

GENERAL CONDITIONS OF THE CONTRACT
1-CM-GMP-GC

THE PENNSYLVANIA STATE UNIVERSITY

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ARTICLE 1 - GENERAL CONTRACT DEFINITIONS

1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Form of Agreement 1-CM-GMP, hereinafter called the Agreement, General Conditions of the Contract, Drawings, Specifications, Addenda issued prior to receipt of Trade Contract bids, Form of Proposal, other documents listed in the Agreement and those modifications to the Contract as follows:

- 1.1.1 Owner's written authorization to the Construction Manager for changes to the Guaranteed Maximum Price Scope of Work
- 1.1.2 Change Order
- 1.1.3 A written order for a minor change in the Work issued by the Professional.

1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements either written or oral.

The Contract may be amended only by those modifications described in Paragraph 1.1.

1.3 OWNER

The Owner is The Pennsylvania State University, a corporation created and existing under the laws of the Commonwealth of Pennsylvania, hereinafter called the Owner, and shall mean the Owner or the Owner's authorized representative.

1.4 PROFESSIONAL

The Professional is the person lawfully licensed to practice architecture or engineering, or the firm employed to provide architectural or engineering services. The term "Professional" shall mean the Professional or the Professional's authorized representative.

1.5 CONSTRUCTION MANAGER

The Construction Manager is the individual, corporation, company, partnership, firm or other organization that has contracted to perform the Work under the Agreement with the Owner. The term "Construction Manager" shall mean the Construction Manager or the Construction Manager's authorized representative.

1.6 TRADE CONTRACTOR

A Trade Contractor is a person or organization who contracts under the Construction Manager for a portion of the Work defined in the Contract between the Owner and the Construction Manager. The Trade Contract may be direct with the Construction Manager or a subcontract with another Trade Contractor.

1.7 THE WORK

The term "Work" shall mean whatever is done by or required of the Construction Manager to perform and complete its duties under this Contract, including the following: construction of the whole or a designated part of the Project; furnishing of any required surety bonds and insurance; and the provision of furnishing of labor,

supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, permits and licenses required of the Construction Manager, fuel, heat, light, cooling, and all other utilities as required by this Contract.

1.8 THE PROJECT

The term "Project" shall comprise the Work defined by the Contract Documents and may include work by the Owner or other Separate Contractors, Trade Contractors, Sub-Trade Contractors or the Professional.

1.9 THE DRAWINGS

The Drawings are the graphic portion of the Contract Documents generally consisting of plans, elevations, sections, details, diagrams and schedules of the Work.

1.10 THE SPECIFICATIONS/PROJECT MANUAL

The Specifications are the written portion of the Contract Documents generally outlining the requirements for materials, equipment, construction systems, methods, standards, workmanship and performance necessary to properly complete the Work.

The Project Manual is the document assembled consisting of all the written portions for the Work including the Specifications, bidding requirements, sample forms, General Conditions and Special Requirements.

1.11 DAY

Whenever the word "day" is used in the Contract Documents, it shall be interpreted to mean a calendar day unless otherwise noted.

1.12 THE GUARANTEED MAXIMUM PRICE

The Guaranteed Maximum Price is the maximum compensation payable to the Construction Manager in performance of the Work for the Project as specified in the Contract Documents or subsequently adjusted by modification to the Contract through a Guaranteed Maximum Price Change Order.

1.13 THE CONTRACT SUM

The Contract Sum is the allowable compensation payable to the Construction Manager for performing the Work in accordance with the Contract Documents. The Contract Sum cannot exceed the Guaranteed Maximum Price.

1.14 CLAIM

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract.

The term "Claim" also includes other disputes and matters in question between the Owner and Construction Manager arising out of or relating to the Contract.

Claims must be made by written notice. The responsibility to substantiate claims shall rest with the party making the claim.

1.15 SCOPE OF WORK

All Work reasonably contemplated, required, implied, or reasonably inferable by the Contract Documents, whether or not explicitly contained in the Contract Documents.

1.16 SUBSTANTIAL COMPLETION

"Substantial Completion" shall mean that stage in the progression of the Work when the Work is sufficiently complete in accordance with this Contract that the Owner can enjoy beneficial use or occupancy of the Work and can utilize the Work for its intended purpose.

ARTICLE 2 - CONSTRUCTION DOCUMENTS

2.1 OWNERSHIP AND USE OF DOCUMENTS

All Drawings, Specifications and other documents of the Work furnished by the Professional are and shall remain the Professional's property. They are not to be used by the Construction Manager on other projects without written consent of the Owner and the Professional.

2.2 COPIES FURNISHED - DRAWINGS AND SPECIFICATIONS

The Professional will furnish to the Construction Manager, free of charge, three (3) copies of Drawings and Specifications for the execution of the Work. The Drawings will be prints on paper, unmounted. Any additional copies of the Drawings and Specifications which the Construction Manager may desire will be furnished at the cost of reproduction and delivery.

2.3 DRAWINGS AND SPECIFICATIONS AT THE SITE

The Construction Manager shall maintain at the site one copy of all Drawings, Specifications, Addenda, approved Shop Drawings, Product Data, Samples and Contract Modifications, in good order and marked to record all changes made during construction.

2.4 AS-BUILT AND RECORD DRAWINGS

The Construction Manager shall, at the time of substantial completion of the Work, deliver to the Professional the complete set of as-built drawings. The Professional will, within 30 days after receipt from the Construction Manager, transpose all changes recorded by the Construction Manager onto a full set of reproducible drawings, and CADD electronic media, compatible with the Owner's CADD system, which shall become the record drawings for the Project, and shall forward same to the Owner.

2.5 INTERRELATIONSHIP AND INTENT OF DOCUMENTS

The interrelation of the Drawings, the Specifications and the schedules is as follows:

- 2.5.1 The intent of this Contract is to require complete, correct, and timely execution of the Work. Any Work that may be required, implied, or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result shall be provided by the Construction Manager for the Contract Price.
- 2.5.2 This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.
- 2.5.3 When a word, term, or phrase is used in this Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

- 2.5.4 The words "include," "includes," or "including," as used in this Contract, shall be deemed to be followed by the phrase, "without limitation."
- 2.5.5 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, nonspecified act, failure, refusal, omission, event, occurrence, or condition shall be deemed not to constitute a material breach of this Contract.
- 2.5.6 Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.
- 2.5.7 The Construction Manager shall have a continuing duty to read, carefully study and compare each of the Contract Documents, the Shop Drawings, and the Product Data and shall give written notice to the Owner of any inconsistency, ambiguity, error, or omission which the Construction Manager may discover with respect to these documents before proceeding with the affected Work. The issuance, or the express or implied approval by the Owner or the Professional of the Contract Documents, Shop Drawings, or Product Data shall not relieve the Construction Manger of the continuing duties imposed hereby, nor shall any such approval be evidence of the Construction Manager's compliance with this Contract. The Owner has requested the Professional to only prepare documents for the Project, including the Drawings and Specifications for the Project, which are accurate, adequate, consistent, coordinate, and sufficient for construction. HOWEVER, THE OWNER MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONSTRUCTION MANAGER CONCERNING SUCH DOCUMENTS. By the execution hereof, the Construction Manager acknowledges and represents that it has received, reviewed, and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated, and sufficient for construction, and that the Construction Manager has not, does not, and will not rely upon any representation or warranties by the Owner concerning such documents as no such representation or warranties have been or are hereby made.
- 2.5.8 Neither the organization of any of the Contract Documents into divisions, sections, paragraphs, articles (or other categories), nor the organization or arrangement of the Design, shall control the Construction Manager in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.
- 2.5.9 The Drawings establish the quantities, dimensions and details.
- 2.5.10 The Specifications determine the nature and installation of the various materials and equipment.
- 2.5.11 The schedules give the locations.
- 2.5.12 The Drawings and Specifications are complementary and what is required by one shall be as binding as if shown or mentioned in both.
- 2.5.13 Should the Drawings disagree with one another, or with the Specifications, the better quality or greater quantity of work or materials shall be performed or furnished. Dimensions given on Drawings govern small scale Drawings.

Dimensions given on Drawings govern scale measurements, and large scale details govern small scale drawings. In case of discrepancy in the Dimensions, in the Drawings, in the schedules, or in the Specifications, the matter shall be promptly submitted to the Professional who will promptly make a determination, after advice and consent of the Owner, in writing.

2.5.14 The "Scope of the Work," usually placed in the front part of each Section of the Specifications, is intended to designate the scope and locations of all items of the Work included therein, either generally or specifically. It is not intended to limit the Scope of Work should plans, schedules, or notes indicate an increased scope. Inadvertent omission of an item from its proper section of the Specifications and its inclusion in another section shall not relieve the Construction Manager of responsibilities for the item specified.

ARTICLE 3 - INSURANCE

3.1 CONSTRUCTION MANAGER'S INSURANCE

3.1.1 Before commencing the Work and as a condition precedent to payment, the Construction Manager shall procure and maintain the following insurance, in amounts not less than that specified for each type:

3.1.1.1 **Workers' Compensation** for statutory obligations imposed by workers' compensation and occupational disease laws. **Employers' Liability** insurance shall be provided with limits not less than:

- 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

3.1.1.2 **Business Automobile Liability** (bodily injury liability and property damage liability) for all owned, leased, hired, non-owned vehicles with limits not less than \$1,000,000 Combined Single Limit.

3.1.1.3 **Commercial General Liability** insurance including coverage for bodily injury, property damage, and personal and advertising injury, for premises and operations, products and completed operations, and contractual liability arising from all operations, written on an occurrence basis with limits not less than:

FOR PROJECTS UNDER \$1,000,000

- a) Per occurrence: \$1,000,000
- b) General aggregate: \$2,000,000
- c) Products/completed operations aggregate: \$2,000,000
- d) Personal and advertising injury limit: \$1,000,000
- e) Medical Expense Limit: \$10,000

The Construction Manager shall maintain completed operations liability insurance for not less than one year after Substantial Completion, or as required by the Contract Documents, whichever is longer.

FOR PROJECTS OVER \$1,000,000

- a) Per occurrence: \$5,000,000
- b) General aggregate: \$5,000,000

- c) Products/completed operations aggregate: \$5,000,000
- d) Personal and advertising injury limit: \$5,000,000
- e) Medical Expense Limit: \$10,000

The Construction Manager shall maintain completed operations liability insurance for not less than two years after Substantial Completion, or as required by the Contract Documents, whichever is longer.

- 3.1.1.4 **Professional Liability** insurance: Where professional services are being provided by licensed and non-licensed professionals, the Construction Manager shall obtain, either itself or through the Design Professional, professional liability insurance for claims arising from the negligent performance of professional services under this Agreement (including, but not limited to, acts, errors, or omissions of the company and its employees), which shall be written for not less than One Million dollars (\$1,000,000) or the total of the Design Fee portion of the Contract, whichever is greater, per claim and in the aggregate. The Professional Liability insurance shall include prior acts coverage sufficient to cover all services rendered by the Construction Manager or the Design Professional, as appropriate/applicable. This coverage shall be continued in effect for 3 year(s) after the Date of Substantial Completion.

- 3.1.1.5 **Pollution Liability** insurance: If the nature of the Work involves professional services, evaluating, testing, remediation, abatement, removal, storage, and transportation of hazardous materials or substances or pollutants, the Construction Manager and those Subcontractors involved in such work shall obtain Pollution Liability insurance applicable to their work, for bodily injury and property damage with limits not less than:

FOR PROJECTS UNDER \$1,000,000

- a) Per occurrence or claim: \$1,000,000
- b) Aggregate: \$1,000,000

FOR PROJECTS OVER \$1,000,000

- a) Per occurrence or claim: \$5,000,000
- b) Aggregate: \$5,000,000

The Pollution Liability insurance must include coverage for completed operations extending three (3) years after final acceptance of the project by the owner or such longer period as the contract documents may require. The definition of property damage shall include clean-up costs. If the insurance is written on a claims-made basis, the policy retroactive date shall be prior to the start of the Construction Manager's/ supplier's/vendor's work, and the renewal policies shall maintain the same retroactive date.

