

**BOARD OF REGENTS, STATE OF IOWA**  
**STANDARD AGREEMENT AND GENERAL CONDITIONS BETWEEN OWNER AND**  
**CONSTRUCTION MANAGER**  
**(Where the CM is At-Risk)**

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**ARTICLE 1 AGREEMENT**

1.1 This Agreement is made this **#th** Day of **Month** in the year **2019**, by and between the Board of Regents, State of Iowa, acting for **The University of Iowa**, hereinafter called the Owner, and **Firm of City, Iowa** hereinafter called the Construction Manager.

The Owner intends to undertake on the Campus of **The University of Iowa** a Project titled:

**Building – Project Title**

Project Number: **#**

The Project Design Professional is: **Firm**

1.2 COMPENSATION The Owner shall compensate the Construction Manager in accordance with the TERMS AND CONDITIONS OF THE AGREEMENT as follows:

1.2.1 CONSTRUCTION MANAGER'S FEE The Construction Manager's Fee shall be **#%** of the Cost of the Work as defined in Article 8 and subject to adjustment as provided in Section 7.4. The initial fee amount is estimated as **Amount in Words and No/100 Dollars \$0.00** based upon the current estimated Cost of the Work of **Amount in Words and No/100 Dollars \$0.00**. The fee amount will be adjusted to reflect the actual Cost of the Work as provided in Section 7.4 when the Guaranteed Maximum Price is accepted by the Owner and its basis shall be set forth in an Amendment to this Contract.

1.2.2 PRECONSTRUCTION SERVICES COMPENSATION The Construction Manager shall be compensated for Preconstruction Services on the basis of a stipulated sum of **Amount in Words and No/100 Dollars \$0.00**

1.2.3 CONSTRUCTION PHASE SERVICE EXPENSES The Construction Manager shall be compensated for Construction Phase Services on the basis of a stipulated sum. The breakdown of services are as follows:

1.2.3.1 Construction Manager Staff Expenses shall be compensated on the basis of a stipulated sum of **Amount in Words and No/100 Dollars \$0.00.**

1.2.3.2 Construction Manager Site Expenses shall be compensated on the basis of a stipulated sum of **Amount in Words and No/100 Dollars \$0.00.**

1.2.3.3 General Conditions Expenses shall be compensated on the basis of a stipulated sum of **Amount in Words No/100 Dollars \$0.00.**

1.2.4 The total amount of compensation outlined above is **Amount in Words and \$0.00.**

## ARTICLE 2 GENERAL PROVISIONS

2.1 RELATIONSHIP OF PARTIES The Parties each agree to proceed with the Project on the basis of mutual trust, good faith and fair dealing.

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

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

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

2.1.4 The Construction Manager represents that it possesses the skill, training, experience, personnel and resources to complete the Work: (a) in a workmanlike fashion; (b) in an orderly, diligent and timely fashion; and (c) in accordance with the Contract Documents and any standards or procedures incorporated therein by reference.

All Work shall be executed in accordance with the manufacturer's most recent recommendations unless otherwise specified or permitted by the Design Professional. A sufficient force of competent workmen, foremen, and superintendents shall be employed at all times to permit the Work to be diligently and continuously pursued in an orderly fashion until completion.

The Work required by the Contract Documents, including, without limitation, all construction details, construction means, use of material, selection of equipment and requirements of product manufacturers shall be performed in a manner that is consistent with (a) good and sound practices within the construction industry; (b) generally prevailing and accepted industry standards applicable to the Work; (c) the requirements of any warranties applicable to the Work; and (d) all laws, ordinances, regulations, rules and orders to the extent that they bear upon the Construction Manager's performance of the Work.

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

2.2 DESIGN PROFESSIONAL The Owner, through its Design Professional, shall provide all architectural and engineering design services necessary for the completion of the Work, except for items indicated in the Specifications that require additional design services for implementation within the context of this Project, and all design services required in order to carry out Construction Manager's responsibilities for construction means, methods, techniques, sequences and procedures. The Construction Manager shall not be required to provide professional services which constitute the practice of architecture or engineering except as otherwise provided.

2.2.1 OWNERSHIP OF DOCUMENTS. All DRAWINGS, SPECIFICATIONS, and SUBMITTALS required pursuant to section 3.16, and any other document or submission required under this Agreement or prepared at any time in connection with the Project, whether in written or electronic form, are and shall remain the Owner's sole property. The Owner's interest in and right to any documents shall not be conditioned upon payment of all or any portion of the Contract Price. These documents shall not be reproduced or used by Construction Manager for any purpose except as (a) required for the performance of the services under this Agreement, or (b) as specifically authorized by the Owner.

## 2.3 DEFINITIONS

2.3.1 "Agreement/Contract" means the Agreement between Owner and Construction Manager (where the CM is At-Risk), as modified upon its execution.

