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ConsensusDocs 500 STANDARD AGREEMENT AND GENERAL CONDITIONS BETWEEN OWNER AND CONSTRUCTION MANAGER (Where the CM is At-Risk)

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ConsensusDocs 500

STANDARD AGREEMENT AND GENERAL CONDITIONS BETWEEN OWNER AND CONSTRUCTION MANAGER (Where the CM is At-Risk)

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ARTICLE 1 AGREEMENT

Project Number:

This Agreement is made this XXXXXXXX, by and between the

OWNER, Board of Trustees
 Michigan State University
 c/o Infrastructure Planning and Facilities
 1147 Chestnut Rd., Room 101
 East Lansing, MI 48824

and the

CONSTRUCTION MANAGER,

for construction and services in connection with the following

PROJECT XXXXXXXX

Notice to the Parties shall be given at the above addresses.

Design Professional is XXXXXXXX

ARTICLE 2 GENERAL PROVISIONS



2.1 RELATIONSHIP OF THE PARTIES Each Party agrees to act on the basis of mutual trust, good faith, and fair dealing.

2.1.1 Construction Manager shall furnish construction administration and management services and use the Construction Manager's diligent efforts to perform the Work in an expeditious manner consistent with the Contract Documents. The Parties shall each endeavor to promote harmony and cooperation among all Project participants.

2.1.2 The Construction Manager represents that it is an independent contractor and that in its performance of the Work it shall act as an independent contractor.

2.1.3 Neither the Construction Manager nor any of its agents or employees shall act on behalf of or in the name of the Owner except as provided in this Agreement unless authorized in writing by the Owner's Representative.

2.1.4 The Parties shall perform their obligations with integrity, ensuring at a minimum that each: (a) avoids conflicts of interest and promptly discloses any to the other Party; and (b) warrants that it has not and shall not pay or receive any contingent fees or gratuities to or from the other Party, including its agents, officers and employees, subcontractors, subconsultants or others for whom they may be liable, to secure preferential treatment.

2.1.5 The Construction Manager accepts the fiduciary relationship of trust and confidence established by this Agreement and covenants to the Owner to cooperate and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner. The Construction Manager represents that it possesses the requisite skill, expertise, and licensing to perform the required services.

2.2 DESIGN PROFESSIONAL The Owner, through its Design Professional, shall provide all architectural and engineering design services necessary for the completion of the Work, except as otherwise provided in the contract documents. The Construction Manager shall not be required to provide professional services which constitute the practice of architecture or engineering except as otherwise provided.

2.2.1 The Owner shall obtain from the Design Professional either a license for the Construction Manager and Subcontractors to use the design documents prepared by the Design Professional or ownership of the copyrights for such design documents, and shall indemnify and hold harmless the Construction Manager against any suits or claims of infringement of any copyrights or licenses arising out of the use of the design documents for the Project.

2.3 DEFINITIONS

2.3.1 "Agreement" means this ConsensusDocs 500 Standard Agreement and General Conditions Between Owner and Construction Manager, as modified, and exhibits and attachments made part of this agreement upon its execution.

2.3.1.1 The following referenced exhibits are a part of this Agreement: Exhibit A – Construction Manager's Proposal; Exhibit B – The General Conditions of Construction and the MSU Construction Standards; Exhibit C – Michigan State University Responsible Contractor Policy.

2.3.1.2 The Michigan State University purchase order is not considered a part of this Agreement.



2.3.2 “Business Day” means all Days, except weekends and official federal or state holidays where the Project is located.

2.3.3 A “Change Order” is a written order signed by the Owner and the Construction Manager after execution of this Agreement, indicating changes in the scope of the Work, the GMP and Date of Substantial Completion or Date of Final Completion, including substitutions proposed by the Construction Manager and accepted by the Owner. Change Orders will be issued through the Owner’s Oracle Primavera Unifier system.

2.3.4 The “Contract Documents” consist of this Agreement, the existing Contract Documents listed in section 15.1, drawings, specifications, addenda issued and acknowledged prior to execution of this Agreement, information furnished by the Owner pursuant to subsection 4.3, and modifications issued in accordance with this Agreement.

2.3.5 “Contract Time” is the period between the Date of Commencement and the Final Completion.

2.3.6 “Cost of the Work” means the costs and discounts specified in ARTICLE 8.

2.3.7 The “Construction Manager” is the person or entity identified in ARTICLE 1 and includes the Construction Manager’s Representative.

2.3.8 “Date of Commencement” is as set forth in section 6.1.

2.3.9 “Day” means a calendar day.

2.3.10 “Defective Work” is any portion of the Work that does not conform with the Contract Documents.

2.3.11 “Design Professional” means the licensed architect or engineer, and its consultants, named in ARTICLE 1, and retained by the Owner to perform design services for the Project.

2.3.12 “FADE” or “F.A.D.E.” is the acronym used to reference the University’s “Facility Asset Data Exchange” process. Details on the process, and the responsibilities of the parties to this Agreement can be found on the University’s website. Should the FADE process change in form or content during the course of the project, it does not relieve the CM from fully executing the work required to compile the asset information and complete the Asset Log. Refer to the following locations for the process outline and instructions:

<https://us.promapp.com/msu/Process/Minimode/Permalink/FiD6QFhsKRIThfdphYuAz8>

2.3.13 “Final Completion” occurs on the date when the Construction Manager’s obligations under this Agreement are complete and accepted by the Owner and final payment becomes due and payable. This date shall be confirmed by a Certificate of Final Completion signed by the Owner and the Construction Manager.

2.3.14 “Construction Change Directive” is a change to the Work directed by the Owner pursuant to section 9.2. It may also be referred to as a change request or Change Management record in the Skire Unifier system.

2.3.15 “Laws” mean federal, state, and local laws, ordinances, codes, rules, and regulations applicable to the Work with which the Construction Manager must comply that are enacted as of the Agreement date.



2.3.16 A “Material Supplier” is a person or entity retained by the Construction Manager to provide material and equipment for the Work.

2.3.17 “Others” means other contractors, material suppliers, and persons at the Worksite who are not employed by the Construction Manager, or Subcontractors.

2.3.18 “Overhead” means (a) payroll costs and other compensation of the Construction Manager’s employees in the Construction Manager’s principal and branch offices (including personnel and administration); (b) general and administrative expenses of the Construction Manager’s principal and branch offices including charges against the Construction Manager for delinquent payments, and costs related to the correction of defective work; and (c) the Construction Manager’s capital expenses, including interest on capital used for the Work.

2.3.19 “Owner” is the person or entity identified in ARTICLE 1 and includes the Owner’s Representative.

2.3.20 The “Owner’s Program” is an initial description of the Owner’s objectives, including budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, site requirements, and any requirements for phased occupancy.

2.3.21 The “Parties” are collectively the Owner and the Construction Manager.

2.3.22 The “Project,” as identified in ARTICLE 1, is the building, facility, or other improvements for which the Construction Manager is to perform Work under this Agreement. It may also include construction by the Owner or Others.

2.3.23 The “Schedule of the Work” is the document prepared by the Construction Manager that specifies the dates on which the Construction Manager plans to begin and complete various parts of the Work, including dates on which information and approvals are required from the Owner as further defined in Subparagraph 3.3.3.

2.3.24 “Subcontractor” is a person or entity retained by the Construction Manager as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The term Subcontractor does not include the Design Professional or Others.

2.3.25 “Substantial Completion” of the Work, or of a designated portion, occurs on the date when the Work is sufficiently complete in accordance with the Contract Documents so that the Owner may occupy or utilize the Work, or a designated portion, for the use for which it is intended, without unscheduled disruption. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond the Construction Manager’s control. This date shall be confirmed by a certificate of Substantial Completion signed by the Owner, Design Professional, and Construction Manager.

2.3.26 A “Sub-subcontractor” is a person or entity who has an agreement with a Subcontractor or another Sub-subcontractor to perform a portion of the Subcontractor’s Work.

2.3.27 “Terrorism” means a violent act, or an act that is dangerous to human life, property, or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion. Terrorism includes, but is not limited to, any act certified by the United States government as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.



2.3.28 “Work” means the construction and services necessary or incidental to fulfill the Construction Manager's obligations for the Project in conformance with this Agreement and the other Contract Documents. The Work may refer to the whole Project or only a part of the Project if work is also being performed by the Owner or Others.

2.3.29 “Worksite” means the geographical area of the Project location as identified in ARTICLE 1 where the Work is to be performed.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

3.1 GENERAL RESPONSIBILITIES

3.1.1 Construction Manager shall provide all labor, materials, equipment, and services necessary to complete the Work, all of which shall be provided in full accord and reasonably inferable from the Contract Documents.

3.1.2 The Construction Manager shall be responsible for the supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized, unless the Contract Documents give other specific instructions. In such case, the Construction Manager shall not be liable to the Owner for damages resulting from compliance with such instructions unless the Construction Manager recognized and failed to timely report to the Owner any error, inconsistency, omission, or unsafe practice that it discovered in the specified construction means, methods, techniques, sequences, or procedures.

3.1.3 WORKSITE VISIT The Construction Manager acknowledges that it has visited, or has had the opportunity to visit, the Worksite to visually inspect the general and local conditions which could affect the Work.

3.1.4 Construction Manager shall perform Work only within locations allowed by the Contract Documents, Law, and applicable permits.

3.1.5 RESPONSIBLE CONTRACTOR The Construction Manager shall comply with the Michigan State University Responsible Contractor Policy, attached as Exhibit C, and take necessary steps to ensure its subcontractors and suppliers also comply.

3.2 CONSTRUCTION PERSONNEL AND SUPERVISION

3.2.1 The Construction Manager shall provide competent supervision for the performance of the Work. Before commencing the Work, the Construction Manager shall notify the Owner in writing of the name and qualifications of its proposed superintendent(s) and project manager, so the Owner may review the individual's qualifications. If, for reasonable cause, the Owner refuses to approve the individual, or withdraws its approval after once giving it, the Construction Manager shall name a different superintendent for the Owner's review. Any disapproved superintendent shall not perform in that capacity thereafter at the Worksite.

3.2.2 The Construction Manager shall be responsible to the Owner for acts or omissions of Parties or entities performing portions of the Work for or on behalf of the Construction Manager or any of its Subcontractors.



3.2.3 The Construction Manager shall permit only fit and skilled persons to perform the Work. The Construction Manager shall enforce safety procedures, strict discipline and good order among persons performing the Work.

3.2.4 CONSTRUCTION MANAGER'S REPRESENTATIVE The Construction Manager's authorized representative is XXXXXX. The Construction Manager's Representative shall possess full authority to receive instructions from the Owner and to act on those instructions. The Construction Manager shall not change its representative or their authority without prior written approval from the Owner, which approval shall not unreasonably be withheld.

3.2.5 The Construction Manager and each of its trade contractors and suppliers shall comply with the MSU Contractor Criminal Background Check Requirements, current as of the date on this Agreement.

3.3 PRECONSTRUCTION SERVICES The Preconstruction Services under this section are included in Construction Manager's work.

3.3.1 PRELIMINARY EVALUATION The Construction Manager shall provide a preliminary evaluation of the Owner's Program and report such findings to the Owner and the Design Professional. The evaluation may include, but not be limited to: (a) a commentary on proposed scope and schedule, (b) preparation of a conceptual estimate to budget comparison, and (c) preparation of a site analysis.

3.3.2 CONSULTATION The Construction Manager shall schedule and attend regular meetings with the Owner and Design Professional. The Construction Manager shall consult with the Owner and Design Professional regarding site use and improvements and the selection of materials, building systems, and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation, and construction completion; and factors related to construction cost, including estimates of alternative designs or materials.

3.3.3 SCHEDULE OF THE WORK When Project requirements have been sufficiently identified, at a minimum at the completion of schematic design, design development, 50% construction drawings, and 100% construction drawings, the Construction Manager shall prepare a preliminary Schedule of the Work for the Design Professional's review and the Owner's approval. The Construction Manager shall coordinate and integrate the Schedule of the Work with the services and activities of the Owner, Construction Manager, Design Professional, and the requirements of governmental entities. As design proceeds, the Construction Manager shall update the Schedule of the Work to indicate proposed activity sequences, durations, or milestone dates for such activities as receipt and approval of pertinent information, issuance of the drawings and specifications, the preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements and estimated date of Substantial Completion of the Project. If Schedule of the Work updates indicates that milestone dates contained in prior Schedules of the Work will not be met, the Construction Manager shall notify and make recommendations to the Owner. If the Project is to be completed in phases, the Construction Manager shall make recommendations to the Owner and Design Professional regarding the phased issuance of the drawings and specifications..

3.3.4 ESTIMATES

3.3.4.1 When the Owner has sufficiently identified the Owner's Program and other Project requirements and the Design Professional has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Design Professional and approval



of the Owner, an initial estimate for the Project, utilizing area, volume, or similar conceptual estimating techniques.

3.3.4.2 When schematic or preliminary design documents have been completed by the Design Professional and approved by the Owner, the Construction Manager shall prepare for the review of the Design Professional and approval of the Owner, a more detailed budget with supporting data. During the preparation of the design development documents or documents of comparable detail, the Construction Manager shall update and refine this estimate at appropriate intervals agreed upon by the Owner and Construction Manager.

3.3.4.3 When design development documents or documents of comparable detail have been completed by the Design Professional and approved by the Owner, the Construction Manager shall prepare a further detailed estimate with supporting data for review by the Design Professional and approval by the Owner. During the preparation of the drawings and specifications, the Construction Manager shall update and refine this estimate at appropriate intervals agreed upon by the Owner and Construction Manager.