- 3.1.2 The insurance limits required for the Employers' Liability, Business Automobile Liability and CGL coverage, required under subsection 3.1.1, may be provided by a combination of primary and Excess or Umbrella Liability policies.

- 3.1.3 The Owner must be named on the Construction Manager's Commercial General Liability insurance as an additional insured.
- 3.1.4 The Construction Manager shall maintain in effect all insurance coverage required under subsection 3.2.1 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located.
- 3.1.5 If the Construction Manager fails to obtain or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and charge the expense to the Construction Manager, or terminate this Agreement.
- 3.1.6 Insurance policies required under subsection 3.1 shall contain a provision that the insurance company or its designee must give the Owner written notice transmitted in paper or electronic format: (a) 30 days before coverage is non-renewed by the insurance company and (b) within 10 business days after cancelation of coverage by the insurance company.
- 3.1.7 Prior to commencing the Work and upon renewal or replacement of the insurance policies, the Construction Manager shall furnish the Owner with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under subsection 3.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, the Construction Manager shall give Owner prompt written notice upon actual or constructive knowledge of such condition.
- 3.1.8 The Construction Manager's insurance shall be primary and non-contributory to the University's insurance.
- 3.1.9 Failure of the Construction Manager to procure, carry, and maintain the required insurance shall not relieve the Construction Manager, and any Subcontractor thereof, of any obligation or liability assumed under this Agreement, nor of any obligation or liability imposed by law.
- 3.1.10 Any self-insured retentions, deductibles, and exclusions in coverage in the insurance required shall be assumed by and at the sole risk of the Construction Manager.

3.2 PROPERTY INSURANCE

- 3.2.1 Before commencing the Work, the Owner shall obtain and maintain a Builder's Risk Insurance upon the entire Project for the full cost of replacement at the time of loss. In addition to the Owner this insurance shall also name the Construction Manager, Subcontractors, Subsubcontractors, Material Suppliers and/or Design-Professional as named insureds. This insurance shall be written as a Builder's Risk Policy or equivalent form to cover risks of physical loss except those specifically excluded by the insurance policy, and shall insure (a) at least against the perils of fire, lightning,

explosion, windstorm, hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of Construction Manager) and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind damage, testing if applicable, collapse however caused, and (b) damage resulting from defective design, workmanship or material and material or equipment stored offsite, onsite or in transit. This insurance policy shall provide for a waiver of subrogation in favor of the named insureds. This insurance shall remain in effect until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until the Owner has secured the consent of the insurance company or companies providing the insurance coverage required in this subsection. Before commencing the Work, the Owner shall provide a copy of the property policy or policies obtained in compliance with this subsection.

3.2.1.1 The Builder's Risk property insurance has a deductible. If the Construction Manager suffers a Builders Risk loss covered by this insurance, the Construction Manager shall be responsible for the first \$25,000 of such deductible. If the Owner or insurer increases the required minimum deductibles above the amounts so identified or if the Owner elects to purchase this insurance with voluntary deductible amounts, the Owner shall be responsible for payment of the additional costs not covered because of such increased or voluntary deductibles. Construction Manager's payment towards the deductible of a loss covered by this insurance will not exceed \$25,000 per occurrence.

3.2.2 If the Owner does not intend to purchase the property insurance required by this Agreement, including all of the coverages and deductibles described herein, the Owner shall give written notice to the Construction Manager and the Design-Professional before the Work is commenced. The Construction Manager may then provide insurance to protect its interests and the interests of the Subcontractors and Subsubcontractors, including the coverage of deductibles. The cost of this insurance shall be charged to the Owner in a Change Order. The Owner shall be responsible for all of Construction Manager's costs reasonably attributed to the Owner's failure or neglect in purchasing or maintaining the coverage described above.

3.2.2.1 If the Owner does not obtain insurance to cover the risk of physical loss resulting from Terrorism, the Owner shall give written notice to the Construction Manager before the Work commences. The Construction Manager may then provide insurance to protect its interests and the interests of the Subcontractors and Subsubcontractors against such risk of loss, including the coverage of deductibles. The cost of this insurance shall be charged to the Owner in a Change Order.

3.2.3 Owner and Construction Manager waive all rights against each other and their respective employees, agents, contractors, subcontractors and subsubcontractors, and design professionals for damages caused by risks covered by the property insurance except such rights as they may have to the proceeds of the insurance and such rights as the Construction Manager may have for the failure of the Owner to obtain and maintain property insurance in compliance with subsection 3.2.1.

3.2.4 RISK OF LOSS Except to the extent a loss is covered by applicable insurance, risk of loss or damage to the Work shall be upon the Construction Manager until the Date of Substantial Completion, unless otherwise agreed to by the Parties.

3.3 OWNER'S INSURANCE

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

3.3.2 OWNER'S LIABILITY INSURANCE The Owner shall maintain its own liability insurance for protection against claims arising out of the performance of this Agreement, including loss of use and claims, losses and expenses arising out of the Owner's acts or omissions.

ARTICLE 4 - GOVERNING LAWS

4.1 GOVERNING LAW

The Contract shall be governed by the law of the Commonwealth of Pennsylvania. In the event litigation arises out of this Contract, the parties agree to submit any claim to the competent courts of Centre County, Pennsylvania.

4.2 COMPLIANCE WITH LAWS

The Construction Manager at all times shall observe and comply with all Federal, State and Local laws, by-laws, ordinances, codes and regulations, in any manner affecting the conduct of the Work or applying to any employees on the Project, as well as all orders or decrees which have been promulgated or enacted, or which may be promulgated or enacted during the progress of the Work, by any legal bodies or tribunals having authority or jurisdiction over the Work, materials, employees or the Contract.

Construction Manager shall indemnify and save harmless the Owner and all its officers, employees and agents from all suits, actions, or claims of any character or description brought for, made on account of, or arising from the violation of any such law, by-law, ordinance, regulation, order or decree.

4.3 PREVAILING WAGE ACT / STEEL PROCUREMENT ACT

The Construction Manager is hereby notified that this Contract is subject to the provisions, duties, obligations, remedies and penalties of the Pennsylvania Prevailing Wage Act, Act No. 442, August 15, 1961 (P.L. 987), as amended August 9, 1963, Act No. 342; and said Act is incorporated herein by reference as fully as though the same were here set forth at length.

Steel Products Procurement Act: This project is subject to the provisions of the Steel Products Procurement Act of 1978 (P.L. 6, No. 3) as amended by the Act of July 9, 1984 (P.L. 674, No. 144).

4.4 TAXES

The Construction Manager shall pay sales, consumer, use and similar taxes for the Work on portions thereof provided by the Construction Manager which are legally enacted when bids are received, whether or not yet effective or merely scheduled to go into effect.

The Construction Manager is obligated to pay all Pennsylvania sales tax with the exception of those items for which an exemption might be claimed under Sales and Use Tax Regulation (SS31.11--SS31.16).

The Construction Manager and each Trade Contractor shall agree to assign and transfer to the Owner all its rights to sales and use tax which may be refunded as a result of a claim for refund for material purchased in connection with this contract. The Construction Manager and each Trade Contractor further agrees that it will not file a claim for refund for any sales or use tax which is the subject of this assignment. The Construction Manager and each Trade Contractor shall incorporate this Owner's right to any and all Subcontracts.

4.5 ROYALTIES AND PATENTS

The Construction Manager shall pay all royalties and license fees, and defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such royalties and license fees and loss when a particular design or process, or the product of a particular manufacturer or manufacturers is specified; provided, however, if the Construction Manager has reason to believe the design, process or product specified constitutes an infringement of a patent, the Construction Manager shall be responsible for such royalties, license fees and loss unless the Construction Manager promptly gives such information to the Owner and the Professional.

ARTICLE 5 - STANDARDS, SUBSTITUTIONS, AND SHOP DRAWINGS

5.1 STANDARDS

Whenever a material, product or process is specified by reference to a governmental, trade association or similar standard, it shall comply with the requirements of the latest publication thereof, and amendment thereto, in effect on the bid date. Such standards are as effectively part of the Contract Documents as if therein printed.

5.2 SUBSTITUTIONS

The various materials, products or equipment specified in the Specifications are mentioned for the purpose of establishing a standard of quality and cost. It is not the intent to limit to any one product, but rather to set up the same as the standard desired or acceptable and to establish a basis of equality. Where trade or proprietary names, catalog numbers and manufacturers of materials, products or equipment are used or specified, whether or not followed by the words "or equal as approved by the Professional," materials, products or equipment to be equal in quality to that mentioned in the Specifications will be acceptable. It will be up to the Construction Manager, supplier and/or vendors to prove by the submission of proper data that their product is equal in quality to that specified.

These standards of quality were established and made only after careful study by the Professional and will, therefore, be strictly adhered to and all substandard materials, products or equipment will be rejected. Each Trade Contractor, supplier and/or vendor shall in securing a substitution, submit a request in writing through the Construction Manager. This request will then be forwarded to the Professional.

The Construction Manager shall obtain written approval of the Professional for all such substitutions of material, products or equipment not less than five (5) working days before bids are due. When submitting a request for a substitution, the requestor shall clearly indicate the item to be substituted, and shall include all calculations, catalog data, literature and/or drawings, so the substitution can be properly evaluated and processed in the shortest period of time. Verbal communication regarding substitutions will not be construed as acceptance by the Professional and Owner; only written approvals on all substitutions will be valid.

The Professional will be the sole judge in evaluating and approving substitutions, and the Professional's decisions with the Owner's approval will be final. No substitution for the above-named products or processes will be permitted after award of a Trade Contract, except as follows:

- (i) The Construction Manager may submit substitute products or processes which will reduce the cost of the work for review by the Professional and Owner. This proposed substitution must be fully documented as

described above, and accompanied by the amount to be deducted from the Guaranteed Maximum Price if approved by the Owner.

- (ii) A substitution submitted by the Construction Manager for reason that a product is not available will not be considered unless written proof is submitted that a firm order for the product was placed within 45 days after Notice to Proceed.

5.3 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

Shop drawings, product data and samples are defined as follows:

- 5.3.1 Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures and other data prepared by the Construction Manager, or any Trade Contractor, manufacturer, supplier or distributor which illustrate some portion of the Work.
- 5.3.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Construction Manager to illustrate materials or equipment for some portion of the Work.
- 5.3.3 Samples are physical examples furnished by the Construction Manager to illustrate materials, equipment or workmanship, and to assist in the establishment of standards by which the Work will be judged.

Shop Drawings, Product Data and Samples are not Contract Documents. The purpose of their submittal is to demonstrate how the Construction Manager proposes to comply with the information given and the design concept outlined in the Contract Documents.

- 5.3.4 Shop Drawing Submittal Schedule: Based on the priorities of the construction schedule, the Construction Manager shall submit a shop drawing submittal schedule on or before the Second Regular Job Conference.

The Professional shall review and check the shop drawing submittal schedule within fifteen (15) days of receipt from the Construction Manager.

The Construction Manager shall thereafter submit all shop drawings, product data and samples in accordance with the approved submittal schedule.

The Construction Manager shall review all shop drawings, product data and samples for compliance with the Contract Documents and shall certify that the Construction Manager has done so by stamp, or otherwise, affixed to each copy thereof. Submittal data presented without such certification will be returned without review or other comment, and any delay resulting therefrom will be the Construction Manager's responsibility. At the time of submission, the Construction Manager shall inform the Professional and Owner in writing of any deviation in the shop drawings, product data or samples from the requirements of the Contract Documents.