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

2.3.3 "Change Order" is a written order signed by the Owner and the Construction Manager after execution of this Agreement, indicating changes in the scope of the Work, the Guaranteed Maximum Price and date of Substantial Completion or date of Final Completion, including substitutions proposed by the Construction Manager and accepted by the Owner.

2.3.4 "Contract Documents" consist of this Agreement, General Conditions, Institution Requirements, Project Requirements, Drawings, Specifications, addenda issued and acknowledged prior to execution of this Agreement, information furnished by the Owner pursuant to Section 4.3, and modifications issued in accordance with this Agreement.

2.3.5 "Contract Price" is the total amount indicated in the Agreement, including the amounts identified in subsection 1.2.4 and Section 7.1.

2.3.6 "Contract Time" is the period between the Date of Commencement and the Final Completion.

2.3.7 "Cost of the Work" means the costs and discounts specified in Article 8.

2.3.8 "Construction Manager" is the person or entity identified in the Agreement and includes the Construction Manager's Representative. The terms "Contractor", "Constructor", and "Construction Manager" where used in the Contract Documents should be considered synonymous.

2.3.9 "Date of Commencement" is as set forth in Section 6.1.

2.3.10 "Day" means a calendar day.

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

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

2.3.13 “Drawings” are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, diagrams, and BIM models. Drawings are intended to show general arrangements, design, and dimensions of work and are partly diagrammatic.

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

2.3.15 “Fixed Limit Cost of Construction” means the total cost budgeted by the Owner for those portions of the entire Project to be designed or specified by the Design Professional. Fixed Limit Cost of Construction does not include the Design Professional’s compensation or expenses, or the Construction Manager’s compensation or expenses for pre-construction services, the Owner’s expenses associated with the Project or the cost of other services to be provided by others to the Owner. Fixed Limit Cost of Construction does include the Construction Manager’s Fee and Construction Manager’s compensation or expenses for construction services and a reasonable allowance for contingencies for market conditions at the time of bidding and for changes in the Work during construction.

2.3.16 “Interim Directed Change” is a change to the Work directed by the Owner pursuant to Section 9.2.

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

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

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

2.3.20 “Overhead” means (a) payroll costs and other compensation of the Construction Manager’s employees in the Construction Manager’s principal and branch offices including but not limited to, estimators, project managers, assistant project managers, and project engineers; (b) general and administrative expenses of the Construction Manager’s principal and branch offices including charges against the Construction Manager for delinquent payments, and (c) costs related to the correction of defective work; and (c) the Construction Manager’s capital expenses, including interest on capital used for the Work.

2.3.21 “Owner” is the person or entity identified in the Agreement and includes the Owner’s Representative.

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

2.3.23 “Parties” are collectively the Owner and the Construction Manager.

2.3.24 “Profit” is a financial gain or total revenue less total expenses.

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

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

2.3.27 "Specifications" are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work and performance of related services.

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

2.3.29 "Substantial Completion" of the Work, or of a designated portion, occurs on the date when the Work is sufficiently complete in accordance with the Contract Documents so that the Owner may occupy or utilize the Work, or a designated portion, for the use for which it is intended. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond the Construction Manager's control. This date shall be confirmed by a certificate of Substantial Completion determined solely by the Owner and signed by the Owner.

2.3.30 "Subsubcontractor" is a person or entity who has an agreement with a Subcontractor or another Subsubcontractor to perform a portion of the Subcontractor's Work.

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

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

2.3.33 "Worksite" means the geographical area of the Project location where the Work is to be performed.

## **ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

### **3.1 GENERAL RESPONSIBILITIES**

3.1.1 The Construction Manager's responsibilities are more fully identified in Exhibit A, Construction Manager's Designated Services and Method of Payment.

3.1.2 The Construction Manager shall provide all labor, materials, equipment, and services necessary to complete the Work, all of which shall be provided in full accord with and reasonably inferable from the Contract Documents. Any additional facilities or areas required for construction operations or storage of materials that are outside of the areas designated in the Contract Documents shall be provided by the Construction Manager at no additional cost to the Owner.

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

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

### 3.2 CONSTRUCTION PERSONNEL AND SUPERVISION

3.2.1 The Construction Manager shall provide competent supervision at all times when the Work is being performed. Before commencing the Work, the Construction Manager shall notify the Owner in writing of the name and qualifications of its proposed superintendent(s) and project manager, so the Owner may review the individual's qualifications. If, for reasonable cause, the Owner refuses to approve the individual, or withdraws its approval after once giving it, the Construction Manager shall name a different superintendent or project manager for the Owner's review. Any disapproved superintendent or project manager shall not perform in that capacity thereafter at the Worksite. The project manager and superintendent shall not be changed without prior written consent of the Owner unless they cease to be in the employ of the Construction Manager. The superintendent, or another qualified representative designated by the Construction Manager and approved by the Owner, shall be in attendance at the Project site during performance of the Work and shall represent the Construction Manager.

