

University System of New Hampshire/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

Contract Number: [_____] Project ID: [_____]

This Agreement is between the

OWNER,
(Name, legal status and address)

[_____]
[_____]
[_____]

and the

CONSTRUCTION MANAGER,
(Name, legal status and address)

[_____]
[_____]
[_____]

for construction and services in connection with the following



PROJECT.
(Name and address or location)

[]
[]
[]

Design Professional is.
(Name, legal status and address)

[]
[]
[]

The Owner's Designated Representative: []
(Name, address and other information)

[]
[]
[]
[]

The Construction Manager's Designated Representative:
(Name, address and other information)

[]
[]
[]
[]

The Design Professional's Designated Representative:
(Name, address and other information)

[]
[]
[]
[]

ARTICLE 2 GENERAL PROVISIONS

2.1 PARTIES' RELATIONSHIP Each Party agrees to act on the basis of mutual trust, good faith, and fair dealing, and perform in an economical and timely manner. The Parties shall each endeavor to promote harmony and cooperation among all Project participants.

2.1.1 Construction Manager represents that it is an independent contractor and that it is familiar with the type of Work it is undertaking.

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



2.1.3 In accordance with the specific requirements of the Contract Documents set forth below, the Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager.

2.2 ETHICS Each Party shall perform with integrity. Each shall: (a) avoid conflicts of interest, and (b) promptly disclose to the other Party any conflicts that may arise. Each Party 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, employees, Subcontractors, Sub-subcontractors, Suppliers, or Others to secure preferential treatment.

2.3 DESIGN PROFESSIONAL

2.3.1 Owner, through its Design Professional, shall provide all architectural and engineering design services necessary for the completion of the Work excluding, however, (a) design services delegated to Construction Manager in accordance with §3.17, and (b) services within the construction means, methods, techniques, sequences, and procedures employed by Construction Manager, its Subcontractors, and Sub-subcontractors in connection with their construction operations.

2.3.2 If requested in writing, the Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Design Professional, and any further modifications to the agreement

2.3.3 Owner shall obtain from Design Professional either a license for Construction Manager and Subcontractors to use the design documents prepared by Design Professional or ownership of the copyrights for such design documents, and shall indemnify and hold harmless 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.

2.3.4 The Owner's agreement noted in §2.3.2 shall allow the Construction Manager, Subcontractors, Sub-subcontractors, and material or equipment suppliers to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Design Professional and the Design Professional's subconsultants for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Design Professional and the Design Professional's subconsultants.

2.3.5 Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Design Professional's or Design Professional's subconsultants' copyrights or other reserved rights.

2.4 DEFINITIONS

2.4.1 "Agreement" means this University System of New Hampshire/ConsensusDocs 500 Standard Agreement and General Conditions Between Owner and Construction Manager, as modified, and exhibits and attachments as listed in ARTICLE 15.

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

2.4.3 A "Change Order" is a written order signed by the Parties 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 Construction Manager and accepted by Owner.



2.4.4 The "Contract Documents" consist of (a) this Agreement; (b) documents listed in §15.1 as existing contract documents; (c) drawings, specifications, addenda issued and acknowledged before execution of this Agreement; (d) information furnished by Owner pursuant to §3.15.4, and (e) Change Orders, Interim Directives, and amendments issued in accordance with this Agreement.

2.4.5 "Contract Time" is the period between the Date of Commencement and the total time authorized to achieve Final Completion.

2.4.6 "Cost of the Work" means the costs and discounts specified in ARTICLE 8.

2.4.7 The "Construction Manager" is the person or entity identified in ARTICLE 1 and includes Construction Manager's Representative.

2.4.8 "Date of Commencement" means the date of commencement of the Construction Phase as identified in the notice to proceed.

2.4.9 "Day" means a calendar day.

2.4.10 "Defective Work" is any portion of the Work that does not conform with the requirements of the Contract Documents.

2.4.11 "Design Professional" means the licensed architect or engineer, and its consultants, retained by Owner to perform design services for the Project.

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

2.4.13 "Hazardous Material" is any substance or material identified now or in the future as hazardous under the Law, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, transportation, disposal, or cleanup.

2.4.14 "Interim Directive" is a written order containing change to the Work directed by Owner pursuant to §9.2 and that is signed by Owner after execution of this Agreement and before Substantial Completion.

2.4.15 "Law" means federal, state, or local laws, ordinances, codes, rules, and regulations applicable to the Work with which Construction Manager must comply that are enacted as of the Agreement date.

2.4.16 "Others" means Owner's other: (a) contractors/constructors, (b) suppliers, (c) subcontractors, sub-subcontractors, or suppliers of (a) and (b); and others employed directly or indirectly by (a), (b), or (c) or individuals for whose acts any of them may be liable.

2.4.17 "Overhead" means (a) payroll costs, burden, and other reasonable compensation of Construction Manager's employees in Construction Manager's principal and branch offices; and (b) general and administrative expenses of Construction Manager's principal and branch offices.

2.4.18 "Owner" is the person or entity identified in ARTICLE 1 and includes Owner's representative.



2.4.19 The “Owner's Program” is an initial description of 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.

2.4.20 The “Parties” are collectively Owner and Construction Manager.

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

2.4.22 “Related Party” means a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term “related party” includes any member of the immediate family of any person identified above.

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

2.4.24 “Subcontractor” is a person or entity retained by 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 Design Professional or Others.

2.4.25 “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 Owner may occupy or utilize the Work, or a designated portion, for the use for which it is intended, without unapproved disruption. This date shall be confirmed by a certificate of Substantial Completion signed by the Parties.

2.4.26 A “Sub-subcontractor” is a person or entity who has an agreement with a Subcontractor or another sub-subcontractor or Supplier to perform a portion of the Subcontractor's Work or supply material or equipment.

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

2.4.28 “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.

2.4.29 “Work” means the construction and administrative and management services necessary or incidental to fulfill Construction Manager's obligations for the Project in accordance with and reasonably inferable from the Contract Documents. The Work may refer to the whole Project or only a part of the Project if work is also being performed by Owner or Others.

2.4.30 “Worksite” means the 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 with the Contract Documents and reasonably inferable from the Contract Documents.

3.1.1.1 The Construction Manager shall be responsible for determining that all materials furnished for the Work meet all requirements of the Contract Documents. If the Design Professional reasonably believes that a material proposed by the Construction Manager, but not specified by brand name and grade or model designation, may not comply with all such requirements, the Design Professional may require the Construction Manager to produce, at the Construction Manager's expense, reasonable evidence of such compliance. This provision shall not require the Construction Manager to pay for periodic testing of different batches of the same material, unless such testing is specifically required by the Contract Documents to be performed at the Construction Manager's expense.

3.1.1.2 If a manufacturer's name, trade name or proprietary designation is used in the Contract Documents in connection with materials or products to be furnished under this Agreement, the Contractor shall furnish the product of the named manufacturer, except as follows:

3.1.1.2.1 Where the words "or equal" are used after such manufacturer's name, trade name or proprietary designation, Construction Manager proposed substitutions will be accepted only if they are, in the opinion of the Design Professional, proved equal to the specified material or product through the submittal of comparative manufacturer's information or as otherwise provided in §3.1.1.1. The Construction Manager shall inform the Design Professional in writing of the proposed substitution and request approval thereof prior to or at the time the material or product is submitted for approval. Written approval by the Design Professional shall be required for the acceptance of any such substitution.

3.1.1.2.2 Where the words "or equal" are not used after such manufacturer's name, trade name or proprietary designation, Construction Manager proposed substitutions may be accepted or rejected whether or not they are or can be, in the opinion of the Design Professional, proved equal to the specified material or product through the submittal of comparative manufacturer's information or as otherwise provided in §3.1.1.1. The Construction Manager shall inform the Design Professional in writing of the proposed substitution and request approval thereof prior to or at the time the material or product is submitted for approval. Written approval by the Design Professional shall be required for the acceptance of any such substitution.

3.1.1.3 If the Construction Manager proposes to use a material which, while suitable for the intended use, deviates in any way from the detailed requirements of the Contract Documents, the Construction Manager shall inform the Design Professional in writing as to the nature of such deviations at the time the material is submitted for approval, and shall request written approval of the deviation from the requirements of the Contract Documents. Written approval by the Design Professional shall be required for the acceptance of any such deviation.

3.1.1.4 The Contract Documents are intended to produce a building of consistent character and quality of design. All components of the building including visible items of mechanical and electrical equipment have been selected to produce a coordinated design in relation to the overall appearance of the building. The Design Professional will judge the design and



appearance of proposed substitutes based on their appropriateness in relation to the overall design of the project, as well as for their intrinsic merits. The Design Professional will not approve as equal to materials specified, proposed substitutions which, in the Design Professional's opinion, would be out of character, obtrusive, or otherwise inconsistent with the character or quality of design of the Project. In order to permit coordinated design of color and finishes the Construction Manager shall, if required by the Design Professional, furnish the substituted material in any color, finish, texture or pattern which would have been available from the manufacturer originally specified, at no additional cost to the Owner.

3.1.1.5 Any additional cost, loss, or damage arising from the substitution of any materials or products for those originally specified shall be borne by the Construction Manager, notwithstanding approval or acceptance of such substitution by the Owner or the Design Professional, unless such substitution was made at the written request or direction of the Owner or the Design Professional.

3.1.2 Unless the Contract Documents instruct otherwise, Construction Manager shall solely be responsible for and have control over construction means, methods, techniques, sequences, procedures, site security and safety precautions, and for coordinating all portions of the Work under the Agreement.

3.1.3 Construction Manager shall perform Work only within locations allowed by the Contract Documents, Law, and applicable permits unless otherwise directed by the Owner.

3.2 CONSTRUCTION PERSONNEL AND SUPERVISION

3.2.1 Construction Manager shall provide competent supervision for the performance of the Work. Before commencing the Work, or when proposing a change in the supervisory personnel, the Construction Manager shall notify Owner in writing of the name and qualifications of its proposed superintendent(s) and project manager, so Owner may review the individual's qualifications. If, for reasonable cause, Owner refuses to approve the individual, or withdraws its approval after giving it, Construction Manager shall name a different superintendent for Owner's review. Any disapproved superintendent shall not perform in that capacity thereafter at the Worksite. The superintendent shall represent the Construction Manager, and communications given to the superintendent shall be as binding as if given to the Construction Manager. The Parties shall use best efforts to confirm communications in writing.

3.2.2 The Construction Manager shall be responsible to the Owner for acts and omissions of the Construction Manager's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Construction Manager or any of its Subcontractors.