By approving and submitting shop drawings, product data and samples, the Construction Manager thereby represents that the Construction Manager has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data, or will do so, and that the Construction Manager has checked and coordinated each shop drawing, product data and sample with the requirements of the Work and the Contract Documents and shall so certify as required above.

The Professional shall review, approve and process, subject to the right of review by the Owner, shop drawings, product data, samples, and other submissions of the Construction Manager as to compliance with the Contract Documents and for conformity to and harmony with the design concept of the Project and for compliance with the

requirements of the Contract Documents. The Professional shall not approve any substitution of or deviation from specified materials and/or equipment without first obtaining the Owner's consent.

The Professional shall return the approved shop drawings or detailed notation for resubmission if required, within twenty-one (21) days after receipt from the Construction Manager. The Professional shall act on any resubmissions within fifteen (15) calendar days of receipt thereof. A detailed log shall be maintained by the Professional as to time of receipt of the shop drawings and time of return with adequate notes as to their disposition.

If the Construction Manager considers any correction indicated on the revised shop drawings to constitute a change to the Contract Drawings or Specifications, written notice shall be given promptly to the Owner and the Professional.

The Construction Manager shall make any corrections required and shall resubmit the required number of corrected copies of the shop drawings, product data, or new samples of materials until approved. The Construction Manager shall direct specific attention in writing to any new revisions other than the corrections requested on previous submissions. No Work requiring a shop drawing, product data, or sample submission shall be commenced until the submission has been approved. All such Work shall be in accordance with Contract documents which shall include approved shop drawings, product data, and samples.

The approval of the shop drawings, product data or samples shall not relieve the Construction Manager of responsibility for any deviation from the requirements of the Contract Documents unless the Construction Manager has informed the Owner and the Professional in writing of such deviation at the time of submission and the Owner or the Professional has not objected to the specific deviation. The approval shall not relieve the Construction Manager from responsibility for errors or omissions in the shop drawings, product data, or samples. The approval of a separate item shall not indicate approval of an assembly in which the item functions.

The Owner reserves the right to review all Submittal data. No Work required by these submittals shall be commenced until the submittal has been approved by the Professional and Owner.

The approval of shop drawings, product data and samples by the Professional shall not be construed as a complete check, but will indicate only that the general method of construction and detailing is satisfactory. Approval of shop drawings, product data and samples will not relieve the Construction Manager of the responsibility for any error which may exist therein, and the Construction Manager shall be responsible for the dimensions and design of adequate connections, details, and the satisfactory construction of all work.

Work done contrary to this procedure shall be at the risk and expense of the Construction Manager. All shop drawings used for fabrication and erection shall be those approved by the Professional, without change. If change is found to be necessary on any approved shop drawings or sample, it shall be resubmitted to the Professional for review and approval.

The number of copies of shop drawings and other submittals will be established at the Initial Job Conference. The Construction Manager shall bear the cost of all required shop drawing reproductions.

The Construction Manager is required to submit a complete set of Approved Shop Drawings, organized by CSI Division, in electronic .pdf format within thirty (30) days of the project's date of Final Completion.

All Operation and Maintenance data is required to be submitted in electronic .pdf format to the Owner subsequent to approval by the Professional. The Construction Manager is required to organize information by system and CSI division. Exact requirements to be outlined by the Owner. One hard copy is required by the Owner.

ARTICLE 6 - KNOWLEDGE OF CONTRACT REQUIREMENTS

6.1 NOTICE

The Construction Manager, its Trade Contractors and materialmen shall consult in detail the Project Manual, the General Conditions of the Contract, all Divisions and Sections of the Specifications, all Drawings, and all Addenda to the Project Manual for instructions and requirements pertaining to the Work, and at its and their cost shall provide all labor, materials, equipment and services necessary to furnish, install and complete the Work in strict conformance with all provisions thereof.

6.2 EXAMINATION AND CONDITIONS AT THE SITE

The Construction Manager is responsible for having visited the site and having ascertained and informed itself, its Trade Contractors and materialmen, of all pertinent local conditions such as location, accessibility, and general character of the site or building, the character and extent of existing work within and adjacent to the site, any other work being performed thereon at the time of the submission of the Construction Manager's proposal, and subsurface conditions. Any failure to do so will not relieve the Construction Manager from responsibility for successfully performing the Work without additional expense to the Owner.

6.3 EXAMINATION OF CONTRACT DOCUMENTS

The Construction Manager will be held to have examined the Contract Documents, and Modifications thereto, as they may affect subdivisions of the Work and to have informed itself, its Trade Contractors, Sub-Trade Contractors and materialmen of all conditions thereof affecting the prosecution of the Work.

The Scope of the Work for the Contract is not necessarily limited to the description of each section of the Specifications and the illustrations shown on the drawings. Included within Scope of Work are minor items not expressly indicated in the Contract Documents, or as might be found necessary as a result of field conditions, in order to complete the Work as it is intended, without any gaps between the various subdivisions of Work of the Construction Manager, or between the Work of all Trade Contractors.

The Construction Manager shall at once report to the Professional errors, inconsistencies or omissions discovered. The Construction Manager shall not be liable to the Owner or Professional for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Construction Manager recognized such error, inconsistency or omission and failed to report it to the Professional. If the Construction Manager performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Professional, the Construction Manager shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

6.4 LABOR

The Construction Manager will be held to be thoroughly familiar with all conditions affecting labor in the location of the Project, including, but not limited to, unions, incentive pay, procurement, living and commuting conditions, and to have informed its Trade Contractors and Sub-Trade Contractors thereof.

ARTICLE 7 - CONTRACT ADMINISTRATION

7.1 GENERAL ADMINISTRATION

The Professional will provide general administration of the Contract beginning with the execution of the Agreement between the Construction Manager and the Owner until expiration of the Construction Manager's one year guarantee period against defective materials, equipment and/or workmanship.

The Professional shall advise and consult with the Owner and will have authority to act on behalf of the Owner to the extent provided in the Contract Documents. The extent of the Professional's duties and responsibilities and

the limitations of the Professional's authority as outlined hereunder shall not be modified without written agreement between the Owner and the Professional.

7.2 CONTRACT ADMINISTRATION COMMUNICATIONS AND INTERPRETATION

7.2.1 Communications: The Owner assumes no responsibility for any understanding given or representation made orally by the Owner's agents prior to the execution of this Contract, unless such understanding(s) or representation(s) are expressly stated in the Contract. The Owner assumes no responsibility for any conclusions or interpretations made by the Construction Manager. Any failure by the Construction Manager to become acquainted with available information will not relieve the Construction Manager from responsibility for properly estimating the difficulty or cost of successfully performing the Work or mutually agreed changes thereto.

The Owner's instructions to the Construction Manager will generally be issued through the Professional except that the owner reserves the right on appropriate occasions to issue instructions directly to the Construction Manager through the Owner's designated representative.

Communications by and with the Professional's consultants shall be through the Professional. Communications by and with Trade Contractors and material suppliers shall be through the Construction Manager. Communications by and with the Owner's Separate Contractors shall be through the Owner.

All instructions affecting contract sum, contract time, or contract interpretation shall be confirmed expeditiously in writing with copies furnished to the Professional, the Owner's designated representatives, and the Construction Manager by the party issuing the instruction. No instruction affecting the Professional's design liability shall be issued without the Professional's prior written consent.

7.2.2 Interpretation: The Professional will be, in the first instance, the interpreter of the requirements of the Contract Documents. The Professional will, within a reasonable time, render such interpretation as the Professional may deem necessary for the proper execution or progress of the Work. All interpretations by the Professional shall be defined in writing and/or by drawing and shall be consistent with the intent of the Contract Documents. In its capacity as interpreter, the Professional will exercise its best efforts to insure faithful performance by the Construction Manager.

The Professional's decisions on matters relating to aesthetic effect will be final with the Owner's consent and if consistent with the intent expressed in the Contract Documents.

7.3 ACCESS TO AND INSPECTION OF THE WORK

The Professional, the Owner and their authorized representatives shall be provided full and safe access to the Work at all times by the Construction Manager for their observation and/or inspection of same.

The Professional, or an authorized and qualified representative, shall visit the project periodically as required by the Owner during periods of active construction, review the progress of the Work, and take such actions as in the Professional's judgment are necessary or appropriate to achieve the requirements of the Contract Drawings and Specifications in the Work of the Construction Manager, including advising the Owner as to particular matters to watch and guard against. The Professional will have its consultants visit the site periodically as required during their respective phases of the Work at such intervals as may reasonably be deemed necessary by the Owner and the Professional, to review their respective phases of the Work in order to achieve the requirements of the Contract Drawings and Specifications.

In addition to the above, the Professional shall be required to attend, at the determination of the Owner, any and all project site conferences dealing with interpretation of the Contract Documents.

The Owner shall be consulted by the Construction Manager on matters pertaining to the Work and shall transmit instructions of the Professional regarding the Work to the Construction Manager.

The Owner will, in addition to the Professional's inspection, inspect all Work under Contract. While the Owner will assist the Construction Manager in obtaining additional information in explanation of the Contract Documents and will serve as liaison between the Construction Manager and the Professional, the Owner is not empowered to authorize deviations from the Contract, except by a written modification as identified in Paragraph 1.1, nor to enter into the Construction Manager's area of responsibility for supervision and construction means, methods, techniques, sequences, procedures or coordination or for safety of persons and property. The fact that the Owner may have permitted faulty Work or Work not in accordance with the Contract Documents to be performed shall not relieve the Construction Manager from any responsibility to perform fully in accordance with the Contract.

The Work will be subject to inspection by the Owner and by representatives of the Professional as outlined above; however, such representatives are not authorized to make oral changes in any provision of the Drawings or Specifications except as provided in Article 9, Changes in the Work. Changes resulting from such inspections will be processed in the manner prescribed in Article 9. The absence or presence of the Owner shall not relieve the Construction Manager from any requirements of the Contract.

The Owner reserves the right to inspect, at their sources, all materials, supplies or services not manufactured or performed within the Construction Manager's on-site facility. Such inspection shall not constitute acceptance, nor shall it replace in any way the Construction Manager's responsibility for inspection or requirement to furnish acceptable materials.

The Owner will notify the Construction Manager of any non-compliance with the Contract Documents and the action required; and, the Construction Manager shall take immediate corrective action. If the Construction Manager fails or refuses to take prompt action, the Owner may issue an order stopping all or part of the work until the Construction Manager takes appropriate action. No part of the time lost due to any such stop orders shall be made the subject of claim for extension of time or for excess costs or damages by the Construction Manager.

7.4 SEPARATE CONTRACTS

The Owner reserves the right to award other, separate contracts in connection with other portions of the Project under these or similar conditions of the Contract and/or to perform construction or operations related to the Project with the Owner's own forces.

The term "Separate Contractor" shall mean the Contractor who executes each separate Owner/Contractor Agreement.

If part of the Construction Manager's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Construction Manager shall, prior to proceeding with that portion of the Work, promptly report to the Professional apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Upon receipt of such report, the Professional shall make a determination as to the unsuitability of such other construction. Failure of the Construction Manager to so report shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Construction Manager's Work, except as to defects not then reasonably discoverable and which may develop in the Owner's or Separate Contractor's construction after the execution of the Construction Manager's Work.

The Construction Manager shall promptly remedy damage wrongfully caused by the Construction Manager to completed or partially completed construction or to property of the Owner or Separate Contractors.

Should the Construction Manager cause damage to the Work or property of any Separate Contractor on the Project, the Construction Manager shall, upon due notice, endeavor to settle with the Separate Contractor by agreement. If such Separate Contractor sues the Owner on account of any damage alleged to have been so sustained, the Owner shall notify the Construction Manager who shall defend such proceedings and pay all costs in connection therewith, and if any judgment against the Owner arises therefrom, the Construction Manager shall pay or satisfy it.

