increase the Project Cost and/or fee.

The Construction Manager's substitution proposals shall include written descriptions of the items to be substituted (including Drawings and/or Specifications) and referenced information of the proposed substitution. The Owners' Representative's signature on this proposal is required for acceptance. Shop Drawings will not be considered a substitution proposal. Verbal approvals or approved Shop Drawings will not be considered as acceptance of proposed substitutions.

5. Quality of Materials, Articles and Equipment

Materials, articles and equipment furnished by the Construction Manager for incorporation into the Work shall be new. When the Contract requires that materials, articles or equipment be furnished, but the quality or kind thereof is not specified, the Construction Manager shall furnish materials, articles or equipment at least equal to the kind or quality or both of materials, articles or equipment which are specified.

6. Testing Materials, Articles, Equipment and Work

Materials, articles and equipment requiring tests shall be delivered to the Site in ample time before intended use to allow for testing and shall not be used prior to testing and receipt of written approval. The Construction Manager shall be solely responsible for notifying the Owner where and when materials, articles, equipment and Work are ready for testing. Should any such materials, articles, equipment or Work be covered without testing and approval, if required, they shall be uncovered at the Construction Manager's expense. The Owner has the right to order the testing of any other materials, articles, equipment or Work at any time during the progress of the Work. Unless otherwise directed, all samples for testing shall be taken by the Owner from materials, articles or equipment to be used on the Project or from Work performed. All tests shall be under the supervision of, and at locations convenient to, the Owner. The Owner shall select the laboratories for all tests. Decisions regarding the adequacy of materials, articles, equipment or Work shall be issued to the Owner in writing.

The Owner may decide to take further samples and tests, and if the results show that the Work was not defective, the Owner shall bear the costs of such samples and tests. In the

event the results of such additional samples and tests show that the Work was defective, the Construction Manager shall bear the cost of such samples and tests.

Samples that are of value after testing shall remain the property of the Construction Manager. All retesting and re-inspection costs may be back charged to the Construction Manager by the Owner.

7. Rejection

Should any portion of the Work done or any materials, articles or equipment delivered fail to comply with the requirements of the Contract Documents, such Work, materials, articles or equipment shall be rejected and shall immediately be made to conform with the Contract Documents, by the Construction Manager, at no additional expense to the Owner. Any materials, articles or equipment which are rejected shall immediately be removed from the premises at the expense of the Construction Manager. The Owner may retain one and one-fourth (1 1/4) times the cost of the rejected materials, articles, equipment, and work from any payments due the Construction Manager until such time as it is made acceptable to the Architect and the Owner.

8. Off-Site Testing

The Owner shall bear the cost of off-Site testing up to a distance of fifty (50) miles from the Project Site and up to one (1) fabrication yard or manufacturing plant per manufactured item, for example, structural steel. The increased cost of testing due to the fabrication yard or manufacturing plant being beyond this fifty (50) mile radius shall be borne by the Construction Manager. The increased cost due to the use of multiple fabrication yards or manufacturing plants for similar materials shall be borne by the Construction Manager.

9. Responsibility for Quality

The testing and inspection provided by the Owner shall not relieve the Construction Manager of its responsibility for the quality of materials and workmanship provided by the Construction Manager, and the Construction Manager shall make good all defective Work not in compliance with the Contract Documents after completion.

(f) Changes in the Work

1. Change Orders

A. Generally

The Owner reserves the right to issue written orders directing changes in the Contract Documents at any time prior to the acceptance of the Project without voiding the Contract, and Construction Manager shall promptly comply with such order. The Construction Manager may request changes in the work, but shall not act on the changes until approved in writing by the Owner. Any change made without authority in writing from the Owner shall be the responsibility of the Construction Manager, and no increase in price or time extension will be made for a change involving greater expense to the Construction Manager, and changes involving greater or lesser expense may be rejected by the Owner with the consequent responsibility on the Construction Manager to replace at its own expense the changed Work with that originally specified/required.

Any such changes in the Work shall only be authorized by written Change Orders approved by the Owner. No action, conduct, omission, prior failure or course of dealing by the Owner shall act to waive, modify, change or alter the requirement that Change Orders must be in writing and signed by the Owner and Construction Manager and that such written Change Orders are the exclusive method for changing or altering the price or Contract time. The Owner and Construction Manager understand and agree that the price and Contract time cannot be changed by implication, oral agreements, actions, inactions, course of conduct or constructive change order.

On the basis set forth herein, the price may be adjusted for any Change Order requiring a different quantity or quality of labor, materials or equipment from that originally required, and the partial payments to the Construction Manager may be adjusted to reflect the change. Whenever the necessity for a change arises, and when so ordered by the Owner in writing, the Construction Manager shall take all necessary steps to mitigate the effect of the ultimate change on the other Work in the area of the change. Changed Work shall be performed in accordance with the original requirements except as modified by the Change Order. Except as herein provided, the Construction Manager shall have no claim for any other compensation due to changes in the Work.

B. Proposed Change Orders

The Architect, with approval of the Owner, shall issue to the Construction Manager a cost request bulletin for a proposed change order describing the intended change and shall require the Construction Manager to indicate thereon a proposed amount to be added to or subtracted from the price due to the change supported by a detailed estimate of cost. Upon request by the Owner, the Construction Manager shall permit inspection of the original Contract estimate, subcontracts, or purchase orders relating to the change. Any request for adjustment in time of Final Completion of the Project which is directly attributable to the changed Work shall also be included, with substantiating detailed explanation, by the Construction Manager in its response to the cost request bulletin. Failure to request adjustment of time on the cost request bulletin shall waive any right to subsequently claim an adjustment of the time for Final Completion based on the changed Work. The Construction Manager shall submit the cost request bulletin with detailed estimates and any time extension request thereon to the Architect within fifteen (15) Days after issuance of the cost request bulletin. Upon its submission, the Architect will review it and advise the Owner who will make the decision. The Owner retains sole discretion to accept or reject the proposed change. If the Construction Manager fails to submit the cost request bulletin within the required fifteen (15) Days, and the Construction Manager has not obtained the Architect's and the Owner's permission for a delay in submission, the Owner may order the Construction Manager in writing to begin the Work immediately, and the price shall be adjusted in accordance with the Owner's estimate of cost, unless the Construction Manager within fifteen (15) Days following completion of the changed Work presents proof convincing to the Owner that the Owner's estimate was in error, in which case, the Owner will adjust the price. The Construction Manager must keep and submit time and materials records verified by the Owner to substantiate its costs and to furnish such proof. The Owner may require the Construction Manager to proceed immediately with the changed Work in accordance with the "Failure to Agree as to Cost" or "Emergency Changes" sections below.

When the Owner and the Construction Manager agree on the amount to be added to or deducted from the price and the time to be added to or deducted from the Final Completion date, and a Change Order is signed by the Owner and the Construction Manager, the Construction Manager shall proceed with the changed Work. If agreement is reached as to the adjustment in compensation for the performance of changed Work but agreement is not reached as to the time adjustment for such Work, the Construction Manager shall proceed with the Work at the agreed price, reserving the right to further pursue its claim for a time adjustment.

C. Allowable Costs Upon Change Orders

The only estimated or actual costs which will be allowed because of changed Work and the manner in which such costs shall be computed are as follows:

(i) Labor

The actual payroll cost to the Construction Manager for labor, and engineering or technical services directly required for the performance of the changed Work, including payments, assessments, or benefits required by lawful labor union collective bargaining agreements, compensation insurance payments, contributions made to the State pursuant to the Unemployment Insurance Code, and for taxes paid to the federal government required by the Social Security Act, as amended.