3.2.3 Construction Manager shall permit only fit and skilled persons to perform the Work. Construction Manager shall enforce safety procedures, strict discipline and good order among persons performing the Work. If Owner determines that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned work, Construction Manager shall immediately reassign the person on receipt of Owner's written notice to do so.

3.2.4 CONSTRUCTION MANAGER'S REPRESENTATIVE Construction Manager's Representative shall possess full authority to receive instructions from Owner and to act on those instructions.

3.2.5 The Construction Manager shall coordinate and supervise the work performed by Subcontractors to ensure that the Work is carried out without conflict between trades and so that no



trade, at any time, causes delay to the general progress of the Work. The Construction Manager and all Subcontractors at all times shall afford each trade, any separate contractor, or the Owner, every reasonable opportunity for the installation of their work and the storage of materials, subject to the specific limitations or restrictions of a particular site.

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

3.3.1 PRELIMINARY EVALUATION Construction Manager shall provide a preliminary evaluation of Owner's Program and report such findings to Owner and Design Professional.

3.3.2 CONSULTATION Construction Manager shall schedule and attend regular meetings with Owner and Design Professional. Construction Manager shall consult with Owner and Design Professional regarding site use and improvements and the selection of materials, building systems, and equipment. 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, and life-cycle data, and possible cost reductions.

3.3.2.1 The Construction Manager shall provide recommendations regarding accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

3.3.3 SCHEDULE OF THE WORK When Project requirements have been sufficiently identified, and within 30 Days of award, Construction Manager shall prepare a preliminary Schedule of the Work for Design Professional's review and Owner's approval. Construction Manager shall coordinate and integrate the Schedule of the Work with the services and activities of Owner, Construction Manager, Design Professional, and the requirements of governmental entities. As design proceeds, 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 indicate that milestone dates contained in prior Schedules of the Work will not be met, Construction Manager shall notify and make recommendations to Owner. If the Project is to be completed in phases, Construction Manager shall make recommendations to Owner and Design Professional regarding the phased issuance of the drawings and specifications.

3.3.4 ESTIMATES

3.3.4.1 When Owner has sufficiently identified Owner's Program and other Project requirements and Design Professional has prepared other basic design criteria, Construction Manager shall prepare, for the review of Design Professional and approval of Owner, an initial estimate for the Project, utilizing area, volume, or similar conceptual estimating techniques. If the Design Professional or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

3.3.4.2 When schematic or preliminary design documents have been completed by Design Professional and approved by Owner, Construction Manager shall prepare for the review of Design Professional and approval of Owner, a more detailed budget with supporting data. During the preparation of the design development documents or documents of comparable



detail, Construction Manager shall update and refine this estimate at appropriate intervals agreed upon by The Parties.

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

3.3.4.4 If any estimate submitted to Owner exceeds previously approved estimates, Construction Manager shall notify and make recommendations to Owner and Design Professional.

3.3.4.5 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.

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

3.3.6 TEMPORARY FACILITIES Construction Manager shall make recommendations regarding temporary construction facilities, equipment, materials, and services for common use by Construction Manager, its Subcontractors, Sub-subcontractors, and 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. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Parties. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

3.3.8 SOLICITATION OF SUBCONTRACTORS AND SUPPLIERS Construction Manager shall seek to develop Subcontractor interest in the Project and shall furnish to Owner and Design Professional a list of possible subcontractors from whom proposals may be requested for each principal portion of the Work. Owner shall promptly reply in writing to Construction Manager if Owner or Design Professional know of any objection to a subcontractor. Owner may designate specific persons or entities from whom Construction Manager shall solicit bids.

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

3.3.10 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 or as follows:

- aerial photographic review



- laser scanning
- geotechnical analysis
- selective destructive exploratory work
- other [_____]

3.4 GUARANTEED MAXIMUM PRICE (GMP)

3.4.1 At such time as the Parties agree the drawings and specifications are sufficiently complete, Construction Manager, in consultation with the Design Professional, shall prepare and submit to Owner in writing a GMP. The GMP proposal shall include the sum of the estimated cost of the Work, Construction Manager's Fee, the clarifications and assumptions upon which it is based, allowances, and reasonable contingencies, but shall not include compensation for Preconstruction Services. 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.

3.4.2 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.

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

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

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

3.4.3.3 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;

3.4.3.4 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;

3.4.3.5 a schedule of applicable alternate prices;

3.4.3.6 a schedule of applicable unit prices;

3.4.3.7 a statement of any work to be self-performed by Construction Manager including associated labor rates.

3.4.3.8 Construction Manager's contingency as provided in §3.4.8, and

3.4.3.9 all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

3.4.4 Construction Manager shall meet with Owner and Design Professional to review the GMP. If Owner or Design Professional discover any inconsistencies, inaccuracies, or omissions in the



information presented, they shall promptly notify Construction Manager, who shall make appropriate adjustments to the GMP. Owner shall then give prompt written approval of the GMP.

3.4.5 Owner shall cause 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 Construction Manager in accordance with the current Schedule of the Work, unless otherwise agreed by Owner, Construction Manager, and Design Professional. Construction Manager shall promptly notify Owner and Design Professional if the revised drawings and specifications are inconsistent with the GMP's clarifications, assumptions, and allowances.

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 CONSTRUCTION MANAGER'S CONTINGENCY The GMP Proposal will contain, as part of the estimated Cost of the Work, Construction Manager's Contingency, a sum mutually agreed upon and monitored by Construction Manager and Owner to cover costs which are properly reimbursable as a Cost of the Work but are not the basis for a Change Order. Construction Manager's Contingency shall not be used for changes in scope or for any item that would be the basis for an increase in the GMP. Construction Manager's use of its contingency shall be by written approval of the Owner, and Construction Manager shall provide Owner with a monthly accounting of charges against Construction Manager's Contingency, if applicable, with each application for payment.

3.4.9 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:

3.4.9.1 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; or

3.4.9.2 terminate the Agreement for convenience in accordance with §12.2.

3.4.10 ACCEPTANCE OF THE GMP PROPOSAL If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement. Owner shall provide a copy of the GMP Amendment to the Design Professional. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based (See §§ 3.4.1 and 3.4.2).

3.4.11 CONSTRUCTION MANAGER TO GUARANTEE CONTRACT SUM The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set



forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

3.4.11.1 One hundred percent of the savings on the project shall be returned to the Owner.

3.4.12 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 WORKMANSHIP

3.5.1 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 as otherwise provided in the Contract Documents.

3.5.2 Work for which no explicit quality of standards of materials and/or workmanship is defined in the Contract Documents shall be of good quality for the intended use and consistent with the quality of surrounding work and of the construction of the Project generally.

3.5.3 All manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturers' written instructions, unless specifically indicated otherwise in the Contract Documents.

3.5.4 Where the Work is to fit with existing conditions or work to be performed by others, the Construction Manager shall join the Work fully and completely with such conditions or work, unless otherwise specified.

3.5.5 The Construction Manager shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

3.5.6 The Construction Manager shall study and compare all Drawings and verify all figures shown thereon before laying out or constructing the Work. The Construction Manager shall be responsible for errors in its work and the work of its Subcontractors that might reasonably have been avoided thereby. The Construction Manager shall establish and be responsible for the accuracy of all lines, grades, measurements, levels, column lines, wall and partition lines required by the various Subcontractors in laying out their Work and shall protect and preserve all permanent bench and other markers. Checking of the figures or layout by the Design Professional shall not relieve the Construction Manager of these responsibilities.

3.6 COOPERATION WITH WORK OF OWNER AND OTHERS

3.6.1 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.

3.6.2 If Owner elects to perform work at the Worksite directly or by Others, the Parties shall coordinate the activities of all forces at the Worksite and agree upon fair and reasonable schedules



and operational procedures for Worksite activities. Owner shall require each separate contractor to cooperate with 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 may be equitably adjusted in accordance with this Agreement, for changes resulting from the coordination of construction activities, and the Schedule of the Work shall be revised accordingly.

3.6.3 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.

3.6.4 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 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 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 regarding the defects.

3.7 CONTRACT DOCUMENT REVIEW AND ADMINISTRATION

3.7.1 Before 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.

3.7.1.1 Requests by the Construction Manager for additional information relative to the Contract Documents (RFIs) shall be submitted simultaneously to the Owner and Design Professional in writing, on a form prepared or approved by the Design Professional, and shall include a detailed statement indicating the specific drawings or specifications in need of clarification and the nature of the clarification requested, such as supplementary drawings or specifications, or review and approval of product data, samples or sketches submitted by the Construction Manager. If mutually agreed upon by the Design Professional, Construction Manager and Owner, "in writing" may include fax transmissions, electronic mail, or other documentable communication methods.

3.7.1.2 RFIs shall be submitted in a timely manner so as to cause no delay in the progress of the Work, and to allow adequate time for review and response prior to the date on which the Construction Manager's current schedule of submittals requires a subsequent submittal which is dependent on the information requested. Unless another period of time is reasonably requested by the Design Professional and agreed to at the time of submittal, the Design Professional shall respond to each RFI within ten Business Days after receiving it.

3.7.2 Should Construction Manager discover any defects which shall include but not be limited to errors, omissions, or inconsistencies in the Contract Documents, Construction Manager shall promptly report them to Owner and Design Professional. It is recognized, however, that Construction Manager is not acting in the capacity of a licensed design professional, and that Construction Manager's examination is to facilitate construction and does not create an affirmative responsibility to



detect defects or to ascertain compliance with applicable laws, statutes, ordinances, building codes, and rules and regulations. Following receipt of written notice from Construction Manager of defects, Owner shall promptly inform Construction Manager what action, if any, Construction Manager shall take regarding the defect.

3.7.3 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 Owner or request supplementary instructions when a problem is identified. If the Construction Manager proceeds with the Work without first obtaining such supplementary instructions, the Construction Manager shall correct work incorrectly done at the Construction Manager's expense.

3.7.4 Construction Manager may be entitled to reasonable additional costs or time because of clarifications or instructions growing out of Construction Manager's reports described in this §3.7.

3.7.5 Nothing in §3.7 shall relieve Construction Manager of responsibility for its own errors, inconsistencies, or omissions.

3.7.6 **COST REPORTING** Construction Manager shall maintain complete, accurate, and current records that comply with generally accepted accounting principles and calculate the proper financial management under this Agreement. Construction Manager shall maintain a complete set of all books and records prepared or used by Construction Manager with respect to the Project. The accounting and control systems shall be satisfactory to the Owner, and Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Agreement. Construction Manager shall preserve all such records for a period of five years after the final payment or longer where required by Law.