The Construction Manager shall afford the Owner and Separate Contractor reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Construction Manager's construction and operations with theirs as required by the Contract Documents.

7.5 CLAIMS AND DISPUTES

7.5.1 Claims: Claims by either party must be made within twenty-one (21) days after occurrence of the event giving rise to such Claim, or within twenty-one (21) days after the claimant first becoming aware or reasonably should have become aware of the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

Pending final resolution of a Claim unless otherwise agreed in writing, the Construction Manager shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

7.5.2 Claims for Concealed or Unknown Conditions: If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or discoverable by the Construction Manager or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and no later than forty-eight (48) hours after first observance of the conditions. The Professional will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Construction Manager's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Guaranteed Maximum Price or Contract Time, or both. If the Professional determines that the conditions at the site are not materially different from those indicated in the Contract Documents or discoverable by the Construction Manager and that no change in the terms of the Contract is justified, the Professional shall so notify the Owner and Construction Manager in writing, stating the reasons. Claims by either party in opposition to such determination must be made within twenty-one (21) days after the Professional has given notice of the decision.

The failure by the Construction Manager to make the written notice and claims as provided in this subparagraph shall constitute a waiver by the Construction Manager of any claim arising out of or relating to such concealed or unknown condition.

7.5.3 Claims for Additional Cost: If the Construction Manager wishes to make Claim for an increase in the Guaranteed Maximum Price, the Construction Manager shall give written notice of such claim to the Professional and the Owner within twenty-one (21) days after the occurrence of the event or first appearance of the condition giving rise to such claim and before proceeding to execute the

Work. The failure by the Construction Manager to give such notice and within the time presented and prior to executing the work shall constitute a waiver of claim for additional compensation. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 8.5.

In connection with any claim by the Construction Manager against the Owner for compensation in excess of the Contract Price, any liability of the Owner for the Construction Manager's cost shall be strictly limited to direct costs incurred by the Construction Manager and shall in no event include indirect costs or consequential damages of the Construction Manager. The Owner shall not be liable to the Construction Manager for claims of third parties, including Trade Contractors, unless and until liability of the Construction Manager has been established therefore in a court of competent jurisdiction.

7.5.4 Claims for Additional Time: If the Construction Manager wishes to make Claim for an extension of the date of Completion of Construction, written notice as provided herein shall be given to the Professional and the Owner at the time of any Change Order proposal submitted. If the Construction Manager believes additional time is involved for reasons including but not limited to (1) changes ordered to the Contract, or because of (2) strikes, (3) lockouts, (4) fire, (5) unusual delay in transportation, (6) or any cause beyond the Construction Manager's control, which constitute a justifiable delay, Claim shall be filed in accordance with the procedure established herein.

If unusual inclement weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions prevented the execution of major and/or critical items of the Work.

Unusual inclement weather as used herein means unusually severe weather which is beyond the normal weather recorded and expected for the locality and/or the season or seasons of the year. Normal weather shall be determined based on records for the closest stations of the United States Environmental Data Service and for a period of ten (10) years.

Any claim for extension of time on account of labor strike or lock-out shall be supported by a certificate of all facts concerning the strike, including, but not limited to, the dates, the crafts(s) concerned, the reason for the strike, efforts to resolve the dispute, and efforts to minimize the impact of the strike on progress.

Any claim for extension of time on account of delays in transportation, or for failure of suppliers, shall be supported by a certificate of all the facts involved, demonstrating that the delays were beyond the Construction Manager's control and including, but not limited to, the Construction Manager's efforts to overcome such delays.

If the Construction Manager fails to make such claim as required in this subparagraph within twenty-one (21) days of such occurrence giving rise to the claim, any claim for extension of time shall be waived.

7.5.5 Injury or Damage to Person or Property: If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding twenty-one (21) days after first becoming aware of such injury or damage. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim

for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Subparagraphs 7.5.3 or 7.5.4 respectively.

7.5.6 Decision of the Professional: Claims, including those alleging an error or omission by the Professional, shall be referred initially to the Professional for action as provided in Subparagraph 7.5.7. A decision by the Professional, as provided in Subparagraph 7.5.7, shall be required as a condition precedent to litigation of a Claim between a Construction Manager and Owner as to all such matters arising prior to the date final payment is due, regardless of (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed. The decision by the Professional in response to a Claim shall not be a condition precedent to litigation in the event (1) the position of Professional is vacant, (2) the Professional has not received evidence or has failed to render a decision within agreed time limits, (3) the Professional has failed to take action required under Subparagraph 7.5.7 within thirty (30) days after the Claim is made, (4) forty-five (45) days have passed after the Claim has been referred to the Professional.

7.5.7 Resolution of Claims and Disputes: The Professional will review Claims and take one or more of the following preliminary actions within ten (10) days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the Professional expects to take action, (3) reject the Claim in whole or in part, stating reasons for rejection, (4) recommend approval of the Claim by the other party or (5) suggest a compromise. The Professional may also, but is not obligated to, notify the surety of the nature and amount of the Claim.

If a Claim has been resolved, the Professional will prepare or obtain appropriate documentation.

If a Claim has not been resolved, the party making the Claim shall, within ten (10) days after the Professional's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Professional, (2) modify the initial Claim or (3) notify the Professional that the initial Claim stands.

If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Professional, the Professional will notify the parties in writing that the Professional's decision will be made within seven (7) days. Upon expiration of such time period, the Professional will render to the parties the Professional's written decision relative to the Claim, including any change in the Guaranteed Maximum Price or Contract Time or both. If there appears to be a possibility of the Construction Manager's default, the Professional may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

7.6 CONTRACT TERMINATION

7.6.1 Termination by Construction Manager: If the Work is stopped for a period of ninety (90) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Construction Manager or a Trade Contractor or their agents or employees or any other persons performing any of the Work under a contract with the Construction Manager, then the Construction Manager may, upon ten (10) additional days written notice to the Owner and the Professional, terminate the Contract and the Owner shall pay the Construction Manager for all Work executed and for any loss sustained upon any materials, equipment, tools, construction equipment and machinery, including Construction Management fee earned to date associated with such Work or losses and reasonable expenses resulting from such termination.

If the cause of the work stoppage is removed prior to the end of the ten (10) day notice period, the Construction Manager may not terminate the Contract.

7.6.2

Termination by Owner: If the Construction Manager refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials to perform the work, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is in violation of a provision of the Contract Documents, or fails to so prosecute the Work as to insure its completion, within the time, or any extension thereof, specified in this Contract, then the Owner may, without prejudice to any right or remedy and after giving the Construction Manager and its surety ten (10) days' written notice, terminate the work and services of the Construction Manager and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Construction Manager and assume all Trade Contracts. In such case, the Construction Manager shall not be entitled to receive any further payment until the work is finished.

If the Construction Manager shall generally not pay its debts as they become due or shall admit in writing its inability to pay its debts, or shall make a general assignment for the benefit of creditors; or if the Construction Manager shall commence any case, proceeding or other action seeking to have an order for relief entered in its behalf as debtor or to adjudicate it as bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property; or if the Construction Manager shall take any action to authorize or in contemplation of any of the actions set forth above in this paragraph, then this agreement will automatically terminate upon written notification by Owner to Construction Manager and its surety.

Should the surety fail to respond within fifteen (15) days following the date of the notice of termination given to the surety and fail to pursue completion of the work with diligence acceptable to the Owner, the Owner may arrange for completion of the Work and deduct the cost thereof from the unpaid Contract Sum remaining, including the cost of additional Professional services made necessary by such default or neglect, in which event no further payment shall then be made by the Owner until all costs of completing the Work shall have been paid.

If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including compensation for the Professional's additional services made necessary thereby, such excess shall be paid to the Construction Manager. If such costs exceed the unpaid balance, the Construction Manager or its surety shall pay the difference to the Owner. This obligation for payment shall survive the termination of the Contract.

7.6.3

Termination for Convenience of Owner: Prior to, or during the performance of the Work, the Owner reserves the right to terminate the Contract for unforeseen causes including but not limited to court orders, loss of funding, acts of the federal government to discontinue the Work, etc., that may occur. Upon such an occurrence, the following procedures will be adhered to:

7.6.3.1 The Owner will immediately notify the Professional and the Construction Manager in writing, specifying the effective termination date of the Contract.

7.6.3.2 After receipt of the notice of termination, the Construction Manager shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Contract:

- (1) Stop all work.

- (2) Place no further trade contracts or orders for
- (3) Cancel all material and equipment orders as applicable.
- (4) Take action that is necessary to protect and preserve all property related to this Contract which is in the possession of the Construction Manager.

7.6.3.3 Within one hundred eighty (180) days of the date of the notice of termination, the Construction Manager shall submit a final termination settlement proposal to the Owner based upon costs up to the date of termination, reasonable profit on Work done only, and reasonable demobilization costs. If the Construction Manager fails to submit the proposal within the time allowed, the Owner may determine the amount due to the Construction Manager because of the termination and shall pay the determined amount to the Construction Manager.

7.6.3.4 If the Construction Manager and the Owner fail to agree on the settlement amount, the matter will be handled as a dispute through the procedures as outlined in Subparagraphs 7.5.6 and 7.5.7.

7.6.4 Written Notice: Written notice shall be considered to have been duly given if delivered in person to the individual or member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by United States mail to the last business address known.

ARTICLE 8 - CONSTRUCTION

8.1 CONSTRUCTION SCHEDULE, FIELD MEASUREMENTS AND SUPERVISION

8.1.1 Construction Schedule: The Construction Manager, promptly after being awarded the Contract, shall prepare and submit for approval by the Professional, a construction schedule for the Work. The schedule shall not exceed time limits as contained in the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

The construction schedule shall be coordinated with the Construction Manager's shop drawing submittal schedule.

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

8.1.3 Supervision: The Construction Manager shall supervise and direct the Work. The Construction Manager shall be solely responsible for all construction means, methods, techniques, safety, sequences and procedures, and for coordinating all portions of the Work under this Contract. The Construction Manager shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

The Construction Manager shall employ a competent superintendent who shall be in attendance at the Project site during the progress of the Work. The superintendent shall be satisfactory to the Owner, and shall not be changed except with the written approval of the Owner unless the superintendent leaves the employment of the Construction Manager. The superintendent shall represent the Construction Manager and shall have full authority to act on the Construction

Manager's behalf. All communications given to the superintendent shall be as binding as if given to the Construction Manager. All oral communications affecting contract time, contract cost and contract interpretation will be confirmed in writing.

8.2 TRADE CONTRACTS

As soon as practicable after the execution of the Contract, the Construction Manager shall submit to the Professional and to the Owner, a list of all Trade Contractors, including those who are to furnish materials or equipment, the Construction Manager and/or its major Trade Contractors propose to employ in the construction of the Project. Trade Contracts will be awarded after consultation with the Owner and Professional. Construction Manager shall have final authority and responsibility for selection of all Trade Contractors and award of all Trade Contracts.

Construction Manager hereby specifically agrees to indemnify, defend and hold harmless the Owner and Owner's agents, employees, trustees and attorneys for any and all loss, damage, cost, charge, award, verdict, judgment, liability or expense, including without limitation, reasonable attorneys' fees, arising out of any claim, actions or suits which are based upon or in any way related to the process of selecting Trade Contractors or the award of Trade Contracts for the project.

A change in any approved Trade Contractor or the addition of any new Trade Contractor can only be made with the written approval of the Owner and Professional.