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

3.2.3 The Construction Manager and its Subcontractors shall permit only fit and skilled persons to perform the Work and shall not permit any persons on site which would violate court orders for convicted sex offenders. The Construction Manager shall enforce safety procedures, strict discipline and good order among persons performing the Work. If the Owner becomes aware that a particular person has failed to follow any state or federal law and Owner policies, including but not limited to Sexual Harassment, and does not follow safety procedures, or is unfit or unskilled for the assigned work, the Construction Manager shall immediately reassign the person on receipt of the Owner's written notice to do so.

3.2.4 The Owner will not tolerate sexual harassment. Sexual harassment is a form of sex discrimination as defined in the Code of Iowa and is a violation of both state and federal law.

3.2.5 CONSTRUCTION MANAGER'S REPRESENTATIVE The Construction Manager's authorized representative shall be the Construction Manager's project manager unless otherwise identified in writing to the Owner. The Construction Manager's Representative shall possess full authority to receive instructions from the Owner, to act on those instructions, to execute all documents related to this Agreement (including, but not limited to Change Orders), and to legally bind the Construction Manager to any document so executed. If the Construction Manager changes its representative or their authority, the Construction Manager shall immediately notify the Owner in writing.

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

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

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

3.3.3 SCHEDULE OF THE WORK When Project requirements have been sufficiently identified, the Construction Manager shall prepare a preliminary Schedule of the Work for the Design Professional's

review and the Owner's approval. The Construction Manager shall coordinate and integrate the Schedule of the Work with the services and activities of the Owner, Construction Manager, Design Professional, and the requirements of governmental entities. As design proceeds, the Construction Manager shall update the Schedule of the Work to indicate proposed activity sequences, durations, or milestone dates for such activities as receipt and approval of pertinent information, issuance of the drawings and specifications, the preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements and estimated date of Substantial Completion of the Project. If Schedule of the Work updates indicates that milestone dates contained in prior Schedules of the Work will not be met, the Construction Manager shall promptly notify and make recommendations to the Owner in writing. If the Project is to be completed in phases, the Construction Manager shall make recommendations to the Owner and Design Professional regarding the phased issuance of the drawings and specifications.

### 3.3.4 ESTIMATES

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

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

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

3.3.4.4 If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's Fixed Limit Cost of Construction, the Construction Manager shall notify and make recommendations to the Owner in writing.

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

3.3.6 TEMPORARY FACILITIES The Construction Manager shall make recommendations regarding temporary construction facilities, equipment, materials, and services for common use by the Construction Manager, its Subcontractors, Subsubcontractors, and Material Suppliers.

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

3.3.8 COMPETITIVE BIDDING OF SUBCONTRACTORS AND SUPPLIERS The Construction Manager shall enter into a contract with each Subcontractor performing construction services for the

Project. The Construction Manager shall solicit competitive bids for the Work in accordance with the following:

3.3.8.1 When the estimated total cost of a trade package construction contract is in excess of \$100,000 (Major Work Trade Package), the Construction Manager shall advertise for competitive bids, receive bids, prepare bid analyses and award contracts in accordance with the requirements of Iowa Code section 26A.3(5). All contracts advertised under this subsection 3.3.8.1 shall be awarded to the lowest, responsive, responsible bidder as provided in Iowa Code section 26A.3(5), unless the Construction Manager determines that award to other than the lowest pecuniary bid is in the best interests of the Project. The Owner shall participate in the bid review and evaluation process, but the Owner's participation in the decision to award shall be limited to rejection of a proposed subcontractor and subsubcontractor as provided in Article 5.

3.3.8.2 The Owner may allow the Construction Manager to submit a bid to self-perform construction services for any Major Work Trade Package in accordance with the requirements of Iowa Code section 26A.3(5). The Construction Manager must notify the Owner in writing of its intent to submit a bid proposal for a Major Work Trade Package. The Construction Manager's bid must be submitted under the same conditions that apply to all other competing firms. The Owner will receive bids and participate in and provide oversight of all bid analyses pertinent to the award of subcontracts or rejection of bids on any trade package for which the Construction Manager submits a bid to self-perform. Where the Construction Manager is not the apparent low bidder, the Owner shall be responsible for determining whether a recommendation of award to the Construction Manager is in the best interests of the project.

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

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

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

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

### 3.4 GUARANTEED MAXIMUM PRICE (GMP)

3.4.1 At such time as the Owner and Construction Manager agree the drawings and specifications are sufficiently complete, the Construction Manager shall prepare and submit to the Owner in writing a GMP. Unless otherwise agreed in writing, the GMP proposal shall include the sum of the estimated cost of the Work, the Construction Manager's Fee, the clarifications and assumptions upon which it is based, allowances, and reasonable contingencies, but shall not include compensation for Preconstruction Services. The Construction Manager does not guarantee any specific line item provided as part of the GMP but agrees that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with this Agreement.