3.8 MATERIALS FURNISHED BY OWNER OR OTHERS

3.8.1 If the Work includes installation of materials or equipment furnished by Owner or Others, it shall be the responsibility of 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 Construction Manager shall be the responsibility of Construction Manager and may be deducted from any amounts due or to become due Construction Manager. Any defects discovered in such materials or equipment shall be reported at once to Owner. Following receipt of written notice from Construction Manager of defects, Owner shall promptly inform Construction Manager what action, if any, Construction Manager shall take regarding the defects.

3.9 TESTS AND INSPECTIONS

3.9.1 Construction Manager shall schedule all tests, inspections and approvals of the Work required by the Contract Documents or by laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction at an appropriate time so as to not delay the progress of the Work. Construction Manager shall give proper notice to all required Parties of such tests, approvals, and inspections. If feasible, Owner and Others may timely observe the tests at the normal place of testing. Except as provided in §3.9.3, 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 Owner. Unless otherwise required by the Contract Documents, required certificates of testing, approval, or inspection shall be secured by Construction Manager and promptly delivered to Owner.



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

3.9.3 If the procedures described in the two subsections immediately above indicate that portions of the Work fail to comply with the Contract Documents due to the errors or omissions of Construction Manager, Construction Manager shall be responsible for costs of correction and retesting.

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. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

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 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 before Substantial Completion or within one year after the date of Substantial Completion of the Work any Defective Work is found, Owner shall promptly notify Construction Manager in writing. Unless Owner provides written acceptance of the condition, 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 Owner discovers and does not promptly notify Construction Manager or give Construction Manager an opportunity to test or correct Defective Work as reasonably requested by Construction Manager, Owner waives Construction Manager's obligation to correct that Defective Work as well as Owner's right to claim a breach of the warranty with respect to that Defective Work.

3.11.2 With respect to any portion of Work first performed after Substantial Completion, the one-year correction period shall commence when that portion of the Work is substantially complete. Correction periods shall not be extended by corrective work performed by Construction Manager.



3.11.3 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.

3.11.4 Construction Manager's obligations and liability, if any, with respect to any Defective Work discovered after the one-year correction period shall be determined in accordance with New Hampshire law. If, after the one-year correction period but before the applicable limitation period has expired, Owner discovers any Work which Owner considers Defective Work, Owner shall, unless the Defective Work requires emergency correction, promptly notify Construction Manager and allow Construction Manager an opportunity to correct the Work if Construction Manager elects to do so. If Construction Manager elects to correct the Work, it shall provide written notice of such intent within 14 Days of its receipt of notice from Owner and shall complete the correction of Work within a mutually agreed timeframe. If Construction Manager does not elect to correct the Work, Owner may have the Work corrected by itself or Others, and, if Owner intends to seek recovery of those costs from Construction Manager, Owner shall promptly provide Construction Manager with an accounting of the actual correction costs.

3.11.5 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.

3.11.6 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.

3.11.7 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. Such adjustment shall be effected whether or not final payment has been made.

3.12 CORRECTION OF COVERED WORK

3.12.1 Upon issuance of an Interim Directive, Work that has been covered without a requirement that it be inspected before being covered may be uncovered for Owner's or Design Professional's inspection. 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 Owner or Others. If the uncovered Work proves to be defective, Construction Manager shall pay the costs of uncovering and replacement.

3.12.2 If any Work is covered contrary to requirements in the Contract Documents, Owner may issue an Interim Directive to uncover the Work for Owner's observation and recover the Work all at Construction Manager's expense, and with no adjustment to the Dates of Substantial or Final Completion.

3.13 SAFETY

3.13.1 SAFETY PROGRAMS Construction Manager holds overall responsibility for safety programs. However, such obligation does not relieve Subcontractors of their safety responsibilities and to comply with the Law. Construction Manager shall prevent against 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 performing the Work whether under the care, custody or control of the Construction Manager or the Construction Manager's Subcontractors or Sub-subcontractors; and (c) property located at the Worksite and adjacent to work areas, whether or not the property is part of the Worksite.

3.13.2 CONSTRUCTION MANAGER'S SAFETY REPRESENTATIVE Construction Manager shall designate an individual at the Worksite in its employ as its safety representative. Unless otherwise identified by Construction Manager in writing to Owner, Construction Manager's project superintendent shall serve as its safety representative. Construction Manager shall report promptly in writing all recordable accidents and injuries occurring at the Worksite. When Construction Manager is required to file an accident report with a public authority, Construction Manager shall furnish a copy of the report to Owner.

3.13.3 The Construction Manager shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury, or loss.

3.13.4 Damage or loss not insured under property insurance that may arise from the Work, to the extent caused by the actions or inactions or intentionally wrongful acts or omissions of Construction Manager, or anyone for whose acts Construction Manager may be liable, shall be promptly remedied by Construction Manager.

3.13.5 The Construction Manager shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

3.13.6 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Construction Manager shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

3.13.7 The Construction Manager shall at all times be responsible for maintaining fire safety on the site, including prompt removal of all combustible rubbish, provision of fire extinguishing apparatus, and other measures and/or services specified herein or required by the State Fire Marshal or other authority having jurisdiction. If such authority determines that the Construction Manager has failed to provide or maintain adequate fire safety, the Construction Manager shall provide at its own expense any compensatory services, equipment, or devices required by the authority having jurisdiction including, but not limited to, maintaining a continuous fire watch.

3.13.8 The Construction Manager shall at all times protect excavations, trenches, buildings, and materials from rainwater, ground water, ice, snow, back-up or leakage of sewers, drains, or other piping, and from water of any other origin and shall remove promptly any accumulation of water. The Contractor shall provide and operate all pumps, piping, and other equipment necessary to this end.

3.13.9 If Owner deems any part of the Work or Worksite unsafe, Owner, without assuming responsibility for Construction Manager's safety program, may require by Interim Directive Construction Manager to stop performance of the Work, take corrective measures satisfactory to Owner, or both. If Construction Manager does not adopt corrective measures, Owner may perform them and deduct their cost from the GMP. 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 Construction Manager's compliance with Owner's reasonable request.

3.14 EMERGENCIES



3.14.1 Prior to the commencement of the Work, Construction Manager and Owner shall establish an emergency communication plan, and in an emergency affecting the safety of persons or property, 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.

3.15 HAZARDOUS MATERIALS

3.15.1 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 Owner as certified by an independent testing laboratory, and approved by the appropriate governmental agency.

3.15.2 If after commencing the Work, Hazardous Material is discovered at the Worksite, Construction Manager shall be entitled to immediately stop Work in the affected area. Construction Manager shall promptly report the condition to Owner, Design Professional, and, if required, the governmental agency with jurisdiction.

3.15.3 Construction Manager shall not resume nor be required to continue any Work affected by any Hazardous Material without written mutual 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.

3.15.4 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 Owner and shall be performed in a manner minimizing any adverse effect upon the Work.

3.15.5 If Construction Manager incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, Construction Manager may be entitled to an equitable adjustment in the GMP or the Dates of Substantial or Final Completion in accordance with this Agreement.

3.15.6 To extent not caused by the actions or inactions or intentionally wrongful acts or omissions of Construction Manager, its Subcontractors and Sub-subcontractors, and the agents, officers, directors, and employees of each of them, Owner shall defend, indemnify, and hold harmless Construction Manager, its Subcontractors and Sub-subcontractors, and the agents, officers, directors, and employees of each of them, from and against all 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 Hazardous Material.

3.15.7 MATERIALS BROUGHT TO THE WORKSITE

3.15.7.1 Safety Data Sheets (SDS) as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by Construction Manager, Subcontractors, Owner or Others, shall be maintained at the Worksite by Construction Manager and made available to Owner, Subcontractors, and Others.

3.15.7.2 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 Construction Manager in accordance with the Contract Documents and used or consumed in the performance of the Work. Upon the issuance of the Certificate of Substantial



Completion, Owner shall be responsible for materials and substances brought to the Worksite by Construction Manager if such materials or substances are required by the Contract Documents.

3.15.7.3 To the extent caused by the actions or inactions or intentionally wrongful acts or omissions of Construction Manager, its agents, officers, directors, and employees, Construction Manager shall defend, indemnify, and hold harmless 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 procedure, arising out of or relating to delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by Construction Manager

3.15.8 Section 3.15 in its entirety shall survive the completion of the Work or Agreement termination.

3.16 SUBMITTALS

3.16.1 Construction Manager shall submit to Owner and Design Professional a submittal log with a proposed submittal schedule, 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 §4.6.1. Construction Manager shall be responsible for the accuracy and conformity of its submittals to the Contract Documents. At no additional cost, 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 Owner and Others. Construction Manager's submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents.

3.16.2 The approval of any Construction Manager submittal shall not be deemed to authorize changes, deviations, or substitutions from the requirements of the Contract Documents unless a Change Order or Interim Directive specifically authorizes such deviation, substitution, or change. To the extent a change, deviation, or substitution causes an impact to the GMP or date of Substantial Completion, such approval shall be memorialized in a Change Order no later than seven Days following approval by Owner. Neither Design Professional nor Owner shall make any change, deviation, or substitution through the submittal process without specifically identifying and authorizing such deviation to Construction Manager. If the Contract Documents do not contain submittal requirements pertaining to the Work, Construction Manager agrees upon request to submit in a timely fashion to Design Professional and Owner for review any shop drawings, samples, product data, manufacturers' literature, or similar submittals as may reasonably be required by Owner.

3.16.3 Unless another time period is reasonably requested by Design Professional and agreed to at the time of submittal, Design Professional shall respond to each submittal within 10 Business Days after receiving it.

3.16.4 Owner shall be responsible for reviewing and commenting on submittals with reasonable promptness to avoid causing delay.

3.16.5 Construction Manager shall perform all Work strictly in accordance with approved submittals and shall not perform any portions of the Work which require submittal and review of shop drawings, product data, samples or similar submittals until the respective submittal has been approved by the Design Professional. 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.



3.16.6 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.

3.16.7 Construction Manager shall prepare and submit to Owner

- X Final marked-up as-built drawings as submitted to the Design Professional;
- X Updated electronic data, in accordance with §4.6.1;
- X Other documentation required by the Contract Documents that specifies how various elements of the Work were actually constructed or installed.
- X Operations and Maintenance Manuals
- X Warranty Information
- X All inspection reports

3.17 DESIGN DELEGATION

3.17.1 If the Contract Documents specify that Construction Manager is responsible for the design of a particular system or component to be incorporated into the Project, then Owner shall provide all required performance and design criteria. Construction Manager shall not be responsible for the adequacy of such performance and design criteria.

