

AGREEMENT

FOR PROFESSIONAL CONSTRUCTION MANAGEMENT SERVICES

BETWEEN

THE REGENTS OF THE UNIVERSITY OF MICHIGAN

AND

(FIRM NAME)

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AGREEMENT FOR PROFESSIONAL CONSTRUCTION MANAGEMENT SERVICES

THIS AGREEMENT FOR PROFESSIONAL CONSTRUCTION MANAGEMENT SERVICES (the “**Agreement**”) has been executed as of **INSERT DATE** between THE REGENTS OF THE UNIVERSITY OF MICHIGAN, a Michigan constitutional corporation, having its principal office in Ann Arbor, Michigan (the “**Owner**”), and **INSERT COMPANY NAME**, a **INSERT COMPANY LEGAL DESCRIPTION**, having its principal office at **INSERT COMPANY ADDRESS, CITY, STATE ZIP** (“**Construction Manager**”).

The purpose of this Agreement is to establish the terms and conditions under which the Owner has agreed to purchase certain construction management services from the Construction Manager.

RECITALS

A. The Owner intends to develop and operate a Project on its campus, as described in the “Schedule of Project Details for the **INSERT PROJECT NAME AS SHOWN ON SOPD** Project” that is attached to, and incorporated by reference into, this Agreement (which is hereinafter referred to as “**The Schedule of Project Details**”) and wishes to occupy the Project as soon as reasonably possible, all the while retaining high quality throughout and economy of costs.

B. Those portions of the Contract Documents pertaining to “phased construction” shall be applicable only if the Project is constructed on a phased construction basis.

C. The Owner has decided to retain the services of a Construction Manager to act on the Owner’s behalf and in the Owner’s best interest, and to assume certain risks, in connection with the development of the Project in accordance with the Owner’s goals.

D. The Construction Manager will not self-perform any of the Work. All Work will be performed by, through or under qualified Trade Contractors and supervised by the Construction Manager.

E. The Construction Manager wishes to serve as construction manager for the Project and has represented that it is experienced in providing construction management services for projects of the size, complexity and nature of the Project and is willing to accept the risk allocation set forth in this Agreement.

F. The parties have executed this Agreement based upon the foregoing recitals.

The Owner and the Construction Manager agree as follows:

Part 1. INDUCEMENT; BASIC AGREEMENT

1.1 INDUCEMENT.

To induce the Owner to execute this Agreement, the Construction Manager represents that:

1.1.1 All materials furnished to the Owner as part of the Owner’s construction manager selection process were, and remain, in all material respects true, correct and complete.

1.1.2 Except to the extent Section **2.14** provides that primary responsibility for the design of the Project lies with the Design Professional, the Work required by the Contract Documents, including, without limitation, all construction details, construction means, methods, procedures and techniques necessary to manufacture will, at a minimum, conform strictly with (i) good and sound practices within the construction industry; (ii) generally prevailing and accepted industry standards applicable to the Work; (iii) the

requirements of any warranties applicable to the Work, and (iv) the requirements of the Contract Documents.

1.1.3 (i) It is and will be financially solvent, able to pay all debts as they mature and possessed of sufficient working capital to perform all obligations under this Agreement; (ii) it has the resources, and it is and will remain, to the extent required by Applicable Laws, properly licensed to fulfill its obligations under this Agreement; (iii) it has and shall maintain throughout the term of this Agreement all federal, state and local licenses, permits and certificates necessary to perform this Agreement; (iv) it is authorized to do business in the State of Michigan; (v) its execution of this Agreement and its performance of it is within its duly authorized powers; (vi) its duly authorized representative has visited the Project Site and is familiar with the reasonably determinable and special conditions under which the Work is to be performed; and (vii) it possesses a high level of experience and expertise in the business administration, pre-construction services, construction management and supervision of projects of the scope, size, complexity and nature of the Project.

1.1.4 As a professional, it (i) has carefully examined and understands this Agreement, (ii) has thoroughly investigated the reasonably determinable nature and locality of the Project Site and the conditions and difficulties under which the Work is to be performed (such as the cost and availability of labor, Applicable Laws, accessibility of the Project Site, and the availability of transportation), and (iii) enters into this Agreement on the basis of its own examination, investigation, and evaluation of all such matters and not in reliance upon any opinions or representations of the Owner, the Design Professional, or any of their respective officers, agents, servants, independent contractors, or employees, except as specifically set forth in the Contract Documents.

1.1.5 Each schedule it submits will set forth a reasonable time for completing the Work, and it will be able to cause the Work to be completed within that time, subject to extensions of time as may be granted in accordance with the Contract Documents.

1.2 SUPPLEMENTAL NATURE.

The Construction Manager's representations and warranties, wherever given, are in addition to, and not in lieu of, any and all other liability imposed upon Construction Manager under this Agreement or by law.

1.3 SURVIVAL.

The Construction Manager's representations and warranties, wherever given, the obligations of the Construction Manager which are of a continuing nature, and the Construction Manager's liability under this Agreement, shall survive the Owner's final acceptance of and payment for the Work and the termination of this Agreement for any reason whatsoever.

1.4 AGREEMENT TO HIRE AND SERVE.

The Owner hires the Construction Manager to perform the Services, and the Construction Manager accepts the Owner's engagement and agrees to perform the Services. The relationship between the Owner and the Construction Manager shall be governed by this Agreement. The attached "*Standard General Conditions Applicable to Projects Where the Owner Has Retained the Professional Services of a Construction Manager*" (the "**Standard General Conditions**") are incorporated herein by reference.

1.5 DEFINITIONS.

Terms defined in this Agreement shall in the Standard General Conditions bear the same meaning and terms used in this Agreement that are defined in the Standard General Conditions shall have the meanings ascribed to them therein, in both cases unless the context clearly requires to the contrary.

1.5.1 The “**Construction Manager’s Fee**” shall mean the amount set forth in the Schedule of Project Details.

1.5.2 The “**Construction Phase Services**” are those services required of the Construction Manager under the Contract Documents to be rendered in respect of any bid package following bidding and the award of one or more contracts for that bid package.

1.5.3 The “**Post-Construction Phase Services**” are those described in [Part 5](#).

1.5.4 The “**Pre-Construction Phase Services**” are those services required of the Construction Manager under the Contract Documents or rendered by the Construction Manager that are not Construction Phase Services or Post-Construction Phase Services, such as the Services described in [Part 3](#), the preparation of the Guaranteed Maximum Price proposal pursuant to [Part 7](#), and, generally, all services rendered by the Construction Manager in respect of any bid package prior to bidding and the award of one or more contracts for that bid package.

1.5.5 The “**Project Schedule**” is the preliminary schedule for the Work to be developed by the Construction Manager under Section [3.7.1](#) and which shall, at a minimum, provide for major elements such as preparation of the Design, phasing of construction, the time of commencement and completion required for each anticipated Bid Package.

1.6 SCOPE.

Subject to and in accordance with the terms of this Agreement, the Owner may at any time and from time to time increase or decrease the scope of the Project, and hence the scope of the Services and the Work.

1.7 TERM.

The term of this Agreement shall begin when the Owner directs the Construction Manager to proceed with the Pre-Construction Services and shall end (i) upon Final Completion of the Work, (ii) when the Construction Manager is directed to stop Work pursuant to Section [10.2](#), or (iii) when it is terminated pursuant to the terms of the Standard General Conditions.

1.8 GOVERNING TERMS.

The Construction Manager’s services shall be governed by this Agreement and the Standard General Conditions. Notwithstanding §1.2.1 in the Standard General Conditions, in the event of a conflict between this Agreement and any of the other Contract Documents, this Agreement shall prevail.

Part 2. THE DUTIES OF THE CONSTRUCTION MANAGER

2.1 BASIC DUTY.

2.1.1 The Construction Manager shall for the Construction Cost (as defined in Section [2.10](#)), and without additional cost to the Owner, provide the Services and cause the Work to be performed on a timely basis in accordance with the Contract Documents.

2.1.2 Without limiting the generality of the foregoing, the Construction Manager shall be responsible for the performance and administration of all general conditions required for the Work, except as specifically allocated to the Owner under this Agreement.

2.2 STANDARD OF CARE.

2.2.1 The Construction Manager agrees that it will (i) perform all Work and Services strictly in accordance with the requirements of the Contract Documents, and (ii) in other respects always act with that degree of care, skill and diligence usually exercised by and expected of first-rate, nationally-recognized construction managers experienced in projects similar to the Project in scope, size, complexity and nature.

2.2.2 The Construction Manager acknowledges that the Construction Manager is an entity in which the Owner will place its trust and confidence. The Construction Manager acknowledges that the Owner is relying upon Construction Manager's knowledge, skill and expertise as a first-rate, nationally-recognized construction manager experienced in projects similar to the Project in scope, size, complexity and nature.

2.2.2.1 The Construction Manager agrees to use its best efforts to efficiently and safely administer and supervise the Work, and to perform its Services and cause the Work to be completed to a high standard of quality, expeditiously, economically and always in a manner consistent with the best interests of the Owner. The Construction Manager shall cooperate reasonably with the Owner, the Design Professional and the Owner's other consultants and contractors in furthering the best interests of the Owner throughout the duration of this Agreement.

2.2.2.2 The Construction Manager shall furnish efficient business administration and management services.

2.2.2.3 The Services and the Work shall be performed only by qualified, competent personnel.

2.2.3 The Construction Manager shall be as responsible to the Owner under this Agreement for the acts and omissions of other members of the Construction Team as it is for its own.

2.3 LAWS.

2.3.1 The Construction Manager shall ascertain that all documents it prepares are in accordance with Applicable Laws.

2.3.2 Except to the extent Section [2.14](#) provides that certain responsibility for the design of the Project lies exclusively with the Design Professional, the Construction Manager shall perform all of its Services and shall cause all Work to be performed strictly in accordance with Applicable Laws to the satisfaction of the unit of government having jurisdiction.

2.3.2.1 Without limiting the generality of Section [2.3.2](#), the Construction Manager shall cause all members of the Construction Team to comply, at their own expense, with the provisions of all laws and regulations applicable to them as employers of labor or otherwise, and all licensing requirements pertaining to any professional status they or their employees, partners, associates, consultants and others directly or indirectly employed by them hold. The Construction Manager shall upon request deliver to the Owner copies of all licenses any members of the Construction Team hold.

2.3.2.2 If the Construction Manager performs any Services or permits any Work to be performed in a manner that it knows, or should have known, to be contrary to any Applicable Laws, the Construction Manager shall, without recovery from the Owner, under the Guaranteed Maximum Price, any contingency or otherwise, assume full responsibility and shall bear all attributable costs (including cost of correction and all fines and penalties).

2.4 COPIES OF DOCUMENTS.

The Construction Manager shall, upon request, furnish the Owner with copies of any documents in the possession of or available to the Construction Manager in any way pertaining to the Project, except privileged communications and documents with incidental references to the Work or documents which discuss multiple projects. The Construction Manager shall take appropriate action to ensure that all Trade Contracts, Subcontracts and Supply Contracts contain the same requirement.