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

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

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



3.4.2.3 a list of all contingency amounts included in the GMP and a statement of their basis:

3.4.2.3.1 Any contingency amounts shall be mutually agreed upon and calculated as a percentage of the Fixed Limit Cost of Construction;

3.4.2.3.2 Each contingency shall be listed as a separate line item within the GMP;

3.4.2.3.3 Any savings achieved after the bidding and award of Bid Packages shall be applied to the appropriate contingency line item in the GMP;

3.4.2.3.4 Any application or expenditure of the contingency amounts after the approval of the GMP requires the advance written approval of the Owner; and

3.4.2.3.5 Any unused contingency amounts remaining at the completion of the Work shall accrue to the Owner in accordance with Section 7.2;

3.4.2.4 a list of the assumptions and clarifications made by the Construction Manager in the preparation of the GMP Proposal to supplement the information contained in the Drawings and Specifications;

3.4.2.5 the date of Substantial Completion upon which the proposed GMP is based, and the Schedule of Work upon which the date of Substantial Completion is based;

3.4.2.6 a schedule of applicable alternate prices;

3.4.2.7 a schedule of applicable unit prices; and

3.4.2.8 a statement of any work the Construction Manager intends to submit a bid for in accordance with subsection 3.3.8.2.

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

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

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

3.4.6 If this Agreement is executed prior to establishment of the GMP and its acceptance by the Owner, then the GMP and its basis shall be set forth in an Amendment to this Contract.

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

3.4.8 The Construction Manager shall make reasonable efforts to assure that the GMP is within the Owner's Fixed Limit Cost of Construction. If the GMP is not within the Owner's Fixed Limit Cost of Construction, the Construction Manager shall provide the Owner with written documentation of the reason for any variance. The Owner may choose to (a) redesign the project such that the GMP falls within the Fixed Limit Cost of Construction, (b) increase the Fixed Limit Cost of Construction, or (c) reject the GMP and proceed in accordance with subsection 3.4.9.

3.4.8.1 In the event the Owner proceeds in accordance with subsection 3.4.8(a) or (b) above, the Construction Manager shall not be entitled to an adjustment in the Construction Manager's fee or any additional compensation for pre-construction services related to the redesign or the increase in the Fixed Limit Cost of Construction.

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

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

3.4.9.2 direct the Construction Manager to proceed on the basis of reimbursement as provided in Article 7 and Article 8 without a GMP, in which case all references in this Agreement to the GMP shall not be applicable. In the absence of a GMP the Parties may establish a date of Substantial Completion or a date of Final Completion; or

3.4.9.3 terminate the Agreement for convenience in accordance with Section 12.4.

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

### 3.5 COOPERATION WITH WORK OF OWNER AND OTHERS

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

3.5.2 If the Owner elects to perform work at the Worksite directly or by Others, the Construction Manager and Owner shall coordinate the activities of all forces at the Worksite and agree upon fair and reasonable schedules and operational procedures for Worksite activities. The Owner shall require each separate contractor to cooperate with the Construction Manager and assist with the coordination of activities and the review of construction schedules and operations. The GMP or the Contract Time shall be equitably adjusted, as mutually agreed by the Parties, for changes made necessary by the coordination of construction activities, and the Schedule of the Work shall be revised accordingly. The Construction Manager, the Owner, and Others shall adhere to the revised Schedule of the Work.

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

3.5.4 Before proceeding with any portion of the Work affected by the construction or operations of the Owner or Others, the Construction Manager shall give the Owner prompt, written notification of any defects or delays the Construction Manager discovers in or resulting from the work of the Owner or

Others which will prevent the proper execution of the Work. The Construction Manager's obligations in this subsection do not create a responsibility for the work of Owner or Others but are for the purpose of facilitating the Work. If the Construction Manager does not notify the Owner of defects or delays interfering with the performance of the Work, the Construction Manager acknowledges that the work of the Owner or Others has not contributed to delays and is not defective and is acceptable for the proper execution of the Work. Following receipt of written notice from the Construction Manager of defects or delays, the Owner shall promptly inform the Construction Manager what action, if any, the Construction Manager shall take with regard to the defects or delays.

### 3.6 CONSTRUCTION SERVICES AND ADMINISTRATION

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

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

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

3.6.4 The Construction Manager may be entitled to additional costs or time because of clarifications or instructions growing out of the Construction Manager's reports described in the three preceding subsections.

3.6.5 Nothing in this section shall relieve the Construction Manager of responsibility for its own errors, inconsistencies, and omissions.

3.6.6 COST REPORTING The Construction Manager shall keep such full and detailed accounts as are necessary for proper financial management under this Agreement. The Construction Manager shall maintain a complete set of all books, records, and accounts prepared or used by the Construction Manager with respect to the Project. The Construction Manager's records supporting its performance and billings under this Agreement shall be current, complete, and accurate and maintained according to Generally Accepted Accounting Principles. The Owner may impose additional requirements regarding the maintenance of records and the Owner's right to access records, and any additional requirements will be documented in writing by the Owner and incorporated into this Agreement.