3.17.2 As required by the Law, Construction Manager shall procure design services and certifications necessary to satisfactorily complete the Work from a licensed design professional. The signature and seal of 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 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 a condition encountered at the Worksite is (a) a subsurface or other physical condition materially different from those indicated in the Contract Documents, or (b) an unusual and unknown physical condition materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, Construction Manager shall stop affected Work after the condition is first observed and give prompt written notice of the condition to Owner and Design Professional. Owner shall investigate and then issue an Interim Directive specifying the extent to which Owner agrees that a concealed or unknown condition exists and directing how Construction Manager is to proceed. Construction Manager shall not be required to perform any Work relating to the 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 condition, including any dispute about its existence or nature shall be determined as provided in ARTICLE 9.

3.18.3 The Owner maintains possession of the premises and any improvements made by the Construction Manager. Under the Contract Documents, the Owner grants the Construction Manager the right to enter and use the premises. Construction Manager shall confine its apparatus, the storage of materials, and the operations of the Construction Manager's workers to limits indicated by law,



ordinance, the Contract Documents and permits and/or directions of the Owner and shall not unreasonably encumber the premises with the Construction Manager's materials or equipment.

3.18.4 The Construction Manager shall remove snow or ice within the limits of the Worksite indicated in the Contract Documents that might result in damage or delay.

3.18.5 During the progress of the Work and at all times prior to the Date of Substantial Completion or occupancy of the Work by the Owner, whichever is earlier, the Construction Manager shall provide temporary heat, ventilation, and enclosure adequate to permit the Work to proceed in a timely fashion, and to prevent damage to completed Work or Work in progress, or to materials stored on the premises. The permanent heating and ventilation systems may be used for these purposes when available unless otherwise provided in the Contract Documents. The use of the permanent heating system for temporary heat shall be subject to the prior written approval of the Owner and Design Professional, and reimbursement to the Owner for the cost of utilities used during construction.

3.19 PERMITS AND TAXES

3.19.1 Construction Manager is responsible for general oversight of all trades required to obtain permits directly and shall assist Owner in obtaining the building permits and special permits for permanent improvements. Owner shall provide appropriate documentation for all subcontractor permit applications.

3.19.1.1 The Owner shall be responsible for all fees related to the primary building permit.

3.19.1.2 The Construction Manager and/or its subcontractors shall be responsible for all fees related to trade permits.

3.19.2 Construction Manager shall give authorities having jurisdiction all notices required by Law, schedule all required inspections by the authority having jurisdiction 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.

3.19.3 Construction Manager shall pay applicable taxes for the Work provided by Construction Manager.

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

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 CLEAN 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 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.

3.21.3 Immediately prior to Substantial Completion, the Construction Manager shall completely clean the premises. Concrete and ceramic surfaces shall be cleaned and washed. Resilient coverings shall be cleaned, waxed, and buffed. Woodwork shall be dusted and cleaned. Sash, fixtures and equipment shall be thoroughly cleaned. Stains, spots, dust marks, and smears shall be removed from all surfaces. Hardware and all metal surfaces shall be cleaned and polished. Glass and plastic surfaces shall be thoroughly cleaned by professional window cleaners. All damaged, broken, or scratched glass or plastic shall be replaced by the Construction Manager at the Construction Manager's expense.

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 Laws 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.

3.23.1 CHANGES IN THE LAW 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 shall be equitably adjusted in accordance with ARTICLE 9 for additional costs or time needed resulting from laws enacted after the date of this Agreement, including taxes.

3.24 CONFIDENTIALITY Construction Manager shall treat as confidential and not disclose to third persons, nor use for its own benefit ("Treat as Confidential"), any of Owner's confidential information, know-how, discoveries, production methods, and the like disclosed to Construction Manager or which Construction Manager may acquire in performing the Work. To the extent necessary to perform the Work, Construction Manager's confidentiality obligations do not apply to disclosures to Subcontractors, Sub-subcontractors, and Suppliers. Owner shall Treat as Confidential information all of Construction Manager's estimating systems and historical and parameter cost data disclosed to Owner in performing the Work. Each Party shall specify and mark confidential items as "Confidential." Confidentiality obligations do not supersede compulsion by Law, a governmental agency or authority, an order of a court of competent jurisdiction, or a validly issued subpoena. In such event, a Party shall promptly notify the other Party to permit that Party's legal objection.

3.25 CONSTRUCTION UPDATES The Construction Manager shall revise the construction schedule at appropriate intervals as required by the conditions of the Work and Project. At a minimum, an up-to-date schedule shall be submitted with each Requisition for Payment, and within seven Days following receipt of information by the Construction Manager, which the Construction Manager believes may result in a change of completion date.

3.26 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.

3.27 RELIANCE ON TEST RESULTS

3.27.1 The Construction Manager is entitled to rely reasonably on the accuracy of test boring or soil test information provided by the Owner at, and only at, the specific locations of such borings or tests. The Owner does not hold such information to be an accurate or approximate indication of subsurface conditions at any other points.

3.27.2 If the Construction Manager finds that subsurface conditions at any specific test location differ from the information in the tests provided by the Owner, the Construction Manager shall immediately notify the Owner and Design Professional in writing and shall not further disturb the noted conditions until authorized to do so by the Owner.

3.27.3 No claim for extra cost or extension of time shall be allowed unless such notification is given by the Construction Manager, the Design Professional determines that the information contained in the test results was incorrect, and the Design Professional determines that the claim is justified by the discrepancy.

3.27.4 Claims based on interpolation, extrapolation or any other assumptions by the Construction Manager as to subsurface conditions between test locations shall not be allowed.

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 At the written request of Construction Manager, Owner shall provide Construction Manager with evidence of Project financing. Evidence of such financing shall be a condition precedent to Construction Manager's commencing or continuing the Work. Construction Manager shall be notified before any material change in Project financing.

4.3 WORKSITE INFORMATION To the extent Owner has obtained, or is required to obtain the following Worksite information, then Owner shall provide Construction Manager the following:

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;

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 Construction Manager which are required for Construction Manager's performance of the Work and under 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, with the



assistance of the Construction Manager, and pay for the Project building permit, approvals, easements, assessments, and development fees.

4.5 MECHANICS AND CONSTRUCTION LIEN INFORMATION The Owner shall furnish to the Construction Manager within 15 Days after receipt of a written request, information necessary and relevant for the Construction Manager to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

4.6 CONTRACT DOCUMENTS

4.6.1 ELECTRONIC DOCUMENTS 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 protocol for the exchange of electronic communications governing all exchanges. At a minimum, the protocol 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 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 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 regarding respective responsibilities for cleanup at the Worksite, Owner may implement appropriate cleanup measures after giving notice and allocate the cost among those responsible during the following pay period.

4.10 OWNER'S RIGHT TO STOP THE WORK If the Construction Manager fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by §3.11 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Construction Manager to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Construction Manager or any other person or entity, except to the extent required by §3.6.

4.11 COST OF CORRECTING DAMAGED OR DESTROYED WORK With regard to damage or loss attributable to the acts or omissions of Owner or Others and not to Construction Manager, Owner may either (a) promptly remedy the damage or loss and assume affected warranty responsibilities, (b) accept the damage or loss, or (c) issue an Interim Directive or Change Order to remedy the damage or loss. If Construction Manager incurs costs or is delayed due to such loss or damage, Construction Manager may seek an equitable adjustment in the GMP, estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion.



4.12 The Owner's review and approval of the Construction Manager's documents or submittals shall not relieve the Construction Manager of responsibility for compliance with the Contract Documents unless (a) the Construction Manager has notified the Owner in writing of the deviation prior to approval by the Owner or, (b) the Owner has approved a Change in the Work reflecting any deviations from the requirements of the Contract Documents.

ARTICLE 5 SUBCONTRACTS

5.1 SUBCONTRACTORS Subcontracts shall be issued on a lump sum basis unless Owner has given prior written approval of a different method of payment to the Subcontractor.

5.1.1 Construction Manager shall not engage a Subcontractor who is a Related Party without prior written approval of the Owner. If the Construction Manager recommends a specific bidder that may be considered a Related Party, then the Construction Manager shall promptly notify the Owner in writing of the specific nature of the contemplated transaction, including the identity of the Related Party and the anticipated cost to be incurred before any such transaction is consummated or cost incurred. If the Owner authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the Related Party, as a Subcontractor. If the Owner does not authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a Related Party according to the terms of §3.3.8 and §5.3.

5.1.2 No Sub-subcontractor's contract for work shall exceed 25% of the Subcontractor's contract value without written permission from the Owner.

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

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

5.2.2 If Owner has reasonably and promptly objected, Construction Manager shall not contract with the proposed Subcontractor or Supplier, and Construction Manager shall propose another acceptable Subcontractor or Supplier to 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 Construction Manager shall not change a Subcontractor or Supplier previously selected if the Owner makes reasonable objection to such substitute.

5.3 BINDING OF SUBCONTRACTORS AND SUPPLIERS Construction Manager agrees to bind every Subcontractor and Supplier (and require every Subcontractor to so bind its subcontractors and significant suppliers) to the Contract Documents as they apply to the Subcontractor's or Supplier's applicable provisions to that portion of the Work. Each subcontract agreement shall preserve and protect the rights of the Owner and Design Professional under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Construction Manager that the Construction Manager, by the Contract Documents, has against the Owner. Where appropriate, the Construction Manager shall require each Subcontractor to enter into similar agreements with Sub-subcontractors.



5.3.1 The Construction Manager shall require all Subcontractors and Sub-subcontractors to carry the insurance required by Article 11 for all their activities in connection with the Work or the Construction Manager shall provide all such coverage under the Construction Manager's own insurance policies. The Construction Manager shall provide to the Owner a list of all Subcontractors and Sub-subcontractors who are providing their own insurance as required by these documents and Construction Manager shall certify that Subcontractors or Sub-subcontractors not on this list are insured by the Construction Manager.

5.3.2 Prior to the binding of subcontractors, Construction Manager shall provide Owner with recommendations for award with a bid tabulation sheet and any assumptions and / or clarifications associated with the awards.

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 §12.2, or §12.3; and,

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

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

ARTICLE 6 TIME

6.1 DATE OF COMMENCEMENT The Date of Commencement is the date of commencement of the Construction Phase as stated in a notice to proceed.

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 with regard to the obligations of the Contract Documents. By executing the Agreement, the Construction Manager confirms that the Contract Time is a reasonable period for performing the Work.