2.5 MEETINGS AND PRESENTATIONS.

At any time during the duration of this Agreement, upon the Owner's request, the Construction Manager shall assist and support the Owner, at no additional charge to the Owner, in preparing for and attending meetings and presentations related to the Work.

2.6 FILING OF DOCUMENTS.

In addition to its obligation to secure permits, the Construction Manager shall assist the Owner and the Design Professional in connection with the filing of documents required to receive approvals from governmental authorities having jurisdiction over the Work.

2.7 SELF-PERFORMANCE OF WORK.

The Construction Manager is prohibited from bidding on or performing any portion of the Work.

2.8 MEETINGS AND MINUTES.

2.8.1 The Construction Manager shall keep minutes of all pre-bid and construction progress meetings and shall deliver them to all participants promptly after each such meeting. The Construction Manager shall promptly respond in writing to comments or suggestions it receives from others.

2.8.2 The Construction Manager shall schedule and conduct with the Trade Contractors pre-construction and construction progress meetings (in accordance with Section [4.3.1](#)) and any other meetings deemed necessary to discuss such matters as procedures, progress, problems, safety, inspections, sequencing, and scheduling, and shall prepare and promptly distribute minutes. Construction progress meetings will be conducted by the Construction Manager weekly unless otherwise directed by the Owner and attended by all Trade Contractors whose Work has not been completed. Executive level progress meetings will be held on a monthly basis. All progress meeting minutes shall be provided to the Owner by the Construction Manager within five (5) days after the meeting and distributed to all attendees promptly after they have been approved by the Owner.

2.9 TEAM BUILDING

2.9.1 The Construction Manager in consultation with the Owner and the Design Professional shall develop, implement and maintain a process of "Team Building" involving both of them and all Trade Contractors so that (i) the goals and objectives of each are clearly understood and accepted by all, and (ii) potential problems, bad feelings, personal difficulties and the like are identified and resolved promptly. The Owner and Design Professional shall cooperate fully in meeting these objectives.

2.9.2 The Team Building objective shall be to identify and develop mutual goals, which may include, as examples, achieving Value Engineering savings, meeting the financial goals of each party, limiting cost growth, limiting review periods for contract submittals, avoiding and resolving disputes, facilitating early completion and minimizing lost time because of injuries. The Team Building process shall emphasize open communication, collegiality and cooperation among all parties, as well as prompt and efficient dispute resolution at the lowest appropriate level of management. Claims and disputes not

resolved in the Team Building process shall be subject to the procedures specified in Article 15 of the Standard General Conditions.

2.10 CONSTRUCTION COST

The “**Construction Cost**” shall consist of the elements described in Sections [2.10.1](#) through [2.10.4](#):

2.10.1 “**Construction Base**” consisting of the following:

2.10.1.1 Trade Contract Costs consisting of payments made by the Construction Manager to Trade Contractors in accordance with the requirements of the Trade Contracts, including payment and performance bonds, if any.

2.10.1.2 Supply Contract Costs not included in Trade Contract Costs for goods and services incorporated in the completed construction including:

(a) Costs, including transportation, but less all available discounts, rebates, allowances and the like, of materials and equipment incorporated or, to the extent permitted by this Agreement, to be incorporated into the Work and included in the Guaranteed Maximum Price.

(b) Costs of materials described in Section [2.10.1.2\(a\)](#) in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage that in any event shall not exceed what is considered a customary allowance. Unused excess materials, if any, shall be delivered to the Owner at the completion of the Work (or upon completion of the specific aspect of the Work, if spoilage or a decrease in the market value is a consideration) or, at the Owner’s option, shall be sold by the Construction Manager; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Construction Cost.

2.10.2 “**General Conditions Items**” consisting of other items provided by the Construction Manager necessary to manage the Project and preapproved by the Owner, including and limited to:

(a) Reasonable costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost less salvage value on such items not fully consumed, whether sold to others or retained by the Construction Manager. If there is salvage value, the Construction Manager shall use its best efforts to provide the Owner with a savings in the Construction Cost by selling the items. If such items are retained by the Construction Manager, the Construction Cost shall be reduced by fair market value of the item that has salvage value. Cost for items previously used by the Construction Manager shall mean fair market value.

(b) Reasonable rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner’s prior approval.

(c) Reasonable costs of removal of debris from the site.

(d) Reasonable reproduction costs, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

(e) That portion of the reasonable travel and subsistence expenses of the Construction Manager’s personnel, in accordance with the Owner’s “[AEC Reimbursement Expense Guidelines](#)” (available at <http://www.umaec.umich.edu/for.archs/guidelines/Professional-Services-Reimbursement-Expense-Guidelines.pdf>), incurred while traveling away from the Project Site in discharge of duties connected with the Work.

(f) Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.

(g) Fees and assessments for any permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay (except those costs which arise as a result of the Construction Manager's failure to proceed in accordance with the Standard of Care applicable to this Agreement or nonconforming Work, in which case, such costs shall be paid by Construction Manager and not reimbursed by the Owner as an element of the Construction Cost).

(h) Reasonable fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work.

(i) Royalties and license fees paid with the prior written approval of the Owner for the use of a particular design, process or product required by the Contract Documents.

(j) Technology costs as agreed between the Construction Manager and the Owner.

(k) Other costs incurred in the performance of the Work if and to the extent approved in advance by the Owner.

2.10.3 The "**Construction Manager's Personnel Charges**" consisting of the amounts to be paid to the Construction Manager as reimbursement for its supervisory and administrative personnel. The staffing of such personnel shall be in accordance with the Schedule of Project Details, as it may be amended from time to time with approval from the Owner. Subject to Section [2.10.3.1](#), the Construction Manager's Personnel Charges shall be the lump sum amounts stated in the Schedule of Project Details, regardless of whether the actual cost is greater or less.

2.10.3.1 The Construction Manager will not be entitled to be paid for Construction Manager's Personnel Charges in excess of the amounts set forth in the Schedule of Project Details, unless (i) the Construction Schedule, as approved by the Owner, shows a Date of Substantial Completion for the Work later than the date shown in the Schedule of Project Details and such new date was due to Owner changes, or (ii) there is a change in either (a) the scope of the Work pursuant to Article 7 of the Standard General Conditions, or (b) the sequencing of Project elements, that requires staffing different than that reflected in the Schedule of Project Details. In either such case, the parties will negotiate an appropriate adjustment to the Construction Manager's Personnel Charges or, at the option of the Owner, they will be calculated in the manner set forth in Section [2.10.3.2](#).

2.10.3.2 An exception to Section [2.10.3.1](#) applies when the Owner wishes to utilize a calculation method in connection with the addition, subtraction or substitution of personnel. The Construction Manager's Personnel Charges, in respect of those persons added, subtracted or substituted, shall then be a lump sum based upon a cost per hour determined separately per Qualifying Employee, determined by calculating the "Base Hourly Rate" and the "Permitted Fringe Benefit Rate" in accordance with (a), (b) and (c) below. "Qualifying Employees" are the Construction Manager's supervisory and administrative personnel listed in the Schedule of Project Details and any others later approved by the Owner.

(a) The "Base Hourly Rate" is the individual employee's base annual compensation (without annual vehicle allowance, if any, which shall be included in the Construction Manager's Fee) divided by 2,080 (hours/year). To the Base Hourly Rate will be added the "Permitted Fringe Benefit Rate", which includes and is limited to social security taxes, unemployment taxes, health and welfare, retirement and workers compensation. The employee's Base Hourly Rate shall be supported by such documentation as may be requested by the Owner, such as W-2 forms and the like. The foregoing Rates will be based on actual costs for the employee or, where customary and appropriate, standard costs, consistently applied, that are derived from reasonable apportionment or projection of actual costs. Bonus and other forms of Supplemental Compensation, if paid to employees, shall not be included in the Base Hourly Rate, but are already included in the Construction Manager's Fee, and the Construction Manager shall disclose the amount of any such bonus or supplemental compensation for each Qualifying Employee.

(b) The Base Hourly Rate and Permitted Fringe Benefit Rate applicable to a given employee, with supporting detail, shall be disclosed in writing and approved by the Owner before the Construction Manager is permitted to bill for the time of such employee. Increases in an employee's Base Hourly Rate or Permitted Fringe Benefit Rate require similar approval from the Owner.

(c) The lump sum for Construction Manager's Personnel Charges, when the Owner wishes to use a calculation method, shall be the sum of the products determined by multiplying the Base Hourly Rate and Permitted Fringe Benefit Rate applicable to each Qualifying Employee by the amount of hours each such employee is expected to work on the Project.

2.10.4 The "**Construction Manager's Fee**" in accordance with Section [8.2](#) and established in the Schedule of Project Details. The Construction Manager's Fee includes the cost of premiums for insurance required to be carried by the Construction Manager under the Contract Documents, as well as the Construction Manager's profit and all other expenses not included under Sections [2.10.1](#), [2.10.2](#) and [2.10.3](#). The Construction Manager's insurance premiums shall be separately detailed in the Schedule of Project Details.

2.10.4.1 The following are examples of items that are not recoverable by the Construction Manager because they are included in the Construction Manager's Fee:

(a) Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or places other than the Project Site, except as specifically permitted in Section [2.10.3](#) above.

(b) Expenses of the Construction Manager's principal office and offices at places other than the Project Site.

(c) Overhead and general expenses of the Construction Manager.

(d) The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

(e) Rental costs of machinery and equipment, except as specifically provided above in Section [2.10.2\(b\)](#).

(f) Costs due to the negligence or willful misconduct of any member of the Construction Team or to the failure of the Construction Manager to comply with the requirements of the Contract Documents. Costs incurred by any member of the Construction Team as a result of the negligence or willful misconduct of any such parties or of anyone for whose acts any of them may be liable, including but not limited to, the costs of correction of defective or non-conforming Work, disposal of materials and equipment wrongly supplied, or making good any damage to property. (However, the costs described in this Section [2.10.4.1\(f\)](#) may be paid out of available Construction Manager's Contingency if (i) the cost did not result from the failure of the Construction Manager to abide by the Standard of Care assigned to it in this Agreement and (ii) the Construction Manager has not been able to recover the cost from the responsible party after using its best efforts, at its expense without reimbursement, and exhausting all available remedies.)

(g) Any cost not specifically and expressly described in Sections [2.10.1](#) and [2.10.2](#).

(h) Costs which would cause the Guaranteed Maximum Price to be exceeded.

(i) Losses and expenses sustained by any member of the Construction Team if such losses or expenses arise out of the infidelity or dishonesty on the part of one of their employees.

(j) The deductibles and self-retained limits on the Construction Manager's insurance, and losses and expenses not covered by insurance if the Construction Manager fails to obtain and/or maintain in effect the insurance required by the Contract Documents.