3.3.4.4 If any estimate submitted to the Owner exceeds previously approved estimates, and/or the Project Budget, the Construction Manager shall notify and make recommendations to the Owner. The Construction Manager's recommendations and related cost studies may be based on the following as deemed appropriate: reduction in Project scope or quality, use of alternate construction methods, and/or participation in value engineering exercises with the Design Professional and the Owner.

3.3.4.5 Prior to release of bid packages for subcontractor pricing, the Construction Manager shall submit to the Owner a bid package estimate that includes all bid packages to be bid and awarded with their respective estimates. The Construction Manager's general conditions, overhead and profit, and contingencies for construction, owner, and design shall also be identified. The total of the bid package estimate shall correspond with the most recently authorized Project Budget.

3.3.5 CONSTRUCTION DOCUMENT REVIEW The Construction Manager shall review the drawings and specifications in an effort to identify potential constructability problems that could impact the Construction Manager's ability to perform the Work in an expeditious and economical manner. The Construction Manager shall issue a report to the Design Professional and Owner for their review and action as appropriate. In addition, the Construction Manager shall promptly report to the Owner and the Design Professional any errors or omissions which it discovers in the drawings and specifications.

3.3.6 TEMPORARY FACILITIES Construction Managers shall make recommendations regarding temporary construction facilities, equipment, materials, and services for common use by Construction Manager, its Subcontractors, Sub-subcontractors, and Material Suppliers.

3.3.7 LONG-LEAD-TIME ITEMS Construction Manager shall recommend to Owner and Design Professional a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Schedule of the Work. Construction Manager shall help expedite the delivery of long-lead-time items.

3.3.8 SOLICITATION OF SUBCONTRACTORS AND SUPPLIERS The Construction Manager shall seek to develop Subcontractor interest in the Project and shall furnish to the Owner and Design Professional a list of pre-qualified subcontractors and suppliers from whom proposals may be requested for each principal portion of the Work. The Owner shall promptly reply in writing to the Construction Manager if the Owner or Design Professional know of any objection to a subcontractor.



The Owner may designate specific persons or entities from which the Construction Manager shall solicit bids. Under no circumstances shall the CM solicit proposals from subcontractors or suppliers without the approval of the Owner.

3.3.8.1 The Construction Manager shall conduct competitive Subcontractor bidding in accordance with Owner criteria and solicit bids from Subcontractors acceptable to the Owner. The Owner must approve the Construction Manager bidding on any work or self-performing the work. The method outlined in the Construction Manager's Proposal for procurement shall be reviewed and approved by the Owner prior to implementation. The Owner, at its sole option and request, shall be entitled to participate in the bid openings. Upon receiving bids, the Construction Manager shall prepare a bid analysis, review the responsiveness and responsibility of each bid received, and make recommendations to accept or reject bids. The Owner shall participate in authorizing all awards, and the Construction Manager shall submit a bid tabulation with each authorization request and indicate the budget allowance for the subject award. Following the Owner's approval, the Construction Manager shall award Trade Contracts consistent with all obligations and conditions defined in the Contract Documents. In general, the Construction Manager shall base recommendations and decisions regarding trade contract awards on the lowest responsible and conforming bid price results following usual post-bid qualification activities. However, if conditions warrant, the Construction Manager may recommend trade contract awards to non-low bid firms, provided that such recommendations are submitted in writing with appropriate justification. The Owner, at its sole discretion, shall accept or reject such award recommendations in writing.

3.3.8.2 Unless otherwise expressly authorized in writing by the Owner, neither the Construction Manager nor any firm of which any officer, director, supervisory employee or stockholder of the Construction Manager is an officer, director, supervisory employee or stockholder or owner, or of which the Construction Manager is a stockholder or owner, shall, during the term of this contract, and until final payment for the services provided for herein is made by the Owner, make or cause to be made any bid on this Project. However, the Construction Manager shall not be prohibited from performing Trade Work where a Subcontractor has failed to perform or as provided in subsection 3.3.8.1.

3.3.9 EQUAL EMPLOYMENT OPPORTUNITY The Construction Manager shall consult with the Owner regarding equal employment opportunity and affirmative action programs.

3.3.10 CONSULTANTS Construction Manager shall assist Owner in selecting, retaining, and coordinating the professional services of a surveyor, testing laboratories, and special consultants as needed.

3.3.11 PERMITS Construction Manager shall assist Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by Construction Manager.

3.3.12 OTHER PRECONSTRUCTION SERVICES Construction Manager shall provide such other preconstruction services as are agreed upon by the Parties and identified in an attached exhibit to this Agreement.

3.4 GUARANTEED MAXIMUM PRICE (GMP)

3.4.1 At the option of the Owner, and at such time as the Owner and Construction Manager agree the drawings and specifications are sufficiently complete, the Construction Manager shall prepare and



submit to the Owner in writing a GMP proposal or Cost of Construction estimate. The estimate / proposal shall include the sum of the estimated cost of the Work, the Construction Manager's Fee, the clarifications and assumptions upon which it is based, allowances, and reasonable contingencies. The Construction Manager does not guarantee any specific line item provided as part of the GMP but agrees that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with this Agreement. In the absence of a GMP, the CM shall prepare and document the same level of cost information as required for a GMP to establish the CM estimate for the "Cost of Construction", and this phrase shall be interchangeable with GMP in this Agreement, except that there is no guarantee on the part of the CM that the Cost of Construction will not be exceeded

3.4.2 BASIS OF GUARANTEED MAXIMUM PRICE Construction Manager shall include with the GMP proposal a written statement of its basis, which shall include:

3.4.2.1 a list of the drawings and specifications, including all addenda, which were used in preparation of the GMP Proposal;

3.4.2.2 a list of allowances and a statement of their basis;

3.4.2.3 a list of the assumptions and clarifications made by Construction Manager in the preparation of the GMP Proposal to supplement the information contained in the drawings and specifications;

3.4.2.4 the Date of Substantial Completion or the Date of Final Completion upon which the proposed GMP is based, and the Schedule of Work upon which the Date of Substantial Completion or the Date of Final Completion is based;

3.4.2.5 a schedule of applicable alternate prices;

3.4.2.6 a schedule of applicable unit prices;

3.4.2.7 a statement of any work to be self-performed by Construction Manager that has been pre-approved by the Owner.

3.4.2.8 A list of all bid packages and purchase orders the Construction Manager anticipates awarding; and

3.4.2.9 A list of contingencies, including Owner, Design and / or bidding contingencies (if still applicable), as well as any CM Contingency, which will be managed by the Construction Manager subject to the approval by the Owner.

3.4.3 The Construction Manager shall meet with the Owner and Design Professional to review the GMP. If the Owner or Design Professional discovers any inconsistencies, inaccuracies, or omissions in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the GMP. The Owner shall then give prompt written approval of the GMP. The duration of the Owner and Design Professional GMP review period shall be established at the initial GMP presentation meeting.

3.4.4 The Owner shall cause the Design Professional to revise the drawings and specifications to the extent necessary to reflect the clarifications, assumptions, and allowances on which the GMP is based. Revised drawings and specifications shall be furnished to the Construction Manager in accordance with the current Schedule of the Work, unless otherwise agreed by the Owner,



Construction Manager, and Design Professional. The Construction Manager shall promptly notify the Owner and Design Professional if the revised drawings and specifications are inconsistent with the GMP's clarifications, assumptions, and allowances.

3.4.5 If the Contract Documents are not complete at the time the GMP proposal is submitted to Owner, Construction Manager shall provide in the GMP for further development of the Contract Documents. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Document.

3.4.6 If this Agreement is executed before establishment of the Guaranteed Maximum Price and its acceptance by Owner, then the GMP and its basis shall be set forth in Amendment 1.

3.4.7 Allowances shall include the costs of materials, supplies, and equipment delivered to the Worksite less applicable trade discounts and including requisite taxes, unloading and handling at the Worksite, and labor and installation, unless specifically stated otherwise. Construction Manager's overhead and profit for the allowances shall be included in the GMP, but not in the allowances. The GMP shall be adjusted by Change Order to reflect the actual costs when they are greater than or less than the allowances.

3.4.8 FAILURE TO ACCEPT THE GMP PROPOSAL Unless Owner accepts the GMP Proposal in writing on or before the date specified in the GMP Proposal for such acceptance and so notifies Construction Manager, the GMP Proposal shall not be effective. If Owner fails to accept the GMP Proposal, or rejects the GMP Proposal, Owner shall have the right to:

3.4.8.1 suggest modifications to the GMP Proposal. If such modifications are accepted in writing by Construction Manager, the GMP Proposal shall be deemed accepted in accordance with §3.4.6;

3.4.8.2 direct Construction Manager to proceed on the basis of reimbursement as provided in ARTICLE 7 and ARTICLE 8 without a GMP, in which case all references in this Agreement to the GMP shall not be applicable; or

3.4.8.3 terminate the Agreement for convenience in accordance with §12.3. In the absence of a GMP the Parties may establish a Date of Substantial Completion or a Date of Final Completion.

3.4.9 PRE-GMP WORK Before Owner's acceptance of the GMP Proposal, Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as provided in this Agreement or as Owner may specifically authorize in writing.

3.5 COOPERATION WITH WORK OF OWNER AND OTHERS

3.5.1 The Owner may perform work at the Worksite directly or by Others. Any agreements with Others to perform construction or operations related to the Project shall include provisions pertaining to insurance, indemnification, waiver of subrogation, consequential damages, coordination, interference, cleanup, and safety that are substantively the same as the corresponding provisions of this Agreement.

3.5.2 If the Owner elects to perform work at the Worksite directly or by Others, the Construction Manager and Owner shall coordinate the activities of all forces at the Worksite and agree upon fair and reasonable schedules and operational procedures for Worksite activities. The Owner shall



require each separate contractor to cooperate with the Construction Manager and assist with the coordination of activities and the review of construction schedules and operations. The GMP or the Date of Substantial Completion or the Date of Final Completion shall be equitably adjusted, as mutually agreed by the Parties, for changes made necessary by the coordination of construction activities, and the Schedule of the Work shall be revised accordingly. The Construction Manager, the Owner, and Others shall adhere to the revised Schedule of the Work.

3.5.3 With regard to the work of Owner and Others, Construction Manager shall (a) proceed with the Work in a manner that does not hinder, delay, or interfere with the work of Owner or Others or cause the work of Owner or Others to become defective; (b) afford Owner or Others reasonable access for introduction and storage of their materials and equipment and performance of their activities; and (c) coordinate Construction Manager's Work with theirs.

3.5.4 Before proceeding with any portion of the Work affected by the construction or operations of Owner or Others, Construction Manager shall give Owner prompt, written notification of any known defects Construction Manager discovers in their work which will prevent the proper execution of the Work. Construction Manager's obligations in this subsection do not create a responsibility for the work of Owner or Others but are for the purpose of facilitating the Work. If Construction Manager does not notify Owner of known defects interfering with the performance of the Work, Construction Manager acknowledges that the work of Owner or Others is not defective and is acceptable for the proper execution of the Work. Following receipt of written notice from Construction Manager of defects, Owner shall promptly issue an Interim Directive informing Construction Manager what action, if any, Construction Manager shall take with regard to the defects.

3.6 CONSTRUCTION SERVICES AND ADMINISTRATION

3.6.1 Prior to commencing the Work, Construction Manager shall examine and compare the drawings and specifications with information furnished by Owner that are considered Contract Documents, relevant field measurements made by Construction Manager, and any visible conditions at the Worksite affecting the Work.

3.6.2 Should, the Construction Manager discover any errors, omissions, or inconsistencies in the Contract Documents, the Construction Manager shall promptly report them to the Owner. It is recognized, however, that the Construction Manager is not acting in the capacity of a licensed design professional, and that the Construction Manager's examination is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions, or inconsistencies or to ascertain compliance with applicable laws, building codes, or regulations. Following receipt of written notice from the Construction Manager of defects, the Owner shall promptly inform the Construction Manager what action, if any, the Construction Manager shall take with regard to the defects.

3.6.3 The Construction Manager shall have no liability for errors, omissions, or inconsistencies discovered under this section, unless Construction Manager knowingly fails to report a recognized problem to the Owner.

3.6.4 **COST REPORTING** The Construction Manager shall keep such full and detailed accounts as are necessary for proper financial management under this Agreement. The Construction Manager shall maintain a complete set of all books and records prepared or used by the Construction Manager with respect to the Project. The Construction Manager's records supporting its performance and billings under this Agreement shall be current, complete, and accurate and maintained according to Generally Accepted Accounting Principles. The Owner shall, upon request, be afforded access to and the right to examine all of the Construction Manager's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to this Agreement during normal



business hours. The Construction Manager shall preserve and afford the Owner the right to examine all such records for a period of three (3) years after the final payment or longer where required by Law. The Construction Manager shall preserve all records relating to a claim arising out of the performance of this Agreement until the claim has been resolved. In the event that an examination of the Construction Manager's records discloses any payment error, the Construction Manager shall promptly refund any overpayment it has received. Further, if any governmental agency provides any funds for the Project, then the Construction Manager shall maintain such records and permit such audits of its records as are required by such governmental agency. This provision shall also apply to Subcontractors and Suppliers.

3.6.4.1 The Construction Manager agrees to use reasonable skill and judgment in the preparation of cost estimates and Schedule of the Work, but does not warrant or guarantee their accuracy within accepted standards of professional care.

3.6.5 MONTHLY REPORT In a format acceptable to the Owner, the Construction Manager shall provide a monthly report showing the status of the Construction Cost and Project budget, trade contracts awarded, updated Project schedule, allowances and contingencies in this contract, allowances and contingencies in trades contracts, payments made by the Owner to the Construction Manager, projected monthly cash flow requirements through Project completion, Requests for Information log, submittals log, Design Professional's Supplemental Instructions Log, and Proposed Change Order log.