6.1.3 Unless instructed by Owner in writing, Construction Manager shall not knowingly commence the Work before the effective date of Construction Manager's required insurance.

6.2 SCHEDULE OF THE WORK



6.2.1 Before submitting its first application for payment, Construction Manager shall submit to Owner and, if directed, Design Professional a Schedule of the Work showing the dates on which Construction Manager plans to begin and complete various parts of the Work, including dates on which information and approvals are required from Owner. Except as otherwise directed by Owner, Construction Manager shall comply with the approved Schedule of the Work. Unless otherwise agreed, the Schedule of the Work shall be formatted in a detailed precedence-style critical path method that (a) provides a graphic representation of all activities and events, including float values that will affect the critical path of the Work and (b) identifies dates that are critical to ensure timely and orderly completion of the Work. Construction Manager shall update the Schedule of the Work on a monthly basis or as mutually agreed by the Parties.

6.2.2 Owner may determine the sequence in which the Work shall be performed, provided it does not unreasonably interfere with the approved Schedule of Work. Owner may require 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 Owner or Others. If Construction Manager consequently incurs costs or is delayed, the GMP or the Dates of Substantial or Final Completion, or both, Construction Manager may seek equitable adjustment under ARTICLE 9.

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 and pandemics; (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. The Construction Manager shall have the burden of demonstrating the impact and shall furnish the Owner the supporting documentation relating thereto as the Owner may reasonably require.

6.3.2 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.

6.3.3 No claim for delay will be allowed on account of failure of the Design Professional to furnish instructions, or return Shop Drawings, Product Data, Samples and the like, unless the Design Professional has failed to respond within 10 Business Days in accordance with the requirements of the Standard Agreement between Owner and Design Professional and not then unless the Construction Manager can demonstrate that the claimed failure by the Design Professional is the sole cause of a delay to Work on the critical path.

6.4 NOTICE OF DELAYS If delays to the Work are encountered for any reason, Construction Manager shall provide written notice to Owner within five Business Days 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.



6.4.1 This Paragraph 6.4 does not preclude recovery of damages for delay by either Party under other provisions of the Contract Documents.

6.5 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. Owner shall process any such claim against Construction Manager in accordance with ARTICLE 9.

6.6 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. The Construction Manager shall also keep, and make available to the Owner and Design Professional, a daily log containing a record for each Day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, safety issues, and other information required by the Owner.

6.7 LIQUIDATED DAMAGES

6.7.1 SUBSTANTIAL COMPLETION Liquidated damages based on the Substantial Completion date [_____] shall/ [_____] shall not apply.

6.7.1.1 Owner will suffer damages which are difficult to determine and accurately specify if the Substantial Completion date, which may be amended by Change Order, is not attained. Construction Manager shall pay Owner \$[_____] as liquidated damages and not as a penalty for each Day that Substantial Completion extends beyond the Substantial Completion date. These liquidated damages are in lieu of all liability for all extra costs, losses, expenses, claims, penalties, and any other damages of any nature incurred by Owner resulting from not attaining the Substantial Completion date.

6.7.2 FINAL COMPLETION Liquidated damages based on the Final Completion date [_____] shall/ [_____] shall not apply.

6.7.2.1 Owner will suffer damages which are difficult to determine and accurately specify if the Final Completion date, as may be amended by subsequent Change Order, is not attained. Construction Manager shall pay Owner \$[_____] as liquidated damages and not as a penalty for each Day that Final Completion extends beyond the Final Completion date. These liquidated damages are in lieu of all liability for any extra costs, losses, expenses, claims, penalties, and any other damages of any nature incurred by Owner resulting from not attaining Final Completion date.

6.7.3 Other applicable liquidated damages shall be included as Agreement exhibit.

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 established in Amendment 1, 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:

Construction Manager's Fee for the GMP Cost of Work: _____%

Construction Manager's Fee for Changes in Work: _____%

7.4 FEE ADJUSTMENTS:

7.4.1 Changes in the Work as provided in ARTICLE 9, shall adjust Construction Manager's Fee as follows:

Adjustments to the Guaranteed Maximum Price because of changes in the Work subsequent to the execution of the GMP Amendment may be determined by any of the methods listed in ARTICLE 9. In lieu of any stated percentage for "Contractor's overhead and profit", the Construction Manager's fee shall be adjusted by the percentage stated in §7.3 of this Agreement on the aggregate cost of the net added Work.

7.4.2 except as provided for in §6.3.1 delays in the Work not caused by Construction Manager shall adjust Construction Manager's Fee to compensate for reasonable increased expenses as provided for in ARTICLE 9; and

7.4.3 managing the replacement of an insured or uninsured loss shall increase Construction Manager's fee in the same proportion that Construction Manager's Fee bears to the estimated Cost of the Work for the replacement.

7.5 PRECONSTRUCTION SERVICES COMPENSATION Construction Manager shall be compensated for Preconstruction Services as follows.

For the Construction Manager's Preconstruction Phase services described in §3.3:

Estimated Lump Sum Fee for Pre-construction Services \$_____ and is based on [_____] hours of Project Manager Pre-Construction assistance in the main office at \$_____ per hour.

ARTICLE 8 COST OF THE WORK

8.1 Owner agrees to pay Construction Manager for the Cost of the Work as defined in this article. This payment shall be in addition to Construction Manager's Fee stipulated in §7.3. The term Cost of the Work means costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs may not be at rates higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in §8.3.

8.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment

8.3 COST ITEMS



8.3.1 Wages of construction workers directly employed by Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops

8.3.2 Salaries of Construction Manager's employees when stationed at the field office, or as approved by the Owner in writing, in whatever capacity employed. All Construction Manager's on-site supervisory personnel shall be charged to either general conditions or pre-construction fee.

8.3.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

8.3.4 Cost of applicable 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 §8.3.1 and §8.3.2.

8.3.5 Subject to the Owner's prior written approval, reasonable transportation, travel, hotel, and moving expenses of Construction Manager's personnel incurred in connection with the Work.

8.3.6 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Agreement. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with Owner's prior approval.

8.3.7 Fees and assessments, permits, licenses, tests, and inspections for which the Construction Manager is liable

8.3.8 Royalty and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

8.3.9 Costs associated with establishing, equipping, operating, maintaining, and demobilizing the field office.

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

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

8.3.12 Costs of materials described in §8.3.11 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work

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



8.3.14 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 Construction Manager.

8.3.15 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from 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. Rentals from Construction Manager or its affiliates, subsidiaries, or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to 85% of the value of the piece of equipment.

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

8.3.17 Losses, expenses, or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work during the Construction Phase and for a one-year period following the Date of Substantial Completion, provided that such losses, expenses, damages, or corrective work did not arise from Construction Manager's acts or failure to act

8.3.18 Water, power, and fuel costs necessary for the Work.

8.3.19 Cost of removal and legal disposal of all nonhazardous substances, debris, and waste materials.

8.3.20 Costs of document reproductions, facsimile transmissions, postage and parcel delivery charges, and reasonable petty cash expenses of the site office.

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

8.4 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.

8.5 COSTS NOT TO BE REIMBURSED

8.5.1 The Cost of the Work shall not include the items listed below:

8.5.1.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in §8.3.2.

8.5.1.2 Expenses of the Construction Manager's principal office and offices other than the site office.

8.5.1.3 Overhead and general expenses, including cell phones and other mobile technology, except as may be expressly included in §§ 8.1 through 8.3.

8.5.1.4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work



8.5.1.5 Except as provided in §8.3.17 of this Agreement, costs due to the actions or inactions or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Agreement.

8.5.1.6 Any cost not specifically and expressly described in §§ 8.1 to 8.3.

8.5.1.7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded

8.5.1.8 Costs for services incurred during the Preconstruction Phase.

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 Interim 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 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 or Interim Directive has been issued.

9.2 INTERIM DIRECTIVES

9.2.1 Owner may issue an Interim Directive directing a change in the Work before reaching agreement with Construction Manager on the adjustment, if any, in the GMP, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion, or directing Construction Manager to perform Work that Owner believes is not a change. If the Parties disagree that the Interim Directed work is within the scope of the Work, Construction Manager shall perform the disputed Work and furnish Owner with an estimate of the costs to perform the disputed work in accordance with Owner's interpretations.

9.2.2 The Parties 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 an Interim Directive. As the directed Work is performed, Construction Manager shall submit its costs for such Work with its application for payment beginning with the next application for payment within 30 Days of the issuance of the Interim Directive. If there is a dispute as to the cost to Owner,



the Parties shall resolve the disputed amount, subject to the requirements of ARTICLE 13. Undisputed amounts may be included in applications for payment and shall be paid by Owner in accordance with this Agreement.

9.2.3 When the Parties 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 an Interim Directive, such agreement shall be the subject of an appropriate Change Order. The Change Order shall include all outstanding Interim Directives on which the Parties 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;

9.3.1.3 Cost of the Work as defined by ARTICLE 8. Construction Manager's Overhead and profit shall be added to any net increase in GMP in accordance with §9.3.2. Overhead and profit shall be applied to any net decrease. Construction Manager shall maintain a documented, itemized accounting evidencing the expenses and savings

9.3.2 For any adjustments to the Contract Sum based on other than unit price method, overhead and profit combined shall be calculated at the following percentages of the cost attributable to the change in the Work:

9.3.2.1 For the Construction Manager, when work is performed by subcontractors, not to exceed fees for Changes in Work defined in Section 7.3.

9.3.2.2 For the Construction Manager, when work performed by Construction Manager's own forces, not to exceed 15% percent of the cost;

9.3.2.3 For each Subcontractor or Sub-subcontractor involved, for the Work performed by that Subcontractor's or Sub-subcontractor's own forces, not to exceed 15% of the cost;

9.3.2.4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, not to exceed 7.5% of the amount due the Sub-subcontractor;

9.3.2.5 The total mark up for overhead and profit to the Owner shall not exceed 25%.

9.3.3 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 either Party, such unit prices shall be equitably adjusted and mutually agreed to.

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



9.4 CHANGES NOTICE Except as provided in §6.3.2 and §6.4 for any claim for an increase in the GMP or the Date of Substantial Completion or Date of Final Completion, Construction Manager shall give Owner written notice of the claim within 7 Business Days after the occurrence giving rise to the claim or within 7 Business Days after Construction Manager first recognizes the condition giving rise to the claim, whichever is later. Owner shall respond in writing denying or approving the claim no later than (14) days after receipt. Except in an emergency, notice shall be given before proceeding with the Work. Thereafter, Construction Manager shall submit written documentation of its claim, including appropriate supporting documentation, within 21 Days after giving notice, unless the Parties mutually agree upon a longer period of time. No later than 14 Days after receipt, Owner shall respond in writing denying or approving 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.