(ii) Materials

The cost to the Construction Manager for the materials directly required for the performance of the changed Work. Such cost of materials may include the costs of procurement, transportation, sales tax, and delivery if necessarily incurred. If a trade discount by the actual Supplier is received by the Construction Manager, it shall be credited to the Owner. If the materials are obtained from a supply or source owned wholly or in part by the Construction Manager, payment therefore will not exceed the current wholesale price for such materials.

If the Owner reasonably determines the cost of materials is excessive, or if the Construction Manager fails to furnish satisfactory evidence of the cost from the actual Suppliers or Vendors thereof, then in either case the cost of the materials shall be deemed to be the lowest wholesale price at which similar materials are available in the quantities required at the time they were needed. The Owner reserves the right to furnish such materials as it deems advisable, and the Construction Manager shall have no claim for costs or profits on material furnished by the Owner.

(iii) Equipment

The actual cost to the Construction Manager for the use of equipment directly required in the performance of the changed Work, except that no payment will be made for time the equipment is inoperative due to breakdowns or for non-working days. The rental time shall include the time required to move the equipment to the Project Site from the nearest available source for rental of such equipment, and to return it to the source. If such equipment is not moved by its own power, then loading and transportation costs will be paid. However, neither moving time nor loading and transportation costs will be paid if the equipment is used on the Project

in any other way than for the changed Work. Individual pieces of equipment having a replacement value of One Hundred Dollars (\$100.00) or less shall be considered to be tools or small equipment, and no payment therefore will be made.

For equipment owned, furnished, or rented by the Construction Manager, no cost therefore shall be recognized in excess of the rental rates established by distributors or equipment rental agencies in the locality where the Work is performed.

The amount to be paid to the Construction Manager including mark-up for the use of equipment as set forth above shall constitute full compensation to the Construction Manager for the cost of fuel, power, oil, lubrication, supplies, small tools, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor, and any and all costs to the Construction Manager incidental to the use of such equipment.

(iv) Work by Subcontractors and Vendors

For any portion of the changed Work which is to be performed by a Subcontractor or Vendor, the Construction Manager shall furnish to the Owner a detailed estimate prepared and signed by Subcontractor or Vendor of the cost to Subcontractor or Vendor for performing the changed Work. At the option of the Owner, a lump sum estimate of such cost from the Subcontractor or Vendor may be accepted in lieu of the detailed estimate. The combined costs for Subcontractor's or Vendor's overhead, profit, taxes, indirect supervision, insurance, bonds, and any other costs not allowed under this Agreement shall not exceed twelve and one-half percent (12 ½ %). Estimates of the amount to be deleted from Subcontractor's or Vendor's portion of the Work shall be net cost of the deducted Work less Construction Manager's mark-up, if any. For changed Work to be furnished by a Subcontractor or Vendor, the Construction Manager shall furnish upon demand of the Owner, a lump sum estimate of the cost of the items including taxes and cartage to the Construction Manager prepared by the Subcontractor or Vendor. No Subcontractor or Vendor mark-up for overhead, profit, layout, supervision or bonds will be allowed for changed Work furnished by a Subcontractor or Vendor.

(v) Market Values

Cost for added Work shall be no more than market values prevailing at the time of the change, unless the Construction Manager can establish to the satisfaction of the Owner that it investigated all possible means of obtaining Work at prevailing market values and that the excess cost could not be avoided.

When a Change Order deletes Work from the Contract, the computation of the cost thereof shall be the values which prevailed at the time bids for the Work were opened or otherwise obtained.

D. Failure to Agree as to Cost

(i) For Added Work

Notwithstanding the failure of the Owner and the Construction Manager to agree as to the cost of the proposed Change Order, the Construction Manager, upon

written order from the Owner, shall proceed immediately with the changed Work. A field instruction or letter signed by the Owner shall be used for this written order. At the start of each day's Work on the change, the Construction Manager shall notify the Owner in writing as to the size of the labor force to be used for the changed Work and its location. Failure to so notify may result in the non-acceptance of the costs for that day. At the completion of each day's Work, the Construction Manager shall furnish to the Owner a detailed summary of all labor, materials, and equipment employed in the changed Work. The Owner will compare its records with Construction Manager's daily summary and may make any necessary adjustments to the summary. After the Owner and the Construction Manager agree upon and sign the daily summary, the summary shall become the basis for determining costs for the additional Work. The sum of these costs when added to an appropriate mark-up will constitute the payment for the changed Work. Subsequent adjustments, however, may be made based on later audits by the Owner. When changed Work is performed at locations away from the job site, the Construction Manager shall furnish in lieu of the daily summary, a summary submitted at the completion of the changed Work containing a detailed statement of labor, material, and equipment used in the changed Work. This latter summary shall be signed by the Construction Manager who shall certify thereon that the information is true.

The Construction Manager shall maintain and furnish on demand of the Owner itemized statements of cost from all Suppliers, Vendors and Subcontractors who perform changed Work or furnish materials and equipment for such Work. All statements must be signed by the Suppliers, Vendors and the Subcontractors.

(ii) For Deleted Work

When a proposed Change Order contains a deletion of any Work, and the Owner and the Construction Manager are unable to agree upon the cost thereof, the Owner's estimate shall be deducted from the Project Cost and may be withheld from any payment due the Construction Manager until the Construction Manager presents proof convincing to the Owner's that the Owner's estimate was in error. The amount to be deducted shall be the costs to the Construction Manager for labor, materials, and equipment which would have been used on the deleted Work together with an amount for Construction Manager's Fee and reimbursable expenses. The guidelines set forth in "Allowable Costs Upon Change Orders" shall be used in computing the amounts involved.

E. Allowable Time Extensions

For any approved change in the Work, the Construction Manager may be entitled only to such adjustments in time by which completion of the entire Work is delayed due solely to performance of the changed Work. However, no extension of time shall be granted for a change in the Work unless the Construction Manager demonstrates to the satisfaction of the Owner that the Work would impact the critical path and submits an updated schedule showing that an extension of time is required and that the Construction Manager is making, or has made, every reasonable effort to guarantee completion of the additional Work called for by the change within the time originally allotted for the Contract Documents.

Adjustment in Contract time shall be on a calendar day basis, except that if the new completion dates fall on a Saturday, Sunday, or legal Holiday, it shall be extended through the next full working day.

F. Emergency Changes

Changes in the Work made necessary due to unforeseen Site conditions, discovery of errors in Plans or Specifications requiring immediate clarification in order to avoid a serious Work stoppage, changes of a kind where the extent cannot be determined until completed, or under any circumstances whatsoever when deemed necessary by the Owner are kinds of emergency changes which may be authorized by the Owner in writing to the Construction Manager. The Construction Manager shall commence performance of the emergency change immediately upon receipt of written direction from the Owner.

If agreement is not reached as to compensation at the time of commencing the emergency change, then compensation will be as provided in "Failure to Agree as to Cost" section.

(g) Claims and Disputes

1. Definition

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

The parties shall endeavor to resolve all of their Claims and disputes amicably and informally through open communication and discussion of all issues relating to the Project. To the greatest extent possible, the parties shall avoid invoking the formal dispute resolution procedures contained in the Contract Documents.

2. Decision of Architect

Claims, including those alleging an error or omission by the Architect, must be referred initially to the Architect for action as provided for above as an express condition precedent to proceeding further in resolving any Claim as to all such matters arising prior to the date Substantial Completion, regardless of (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed.

3. Time Limits on Claims

Claims by either party must be made within ten (10) Days after occurrence of the event giving rise to such Claim or within ten (10) Days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim on the matter has been implemented by Change Order will not be considered.

4. Continuing Contract Performance

Pending final resolution of a Claim, unless otherwise agreed in writing, the Construction Manager shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents subject to the Owner's rights relative to payments, withholding of payments, termination, or all other rights afforded it in the Contract Documents.