The Owner shall be afforded access to all of the Construction Manager's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to this Agreement. The Construction Manager shall make such records available, in their original form, for inspection by the Owner at the Construction Manager's normal place of business during regular business hours and without prior notice, unless an alternate arrangement is required by the Owner as provided under subsection 3.6.6. The Owner's right to access records and the Construction Manager's duty to preserve records shall commence on the date this Agreement is signed and continue for a period of three years after the final payment or longer where required by Law.

3.6.6.1 The Construction Manager agrees to use reasonable skill and judgment in the preparation of cost estimates and Schedule of the Work.

3.6.6.2 Costs incurred by the Owner as the result of the Owner exercising its rights under subsection 3.6.6 shall be borne by the Owner, unless the audit identifies significant findings, errors, or omissions, in which case costs incurred by the Owner shall be the responsibility of the Construction Manager. The Construction Manager shall be responsible for all costs incurred by the Construction Manager in the Construction Manager's performance of the requirements under subsection 3.6.6.

3.6.6.3 The obligations of this section shall be explicitly included in any subcontracts or agreements entered into by the Construction Manager that relate to the fulfillment of the Construction Manager's obligations to the Owner under this Agreement.

### 3.7 MATERIALS FURNISHED BY THE OWNER OR OTHERS

3.7.1 If the Work includes installation of materials or equipment furnished by the Owner or Others, it shall be the responsibility of the Construction Manager to examine the items so provided and thereupon handle, store, and install the items, unless otherwise provided in the Contract Documents, with such skill and care as to provide a satisfactory and proper installation. Loss or damage due to acts or omissions of the Construction Manager shall be the responsibility of the Construction Manager and the Owner shall be deducted by the Owner from any payments due or to become due the Construction Manager. If payment then or thereafter due to the Construction Manager are not sufficient, the Owner shall charge the Construction Manager for the cost of the loss or damage and the Construction Manager shall promptly pay amounts due to the Owner. Any defects discovered in such materials or equipment shall be reported at once to the Owner. Following receipt of written notice from the Construction Manager of defects, the Owner shall promptly inform the Construction Manager in writing what action, if any, the Construction Manager shall take with regard to the defects.

### 3.8 TESTS AND INSPECTIONS

3.8.1 The Construction Manager shall schedule all required tests, approvals and inspections of the Work or portions thereof at appropriate times so as not to delay the progress of the Work or other work related to the Project. The Construction Manager shall give proper notice to all required Parties of such tests, approvals, and inspections. If feasible, the Owner and Others may timely observe the tests at the normal place of testing. Except as provided in subsection 3.8.3, the Owner shall bear all expenses associated with tests, inspections, and approvals required by the Contract Documents which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity retained by the Owner. Unless otherwise required by the Contract Documents, required documents and/or certificates of testing, approval, or inspection shall be secured by the Construction Manager and immediately delivered to the Owner. The Construction Manager's duty to provide the Owner with required documents and/or certificates of testing, approval or inspection shall not be conditioned upon the payment of all or any portion of the Contract Price. Failure of the Construction Manager to provide any documents and/or certificates required under this subsection 3.8.1 shall be considered a material breach of this Agreement.

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

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

3.8.4 If the Construction Manager fails to schedule or conduct any test, approval, or inspection required under Section 3.8, or fails to provide the Owner with any document and/or certificate required under Section 3.8, the Owner may proceed to schedule any required test, approval, or inspection, and the Construction Manager shall be responsible for all increased costs associated with such test, approval, or inspection that would not have been incurred by the Owner had the test been scheduled

and paid for in accordance with subsection 3.8.1. The Owner shall deduct these costs from payments then or thereafter due to the Construction Manager. If payments then or thereafter due to the Construction Manager are not sufficient, the Owner shall charge the Construction Manager for these costs and the Construction Manager shall promptly pay amounts due to the Owner.

### 3.9 WORKMANSHIP

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

### 3.10 WARRANTY

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

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

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

3.10.4 The Construction Manager shall obtain from its Subcontractors and Material Suppliers any special or extended warranties required by the Contract Documents and deliver the same to the Owner. All such warranties shall be listed in an attached exhibit to this Agreement. Construction Manager's liability for such warranties shall be limited to the one-year correction period referred to in the section immediately below unless otherwise stated in the Project Requirements. After that period the Construction Manager shall provide reasonable assistance to the Owner in enforcing the obligations of Subcontractors or Material Suppliers for such extended warranties.

3.10.5 Unless otherwise specifically stated in the Contract Documents, all required warranties shall be at a minimum, a no dollar limit warranty.

### 3.11 CORRECTION OF WORK WITHIN ONE YEAR

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

3.11.2 With respect to any portion of Work not accepted at Substantial Completion, the one-year correction period shall commence upon the date the Work is accepted by the Owner. Correction periods shall not be extended by corrective work performed by the Construction Manager.