9.5 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.

9.5.1 Construction Manager shall record such changes on the Construction Documents maintained by Construction Manager.

9.6 VALIDATION OF PRICES To facilitate checking quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs, including labor, materials and Subcontracts. In no case will a change involving over \$5,000.00 be approved without such itemization. No claim for delay shall be valid unless such itemization has been submitted in a timely manner.

ARTICLE 10 PAYMENT

10.1 SCHEDULE OF VALUES Before the first Application for Payment, the Construction Manager shall submit to the Owner for approval a schedule of values allocating the Contract Sum to various portions of the Work. This schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. Upon approval by the Owner, this schedule shall be used as the basis for reviewing the Construction Manager's Applications for Payment and shall be revised if later found by the Owner to be inaccurate.

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 first 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 be based on the approved scheduled of values submitted by the Construction Manager in accordance with the Contract Documents, include payment requests on account of properly authorized Change Orders or Interim Directives, and be notarized. The Design Professional will, within seven Business Days of receipt of the Construction Manager's application for payment, either issue to the Owner a certificate for payment or notify the Construction Manager the Design Professional's reason for withholding payment. Owner shall pay the amount otherwise due on any payment application, as certified by Design Professional, no later than 22 Days after accepting such application. Owner may deduct from any progress payment amounts that may be retained pursuant to §10.2.5. The schedule of values shall allocate the entire Guaranteed Maximum Price among the



various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

10.2.1.1 Each Application for Payment or periodic estimate requesting payment shall be accompanied by (1) a waiver of liens on account of prior payments from each Subcontractor or (2) a certificate from each Subcontractor stating that the Subcontractor has been paid all amounts due the Subcontractor on the basis of the previous periodic payment to the Construction Manager, or else stating the amount not so paid and the reason for the discrepancy. In the event of any such discrepancy, the Construction Manager shall furnish the Construction Manager's own written explanation to the Owner through the Design Professional. Such waiver or certificate shall be in a form acceptable to the Owner.

10.2.1.2 Each application for payment shall be accompanied by a cost report which includes the schedule of values and change order report.

10.2.1.3 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

10.2.1.4 When reviewing Construction Manager's Applications for Payment, the Design Professional shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Design Professional has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with §10.2.1 or other supporting data; that the Design Professional has made exhaustive or continuous on-site inspections; or that the Design Professional has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

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 when approved by Owner in writing, 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 COMPUTATION OF PROGRESS PAYMENTS Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

10.2.3.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule



of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in §9.2.2.

10.2.3.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.

10.2.3.3 Add the Construction Manager's Fee, less retainage of 10%. The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in §7.3 or, if the Construction Manager's Fee is stated as a fixed sum in that section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion.

10.2.3.4 Subtract retainage of 10% from that portion of the Work that the Construction Manager self-performs.

10.2.3.5 Subtract the aggregate of previous payments made by the Owner

10.2.3.6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by §10.2.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner.

10.2.3.7 Subtract amounts, if any, for which the Design Professional has withheld or nullified a Certificate for Payment as provided in §10.3.

10.2.4 LIEN WAIVERS AND LIENS

10.2.4.1 PARTIAL LIEN WAIVERS AND AFFIDAVITS Partial lien waivers and affidavits will be 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.

10.2.4.2 REMOVING LIENS If Owner has made payments in the time required by this article, Construction Manager shall, within 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.

10.2.5 RETAINAGE Until the Work is 50% complete, the Owner will pay 90% of the amount due the Construction Manager on account of each such progress payment. At the time the Work is 50% complete and thereafter, if its manner of completion and progress are satisfactory, the Owner may make any of the remaining progress payments in full, subject to presentation by the Construction Manager of written consent of surety for such reduction in retainage. The initial 10% retainage will continue to be withheld, and the Owner will release such retainage within 30 Days after the date of issuance of a Certificate of Final Completion by the Design Professional.

10.2.5.1 The full Contract retainage may be reinstated at any time if the manner of completion of the Work and its progress do not remain satisfactory to the Owner, or if the Surety withholds or revokes its consent, or for other good and sufficient reasons.



10.2.5.2 Owner may reduce the amount to be retained at any time;

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

10.2.6 PAYMENTS TO SUBCONTRACTORS AND MATERIAL SUPPLIERS The Construction Manager shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Construction Manager on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Construction Manager on account of such Subcontractor's portion of the Work. By appropriate agreement with each Subcontractor, the Construction Manager shall require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Construction Manager shall make payments to material suppliers in a similar manner.

10.2.6.1 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements

10.2.6.2 Unless required by law, neither the Owner nor the Design Professional shall have an obligation to pay nor to see the payment of money to a Subcontractor or material supplier.

10.3 ADJUSTMENT OF CONSTRUCTION MANAGER'S PAYMENT APPLICATION Owner, or Design Professional on Owner's behalf, 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:

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 Construction Manager's failure to properly pay Subcontractors and Suppliers following receipt of such payment from Owner for that portion of the Work or for supplies, provided that Owner is making payments to Construction Manager in accordance with this Agreement;

10.3.4 rejected or 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;

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.

10.3.8 failure to maintain specified record documents relating to the Work; and

10.3.9 damage to the Owner's or another contractor's Work

No later than seven 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 for any reason not the fault of Construction Manager, Construction Manager does not receive a progress payment from Owner within seven Days after the time such payment is due, then Construction Manager, upon giving seven Days' written notice to Owner, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to Construction Manager has been received. If Construction Manager incurs costs or is delayed resulting from shutdown, delay, and start-up, Construction Manager may seek an equitable adjustment in the GMP and Dates of Substantial or Final Completion may be equitably adjusted by a Change Order in accordance with ARTICLE 9.

10.6 SUBSTANTIAL COMPLETION

10.6.1 Construction Manager shall notify Owner and, if directed, Design Professional when it considers that the Work or a designated portion is substantially complete and the premises comply with §3.21.3. 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. .

10.6.1.1 The Construction Manager's notification of substantial completion shall include (1) a list of items to be completed or corrected, and (2) all permits, certificates, and special warranties required by the Contract Documents, endorsed by the Construction Manager and in a form reasonably acceptable to the Owner.

10.6.1.2 If the Owner and its Design Professional find during the review that the Work or designated portion has not reached Substantial Completion, and the Construction Manager's notice and supporting documents are not generally complete or correct, the Owner and its Design Professional will 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 as well as return the submitted documents to the Construction Manager for revision and resubmittal, describing in general the additions or corrections required. Construction Manager shall promptly complete all items on the list.

10.6.1.3 If the Owner and its Design Professional find on a preliminary review of the Construction Manager's resubmittal that the resubmitted notice and supporting documents are still not generally complete and correct, the Construction Manager shall again correct and resubmit them and shall in addition reimburse the Owner for the cost of any change in the



Design Professional's services resulting from such second and any subsequent preliminary reviews.

10.6.1.4 If the Owner and its Design Professional find during a preliminary review or subsequent review of resubmitted documents that the Construction Manager's notice and supporting documents are substantially complete and correct, the Owner and Design Professional will proceed as stated in §10.6.2

10.6.2 Promptly on receipt from the Construction Manager of a notice, list, permits, certificates and special warranties mentioned in the first sentence of §10.6.1.1 which the Owner and Design Professional determine on the basis of a preliminary review to be generally complete and correct, the Design Professional will perform a detailed inspection to determine that the requirements of the Contract Documents for Substantial Completion of the Work or designated portion thereof have been met.

10.6.3 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. In the absence of a delineation of responsibilities between Owner and Construction Manager, Owner shall assume all responsibilities for items such as security, maintenance, utilities, insurance, and damage to the Work. 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.

10.6.4 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.

10.6.5 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 200% 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) appropriate 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. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Construction Manager have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents.

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 Final Completion has been achieved, 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 no later than 30 Days after Construction Manager has submitted a complete and accurate application for final payment, including submissions required under §10.8.4, and a Certificate of Final Completion has been executed by the Parties.

10.8.3.1 The amount of the final payment shall be calculated as follows:

10.8.3.1.1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the Guaranteed Maximum Price.

10.8.3.1.2 Subtract amounts, if any, for which the Owner withholds, in whole or in part, a final Certificate for Payment as provided in §10.3 or other provisions in the Contract Documents.

10.8.3.1.3 Subtract the aggregate of previous payments made by the Owner.

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, to have been paid, satisfied, or to be paid with the proceeds of final payment, so as not to encumber 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;

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

10.8.4.6 a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until prior written notice has been given to the Owner as required in Article 11.

If the Construction Manager fails to furnish such releases or waivers as the Owner reasonably requires to satisfy the Owner that there are no outstanding liens, the Owner may require the Construction Manager, as a condition of final payment and at the Construction Manager's expense, to furnish a bond satisfactory to the Owner to indemnify the Owner against such liens.



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 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

10.8.6.1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;

10.8.6.2 failure of the Work to comply with the requirements of the Contract Documents; or

10.8.6.3 terms of warranties required by the Contract Documents

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 all claims by the Construction Manager arising out of or related to the Agreement or the Work.

ARTICLE 11 INDEMNITY, INSURANCE, AND BONDS

11.1 INDEMNITY

11.1.1 To the fullest extent permitted by New Hampshire law, Construction Manager shall indemnify and hold harmless Owner, Owner's officers, directors, members, consultants, agents, and employees, Design Professional, and Others as required by contract (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 actions or inactions or intentionally wrongful acts or omissions of Construction Manager, Subcontractors, Suppliers, Sub-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 New Hampshire law, Owner shall indemnify and hold harmless Construction Manager, its officers, directors, members, consultants, agents, and employees, Subcontractors, Suppliers, 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 Owner, Design Professional, or Others, but only to the extent caused by the actions or inactions or intentionally wrongful acts or omissions by Owner, Design Professional, or Others

11.1.3 NO LIMITATION ON LIABILITY The limits and types of insurance set forth in Article 11 are the minimum required amounts and in no way limit the liability of the Construction Manager or subcontractors. In any and all claims against the Indemnitees by any employee of Construction Manager, anyone directly or indirectly employed by Construction Manager, or anyone for whose acts 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



Construction Manager under workers' compensation acts, disability benefit acts, or other employment benefit acts.