5. Claims for Concealed or Unknown Conditions

If conditions are encountered at the Site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 24 hours after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Construction Manager's cost of, or time required for, performance of any part of the work, will recommend an equitable adjustment in the Project Cost/price or Contract Time, or both. If the Architect determines that the conditions at the Site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Construction Manager in writing, stating the reasons. Claims by either party in opposition to such determination must be made within ten (10) Days after the Architect has given notice of the decision. If the Owner and Construction Manager cannot agree on an adjustment in the Project Cost or Contract time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings as set forth below.

6. Claims for Additional Cost

If the Construction Manager wishes to make Claim for an increase in the Cost-of –the-Work, written notice as provided herein shall be given before proceeding to execute the Work. If the Construction Manager believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Construction Manager was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination or suspension of the Contract by the Owner, (6) Owner's suspension of the Contract or (7) other reasonable grounds, Claim shall be filed in accordance with the procedure established herein.

7. Claims for Additional Time

If the Construction Manager wishes to make Claim for additional time, written notice as provided herein shall be given. The Construction Manager's Claim shall include an estimate of the probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather

conditions had an adverse effect on the scheduled construction which could not be mitigated through adjustments in the scheduling of the construction.

8. Injury or Damage to Person or Property

If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided for above. Nothing in this provision can be deemed or interpreted as an indemnity obligation on Owner.

9. Resolution of Claims and Disputes

- A. Architect will review Claims and take one or more of the following preliminary actions within ten (10) Days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the Architect expects to take action, (3) reject the Claim in whole or in part, stating reasons for rejection, (4) recommend approval of the Claim by the other party or (5) suggest a compromise. The Architect may also, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim.
- B. If a Claim has been resolved, the Architect will prepare or obtain appropriate documentation.
- C. If a Claim has not been resolved, the party making the Claim shall, within ten (10) Days after the Architect's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Architect, (2) modify the initial Claim or (3) notify the Architect that the initial Claim stands.
- D. If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect, the Architect will notify the parties in writing that the Architect's decision will be made within five (5) Days. Upon expiration of such time period, the Architect will render to the parties the Architect's written decision relative to the Claim, including any recommended change in the Project Cost or Contract time or both. If there is a surety and there appears to be a possibility of a Construction Manager's default, the Architect may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy. The decision of the Architect shall be subject to the review of the Owner's Vice-President for Finance and Administration (VPFA).
- E. The VPFA shall review the Architect's decision and the supporting information submitted by the parties for the purpose of upholding the Architect's decision, modifying the Architect's decision, or rejecting the Architect's decision. The VPFA shall render a decision within forty-five (45) Days of the completion of any submissions by the parties.
- F. In the event the parties remain unable to resolve the claim or dispute, the parties may at that point resort to litigation within one (1) calendar year of the issuance of the decision. No provision in the Contract may be construed as the Owner's consent to submit any Claim, dispute, or other matter in question for resolution to any binding

arbitration or mediation process, whether or not provisions for such dispute resolution process are included in a document which is included, or which has been incorporated by reference into this Contract.

- G. The process and procedures described above are an express condition precedent to Construction Manager filing or pursuing any litigation, doing so prior to exhaustion of the Dispute Resolution process set forth herein shall be premature and a material breach of this Agreement.

(h) Payment and Completion

Unless otherwise provided in the Contract Documents, the following will apply to administration of payments to Construction Manager:

1. Progress Payments

To assist in computing partial payments, the Construction Manager shall submit to the Architect and Owner a "Schedule of Values" of the Construction Manager's actual and estimated costs for each item of Work. The cost breakdowns shall be in sufficient detail for use in estimating the Work to be completed each month and shall be submitted within fifteen (15) Days after the date of commencement of Work given in the Notice to Proceed.

2. Completion and Final Payment

A. From time to time, as portions of the Work are completed by the Construction Manager, the Owner shall have the right, upon giving the Construction Manager prior written notice, to accept any portion of the Work that the Owner desires to use and occupy. Such partial acceptance shall be made in writing and thereafter the Construction Manager shall have no further obligation with respect to the Work accepted, except to correct the Work subsequently found to have been improperly done or to replace defective materials or equipment. Notwithstanding anything contained herein to the contrary, all guarantees and warranties shall run from the time of any partial acceptance which occurs pursuant to this provision.

B. The making of Final Payment shall constitute a waiver of all claims by the Owner except those arising from: (1) unsettled liens or bond claims; (2) faulty or defective Work discovered and/or appearing after completion; (3) failure of the Work to comply with the requirements of the Contract Documents; (4) terms of any special or extended warranties or guarantees required by the Contract Documents; or (5) the obligations of the Construction Manager under the indemnification provisions hereof.

C. The acceptance of Final Payment shall constitute a waiver of all Claims by the Construction Manager against Owner and Architect.

- 3. The Construction Manager hereby unconditionally guarantees the Work under this Contract to be in conformance with the Contract Documents and to be and remain free of defects in workmanship and materials not inherent in the quality required or permitted for a period of one (1) calendar year from the date of Substantial Completion, excepting normal wear and tear, unless a longer guarantee period is stipulated in the Contract Documents. By this guarantee the Construction Manager agrees, within the guarantee period, to repair or replace any Work, together with any adjacent work which may be displaced in so doing which is not in accordance with the requirements of the Contract Documents or which is defective in its workmanship or material, all without any expense whatsoever to the Owner.

Construction Manager will pay Owner the replacement cost of any personal property or other equipment damaged as a result of Work not in conformance with the Contract Documents or which is defective in workmanship or material.

Special guarantees that are required by the Contract shall be signed by the Construction Manager who is responsible for the entire Work and countersigned by the Subcontractor who performs the Work.

Payment, Performance and all other required bonds and the required insurance shall remain in full force and effect during the guarantee period, unless a longer period is stipulated in the Contract Documents.

The Construction Manager further agrees that within five (5) Days after being notified in writing by the Owner of any Work not in accordance with the requirements of the Contract Documents or of any defects in the Work, it shall commence and prosecute with due diligence all Work necessary to fulfill the terms of this guarantee and to complete the Work in accordance with the requirements of the Contract Documents with sufficient manpower and material to complete the repairs as expeditiously as possible. The Construction Manager, in the event of failure to so comply, does hereby authorize the Owner to proceed to have the Work done at the Construction Manager's expense, and it agrees to pay the cost thereof upon demand. The Owner shall be entitled to all costs necessarily incurred upon the Construction Manager's refusal to pay the above cost.

Notwithstanding the foregoing paragraph, in the event of an emergency constituting an immediate hazard to health or safety of the Owner's employees, property, or licensees, the Owner may undertake at the Construction Manager's expense, without prior notice, all work necessary to correct such hazardous conditions caused by the Work not being in accordance with the requirements of the Contract Documents.

The Construction Manager shall require a similar guaranty in all subcontracts, including the requirement that the Owner be reimbursed for any damage or loss to the Work or to other work resulting from such defects.

(i) Termination

1. Termination by the Owner for Cause

A. The Owner may terminate the Contract if the Construction Manager: (a) becomes insolvent; (b) files or has filed against it any Petition in Bankruptcy or makes a general assignment for the benefit of its creditors; (c) fails to pay, when due, for materials, supplies, labor, or other items purchased or used in connection with the Work for which Construction Manager has been paid; (d) refuses or fails to prosecute the Work, or any separable part thereof, with such diligence as will ensure the completion of the Work in accordance with the Contract Documents; (e) fails, refuses or neglects to supply sufficient labor, material or supervision in the prosecution of the Work; (f) unreasonably interferes with or disrupts, or causes an interference or disruption, or threatens to interfere with or disrupt the operations of the Owner, or any other Supplier, Subcontractor, Vendor or other person working on the Project, whether by reason of any labor dispute, picketing, boycotting or by any other reason; or (g) commits any other material breach of the Contract.