(k) Provided that the Owner has paid the Construction Manager all amounts then properly due and payable under the Contract Documents, the Construction Cost shall not include any sums spent or costs incurred by the Construction Manager, or for which the Construction Manager is liable

or obligated, in connection with any construction liens filed or served by any member of the Construction Team because of the Construction Manager's failure or refusal to pay any such member, whether or not any such failure or refusal is wrongful or as a result of a bona fide dispute between the Construction Manager and any such member.

(l) Legal expenses required for the Construction Manager to enter into this Agreement and perform its routine duties under it. However, legal expenses incurred solely for the benefit of the Project and approved in advance by the Owner shall be permitted.

(m) Costs not reasonable, actual and necessary or those in excess of costs customarily paid for similar items at the place of the Project.

(n) Other costs, expenses and losses which under the Contract Documents are not recoverable.

2.10.5 In accordance with Section [3.8](#), the Construction Manager shall periodically prepare an estimated Construction Cost for the Project, and present it in a form required by the Owner, that shall include the sum total of those costs of construction, at current or projected market rates of labor and materials, which are specified or designed by the Design Professional for the completed Project including fixed equipment to be furnished and/or installed by the Construction Manager or any member of the Construction Team, but excluding: (a) the cost of moveable furniture and fixed equipment furnished and/or installed by parties other than the Construction Manager or any member of the Construction Team; (b) the cost of Work designed or specified by persons other than the Design Professional; (c) the fees and expenses of the Design Professional and Sub-consultants retained directly or indirectly by either the Design Professional or the Owner.

2.10.6 The estimated Construction Cost shall not include the cost of the land, rights-of-way, financing or other costs which are the responsibility of the Owner or, except to the extent otherwise provided in the Contract Documents, the fees and expenses of the Design Professional and Sub-consultants retained directly or indirectly by either the Design Professional or the Owner.

2.10.7 Prior to the establishment of the Guaranteed Maximum Price, a "**Fixed Limit of Construction Cost**", as identified in the Schedule of Project Details, shall identify the maximum Construction Cost the Owner is willing to pay, except in the case of Changes in the Work pursuant to Article 7 of the Standard General Conditions. The Fixed Limit of Construction Cost consists of the Construction Base (Trade and Supply Contracts), General Conditions Items, the Construction Manager's Fee (includes insurance), the Construction Manager's Personnel and the Construction Manager's Contingency. Neither the estimated nor the final Construction Cost may exceed the Fixed Limit of Construction Cost without prior written approval of the Owner. The Construction Manager shall collaborate with the Design Professional during the design and bidding of the Project to achieve the objective of complete construction of the Project for a Construction Cost that does not exceed the Fixed Limit of Construction Cost. If, during the collaboration process, there is any indication the Construction Cost may exceed the Fixed Limit of Construction Cost, the Construction Manager shall consult and cooperate with the Design Professional in making recommendations to the Owner for corrective action toward meeting the Owner's requirement of having the Construction Cost be no greater than the Fixed Limit of Construction Cost.

2.10.8 The Guaranteed Maximum Price, determined in accordance with [Part 7](#), shall not exceed the Fixed Limit of Construction Cost.

2.11 CONSULTANTS.

To the extent deemed appropriate by the Owner, the Construction Manager shall assist the Owner and the Design Professional in selecting, retaining and coordinating the services of surveyors, special consultants and testing laboratories.

2.12 CLAIMS AGAINST CONSTRUCTION MANAGER.

The Construction Manager shall promptly notify the Owner of any claims threatened or asserted against the Construction Manager or any member of the Construction Team arising out of or in connection with the Project, the Work or the Contract Documents except those, if any, asserted by the Owner. The notification shall include as much specific information as is available about the claim, including without limitation, whether the claim involves, or may involve, the Owner. It shall keep the Owner fully apprised of the status of any such claims. To the extent such claims are its responsibility under the Contract Documents, the Construction Manager shall without undue delay resolve all such claims in good faith at its sole expense and without additional recovery from the Owner by increase in the Guaranteed Maximum Price or otherwise, provided however, that any claims that are not the result of the acts or omissions of the Construction Manager shall be eligible for reimbursement out of the Construction Manager's contingency, if available, and in accordance with the provisions of Section [7.1.3.1](#).

2.13 TIME IS OF THE ESSENCE.

2.13.1 The Construction Manager will promptly perform its duties under the Contract Documents and will give the Work as much priority as is necessary to cause the Work to be completed on a timely basis in accordance with the Contract Documents. Time is of the essence of this Agreement. All Services and Work shall be performed strictly within the time limitations necessary to maintain the critical path and all deadlines established in the Project Schedule and the Construction Schedule.

2.13.1.1 All dates and periods of time set forth in the Contract Documents, including those for the commencement, prosecution, interim milestones, milestones, and completion of the Work, and for the delivery and installation of materials and equipment, were included because of their importance to the Owner.

2.13.1.2 The Construction Manager acknowledges and recognizes that (i) the Owner is entitled to full and beneficial occupancy and use of the completed Work following expiration of the Contract Time, and (ii) the Owner is relying upon the Construction Manager's achieving Substantial Completion of the Work at the time for Substantial Completion set forth in the Construction Schedule.

2.13.1.3 Except and only to the extent provided otherwise in Article 7 of the Standard General Conditions, by signing this Agreement, the Construction Manager agrees:

2.13.1.4 to bear the risk of delays to completion of the Work; and

2.13.1.5 that its compensation was established and this responsibility was accepted with full knowledge of this risk.

2.13.1.6 In agreeing to bear the risk of delays to completion of the Work, the Construction Manager understands that, except and only to the extent provided otherwise in Article 7 of the Standard General Conditions, the occurrence of events that delay the Work shall not excuse the Construction Manager from its obligation to achieve full completion of the Work within the Contract Time and shall not entitle the Construction Manager to an adjustment of the Guaranteed Maximum Price.

2.13.1.7 The Construction Manager acknowledges that the Owner is purchasing the right to have the Construction Manager at the Project Site for the full duration of the Contract Time, even if the Work could be completed in less than the Contract Time.

2.14 DESIGN RESPONSIBILITIES.

Among its other duties, the Design Professional is responsible to create the Design. Any errors, omissions, conflicts, ambiguities, violations of Applicable Laws, or other defects that are incorporated in the Design are the responsibility of the Design Professional. The Construction Manager's responsibility to the Owner

with respect to its services under this Agreement, for its review of the Drawings and Specifications, is limited to the following: (a) Defects the Construction Manager failed to report to the Owner or the Design Professional promptly after Construction Manager actually discovered them; or (b) Ambiguities, lack of clarity, inadequacy of detail, inconsistency, inaccuracy in the Design documents, or their being incomplete or defects related to the constructability of the Work, which the Construction Manager failed to discover or report to the Owner or Design Professional, but which a first-rate, nationally recognized construction manager experienced in projects similar to the Project in scope, size, complexity and nature would have discovered and reported given the time and opportunity for discovery that were actually available. If the conditions of (a) or (b) are met, and the Owner incurs loss or damage on account of the Construction Manager's failure to discover or report the defect in a timely fashion, the Construction Manager will share an appropriate portion of the responsibility, notwithstanding the Design Professional's primary responsibility for creating the defect.

2.15 ASSISTANCE TO THE OWNER.

Throughout the term of this Agreement, the Construction Manager shall assist the Owner with systems analysis and engineering studies for the Work and coordinating all consultants, testing firms and inspectors.

2.16 IMPROPER PAYMENTS.

Except as otherwise provided in Section [8.5](#), the Construction Manager shall neither solicit nor accept any rebate, kickback or improper fee, payment or benefit of any kind in connection with the Project from anyone.

2.17 INSURANCE.

The Construction Manager shall purchase and maintain all insurance policies as required of the Construction Manager in the Contract Documents and verify that all Trade Contractors purchase and maintain those policies as required of them in the Contract Documents.

Part 3. PRE-CONSTRUCTION PHASE SERVICES

3.1 OBLIGATIONS OF THE CONSTRUCTION MANAGER WITH RESPECT TO THE DESIGN PROFESSIONAL.

3.1.1 The Construction Manager shall:

(a) cooperate with the Design Professional in the preparation of cost evaluations, including cost/benefit analysis, for alternative approaches to bring costs in line with the Fixed Limit of Construction Cost;

(b) cooperate fully with each of the consultants retained by the Design Professional and with the Design Professional's Representative and assist in the coordination and interface of all parties involved in the Project;

(c) coordinate with the Design Professional to help it determine which design phase team meetings require the presence of the Design Professional;

(d) coordinate with the Design Professional during the Pre-Construction phase concerning site use and improvements, costs, scheduling, selection of materials, building systems, equipment and options for Project delivery;

(e) coordinate with the Design Professional and the Owner if any Trade Contractor requests interpretations of the meaning and intent of any of the Contract Documents and reasonably assist in the resolution of questions which may arise; and

(f) review, and if appropriate approve, alternative solutions proposed by the Design Professional.

3.2 PRE-CONSTRUCTION MEETINGS.

3.2.1 Construction Manager and the Design Professional shall jointly schedule and attend regular meetings with the Owner to review and evaluate the Design. The Construction Manager shall, in consultation with the Design Professional, prepare a meeting schedule within five (5) days after execution of this Agreement, or issuance of a notice to proceed, whichever occurs first, and the first meeting shall be held not later than fourteen (14) days after execution of this Agreement, or issuance of a notice to proceed, whichever occurs first.

3.2.1.1 Unless directed otherwise by the Owner, the Construction Manager shall provide the following items at the first meeting:

3.2.1.2 An outline of the goals and objectives of the entire Work and the working relationship and responsibilities of the Owner, the Design Professional, and the Construction Manager, using this Agreement as a basis;

3.2.1.3 A preliminary outline, with samples, of its Administrative Management Plans and Reports as required in Section [3.3](#);

3.2.1.4 A preliminary evaluation of the Fixed Limit of Construction Cost and the program requirements provided by the Owner, each in terms of the other;

3.2.1.5 In cooperation with the Owner and the Design Professional, a determination of which Design phase team meetings warrant the Construction Manager's presence. Once agreed by the parties, it shall attend and participate in all such meetings;

3.2.1.6 A preliminary site logistics and utilization plan for review by the Owner. This plan shall subsequently be refined by the Construction Manager with input from the Owner and Design Professional and approved by the Owner prior to its implementation; and

3.2.1.7 A preliminary Project Schedule in accordance with Section [3.7.1](#), using actual current project data that will fully demonstrate the Construction Manager's intended scheduling program, online access and reports.