The Construction Manager agrees to bind every Trade Contractor, and every Trade Contractor agrees to be bound, by the terms of the Agreement, the General Conditions of the Contract, and the Drawings and Specifications insofar as they are applicable to the Trade Contractor's respective portion of the Work. The Construction Manager shall further more fully inform each of its Trade Contractors, prior to executing an agreement with, conformance with related documents and to submit Cost Estimates and Change Order proposals in complete and full analytical detail when so required or requested. The Construction Manager shall indemnify the Owner for any Trade Contractor's claim which may result from the failure of the Construction Manager to incorporate the provisions of this Contract, in the Construction Manager's agreements with any of its Trade Contractors.

The Construction Manager shall indemnify the Owner for any Trade Contractor's claim which may arise out of an inconsistency between the Contract Documents and a Trade Contract. Trade Contracts entered into between the Construction Manager and Trade Contractors shall not be inconsistent with the obligations of the Construction Manager under the Contract Documents and shall be assignable to the Owner in accordance with Article 8.2.1.

8.2.1 Contingent Assignment of Trade Contracts: Each Trade Contract agreement for a portion of the work is hereby assigned by the Construction Manager to the Owner provided that:

8.2.1.1 Assignment is effective only after termination of the Contract by the Owner for cause pursuant to Subparagraph 7.6.2 and only for those trade contract agreements which the Owner accepts by notifying the Trade Contractor in writing.

8.2.1.2 Assignment is subject to the prior rights of the surety obligated under bond relating to the Contract.

8.3 PERMITS, FEES AND NOTICES

The Construction Manager shall secure and pay for, with the exception of the building permit, all other permits, fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Agreement and which are legally required.

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

If the Construction Manager performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Professional and Owner, the Construction Manager shall assume full responsibility for such Work and shall bear the attributable costs.

8.4 ACTS AND OMISSIONS

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

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

8.5 PROTECTION OF PERSONS AND PROPERTY

- 8.5.1 OSHA: It shall be the duty and responsibility of the Construction Manager and all its Trade Contractors and their agents and employees, and other persons performing portions of the Work under a contract with the Construction Manager to be familiar and comply with all requirements of Public Law 91-596, the Occupational Safety and Health Act of 1970 (OSHA) and all amendments thereto, and to enforce and comply with all of the provisions of this Act.
- 8.5.2 Safety: Construction Manager and each Trade Contractor shall be obligated to adhere to the safety requirements as outlined in the most current Contractor Safety Requirements document located on the Office of Physical Plant website(www.opp.psu.edu), Design and Construction Standards, Division 00(Procurement and Contracting Requirements).
- 8.5.3 Emergencies: In an emergency affecting safety of persons or property, the Construction Manager shall act, at its discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Construction Manager on account of an emergency shall be considered in accordance with Paragraph 7.5 and Article 9.
- 8.5.4 Precautions: The Construction Manager shall take appropriate precautions for safety of and shall provide necessary protection to prevent damage, injury or loss to:
- 8.5.4.1 Employees of the Owner at the Work and other persons who may be affected thereby.
 - 8.5.4.2 The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Construction Manager or the Construction Manager's Trade Contractors.
 - 8.5.4.3 Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

The Construction Manager shall erect and maintain, as required by existing conditions and performance of the Contract, all necessary safeguards for safety and protection, including posting danger signs and other warnings against hazards.

When the use of explosives is necessary for execution of the Work and such use is approved by the Owner, the Construction Manager shall conform to the procedures specified.

The Construction Manager shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

- 8.5.5 Hazardous Material: The Construction Manager and all its Trade Contractors and their agents and employees and other persons performing portions of the Work under a contract with the Construction Manager shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic material.

If the Construction Manager encounters or suspects hazardous or toxic material, the Construction Manager shall advise the Owner immediately.

The Work in the affected area shall not be resumed by the Construction Manager until the hazardous material has been removed or rendered harmless by the Owner.

- 8.5.6 Property Damage Repair: The Construction Manager shall promptly remedy any damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Subparagraphs 8.5.4.2 and 8.5.4.3 caused in whole or in part by the Construction Manager, a Trade Contractor, their agents and employees or any other persons performing portions of the Work under a contract with the Construction Manager.

8.6 MATERIALS AND WORKMANSHIP

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

All Work shall be executed in accordance with the Contract Documents, complete in all parts and in accordance with approved practices and customs, the finish specified and of the best workmanship. Unless otherwise specified, all materials and equipment incorporated in the Work under the Contract shall be new.

The Construction Manager shall provide, without extra charge, all incidental items required as a part of the Work, even though not particularly specified nor indicated and, if the Construction Manager has good reason for objecting to the use of a material, appliance, or method of construction as shown or specified, the Construction Manager shall register its objections to the Professional, in writing, sending a copy to the Owner; otherwise, the Construction Manager shall proceed with the Work, with the understanding that a satisfactory job is required.

- 8.6.1 Use of Site: The Construction Manager shall confine operations at the site to areas indicated in the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

Subject to prior approval of the Owner, the Construction Manager may use spaces within the building for shops and the storage of materials and equipment. Every space so used shall be repaired, patched, cleaned and restored to new condition by the Construction Manager.

8.6.2 Cutting and Patching: The Construction Manager shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

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

The Construction Manager or a Trade Contractor or Sub-Trade Contractor requiring the cutting of openings in, or relocation of, Work installed by others shall have such openings cut and patched and relocations made by the trade skilled in performing the particular Work; and such cutting, patching and relocation shall be at the expense of the Construction Manager, Trade Contractor, or Sub-Trade Contractor requiring the opening or relocation.

8.7 TESTS AND INSPECTIONS

Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of authorities having jurisdiction shall be made at an appropriate time. The Construction Manager shall schedule and coordinate such tests, inspections and approvals with the independent testing laboratory. The Owner or Owner's agent will retain the testing services. The Construction Manager shall give the Professional timely notice of when and where tests and inspections are to be made so the Professional may observe such procedures.

In addition, the Owner or the Professional may require special inspection, testing or approval of material or work for compliance with the requirements of the Contract Documents. Upon direction of the Owner and Professional, the Construction Manager shall promptly arrange for such special testing, inspection or approval procedure. Should the material or work fail to comply with the requirements of the Contract Documents, the Construction Manager shall bear all costs of the testing, inspection or approval as well as the cost of replacement of unsatisfactory material or work as provided by Paragraph 8.8; otherwise, the Owner shall bear such costs and an appropriate change order shall be issued.

8.8 UNCOVERING, REJECTION AND CORRECTION OF WORK

8.8.1 Uncovering of Work: If any portion of the Work is covered contrary to the Professional's or the Owner's request or to the requirements of the Contract Documents, it must, if requested by the Professional or Owner, be uncovered for observation by the Professional or Owner. All costs of uncovering, recovering and replacement of Work, if not installed in accordance with the Contract Documents, shall be borne by the Construction Manager and with no change in Contract Time.

Any other portion of the Work requested to be uncovered by the Professional or the Owner and found not to be in accordance with the Contract Documents shall be replaced by the Construction Manager. The Construction Manager shall bear all the costs of uncovering and replacement of such work. If the portion of Work uncovered is found to be in accordance with the Contract Documents, the costs of uncovering and recovering shall be paid by the Owner by appropriate Change Order.

8.8.2 Rejection and Correction of Work: Any Work rejected by the Professional or the Owner or found not to be in accordance with the Contract Documents shall be corrected promptly by the Construction Manager at its cost and with no change in Contract Time.

The Construction Manager shall bear the cost of correcting destroyed or damaged construction,

whether completed or partially completed, of the Owner or Separate Contractors caused by the Construction Manager's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

If the Construction Manager fails to correct rejected or nonconforming work, the Owner may correct it in accordance with Paragraph 8.9.

- 8.8.3 Acceptance of Nonconforming Work: If the Owner prefers to accept Work found not to be in accordance with the Contract Documents, the Owner may do so, in which case the Contract Sum will be reduced downward appropriately as determined by the Owner.

8.9 OWNER'S RIGHT TO STOP AND/OR CARRY OUT THE WORK

- 8.9.1 Owner's Right to Stop the Work: If the Construction Manager fails to correct rejected or nonconforming Work as required in Subparagraph 8.8.2 or fails to carry out Work in accordance with the Contract Documents the Owner may, in writing, order the Construction Manager to stop the Work, or any portion thereof until the proper corrective action has been implemented.

- 8.9.2 Owner's Right to Carry Out the Work: If the Construction Manager fails or neglects to carry out the Work in accordance with the Contract Documents or ceases work for a period of seven (7) consecutive days, the Owner may, without prejudice to other remedies the Owner may have, perform or cause to be performed the Work.

In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Construction Manager the cost of performing work pursuant to this subsection. If payments then or thereafter due the Construction Manager are not sufficient to cover such amounts, the Construction Manager shall pay the difference to the Owner.

8.10 CLEANUP

The Construction Manager shall keep the premises clean at all times of dirt, rubbish and debris resulting from the Work, and shall remove rubbish and debris in metal containers at the end of each working day. The Construction Manager shall remove rubbish and cartons resulting from the installation of fixtures and equipment. Prior to substantial completion of the Work, the Construction Manager shall do the final cleaning and polishing of the surfaces of the Construction Manager's installations as may be required by the various Specifications sections. The Construction Manager, in addition, shall employ a professional cleaning organization to remove all paint and stains from glass, and to wash all glass, throughout the Work, to clean and polish the finished surface of all fixtures, equipment and accessories and to vacuum clean all floors.

If the Construction Manager fails to clean up as outlined above, the Owner may do so and the cost thereof shall be charged to the Construction Manager.

8.11 PROJECT SIGN

A project sign shall be prepared and erected by the Construction Manager and shall conform to the Specifications provided by the University. The appropriate project name shall be included. A proof/sample of the sign must be approved by the Owner prior to installation.

8.12 CONSTRUCTION FENCE

The Construction Manager shall abide by all project fencing requirements located within Appendix B of the most current Contractor Safety Requirements document, located on the Office of Physical Plant website (www.opp.psu.edu), Design and Construction Standards, Division 00.

8.13 CONSTRUCTION WASTE MANAGEMENT

The Construction Manager is required to recycle and/or salvage 75% construction, demolition, and land clearing waste. A waste management plan is to be developed for the project which outlines how you will achieve the required recycling rate, including materials to be recycled or salvaged, materials handling requirements, and how you will communicate the plan to your crews and trade/subcontractors. The waste management plan is to be approved by the OPP Project Leader and submitted with the initial application for payment.

At the end of the project, prior to the application for Final Payment, the Construction Manager is required to submit a calculation documenting that the project achieved a 75% diversion rate. The Application for Final Payment will be held until this documentation is received by the Owner. The documentation should include a tabulation of the total waste material, quantities diverted and the means by which they were diverted. A signature declaring that the requirements have been met must be included.

If this project is attempting to achieve LEED certification, the LEED process to achieve the Construction Waste Management credit(s) supersedes this section.

ARTICLE 9 - CHANGES IN THE WORK

9.1 CHANGES

Except as provided in this article, no order, oral statement or direction of the Professional or the Owner shall be treated as a Change Order or entitle the Construction Manager to an adjustment to the Contract Sum and/or the Contract Time.

The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by Change Order and shall be performed under the applicable conditions of the Contract Documents. If such changes cause an increase or decrease in the Construction Manager's cost of, and/or time required for, performance of the Contract, an equitable adjustment shall be made and confirmed in writing in a Change Order.

9.2 CHANGE ORDERS

A Change Order is a written order to the Construction Manager, signed by the Owner and issued after execution of the Contract, authorizing a change in the Work and/or an adjustment in the Contract Sum and/or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. A Change Order signed by the Construction Manager indicates the Construction Manager's agreement therewith, including the adjustment in the Contract Sum and/or the Contract Time.