3.11.3 If the Construction Manager fails to correct Defective Work within seven days following receipt of written notice from the Owner prior to final payment, the Owner may correct it in accordance with the Owner's right to carry out the Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting the Defective Work from payments then or thereafter due the Construction Manager. If payments then or thereafter due Construction Manager are not sufficient to cover such amounts, the Construction Manager shall pay the difference to the Owner promptly upon demand.

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

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

3.11.6 The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of the Construction Manager's other obligations under the Contract Documents, or any of the Owner's legal rights, including, but not limited to, claims for breach of contract.

3.11.7 The Owner may, at the Owner's option, elect to accept Defective Work rather than require its removal and correction. If the Owner elects to accept Defective Work prior to final payment, the Contract Price shall be equitably adjusted for any diminution in the value of the Project caused by such Defective Work, as determined by the Owner, and any diminution in value shall be deducted from any payments then or thereafter due to the Construction Manager. If the Owner elects to accept defective work after final payment, or payments then or thereafter due to the Construction Manager are not sufficient to cover such amounts, the Owner shall charge the Construction Manager for the amount of diminution in value and the Construction Manager shall promptly pay amounts due to the Owner.

### 3.12 CORRECTION OF COVERED WORK

3.12.1 On request of the Owner, Work that has been covered without a requirement that it be inspected prior to being covered may be uncovered for the Owner's inspection. The Owner shall pay for the costs of uncovering and replacement if the Work proves to be in conformance with the Contract Documents, or if the defective condition was caused by the Owner or Others. If the uncovered Work proves to be defective, the Construction Manager shall pay the costs of uncovering and replacement.

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

### 3.13 SAFETY OF PERSONS AND PROPERTY

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

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

3.13.3 CONSTRUCTION MANAGER'S SAFETY REPRESENTATIVE The Construction Manager shall designate a responsible member of the Construction Manager's organization at the site as the Construction Manager's Safety Representative whose duty shall be the prevention of accidents. This person shall be the Construction Manager's superintendent unless otherwise designated by the Construction Manager in writing to the Owner. The Construction Manager shall report daily in writing to the Owner all recordable accidents and injuries occurring at the Worksite. When the Construction Manager is required to file an accident report with a public authority, the Construction Manager shall promptly furnish a copy of the report to the Owner.

3.13.4 The Construction Manager shall provide the Owner with copies of all notices required of the Construction Manager by law or regulation. The Construction Manager's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction.

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

3.13.6 If the Owner deems any part of the Work or Worksite unsafe, the Owner, without assuming responsibility for the Construction Manager's safety program, may require the Construction Manager to stop performance of the Work or take corrective measures satisfactory to the Owner, or both. If the Construction Manager does not adopt corrective measures within the timeframe set by the Owner, the Owner may perform them and deduct their cost from the Contract Price. The Construction Manager agrees to make no claim for damages, or an increase in the Contract Price or for a change in the Contract Time based on the Construction Manager's compliance with the Owner's reasonable request.

3.14 EMERGENCIES In an emergency affecting the safety of persons or property, the Construction Manager shall act in a reasonable manner to prevent threatened damage, injury, or loss. If appropriate, an equitable adjustment in GMP or Contract Time shall be determined as provided for in Article 9.

### 3.15 HAZARDOUS MATERIALS

3.15.1 A Hazardous Material is any substance or material identified now or in the future as hazardous under Laws or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or clean-up, except that in the category of Asbestos Containing Materials, materials containing less than once percent (< 1%) asbestos and Asbestos Containing Materials that are encapsulated shall not be considered Hazardous Materials subject to the requirements of Section 3.15. The Construction Manager shall not be obligated to commence or continue work at the Worksite in an area affected by Hazardous Material until any Hazardous Material discovered at the Worksite has been removed, rendered or determined to be harmless by the Owner.

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

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

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

3.15.5 If the Construction Manager incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, the Construction Manager shall be entitled to an equitable adjustment in the GMP or the Contract Time.

3.15.6 subsections 3.15.1 through 3.15.5 shall not apply to any Hazardous Material that is included in the scope of Work to be performed by the Construction Manager.

### 3.15.7 MATERIALS BROUGHT TO THE WORKSITE

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

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

3.15.7.3 The Construction Manager shall indemnify and hold harmless the Owner, its agents, officers, directors, and employees, from and against claims, damages, losses, costs, and expenses, including attorney fees, incurred in connection with any dispute resolution process, arising out of or relating to the delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by the Construction Manager in accordance with the Contract Documents.