3.3 ADMINISTRATIVE MANAGEMENT PLANS.

3.3.1 Within thirty (30) days following the first Pre-Construction meeting, the Construction Manager shall develop and submit to the Owner for review and comment a set of administrative management plans for the Project ("**Administrative Management Plans**"). The Administrative Management Plans shall include plans, processes and sample forms and reports that are proposed to manage and organize all aspects of the Work and shall include, at minimum, sections for each of the following: cost estimating; value engineering; schedule control; document control; quality control; project site security and access; traffic routing and parking; sustainability; on-site software utilization; material procurement and handling; Trade Contractor prequalification; bid and award; diversity; labor relations; change management and budget control; payment application; emergency management; general management, including organization charts of the Project team; a Project directory listing pertinent websites, personnel, locations, phone numbers and email addresses; and such other plans as may be necessary or appropriate for the proper administration of the Project. Specific requirements for some of the sections in the Administrative Management Plans are detailed in the remainder of this Section [3.3](#). The Construction Manager shall cooperate with the Owner in making adjustments to the proposed plans that are acceptable to the Owner. The Administrative Management Plans shall be updated and resubmitted to the Owner by the Construction Manager as changes occur or additional information is required. During the Construction Phase, the Construction Manager shall implement and maintain the Owner accepted Administrative Management Plans.

3.3.1.1 The Construction Manager shall also submit, as a separate document, the Safety Plan, as required by §10.1 of the Standard General Conditions, at the time of the submission of the Administrative Management Plans.

3.3.2 Quality Control (QC) Plan. The Construction Manager shall include in its Administrative Management Plans a preliminary QC plan to the Owner for review and comment. Construction will be permitted to begin only after Owner acceptance of the QC plan, or acceptance of that portion of the plan applicable to the particular feature of Work to be started. The QC plan that the Construction Manager proposes to implement shall identify the personnel, procedures, instructions, records, forms and, at a minimum, shall include:

- (a) a description of the quality control program;
- (b) procedures for processing Shop Drawings, samples, certificates, and other submittals;
- (c) QC activities to be performed, including those of Trade Contractors, Subcontractors, offsite fabricators, and Suppliers; and
- (d) control testing procedures to include notification of tests, participants, recording of test results, and distribution of test reports.

3.3.2.1 The QC plan shall (i) detail the specific measurable goals it shall achieve, (ii) provide for the most cost effective manner in which to meet those goals and identify its cost efficiencies, and (iii) make recommendations to the Design Professional and the Owner regarding the scope and magnitude of the testing program.

3.3.2.2 After approval of the QC plan, the Construction Manager shall notify the Owner in writing of any proposed change to its QC program.

3.3.2.3 The Construction Manager shall maintain a quality control log to track quality issues as they are identified. The log should track Trade Contractor responsibility, a brief description of the issue and solution, and the dates issues are identified and corrected.

3.3.2.4 The Construction Manager's QC program shall include at least the following two phases of control and follow-up management for definable features of Work:

- (a) Preparatory meeting—this control phase shall be performed before beginning Work on each definable feature of Work. It shall include a review of contract requirements to assure that materials, sample panels, and equipment conform to contract requirements, and that control testing, including procedures, are finalized. This control phase shall also include an examination of the Project Site to verify that it conforms to contract requirements and that required materials are on hand and properly stored. The Owner shall be notified at least forty-eight (48) hours in advance of each preparatory meeting.
- (b) Management—the follow-up management phase shall be performed continuously to verify that control procedures are providing an end product that complies with contract requirements. Adjustments to control procedures may be required based upon the results of this phase and control testing.

3.3.2.5 The Construction Manager shall inspect the Work, including all materials and installations, with such regularity as may be necessary to fulfill its obligations under this Agreement to verify compliance with the Design, insure that the quality control plan is met or exceeded, and reject nonconforming Work.

3.3.2.6 The Construction Manager is responsible for tests specified or required to verify that control measures are adequate to provide a product that conforms to the contract requirements of the Contract Documents. A list of such tests which the Construction Manager is required to perform, and tests

that require third party firms, shall be furnished to the Owner with the QC plan. The list shall give the test name, a specification paragraph containing the test requirements, and the Construction Manager's personnel or list of potential third party firms that will be responsible for each type of test. The Construction Manager shall perform the following activities and record and provide the following data:

- (a) prior to each test, submit to the Design Professional and the Owner the testing procedures that comply with contract requirements;
- (b) verify that facilities and testing equipment are available and comply with testing standards;
- (c) check test instrument calibration data against certified standards;
- (d) verify that recording forms, including all of the test documentation requirements, have been prepared;
- (e) provide all necessary equipment, utilities, material, data and personnel for each test for which the Construction Manager is responsible; and
- (f) for tests requiring third party testing firms, prepare, with the Design Professional, all needed requests for proposal for these testing needs and coordinate all testing activities. However, the Owner shall contract directly with the testing firms.

3.3.3 Materials Procurement and Handling Plan. The Construction Manager shall, as part of the Administrative Management Plans, develop and submit a preliminary materials procurement and handling plan. This plan shall include the following:

- (a) procurement strategy and payment;
- (b) coordination with separate contractors;
- (c) the Owner's operation of adjacent facilities;
- (d) provisions for both vertical and horizontal transportation and utilization of material and personnel hoists;
- (e) storage requirements;
- (f) timing and sequencing the delivery of materials; and
- (g) requirements for handling and installation of large equipment.

3.3.4 Site Security, Access and Traffic Routing Plan. The Construction Manager shall include in its Administrative Management Plans a site security, access and traffic routing plan for the Project. This plan shall be finalized in consultation with the Owner, identifying authorized site security and access, including the routing of the vehicles of the members of the Construction Team during construction, and the Construction Manager shall organize the Work in relation to these plans. Access to the Project Site shall be restricted to such locations as are directed by the Owner. This plan shall also identify any proposed on-site parking for loading and unloading. No other parking will be provided by the Owner.

3.3.5 Diversity Plan. The Construction Manager shall include in the Administrative Management Plans a diversity plan that comports with the following requirements:

3.3.5.1 The Owner is committed to providing contract opportunities to businesses owned by women, minorities, and persons with disabilities. Through this commitment, the Owner works closely with its purchasing partners to ensure appropriate participation of diversity businesses in the provision of goods and services to the Owner.

3.3.5.2 In support of this commitment, the Construction Manager agrees to ensure that, with regard to any contract entered into pursuant to this Agreement, diversity business enterprises will be afforded full opportunity and will not be discriminated against on the basis of race, color, gender, age, handicap, religion, ancestry, marital status, sexual orientation, national origin or place of birth. In

recognition of this, the Construction Manager will take steps to ensure maximum participation by qualified diversity businesses in a manner and to the degree that it takes such steps for its best customers.

3.3.5.3 The Construction Manager shall provide methods to maximize opportunity for diversity participation and reporting methods that indicate firms invited, firms recommended for award and other pertinent information.

3.3.5.4 For purposes of this Diversity Plan, diversity businesses are those businesses qualifying as women-owned and minority-owned business enterprises and those businesses owned by persons with disabilities.

3.3.6 Change and Budget Management Plan. The Construction Manager shall include in the Administrative Management Plans a Change and Budget Management Plan that includes:

- (a) a sample monthly report to the Owner showing clear tracking of all bid package forecasts and results with any savings to, or overages against, the Cost Estimate.
- (b) samples of forms utilized to authorize changes on the Project;
- (c) a flow diagram indicating the process to be utilized for changes;
- (d) a sample log page showing the number and dollar amounts of Change Orders covering cumulative costs and effects on the Guaranteed Maximum Price; and
- (e) samples of standard change control reports submitted to the Owner and Design Professional.

3.4 REVIEW AND EVALUATION OF DESIGN AND OWNER INFORMATION.

3.4.1 Taking into account the Fixed Limit of Construction Cost, the Construction Manager shall consult with the Owner and the Design Professional and give advice concerning site use and improvements, cost, scheduling, selection of materials, building systems, equipment and methods of Project delivery. When appropriate, the Construction Manager shall propose and review with the Owner and the Design Professional alternative approaches to the Design and construction of the Work and shall disclose any potential adverse effects created by the alternatives, including items affecting the budget, quality, schedule, labor or safety of the Project.

3.4.2 The Construction Manager shall review the constructability of the Design following the completion of each set of schematic design documents, design development documents and construction documents to identify areas of conflict, omission and overlap in the Work to be performed by the Members of the Construction Team, and, whenever the Design details adversely affect construction feasibility, budgets or schedules, recommend alternative solutions for approval by the Owner and the Design Professional. The Construction Manager shall provide recommendations concerning the relative feasibility of construction methods, availability of materials and labor, and time requirements for procurement, installation and construction.

3.4.2.1 The Construction Manager shall review all Design documents for ambiguity, clarity, adequacy of detail, consistency, accuracy, completeness and constructability, costing and scheduling.

3.4.2.2 The Construction Manager shall perform Value Engineering and estimates of cost for the current conceptual designs prepared by the Design Professional.

3.4.2.3 If the Project will be constructed on a phased construction basis, the Construction Manager shall make recommendations to the Owner and Design Professional regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work.

3.4.3 The Construction Manager shall as often as appropriate (i) make recommendations concerning construction methods, the need for additional studies or tests, the availability and effective use

of materials and labor, time requirements for procurement, installation and construction, and factors related to cost, including, but not limited to, cost over useful life and comparative cost of operation, cost of alternative designs or materials, preliminary budgets, and possible economies; (ii) provide recommendations regarding assignment of responsibilities for prepared safety programs, temporary project facilities, equipment, materials and services for common use of members of the Construction Team; and (iii) verify that such requirements and assignment of responsibilities are included in the proposed Contract Documents.

3.4.4 Except to the extent Section [2.14](#) provides that primary responsibility for the design of the Project lies with the Design Professional for the Project, the Construction Manager shall bear an appropriate portion of the responsibility for any materially adverse impact on the Work resulting from its failure to notify the Owner and Design Professional in writing of flaws in or conflicts among the Drawings, Specifications, submittals and any Applicable Laws that it discovers or should have discovered with the exercise of appropriate diligence.

3.4.5 Regarding the Project Site, and during the Pre-Construction Phase, the Construction Manager shall (i) review the information that the Owner has obtained, and (ii) review the scope of the information that the Owner proposes to obtain, and at once report to the Owner any errors, inconsistencies or omissions it discovers.

3.5 VALUE ENGINEERING PROGRAM.

The Construction Manager shall assemble a Value Engineering Team, consisting of the Construction Manager, the Design Professional, and the Owner to develop and implement a comprehensive Value Engineering program. Immediately upon its development, the Construction Manager will submit the proposed program to the Owner for its review and approval. The Value Engineering program will explore alternative solutions, systems, materials or techniques to achieve Work requirements economically. The Value Engineering program, to consist of such sessions as may be appropriate during each of the Design and bid-package phases of the work, will address all major facility elements, both system and material. As part of the Value Engineering program, the Construction Manager will advise the Owner regarding costs and benefits of alternative building systems as well as prepare comparative analyses of alternative systems and finishes for the Owner's consideration. The Value Engineering options approved by the Owner will be incorporated into the Contract Documents by the Design Professional.