It is recognized by the parties hereto and agreed by them that the Specifications and Drawings may or may not be complete or free from errors, omissions and imperfections or require changes or additions in order for the Work to be completed in accordance with the Contract Documents and to the satisfaction of Owner and that, accordingly, it is the express intention of the parties, notwithstanding any other provisions in this Contract, that any errors, omissions or imperfections in such Specifications and Drawings or any changes in or additions to same or to the Scope of Work ordered by Owner and any resulting delays in the Work or increases in the Construction Managers costs and expenses, shall not constitute or give rise to any claim, demand or cause of action of any nature whatsoever in favor of Construction Manager, whether for breach of contract, quantum merit, or otherwise; provided, however, that Owner shall be liable to Construction Manager for the sum stated to be due Construction Manager in any Change Order approved and signed by both parties, it being agreed hereby that such sum, together with any extension of time contained in said Guaranteed Maximum Price Change Order, shall constitute full compensation to Construction Manager for all costs, expenses and damages to Construction Manager, whether

direct, consequential or otherwise in any way incident to, arising out of, or resulting directly or indirectly from the Work performed by Construction Manager under such Change Order.

All Change Orders must be prepared by using the Owner's most current Change Order Summary and Cost Breakdown forms. Change Orders submitted on forms, other than the Owner's, will not be approved.

9.3 GUARANTEED MAXIMUM PRICE CHANGE ORDERS - CONTRACT SUM ADJUSTMENTS

Adjustments in the contract price for Work covered by a Guaranteed Maximum Price Change Order shall be computed on the basis of one or more of the following procedures. The Construction Manager shall have a maximum time of fourteen (14) calendar days to submit change order pricing, unless otherwise directed by the Owner.

9.3.1 Unit Prices: Unit prices as stated in the Contract Documents or subsequently mutually agreed upon by the Owner and the Construction Manager for the increase or reduction in the Scope of Work or portion thereof.

Unit prices shall be inclusive of all costs and shall be applied to units of measure as defined in the Contract Documents for each category of Work.

9.3.2 Lump Sum: A lump sum agreed upon by the Owner and Construction Manager based on an estimated cost of the increase or reduction in the Scope of the Work properly itemized and supported by sufficient substantiating data to permit evaluation.

9.3.3 Actual Cost: The actual cost of the Work as determined from job records after the completion of the extra Work. For Work done under this paragraph, the Construction Manager shall maintain and submit to the Owner for review and approval as directed by the Owner, accurate accounts of all costs and supporting data. There shall be a lump sum cost-not-to-exceed agreed upon by the Owner and Construction Manager before this provision is used.

9.3.4 Net Cost of Increase or Reduction in Scope of Work: The net cost of the estimated or actual cost of the Scope of Work shall be the actual or prorated cost of:

9.3.4.1 Labor at the prevailing rate of wages and fringe benefits.

9.3.4.2 Materials entering permanently into the Work, including delivery to the site.

9.3.4.3 The ownership or rental cost of construction equipment at actual cost, prorated for the time necessary for the Work.

9.3.4.4 Power and consumable supplies for the operation of power equipment at actual cost, prorated for the time necessary for the Work.

9.3.4.5 Insurances and bonds only when supported by paid invoice.

9.3.4.6 When a change in the Scope of Work includes a category or categories of work both added to and deleted from the Contract, the total quantities of added Work and of deleted Work shall be determined separately for each category and the appropriate Unit Price or net cost of the Work shall be the difference between the two total quantities.

If no mutual agreement can be reached between the Owner and the Construction Manager as to the method to complete the Work covered by a Change Order, the change in the Contract Price, if any, shall then be determined

on the basis of the reasonable expenditures or savings of those performing, deleting, or revising the Work attributable to the change. In such case, the Construction Manager shall present, in such form and with such contents and details as the Owner requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies, or equipment, including delivery costs; reasonable costs of labor and fringe benefits required by agreement or custom; reasonable rental or Owner costs of machinery and equipment exclusive of hand tools whether rented from the Construction Manager or others; actual costs of premiums for all bonds and insurance, only when supported by paid invoice, permit fees, and sales, use, or other taxes related to the Work. In no event shall any expenditure or savings associated with the Construction Manager's home office or other non-job site overhead expense be included in any change in the Contract Price. Allowance for overhead and profit shall be determined in accordance with Article 9.4.

9.4 OVERHEAD AND PROFIT ALLOWANCE

The Construction Manager, or Subcontractor, performing the Work will be allowed a total markup for overhead and profit of **10%** on labor, material, and equipment. The Construction Manager's fee shall not apply to change order work that is self-performed. Markup on sales tax is not permitted.

9.4.1 Subcontractor Management Markup: The total aggregate markup for overhead and profit of 10%, to the Subcontractor, for Subsubcontractor management on the **actual** cost of the Work performed regardless of tier.

9.4.2 Construction Manager Subcontractor Management Markup: The Construction Manager, under a Guaranteed Maximum Price Change Order, shall include the net cost of the Work to the Subcontractor plus an adjustment in fee as provided in Article 10 of the Form of Agreement.

9.5 GUARANTEED MAXIMUM PRICE CHANGE ORDER CONTRACT TIME ADJUSTMENTS

Adjustments in the time required for performance of the Contract for Work covered by a Change Order shall be as agreed upon by the Owner and the Construction Manager as part of the Change Order. If the parties are unable to agree on the time extension or reduction, the Professional shall make a determination of the time extension or reduction to be allowed for a change.

9.6 MINOR CHANGES IN THE WORK

The Professional, with the Owner's approval, will have authority to order minor changes in the Work not involving an adjustment in the Guaranteed Maximum Price or an extension of the Contract Time. Such changes will be effected by written order which the Construction Manager shall carry out promptly.

9.7 NOTICE TO SURETY: CONSENT

The Construction Manager shall notify and obtain the consent and approval of the Construction Manager's surety with reference to all Change Orders if such notice, consent, or approval are required by the Construction Manager's surety or by law. The Construction Manager's execution of the Change Order shall constitute the Construction Manager's warranty to the Owner that the surety has been notified of and consents to such Change Order, and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

9.8 EFFECT OF EXECUTED CHANGE ORDER

The execution of a Change Order by the Construction Manager shall constitute conclusive evidence of the Construction Manager's agreement to the ordered changes in the Work, this Contract as thus amended, the

Contract Price and the Contract Time. The Construction Manager, by executing the Change Order, waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

ARTICLE 10 - CONTRACT COMPLETION TIME

10.1 NOTICE TO PROCEED

The Contract Time will begin on the date designated in the Notice to Proceed issued by the Owner, and the Construction Manager is required to complete the Work in the time stated therein and in the Agreement.

10.2 PROGRESS AND COMPLETION

Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Construction Manager confirms that the Contract Time is a reasonable period for performing the Work.

The Construction Manager shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

10.3 DELAYS AND EXTENSIONS OF TIME

If the Construction Manager is delayed at any time in progress of the Work by an act or neglect of the Owner or Professional, or of an employee of either, or of a Separate Contractor employed by the Owner, or by changes ordered in the Scope of Work, or by labor disputes, fire, unavoidable casualties or other causes beyond the Construction Manager's control, or by delay authorized by the Owner, or by other causes which the Professional determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Professional may determine with the Owner's approval.

Claims relating to time shall be made in accordance with applicable provisions of Subparagraph 7.5. Paragraph 10.3 does not preclude recovery of damages for delay by the Owner under other provisions of the Contract Documents.

Apart from extension of time, no payment or claim for damages shall be made to the Construction Manager as compensation for damages for any ordinary delays or hindrances from any cause whatsoever in the progress of the Work, notwithstanding whether such delay be avoidable or unavoidable.

On a case-by-case basis, the Owner may reasonably consider financial reimbursement to the Construction Manager (in addition to an extension of time). Each case shall be evaluated on its merits as it occurs.

10.4 COMPLETION AND LIQUIDATION DAMAGES

The Construction Manager shall substantially complete all of the Work included in the Contract Documents ready for the Owner's use and occupancy in the Contract Time noted in the Construction Manager's Form of Proposal and the Agreement, subject to extensions of Contract Time as provided in Paragraph 10.3 above.

Pursuant to the provisions of Paragraph 10.4, for each calendar day's delay in said completion, the Construction Manager shall pay to the Owner as liquidated damages, and not as a penalty, the sum in the amount noted in the Project Manual and the Agreement. The Construction Manager and its surety shall be liable for the amount thereof.

Any delay attributable to lack of coordination or cooperation by or between the Construction Manager and its Trade Contractor(s) will not be recognized by the Owner as the basis for any claim for increase in the Contract Sum Guaranteed Maximum Price or Contract Time.

10.5 SUBSTANTIAL COMPLETION

When the Construction Manager considers that the Work, or a portion thereof which the Owner wishes or agrees to accept separately, is substantially complete in accordance with Paragraph 1.16, the Construction Manager shall prepare for submission to the Professional and the Owner a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents. When the Professional and the Owner, on the basis of an inspection, determine that the Work is substantially complete, the Professional will then prepare a Substantial Completion Inspection Report which shall establish the Date of Substantial Completion; shall state the responsibilities of the Owner and the Construction Manager for maintenance, heat, utilities, operation of permanent equipment, warranty and insurance; and shall fix the time within which the Construction Manager shall complete the items listed therein. The Substantial Completion Inspection Report shall be submitted to the Owner and the Construction Manager as their notification of the responsibilities assigned to each of them. All necessary inspections shall be coordinated and scheduled by the Construction Manager prior to occupancy.

The Construction Manager shall be charged with any cost for re-inspection resulting from substantial differences between the Construction Manager's list of items to be completed or corrected and the list of items resulting from the Professional and Owner's inspection.

10.6 PARTIAL OCCUPANCY

The Owner may take occupancy or make use of any substantially completed portion of the Work and in accordance with the Construction Manager's review and approval.

The procedures for the preparation of a list of items to be completed or corrected, Partial Occupancy Inspection and Inspection Reports are to be followed as outlined in Paragraph 10.5 above.

The Construction Manager agrees that the Owner may place and install as much material, equipment and furnishings as is possible during construction without interfering with orderly progress of the Work and prior to use and occupancy of the various parts of the Work, and further agrees that such placing and installation shall not evidence completion of the Work or signify the Owner's acceptance of the Work or any part thereof.

Partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

ARTICLE 11 - PAYMENTS AND COMPLETION

11.1 SCHEDULE OF VALUES

Upon execution of the Agreement between the Owner and the Construction Manager, the Construction Manager shall submit to the Professional and Owner for approval, a breakdown of the Guaranteed Maximum Price, itemizing material and labor for the various classifications of the Work. The breakdown will be used as the basis for the progress payments of the Contract.

The schedule shall be tabulated into trade contracts, for each of which the Quantity, Labor, Material, Other Cost and resulting final Cost per Unit shall be indicated. Quantity, Labor, Material, Other Costs, and Cost per Unit generally include but are not necessarily limited to the following:

- 11.1.1 Quantity: Total number of items for each portion or Unit of Work as determined from the Contract Documents.
- 11.1.2 Labor: On-site labor required for the handling and installation of material from point of delivery at site.

- 11.1.3 Material: Cost of material as delivered to site for installation and erection.
- 11.1.4 Other Costs: Rental equipment, depreciation, site office, administration, overhead and profit, testing, survey and layout, samples and other costs not included in Labor and Material.
- 11.1.5 Cost per Unit: Total of Labor, Material and Other Cost for each portion or Unit of Work derived from the total Quantity of same.

The Construction Manager's monthly application for payment shall reflect the same items as outlined above. Unit costs shall be realistic for their part of the Work.