3.15.7.4 Section 3.15 shall survive the completion of the Work or any termination of this Agreement.

### 3.16 SUBMITTALS

3.16.1 The Construction Manager shall submit to the Owner and the Design Professional all shop drawings, samples, product data, and similar submittals required by the Contract Documents for review. Submittals shall be submitted in electronic form if required in accordance with subsection 4.5.1. The Construction Manager shall be responsible for the accuracy and conformity of its submittals to the Contract Documents. At no additional cost, the Construction Manager shall prepare and deliver its submittals in such time and sequence so as not to delay the performance of the Work or the work of the Owner and Others. The Construction Manager's submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. The review of any Construction Manager submittal shall not be deemed to authorize changes,



deviations, or substitutions from the requirements of the Contract Documents unless express written approval is obtained from the Owner specifically authorizing such deviation, substitution, or change. To the extent a change, deviation, or substitution causes an impact to the GMP or Contract Time, such approval shall be promptly memorialized in a Change Order. Neither the Design Professional nor Owner shall make any change, deviation, or substitution through the submittal process without specifically identifying and authorizing such deviation to the Construction Manager. If the Contract Documents do not contain submittal requirements pertaining to the Work, the Construction Manager agrees upon request to submit in a timely fashion to the Design Professional and the Owner for review any shop drawings, samples, product data, manufacturers' literature, or similar submittals as may reasonably be required by the Owner.

3.16.2 The Construction Manager shall provide the Design Professional with a submittal schedule within the first thirty (30) days of the Work and shall accept reasonable modifications to the schedule made by the Owner and the Design Professional. The Construction Manager shall not be entitled to an increase in the GMP or the Contract time resulting from delays in review of submittals that are not submitted in a timely manner and in accordance with the submittal schedule.

3.16.3 The Owner or designee shall be responsible for review of submittals with reasonable promptness to avoid causing delay. Any time required to prepare, submit and review a previously rejected submittal will not justify an increase to the GMP and/or Contract Time. The Construction Manager shall reimburse the Owner for all costs incurred by the Owner that were made necessary by re-review of previously submitted submittals as determined by the Owner. The Owner shall deduct these costs from payments then or thereafter due to the Constructor. If payments then or thereafter due to the Construction Manager are not sufficient, the Owner shall charge the Construction Manager for these costs and the Construction Manager shall promptly pay amounts due to the Owner.

3.16.4 The Construction Manager shall perform all Work strictly in accordance with reviewed submittals. Review of shop drawings is not an authorization to perform changed work, unless the procedures of Article 9 are followed. Review does not relieve the Construction Manager from responsibility for Defective Work resulting from errors or omissions on the reviewed shop drawings. Any work performed prior to approval of the relevant submittal shall be at the Construction Manager's risk.

3.16.5 The Construction Manager shall maintain at the Worksite As-Built Documents, recording and incorporating field changes and selections made during construction of the following: Drawings, Specifications, addenda and other modifications, and required submittals including product data, samples, and shop drawings. Upon the Owner's request, the Construction Manager shall provide the Owner with access to the As-Built Documents and any electronic systems or databases in which the items specified in this subsection 3.16.5 may be stored.

3.16.6 No substitutions shall be made in the Work unless permitted in the Contract Documents and then only after the Construction Manager obtains approvals from the Owner if required under the Contract Documents for substitutions. All such substitutions shall be promptly memorialized in a Change Order no later than seven (7) Days following approval by the Owner and Design Professional and, if applicable, provide for an adjustment in the GMP or Contract Time.

3.16.7 Prior to issuance of final payment, the Construction Manager shall prepare and submit to the Owner final marked-up As-Built Documents, which have been reviewed and approved by the Design Professional or Others at the Owner's discretion, documenting how the various elements of the Work were actually constructed or installed.

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

Manager's design professional shall appear on all drawings, calculations, specifications, certifications, shop drawings, and other submittals related to the Work designed or certified by the Construction Manager's design professional.

### 3.18 WORKSITE CONDITIONS

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

3.18.2 CONCEALED OR UNKNOWN SITE CONDITIONS If the conditions encountered at the Worksite are (a) subsurface or other physical conditions materially different from those indicated in the Contract Documents, or (b) unusual and unknown physical conditions materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, the Construction Manager shall stop affected Work after the condition is first observed and give prompt written notice of the condition to the Owner and the Design Professional. The Construction Manager shall not disturb the condition. The Owner shall promptly investigate and determine whether or not the condition is concealed or unknown and promptly inform the Construction Manager of its decision in writing. The Construction Manager shall not be required to perform any Work relating to the unknown condition until instructed to do so by the Owner. Any change in the GMP, estimated Cost of the Work, Construction Manager's Fee, date of Substantial Completion or date of Final Completion, and, if appropriate, the Compensation for Preconstruction Services as a result of the unknown condition shall be determined as provided in Article 9.

### 3.19 PERMITS AND TAXES

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

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

3.19.3 Iowa Construction Sales Tax Exemption Certificates and authorization letters will be provided by the Owner to the Construction Manager and Subcontractors for use on this project in accordance with the regulations of the Iowa Department of Revenue and Finance. This exemption certificate will authorize suppliers to sell construction materials that will be incorporated into and made part of the Work exempt from Iowa sales tax and any applicable local option sales tax and school infrastructure local option sales tax. Complete information on qualifying materials can be found on the Iowa Department of Revenue and Finance web site at [www.state.ia.us/tax](http://www.state.ia.us/tax). It is the responsibility of the Construction Manager and Subcontractors to maintain records identifying the materials purchased and verifying they were used on this project. Any materials purchased tax-free and not used on the project are subject to sales and local option taxes and these taxes must be paid directly to the Iowa Department of Revenue and Finance.