3.6.5.1 The Construction Manager shall fully utilize the Unifier project management system for the applicable parts of its Monthly Report

3.7 MATERIALS FURNISHED BY OWNER OR OTHERS

3.7.1 If the Work includes installation of materials or equipment furnished by the Owner or Others, it shall be the responsibility of the Construction Manager to examine the items so provided and thereupon handle, store, and install the items, unless otherwise provided in the Contract Documents, with such skill and care as to provide a satisfactory and proper installation. Loss or damage due to acts or omissions of the Construction Manager shall be the responsibility of the Construction Manager and may be deducted from any amounts due or to become due the Construction Manager. Any defects discovered in such materials or equipment shall be reported at once to the Owner. Following receipt of written notice from the Construction Manager of defects, the Owner shall promptly inform the Construction Manager what action, if any, the Construction Manager shall take with regard to the defects. If the Construction Manager does not notify the Owner of defects discovered in such materials and equipment, the Construction Manager acknowledges that the materials and equipment is acceptable for the proper execution of the Work.

3.8 TESTS AND INSPECTIONS

3.8.1 The Construction Manager shall schedule all required tests, approvals and inspections of the Work or portions thereof at appropriate times so as not to delay the progress of the Work or other work related to the Project. The Construction Manager shall give proper notice to all required Parties of such tests, approvals, and inspections. Construction Manager shall schedule tests and inspections to ensure that the Owner's representative and Others may timely observe the tests at the normal place of testing. Except as provided in subsection 3.8.3, the Owner shall bear all expenses associated with tests, inspections, and approvals required by the Contract Documents which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity retained by the Owner. Unless otherwise required by the Contract Documents, required certificates of testing,



approval, or inspection shall be secured by the Construction Manager and promptly delivered to the Owner.

3.8.2 If the Owner or appropriate authorities determine that tests, inspections, or approvals in addition to those required by the Contract Documents will be necessary, the Construction Manager shall arrange for the procedures and give timely notice to the Owner and Others who may observe the procedures. Costs of the additional tests, inspections, or approvals are at the Owner's expense except as provided in the subsection below.

3.8.3 If the procedures described in the two subsections immediately above indicate that portions of the Work fail to comply with the Contract Documents the Construction Manager shall be responsible for the costs of correction, retesting, and re-inspection.

3.9 WORKMANSHIP

3.9.1 The Work shall be executed in accordance with the Contract Documents in a workmanlike manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work and shall be new except such materials as may be expressly provided in the Contract Documents to be otherwise.

3.10 WARRANTY

3.10.1 Construction Manager warrants that all materials and equipment furnished under the Construction Phase of this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. At Owner's request, Construction Manager shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. Construction Manager further warrants that the Work shall be free from material defects not intrinsic in the design or materials required in the Contract Documents. Construction Manager's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by Owner or others, or abuse. Construction Manager's warranty shall commence on the Date of Substantial Completion of the Work, or of a designated portion.

3.10.2 With respect to any portion of Work first performed after Substantial Completion, Construction Manager's warranty obligation shall be extended by the period of time between Substantial Completion and the actual performance of the later Work.

3.10.3 To the extent products, equipment, systems, or materials incorporated in the Work are specified and purchased by Owner, they shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face of any such warranty.

3.10.4 Construction Manager shall obtain from its Subcontractors and Suppliers any special or extended warranties required by the Contract Documents. Construction Manager's liability for such warranties shall be limited to the one-year correction period referred to in the section immediately below. After that period Construction Manager shall provide reasonable assistance to Owner in enforcing the obligations of Subcontractors or Suppliers for such extended warranties.

3.11 CORRECTION OF WORK WITHIN ONE YEAR



3.11.1 If prior to Substantial Completion or within one year after the date of Substantial Completion of the Work any Defective Work is found, the Owner shall promptly notify the Construction Manager in writing. Unless the Owner provides written acceptance of the condition, the Construction Manager shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. If within the one-year correction period the Owner discovers and does not promptly notify the Construction Manager or give the Construction Manager an opportunity to test or correct Defective Work as reasonably requested by the Construction Manager, the Owner waives the Construction Manager's obligation to correct that Defective Work as well as the Owner's right to claim a breach of the warranty with respect to that Defective Work.

3.11.2 If Construction Manager fails to correct Defective Work within a reasonable time after receipt of written notice from Owner before final payment, Owner may correct it in accordance with Owner's right to carry out the Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting the Defective Work from payments then or thereafter due Construction Manager. If payments then or thereafter due Construction Manager are not sufficient to cover such amounts, Construction Manager shall pay the difference to Owner.

3.11.3 If after the one-year correction period but before the applicable limitation period the Owner discovers any Defective Work, the Owner shall, unless the Defective Work requires emergency correction, promptly notify the Construction Manager. If the Construction Manager elects to correct the Work it shall provide written notice of such intent within fourteen (14) Days of its receipt of notice from the Owner. The Construction Manager shall complete the correction of Work within a mutually agreed timeframe. If the Construction Manager does not elect to correct the Work, the Owner may have the Work corrected by itself or Others and charge the Construction Manager for the reasonable cost of the correction. The Owner shall provide the Construction Manager with an accounting of correction costs it incurs.

3.11.4 If Construction Manager's correction or removal of Defective Work causes damage to or destroys other completed or partially completed work or existing building, Construction Manager shall be responsible for the cost of correcting the destroyed or damaged property.

3.11.5 The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of Construction Manager's other obligations under the Contract Documents.

3.11.6 Prior to final payment, at Owner's option and with Construction Manager's agreement, Owner may elect to accept Defective Work rather than require its removal and correction. In such cases the GMP shall be equitably adjusted for any diminution in the value of the Project caused by such Defective Work.

3.11.7 The Owner, Construction Manager, and Design Professional shall conduct a walk-through 11 months after substantial completion to identify remaining warranty and punchlist items. This will also serve as an opportunity to evaluate the operational effectiveness of the building for learning to be applied to future projects. The Design Professional shall produce a report detailing the findings of the walk-through.

3.12 CORRECTION OF COVERED WORK

3.12.1 On request of the Owner, Work that has been covered without a requirement that it be inspected prior to being covered may be uncovered for the Owner's inspection. The Owner shall pay for the costs of uncovering and replacement if the Work proves to be in conformance with the



Contract Documents, or if the defective condition was caused by the Owner or Others. If the uncovered Work proves to be defective, the Construction Manager shall pay the costs of uncovering and replacement.

3.12.2 If contrary to specific requirements in the Contract Documents or contrary to a specific request from the Owner, a portion of the Work is covered, the Owner, by written request, may require the Construction Manager to uncover the Work for the Owner's observation. In this circumstance the Work shall be replaced at the Construction Manager's expense and with no adjustment to the Dates of Substantial or Final Completion.

3.13 SAFETY OF PERSONS AND PROPERTY

3.13.1 SAFETY PRECAUTIONS AND PROGRAMS The Construction Manager shall have overall responsibility for safety precautions and programs in the performance of the Work. However, such obligation does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable Laws.

3.13.2 The Construction Manager shall seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect: (a) its employees and other persons at the Worksite; (b) materials and equipment stored at onsite or offsite locations for use in the Work; and (c) property located at the Worksite and adjacent to Work areas, whether or not the property is part of the Worksite.

3.13.3 CONSTRUCTION MANAGER'S SAFETY REPRESENTATIVE The Construction Manager's Worksite Safety Representative is XXXXXXXX, who shall act as the Construction Manager's authorized safety representative with a duty to prevent accidents. If no individual is identified in this subsection, the safety representative shall be the Construction Manager's Representative. The Construction Manager shall report promptly in writing all recordable accidents and injuries occurring at the Worksite in compliance with paragraph 4.02.9 of the CM General Conditions. When the Construction Manager is required to file an accident report with a public authority, the Construction Manager shall furnish a copy of the report to the Owner.

3.13.4 The Construction Manager shall provide the Owner with copies of all notices required of the Construction Manager by law or regulation and in compliance with paragraph 4.02.9 of the CM General Conditions. The Construction Manager's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction. The Construction Manager shall promptly alert the Owner of any inspections and/or violations issued by MIOSHA or other agencies.

3.13.5 Damage or loss not insured under property insurance that may arise from the Work, to the extent caused by negligent acts or omissions of the Construction Manager, or anyone for whose acts the Construction Manager may be liable, shall be promptly remedied by the Construction Manager. With regard to damage or loss attributable to the acts or omissions of the Owner or Others and not to the Construction Manager, the Owner may either (a) promptly remedy the damage or loss; or (b) accept the damage or loss.

3.13.6 If the Owner deems any part of the Work or Worksite unsafe, the Owner, without assuming responsibility for the Construction Manager's safety program, may require the Construction Manager to stop performance of the Work or take corrective measures satisfactory to the Owner, or both. If the Construction Manager does not adopt corrective measures, the Owner may perform them and deduct their cost from the GMP. The Construction Manager agrees to make no claim for damages,



or an increase in the GMP, or for a change in the Dates of Substantial or Final Completion based on the Construction Manager's compliance with the Owner's reasonable request.

3.14 EMERGENCIES In an emergency affecting the safety of persons or property, the Construction Manager shall act in a reasonable manner to prevent threatened damage, injury, or loss. If appropriate, an equitable adjustment in GMP or Date of Substantial Completion or Date of Final Completion shall be determined as provided for in ARTICLE 9. The Construction Manager agrees to make no claim for damages, or an increase in the GMP, or for a change in the Dates of Substantial or Final Completion if the emergency event is directly caused by the negligent actions of the Construction Manager.

3.15 HAZARDOUS MATERIALS

3.15.1 A Hazardous Material is any substance or material identified now or in the future as hazardous under Laws or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or clean-up. Unless otherwise required by the contract documents, the Construction Manager shall not be obligated to commence or continue work until any Hazardous Material discovered at the Worksite has been removed, rendered or determined to be harmless by the Owner as certified by an independent testing laboratory, and approved by the appropriate governmental agency.

3.15.2 If after commencing the Work, unforeseen Hazardous Material is discovered at the Worksite, the Construction Manager shall be entitled to immediately stop Work in the affected area. The Construction Manager shall promptly report the condition to the Owner, the Design Professional, and, if required, the governmental agency with jurisdiction. The stop work order shall be confirmed by issuance of a Construction Change Directive.

3.15.3 The Construction Manager shall not be required to perform any Work relating to or in the area of Hazardous Material without written mutual agreement.

3.15.4 The Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether the material requires corrective measures or remedial action. Such measures shall be the sole responsibility of the Owner and shall be performed in a manner minimizing any adverse effect upon the Work. The Construction Manager shall resume Work in the area affected by any unforeseen Hazardous Material only upon written agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction.

3.15.5 If the Construction Manager incurs additional costs or is delayed due to the presence or remediation of unforeseen Hazardous Material, the Construction Manager shall be entitled to an equitable adjustment in the GMP and / or the Dates of Substantial or Final Completion.

3.15.6 To the extent permitted by section 6.7 and to the extent not caused by the negligent acts or omissions of the Construction Manager, its Subcontractors and Sub-subcontractors, and the agents, officers, directors, and employees of each of them, the Owner shall defend, indemnify, and hold harmless the Construction Manager, its Subcontractors and Sub-subcontractors, and the agents, officers, directors, and employees of each of them, from and against any and all direct claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs, and expenses incurred in connection with any dispute resolution procedure arising out of or relating to the performance of the Work in any area affected by unforeseen Hazardous Material.

3.15.7 MATERIALS BROUGHT TO THE WORKSITE



3.15.7.1 Material Safety Data (MSD) sheets as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by the Construction Manager, Subcontractors, the Owner or Others, shall be maintained at the Worksite by the Construction Manager and made available to the Owner (in a format acceptable to Owner's Project Representative), Subcontractors, and Others.

3.15.7.2 The Construction Manager shall be responsible for the proper delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by the Construction Manager in accordance with the Contract Documents and used or consumed in the performance of the Work.

3.15.7.3 To the extent not caused by the negligent acts or omissions of the Owner, its agents, officers, directors and employees, the Construction Manager shall indemnify and hold harmless the Owner, its agents, officers, directors and employees from and against claims, damages, losses, costs and expenses, including but not limited to reasonable attorneys' fees, costs and expenses incurred in connection with any dispute resolution, arising out of or relating to the delivery, handling, application, storage, removal and disposal of all materials and substances brought to the Worksite by the Construction Manager and its Subcontractors and Sub-subcontractors and all respective suppliers in accordance with the Contract Documents.

3.15.7.4 This section shall survive the completion of the Work or any termination of this Agreement.

3.16 SUBMITTALS

3.16.1 The Construction Manager shall submit to the Owner and the Design Professional all shop drawings, samples, product data, and similar submittals required by the Contract Documents for review and approval. Submittals shall be submitted in electronic form if required in accordance with subsection 4.6.1. Submittals shall be recorded and tracked through the Owner's Primavera Unifier system. The Construction Manager shall be responsible for the accuracy and conformity of its submittals to the Contract Documents. At no additional cost, the Construction Manager shall prepare and deliver its submittals in such time and sequence so as not to delay the performance of the Work or the work of the Owner and Others. The Construction Manager's submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. The review and approval of any Construction Manager submittal shall not be deemed to authorize changes, deviations, or substitutions from the requirements of the Contract Documents unless express written approval is obtained from the Owner specifically authorizing such deviation, substitution, or change. To the extent a change, deviation, or substitution causes an impact to the Contract Price or Contract Time, such approval shall be promptly memorialized in a Change Order. Neither the Design Professional nor Owner shall make any change, deviation, or substitution through the submittal process without specifically identifying and authorizing such deviation to the Construction Manager. If the Contract Documents do not contain submittal requirements pertaining to the Work, the Construction Manager agrees upon request to submit in a timely fashion to the Design Professional and the Owner for review any shop drawings, samples, product data, manufacturers' literature, or similar submittals as may reasonably be required by the Owner.