11.2 INSURANCE

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

11.2.1.1 Employers' Liability Insurance

- a. \$500,000 bodily injury by accident per accident.
- b. \$500,000 bodily injury by disease policy limit.
- c. \$500,000 bodily injury by disease per employee.

11.2.1.2 Business Automobile Liability Insurance \$1,000,000 per accident.

11.2.1.3 Commercial General Liability Insurance (must be location and project specific)

- a. \$1,000,000 per occurrence.
- b. \$2,000,000 general aggregate.
- c. \$2,000,000 products/completed operations aggregate.
- d. \$1,000,000 personal and advertising injury limit.

11.2.1.4 Excess/Umbrella Liability Insurance

- a. \$2,000,000 per occurrence.
- b. \$2,000,000 general aggregate
- c. \$2,000,000 products/completed operations aggregate limit

11.2.2 Employers' Liability, Business Automobile Liability, and CGL coverages required under §11.2.1 may be provided by 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.

11.2.3 Construction Manager shall maintain in effect all insurance coverage required under §11.2.1 with insurance companies licensed to do business in the State of New Hampshire or on the New Hampshire Insurance Department's approved List of Non-Admitted Carriers and with an AM Best rating of at least A-, XIII. If Construction Manager fails to obtain or maintain any insurance coverage required under this Agreement, Owner may purchase such coverage and charge the expense to Construction Manager, or terminate this Agreement.

11.2.4 To the extent commercially available to Construction Manager from its current insurance company, insurance policies required under §11.2.1 shall contain an endorsement stating that the insurance company will not cancel the policy, or allow it to expire, or change any coverage therein without first mailing by registered mail written notice of such action to the Treasurer of the University System, 5 Chenell Drive, Suite 301, Concord, NH 03301, at least seven Days prior to termination for nonpayment of premium, and at least 30 Days prior to termination or change for any other cause.

11.2.4.1 Before commencing the Work and upon renewal or replacement of the insurance policies, Construction Manager shall furnish Owner with certificates of insurance (Acord 25



Form) until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under §11.2.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, Construction Manager shall give Owner prompt written notice upon actual or constructive knowledge of such condition.

11.2.4.2 Any certificate found incomplete or not according to form will be rejected as unsatisfactory. Rejected certificates and copies of policies shall be corrected as necessary and resubmitted until approved

11.2.5 The University System of New Hampshire, its trustees, officers, agents, and employees shall be listed as additional insureds on all certificates and policies, except workers' compensation and professional liability. The insurance of the Construction Manager and its Subcontractors (both primary and excess) shall apply on a primary and non-contributory basis to any insurance carried by the additional insureds.

11.3 PROPERTY INSURANCE (provided by Owner)

11.3.1 Builders Risk coverage shall insure all parts of the Work comprising new buildings, structures, paths, roadways, utility and landscape structures, utility distribution systems and the like, and all additions to or extensions of existing buildings, structures and systems. If the Contract Work also includes renovation within an existing structure, then this portion of the Work shall also be insured and so described and endorsed to the policy. Renovation coverage shall also insure all parts of existing buildings, structures, paths, roadways, utility and landscape structures, utility distribution systems and the like within or in connection with which the Work is performed on an agreed amount/no coinsurance basis. Coverage shall be written on a "Special Form" basis for the full value of the Insured Structure. The policy or policies shall be in the name of the Owner. The Construction Manager, Subcontractors, Sub-subcontractors and others employed on the premises will be added as loss payee(s) as their interests may appear with respect to all work in place and stored on the site. The Construction Manager shall cover or cause to be covered all Materials off site or while in transit. Where allowable by law, the policy or policies shall stipulate that the insurance company or companies shall have no right of subrogation against any of the insureds for any portion of the Work

11.3.2 It will be the decision of the Owner regarding the deductible or any increase in coverage such as Flood or Earthquake, however, the Owner will be responsible for the Direct Physical Damage to the property if insured or not.

11.3.3 The Party that is the primary cause of a Builder's Risk Policy claim shall be responsible for any deductible amounts or coinsurance payments. If no Party is the primary cause of a claim, then the Party obtaining and maintaining the Builder's Risk Policy pursuant to §11.3.1 shall be responsible for the deductible amounts or coinsurance payments.

11.3.4 Where allowable by law, the Parties each waive all rights against each other and their respective employees, agents, contractors, subcontractors, suppliers, sub-subcontractors, and design professionals for damages caused by risks covered by the property insurance provided under §11.3.1, except such rights as they may have to the proceeds of the insurance. Construction Manager shall indemnify and hold harmless Owner against any and all liability, claims, demands, damages, losses, and expenses, including attorneys' fees, in connection with or arising out of any damage or alleged damage to any of Owner's existing adjacent property that may arise from the performance of the Work, to the extent caused by the actions or inactions or intentionally wrongful acts or omissions of Construction Manager, Subcontractor, Supplier, Sub-subcontractor, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.



11.4 RISK OF LOSS The Construction Manager shall be responsible for loss or damage to all personal property brought on the Worksite.

11.5 POLLUTION LIABILITY INSURANCE Construction Manager is/ is not required to maintain pollution liability insurance. Unless indicated affirmatively, the obligation to procure such insurance is not triggered.

11.5.1 If applicable: in the following amounts: \$[_____] per occurrence, and \$[_____] in aggregate shall apply for one year after Final Completion. The policy shall cover Construction Manager's liability during construction, removal, storage, encapsulation, transport and disposal of hazardous waste and contaminated soil, and asbestos abatement. The policy shall include coverage for on-site and off-site bodily injury and loss of damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release, or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gas, waste materials, or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any water body, whether it be gradual or sudden and accidental. The policy shall not have exclusions for mold or asbestos.

11.6 ADDITIONAL GENERAL LIABILITY COVERAGE Owner shall/ shall not require Construction Manager to purchase and maintain additional liability coverage. If required, Construction Manager shall provide:

11.6.1 OCP. 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 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 Owner directly or the costs may be reimbursed by Owner to Construction Manager by increasing the Contract Price to correspond to the actual cost required to purchase and maintain the coverage. Before commencing the Work, Construction Manager shall provide either a copy of the OCP policy, or a certificate and endorsement evidencing that Owner has been named as an additional insured, as applicable. The insurance of the Construction Manager shall be primary and non-contributory to any insurance available to the Additional Insureds.

11.7 BONDS Performance and Payment Bonds are/ are not required of Construction Manager. The surety company providing these bonds shall be licensed to do business in the State of New Hampshire and listed on the Federal Register for the Department of the Treasury as an approved surety company. Owner's acceptance shall not be withheld without a reasonable cause. The penal sum of the bonds shall each be 100% of the GMP. Construction Manager shall endeavor to keep its surety advised of changes potentially impacting the GMP and Contract Time, though Construction Manager shall require that its surety waives any requirement to be notified of any alteration or extension of time.

11.7.1 Any increase in the GMP Price that exceeds 10% in the aggregate shall require a rider to the Bonds increasing penal sums accordingly. Up to such 10% amount, the penal sum of the bond shall remain equal to 100% of the GMP or as otherwise provided in §11.7. Construction Manager shall endeavor to keep its surety advised of changes within the scope of the initial Agreement potentially impacting the GMP or the Dates of Substantial Completion or Final Completion.

11.8 PROFESSIONAL LIABILITY INSURANCE To the extent Construction Manager is required to procure design services in accordance with §3.17, 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 Owner, including coverage for all professional liability caused by any consultants to Construction Manager's design professional, written for not less than \$1,000,000.00 per claim and \$2,000,000.00 in the aggregate with the retention or deductible not to exceed \$25,000. Construction Manager's design professional shall be responsible for payment of any applicable retention or deductible. The Professional Liability Insurance shall contain a retroactive date providing prior acts coverage sufficient to cover all Services performed by the Construction Manager's design professional for this Project. Coverage shall be continued in effect for eight years following Substantial Completion.

ARTICLE 12 SUSPENSION, NOTICE TO CURE, AND TERMINATION

12.1 SUSPENSION BY OWNER FOR CONVENIENCE

12.1.1 OWNER SUSPENSION Should Owner order Construction Manager in writing to suspend, delay, or interrupt the performance of the Work for the convenience of Owner and not due to any act or omission of Construction Manager or any person or entity for whose acts or omissions Construction Manager may be liable, then Construction Manager shall immediately suspend, delay, or interrupt that portion of the Work for the time period ordered by Owner.

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 the Work does not constitute a suspension of Work under this section.

12.2 TERMINATION BY OWNER FOR CONVENIENCE

12.2.1 Upon Construction Manager'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.

12.2.2 If Owner terminates this Agreement for convenience, 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 resulting from termination, but not including Overhead or profit on Work not performed.

12.2.3 If Owner terminates this Agreement, Construction Manager shall:

12.2.3.1 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;

12.2.3.2 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;

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

12.2.3.4 sell at prices approved by Owner any materials, supplies, and equipment as Owner directs, with all proceeds paid or credited to Owner.

12.3 TERMINATION BY OWNER FOR CAUSE The Owner may terminate the contract if the Construction Manager:

12.3.1 refuses or fails to supply enough properly skilled workers or proper materials;



12.3.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Construction Manager and the Subcontractors;

12.3.3 disregards laws, ordinances, rules, or regulations or orders of a public authority having jurisdiction; or

12.3.4 is otherwise in material breach of a provision of the Contract Documents.

12.3.5 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Construction Manager and the Construction Manager's surety, if any, seven Days' written notice, terminate employment of the Construction Manager and may, subject to any prior rights of the surety:

12.3.5.1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Construction Manager;

12.3.5.2 accept assignment of subcontracts pursuant to §5.4; and

12.3.5.3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a detailed accounting of the costs incurred by the Owner in finishing the Work.

12.3.6 When the Owner terminates the Agreement for one of the reasons stated in §12.3.1 through §12.3.4, the Owner shall be entitled to collect from the Construction Manager all direct, indirect, and consequential damages suffered by the Owner on account of the Construction Manager's default, including without limitation additional services and expenses of the Design Professional and attorney's fees and expenses made necessary thereby. The Owner shall be entitled to hold all amounts due the Construction Manager at the date of termination until all the Owner's damages have been established, and to apply such amounts to such damages. In no case shall the Construction Manager be entitled to receive further payment until the Work is finished.

12.3.7 If Construction Manager files a petition under the Bankruptcy Code, this Agreement shall be governed by the applicable provisions of the Bankruptcy Code.