B. When any of the above reasons exist, the Owner may, without prejudice to any other rights or remedies of the Owner, give the Construction Manager and the Construction

Manager's surety written notice that if the Construction Manager fails to undertake reasonable efforts to cure such matters within three (3) Days after receiving said written notice, Owner will terminate employment of the Construction Manager and may, subject to any prior rights of the surety: (1) take possession of the Site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Construction Manager; (2) accept assignment of subcontracts; and (3) finish the Work by whatever reasonable method the Owner may deem expedient.

- C. When the Owner terminates the Contract for cause, the Construction Manager shall not be entitled to receive further payment until the Work is completed.
- D. If the unpaid balance of any amounts Owner owes to Construction Manager, as may be adjusted according to the Contract Documents, exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, such excess shall be paid to the Construction Manager. If costs of finishing the Work exceed the unpaid balance, the Construction Manager shall pay the difference to the Owner. The amount to be paid to the Construction Manager or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract. The Construction Manager shall not be paid on account of loss of anticipated profits or revenues or other economic loss or consequential damages arising out of or resulting from such termination, all of which are hereby waived by the Construction Manager.

2. Suspension by the Owner without Cause

- A. The Owner may, without cause, order the Construction Manager in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.
- B. An adjustment may be made for increases in the Project Cost and/or time of performance of the Work, caused by suspension, delay or interruption. No adjustment shall be made to the extent: (1) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Construction Manager is responsible; or (2) that an equitable adjustment is made or denied under another provision of this Contract. The Construction Manager shall not be paid on account of loss of anticipated profits or revenues or other economic loss or consequential damages arising out of or resulting from such suspension, all of which are hereby waived by the Construction Manager.

3. Termination by the Owner Without Cause

- A. The Owner, without cause, may terminate all or any portion of the services by the Construction Manager under the Contract, upon giving the Construction Manager thirty (30) Days written notice of such termination. In the event of termination, the Construction Manager shall deliver to the Owner all reports, estimates, schedules, subcontracts, Contract assignments, purchase order assignments, and other documents and data prepared by it, or for it, pursuant to the Contract Documents.
- B. Unless the termination is for cause, the Construction Manager shall be entitled to receive the payments due under the Contract Documents through the date of termination (including payment for the period of the thirty (30) day notice). Prior to payment, the Construction Manager shall furnish the Owner with a release of all claims

against the Owner. The Construction Manager shall not be paid on account of loss of anticipated profits or revenues or other economic loss or consequential damages arising out of or resulting from such termination, all of which are hereby waived by the Construction Manager.

4. Termination by Owner due to Failure to Fund

As acknowledged above, if the Project is to be funded by project specific government funds, it is understood that each payment obligation of the Owner created hereby is conditioned upon the availability of such funds which are allocated for the payment of such an obligation. If funds are not allocated and available for the continuance of the Construction Manager's services, the Contract may be terminated by the Owner at the end of the period for which funds are available. The Owner shall notify the Construction Manager at the earliest possible time if the Construction Manager's services will or may be affected by a shortage of funds. No penalty shall accrue to the Owner in the event this provision is exercised, and the Owner shall not be obligated or liable for any future payments or for any damages as a result of termination under this provision. This provision shall not be construed so as to permit the Owner to terminate this Agreement solely in order to acquire similar services from another Construction Manager.

5. Termination for Unfair Labor Practices

The Owner may void this Contract if the name of the Construction Manager, or the name of a Subcontractor, manufacturer, or Supplier or Vendor of the Construction Manager subsequently appears in the register of employers who have been found in contempt of court by a federal court of appeals for failure to correct an unfair labor practice, as further conditioned in Section 2 of Michigan PA 1989, No. 278, found at MCL 423.321 et seq.

6. Termination by the Construction Manager

A. The Construction Manager may terminate the Contract if the Work is stopped for a period of sixty (60) Days through no act or fault of the Construction Manager or a Subcontractor, or their agents or employees or any other persons performing portions of the Work under Contract with the Construction Manager, for any of the following reasons: (1) issuance of an order of a court or other public authority having jurisdiction; (2) an act of government, including but not limited to a declaration of national emergency that makes material unavailable; (3) because the Architect has not issued a Certificate for Payment and has not notified the Construction Manager of the reason for withholding certification, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; (4) if repeated suspensions, delays or interruptions by the Owner constitute in the aggregate more than one hundred percent (100%) of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

B. If one of the above reasons exists, the Construction Manager may, upon seven (7) additional Days written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work performed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead and profit.

- C. If the Work is stopped for a period of sixty (60) Days through no act or fault of the Construction Manager or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Construction Manager because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Construction Manager may, upon seven (7) additional Days written notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for Work performed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead and profit.

(j) Safety

Construction Manager must comply with all federal, state and local regulations pertaining to occupational health/safety and protection of the environment. Owner has the right to suspend or terminate any construction activities if Owner's Office of Environmental Health and Safety reasonably believes that one or more of these regulations is being violated.

Construction Manager must complete and return the "OU Bidder's Health and Safety Checklist". Further, once selected, the Construction Manager must have ALL Subcontractors complete the "OU Subcontractor's Health and Safety Checklist" and return the completed "Checklist(s)" to the Project Manager at least seven (7) days before the Subcontractor Work begins on the Project.

The following requirements are provided to inform Construction Manager of its environmental, health and safety obligations on the Project. The requirements herein do not nullify or limit any local, state or federal regulations. Construction Manager is obligated to insure that all Subcontractors adhere to all applicable health and safety laws, regulations and orders, including but not limited to the terms and requirements contained in the Contract Documents.

The requirements in this Section are intended only to highlight the type of Environmental Health and Safety concerns that commonly apply to contracted activities on Owner's property; they are in no way intended to be comprehensive of all regulatory requirements that apply to the Construction Manager.

1. On Site storage of combustible or flammable liquids shall be limited to one day supply. Indoor storage of propane containers is prohibited.
2. Hazard Communication: Owner requires the Construction Manager to maintain at its job site(s) the Material Safety Data Sheets (MSDS) for all hazardous materials brought onto Owner's property. Copies of these MSDS must also be provided to the Owner's Project Manager no less than two weeks prior to the onset of activities. Failure to submit MSDS may result in suspension of Work activities until the MSDS are obtained. If Construction Manager is to work with hazardous products, it shall notify and update the Owner's Project Manager of a) proposed work schedules, b) what to expect in terms of noises/odors, and c) how to access MSDS. The Construction Manager must also be able to demonstrate that its employees and all others performing work on the project have received "Haz Com" (i.e. Michigan Right-to-Know), and thereby possess a broad understanding of "MSDS language." Construction Manager-owned chemical containers must be labeled with the product name and hazards.
3. Confined Spaces: Prior to working in confined spaces on Owner's Property, the Construction Manager must have its written Confined Spaces Program and Permit System reviewed by Owner's Office of Environmental Health & Safety (EH&S) to ensure the

documents meet minimum acceptable standards under the current OSHA/MIOSHA regulation(s). EH&S then has the right to require amendments or additions to these documents before Work is allowed to begin. The Construction Manager must provide its own atmospheric testing, personal protection, ventilating and rescue equipment as required. The Construction Manager should seek information from Owner on any known hazards of the confined spaces to be entered. All manholes and utility tunnels are considered confined spaces.