3.16.2 The Owner shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay. Processing of submittals shall be in accordance with the Owner's submittal process in Oracle Primavera Unifier.



3.16.3 Construction Manager shall perform all Work strictly in accordance with approved submittals. Approval of shop drawings is not an authorization to perform changed work, unless the procedures of ARTICLE 9 are followed. Approval does not relieve Construction Manager from responsibility for Defective Work resulting from errors or omissions on the approved shop drawings.

3.16.4 Record copies of the following, incorporating field changes and selections made during construction, shall be maintained at the Worksite and available to Owner upon request: drawings, specifications, addenda and other modifications, and required submittals including product data, samples, and shop drawings.

3.16.5 No substitutions shall be made in the Work unless permitted in the Contract Documents and then only after the Construction Manager obtains approvals required under the Contract Documents for substitutions. Substitutions resulting in cost increases/decreases shall be memorialized by a Change Order.

3.16.6 The Construction Manager shall prepare and submit to the Owner final as-built drawings and records in the format designated in Division 1 of the MSU Construction Standards.

3.16.7 The CM shall update, according to the Owner's requirements, the Facility Asset Data Log to support the Owner's "Facility Asset Data Exchange" (FADE) initiative for major assets and space obtained through Capital Projects.

3.16.8 These records shall be maintained and submitted in compliance with the MSU Electronic Document Submittal Standards in force on the date of this Agreement.

3.17 DESIGN DELEGATION If the Contract Documents specifically require the Construction Manager to procure design services, the Owner shall specify all required performance and design criteria. The Construction Manager shall not be responsible for the adequacy of such performance and design criteria. As permitted by the laws, rules and regulations in the jurisdiction where the Project is located, the Construction Manager shall procure such services and any certifications necessary to satisfactorily complete the Work from a licensed design professional. The signature and seal of the Construction Manager's design professional shall appear on all drawings, calculations, specifications, certifications, shop drawings, and other submittals related to the Work designed or certified by the Construction Manager's design professional.

3.18 WORKSITE CONDITIONS

3.18.1 WORKSITE VISIT Construction Manager acknowledges that it has visited, or has had the opportunity to visit, the Worksite to visually inspect the general and local conditions which could affect the Work.

3.18.2 CONCEALED OR UNKNOWN SITE CONDITIONS If the conditions encountered at the Worksite are (a) subsurface or other physical conditions materially different from those indicated in the Contract Documents, or (b) unusual and unknown physical conditions materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, the Construction Manager shall stop affected Work after the condition is first observed and give prompt written notice of the condition to the Owner and the Design Professional. Upon receipt of the Construction Manager's written notice, the Owner will investigate the conditions. If the Owner determines that a concealed or unknown site condition exists, the Owner will issue a Construction Change Directive pursuant to Subparagraph 9.2 providing the Construction Manager direction on how to proceed. If the Owner determines that a concealed or unknown site condition



does not exist, the Construction Manager shall, subject to its rights under ARTICLE 13, continue with the Work as shown in the Contract Documents. The Construction Manager shall not be required to perform any Work relating to the unknown condition without the written mutual agreement of the Parties. Any change in the GMP, estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion, and, if appropriate, the Compensation for Preconstruction Services as a result of the unknown condition shall be determined as provided in ARTICLE 9.

3.19 PERMITS AND TAXES

3.19.1 Construction Manager shall give public authorities all notices required by law and, except for permits and fees that are the responsibility of Owner pursuant to §4.4, shall obtain and pay for all necessary permits, licenses, and renewals pertaining to the Work. Construction Manager shall provide to Owner copies of all notices, permits, licenses, and renewals required under this Agreement.

3.19.2 The Construction Manager shall pay all applicable taxes enacted when bids are received or negotiations concluded for the Work provided by the Construction Manager.

3.19.3 The GMP shall be adjusted for additional costs resulting from Laws enacted after the date of this Agreement, including taxes, but not income taxes

3.19.4 If, in accordance with the Owner's direction, the Construction Manager claims an exemption for taxes, the Owner shall indemnify and hold the Construction Manager harmless from any liability, penalty, interest, fine, tax assessment, attorneys' fees, or other expense or cost incurred by the Construction Manager as a result of any such action.

3.20 CUTTING, FITTING, AND PATCHING

3.20.1 Construction Manager shall perform cutting, fitting, and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of Owner or Others.

3.20.2 Cutting, patching, or altering the work of Owner or Others shall be done with the prior written approval of Owner. Such approval shall not be unreasonably withheld.

3.21 CLEANING UP

3.21.1 Construction Manager shall regularly remove debris and waste materials at the Worksite resulting from the Work. Before discontinuing Work in an area, Construction Manager shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. Construction Manager shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, Construction Manager shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.

3.21.2 If Construction Manager fails to commence compliance with cleanup duties within two (2) Business Days after written notification from Owner of non-compliance, Owner may implement appropriate cleanup measures without further notice and the cost shall be deducted from any amounts due or to become due to Construction Manager in the next payment period.

3.22 ACCESS TO WORK Construction Manager shall facilitate the access of Owner, its Design Professional, and Others to Work in progress.



3.23 COMPLIANCE WITH LAWS Construction Manager shall comply with all the Law at its own cost. Construction Manager shall be liable to Owner for all loss, cost, or expense attributable to any acts or omissions by Construction Manager, its employees, subcontractors, suppliers, and agents for failure to comply with Laws, including fines, penalties, or corrective measures. However, liability under this subsection shall not apply if prior approval by appropriate authorities and Owner is received.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES Owner's responsibilities under this Article shall be fulfilled with reasonable detail and in a timely manner.

4.2 FINANCIAL INFORMATION[DELETED].

4.3 WORKSITE INFORMATION To the extent the Owner has obtained, or is required elsewhere in the Contract Documents to obtain, the following Worksite information, the Owner shall provide at the Owner's expense and with reasonable promptness:

4.3.1 information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data or drawings depicting existing conditions, subsurface conditions, and environmental studies, reports, and investigations. Legal descriptions shall include easements, title restrictions, boundaries, and zoning restrictions. Worksite descriptions shall include existing buildings and other construction and all other pertinent site conditions. Adjacent property descriptions shall include structures, streets, sidewalks, alleys, and other features relevant to the Work. Utility details shall include available services, lines at the Worksite and adjacent thereto, and connection points. The information shall include public and private information, subsurface information, grades, contours, and elevations, drainage data, exact locations and dimensions, and benchmarks that can be used by the Construction Manager in laying out the Work;

4.3.2 tests, inspections, and other reports dealing with environmental matters, Hazardous Material, and other existing conditions, including structural, mechanical, and chemical tests, required by the Contract Documents or Law; and

4.3.3 any other information or services requested in writing by the Construction Manager which are required for the Construction Manager's performance of the Work and under the Owner's control.

4.4 BUILDING PERMIT, FEES, AND APPROVALS Except for those permits and fees related to the Work which are the responsibility of Construction Manager pursuant to §3.19.1, Owner shall secure and pay for all other permits, approvals, easements, assessments, and fees required for the development, construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.

4.5 MECHANICS AND CONSTRUCTION LIEN INFORMATION [DELETED].

4.6 CONTRACT DOCUMENTS Unless otherwise specified, Owner shall provide a reasonable number of hard copies of the Contract Documents to Construction Manager without cost.

4.6.1 ELECTRONIC DOCUMENTS If Owner requires that Owner, Design Professional, and Construction Manager exchange documents and data in electronic or digital form, before any such exchange, Owner, Design Professional, and Construction Manager shall agree on and follow a written protocol governing all exchanges in ConsensusDocs 200.2 or a separate addendum, which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination



responsibilities; (c) necessary equipment, software, and services; (d) acceptable formats, transmission methods, and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. Except as otherwise agreed upon by the Parties in writing, each Party shall each bear its own costs as identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

4.7 OWNER'S REPRESENTATIVE Owner's Representative is XXXXXXXXXX. Owner's Representative shall be fully acquainted with the Project and shall have authority to bind Owner in all matters requiring Owner's approval, authorization, or written notice. If Owner changes its Representative or the Representative's authority, Owner shall immediately notify Construction Manager in writing.

4.8 OWNER'S CUTTING AND PATCHING Cutting, patching, or altering the Work by Owner or Others shall be done with the prior written approval of Construction Manager, which approval shall not be unreasonably withheld.

4.9 OWNER'S RIGHT TO CLEAN UP In case of a dispute between Construction Manager and Others with regard to respective responsibilities for cleanup at the Worksite, Owner may implement appropriate cleanup measures after two (2) Business Days' notice and allocate the cost among those responsible during the following pay period.

4.10 COST OF CORRECTING DAMAGED OR DESTROYED WORK With regard to damage or loss attributable to the acts or omissions of the Owner or Others and not to the Construction Manager, the Owner may either (a) promptly remedy the damage or loss or (b) accept the damage or loss.

ARTICLE 5 SUBCONTRACTS

5.1 SUBCONTRACTORS The Work not performed by the Construction Manager with its own forces shall be performed by Subcontractors. All subcontracts shall be issued on a lump sum basis unless the Owner has given prior written approval of a different method of payment to the Subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 The Construction Manager shall provide the Owner, and, if directed, the Design Professional with a written list of the proposed subcontractors and significant Material Suppliers. If the Owner has a reasonable objection to any proposed subcontractor or material supplier, the Owner shall notify the Construction Manager in writing. Failure to promptly object shall constitute acceptance.

5.2.2 If the Owner has reasonably and promptly objected, the Construction Manager shall not contract with the proposed Subcontractor or Material Supplier, and the Construction Manager shall propose another acceptable Subcontractor or Material Supplier to the Owner. An appropriate Change Order shall reflect any increase or decrease in the GMP or Dates of Substantial or Final Completion because of the substitution.

5.2.3 Before any person, including a sole proprietor operating under an assumed name, becomes a Subcontractor, Sub-subcontractor, or performs any Work, the Construction Manager shall deliver to the Owner the information required by Parts II, III, and IV of IRS Form SS-8 with respect to such person.

5.3 BINDING OF SUBCONTRACTORS AND MATERIAL SUPPLIERS The Construction Manager agrees to bind every Subcontractor and Material Supplier (and require every Subcontractor to so bind its subcontractors and material suppliers) to all the provisions of this Agreement and the Contract



Documents as they apply to the Subcontractor's or Material Supplier's portions of the Work including but not limited to record-keeping requirements as provided in Section 3.6.4.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.4.1 If this Agreement is terminated, each subcontract and supply agreement shall be assigned by Construction Manager to Owner, subject to the prior rights of any surety, provided that:

5.4.1.1 this Agreement is terminated by Owner pursuant to §12.4 or §12.5; and

5.4.1.2 the Owner accepts such assignment after termination by notifying the Subcontractor and Construction Manager in writing, and assumes all rights and obligations of the Construction Manager pursuant to each subcontract agreement.

5.4.2 If Owner accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive Days, following termination, the Subcontractor's or Supplier's compensation shall be equitably adjusted as a result of the suspension.

ARTICLE 6 TIME

6.1 DATE OF COMMENCEMENT The Date of Commencement is the Agreement date in ARTICLE 1 unless otherwise set forth below: Upon signature of this Agreement.

6.1.1 SUBSTANTIAL/FINAL COMPLETION Unless the Parties agree otherwise, the Date of Substantial Completion or the Date of Final Completion shall be established in Amendment 1 to this Agreement subject to adjustments as provided for in the Contract Documents. Owner and Construction Manager may agree not to establish such dates, or in the alternative, to establish one but not the other of the two dates. If such dates are not established upon the execution of this Agreement, at such time as GMP is accepted a Date of Substantial Completion or Date of Final Completion of the Work shall be established in Amendment 1. If a GMP is not established and the Parties desire to establish a Date of Substantial Completion or Date of Final Completion, it shall be set forth in Amendment 1. The dates for Substantial and Final Completion are subject to adjustments as provided for in the Contract Documents.

6.1.2 Time is of the essence for this Agreement.

6.1.3 Unless instructed by the Owner in writing, the Construction Manager shall not knowingly commence the Work before the effective date of insurance to be provided by the Construction Manager or the Owner as required by the Contract Documents.

6.2 SCHEDULE OF THE WORK

6.2.1 Before submitting the first application for payment, the Construction Manager shall submit to the Owner and, if directed, the Design Professional a Schedule of the Work showing the dates on which the Construction Manager plans to commence and complete various parts of the Work, including dates on which information and approvals are required from the Owner. The Construction Manager shall comply with the approved Schedule of the Work, unless directed by the Owner to do otherwise or the Construction Manager is otherwise entitled to an adjustment in the Contract Time. The Construction Manager shall update the Schedule of the Work on a monthly basis or at appropriate intervals as required by the conditions of the Work and the Project.



6.2.2 The Owner may determine the sequence in which the Work shall be performed, provided it does not unreasonably interfere with the approved project schedule. The Owner may require the Construction Manager to make reasonable changes in the sequence at any time during the performance of the Work in order to facilitate the performance of work by the Owner or Others. To the extent such changes increase the Construction Manager's costs or time, the GMP or the Dates of Substantial or Final Completion shall be equitably adjusted.