12.4 CONSTRUCTION MANAGER'S RIGHT TO TERMINATE

12.4.1 Seven Days after Owner's receipt of written notice from Construction Manager, Construction Manager may terminate this Agreement if the Work has been stopped for a 30-Day period through no fault of Construction Manager for any of the following reasons:

12.4.1.1 Under court order or order of other governmental authorities having jurisdiction;

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

12.4.1.3 suspension by Owner for convenience pursuant to §12.1.

12.4.2 In addition, upon seven Days' written notice to Owner and an opportunity to cure within three Days, Construction Manager may terminate this Agreement if Owner:

12.4.2.1 Assigns this Agreement over Construction Manager's reasonable objection, or



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

12.4.2.3 otherwise materially breaches this Agreement.

12.4.3 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 demobilization costs.

12.5 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 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 Business Days to endeavor to reach resolution. If the dispute remains unresolved after 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 MEDIATION If direct discussions pursuant to §13.2 do not result in resolution of the matter, the Parties shall endeavor to resolve the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association, or the Parties may mutually agree to select another set of mediation rules. The Parties shall mutually agree upon the mediator and the mediation process. The mediation shall be convened within 30 Business Days of the matter first being discussed and shall conclude within 45 Business Days of the matter first being discussed. Either Party may terminate the mediation at any time after the first session by written notice to the non-terminating Party and mediator. The costs of the mediation shall be shared equally by the Parties.

13.4 BINDING DISPUTE RESOLUTION If the matter is unresolved after submission of the matter to mediation, the Parties shall submit the matter to litigation in either the state or federal court having jurisdiction of the matter in the location of the Project. **THE PARTIES EXPRESSLY AGREE TO WAIVE ALL RIGHTS TO A JURY TRIAL FOR ANY CLAIM ARISING OUT OF OR RELATED TO THE AGREEMENT, PROJECT, OR WORK.**

13.5 COSTS The parties shall pay their own costs and attorneys' fees of any binding dispute resolution procedures unless otherwise determined by the adjudicator.

13.6 MULTIPARTY PROCEEDING All parties necessary to resolve a matter agree to be parties to the same dispute resolution proceeding, if possible. Appropriate provisions shall be included in all other



contracts relating to the Work to provide for the joinder or consolidation of such dispute resolution procedures.

13.7 LIEN RIGHTS Nothing in this article shall limit any rights or remedies not expressly waived by Construction Manager which Construction Manager may have under lien laws.

ARTICLE 14 MISCELLANEOUS

14.1 EXTENT OF AGREEMENT Except as expressly provided, this Agreement is for the exclusive benefit of the Parties, and not for 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.

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 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 Agreement shall be governed by the laws of the State of New Hampshire.

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 NOTICE Unless changed in writing, a Party's address indicated in ARTICLE 1 shall be used when delivering notice to a physical address. Except for Agreement termination and as otherwise specified in the Contract Documents, notice is effective upon transmission by any effective means, including U.S. postal service and overnight delivery service.

14.6 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.

14.7 TITLES The titles given to the articles are for ease of reference only and shall not be relied upon or cited for any other purpose.

14.8 OWNER'S RIGHT TO AUDIT

14.8.1 Construction Manager shall grant the Owner and its designated representative the right to audit, during the performance of the Work and for a period of three years after Final Payment, all books, records, correspondence and notes maintained by the Construction Manager and any of its Subcontractors with respect to Services performed under this Agreement. A similar provision shall be incorporated by Construction Manager in all subcontracts entered into in connection with this Agreement.



14.8.2 Owner shall provide the Construction Manager 30 Days prior written notice of its intent to audit Construction Manager's or any Subcontractor's records. Construction Manager shall have the opportunity to audit itself prior to the proposed audit by Owner.

14.8.2.1 Should any overcharge to Owner be found by Construction Manager's audit, Construction Manager shall pay Owner an amount equal to the amount overcharged (including any part of the Construction Manager fee based on such overcharge).

14.8.2.2 If Owner's audit reveals that the amounts charged to Owner by Construction Manager exceeded the actual amounts to which Construction Manager was entitled for Work, then Construction Manager shall pay Owner an amount equal to the amount overcharged (including any part of the Construction Manager Fee based on such overcharge).

14.8.2.3 If the Owner's audit reveals that the Construction Manager is entitled to additional sums, Owner shall promptly reimburse Construction Manager for the amount due (not exceeding the Guaranteed Maximum Price).

14.8.3 During such inspections and audits, Owner shall have the right, at its expense, to take extracts and make copies of Construction Manager's records as it deems necessary to support its accounting report. Owner agrees to keep confidential all information and copies obtained pursuant to this section other than with respect to required disclosures in connection with disputes between the parties or as otherwise required by law, court order or governmental process.

14.8.4 The exercise by Owner, at any time of the right to audit Construction Manager's or any Subcontractor's records and accounts, or the acceptance by Owner of any audit statement or the receipt and/or deposit of payments by Owner or Construction Manager, or any payment tendered by or on behalf of Construction Manager or Owner shall be without prejudice to any duties, rights or remedies of Owner, Construction Manager or any Subcontractor.

14.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION Construction Manager shall abide by all applicable federal, state, and local laws respecting non-discrimination in employment and non-segregation of facilities, including the requirements set out at 41 CFR §§ 60-1.4, 60-300.5(a), and 60-741.5(a), which equal opportunity clauses are hereby incorporated by reference. The latter two regulations prohibit discrimination against qualified protected veterans and qualified individuals based on disability. These regulations also require affirmative action by covered vendors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities. Additionally, Construction Manager will not discharge or in any other manner discriminate against employees or applicants because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant.

ARTICLE 15 CONTRACT DOCUMENTS

These documents are on file, in electronic format, with the USNH Procurement Services Office, 121 Technology Drive, Suite 121, Durham, NH 03824-4716.

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

- (a) Construction Manager's proposal and any modifications made during negotiations including:
 - i) Construction Manager's Proposal dated [_____]
 - ii) Construction Manager's Fee Proposal dated [_____]
 - iii) Other
- (b) USNH RFQ/P or RFP Event # [_____] posted [_____] for the CM services identified in



- Article 1.
- (c) Drawings: [_____] include # of pages
 - (d) Specifications: [_____] include # of pages
 - (e) Addenda: [_____]
 - (f) Owner Provided information: [_____]
 - (g) Other: [_____]

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, Construction Manager shall perform the Work as though fully described on both.

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, Construction Manager shall immediately submit the matter to Owner for clarification. Subject to an equitable adjustment in the GMP, Dates of Substantial or Final Completion pursuant to ARTICLE 9 or a dispute mitigation and resolution, Owner's clarifications are final and binding.

15.2.3 The Drawings are generally made to scale, but all working dimensions shall be taken from the figured dimensions, or by actual measurements taken at the job, and in no case by scaling. Whether or not an error is believed to exist, deviation from the Drawings and the dimensions given thereon shall be made only after approval in writing from the Design Professional.

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 documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement; (b) this Agreement; (c) subject to §15.2.2 the drawings, (large scale governing over small scale) specifications, and addenda issued before the execution of this Agreement; (d) approved submittals; (e) information furnished by Owner pursuant to §3.15.5 or designated as a Contract Document in §15.1; (f) other Contract Documents listed in this Agreement. Among categories of documents having the same order of precedence, the term or provision that is strictest shall control.



This Agreement will become effective when all parties have signed it. The date of this Agreement will be the date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature.)

Each party is signing the Agreement on the date stated under the party's signature.

FOR THE UNIVERSITY SYSTEM
OF NEW HAMPSHIRE

OWNER «Name Title Campus»	CONSTRUCTION MANAGER «Name Title Company»
<i>Date:</i>	<i>Date:</i>
OWNER «Name Title Campus»	
<i>Date:</i>	
OWNER Catherine A. Provencher Vice Chancellor for Financial Affairs & Treasurer University System of New Hampshire»	
<i>Date:</i>	

END OF DOCUMENT.



AMENDMENT NO. 1
to
University System of New Hampshire/ConsensusDocs® 500
STANDARD AGREEMENT AND GENERAL CONDITIONS BETWEEN OWNER AND
CONSTRUCTION MANAGER

UNSH Contract Number: [] Project ID: []

Guaranteed Maximum Price Amendment

for the following PROJECT:
(Name and address or location)

[]
[]
[]

THE OWNER:
(Name, legal status and address)

[]
[]
[]

THE CONSTRUCTION MANAGER:
(Name, legal status and address)

[]
[]
[]

Pursuant to Section 3.4.1 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price (GMP) for the Work.

ARTICLE 1 GUARANTEED MAXIMUM PRICE

The Contractor's Guaranteed Maximum Price (GMP) for the Work, including the Cost of the Work as defined in Article 8 and the Contractor's Fee as set forth in Section 7.3, is \$[]. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Construction Manager shall provide an itemized statement of the Guaranteed Maximum Price.

The GMP is for the performance of the Work in accordance with the exhibits listed below, which are part of this Agreement.



EXHIBIT 1 Itemized statement of the Guaranteed Maximum Price

Exhibit 2 Drawings and Specifications, including Addenda, if any, which were used in preparation of the GMP Proposal, and information furnished by the Owner under Section 4.3, dated [____], [____] pages.

EXHIBIT 3 Allowance Items, dated [____], [____] pages.

EXHIBIT 4 Assumptions and Clarifications on which the GMP is based, dated [____], [____] pages.

EXHIBIT 4 Schedule of Work, dated [____], [____] pages.

EXHIBIT 5 Alternate Prices, dated [____], [____] pages.

EXHIBIT 6 Unit Prices, dated [____], [____] pages.

EXHIBIT 7 A statement of any work to be self-performed by the Construction Manager, including associated labor rates dated [____], [____] pages.

ARTICLE 2 DATE OF SUBSTANTIAL COMPLETION

The Date of Substantial Completion of the Work is [____].

ARTICLE 3 DATE OF FINAL COMPLETION

The Date of Final Completion of the Work is: [____] or within [____] Days after the Date of Substantial Completion, subject to adjustments as provided for in the Contract Documents.



This Amendment will become effective when all parties have signed it. The date of this Amendment will be the date this Amendment is signed by the last party to sign it (as indicated by the date associated with that party's signature.)

FOR THE UNIVERSITY SYSTEM
OF NEW HAMPSHIRE

OWNER
«Name
Title
Campus»

Date:

CONSTRUCTION MANAGER
«Name
Title
Company»

Date:

OWNER
«Name
Title
Campus»

Date:

Date:

OWNER
Catherine A. Provencher
Vice Chancellor for Financial Affairs &
Treasurer
University System of New Hampshire»

Date:

Date:

END OF DOCUMENT.