4. Ladders: Construction Manager is responsible to supply its own ladder(s). When in use, ladders should be tied off and extension ropes secured. When used as accesses to elevated Work areas, ladders must extend at least three feet beyond the platforms. If using a ladder in or over a doorway, the area must be barricaded and signed. Construction Manager must be able to demonstrate that its employees and all others performing work on the project have received formal instruction which addresses fall protection. This training minimally should include: 1) Nature of the fall hazards onsite; 2) Correct procedures for erecting, maintaining and disassembly fall protection system(s) to be used; 3) Proper use placement and care in handling of all ladders; and 4) Maximum intended load-carrying capacities of ladders used.
5. Personal Protective Equipment (PPE): Construction Manager is responsible to ensure that appropriate (per 29 CFR Part 1910 Subpart I) PPE is provided to its employees and all others performing work on the project and ensure its use.
6. Lockout/Tagout: Construction Manager must follow all of OSHA's lockout/tagout requirements of 29 CFR 1910.147, provide its own lockout/tagout supplies, and be able to demonstrate that its employees and all others performing work on the project have received formal instruction in "lock-tag-try" procedures. Copies of Construction Manager's written Lockout/Tagout Program should also be available upon request.
7. Housekeeping: Construction Manager will regularly (per agreement with Owner) ensure than 1) excess material/trash are removed from Work Sites; 2) passageways (e.g., sidewalks, hallways) are cleared of obstructions; 3) equipment is shut down and secured; and 4) lighted barricades are erected where necessary.
8. Contaminated Soil and Debris: Construction Manager encountering any soil which it recognizes to be contaminated or buried debris during excavation or grounds maintenance must immediately notify the Owner's Project Manager. These materials may not be moved/removed until approved by the Owner.
9. Hazardous Materials: In addition to complying with the Michigan Right-to-Know Law, the Construction Manager and all others performing work on the project must use and store hazardous materials in accordance with all local, state and federal regulations. Special attention must be paid to the segregation of incompatible materials and the handling/storage of flammable and/or volatile materials. At the end of each work day, hazardous materials must be properly secured, stored in OSHA approved containers, and placed in locations authorized by the Owner's Project Manager, or removed from Owner's property.
10. Transportation of Hazardous Materials: Construction Manager and all others performing work on the project transporting hazardous materials (e.g. reclaimed materials, chemicals, fuels, oils, concrete) to and from the Owner's property must follow all applicable DOT

regulations. This includes proper shipping papers, placarding, material segregation and weight limits.

11. Waste Disposal: Construction Manager is responsible to provide trash containers and fund the removal/disposal of construction debris and general trash.

Construction Manager is also responsible for the proper collection, labeling, transporting, manifesting, security, and disposal of polluting or hazardous wastes such as solvents, paints, oil or antifreeze (and rags contaminated with any of these materials), per 40 CFR Part 261 and Michigan Act 64 of 1979. Copies of all manifests should remain available for Owner review upon request. Under no circumstances may hazardous wastes be disposed of in Owner-owned dumpsters, waste containers, drains or sewers, or drained onto roads, parking lots, ditches, wetlands, dirt piles or other soil. Nothing in this paragraph, however, imposes responsibility on the Construction Manager for any hazardous materials or hazardous wastes that were present at the Project Site before Work began.

12. Spills and Accidents: Construction Manager must immediately notify the Owner's Project Manager in the event that of a (non-negligible) spill of a hazardous material, or an accident or an injury (to any individual). Construction Manager must complete the "Construction Manager Incident Report Form" or other format acceptable to Owner and return it to the Owner's Project Manager within 24 hours of being provided the form by the Project Manager. Owner reserves the right to suspend or terminate Work activities if the Construction Manager Incident Report Form is not completed within 24 hours of receipt, is not completed in its entirety, or if health and safety deficiencies reflected in the report are not corrected to the satisfaction of Owner.
13. Neither the Owner, the Owner's Representative nor the Architect is responsible for conducting safety inspections or observations, but may make recommendations concerning safety to the Construction Manager.

14. Fire Protection

- A. All reasonable precautions shall be taken against fire throughout all the Construction Manager's and Subcontractor's operations. Flammable material shall be kept at an absolute minimum. Any such materials shall be properly handled and stored. Except as otherwise provided herein, the Construction Manager shall not permit fires to be built or open salamanders to be used in any part of the Work.
- B. Construction practices, including cutting and welding, and protection during construction shall be in accordance with the published standards of the Factory Insurance Association (FIA) and the American Insurance Association (AIA). Construction Manager shall provide a sufficient number of approved portable fire extinguishers, distributed about the Project and in cold weather, non-freeze type portable fire extinguishers shall be used.
- C. Gasoline and other flammable liquids shall be stored in and dispensed from Underwriter's Laboratories listed safety containers in conformance with the National Board of Fire Underwriters recommendations. Storage, however, shall not be within any building.
- D. All tarpaulins that may be used for any purpose during performance of the Work shall

be made of material which is water and weather resistant and fire retardant treated. All tarpaulins shall be Underwriters' Laboratories labeled with flame spread rating of fifteen (15) or less and shall be approved prior to use by any local fire marshal.

15. Protection in Work Area. The Construction Manager shall provide, erect and maintain all necessary barricades, signs, signals, lights and fencing as needed for the protection of the property and safety of the public, and shall hold the Owner harmless from damage or claims arising out of personally owned property incidental to work under the Contract.
16. Use of Owner's Sidewalks, Grounds, Fire Hydrants and Hose Bibs. Construction Manager is strictly prohibited from driving vehicles over Owner's sidewalks and grounds. Permits are granted as an exception, for the express purpose of carrying heavy loads to the site, over sidewalks and grounds. Construction Manager shall seek this permit for employees and Subcontractors through the Project Manager and Public Safety Department, when required, providing at least twenty-four (24) hour advance notice. Construction Manager shall inform Public Safety Department prior to and after the use of fire hydrants. The Public Safety Department will check the hydrants to ensure that the hydrants have not sustained any damage due to Construction Manager's operations.

When using hose bibs on buildings use only valve key of the size and style required. Any other method is prohibited and all repairs to fixtures as a result of other methods will be charged to the Construction Manager. It is the Construction Manager's responsibility to inspect all fixtures prior to using and report any damaged fixtures to Owner's representative.

17. Operation and Maintenance Manuals. To aid the continued instruction of operating and maintenance personnel, and to provide a positive source of information regarding the products incorporated into the Work, Construction Manager shall furnish and deliver two (2) paper copies and one (1) electronic media of the Maintenance Manuals (Manual or Manuals) and As-Built Drawings. Construction Manager shall prepare manuals in accordance with the following provisions.
 1. A neatly typewritten index near the front of the Manual, giving immediate information as to location within the Manual of all emergency information regarding the installation;
 2. Complete instructions regarding sequence of operation and maintenance of all equipment involved including lubrication, disassembly and reassembly;
 3. Complete nomenclature of all parts of all equipment;
 4. Complete nomenclature and part number of all other data pertinent to procurement procedures;
 5. Copies of all guarantees and warranties issued;
 6. Manufacturers' bulletins, cuts, and descriptive data, where pertinent, clearly indicating the precise items included in this installation and deleting, or otherwise

clearly indicating, all manufacturers' data with which this installation is not concerned;