6.3 DELAYS AND EXTENSIONS OF TIME

6.3.1 If Construction Manager is delayed at any time in the commencement or progress of the Work by any cause beyond the control of Construction Manager, Construction Manager shall be entitled to an equitable extension of the Date of Substantial Completion or Date of Final Completion. Examples of causes beyond the control of Construction Manager include, but are not limited to, the following: (a) acts or omissions of Owner, Design Professional, or Others; (b) changes in the Work or the sequencing of the Work ordered by Owner, or arising from decisions of Owner that impact the time of performance of the Work; (c) encountering Hazardous Materials, or concealed or unknown conditions; (d) delay authorized by Owner pending dispute resolution or suspension by Owner under §12.1; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving Construction Manager; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) Terrorism; (j) epidemics; (k) adverse governmental actions; (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated. Construction Manager shall submit any requests for equitable extensions of Contract Time in accordance with the provisions of ARTICLE 9. In addition, if Construction Manager incurs additional costs as a result of a delay that is caused by items (a) through (d) immediately above, Construction Manager shall be entitled to an equitable adjustment in the GMP subject to §6.7. .

6.3.2 NOTICE OF DELAYS If delays to the Work are encountered for any reason, Construction Manager shall provide prompt written notice to Owner of the cause of such delays after Construction Manager first recognizes the delay. The Parties each agree to take reasonable steps to mitigate the effect of such delays.

6.4 NOTICE OF DELAY CLAIMS If Construction Manager requests an equitable extension of the Contract Time or an equitable adjustment in the Contract Price as a result of a delay described in §6.3, Construction Manager shall give Owner written notice of the claim in accordance with §9.4. If Construction Manager causes delay in the completion of the Work, Owner shall be entitled to recover its additional costs subject to §6.7. Owner shall process any such claim against Construction Manager in accordance with ARTICLE 9.

6.5 MONITORING PROGRESS AND COSTS Following acceptance by Owner of the GMP, Construction Manager shall establish a process for monitoring actual costs against the GMP and actual progress against the Schedule of Work. Construction Manager will provide written reports to Owner at intervals as agreed to by the Parties on the status of the Work, showing variances between actual costs and the GMP and actual progress as compared to the Schedule of Work, including estimates of future costs and recovery programs if actual progress indicates that the Dates of Substantial Completion or Final Completion may not be met.

6.6 LIQUIDATED DAMAGES

6.6.1 SUBSTANTIAL COMPLETION Liquidated damages based on the Substantial Completion date [____] ~~shall~~ X shall not apply.



6.6.1.1 The Construction Manager understands that if the Date of Substantial Completion established by this Agreement, as may be amended by subsequent Change Order, is not attained, the Owner will suffer damages which are difficult to determine and accurately specify. The Construction Manager agrees that if the Date of Substantial Completion is not attained, the Construction Manager shall pay the Owner [____] dollars (\$[____]) as liquidated damages and not as a penalty for each Day that Substantial Completion extends beyond the Date of Substantial Completion. The liquidated damages provided herein shall be in lieu of all liability for any and all extras costs, losses, expenses, claims, penalties, and any other damages of whatsoever nature incurred by the Owner which are occasioned by any delay in achieving the Date of Substantial Completion.

6.6.2 FINAL COMPLETION Liquidated damages based on the Final Completion date [____] ~~shall~~ X shall not apply.

6.6.2.1 The Construction Manager understands that if the Date of Final Completion established by this Agreement, as may be amended by subsequent Change Order is not attained, the Owner will suffer damages which are difficult to determine and accurately specify. The Construction Manager agrees that if the Date of Final Completion is not attained the Construction Manager shall pay the Owner [____] dollars (\$[____]) as liquidated damages and not as a penalty for each Day that Final Completion extends beyond the Date of Final Completion. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties, and any other damages of whatsoever nature incurred by the Owner which are occasioned by any delay in achieving the Date of Final Completion.

6.6.3 The Owner and the Construction Manager may agree upon the imposition of liquidated damages based on other project milestones or performance requirements. Such agreement shall be included as an exhibit to this Agreement.

6.7 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for damages mutually agreed upon by the Parties as liquidated damages in section 6.6 and excluding losses covered by insurance required by the Contract Documents, the Owner and the Construction Manager agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement, except for those specific items of damages excluded from this waiver as mutually agreed upon by the Parties and identified below. The Owner agrees to waive damages including but not limited to the Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit or financing related to the Project, as well as the loss of business, loss of financing, loss of profits not related to this Project, loss of reputation, or insolvency. The Construction Manager agrees to waive damages including but not limited to loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. The provisions of this section shall also apply to the termination of this Agreement and shall survive such termination. The following items of damages are excluded from this mutual waiver: [N/A____].

6.7.1 The Owner and the Construction Manager shall require similar waivers in contracts with Subcontractors and Others retained for the Project.

ARTICLE 7 COMPENSATION AND GUARANTEED MAXIMUM PRICE

7.1 Owner shall compensate Construction Manager for Work performed on the following basis:

7.1.1 the Cost of the Work as allowed in ARTICLE 8; and



7.1.2 Construction Manager's Fee paid in proportion to the Work performed subject to adjustment as provided in §7.4.

7.2 The compensation to be paid shall be limited to the GMP, as the GMP may be adjusted under ARTICLE 9.

7.2.1 Payment for Work performed shall be as set forth in ARTICLE 10.

7.3 CONSTRUCTION MANAGER'S FEE Construction Manager's Fee shall be as follows, subject to adjustment as provided in §7.4: \$XXXXXX.

7.4 ADJUSTMENT IN THE CONSTRUCTION MANAGER'S FEE Adjustment in the Construction Manager's Fee shall be made as follows:

7.4.1 for changes in the Work as provided in ARTICLE 9 and limited to only those changes that result in an increase to the GMP, the Construction Manager's Fee shall be adjusted as follows: Not to exceed XXX% of the Owner approved cost exceeding the GMP.

7.4.2 for delays in the Work not caused by the Construction Manager, except as provided in section 6.3, there shall be an equitable adjustment in the Construction Manager's Fee to compensate the Construction Manager for increased expenses; and

7.4.3 if the Construction Manager is placed in charge of managing the replacement of an insured or uninsured loss, the Construction Manager shall be paid an additional fee in the same proportion that the Construction Manager's Fee bears to the estimated Cost of the Work for the replacement.

7.5 PRECONSTRUCTION SERVICES COMPENSATION The Construction Managers shall be compensated for Preconstruction Services as follows:

The budget for pre-construction services by the Construction Manager is a not to exceed sum of \$XXXXX. These services will be billed on a reimbursable basis.

ARTICLE 8 COST OF THE WORK

8.1 The Owner agrees to pay the Construction Manager for the Cost of the Work as defined in this article. This payment shall be in addition to the Construction Manager's Fee stipulated in section 7.3. Unless and until such time as a lump-sum price is agreed upon, the sole basis for determining the Cost of the Work shall be actual cost necessarily incurred for the proper performance of the Work.

8.2 COST ITEMS

8.2.1 Wages paid for labor in the direct employ of the Construction Manager in the performance of the Work.

8.2.2 Salaries of the Construction Manager's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and employees from the principal or branch office performing the functions as detailed in the Construction Manager's approved proposal.

8.2.3 Cost of all employee benefits and taxes, including but not limited to, workers' compensation, unemployment compensation, social security, health, welfare, retirement, and other fringe benefits as required by law, labor agreements, or paid under Construction Manager's standard personnel policy,



insofar as such costs are paid to employees of Construction Manager who are included in the Cost of the Work pursuant to §8.2.1 and §8.2.2.

8.2.4 Cost of all materials, supplies and equipment incorporated in the Work, including costs of inspection and testing if not provided by the Owner, transportation, storage, and handling.

8.2.5 Payments made by the Construction Manager to Subcontractors for work performed under this Agreement.

8.2.6 Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value or residual value; and cost less salvage value on such items used, but not consumed that remain the property of the Construction Manager.

8.2.7 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from the Construction Manager or Others, including installation, repair and replacement, dismantling, removal, maintenance, transportation, and delivery costs. Rental from unrelated third parties shall be reimbursed at actual cost.

8.2.8 Cost of the premiums for all insurance, surety bonds, and Subcontractor Default Insurance which the Construction Manager is required to procure or deems necessary, and approved by the Owner including any additional premium incurred as a result of any increase in the GMP.

8.2.9 Sales, use, gross receipts, or other taxes, tariffs, or duties related to the Work for which the Construction Manager is liable.

8.2.10 Permits, fees, licenses, tests, royalties, damages for infringement of patents or copyrights.

8.2.11 Losses, expenses, or damages to the extent not compensated, provided that such losses, expenses, or damages, did not arise from the Construction Manager's negligence or the negligence of its Subcontractors, Sub-subcontractors, or suppliers.

8.2.12 All costs associated with establishing, equipping, operating, maintaining, and demobilizing the field office.

8.2.13 Reproduction costs, photographs, postage, express delivery charges, technology, computers and telephone service at the Worksite to the extent such items are used and consumed in the performance of the Work or are not capable of use after completion of the Work.

8.2.14 All water, power, and fuel costs necessary for the Work.

8.2.15 Cost of removal of all nonhazardous substances, debris, and waste materials.

8.2.16 Costs incurred due to an emergency affecting the safety of persons or property.

8.2.17 Legal, mediation, and arbitration fees and costs, other than those arising from disputes between the Owner and the Construction Manager, reasonably and properly resulting from the Construction Manager's performance of the Work and with the Owner's approval.

8.2.18 All costs directly incurred in the performance of the Work or in connection with the Project, and not included in the Construction Manager's Fee as set forth in ARTICLE 7, which are reasonably inferable from the Contract Documents.



8.2.19 Additional costs resulting from Laws and taxes enacted after the date of this Agreement.

8.2.20 The following costs are hereby authorized, on a not to exceed basis, in accordance with the CM Proposal Dated XXXXXX:

8.2.20.1 Pre-Construction Services	\$	XXXXXX
8.2.20.2 Construction Personnel	\$	XXXXXX
8.2.20.3 Post-construction Personnel	\$	XXXX
8.2.20.4 CM General Conditions	\$	XXXXX
8.2.20.5 PLM Bonds at XXX%	\$	XXXXX
8.2.20.6 Subcontractor Default Insurance at XXX%	\$	XXXXX
8.2.20.7 CGL Insurance at XXX%	\$	XXXXX
8.2.20.8 Builder's Risk Insurance at XXX%	\$	XXXXX
8.2.20.9 Trade Contracts		\$ TBD through bidding
8.2.20.10 CM Self-Performed Work		\$ Not Applicable
8.2.20.11 Construction General Conditions	\$	XXXXXX
8.2.20.12 CM Fee	\$	<u>XXXXXX</u>
8.2.20.13 TOTAL AUTHORIZED	\$	XXXXXX

8.3 DISCOUNTS All discounts for prompt payment shall accrue to Owner to the extent such payments are made directly by Owner. To the extent payments are made with funds of Construction Manager, all cash discounts shall accrue to Construction Manager. All trade discounts, rebates, and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.

ARTICLE 9 CHANGES

Changes in the Work that are within the general scope of this Agreement shall be accomplished, without invalidating this Agreement, by Change Order and Construction Change Directive.

9.1 CHANGE ORDER

9.1.1 Construction Manager may request or Owner may order changes in the Work or the timing or sequencing of the Work that impacts the GMP or the estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion and, if appropriate, the Compensation for Preconstruction Services. All such changes in the Work shall be formalized in a Change Order. Any such requests for changes in the Work shall be processed in accordance with this article.

9.1.2 For changes in the Work, the Parties shall negotiate an equitable adjustment to the GMP or the Date of Substantial Completion or Date of Final Completion in good faith and conclude negotiations as expeditiously as possible. Acceptance of the Change Order and any equitable adjustment in the GMP or Date of Substantial Completion or Date of Final Completion shall not be unreasonably withheld.

9.1.3 NO OBLIGATION TO PERFORM The Construction Manager shall not be obligated to perform changes in the Work that impact the GMP or the estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion until a Change Order has been executed or a written Construction Change Directive has been issued.

9.2 CONSTRUCTION CHANGE DIRECTIVES



9.2.1 The Owner may issue a written Construction Change Directive directing a change in the Work prior to reaching agreement with the Construction Manager on the adjustment, if any, in the GMP or the Date of Substantial Completion or Date of Final Completion. The Construction Manager shall proceed with the Work of the Construction Change Directive immediately upon its issuance unless directed otherwise.

9.2.2 The Owner and the Construction Manager shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the GMP or the Date of Substantial Completion or Date of Final Completion arising out of a Construction Change Directive. If the parties can not otherwise reach agreement, the cost will be determined in accordance with Subparagraph 9.3.1. If there is a dispute as to the cost to the Owner, the Parties reserve their rights as to the disputed amount or amounts, subject to the requirements of ARTICLE 13.

9.2.3 When the Owner and the Construction Manager agree upon the adjustments in the GMP or the Date of Substantial Completion or Date of Final Completion, for a change in the Work directed by a Construction Change Directive, such agreement shall be the subject of an appropriate Change Order. The Change Order shall include all outstanding Construction Change Directives on which the Owner and Construction Manager have reached agreement on GMP or the Date of Substantial Completion or Date of Final Completion issued since the last Change Order.