3.6 BID PACKAGES; LABOR REQUIREMENTS.

A "Construction Bid Package List" shall be submitted by the Construction Manager to the Owner and Design Professional for their review and comment within thirty (30) days of the execution of the Agreement or the issuance of a Notice to Proceed, whichever occurs first. This list shall itemize the desired trade bid packages and corresponding divisions of Work in order to allow the Design Professional to organize and manage staffing so as to produce design documents in a timely manner. Any revision to the Construction Bid Package List shall be resubmitted for review and comment. Likewise, the method and procedures to be used for selecting Trade Contractors and Suppliers and awarding contracts shall be submitted to the Owner and Design Professional for their review and comment. The Construction Manager shall provide an estimate of the number and categories of bid packages that will be appropriate to complete the Work and an analysis of the types and quantities of labor required for the Project and shall review the availability of appropriate categories of labor required for critical phases. In conjunction with the preparation of the Construction Bid Package List, and thereafter whenever appropriate, the Construction Manager shall at no additional cost to the Owner, minimize any potential adverse effects of labor shortages, such as by utilizing planned/scheduled overtime and/or shift work when necessary.

3.7 SCHEDULES.

3.7.1 Project Schedule. Taking into account the Owner's desired occupancy date, as soon as practical, and not later than thirty (30) days after execution of this Agreement or issuance of a Notice to Proceed, whichever occurs first, the Construction Manager shall use its best efforts, given a sufficient

amount of information (the need for which the Construction Manager shall identify in advance), to develop and provide in an electronic format reasonably satisfactory to the Owner a Project Schedule. The Project Schedule shall coordinate and integrate the Construction Manager's Services, the Design Professional's services, and the Owner's responsibilities through the Schematic Design, Design Development and Construction Document phases. The Project Schedule shall include a preliminary construction schedule and identify the required construction bid packages. The Construction Manager shall obtain the Design Professional's approval of that portion relating to the performance of the Design Professional's services. As Design proceeds, the Construction Manager shall, in consultation with the Owner and Design Professional, refine (make more detailed) the Project Schedule as often as necessary, but at least monthly, to reflect the evolution of the Design, the Work, and other relevant factors, including, when they become available, proposed activity sequences and durations (including site Work, fabrication and installation of systems, testing, start-up and commissioning activities), Milestone Dates for receipt and approval of pertinent information, preparation and processing of shop drawings and samples, procurement and delivery of materials and equipment, the Owner's occupancy requirements and priority, the date of Substantial Completion, and other relevant information. The Project Schedule shall also be updated upon completion of the Design associated with each construction bid package in order to inform interested bidders of the required schedule. If any Project Schedule update suggests that previously approved schedules may not be met, the Construction Manager shall promptly make appropriate recommendations to the Owner and the Design Professional.

3.7.1.1 As part of its preparation of the Project Schedule, the Construction Manager shall investigate and recommend a schedule for the Owner's purchase of materials and/or equipment, including materials and/or equipment and enabling Projects requiring long lead time procurement, which are to be purchased or completed by the Owner. The Construction Manager shall coordinate this schedule with the early preparation of portions of the Contract Documents by the Design Professional.

3.7.1.2 The Construction Manager shall provide the Owner with a written report, including a Construction Cost Control Summary ("**CCCS**"), a sample of which is attached to the Schedule of Project Details as Exhibit A, detailing procurement requirements for long lead time materials and equipment to be included in the Work and projected dates by which arrangements for purchasing such materials and equipment should be completed. The Construction Manager shall identify qualified manufacturers for long lead time items and bid out materials to approved manufacturers (or if requested by the Owner, negotiate with manufacturers) in order to meet the requirements of the Project Schedule. The Construction Manager shall monitor manufacturers for production timetables and performance testing to ensure complete compliance with the requirements of the Contract Documents. The Construction Manager shall expedite and coordinate its purchase and delivery of long lead time items.

3.7.2 Construction Schedule. As part of its Guaranteed Maximum Price Proposal or Bid Release Recommendation for the first bid package, whichever occurs first, and using the Project Schedule as a basis, the Construction Manager shall present to the Owner for approval a Construction Schedule in the form required by §3.3 of the Standard General Conditions. The Construction Schedule, subject to any Modification granted in accordance with the Agreement, shall establish the Contract Time within which the Construction Manager must achieve Final Completion of the Project. The Construction Schedule shall be the schedule utilized by the Construction Manager for the duration of the Project and upon which the Guaranteed Maximum Price shall be based, as set forth in Section [7.2](#).

3.7.2.1 Except with the Owner's prior written approval, the Construction Schedule shall maintain the critical path and any milestones and deadlines established in the Project Schedule. The Construction Schedule shall be reviewed monthly or at appropriate intervals as required by the conditions of the Work, and shall provide for expeditious and practicable execution of the Work.

3.7.2.2 In addition to the requirements of §3.3 of the Standard General Conditions, the Construction Schedule shall allow for and depict the design release dates and bid and award dates.

3.8 PRELIMINARY COST ESTIMATES.

3.8.1 Within twenty one (21) days after receipt of the Owner approved final schematic design documents, or prior to submittal of any Bid Release Recommendation, whichever is earlier, the Construction Manager shall prepare, for the Design Professional's review and the Owner's approval, an estimate of the Construction Cost of the project, including a completed CCCS, extending the preliminary requirements of Section [3.7.1.2](#) to include all phases of the Work. The CCCS shall include supporting data. When requested by the Owner or the Design Professional, during the preparation of the design development documents, the Construction Manager shall update and refine this estimate.

3.8.2 Within twenty one (21) days after design development documents for each bid package have been completed and approved by the Owner, the Construction Manager shall prepare an updated detailed cost estimate, again including supporting data, for review by the Design Professional and approval by the Owner. During the preparation of the construction documents, Construction Manager shall update and refine this estimate at appropriate intervals.

3.8.3 Upon notification by the Owner or Design Professional (orally or in writing) that the construction documents are ninety-five percent (95%) complete if a Guaranteed Maximum Price has not then been established, the Construction Manager shall again revise the cost estimate for each bid package category and shall deliver a copy for approval to the Owner and the Design Professional, together with supporting data within twenty one (21) days.

3.8.4 If any estimate submitted to the Owner exceeds the Fixed Limit of Construction Cost, the Construction Manager shall, without additional cost to the Owner, within twenty-one (21) days make recommendations to the Owner and the Design Professional as to how the Work can be completed within the Fixed Limit of Construction Cost.

3.8.4.1 The Construction Manager shall, in conjunction with the Design Professional, recommend and prepare for the Owner's approval cost evaluations, including cost/benefit analyses, for alternative solutions when solutions proposed by the Design Professional appear unnecessarily costly or if it at any time appears that the construction estimate may exceed the Fixed Limit of Construction Cost.

3.8.5 All cost estimates shall be made in good faith and shall have a reasonable basis. All cost estimates shall, where the concepts are applicable, provide quantities and unit prices for each item of Work.

3.8.5.1 If the Construction Manager's cost estimates differ in any material respect from any comparable cost estimate prepared by the Design Professional, the Construction Manager shall work with the Design Professional to promptly reconcile their estimates. If the Construction Manager and the Design Professional are unable to reconcile discrepancies in their estimates, the Construction Manager and the Design Professional shall agree as to the method of resolution.

3.8.6 If the Fixed Limit of Construction Cost is exceeded by either the latest Construction Manager and Design Professional reconciled estimates or the lowest bona fide bids when they become known, or both, the Owner may, at its option and at any time, elect to do any one or more of the following:

- (a) Cooperate with the Design Professional and the Construction Manager in revising the scope and quality of the Project as required to reduce the probable Construction Cost for the Project to within the limits of the Fixed Limit of Construction Cost;
- (b) Authorize rebidding within a reasonable time;
- (c) Give written approval of an increase in the Fixed Limit of Construction Cost or Guaranteed Maximum Price;
- (d) Suspend or terminate the Project.

3.8.7 When Section [3.8.6](#) is elected:

3.8.7.1 If the Owner elects to proceed under Section [3.8.6\(a\)](#), the Design Professional will modify the Contract Documents as necessary to bring the Construction Cost within the Fixed Limit of Construction Cost without additional cost to the Owner, and the Construction Manager's Lump Sum for Pre-Construction and Construction Personnel and the Construction Manager's Fee shall not be increased.

3.8.7.2 If the Owner elects to authorize rebidding or to suspend or terminate the Project, the Construction Manager shall take all appropriate action to assist the Owner at no additional cost to the Owner.

3.8.7.3 If the Owner decides to increase funding partially or wholly to adjust for estimates or bids greater than the Fixed Limit of Construction Cost, as provided in Section [3.8.6\(c\)](#), the Construction Manager's Lump Sum Pre-Construction and Construction Personnel Charges and the Construction Manager's Fee shall not be increased.

3.9 OWNER-FURNISHED ITEMS; CONSTRUCTION OR INSTALLATION PROCEDURES.

3.9.1 The Construction Manager accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Contract Documents and have been provided to it prior to or during the execution of the Contract. The Construction Manager shall be responsible for such Owner-furnished items, if any, as if the Construction Manager were the original purchaser. If feasible, the Construction Manager shall promptly inspect all Owner-furnished items and report to the Owner any deficiencies or defects. Failure to so report shall constitute an acknowledgment that such items are fit and suitable for inclusion in the Work. All warranty and Correction of the Work obligations under the Contract Documents shall also apply to any Owner-furnished items, unless the Contract Documents specifically provide otherwise.

3.9.2 The Construction Manager shall review any specified construction or installation procedure (including those recommended by any product manufacturer). The Construction Manager shall advise the Owner:

- (a) if the specified procedure deviates from acceptable construction practice;
- (b) if following the procedure will affect any warranties; or
- (c) of any objections which the Construction Manager may have to the procedure.

3.10 SELECTION OF TRADE CONTRACTORS AND SUPPLIERS; BIDDING; REVIEW AND AWARD.

3.10.1 Preliminary Selection—As soon as possible (and not later than sixty (60) days) after completion of design development for each portion of the Work to be put out for bids, the Construction Manager shall identify to the Owner prospective Trade Contractors and Suppliers for the Project (i) by name and, (ii) respectively, by trade or material, equipment or supplies to be provided. Identification of a Trade Contractor or Supplier by the Construction Manager shall constitute a representation by the Construction Manager that, to the best of Construction Manager's knowledge at the time, following an appropriate inquiry, the potential Trade Contractor or Supplier is qualified to undertake the task for which it has been identified. The identification of possible Trade Contractors and Suppliers shall not require the Owner to investigate their qualifications, nor shall it preclude later objection to or rejection of any of them prior to bidding.

3.10.1.1 If the Owner has a reasonable objection to a Trade Contractor or Supplier identified by the Construction Manager, the Owner shall promptly notify the Construction Manager and the Construction Manager shall propose one or more others to whom the Owner has no reasonable objection.

3.10.1.2 The Construction Manager shall verify that all proposed Trade Contractors and Suppliers are properly licensed and sufficiently staffed to carry out their duties.

3.10.2 Bidding— The following provisions shall apply to bidding of the Work:

3.10.2.1 The Construction Manager shall provide for the Owner's review the criteria for prequalification of bidders. The Construction Manager shall, with the assistance of the Design Professional, assemble and distribute all documents for each bid package.