11.2 APPLICATIONS FOR PAYMENT

Except as otherwise agreed in writing by the parties, and except for any amounts withheld or disallowed due to deficiencies or errors in documentation as defined in Paragraph 11.5 below, payment of progress and final payment applications shall be due from the Owner forty-five (45) days after the end of a billing period or forty-five (45) days after delivery of the Application for Payment, whichever is later.

Within ten (10) calendar days of the effective date hereof, the Construction Manager shall submit to the Owner and to the Professional, a Schedule of Values allocating the Contract Price to the various portions of the Work. The Construction Manager's Schedule of Values shall be prepared in such form, with such detail, and supported by such data as the Professional or the Owner may require to substantiate its accuracy. The Construction Manager shall not imbalance its Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the Construction Manager shall constitute a material breach of this Contract. The Schedule of Values shall be used only as a basis for the Construction Manager's Applications for Payment and shall only constitute such basis after it has been acknowledged in writing by the Professional and the Owner.

Ten days before the date established for each progress payment submittal to the Owner, the Construction Manager shall submit to the Professional an itemized Application Certificate of Payment for construction activities completed in accordance with the approved Schedule of Values and which shall reflect the appropriate retainage as outlined in Article 14 of the Form of Agreement.

Such application shall be supported by such data substantiating the Construction Manager's right to payment as the Owner may require, including weekly payroll certifications (Commonwealth of Pennsylvania Department of Labor and Industry form LLC-25) if applicable.

Such applications may include requests for payment for Changes in the Scope of Work which have been properly authorized by a Guaranteed Maximum Price Change Order and fully executed.

Such applications shall not include requests for payment of amounts the Construction Manager does not intend to pay to a Trade Contractor or material supplier because of a dispute or other reason.

The Construction Manager warrants that title to all Work covered by an Application Certificate of Payment will pass to the Owner at the time of payment. The Construction Manager further warrants that upon submittal of an Application Certificate of Payment all Work for which Certificates of Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Construction Manager, Trade Contractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

This provision shall not be construed as relieving the Construction Manager from the sole responsibility for the care and protection of materials and work upon which payments have been made or the restoration of any

damaged Work, or as a waiver of the right of the Owner to require the fulfillment of all of the terms of the Contract.

Payments to the Construction Manager shall not be construed to release the Construction Manager or its surety from any obligations under this Contract.

A Certificate of Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

11.3 PAYMENTS FOR STORED MATERIAL

Payments on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site, or at some other location agreed upon in writing, will be made by the Owner subject to the following conditions:

- 11.3.1 Such materials or equipment shall have been fabricated or assembled specifically for the Project and delivered to storage no earlier than needed for the orderly progress of the Work as demonstrated by the Progress Schedule.
- 11.3.2 Title to such materials or equipment shall pass to the Owner pursuant to the Construction Manager's bill of sale which shall contain a guarantee of replacement thereof in the event of damage thereto or disappearance thereof due to any cause. Payment by the University for stored material will be made only upon receipt of the Construction Manager's paid-in-full invoice from the manufacturer or supplier.
- 11.3.3 In the case of off-site storage, the Construction Manager shall also provide consent of Surety to such payment and insurance of such materials or equipment against the perils set forth in Paragraph 3.3, both while in storage and during transportation to the site.
- 11.3.4 Raw materials or other materials or equipment readily duplicated or usable on other projects will be paid for only after the materials are incorporated into the Project.

11.4 CERTIFICATES OF PAYMENT

Based on observations of the Work, the Professional will either recommend, within seven (7) days (except as otherwise provided in Paragraph 11.5.8 below) after receipt from the Construction Manager, approval of payment on the Application Certificate of Payment or notify the Construction Manager and Owner in writing of the Professional's reason(s) for withholding its recommendation in whole or in part as provided in Paragraph 11.5 below.

The Professional shall mark the Certificate of Payment so as to indicate the disapproval of those items for which payment is to be withheld or disallowed and to indicate the corrected values, and shall forward the Certificate of Payment to the Owner for further processing, except that, should the Professional disapprove payment of the entire progress payment, the disapproved Certificate of Payment will be returned to the Contractor, with notification of said return provided to the Owner by the Professional.

Approval of the Certificate of Payment shall constitute a representation by the Professional to the Owner that the Work has progressed to the point indicated on the Application, and that to the best of the Professional's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents.

The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the

Professional. The issuance of a Certificate of Payment will further constitute a representation that the Construction Manager is entitled to payment in the amount certified. However, the issuance of a Certificate of Payment will not be a representation that the Professional has (1) made exhaustive or continuous on-site inspections to check the quality of quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Trade Contractors and material suppliers and other data requested by the Owner to substantiate the Construction Manager's right to payment or (4) made examination to ascertain how or for what purpose the Construction Manager has used money previously paid on account of the Contract Sum.

Application/Certificate of payment applications MUST include the following: **(Failure to submit any of the following will deem the Application/Certificate of Payment incomplete)**

First Payment

- Application/Certificate of Payment (Must be signed by the Contractor, the OPP Representative, and if applicable the AE Representative, the correct PSU Project Number must be provided on the form)
- Schedule of Values / Continuation Sheet
- Steel Certifications – If no steel was used, fill out the form and choose option 1A
- OSHA 30-Hour Certified
- Waste Management Plan
- Site Specific Safety Plan
- Weekly Payroll Certification

Progress Payment

- Application/Certificate of Payment (Must be signed by the Contractor, the OPP Representative, and if applicable the AE Representative, the correct PSU Project Number must be provided on the form)
- Schedule of Values / Continuation Sheet
- Steel Certifications – If no steel was used, fill out the form and choose option 1A
- Weekly Payroll Certification

Upon Substantial Completion of the Work and upon written request of the Construction Manager, certification by the Professional and approval of the Owner, retainage for the uncompleted portion of the work may be reduced to a percentage mutually agreed upon by all parties.

11.5 WITHHOLDING OF PAYMENT

The Professional or the Owner may decline to make payment, may withhold funds, and if necessary, demand the return of some or all of the amounts previously paid to the Construction Manager or, nullify that part of any Application Certificate of Payment to such extent as may be necessary to protect the Owner from loss because of any of the following:

- 11.5.1 Defective Work not remedied by the Construction Manager nor, in the opinion of the Owner, likely to be remedied by Construction Manager.
- 11.5.2 Third party claims filed or reasonable evidence indicating probable filing of such claims.
- 11.5.3 Failure of the Construction Manager to make payments promptly and properly to Trade Contractors or others.
- 11.5.4 Any evidence that the Work cannot be completed for the unpaid balance of the Contract Sum.

- 11.5.5 Damage to the Owner, another Separate Contractor, or any third party.
- 11.5.6 Any evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay.
- 11.5.7 Failure to carry out the Work in accordance with the Contract Documents.
- 11.5.8 Errors in Documentation: If a Certificate of Payment is filled out incorrectly or incompletely, or if there is any other defect or impropriety in a Certificate of Payment, the Professional or Owner shall give written notice to the Contractor within ten (10) working days after receipt of the Certificate, and the Owner shall make payment for the correct amount to the Contractor provided the Certificate of Payment is approved by the Professional in accordance with this Agreement.

If the Construction Manager and Professional cannot agree on a revised amount, the Professional will promptly issue a Certificate of Payment for the amount for which the Professional is able to recommend to the Owner.

When the above reason(s) for withholding recommendation or nullifying any part of a Certificate of Payment are removed, recommendation and payment will be made for amounts previously withheld.

11.6 PAYMENTS TO TRADE CONTRACTORS

Upon receipt of payment from the Owner, the Construction Manager shall promptly pay each Trade Contractor, out of the amount paid to the Construction Manager, the amount to which said Trade Contractor is entitled, reflecting percentages actually retained from payments to the Construction Manager on account of such Trade Contractor's portion of the Work. The Construction Manager shall, by appropriate agreement with each Trade Contractor, require each Trade Contractor to make payments in similar manner.

The Professional or Owner will, on request, furnish to a Trade Contractor, if practicable, information regarding percentages of completion or amounts applied for by the Construction Manager and action taken thereon by the Professional and Owner on account of portions of the Work done by such Trade Contractor.

Neither the Owner nor Professional shall have an obligation to pay or to see to the payment of money to a Trade Contractor.

Payment to material suppliers by the Construction Manager shall be treated in a manner similar to that provided above.

11.7 FAILURE OF PAYMENT

If the Professional does not recommend approval of payment, through no fault of the Construction Manager, within fourteen (14) days after receipt of the Construction Manager's Application of Payment, or if the Owner does not pay the Construction Manager within a reasonable time the amount certified by the Professional, then the Construction Manager may, upon seven (7) additional days written notice to the Owner and Professional, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Construction Manager's reasonable costs of shutdown, delay and start-up, which shall be accomplished as provided in Article 9.

11.8 FINAL COMPLETION AND FINAL PAYMENT

- 11.8.1 Notification: When the Work is completed, the Construction Manager shall notify the Professional and Owner in writing that the Work will be ready for final inspection on a definite date. Upon verification by the Professional that the Work is ready for final inspection and acceptance, the Professional and Owner will make a final inspection and, when the Work is found acceptable under

the Contract Documents and the Contract is fully performed, the Owner will make final payment to the Construction Manager.

11.8.2 **Final Payment Documentation:** The final payment for the remaining retained percentage shall not become due until the Contractor submits to the Professional for transmittal to the Owner the following: **(Failure to submit any of the following will deem the Application/Certificate of Payment incomplete)**

- Application/Certificate of Payment (Must be signed by the Contractor, the OPP Representative, and if applicable the AE Representative, the correct PSU Project Number must be provided on the form)
- Certificate of Completion
- Schedule of Values / Continuation Sheet
- Steel Certifications – If no steel was used, fill out the form and choose option 1A
- Contractor's Affidavit for Final Payment - an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might in any way be responsible, have been paid or will be paid or otherwise satisfied within thirty (30) days after receipt of final payment from the Owner
- Waiver of Mechanics Liens
- Consent of Surety to Final Payment
- Construction Waste Management Documentation – If no participation, send form back with this statement.
- OSHA Recordable Accident Data – If no accidents were recorded, send form back stating so
- Weekly Payroll Certification
- All maintenance manuals, as-built drawings and warranty certificates that may be required. If any third party fails or refuses to provide a release of claim or waiver of lien as required by Owner, the Contractor shall furnish a bond satisfactory to the Owner to indemnify the Owner from liability

11.8.3 **Final Payment:** Acceptance of final payment by the Construction Manager shall constitute a waiver of all claims by the Construction Manager except those specifically enumerated in writing previously and identified in writing as unsettled at the time of final payment.

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

- 11.8.3.1 Liens, Claims, security interests or encumbrances arising out of the Contract and unsettled.
- 11.8.3.2 Failure of the Work to comply with the requirements of the Contract Documents.
- 11.8.3.3 Terms of special warranties required by the Contract Documents.

ARTICLE 12 - CONTRACT WARRANTY PERIOD

12.1 WARRANTY

Except as otherwise specified, the Construction Manager warrants and guarantees all Work against defects in materials, equipment and/or workmanship for a period of one (1) year from the date of Substantial Completion of the entire Project or Partial Occupancy of any portion thereof and for that period of time noted in any special or extended warranty.

This period of one (1) year shall be extended with respect to portions of the Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

The Construction Manager's warranty excludes damage or defect caused by abuse, modifications not executed by the Construction Manager, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage.

This warranty and guarantee is not the exclusive remedy of the Owner but is in addition to the general obligation of the Construction Manager to faithfully perform the Contract and it in no way limits the responsibility of the Construction Manager for faulty materials or workmanship.

12.2 CORRECTION OF DEFECTS

Upon receipt of written or verbal notice from the Owner or Professional of the discovery of any defects in materials, equipment and/or workmanship, the Construction Manager shall remedy the defects and replace any property damaged therefrom occurring within the warranty and guarantee period. Any defects discovered in materials, equipment and/or workmanship which are included in any manufacturer's written warranty certificate shall be remedied in accordance with the manufacturer's recommendations and procedures.