9.3 DETERMINATION OF COST

9.3.1 An increase or decrease in the GMP or the Date of Substantial Completion or Date of Final Completion resulting from a change in the Work shall be determined by one or more of the following methods:

9.3.1.1 unit prices set forth in this Agreement or as subsequently agreed;

9.3.1.2 a mutually accepted, itemized lump sum; or

9.3.1.3 if an increase or decrease cannot be agreed to as set forth in subsections .1 through .2 above, and the Owner issues a Construction Change Directive, the cost of the change in the Work shall be determined by the reasonable actual expense incurred and savings realized in the performance of the Work resulting from the change. If there is a net increase in the GMP, the Construction Manager's Fee shall be adjusted accordingly. In case of a net decrease in the GMP, the Construction Manager's Fee shall not be adjusted unless a material amount of the project is reduced. In no event shall the Construction Manager charge a markup for overhead and profit on change orders that occur in the delivery of the project within the GMP or estimated Cost of Construction once it has been established. The Construction Manager shall maintain a documented, itemized accounting evidencing the expenses and savings.

9.3.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to the Owner or the Construction Manager, such unit prices shall be equitably adjusted.

9.3.3 If the Owner and the Construction Manager disagree as to whether work required by the Owner is within the scope of the Work, the Construction Manager shall furnish the Owner with an estimate of the costs to perform the disputed work in accordance with the Owner's interpretations.



9.4 CLAIMS FOR ADDITIONAL COST OR TIME Except as provided in subsection 6.3.2 and section 6.4 for any claim for an increase in the GMP or a change to the Date of Substantial Completion or Date of Final Completion, the Construction Manager shall give the Owner written notice of the claim within fourteen (14) Days after the occurrence giving rise to the claim or within fourteen (14) Days after the Construction Manager first recognizes the condition giving rise to the claim, whichever is later. Owner's failure to so respond shall be deemed a denial of the Construction Manager's claim. Except in an emergency, notice shall be given before proceeding with the Work. Thereafter, the Construction Manager shall submit written documentation of its claim, including appropriate supporting documentation, within twenty-one (21) Days after giving notice, unless the Parties mutually agree upon a longer period of time. No later than fourteen (14) Days after receipt, the Owner shall respond in writing denying or approving the claim. Owner's failure to so respond shall be deemed a denial of the claim. Any change in the GMP or the Date of Substantial Completion or Date of Final Completion resulting from such claim shall be authorized by Change Order. With respect to any claim asserted by the Construction Manager on its own or on behalf of a Subcontractor for additional time or cost, the Construction Manager shall evaluate the claim and verify that any amounts claimed are valid, compiled in accordance with generally accepted accounting principles and are consistent with the terms of the existing contractual agreements regarding entitlement before presentation of the claim to the Owner.

9.5 CHANGES IN LAW Notwithstanding the Construction Manager's obligations to comply with all Laws, if there are any changes in Laws, including taxes (but excluding income taxes), which were not reasonably anticipated and then enacted after either the date of this Agreement or the date a GMP Proposal is accepted by the Owner and set forth in Amendment 1, whichever occurs later, the GMP, estimated Cost of the Work, and the Date of Substantial Completion or the Date of Final Completion shall be equitably adjusted by Change Order

9.6 INCIDENTAL CHANGES Owner may direct Construction Manager to perform incidental changes in the Work, upon concurrence with Construction Manager that such changes do not involve adjustments in the Contract Price or the Contract Time. Incidental changes shall be consistent with the scope and intent of the Contract Documents. Owner shall initiate an incidental change in the Work by issuing a written order to Construction Manager. Such written notice shall be carried out promptly and is binding on the Parties.

ARTICLE 10 PAYMENT

10.1 SCHEDULE OF VALUES Within twenty-one (21) Days from the date of execution of this Agreement, Construction Manager shall prepare and submit to Owner and Design Professional a schedule of values apportioned to the various divisions or phases of the Work. Each line item contained in the schedule of values shall be assigned a value such that the total of all items shall equal the GMP.

10.2 PROGRESS PAYMENTS

10.2.1 APPLICATIONS Construction Manager shall submit to Owner and, if directed, Design Professional a monthly application for payment no later than the Fifth (5th) Day of the calendar month for the preceding calendar month. Construction Manager's applications for payment shall be itemized and supported by Construction Manager's schedule of values based on a percentage of completion and shall include any other substantiating data as required by this Agreement. Applications for payment shall include payment requests on account of properly authorized Change Orders or Interim Directives. Owner shall pay the amount otherwise due on any payment application, as certified by Design Professional, no later than fifteen (15) Days after accepting such application. Owner may deduct from any progress payment amounts that may be retained pursuant to §10.2.4.



10.2.2 STORED MATERIALS AND EQUIPMENT Unless otherwise provided in the contract documents, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored onsite or offsite including applicable insurance, storage, and costs incurred transporting the materials to an offsite storage facility. Approval of payment applications for stored materials and equipment stored offsite shall be conditioned on a submission by Construction Manager of bills of sale and proof of required insurance, or such other documentation satisfactory to Owner to establish the proper valuation of the stored materials and equipment, Owner's title to such materials and equipment, and to otherwise protect Owner's interests therein, including transportation to the Worksite.

10.2.3 LIEN WAIVERS AND LIENS

10.2.3.1 PARTIAL LIEN WAIVERS AND AFFIDAVITS If required by Owner, as a prerequisite for payment, Construction Manager shall provide a partial lien and claim waiver in the amount of the application for payment and affidavits from its Subcontractors and Suppliers for the completed Work. Such waivers shall be conditional upon payment. In no event shall Construction Manager be required to sign an unconditional waiver of lien or claim, before receiving payment or in an amount in excess of what it has been paid.

10.2.3.2 RESPONSIBILITY FOR LIENS If Owner has made payments in the time required by this article, Construction Manager shall, within thirty (30) Days after filing, remove any liens filed against the premises or public improvement fund by any party or parties performing labor or services or supplying materials in connection with the Work. If Construction Manager fails to take such action on a lien, Owner may cause the lien to be removed at Construction Manager's expense, including bond costs and reasonable attorneys' fees. This subsection shall not apply if there is a dispute pursuant to ARTICLE 13 relating to the subject matter of the lien.

10.2.4 RETAINAGE From each progress payment made before Substantial Completion, Owner may retain Ten percent (10%), of the amount otherwise due after deduction of any amounts as provided in §10.3, and in no event shall such percentage exceed any applicable statutory requirements. If the Owner chooses to use this retainage provision, then:

10.2.4.1 after the portion of Work of a Subcontractor is fifty percent (50%) complete, the Owner may withhold no additional retainage and shall pay the Construction Manager the full amount due on account of subsequent progress payments if progress of the Subcontractor's Work has been satisfactory;

10.2.4.2 the Owner may, in its sole discretion, reduce the amount to be retained at any time;

10.2.4.3 the Owner may release retainage on that portion of the Work a Subcontractor has completed in whole or in part, and which the Owner has accepted. In lieu of retainage, the Construction Manager may furnish a retention bond or other security interest acceptable to the Owner, to be held by the Owner.

10.2.4.4 Retainage will not be held by the Owner for the Construction Manager's cost of staffing, fee, bonds, insurances, or general conditions times. The Owner shall withhold an amount to be determined, but no less than \$XXXX dollars for project Closeout.

10.3 ADJUSTMENT OF CONSTRUCTION MANAGER'S PAYMENT APPLICATION Owner may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as



may reasonably be necessary to protect Owner from loss or damage based upon the following, to the extent that Construction Manager is responsible under this Agreement. However, the Owner may not nullify a previously approved Payment Application after the CM has made payments to the Subcontractors or Suppliers included in that Payment Application:

10.3.1 Construction Manager's repeated failure to perform the Work as required by the Contract Documents;

10.3.2 except as accepted by the insurer providing builder's risk or other property insurance covering the Project, loss or damage arising out of or relating to this Agreement and caused by Construction Manager to Owner or others to whom Owner may be liable;

10.3.3 the Construction Manager's failure to properly pay Subcontractors and Material Suppliers following receipt of such payment from the Owner;

10.3.4 defective Work not corrected in a timely fashion;

10.3.5 reasonable evidence of delay in performance of the Work such that the Work will not be completed by the Dates of Substantial or Final Completion;

10.3.6 reasonable evidence demonstrating that the unpaid balance of the GMP is insufficient to fund the cost to complete the Work; and

10.3.7 uninsured third-party claims involving Construction Manager or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until Construction Manager furnishes Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment sufficient to discharge such claims if established.

No later than seven (7) Days after receipt of an application for payment, Owner shall give written notice to Construction Manager, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by Construction Manager in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

10.4 ACCEPTANCE OF WORK Neither Owner's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of Work not complying with the Contract Documents.

10.5 PAYMENT DELAY If the Owner should fail to pay the Construction Manager within fourteen (14) days after the time the Owner-approved payment of any amount becomes due, then the Construction Manager may, upon seven (7) additional days written notice to the Owner, stop the Project until payment of the amount has been received. During this period, and at the discretion of the Construction Manager, interest shall accrue on the amount of the late payment at an annualized rate equal to the prime lending rate (as published by Comerica Bank on the first day that the payment becomes delinquent), but not to exceed a total of 9%.

10.6 SUBSTANTIAL COMPLETION

10.6.1 Construction Manager shall notify Owner and, if directed, Design Professional when it considers Substantial Completion of the Work or a designated portion to have been achieved. Owner, with the assistance of its Design Professional, shall promptly conduct an inspection to determine whether the Work or designated portion can be occupied or used for its intended use by



Owner without excessive interference in completing any remaining unfinished Work. If Owner determines that the Work or designated portion has not reached Substantial Completion, Owner, with the assistance of its Design Professional, shall promptly compile a list of items to be completed or corrected so Owner may occupy or use the Work or designated portion for its intended use. Construction Manager shall promptly complete all items on the list.

10.6.2 When Substantial Completion of the Work or a designated portion is achieved, Construction Manager shall prepare a Certificate of Substantial Completion establishing the date of Substantial Completion and the respective responsibilities of each Party for interim items such as security, maintenance, utilities, insurance, and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted by Construction Manager to Owner and, if directed, to Design Professional for written acceptance of responsibilities assigned in the Certificate of Substantial Completion.

10.6.3 Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion.

10.6.4 Upon Owner's written acceptance of the Certificate of Substantial Completion, Owner shall pay to Construction Manager the remaining retainage held by Owner for the Work described in the Certificate of Substantial Completion less a sum equal to one hundred and fifty percent (150%) of the estimated cost of completing or correcting remaining items on that part of the Work, as agreed to by the Parties as necessary to achieve Final Completion. Uncompleted items shall be completed by Construction Manager in a mutually agreed upon timeframe. Owner shall pay Construction Manager monthly the amount retained for unfinished items as each item is completed.

10.7 PARTIAL OCCUPANCY OR USE

10.7.1 Owner may occupy or use completed or partially completed portions of the Work when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) consent to the occupancy or use, and (c) public authorities authorize the occupancy or use. Construction Manager shall not unreasonably withhold consent to partial occupancy or use. Owner shall not unreasonably refuse to accept partial occupancy.

10.8 FINAL COMPLETION AND FINAL PAYMENT

10.8.1 Upon notification from Construction Manager that the Work is complete and ready for final inspection and acceptance, Owner, with the assistance of its Design Professional shall promptly conduct an inspection to determine if the Work has been completed and is acceptable under the Contract Documents.

10.8.2 When the Work is complete, Construction Manager shall prepare for Owner's written acceptance a final application for payment stating that to the best of Construction Manager's knowledge, and based on Owner's inspections, the Work has reached Final Completion in accordance with the Contract Documents.

10.8.3 Final payment of the balance of the GMP shall be made to Construction Manager within thirty (30) Days after Construction Manager has submitted an application for final payment, including submissions required under §10.8.4, and a Certificate of Final Completion has been executed by the Owner and Construction Manager.

10.8.4 Final payment shall be due on Construction Manager's submission of the following to Owner:



10.8.4.1 an affidavit declaring any indebtedness connected with the Work, e.g. payrolls or invoices for materials or equipment, to have been paid, satisfied, or to be paid with the proceeds of final payment, so as not to encumber the Owner's property;

10.8.4.2 as-built drawings, manuals, copies of warranties, and all other close-out documents required by the Contract Documents;

10.8.4.3 release of any liens, conditioned on final payment being received;

10.8.4.4 consent of any surety; and

10.8.4.5 any outstanding known and unreported accidents or injuries experienced by Construction Manager or its Subcontractors at the Worksite.

10.8.5 If, after Substantial Completion of the Work, the Final Completion of a portion of the Work is materially delayed through no fault of Construction Manager, Owner shall pay the balance due for any portion of the Work fully completed and accepted. If the remaining contract balance for Work not fully completed and accepted is less than the retained amount before payment, Construction Manager shall submit to Owner and, if directed, Design Professional the written consent of any surety to payment of the balance due for portions of the Work that are fully completed and accepted. Such payment shall not constitute a waiver of claims, but otherwise shall be governed by this §10.8.

10.8.6 OWNER RESERVATION OF CLAIMS Claims not reserved in writing with the making of final payment shall be waived except for claims relating to liens or similar encumbrances, warranties, Defective Work, and latent defects.

10.8.7 ACCEPTANCE OF FINAL PAYMENT Unless Construction Manager provides written identification of unsettled claims with an application for final payment, its acceptance of final payment constitutes a waiver of such claims.

10.9 LATE PAYMENT Refer to 10.5.

ARTICLE 11 INDEMNITY, INSURANCE, AND BONDS

11.1 INDEMNITY

11.1.1 To the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless the Owner, Owner's officers, directors, members, consultants, agents, and employees, the Design Professional, and Others (the Indemnitees) from all claims for bodily injury and property damage, other than to the Work itself and other property insured, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of the Work, but only to the extent caused by the negligent acts or omissions of the Construction Manager, Subcontractors, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

11.1.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Construction Manager, its officers, directors, members, consultants, agents, and employees, Subcontractors, or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured, including reasonable attorneys' fees, costs and expenses, that may arise from the performance of work by the Owner, the Design Professional, or Others, but only to the extent caused by the negligent acts or omissions by the Owner, the Design Professional, or Others.