3.10.2.2 The Construction Manager shall solicit Trade Contractor and Supplier interest in the Work. Within the guidelines established by law or made known by the Owner to the Construction Manager, the Construction Manager shall recommend to the Owner a suggested list of the Construction Manager's prequalified Trade Contractors and Suppliers for participation in the Work. The Construction Manager shall organize and conduct pre-bid conferences with potential bidders to familiarize them with bid documents and with any special circumstances, systems, materials or methods.

3.10.2.3 The Construction Manager shall review the bid climate for each bid package approximately thirty (30) days prior to the issuance of the package, including the prequalified bidders' current workloads. The resulting suggested bid lists shall contain as many qualified bidders as are available and at minimum three bidders for each bid package.

3.10.2.4 Subsequently, the Construction Manager shall submit for the Owner's review and approval their **Bid Release Recommendation** for each bid package, which shall include at minimum:

- (a) a list of all prequalified bidders identifying diversity vendors included;
- (b) a description of the Work;
- (c) the estimated cost; and
- (d) the schedule of the Work included in the bid package.

3.10.2.5 With the cooperation of the Design Professional and the Owner, the Construction Manager shall update and deliver the CCCS, to include (a) the bidding schedule to coordinate timing for bid package releases, reviews and awards in accordance with the Construction Schedule, (b) the estimated value for each bid package with enough detail to allow analysis of the major elements of the bids and (c) any additional information as required by the Owner. This report shall be updated as stipulated in Section [3.10.3.3](#).

3.10.2.6 The Construction Manager shall review the Drawings and Specifications and make recommendations as required to ensure that: (1) the Work of the Trade Contractors and Suppliers and any Owner-purchased materials is coordinated; (2) all requirements for the Work have been assigned to the appropriate Trade Contractor or Supplier; and (3) the likelihood of jurisdictional disputes has been minimized.

3.10.2.7 All general conditions shall be in the form of the Standard General Conditions, modified (with the prior Approval of the Owner) by the Construction Manager in an insubstantial manner for particular trades and, when necessary, for consistency.

3.10.2.8 The Construction Manager shall, with the Design Professional's assistance, coordinate all questions and responses, maintain a bid "Request for Information" log, and issue appropriate Addenda.

3.10.3 Review and Award— The following provisions shall apply to the Work to be awarded:

3.10.3.1 With the Design Professional's assistance, the Construction Manager shall receive and open the bids, unless the Owner elects to perform this task. The Owner shall be invited to attend all bid openings conducted by the Construction Manager. After bid opening, the Construction Manager shall prepare a trade-by-trade bid analysis, and make recommendations for acceptance or rejection of bids. This shall include a detailed review of each bid to determine whether it is responsive, complete, reasonable, consistent and acceptable.

3.10.3.2 With the Design Professional's assistance, the Construction Manager shall conduct a scope review meeting with the apparent lowest qualified bidder in each category (or the apparent two or more lowest qualified bidders if deemed appropriate by the Construction Manager or the Owner) to determine and verify that each bidder has satisfied the bidding requirements, and that each bidder understands the required scope and Contract Documents. The Owner shall be invited to attend all such scope review meetings conducted by the Construction Manager.

3.10.3.3 The Construction Manager shall update the CCCS with bid results. If the bids cause, or threaten to cause, the total cost to construct to exceed the Fixed Limit of Construction Cost or Guaranteed Maximum Price, whichever is then in effect, the Owner may seek remedy under the terms of Sections [3.8.6](#) and [3.8.7](#).

3.10.3.4 It is the Owner's intention to have each bid package awarded to the lowest responsive bidder. The Construction Manager shall submit to the Owner an award recommendation for each bid package that shall include detailed reasoning for its recommendations. The Owner shall have the right to approve all awards. If the Owner rejects a prequalified and apparently successful bidder who has been submitted for award by the Construction Manager, the Fixed Limit of Construction Cost or the Guaranteed Maximum Price, whichever is then in effect, will if necessary be adjusted to the extent of any change in the Construction Cost caused by the selection of another bidder, but the Construction Manager's Fee shall not be increased.

3.10.3.5 The Construction Manager shall in its name issue letters of intent, award Trade Contracts and Supply Contracts, and issue notices to proceed.

Part 4. CONSTRUCTION PHASE SERVICES

4.1 FIELD STAFF.

The Construction Manager shall (i) maintain a competent and sufficient number of full-time field staff to perform the Services and coordinate, supervise and administer the Work and (ii) enforce strict discipline and good order among the employees of the members of the Construction Team. The Construction Manager shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. To provide the uninterrupted, efficient and timely performance of the Work, the Construction Manager shall use its best efforts to avoid labor disputes of any kind.

4.2 SUPERINTENDENCE.

4.2.1 The Construction Manager shall provide supervisory, administrative, management, inspection and related services as required to properly coordinate, schedule and sequence the Work of the Trade Contractors with each other (to avoid both duplication and omission of Work) and with the activities and responsibilities of the Construction Manager, the Owner and the Design Professional to complete the Work in accordance with the requirements of the Contract Documents with respect to cost, time and quality and to ensure that the other goals and objectives of the entire Work are otherwise met or exceeded.

4.2.2 The Construction Manager shall keep on the Project at all times during the progress of the Work a competent, full time Superintendent and any necessary assistants. The Superintendent shall be located at the Project site. The Superintendent shall represent the Construction Manager and all directions, directives, notices and other communications given by or to the Superintendent shall be as binding as if given by or to the Construction Manager. The Superintendent shall remain on-site daily until full completion of the entire Work, including Punchlist Work.

4.3 COST AND SCHEDULE CONTROL DURING CONSTRUCTION.

4.3.1 The Construction Manager shall meet at least biweekly, unless otherwise directed by the Owner, with the persons providing labor or materials under each trade package to review their progress and take appropriate action to maintain the Construction Schedule.

4.3.2 The Construction Manager shall develop for the Owner's approval and maintain computerized information management systems to monitor costs, schedules, quality, requests for information, Change Order status, submittals and all other information about the Work appropriately adaptable to such systems. Online access to the systems, or the systems' up-to-date contents, shall be provided, if requested by the Owner.

4.3.3 The Construction Manager shall monitor the Construction Cost in relation to the Guaranteed Maximum Price, incorporate approved changes as they occur, account for anticipated Change Orders and claims, monitor contingency amounts and develop and submit cash flow reports and forecasts as requested by the Owner, but not less often than monthly. If authorized Work is performed under unit pricing, on the basis of actual costs of labor and materials, or otherwise requires accounting records, the Construction Manager shall maintain cost accounting records.

4.3.4 The Construction Manager shall monitor the schedule of the Work in relation to the approved Construction Schedule, as detailed in Standard General Conditions Article 3.3, incorporate approved changes as they occur and account for anticipated Change Orders, weather and other conditions which may affect the schedule.

4.4 PAYMENTS TO TRADE CONTRACTORS.

4.4.1 Upon award of the Trade Contract, the Construction Manager shall have each Trade Contractor prepare and submit a Schedule of Values allocating that portion of the Construction Cost attributable to its Trade Contract to the various portions of the Work. Each Schedule of Values shall be prepared in a form and substance acceptable to the Construction Manager (which form shall previously have been approved by the Owner) and supported by such data as may be necessary to substantiate its accuracy. The Construction Manager shall develop and implement procedures for the review and processing of applications by Trade Contractors for progress and final payments. Payment packages shall include, but shall not be limited to, each of the following documents: schedule of values, sworn statements, and appropriate Acknowledgements of Payment or other similar waivers and releases of claims.

4.5 REPORTS, LOGS, DOCUMENTS AND SAMPLES AT THE PROJECT SITE.

4.5.1 The Construction Manager shall record the progress of the Work monthly and shall submit a "Construction Manager's Quarterly Construction Summary" to the Owner and the Design Professional including: (a) information on each Trade Contractor's Work, as well as the entire Work; (b) percentages of completion; (c) current Construction Cost, including committed costs and estimated future costs, compared with the Guaranteed Maximum Price; (d) status of the Construction Schedule; (e) Work accomplished; (f) problems encountered; (g) safety, quality and other similar and relevant data as the Owner may require; and (h) critical issues. The Construction Manager shall make the reports and logs available to the Owner and the Design Professional anytime upon request. The Construction Manager shall conduct information meetings for user groups and other Owner personnel at reasonable intervals as requested by the Owner to provide an overall update on the progress of the Work.

4.5.2 The Construction Manager shall provide reports on a monthly basis showing budgets, committed amounts, Change Orders, contingencies, estimated cost to complete, variances between actual and estimated costs, and payments for line items in the account structure. The Construction Manager shall advise the Design Professional and the Owner promptly whenever projected costs exceed budgets or estimates. The Owner shall provide the Construction Manager with summary totals for all line items not directly administered by the Construction Manager.

4.5.3 The Construction Manager shall keep and maintain a daily log that shall be made available online and available for downloading for the Owner and the Design Professional. The log shall contain, at a minimum, the following items and such other similar relevant data as the Owner or the Design Professional may reasonably require:

- (a) a record of the daily temperature and weather;
- (b) the number of workers listed by trade and/or Trade Contractor or Subcontractor on the Project, indicating where on the Project each was working and what Work activity was performed;
- (c) a record of the delivery of major materials and equipment to the site;
- (d) a list of visitors to the site;
- (e) accidents of any nature and the severity of each occurring on the Project;
- (f) inspectors, testing agencies or other authorities on the Project site;
- (g) problems encountered;
- (h) a photographic record of the Work's progress; and
- (i) any variances between the requirements of the Contract Documents and the actual construction of the Work.

4.5.4 The Construction Manager shall maintain a log describing all requests for information or interpretation, including the date of the request, the date of its transmission to the Design Professional, the date the Design Professional's response was received, and the date that response was transmitted to the maker of the request. Copies of all requests for information or interpretation shall be sent to the Owner at the same time they are sent to the Design Professional. The parties wish to avoid unnecessary requests for information or interpretation to the Design Professional. The Construction Manager shall review and evaluate any request for either information or interpretation received from any member of the Construction Team. If the Construction Manager believes it was made unnecessarily, it shall so notify the person submitting the request and notify the Owner.

4.6 PERSONNEL.

4.6.1 Except as hereinafter provided, the Construction Manager shall render its Services and cause the Work to be staffed under this Agreement substantially in accordance with the Staffing Plan included in the Schedule of Project Details (Exhibit D). The Staffing Plan shall include the names of each person staffing the Work and the amount of time each staff person will dedicate to the Work. The Construction Manager shall neither permit deviation from the Staffing Plan in any material fashion nor increase or decrease the staff performing or supervising the Work, except that (i) minor changes in staff which do not involve Key People (as defined in Section 4.6.1.1), may be made and (ii) increased staffing necessary or appropriate to assure timely and proper performance of the Work in accordance with the Contract Documents shall be made without the prior written consent of the Owner, but in neither case shall there be any increase in cost to the Owner, whether under the Guaranteed Maximum Price, the use of any contingency, claim, or otherwise, as a result of such change. The Construction Manager shall be responsible for all damages and other liabilities which result from the Construction Manager's failure to properly staff the Work in accordance with the Staffing Plan.