7. Such other data as required in pertinent Sections of these Specifications.

(k) Excavation Policy

1. Purpose. To mitigate the possibility of unscheduled interruptions to building services, or the creation of hazardous situations, brought about as a result of inadvertently striking an underground utility on the Owner's property.
2. Scope. The policy prescribed herein shall be adhered to for all earth excavation, manual or power, on the Owners property performed by in-house personnel or contracted services that penetrate the surface of the soil by a depth of 6 inches or greater. The procedures prescribed herein shall be adhered to by in-house personnel and contracted services. The latter may choose to submit their own written excavation procedures to the Owner's Engineer ("University Engineer") or his designee for written approval prior to excavating.
3. Policy.
 - A. In non-emergency situations (i.e., scheduled maintenance or construction) the excavating organization (i.e., Plant Maintenance, Grounds, or an outside Construction Manager/Contractor) shall contact the University Engineer, or his/her designee, a minimum of three weeks in advance of the scheduled excavation.
 - B. The University Engineer, or his/her designee, will examine site utility drawings to determine potential interferences. The designee (backup) for the University Engineer is the Energy Manager; or the Central Heating Plant Supervisor.
 - C. The excavating organization (i.e., Plant Maintenance, Grounds, or an outside Construction Manager/Contractor) shall, upon the University Engineer's or his/her designee's recommendation, contact Miss Dig and private stakers, if appropriate, five days prior to the scheduled excavation, to ascertain and stake the actual location for all utilities within 50 feet of the limits of the proposed excavation. Actual staking shall be performed not more than three (3) days prior to the excavation.
 - D. Excavation shall commence only with the approval of the University Engineer or his/her designee, which shall be granted only after a complete examination of the site utility drawings and a field observation of the staked site.
 - E. In an emergency situation (i.e., loss of services to the Owner's property or to a building), the Owner's designated maintenance personnel (ODMP) shall immediately act in the absence of the University Engineer, or his/her designee, as follows:
 1. Contact the University Engineer, or his/her designee.
 2. Immediately examine the site utility drawings to determine the potential interferences.
 3. The excavating organization (i.e., Plant Maintenance, Grounds or an outside Construction Manager) shall upon the ODMP's recommendation, contact Miss Dig and private stakers, if appropriate, to ascertain and stake the actual location

of all utilities within 50 feet of the limits of the proposed excavation. The ODMP shall also immediately contact Consumers Power Company, in addition to Miss Dig, upon a natural gas line failure.

4. No attempt shall be made to repair a gas line leak or break. Wait for Consumers Power Company's crew. (However, flexible gas line may be folded over to reduce gas leakage, or bent upward to prevent gas from following a pipe into a building, if directed by ODMP or University Engineer).
5. Excavation shall commence only with the approval of the ODMP, or the University Engineer, who will grant approval only after a complete examination of the site utility drawings and a field observation of the staked site.

(I) Excavation Procedures

1. Pre-excavation.

- A. Schedule excavation in cooperation with Owner's Facilities and Operations' Plant Engineering Department.
- B. Provide three weeks' notice to Owner's Facilities and Operations' Plant Engineering Department.
- C. Plant Engineering shall provide complete utility drawing reviews.
- D. Construction Manager/Contractor (if contracted project) or Grounds Supervisor, or Plant Maintenance (if in-house project), shall contact Miss Dig (for natural gas, fuel oil, water, sewer, cable TV and telephone services) at 248-874-3400, and private stakers (for electric service) at 248-344-0200 five days before scheduled to excavate. (Note that Detroit Edison Company will not provide staking services for private electrical lines. However, Miss Dig will contact them with excavation locations so that they may ascertain whether the excavation site contains any of their electrical lines.)
- E. Indicate Project is maintenance or construction oriented.
- F. Provide location of project.
- G. Record ticket number.
- H. Wait for stakers from utility companies and for private staker company.
- I. Excavate only after cleared by the University Engineer or his designee.
- J. Service Interruption
 - (i) Contact Miss Dig at 248-874-3400 immediately.
 - (ii) Indicate problem is a service interruption.
 - (iii) Provide location of interruption.
 - (iv) Record ticket number.

- (v) Contact private electric utility staker company. (See Section IV for electric utility staker telephone number). Note that Detroit Edison Company will not provide staking services for private electrical lines. However, Miss Dig will contact Detroit Edison with excavation locations so that they may ascertain whether the excavation site contains any of Detroit Edison's electrical lines.
 - (vi) Contact University Engineer, or his/her designee, and the ODMP.
 - (vii) Secure failure (unless a natural gas line) and wait for stakers.
 - (viii) Upon a natural gas interruption, contact Consumers Power Company directly and indicate the urgency of the interruption. (See Section IV for telephone numbers).
- K. No attempt shall be made to repair a gas line leak or break. Wait for Consumers Energy crew. (However, flexible gas line may be folded over to reduce gas leakage, or bent upward to prevent gas from following pipe into building, if directed by ODMP or University Engineer).
- (i) Call Miss Dig and/or private staking company again if stakers for all utilities do not arrive within two hours.
 - (ii) Wait for stakers from utility companies and private staking company for electric services.
 - (iii) Excavate only after cleared by University Engineer, his designee, or Duty ODMP.
- L. Life and/or Property Threatening Emergency
- (i) Natural Gas
 - (ii) Contact Public Safety at 911 to determine if evacuation is necessary and to conduct the evacuation.
 - (iii) Do not attempt to repair or shut off. (However, flexible gas line may be folded over to reduce gas leakage, or bent upward to prevent gas from following pipe into building, if directed by ODMP or University Engineer).
 - (iv) Contact Consumers Energy Company directly to inform them of the emergency and the location.
 - (v) Contact University Engineer, or his/her designee, and ODMP.
 - (vi) Contact Miss Dig at 248-874-3400.
 - (vii) Indicate problem is an emergency and that Consumers Energy Company has been called.
 - (viii) Provide location of emergency.
 - (ix) Record ticket number.
 - (x) Wait for crew from Consumers Power Company (natural gas). Consumers Power will excavate and make repairs.

M. Other Services

- (i) Attempt to shut off or disconnect.
- (ii) Contact utility company, municipality or private staking company directly and inform them of the emergency and the location. (See Section IV for telephone numbers).
- (iii) Contact Public Safety at x3331 to determine if evacuation is necessary and to conduct the evacuation.
- (iv) Contact University Engineer, or his/her designee, and ODMP.
- (v) Contact Miss Dig at 248-874-3400.
- (vi) Indicate problem is an emergency and that Consumers Energy Company has been called.
- (vii) Provide location of emergency.
- (viii) Record ticket number.
- (ix) Wait for stakers from utility companies and/or private staking company.
- (x) Excavate only after cleared by University Engineer, or his/her designee, or ODMP.

(m) Excavation

1. The University Engineer, his designee, or ODMP in their absence shall complete drawing reviews and stakers shall complete all staking before excavating.
2. Because staking generally locates only known buried utilities, all power and manual excavators will perform excavation slowly and with caution.
 - A. Remove soil in not more than 6 inch layers when within 50 feet of a known interference.
 - B. Excavate with a maximum of a 12" cut for all other areas.
 - C. Excavate in pairs with an equipment operator and an observer.
 - D. When excavating or trenching across a known and staked utility, locate the utility first by excavating a test pit for positive identification of the utility location and depth.
 - E. When excavating within 8 feet of a known and staked buried utility, the observer shall probe the soil every 12" of excavation depth with a shovel in an attempt to locate the utility before the operator continues with the next 12" (two 6" layers).
 - F. Within two feet of the expected utility depth, a test pit shall be hand dug to determine the actual utility depth.
 - G. When within two feet of a known utility depth, hand excavate the remainder of the soil.

H. If the excavators encounter an unexpected utility (those not indicated on the drawings and/or not staked), they shall contact the University Engineer, his/her designee, or the ODMF in their absence, to determine usage before proceeding with excavation.

(n) Post-Excavation

1. The excavators shall provide the following services during post-excavation:
 - A. Contact the University Engineer, or his/her designee, prior to backfill if discrepancies are detected on utility drawings, so that Plant Engineering may update the documents.
 - B. Provide appropriate pipe protection (wraps, and/or cathodic protection) as originally installed.
 - C. Provide backfill material and compaction as required for the excavated utility or new utility installation.
 - D. Remove all rocks in excess of five inches in back fill material.
 - E. Back fill and compact in twelve inch layers.
 - F. Provide a wire trace 24" (12" for shallow trenches) above pipe for non-ferrous utilities.
 - G. Provide plastic tape trace 24" (12" for shallow trenches) above all utilities indicating utility type by MISS DIG color code and name defined as follows:

<u>Utility</u>	<u>Color</u>	<u>Lettering</u>
Electric	Red	"ELECT"
Oil/Natural Gas	Yellow	"GAS" or "OIL"
Telephone	Orange	"TELE"
Cable TV	Brown	"TV"
Water	Blue	"WATER"
HT Water	Blue	"HTHW"
Chilled Water	Blue	"CHILLED WATER"
Condenser Water	Blue	"COND. WATER"
Sewer	Green	"SEWER"

H. Return grade to pre-excavation condition.

(o) Maximum Vehicle Weight

All vehicles driven on the Owner's property shall comply with the weight limitations, per axle or otherwise, prescribed by the Oakland County Road Commission. In the event Owner believes Construction Manager, Subcontractors, Suppliers or Vendors are exceeding such weight limits, Owner may contact the Oakland County Permits Department and request the services of a Weight Master who may conduct a weight test on the suspected offender. All penalties, fines, or assessments shall be the sole responsibility of the offender.