11.1.3 NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of the Construction Manager, anyone directly or indirectly employed by the Construction Manager or anyone for whose acts the Construction Manager may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Construction Manager under workers' compensation acts, disability benefit acts, or other employment benefit acts.

11.2 INSURANCE

11.2.1 The Construction Manager shall not commence the Work before the effective date of insurance that is required to be provided by the Construction Manager or the Owner. The insurance requirements for this contract are governed by the project size, and coverage shall be provided in accordance to the following table of "Required Insurance Coverage":

Contract Amount:	General Liability	Auto	Worker's Comp	Builder's Risk	Performance and Payment Bond	Pollution Liability
<\$50,000	\$1,000,000	\$1,000,000	\$1,000,000	not required	not required	Note 1
Between \$50,000 and \$250,000	\$1,000,000	\$1,000,000	\$1,000,000	not required	100% of contract	Note 1
Between \$250,000 and \$10,000,000	\$1,000,000	\$1,000,000	\$1,000,000	Note 2	100% of contract	Note 1
>\$10,000,000	\$5,000,000	\$1,000,000	\$1,000,000	Note 2	100% of contract	Note 1

Required Insurance Coverage Table Notes:

1. \$1,000,000 unless work involves licensed abatement, remediation, or hauling, then \$5,000,000.
2. 100% of contract (equivalent installation floater accepted for roads, roofs, and other suitable project types).

11.2.2 Before commencing the Work and as a condition precedent to payment, the Construction Manager shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury,



contractual liability, and broad form property damage. The Construction Manager shall maintain completed operations liability insurance for one year after Substantial Completion, or as required by the Contract Documents, whichever is longer. The Construction Manager's Employers' Liability, Business Automobile Liability and CGL policies shall be written with at least the following limits of liability:

- (1) Comprehensive or Commercial Form General Liability Insurance covering all Work done by or on behalf of the Construction Manager and providing insurance for bodily injury, personal injury, property damage, and Contractual liability. Except with respect to bodily injury and property damage included within the products and completed operations hazards, the aggregate limit shall apply separately to work required of the Construction Manager by these Contract Documents. This insurance shall include the contractual obligations assumed under the Contract Documents. Limits of liability shall not be less than shown in the table of "Required Insurance Coverage" per occurrence and general aggregate, which limits may be achieved under a single policy or by a combination of underlying and excess or umbrella policies.
- (2) Business Automobile Liability Insurance on an "Occurrence" form covering owned, hired, leased, and non-owned automobiles used by or on behalf of the Construction Manager and providing insurance for bodily injury, property damage, and Contractual liability. Limits of liability shall not be less than shown in the table of "Required Insurance Coverage" per occurrence, which limits may be achieved under a single policy or by a combination of underlying and excess or umbrella policies.
- (3) Worker's Compensation and Employer's Liability Insurance as required by Federal and Michigan law. The Construction Manager shall also require all of its Subcontractors to maintain this insurance coverage. Limits of liability shall not be less than statutory for worker's compensation insurance, and as shown in the table of "Required Insurance Coverage" each accident for employer's liability insurance.
- (4) The Umbrella Excess Liability insurance must be consistent with and follow the form of the primary policies, except that Umbrella Excess Liability insurance shall not be required for the Medical Expense Limit.

11.2.3 Builder's Risk/Property Insurance. The Construction Manager shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the Owner has an insurable interest, whichever is later. This insurance shall include interests of the Owner, the Construction Manager, Subcontractors, and Sub-Subcontractors in the Project.

11.2.4 Proof of Coverage: Certificates of Insurance, as evidence of the insurance required by these Contract Documents, shall be submitted by the Construction Manager to the Owner no later than five days after the execution of this agreement and in all cases, prior to the commencement of the work. The Certificates of Insurance shall state the scope of coverage and deductible, identify any endorsements to the policies and, except for the worker's compensation and employer's liability insurance, list the Owner as an additional insured. Any deductible shall be the Construction Manager's liability. The Certificates of Insurance shall provide for no cancellation or modification of coverage without thirty (30) days prior written notice to the Owner. Acceptance of Certificates of Insurance by the Owner shall not in any way limit the Construction Manager's liabilities under the Contract Documents.



In the event the Construction Manager does not comply with these insurance requirements, the Owner may, at its option, provide insurance coverage to protect the Owner; the cost of such insurance shall be deducted from the Contract Sum or otherwise paid by the Construction Manager. Renewal certifications shall be filed in a timely manner for all coverage until the Project is accepted as complete. Upon the Owner's request, the Construction Manager shall provide copies of the Builder's Risk insurance policy obtained from the insurers.

11.2.5 Subcontractors' Insurance: The Construction Manager shall either require subcontractors to carry the insurance or the Construction Manager shall insure the activities of the subcontractors in the types and form of insurance required under the Contract Documents, and in such amounts as the Construction Manager shall deem appropriate.

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

11.2.6.1 The Owner, its trustees, officers, employees, representatives and agents including the Design Professional, shall be included as additional insureds (except under worker's compensation and employer's liability insurance) for and relating to the Work to be performed by the Construction Manager and subcontractors.

11.2.6.2 A Severability of Interest Clause stating that, "The term 'insured' is hereby used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limits of the insurer's or insurers' liability".

11.2.6.3 A Cross Liability Clause stating that, "In the event of claims being made under any of the coverages of the policy or policies referred to herein by one or more insured hereunder for which another or other insured hereunder may be liable, then the policy or policies shall cover such insured or insured against whom a claim is made or may be made in the same manner as if separate policies had been issued to each insured hereunder. Nothing contained herein, however, shall operate to increase the insurer's limits of liability as set forth in the insuring agreements."

11.2.6.4 Coverage provided is primary and is not in excess of or contributing with any insurance or self-insurance maintained by the Board of Trustees of Michigan State University, the Owner, their officers, employees, representatives and agents.

11.2.7 Employers' Liability, Business Automobile Liability and CGL coverages required under subsection 11.2.2 may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by Excess or Umbrella Liability policies.

11.2.8 The Construction Manager shall maintain in effect all insurance coverage required under subsection 11.2.2 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located. If the Construction Manager fails to obtain or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and charge the expense to the Construction Manager or terminate this Agreement.

11.2.9 To the extent commercially available to the Construction Manager from its current insurance company, insurance policies required under subsection 11.2.2 shall contain a provision that the insurance company or its designee must give the Owner written notice transmitted in paper or electronic format: (a) 30 Days before coverage is nonrenewed by the insurance company and (b) within 10 Business Days after cancelation of coverage by the insurance company. Prior to commencing the Work and upon renewal or replacement of the insurance policies, the Construction



Manager shall furnish the Owner with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under subsection 11.2.2 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, the Construction Manager shall give Owner prompt written notice upon actual or constructive knowledge of such condition.

11.2.10 Pollution Legal Liability Insurance with limit of ☒ \$1,000,000 or ☐ \$5,000,000. Coverage shall apply to sudden and gradual pollution legal liability including defense costs and completed operations. If the coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three years beginning from the time that work under this Contract is completed. Contractors or subcontractors responsible for remediation, including containerization, transportation, or disposal of any hazardous or toxic wastes, materials, or substances requiring permits or licenses by state or Federal Law or regulation shall maintain Pollution Liability Insurance with limit no less than \$5,000,000. Coverage shall extend for 3 years after completion of the Work and be evidenced by annual certificates of insurance.

11.3 PROPERTY INSURANCE [DELETED]

11.4 OWNER'S INSURANCE

11.4.1 BUSINESS INCOME INSURANCE The Owner may procure and maintain insurance against loss of use of the Owner's property caused by fire or other casualty loss.

11.4.2 OWNER'S LIABILITY INSURANCE The Owner shall either self-insure or obtain and maintain its own liability insurance for protection against claims arising out of the performance of this Agreement, including without limitation, loss of use and claims, losses, and expenses arising out of the Owner's acts or omissions.

11.5 ADDITIONAL LIABILITY COVERAGE

11.5.1 The Owner ☐ shall/ ☒ shall not (indicate one) require the Construction Manager to purchase and maintain additional liability coverage, primary to the Owner's coverage under subsection 11.4 .2.

11.5.2 If required by subsection 11.5.1, the additional liability coverage required of the Construction Manager shall be (Designate required coverage):

1. ☒. Additional Insured. The Owner shall be named as an additional insured on the Construction Manager's CGL specified, for operations and completed operations, but only with respect to liability for bodily injury, property damage, or personal and advertising injury to the extent caused by the negligent acts or omissions of Construction Manager, or those acting on the Construction Manager's behalf, in the performance of the Construction Manager's work for the Owner at the Worksite.

2. ☐. OCP. The Construction Manager shall provide an Owners' and Contractors' Protective Liability Insurance ("OCP") policy with limits equal to the limits on CGL specified, or limits as otherwise required by the Owner.



Any documented additional cost in the form of a surcharge associated with procuring the additional liability coverage in accordance with this subsection shall be paid by the Owner directly or the costs may be reimbursed by the Owner to the Construction Manager by increasing the Contract Price to correspond to the actual cost required to purchase and maintain the coverage. Before commencing the Work, the Construction Manager shall provide either a copy of the OCP policy, or a certificate and endorsement evidencing that the Owner has been named as an additional insured, as applicable.

11.6 ROYALTIES, PATENTS, AND COPYRIGHTS Construction Manager shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by Construction Manager and incorporated in the Work. Construction Manager shall defend, indemnify, and hold Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. Owner agrees to defend, indemnify, and hold Construction Manager harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods, or systems specified by Owner or Design Professional.

11.7 BONDS

11.7.1 Performance and Payment Bonds are required of the Construction Manager. Such bonds shall be issued by a surety admitted in the state in which the Project is located and must be acceptable to the Owner. The Owner's acceptance shall not be withheld without a reasonable cause. The penal sum of the bonds shall each be one hundred percent (100%) of the GMP. Any increase in the GMP that exceeds ten percent (10%) in the aggregate shall require a rider to the Bonds increasing penal sums accordingly. Up to such ten percent (10%) amount, the penal sum of the bond shall remain equal to one hundred percent (100%) of the original GMP. The Construction Manager shall endeavor to keep its surety advised of changes potentially impacting the GMP and Contract Time, though the Construction Manager shall require that its surety waives any requirement to be notified of any alteration or extension of time within the scope of the initial Agreement. A copy of the Construction Manager's Payment Bond for the Project, if any, shall be furnished by the Owner or the Construction Manager upon the Subcontractor's written request.

11.7.2 The Construction Manager shall forward to the Owner fully executed Payment & Performance Bonds in the amount of 100 percent of the Contract value on the AIA Form 312 and in compliance with MCL 129.201 et seq. within five (5) days after execution of the Agreement or acceptance of the Project Budget.

In the same five (5) day period the Construction Manager shall present to the Owner, in an acceptable form, evidence of the insurance as required by the Contract Documents. Actual Work shall not commence until the bond and insurance is received by the Owner. Failure to provide the bonds and insurance in the time-frame allowed shall not be cause for an extension of Contract Time.

All alterations, extensions of time, extra and additional work, and other changes authorized by any part of the Contract, including determinations made under ARTICLE 13, shall be made without securing the consent of the surety or sureties on the Contract bonds.

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



Contract bonds shall remain in full force and effect during the one year guarantee period, unless a longer bond period is stipulated in the Contract Documents.

11.8 PROFESSIONAL LIABILITY INSURANCE To the extent the Construction Manager is required to procure design services in accordance with subsection 3.17, the Construction Manager shall require its design professionals to obtain professional liability insurance for claims arising from the negligent performance of professional services under this Agreement, with a company reasonably satisfactory to the Owner, including coverage for all professional liability caused by any consultants to the Construction Manager's design professional, written for not less than [N/A_] dollars (\$[____]) per claim and in the aggregate with the deductible not to exceed [N/A_] dollars (\$[____]). The Construction Manager's design professional shall pay the deductible.

ARTICLE 12 SUSPENSION, NOTICE TO CURE, AND TERMINATION

12.1 SUSPENSION BY OWNER FOR CONVENIENCE

12.1.1 OWNER SUSPENSION Should the Owner order the Construction Manager in writing to suspend, delay, or interrupt the performance of the Work for the convenience of the Owner and not due to any act or omission of the Construction Manager or any person or entity for whose acts or omissions the Construction Manager may be liable, then the Construction Manager shall immediately suspend, delay, or interrupt that portion of the Work for the time period ordered by the Owner. The GMP and the Dates of Substantial or Final Completion shall be equitably adjusted by Change Document for the cost and delay resulting from any such suspension.

12.1.2 Any action taken by Owner that is permitted by any other provision of the Contract Documents and that results in a suspension of part or all of the Work does not constitute a suspension of Work under this section.

12.2 NOTICE TO CURE A DEFAULT If the Construction Manager persistently fails to supply enough properly qualified workers, proper materials, or equipment to maintain the approved Schedule of the Work or fails to make prompt payment to its workers, Subcontractors, or Material Suppliers, disregards Laws or orders of any public authority having jurisdiction or is otherwise guilty of a material breach of a provision of this Agreement, the Construction Manager may be deemed in default. If the Construction Manager fails within seven (7) Days after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, then the Owner shall give the Construction Manager a second notice to correct the default within a three (3) Day period. If the Construction Manager fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, the Owner without prejudice to any other rights or remedies may: (a) take possession of the Worksite; (b) complete the Work utilizing reasonable means; (c) withhold payment due to the Construction Manager; and (d) as the Owner deems necessary, supply workers and materials, equipment, and other facilities for the satisfactory correction of the default, and charge the Construction Manager, the costs and expenses, including reasonable Overhead, profit, and attorneys' fees.