4.6.1.1 The Construction Manager agrees that certain highly qualified person(s) have been designated in the Staffing Plan or the Schedule of Project Details as "Key People". When the Key People are designated as "full-time" on the Staffing Plan, they shall devote all of their working time to the Project. All computations and other work performed by the employees of the Construction Manager shall be adequately supervised by one or more of the Key People.

4.6.1.2 The Construction Manager agrees that the Key People shall not be removed from their responsibilities without the prior written consent of the Owner, except in the event of death, disability

or departure from the employment of the Construction Manager. If the Owner reasonably determines that any of the Construction Manager's employees, including the Key People, or other members of the Construction Team are not working in a harmonious manner with the Owner's representatives, the Owner shall have the right to direct the Construction Manager to take appropriate action; appropriate action may include replacing such individuals. If a replacement for one of the Construction Manager's employees is necessary, (i) the replacement shall have qualifications and experience similar to their predecessor, (ii) the Construction Manager shall provide the Owner with résumés of possible replacements, (iii) the Owner shall have the opportunity to interview any such replacement candidates, and (iv) the candidate shall be subject to the Owner's approval.

4.6.2 If the Construction Manager, after approval of the Owner, replaces any person included in the Staffing Plan included in the Schedule of Project Details with personnel having a lower rate of compensation, there may, at the option of the Owner, be a proportionate decrease in the Construction Manager's personnel charges. Under no circumstances shall a personnel replacement with a higher rate of compensation cause an increase to the Construction Cost.

4.6.3 If the Construction Manager's staffing is reduced for any reason, the lump sum personnel cost will be adjusted down based on a prorating of the displaced personnel's time and compensation.

Part 5. POST-CONSTRUCTION PHASE SERVICES

5.1 POST-CONSTRUCTION PHASE.

The Post-Construction phase will commence upon Substantial Completion and shall extend to Final Completion and close-out of all contracts (the "**Work Close-out**").

5.2 FINAL COMPLETION CERTIFICATE.

The Construction Manager shall review the Trade Contractors' Contract Documents, secure and transmit to the Owner all required guarantees, warranties, affidavits, releases, bonds, waivers, insurance certificates, consents of sureties, etc., and shall sign off on a Final Completion Certificate ("**Final Completion Certificate**") in a form acceptable to the Owner. The Trade Contractors' Final Payment applications shall also be included with the close-out documents to the Owner, after the Design Professional's review.

5.3 CLOSE-OUT OF OUTSTANDING CLAIMS.

The Construction Manager shall thoroughly investigate any claim, whenever asserted or received, and provide the Owner with a detailed explanation of the claim, the circumstances under which it arose, and whether it is meritorious. The Construction Manager shall provide services to resolve any outstanding claims against the Owner by any member of the Construction Team or by anyone else as a result of any act or omission of any member of the Construction Team and to close-out contracts.

5.4 WARRANTIES.

The Construction Manager shall carefully coordinate all warranty and guaranty periods.

5.5 RECORD DOCUMENTS.

The Construction Manager shall for a period of seven (7) years after Final Completion retain and make available to the Owner upon request and without charge complete, legible and accurate copies of all Record Documents. The Construction Manager may charge a reasonable fee if the Owner requests reproduction of any such documents. After seven (7) years all Record Documents shall be returned to the Owner. The Construction Manager may retain a copy of the Contract Documents.

5.6 TRAINING.

5.6.1 The Construction Manager shall provide training of all appropriate personnel employed by the Owner or the Owner's agents in the installation, maintenance, operation, calibrations, and routine care of all equipment and systems provided and installed as part of the Work. Such training will be provided for multiple shifts, where applicable.

5.6.1.1 Separate training sessions shall be conducted for equipment/system operation and maintenance except when combining of these two (2) subjects is specifically allowed by the Owner.

5.6.1.2 The Construction Manager shall provide qualified, prepared instructors for all training plus all necessary material and equipment (training aids, audio visual equipment, seating, tables, etc.).

5.6.1.3 The Construction Manager shall provide factory-level maintenance training in system problem identification and resolution. This training should be aimed at providing the Owner with means to perform all corrective, scheduled and preventative maintenance.

5.6.2 All training shall be conducted on-site or, if conducted at a remote location, travel and expenses for Owner's personnel shall be reimbursed to the Owner by the Construction Manager.

5.6.3 Training shall be conducted during the period described in the Schedule of Project Details.

5.6.4 For each training session, the Construction Manager shall submit a training plan for review. The plans shall include proposed dates/times/durations of training sessions, suggested class size/attendees, proposed locations, session objectives and an outline of the training topics to be presented. Training plans for all training sessions shall be submitted not later than the date set forth in the Schedule of Project Details. The Owner shall have the right to modify proposed training dates in conjunction with the Construction Manager to coordinate the schedule with availability of personnel and ongoing operations.

Part 6. ADDITIONAL SERVICES

6.1 OWNER'S WITNESS; RECRUITING AND TRAINING.

6.1.1 The following Additional Services shall be performed upon the written request of the Owner and shall be paid for as changes to the Work:

6.1.1.1 Preparing to serve or serving as a witness for the Owner in connection with any litigation or arbitration proceeding or other hearing after final contract close-out, and

6.1.1.2 Recruiting or training maintenance personnel, except as provided in the Contract Documents.

6.1.2 Notwithstanding anything to the contrary in this Agreement, the Owner shall not be responsible to pay, and the Construction Manager shall not be entitled to receive, compensation for any Additional Services if such services were required due to the fault of the Construction Manager, any member of the Construction Team, or the Construction Manager's failure to perform strictly in accordance with the terms of this Agreement.

Part 7. GUARANTEED MAXIMUM PRICE

7.1 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME.

7.1.1 The Owner may at any time request, and the Construction Manager shall thereafter submit within 45 days after the Owner's request, a proposed "**Guaranteed Maximum Price**" for the full scope of the Work; provided however, that if the Owner has not then requested a Guaranteed Maximum Price, the Construction Manager shall prepare and deliver a Guaranteed Maximum Price proposal not later than sixty (60) days after the receipt of ninety percent (90%) of the dollar value of the bids. The Guaranteed Maximum Price proposal shall include all of the components identified in Section [7.2](#). The Owner may accept or reject the Guaranteed Maximum Price proposal.

7.1.1.1 If the Owner approves the Guaranteed Maximum Price proposal on or before the date specified in the proposal for such acceptance, the Guaranteed Maximum Price proposal shall be effective and shall become a part of this Agreement.

7.1.1.2 If the Owner rejects any Guaranteed Maximum Price proposal, but the Owner nevertheless elects to proceed with the Project, a Guaranteed Maximum Price submittal will be required sixty (60) days after the receipt of ninety percent (90%) of the dollar value of the bids.

7.1.1.3 During the review period of the Guaranteed Maximum Price proposal, the Construction Manager shall continue to work under the Fixed Limit of Construction Cost and work with the Owner to refine the proposal, if required by the Owner, until it is either accepted or rejected.

7.1.1.4 The date on which the Guaranteed Maximum Price is accepted by the Owner shall not result in an extension of the Contract Time.

7.1.1.5 The Guaranteed Maximum Price is defined as the "Contract Sum" in the Standard General Conditions.

7.1.2 The Construction Manager will participate in Owner/Design Professional meetings and will be given ample opportunity to ask questions to obtain a thorough understanding of the intended final product. Particularly in the case of phased construction, the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Construction Manager shall provide in the Guaranteed Maximum Price proposal consideration for further development of the Drawings and Specifications by the Design Professional (including addition of detail) that is consistent with the Contract Documents, including items reasonably inferable therefrom or from the Owner's program (if provided to the Construction Manager), the Owner's comments on the Design (if provided to the Construction Manager), and general industry standards. Hence, the Construction Manager acknowledges that the Drawings and Specifications are not complete and agrees that the Guaranteed Maximum Price shall not increase as a result of this. However, 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 as described in Article 7 of the Standard General Conditions, "Changes in the Work."

7.1.3 The Guaranteed Maximum Price shall include a contingency (the "**Construction Manager's Contingency**").

7.1.3.1 The Construction Manager's Contingency shall represent a sum available for the Construction Manager's exclusive use to cover costs which would have been properly reimbursable as Construction Cost, such as minor work that was not included in a prior bid package or work not indicated on the bid drawings. Construction Manager's Contingency, to the extent available, may also be used to cover the cost of Work which should have reasonably been detected during a review of the design documents but was not, provided however, that the Construction Manger's Contingency will not be increased for use as a result of these items. Any savings in bid packages over the estimate shall accrue

to an Owner's contingency, which shall be available for the Owner's use in its sole discretion. The use of the Construction Manager's Contingency shall require prior written concurrence by the Owner for any item. In addition, a monthly report summarizing and detailing all of the Construction Manager's Contingency utilization shall be issued to the Owner.

7.2 BASIS OF GUARANTEED MAXIMUM PRICE.

7.2.1 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:

(a) a list of the Drawings and Specifications, including all Addenda thereto and the other Contract Documents, which were used in preparation of the Guaranteed Maximum Price proposal;

(b) If allowed by the Owner, a list of allowances and a statement of their basis, including all assumptions shall be included in the Guaranteed Maximum Price (any expenditures of allowances shall require the Owner's prior written approval);

(c) a list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications;

(d) a statement of the Construction Cost, organized by proposed bid package trade categories, allowances, contingency, change orders, general conditions items and the fee that comprise the Guaranteed Maximum Price;

(e) the Construction Schedule depicting the Work and the Date of Substantial Completion upon which the Guaranteed Maximum Price proposal is based;

(f) the costs for permits, anticipated tests, inspections, and other similar costs associated with the Work, which shall be carried as an Owner's set-aside, outside of the Guaranteed Maximum Price; and

(g) all applicable taxes (the Guaranteed Maximum Price shall not be changed as the result of the Construction Manager's failure to include any applicable tax, or as a result of any change in the Construction Manager's tax liabilities).

7.3 GUARANTEED MAXIMUM PRICE REVIEW AND ACCEPTANCE.

7.3.1 The Construction Manager shall meet with the Owner to review the Guaranteed Maximum Price proposal and the written statement of its basis, including all assumptions. If the Owner discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis or both; provided however, that the Owner shall have no duty to make any such discovery.

7.3.2 Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price shall be set forth in a Modification. The Guaranteed Maximum Price shall be subject to additions and deductions by Change Order or Construction Change Directive, as set forth in Article 7 of the Standard General Conditions, "Changes in the Work."

7.4 UNUSED PORTION OF GUARANTEED MAXIMUM PRICE.

Upon Final Completion of the Work, any unused portion of the Guaranteed Maximum Price, other than the Construction Manager's Fee and personnel charges, shall revert back to the Owner through reduction of the Guaranteed Maximum Price by Change Order.