(p) Telephone Contacts - Updated January 2001

Utility	Contact Company	Telephone # Days	Telephone# Nights/Weekends
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All	Miss Dig Power Plus Engineering 28064 Center Oaks Court Wixom, MI 48393 Bill Mackey	248-874-3400 248-344-0200	248-874-3400 248-344-0200
Electric	Primary Services for Detroit Edison Janice Fulton	313-235-6471	313-235-6471 (Emergency)
Natural Gas	Consumers Energy	1-800-477-5050 (Emergency - Breaks/Leaks) 800-477-5050 (Non-Emergency)	1-800-477-5050 (Emergency)

(q) Miscellaneous.

1. No waiver of any breach or covenant herein contained shall be construed as a waiver of the covenant itself or of any subsequent breach thereof.
2. The invalidity or unenforceability of any term or provision of this Agreement will in no way affect the validity or enforceability of any other term or provision.
3. Any captions or headings in this Agreement are for convenience only and in no way define or limit the scope or intent of any term, clause, provision or paragraph.
4. Michigan law, including without limitation the Michigan Persons with Disabilities Civil Rights Act, the Michigan Elliott-Larsen Civil Rights Act and the Michigan Governmental Tort Liability Act ("Act"), all as may be amended from time to time, including the provision that illegal discrimination by the Agency may be considered a material breach of this Agreement, will govern the validity, construction and performance of this Agreement. Michigan will be the forum for any legal or equitable proceedings in connection with this Agreement. Notwithstanding anything contained in this Agreement to the contrary, whether express or implied, no provision of this Agreement waives the University's rights under the Act or effectively creates any direct or indirect liability for the University otherwise prohibited by the Act.
5. This Agreement may be executed in several counterparts, each of which will be deemed an original, and all of which together will constitute one and the same instrument.
6. Owner is a public institution and all of its employees and public officers must conduct all of Owner's affairs solely to promote the best interests of the Owner rather than a personal interest. Consistent with this concept, the Owner has a conflict of interest policy which prohibits employees and public officers from having a personal financial interest in transactions with the Owner unless certain disclosure requirements are met. The policy also prohibits employees and public officers from accepting gifts from entities with which the Owner engages in commercial transactions. Any violation of said policy or law governing the conduct of public officers and public employees shall be grounds for termination of the Contract.

(r) Guaranteed Maximum Price (applicable only if set forth in Exhibit A)

1. GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME

- (a) When the Drawings and Specifications are sufficiently complete, the Construction Manager shall propose a GMP, which shall be the sum of the estimated total cost of the Work ("Cost of the Work") and the Construction Manager's Fee for the construction and post-construction phase work, including, but not limited to, all sales, use, consumer and other taxes required by law; all other fees, general conditions, bonds, required permits and insurance; tools, construction equipment and machinery, and temporary facilities required at the construction site; and all other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated in the Work. The portion of the Cost of the Work attributable to the general conditions (inclusive of costs associated with general liability and builder's risk insurance, performance and payment bonds, and Construction Manager's labor and employee benefits) shall not exceed 5% of the total Cost of the Work and will be detailed in the GMP and invoiced in a manifest format approved by Owner. The GMP and project completion time, when established, shall not exceed the Owner's maximum budget and schedule for the Project as set forth in the Owner's Request for Proposal for Construction Manager at Risk Services. Costs that would cause the GMP to be exceeded shall be paid by the Construction Manger without reimbursement by the Owner.
- (b) If not submitted when the Drawing and Specifications are sufficiently complete, the GMP shall be submitted to the Owner not more than 30 Days after receipt of the Owner's request for the GMP. The Owner may accept such GMP within 45 Days of receipt unless such time is mutually agreed to be extended. If the Owner does not accept the GMP within the time period provided herein, such price shall be deemed to have been rejected by the Owner.
- (c) In the event that the Owner does not request the Construction Manager to establish a GMP or does not accept the proposed GMP, but chooses to proceed with the Work, this Agreement shall be terminated in accordance with Owner's right to terminate without cause as set forth in the Contract General Terms and Conditions, Attachment 1 hereto.
- (d) As the Drawings and Specifications may not be finished at the time the GMP proposal is prepared, the Construction Manager shall take into consideration further development of the Drawings and Specifications by the Architect that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as material changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.
- (e) The Cost of the Work provided for in the GMP shall include the Construction Manager's "Construction Contingency", a sum established by the Construction Manager in cooperation with an agreement by the Owner, for the Construction Manager's use to cover costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order. The Construction Contingency shall be shown as a separate line amount within the GMP proposal and within the Schedule of Values for the Work. Each use of the Construction Contingency must be pre-approved by Owner and may be billed against the Schedule of Values line once that approval is obtained.
- (f) Subject to the review and preapproval of its use by Owner as described below, the Construction Manager shall be permitted to use up to one hundred percent (100%) of the Construction Contingency for changes initiated by the Construction Manager and is for its

use to cover only the following costs:

- 1) Costs due to subcontractor or subcontracted labor disputes that impact the Project
- 2) Labor, equipment, material or job site costs that exceed the amounts budgeted by the Construction Manager;
- 3) Costs associated with any increase in actual or final bid or negotiated subcontracts or purchase order agreements versus those used by the Construction Manager to establish the GMP, including unanticipated or materially higher than expected cost increases due to inflation or other market forces;
- 4) Costs to repair and/or replace damaged or non-conforming Work for which the Construction Manager is not responsible and is not caused by its own negligence, corrective work, labor disputes within the manufacturing or transportation industries causing delays in receipt of materials or equipment not the fault of the Construction Manager;
- 5) Costs due to delay for which the Construction Manager is not responsible;
- 6) Costs due to lost time due to acts beyond the control of the Construction Manager, and fixed job site costs due to these delays;
- 7) Costs due to unusually large price increases in material costs or subcontractor labor that are above expected levels and could not be reasonably anticipated within the proposed GMP; and
- 8) Costs attributable to insurance deductibles related to the Project not caused by the Construction Manager's or any subcontractor's or supplier's actual or alleged negligence.
- 9) The Construction Contingency is not available and shall not be used for any of the following:
 - a. Payment of liquidated damages, reimbursement of additional consultant services due to deficient or delayed work, or similar back charges or damages caused by the Construction Manager
 - b. Any costs identified in this subparagraph that are recoverable by the Construction Manager from insurance, subcontractors or suppliers, or other sources.
 - c. To supplement the Construction Manager's own office or field staff, beyond the originally agreed upon levels or commitment.