12.2.1 In the event of an emergency affecting the safety of persons or property, the Owner may immediately commence and continue satisfactory correction of such default without first giving written notice to the Construction Manager, but shall give prompt written notice of such action to the Construction Manager following commencement of the action

12.3 OWNER'S RIGHT TO TERMINATE FOR DEFAULT

12.3.1 If, within seven (7) Days of receipt of a notice to cure pursuant to section 12.2, the Construction Manager fails to commence and satisfactorily continue correction of the default set



forth in the notice to cure, the Owner may notify the Construction Manager, and if applicable, the surety, that it intends to terminate this Agreement for default absent appropriate corrective action within fourteen (14) additional Days. After the expiration of the additional fourteen- (14) Day period, the Owner may terminate this Agreement by written notice absent appropriate corrective action. Termination for default is in addition to any other remedies available to the Owner under section 12.2. If the Owner's costs arising out of the Construction Manager's failure to cure, including the costs of completing the Work and reasonable attorneys' fees, exceed the unpaid GMP, the Construction Manager shall be liable to the Owner for such excess costs. If the Owner's costs are less than the unpaid GMP, the Owner shall pay the difference to the Construction Manager. If the Owner exercises its rights under this section, upon the request of the Construction Manager, the Owner shall furnish to the Construction Manager a detailed accounting of the costs incurred by the Owner.

12.3.2 If the Owner or Others perform work under this section, the Owner shall have the right to take and use any materials, supplies, and equipment belonging to the Construction Manager and located at the Worksite for the purpose of completing any remaining Work. Immediately upon completion of the Work, any remaining materials, supplies, or equipment not consumed or incorporated in the Work shall be returned to the Construction Manager in substantially the same condition as when they were taken, reasonable wear and tear excepted.

12.3.3 If the Construction Manager files a petition under the Bankruptcy Code, this Agreement shall terminate if the Construction Manager or the Construction Manager's trustee rejects the Agreement, or if there has been a default and the Construction Manager is unable to give adequate assurance that the Construction Manager will perform as required by this Agreement, or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

12.3.4 Owner shall make reasonable efforts to mitigate damages arising from Construction Manager's default and shall promptly invoice Construction Manager for all amounts due pursuant to §12.2 and §12.3.

12.3.5 If the Owner terminates this Agreement for default, and it is later determined that the Construction Manager was not in default, or that the default was excusable under the terms of the Contract Documents, then, in such event, the termination shall be deemed a termination for convenience, and the rights of the Parties shall be as set forth in section 12.4.

12.4 TERMINATION BY OWNER FOR CONVENIENCE

12.4.1 Upon Constructor's receipt of written notice from Owner, Owner may, without cause, terminate this Agreement. Construction Manager shall immediately stop the Work, follow Owner's instructions regarding shutdown and termination procedures, and strive to minimize any further costs.

12.4.2 If the Owner terminates this Agreement pursuant to this section, the Construction Manager shall be paid (a) for the Work performed to date including Overhead and profit; and (b) for all demobilization costs and costs incurred as a result of the termination but not including Overhead or profit on Work not performed.

12.4.3 If Owner terminates this Agreement, Construction Manager shall:

12.4.3.1 execute and deliver to Owner all papers and take all action required to assign, transfer, and vest in Owner the rights of Construction Manager to all materials, supplies, and



equipment for which payment has been or will be made in accordance with the Contract Documents and all subcontracts, orders, and commitments which have been made in accordance with the Contract Documents;

12.4.3.2 exert reasonable effort to reduce to a minimum Owner's liability for subcontracts, orders, and commitments that have not been fulfilled at the time of the termination;

12.4.3.3 cancel any subcontracts, orders, and commitments as Owner directs; and

12.4.3.4 sell at prices approved by Owner any materials, supplies, and equipment as Owner directs, with all proceeds paid or credited to Owner, provided that the Owner has already paid the CM for these items.

12.5 CONSTRUCTION MANAGER'S RIGHT TO TERMINATE

12.5.1 Upon seven (7) Days' written notice to the Owner, the Construction Manager may terminate this Agreement if the Work has been stopped for a thirty (30) Day period through no fault of the Construction Manager for any of the following reasons:

12.5.1.1 under court order or order of other governmental authorities having jurisdiction;

12.5.1.2 as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of Construction Manager, materials are not available; or

12.5.1.3 suspension by Owner for convenience pursuant to §12.1.

12.5.2 In addition, upon seven (7) Days' written notice to the Owner, the Construction Manager may terminate this Agreement if the Owner:

12.5.2.1 [DELETED]

12.5.2.2 assigns this Agreement over Construction Manager's reasonable objection, or

12.5.2.3 fails to pay Construction Manager in accordance with this Agreement and Construction Manager has stopped Work in compliance with §10.5, or

12.5.2.4 otherwise materially breaches this Agreement.

12.5.3 Upon termination by Construction Manager in accordance with this section, Construction Manager shall be entitled to recover from Owner payment for all Work executed and for any proven loss, cost, or expense in connection with the Work, including all demobilization costs plus reasonable Overhead and profit on Work not performed.

12.6 OBLIGATIONS ARISING BEFORE TERMINATION Even after termination, the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred, or obligations arising before the termination date.

ARTICLE 13 DISPUTE MITIGATION AND RESOLUTION

13.1 WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, Construction Manager shall continue the Work and maintain the Schedule of the Work during any dispute mitigation or resolution



proceedings. If Construction Manager continues to perform, Owner shall continue to make payments in accordance with this Agreement.

13.2 DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of this Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) Business Days from the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that a resolution could not be reached. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) Business Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) Days from the date of first discussion, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected below.

13.3 Dispute Resolution: All disputes, claims, or other matters relating to this Contract shall be submitted by the Construction Manager in writing to the Owner (University's Vice President for Strategic Infrastructure Planning and Facilities or designee) to review. Raised claims must be presented to the Owner's representative within 30 days of when the Construction Manager knows or should have known of the issue in controversy. This informal dispute process is in place to precede any formal litigation. If the Construction Manager is not satisfied with the outcome of the review, a dispute may be filed for resolution with the court of competent jurisdiction in Michigan. Claims and any appeals by the Construction Manager affecting the fee payment must be made before submitting the request for final payment. Unless otherwise instructed by the Owner, the Construction Manager shall continue to Work under this Contract without delaying the Project, or any portion thereof, pending the outcome of the dispute, claim, or question.

ARTICLE 14 MISCELLANEOUS

14.1 EXTENT OF AGREEMENT Except as expressly provided, this Agreement is for the exclusive benefit of the Parties, and not the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of the Parties and not for the benefit of any third party.

14.2 ASSIGNMENT Except as to the assignment of proceeds, neither Party shall assign their interest in this Agreement without the written consent of the other Party. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives. Neither Party shall assign the Agreement as a whole without written consent of the other except that Owner may assign the Agreement to a wholly owned subsidiary of Owner when Owner has fully indemnified Construction Manager or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to Construction Manager than this Agreement. If such assignment occurs, Construction Manager shall execute any consent reasonably required. In such event, the wholly owned subsidiary or lender shall assume Owner's rights and obligations under the Contract Documents. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under this Agreement, unless otherwise agreed by the other Party.

14.3 GOVERNING LAW The law in effect at the location of the Project shall govern this Agreement.

14.4 SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.



14.5 NO WAIVER OF PERFORMANCE Either Party's failure to insist upon any of its rights, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance or any other term, covenant, condition, or right.

14.6 The titles given to the articles are for ease of reference only and shall not be relied upon or cited for any other purpose. The grouping of the articles in this Agreement and of the Owner's specifications under the various headings is solely for the purpose of convenient organization and in no event shall the grouping of provisions, the use of sections or the use of headings be construed to limit or alter the meaning of any provisions.

14.7 JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms before execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party but shall be construed in a neutral manner.

14.8 RIGHTS AND REMEDIES The Parties' rights, liabilities, responsibilities and remedies with respect to this Agreement, whether in contract, tort, negligence, or otherwise, shall be exclusively those expressly set forth in this Agreement.

14.9 CRIMINAL BACKGROUND CHECKS

14.9.1 The University strives to provide a safe and enjoyable environment for its students, faculty, staff, and visitors in support of its educational mission. In support of that goal, the University has set forth criminal background check requirements for specified University contractors. The policy requirements are available upon request or at

MBP: <https://usd.msu.edu/mbp/mbp-270/index.html> (fourth paragraph down applies to the background checks)

In accordance with the policy, the Vice President for Strategic Infrastructure Planning and Facilities has approved implementing more stringent requirements. Accordingly, Constructors shall comply with the Criminal Background Check Requirements on all project on the East Lansing campus. On our For Suppliers page <https://usd.msu.edu/for-suppliers/criminal-background-check/index.html>

Policy:

<https://usd.msu.edu/common/documents/criminal-back-ground-check.pdf>

14.9.2 These requirements apply to contractors and their consultants on any on-campus project.

14.10 SEXUAL HARASSMENT POLICY

14.10.1 The Contractor shall assure that it, its employees and agents, all Subcontractors and their employees and agents, and all Sub-subcontractors and their employees and agents are aware of and comply with the Owner's policy prohibiting sexual harassment in the performance of this contract. Copies of this policy are available at the Engineering and Architectural Services Division, Purchasing Department.

14.10.2 The Contractor shall act promptly to stop any violation of the policy by any such persons, by removing the violator from the site or otherwise. Failure by the Contractor to promptly investigate complaints and take appropriate action to address violations of the policy shall be deemed a material breach of the Contract.

14.11 NONDISCRIMINATION AND INCLUSION

14.11.1 In performing under this Contract, the Contractor shall not discriminate against any employee, or applicant for employment, with respect to hire, tenure, terms, conditions or privileges of



employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height or weight, marital or familial status or disability. Subcontracts with each Subcontractor will contain a provision requiring nondiscrimination in employment, as herein specified. Any breach of this covenant may be regarded as a material breach of this Contract.

14.11.2 Michigan State University is an equal opportunity employer and federal contractor or subcontractor. Consequently, the parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The parties also agree that, as applicable, they will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.

14.11.3 The University makes a continuous effort to broaden its business relationships with Minority Business Enterprise (MBE) contractors, Women Business Enterprise (WBE) contractors, and small business concerns (including veteran-owned small business, service-disabled veteran owned small business, HUB Zone small business, and small disadvantaged business concerns certified by the U.S. Small Business Administration). For the purposes of this provision, suppliers are considered subcontractors. If third parties are needed to fulfill contractual obligations, Contractors are strongly encouraged to consider all qualified sources, including WBE, MBE, and small business subcontractors. For purposes of this paragraph, MBE is defined as a business enterprise of which more than 50% of the voting shares or interest in the business is owned, controlled, and operated by individuals who are members of a minority and with respect to which more than 50% of the net profit or loss attributable to the business accrues to shareholders who are members of a minority. WBE is defined as a business enterprise of which more than 50% of the voting shares or interest in the business is owned, controlled, and operated by women and with respect to which more than 50% of the net profit or loss attributable to the business accrues to the women shareholders.

ARTICLE 15 CONTRACT DOCUMENTS

15.1 EXISTING CONTRACT DOCUMENTS The Contract Documents in existence at the time of execution of this Agreement are as follows:

- a. Drawings: XXXXXXXXX
- b. Specifications: XXXXXXXXX and the MSU Construction Standards
- c. Addenda: XXXXX
- d. Owner Provided information: XXXXXX Program Statement and Conceptual Design Documents
- e. Other: None
- f. The Michigan State University purchase order is not considered a contract document.

15.2 INTERPRETATION OF CONTRACT DOCUMENTS

15.2.1 The drawings and specifications are complementary. If Work is shown only on one but not on the other, the Construction Manager shall perform the Work as though fully described on both consistent with the Contract Documents and reasonably inferable from them as being necessary to



produce the indicated results.

15.2.2 In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of omissions or errors in figures, drawings or specifications, the Construction Manager shall immediately submit the matter to the Owner and, if directed, to its Design Professional for clarification. The Owner's reasonable clarifications are final and binding on all Parties.

15.2.3 Where figures are given, they shall be preferred to scaled dimensions.

15.2.4 Unless otherwise specifically defined in this Agreement, any terms that have well-known technical or trade meanings shall be interpreted in accordance with their well-known meanings.

15.2.5 ORDER OF PRECEDENCE In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the following documents shall govern in this order: (a) Change Orders and written amendments to this Agreement; (b) the Agreement and General Conditions; (c) subject to subsection 1.1.1 the drawings, specifications, and addenda issued for bidding, or in the absence of bidding, for construction; (d) information furnished by the Owner pursuant to subsection 4.3 or designated as a Contract Document in 15.1; (e) other documents listed in this Agreement. Among all the Contract Documents, the term or provision that is most specific or includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered to be a conflict or inconsistency. If any provision of this Agreement conflicts with or is inconsistent with any other provision of other Contract Documents, the provision of this Agreement governs, unless the other provision specifically refers to the provision it supersedes and replaces in this Agreement.

OWNER: MICHIGAN STATE UNIVERSITY

BY: _____

PRINT NAME

PRINT TITLE

CONSTRUCT MANAGER: xxxxxx

BY: _____

PRINT NAME

PRINT TITLE

END OF DOCUMENT.