Any of the Work found to be not in accordance with the requirements of the Contract Documents, including substitutions not properly approved and authorized, such work will be considered defective and shall be corrected promptly by the Construction Manager after receipt of notice from the Owner or Professional.

If the Construction Manager, after notice, fails to proceed promptly and remedy such defects within thirty (30) days or within another period of time which has been agreed to in writing, in compliance with the terms of the warranty and guarantee, the Owner may have the defects corrected and the Construction Manager and its surety shall be liable for all expenses incurred.

12.3 ONE-YEAR INSPECTION

Prior to the expiration of the one (1) year guarantee period against defective materials, equipment and/or workmanship, the Professional and Owner shall conduct an inspection to determine any other defects in material, equipment and/or workmanship not previously noticed and corrected as outlined in Paragraph 12.2 above.

Should any additional defects be discovered, the Construction Manager, upon receipt of written notice from the Professional or Owner, shall promptly remedy the defects and replace any property damaged therefrom.

If the Construction Manager, after notice, fails to proceed promptly and remedy such defects within thirty (30) days or within another period of time which has been agreed to in writing, in compliance with the terms of the warranty and guarantee, the Owner may have the defects corrected and the Construction Manager and its surety shall be liable for all expenses incurred.

ARTICLE 13 - EQUAL EMPLOYMENT OPPORTUNITY

13.1 Non-Discrimination Clause

During the term of the Contract, the Construction Manager agrees as follows:

- 13.1.1 Construction Manager shall not discriminate against any employee, applicant for employment, any independent Contractor or any other person because of race, color, religious creed, ancestry, national origin, service in the uniformed services (as defined in state and federal law), veteran status, age, sex, sexual orientation, marital or family status, pregnancy, pregnancy-related

conditions, physical or mental disability, gender, perceived gender, gender identity, genetic information or political ideas, or any other basis prohibited by law.

Construction Manager shall take affirmative action to ensure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, service in the uniformed services (as defined in state and federal law), veteran status, age, sex, sexual orientation, marital or family status, pregnancy, pregnancy-related conditions, physical or mental disability, gender, perceived gender, gender identity, genetic information or political ideas, or any other basis prohibited by law. Such affirmative action shall include, but is not limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training.

Construction Manager shall post in conspicuous places, available to employees, agents, applicants for employment and other persons, notices to be provided by the contracting agency setting forth the provisions of this non-discrimination clause.

- 13.1.2 Construction Manager shall in solicitations or advertisements placed by it or on its behalf state all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age or sex.
- 13.1.3 Construction Manager shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding a notice advising said labor union or workers' representative of its commitment to this non-discrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment. Similar notices shall be sent to every other source or recruitment utilized by Construction Manager.
- 13.1.4 It shall be no defense to a finding of a non-compliance with Executive Order 1972-1 or any regulations issued by the Pennsylvania Human Relations Commission or this non-discrimination clause that recipient had delegated some of its employment practices to any union, training program or other source of recruitment which prevents it from meeting its obligations.
- 13.1.5 Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that Construction Manager will be unable to meet its obligations under Executive Order 1972-1 or any regulations issued by the Pennsylvania Human Relations Commission or this non-discrimination clause, Construction Manager shall then employ and fill vacancies through other employment procedures without regard to race, color, religious creed, ancestry, national origin, sex or age, taking affirmative action to obtain qualified minority group persons.
- 13.1.6 Construction Manager shall comply with all rules, regulations and orders issued by the Governor, the Attorney General, and the Human Relations Commission relating to laws, prohibiting discrimination in hiring or employment opportunities. In the event of Construction Manager's non-compliance with the non-discrimination clause of the contract or with any such rules, regulations or orders, this Contract may be cancelled, terminated or suspended in whole or in part, and recipient may be declared ineligible for further Commonwealth contracts, and such other sanctions may be imposed and remedies involved as provided by rule, regulation or order of the Governor, Attorney General, or the Human Relations Commission, or as otherwise provided by law.
- 13.1.7 Construction Manager shall furnish all information and reports required by the Governor, Attorney General, and the Human Relations Commission and will permit access to its books, records and accounts by the contracting agency and the Human Relations Commission, for purpose of

investigations to ascertain compliance with provision of Executive Order 1972-1 or any regulations issued by the Pennsylvania Human Relations Commission or this non-discrimination clause.

- 13.1.8 Construction Manager shall actively recruit minority Trade Contractors or Trade Contractors with substantial minority representation among their employees.
- 13.1.9 Construction Manager shall include the provisions of Paragraphs 13.1.1 through 13.1.10 in every contract or purchase order, so that such provisions will be binding upon each Trade Contractor, vendor or other person.
- 13.1.10 The terms used in this non-discrimination clause shall have the same meaning as in the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission, 16 Pa. Code Ch. 49.

ARTICLE 14 - MISCELLANEOUS PROVISIONS

14.1 RIGHTS AND REMEDIES

Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

No actions or failure to act by the Owner, Professional or Construction Manager shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

14.2 OWNERSHIP AND USE OF DOCUMENTS COMPILED BY CONSTRUCTION MANAGER

All studies, special requirements, cost estimates, project schedules, and all other data compiled by the Construction Manager under this Agreement, shall become the property of the Owner, and may be used for any purpose desired by the Owner. The Construction Manager shall not be liable for any reuse of these documents by the Owner.

14.3 CONSTRUCTION MANAGER'S RECORDS/RIGHT-TO-AUDIT

Documentation accurately reflecting the time expended by the Construction Manager and its personnel and records of Reimbursable Expenses shall be maintained by the Construction Manager and shall be available to the Owner for review and copying upon request.

- 14.3.1 Construction Manager's "records" shall upon reasonable notice be open to inspection and subject to audit and/or reproduction during normal business working hours. An Owner's representative or an outside representative engaged by Owner may perform such audits. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of three years after final payment or longer if required by law.
- 14.3.2 Construction Manager shall require all payees (examples of payees include subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this article by incurring the requirements hereof in a written contract agreement between Construction Manager and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-Subcontractors, material suppliers, etc. Construction Manager will cooperate fully and will require Related Parties and all of Construction Manager's subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested in an

expeditious manner any and all such information, materials and data.

14.3.3 Owner's authorized representative or designee shall have reasonable access to the Construction Manager's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

If an audit inspection or examination in accordance with this Article, discloses overpricing or overcharges (of any nature) by the Construction Manager or any subcontractor to the Owner in excess of one-half of one percent (.5%) of the total contract billings, the reasonable actual cost of the Owner's audit shall be reimbursed to the Owner by the Construction Manager. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Construction Manager's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of Owner's findings to Construction Manager.

14.4 GAS LINE

The University Park campus is traversed by a 12" high pressure gas transmission line. The Construction Manager must follow precautions and requirements as outlined on the plan set. The routing of the gas line is available at OPP Design and Construction Standards, Section 3000.06, or at the following link:

[Columbia Gas Line Routing Map.](#)

The Construction Manager must review the project location relative to the gas routing and coordinate all requirements with Columbia Gas and/or the Owner.

14.5 SMOKING AND TOBACCO POLICY

Smoking and the use of tobacco are prohibited in and on all University owned or leased properties, facilities, and vehicles, per University Policy AD 32.

14.6 ELECTRONIC PROJECT MANAGEMENT INFORMATION SYSTEM (PMIS)

The Owner has implemented an electronic PMIS, "e-Builder", an internet-based information and project communication system that will allow the entire project team to collaborate in a centralized and secured repository for all projects.

The Construction Manager shall utilize the PMIS during all phases of the project, unless directed otherwise by the Owner. All project specific correspondence, workflow processes, and documentation will be stored and routed within the PMIS. The Construction Manager and the Owner shall agree on file name convention of submissions in advance.

The Construction Manager, or those direct-employee(s) responsible, on each project will be expected to participate in the necessary training to use the PMIS effectively. Periodic training sessions on the PMIS will be provided by the Owner. Registration will be through Penn State's Learning Resource Network (LRN). It is the responsibility of the Construction Manager to coordinate with the Owner regarding the training schedule and to register via the LRN. All costs for personnel time, travel, meals, and lodging to attend the training shall be borne by the Construction Manager and, as such, will not be reimbursed by the Owner.

The Construction Manager shall obtain, at their own cost, the necessary equipment and web connections to access and utilize the PMIS. The Construction Manager will not incur any registration fees or licensing costs to utilize the PMIS.

The Owner will not entertain or acknowledge any amendment requests by the Construction Manager for claimed inefficiencies or other costs related to the implementation and subsequent use of the PMIS.

14.7 USE OF UNMANNED AIRCRAFT (“UA”)

If the Work involves the use of UA (Drones), and if UA use is approved by the Penn State Project Manager assigned to the job in question, the Professional and those Subconsultants involved in UA use must follow all applicable federal regulations and the requirements of Penn State policy SY45 (<https://policy.psu.edu/policies/sy45>), which defines the requirements for use of UA on property owned or controlled by Penn State. In addition, a request to operate UA must be submitted to Penn State’s UA Operations Manager, as specified at:

<https://www.research.psu.edu/UasOperations>.

UA flight operations may not proceed until approval is granted by the UA Operations Manager.

ARTICLE 15 - PERFORMANCE AND PAYMENT BONDS

At the time of signing the Contract and before it becomes effective, the Construction Manager and its surety, acceptable to the Owner, shall execute two bonds each in the amount of 100% of the contract price of the Work awarded to the Construction Manager. The Bonds shall be written by a Surety authorized to do business in the Commonwealth of Pennsylvania and shall be delivered to the Owner prior to award of Contract and within three (3) days of the Owner's request thereof. The Attorney-in-Fact who signs the Bonds must be a resident of the Commonwealth of Pennsylvania and shall file with each Bond a certified and effectively dated copy of the Attorney-in-Fact's Power of Attorney.

One bond shall be a performance bond covering the faithful performance by the Construction Manager of all covenants and agreements on the part of the Construction Manager contained in this Contract.

The other bond shall be a labor and material payment bond protecting all parties that have performed labor or supplied material on this Contract from suffering any loss due to the failure of the Construction Manager to pay any or all obligations incurred under this Contract.

The Construction Manager shall pay all premiums for all bonds.

Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Construction Manager or Owner shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE 16 – INDEMNITY

16.1 To the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless the Owner, Owner's officers, directors, members, consultants, agents, trustees and employees (the Indemnitees) from all claims for bodily injury, sickness, or death and property damage (other than to the Work itself), including reasonable attorneys' fees, costs and expenses, that may arise from the performance of the Work, but only to the extent caused by the negligent acts or omissions or failure to conform to the provisions of the Contract Documents of the Construction Manager, Subcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. The Construction Manager shall not be

required to indemnify or hold harmless the Indemnitees for any negligent acts or omissions of the Indemnitees.

- 16.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Construction Manager, its officers, directors or members, Subcontractors or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury, sickness or death and property damage (other than to the Work itself), including reasonable attorneys' fees, costs and expenses, that may arise from the performance of work by the Owner or Others, but only to the extent caused by the negligent acts or omissions of the Owner or Others.
- 16.3 NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of the Construction Manager, anyone directly or indirectly employed by the Construction Manager or anyone for whose acts the Construction Manager may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Construction Manager under workers' compensation acts, disability benefit acts or other employee benefit acts.
- 16.4 ROYALTIES, PATENTS AND COPYRIGHTS The 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 the Construction Manager and incorporated in the Work. The Construction Manager shall defend, indemnify and hold the Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The Owner agrees to defend, indemnify and hold the 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 the Owner.

GENERAL CONDITIONS OF THE CONTRACT