Part 8. PAYMENT TO THE CONSTRUCTION MANAGER

8.1 SOLE REMUNERATION.

The Owner shall pay the Construction Manager, as Construction Manager's sole remuneration in connection with the Project, the Construction Cost in accordance with Section [2.10](#).

8.2 CONSTRUCTION MANAGER'S FEE.

8.2.1 The Construction Manager's Fee is based on the Professional Services rendered in connection with the Work. The amount of the Construction Manager's Fee is set forth in the Schedule of Project Details. In the case of changes to the Fixed Limit of Construction Cost or Guaranteed Maximum Price, not covered by Sections [3.8.6](#) and [3.8.7](#), that are required due to Owner change to the original scope included in this Agreement or for Design Professional error and omissions, the Construction Manager will be entitled to additional fee only in accordance with the Schedule of Project Details, Item 5a. No additional Construction Manager fee shall be allowed for any payments in satisfaction and resolution of claims or disputes.

8.2.1.1 The calculation for Trade Contractor's mark-up used in §7.6.3.3 of the Standard General Conditions (the net compounded amount) excludes any allowed Construction Manager's Fee.

8.2.2 In the case of a termination of the Contract by the Construction Manager pursuant to §8.7.2 and/or §14.3 of the Standard General Conditions, the Construction Manager's Fee through the date of termination shall be calculated as if the termination were by the Owner for convenience pursuant to §14.2 of the Standard General Conditions.

8.3 PAYMENT OF CONSTRUCTION COST.

8.3.1 The Construction Cost will be paid monthly as expenses are incurred in accordance with Article 9 of the Standard General Conditions. No retainage will be held on the Construction Manager's Personnel Charges or "General Conditions Items" (as described in Section [2.10.2](#) above). The Construction Manager's Fee for Pre-Construction Phase Services shall be billed and paid monthly in equal installments as set forth in the Schedule of Project Details. The Construction Manager's Fee for Construction Phase Services shall be billed and paid monthly in proportion to the Construction Base and General Conditions Items on which it is based.

8.3.2 The Construction Manager's Applications for Payment shall be accompanied by whatever supporting data substantiating the Construction Manager's right to payment that the Owner may reasonably require, such as copies of paid statements from Trade Contractors.

8.3.2.1 The Construction Manager shall prepare an Application for Payment Schedule for Trade Contractors which will require each Trade Contractor to provide a draft "pencil copy" payment request on or before the twenty-fifth (25th) of the month (comprising work from the twenty-fifth (25th) of the last month to the twenty-fifth (25th) of the present month) for Construction Manager approval. On or before the first (1st) day of each succeeding month, the Construction Manager shall submit to the Owner and the Design Professional a "Consolidated Application for Payment" including the Construction Manager's costs and showing in detail all monies to be disbursed to Trade Contractors from the approved Trade Contractor Applications for Payment, other cost items incurred and the proportionate amount of the Construction Manager's Fee. The Consolidated Application for Payment shall be complete in every respect, shall be accompanied by such supporting data substantiating the Construction Manager's right to payment as the Owner may reasonably require, and shall reflect retainage as provided for elsewhere in the Contract Documents.

8.3.2.2 Within seven (7) days after the Owner's receipt of the Consolidated Application for Payment, the Owner and the Construction Manager (and if requested by the Owner, the Design

Professional) will meet, and the Owner will act in accordance with the provisions of Standard General Conditions Articles 9.5.3 and 9.8.

8.3.2.3 If a Consolidated Application for Payment is submitted on a timely basis, payment by the Owner to the Construction Manager of the amounts included in the Consolidated Application for Payment and approved for payment shall be made within twenty-two (22) days after it is submitted.

8.3.2.4 Consolidated Applications for Payment may not include requests for payment of amounts the Construction Manager does not intend to pay to a Trade Contractor because of a dispute or other reason.

8.3.2.5 Where a submission is required by this Section [8.3.2](#) to be made by a particular date and that date falls on a weekend or holiday, submission shall be required by the next preceding business day.

8.4 GENERAL CONDITIONS COSTS.

The Construction Manager shall include in the Applications for Payment it submits to the Owner detailed statements of General Conditions Costs, as set forth and approved by the Owner in the Schedule of Project Details and described in Section [2.10.2](#), itemized by category and amount, documented with receipts, and shall highlight the items in expense reports if combined with non-reimbursable expenses. Any revisions to General Conditions line items as listed in the Schedule of Project Details shall require prior written approval of the Owner.

8.5 DISCOUNTS.

Trade discounts, rebates and refunds, and returns from sale of surplus materials and equipment shall accrue to the Owner to the extent the Owner makes funds available in a manner that allows such discounts, rebates and returns to be obtained, and the Construction Manager shall make provisions so that they can be secured. All items paid for by the Owner which are not consumed shall be turned over (or title transferred) to the Owner upon Final Completion. To the extent such items are being billed to the Owner on the basis of cost, the Construction Manager shall cause all members of the Construction Team to take advantage of all available discounts, rebates and the like and pass that advantage fully on to the Owner.

Part 9. MISCELLANEOUS PROVISIONS

9.1 LIQUIDATED DAMAGES; WAIVER OF CONSEQUENTIAL DAMAGES.

9.1.1 If, in the Schedule of Project Details, the parties (i) agree that the damages which the Owner will sustain as a result of a failure to meet the date of Substantial Completion set forth therein, except as modified by Change Order, are difficult or impossible to determine with certainty and (ii) in good faith estimate and set forth as fair compensation (and not as a penalty) "Liquidated Damages" to be based upon the actual date Substantial Completion is achieved, then Liquidated Damages shall apply.

9.1.1.1 If Liquidated Damages apply and Substantial Completion occurs later than the Substantial Completion date established in the Schedule of Project Details, except as modified by Change Order, to the extent not excused as a Force Majeure Event, as defined in §8.6.4 of the Standard General Conditions, Liquidated Damages shall be applied, reducing the Construction Manager's Fee, for each day of delay thereafter as set forth in the Schedule of Project Details.

9.1.2 If, but only if, Liquidated Damages apply, notwithstanding any other provision of this Agreement, the Owner waives all Claims against the Construction Manager for consequential damages arising out of or relating to the failure to achieve Substantial Completion on or before the date established therefor in the Schedule of Project Details, except as modified by Change Order.

9.1.3 If Liquidated Damages do not apply to a failure to achieve Substantial Completion on or before the date established therefor in the Schedule of Project Details, except as modified by Change Order, and in any event in the case of any other breach of the Agreement by the Construction Manager, then the Owner may pursue and enjoy any and all rights it may have at law or in equity, including claims for direct, incidental, and consequential damages.

9.1.4 Notwithstanding any other provision of this Agreement, the Construction Manager waives all Claims against the Owner for consequential damages, including damages incurred by the Construction Manager for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, general conditions and site expenses (except to the extent recovery is otherwise specifically permitted by this Agreement), and for loss of opportunity or profit.

9.1.5 If this Agreement includes a provision for Liquidated Damages, it shall not, on account of the Liquidated Damages provision, directly or indirectly or wholly or in part increase (or permit any increase in) the Construction Cost, the Guaranteed Maximum Price, or any fee or compensation it may be entitled to receive beyond what would have otherwise been charged. It is the intention of the parties that risk of Liquidated Damages will be borne solely by the members of the Construction Team and that none of that risk will in any way be passed or charged back to the Owner; provided, however, that the Construction Manager shall not, by contract or otherwise, require any Trade Contractor to bear the risk or burden of Liquidated Damages except to the extent of that Trade Contractor's responsibility for any delay giving rise to the imposition of Liquidated Damages.

9.2 EXHIBITS.

Any exhibits attached hereto are hereby incorporated into this Agreement and are deemed a material part of this Agreement.

9.3 NOTICES.

9.3.1 All notices required or permitted to be given by one party to the other under this Agreement shall be in writing and shall be sent by certified U.S. Mail, return receipt requested, or recognized overnight courier service, or shall be hand-delivered. Notices shall be effective upon the earlier of actual receipt or two (2) business days after posting or delivery to a courier, at the following addresses:

To the Owner:

The Regents of The University of Michigan
c/o Architecture, Engineering and Construction
326 East Hoover Avenue, Mail Stop E
Ann Arbor, Michigan 48109-1002

Attention: Executive Director

To the Construction Manager:

As shown in the Schedule of Project Details

9.3.2 Either party may change its address for the purpose of receiving notices under this Agreement by written notice to the other party in the manner set forth above.

9.4 RELATIONSHIP OF THE PARTIES.

Construction Manager agrees that its relationship with the Owner is one of an independent contractor, and that, except to the extent it is expressly permitted by this Agreement to do so, it will not act or represent that

it is acting as an agent of the Owner or incur any obligation on the part of the Owner. The Construction Manager acknowledges that the Owner is not a partner or joint-venturer of the Construction Manager and that the Construction Manager is not an employee or agent of the Owner.

9.5 CONFLICT OF INTEREST.

The Construction Manager warrants that to the best of the Construction Manager's knowledge, there exists no actual or potential conflict between the Construction Manager and the Owner, and its services under this Agreement, and in the event of change in either the Construction Manager's private interests or services under this Agreement, the Construction Manager will inform the Owner regarding possible conflict of interest which may arise as a result of the change. The Construction Manager also affirms that, to the best of the Construction Manager's knowledge, there exists no actual or potential conflict between an Owner employee and the Construction Manager. The Owner shall be entitled to take reasonable steps to manage any such conflicts of interest, up to and including prohibition in appropriate circumstances. The Construction Manager will ensure that all members of the Construction Manager's staff are made aware of and required to comply with this Section [9.5](#).

9.6 ADDITIONAL BONDING

In accordance with §11.8 of the Standard General Conditions, each Trade Contractor shall furnish a Performance Bond and Labor and Material Payment Bond, however, the Construction Manager may, in its discretion, determine whether any other members of the Construction Team will be required to supply bonds. All such bonds shall be (i) purchased solely at the expense of the Construction Manager (or the persons supplying them), without reimbursement under the Contract Sum or otherwise, and (ii) dual obligee bonds, naming the Owner as one of the obligees.

Part 10. REGENTAL APPROVAL

10.1 APPROVAL REQUIRED.

Even though it may have been executed by all parties, this Agreement shall not be binding upon the Owner unless and until the Project has been approved by the Owner's Board of Regents, if Regental approval is required for this Agreement.

10.2 FAILURE TO OBTAIN APPROVAL.

If the Construction Manager has been directed by the Owner to proceed with the Pre-Construction Services and approval of the Project is not obtained from the Owner's Board of Regents, then the Owner shall direct the Construction Manager to stop Work, and the Owner shall pay the Construction Manager for all Services rendered prior to its being directed to stop Work.

IN WITNESS WHEREOF, this Agreement for Professional Construction Management Services has been executed as of the date first written above.

(FIRM NAME)

THE REGENTS OF THE UNIVERSITY OF MICHIGAN

Construction Manager

Owner

By _____
(Signature)

By _____
Kevin P. Hegarty
Executive Vice President and Chief Financial Officer

(Printed Name)

(Title)