- d. Any use that is for the sole use, benefit or convenience of the Construction Manager.
 - e. Correction of errors, omissions, conflicts or defects in the documents that would be discoverable through reasonable review and inspection of the documents during the constructability and buildability reviews required by the Contract.
 - f. Overtime work not expressly pre-approved by Owner in writing.
- 10) To the extent Construction Contingency is projected to be remaining at the end of the Project and with mutual consent of the Construction Manager, portions of the Construction Contingency may be used for Owner requested Change Orders, changes in design, or increases in allowances. Use of this Construction Contingency shall be treated similar to an Owner allowance within the GMP, with Architect's review and Owner's approval prior to its use or commitment by the Construction Manager. Any use of this Construction Contingency requires joint agreement by the Construction Manager, Architect and Owner. To the extent there is remaining Construction Contingency when the Work is ready for final payment, the Owner shall be entitled to one hundred percent (100%) of the balance which shall be returned to the Owner by issuance of a Change Order, that will also reconcile all amounts used and remaining. The Construction Manager shall keep full and detailed records regarding costs used from the Construction Contingency and the accounting and control systems for such costs shall be in accordance with generally accepted accounting principles acceptable to the Owner.
- 11) The Owner also shall have other contingency funds in addition to the Construction Contingency. These Owner contingency funds shall not be considered to be used or held for benefit of the Construction Manager, and are not accessible to the Construction Manager for Construction Manager's costs that exceed the Construction Contingency. The Owner's contingency funds will be used solely by the Owner at its discretion and for its sole benefit related to the Project.
- 12) No claim for extra work done or materials furnished by the Construction Manager will be allowed by the Owner except as provided herein, nor will the Construction Manager do any work or furnish any material(s) not covered by the Contract unless such work or material is first reviewed by the Architect and authorized in writing in advance by the Owner. Work or material(s) furnished by the Construction Manager without such prior written authorization will be at the Construction Manager's sole jeopardy, cost, and expense, and the Construction Manager hereby agrees that without prior written authorization no claim for compensation for such work or materials furnished will be made.
- 13) When all of the funds in the Construction Contingency are expended, or in the event that the Cost of the Work exceeds the GMP and any adjustments as may be due under the terms of this Agreement, the Construction Manager shall continue to perform at no additional cost to the Owner until the Work is complete. The Construction Manager shall be responsible for paying all costs, in accordance with the terms of this Agreement that may be necessary to complete the Work, even if such amounts are in aggregate in excess of the GMP.

BASIS OF GUARANTEED MAXIMUM PRICE

- (a) The Construction Manager shall include with the GMP proposal a written statement of the GMP basis, which shall include:
- 1) A list of the Drawings and Specifications, including all Addenda thereto and the general conditions, which were used in preparation of the GMP proposal. Unless a GMP is requested during an earlier design phase, only the Drawings and Specifications produced for the Construction Documents shall be used as a basis for pricing and performance of the Work; Drawings or Specifications produced during the design phases of the Work are for Project development and refinement only and shall not be used or referenced as the basis of pricing, materials or assemblies selection or actual Work.
 - 2) A list of allowances and unit costs and a statement of their basis.
 - 3) A detailed list of the clarifications and assumptions made by the Construction Manager in the preparation of the GMP proposal to supplement the information contained in the Drawings and Specifications.
 - 4) The proposed GMP, including a statement of the estimated cost organized by trade categories by the Specification's major divisions, allowances, contingency, and other items and the fee that comprise the GMP.
 - 5) The date(s) of Substantial Completion upon which the proposed GMP is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.
 - 6) A list of the specific exclusions of work, costs, or other items that are not contained within the GMP. All Work necessary to complete the Project not listed within the specific exclusions shall be considered to be within the GMP and part of the final Contract Documents. No Work contained in the Contract Documents shall be listed as exclusion without specific separate written notification to the Owner and specific written agreement by the Owner in advance of submitting the GMP.
- (b) When requested by the Owner, within fifteen (15) Days after the Construction Manager proposes a GMP, the Construction Manager shall meet with the Owner and Architect to review the GMP proposal and the written statement of its basis. In the event that the Owner or Architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the GMP proposal, its basis, or both.
- (c) Prior to the Owner's written acceptance of the Construction Manager's GMP proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.
- (d) Upon written acceptance by the Owner of the GMP proposal and Owner's issuance of a Notice to Proceed, the GMP, its basis, and the date of Substantial Completion shall be set forth in a written Addendum to this Agreement. The GMP shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents and the date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

- (e) The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP proposal. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Architect and Construction Manager. The Construction Manager shall promptly notify the Architect and Owner if such revised Drawings and Specifications are inconsistent with the agreed upon assumptions and clarifications.
- (f) If the GMP is not within the Owner's Project budget, the Owner reserves the right to terminate this Agreement and proceed with the Project as a "Design-Bid-Build" or other delivery method of the Owner's choice and this Agreement will be terminated in accordance with Owner's right to terminate without cause as set forth in the Contract General Terms and Conditions, Attachment 1 hereto.
- (g) By proposing the GMP, the Construction Manager represents that it has the capability, in all respects, and the moral and business integrity, reliability, technical ability, financial resources, plant, management, superintendence, equipment and materials which will assure effective and efficient good faith performance in full compliance with the Contract Documents and with any and all schedules and milestone and completion dates, that it has made allowances for normal inclement weather indigenous to the Project Site, in its estimating, planning and scheduling of the Work and that the GMP submitted is complete and covers all of the Work shown or that can be reasonably inferred or assumed, and as specified or shown, in the Contract Documents. The Construction Manager hereby certifies that the Work shall be completed, in place, in full accordance with the Contract Documents, within the time limits specified.
- (h) For the GMP proposal, proposed costs shall be segregated as follows:
 - 1) Direct Cost of the Work: The Construction Manager's Subcontractor, and Supplier and Vendor costs, including wages of construction labor, along with labor/fringe benefits and burden for that labor; materials/equipment used to perform construction of Work, including rental or use of Construction Manager-owned equipment; rental or purchased small tools used to perform construction of Work; municipal fees and costs for water and sewer system permits, development fees, installation and meters associated with water and sewer facilities; cranes, elevators, lifts and other lifting equipment including rental, operator costs and safety inspections; delivery, erecting and dismantling; fuel, normal repairs, maintenance and service costs; and surveyor services. Costs incurred during extended equipment idle periods on the site may be declined by the Owner.
 - 2) General conditions for Construction Phase Services to include:
 - a. Project/On-Site Jobsite Staff: includes project manager, superintendent and project engineers; as-built and close-out documents; other clerical and support staff assigned and located at the Work site with prior Owner written approval; along with labor/fringe benefits, burden and vacation for that labor.
 - b. Temporary Utilities: temporary water, power, natural gas or propane, telephone, internet or wireless connectivity, including installation and removal, temporary extensions, monthly or other billing; all fees or costs for permits and meters associated with temporary utilities; temporary signs including permit costs; heating and cooling; light bulbs and other

miscellaneous office and utilities supplies; periodic and final cleaning; trash chutes, bins, removal and disposal, dump permits and fees; flagman and other traffic control; dust permit, dust control, track out materials and required notification signage; temporary roads and their maintenance.

- c. Temporary Facilities: office trailer, including rental, set up and removal; storage trailer and shed rentals; office furniture, copying equipment and fax machine (either direct rental costs or pro-rated ownership/purchase costs); postage, shipping and delivery costs; office and other supplies directly related to and required for the management and administration of the Work; project photographs; temporary toilets and sanitary facilities; project sign; temporary fencing, enclosures, barricades and covered walkways; temporary stairs; opening protection and safety railing; drinking water and associated supplies and coolers; safety and first aid supplies and equipment; firefighting equipment and extinguishers; security guards, watchman services, and security equipment or costs.
- d. Miscellaneous Costs: Construction Manager required insurance deductibles with amounts and levels approved by the Owner prior to submitting the GMP; Owner training and other close out activities and support; printing of drawings and specifications if not included within the Pre-Construction other final/permanent utility and governmental permit (including general building permit and permits for off-site work), reviews and inspection fees with the Owner prior to submitting the GMP to confirm which will be paid by the Owner and which will be paid by the Contract.

- 3) Construction Manager's Construction Phase Contingency.
- 4) Payment and Performance bonds, and insurance as set forth in the General terms and Conditions.
- 5) Sales Taxes.
- 6) Proposed Construction Manager's Fee