3.19.4 If Iowa sales and/or use taxes, including local option sales taxes where applicable, are paid by the Construction Manager and all Subcontractors for supplies, materials or equipment incorporated into and made part of the Work, upon completion of this Contract, but before final payment, the Construction Manager shall furnish the Owner, a Construction Manager's Statement properly executed and sworn to, listing all Iowa sales and/or use taxes, and local option sales taxes where applicable, paid by the Construction Manager and all Subcontractors on all supplies and materials and on all equipment incorporated into and made part of the Work. The Construction Manager's Statement form is available on the Iowa Department of Revenue web site at <http://www.iowa.gov/tax/forms/35002.pdf>.

### 3.20 CUTTING, FITTING, AND PATCHING

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

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

### 3.21 CLEANING UP

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

3.21.2 If the Construction Manager fails to commence compliance with cleanup duties within two (2) Business Days after written notification from the Owner of non-compliance, the Owner may implement appropriate cleanup measures without further notice and the cost shall be deducted from any payments then or thereafter due the Construction Manager. If payment then or thereafter due to the Construction Manager are not sufficient, the Owner shall charge the Construction Manager for these costs and the Construction Manager shall promptly pay amounts due to the Owner.

3.22 ACCESS TO WORK The Construction Manager shall facilitate the access of the Owner, its Design Professional, and Others to Work in progress. The Construction Manager shall furnish the Owner and the Design Professional all necessary assistance to facilitate inspections throughout the process of manufacture or construction, or for the examination of any materials entering into the Work or for any other purpose required in the discharge of the Owner's duties.

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

3.23.1 The GMP or the date of Substantial Completion or the date of Final Completion shall be equitably adjusted by Change Order for additional costs or time resulting from any changes in Laws which were not reasonably anticipated and then enacted after the effective date of this Agreement.

3.24 CONFIDENTIALITY Unless compelled by law, a governmental agency or authority, an order of a court of competent jurisdiction, or a validly issued subpoena, the Construction Manager shall treat as confidential and not disclose to third-persons, except Subcontractors, Subsubcontractors, and Material Suppliers as is necessary for the performance of the Work any of the Owner's confidential information, know-how, discoveries, production methods, and the like that may be disclosed to the Construction Manager or which the Construction Manager may acquire in connection with the Work. The Owner shall specify those items to be treated as confidential and shall mark them as "Confidential." In the event of a legal compulsion or other order seeking disclosure of any Confidential Information, the Construction Manager shall promptly notify the Owner to permit the Owner's legal objection, if necessary. For the purposes of this section 3.24, the Drawings, shop drawings, Specifications, As-Built Documents, pay requests, and product data are designated Confidential by the Owner. Additional information may be separately designated as confidential by the Owner at any time.

## **ARTICLE 4 OWNER'S RESPONSIBILITIES**

4.1 INFORMATION AND SERVICES Any information or services to be provided by the Owner shall be fulfilled with reasonable detail and in a timely manner.

4.2 The Owner shall provide the Construction Manager with its Fixed Limit Cost of Construction. The Owner shall promptly advise the Construction Manager of any changes in the Fixed Limit Cost of Construction.

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

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

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

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

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

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

4.5.1 ELECTRONIC DOCUMENTS If the Owner requires that the Owner, Design Professional, and Construction Manager exchange documents and data in electronic or digital form, prior to any such exchange, the Owner, Design Professional and Construction Manager shall agree on a written protocol governing all exchanges, which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software and services; (d) acceptable formats, transmission methods and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. Except as otherwise agreed to by the Parties in writing, the Parties shall each bear their own costs as identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

4.6 OWNER'S REPRESENTATIVE The Owner's Representative is identified in Section 00 73 13 Institution Requirements. The Owner's Representative shall be fully acquainted with the Project and authorized to act on behalf of the Owner. The Owner's Representative shall provide general administration of the contract and shall fulfill the duties, rights and obligations of the Owner under the Contract Documents. If the Owner changes its representative or the representative's authority, the Owner shall immediately notify the Construction Manager in writing.

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

4.8 OWNER'S RIGHT TO CLEAN UP In case of a dispute between the Construction Manager and Others with regard to respective responsibilities for cleaning up at the Worksite, the Owner may implement appropriate cleanup measures after two (2) Business Days' notice and allocate the cost among those responsible during the following pay period. The Owner shall deduct the portion of these costs allocated to the Construction Manager from payments then or thereafter due to the Constructor. If payments then or thereafter due to the Construction Manager are not sufficient, the Owner shall charge the Construction Manager for its portion of these costs and the Construction Manager shall promptly pay amounts due to the Owner.

4.9 COST OF CORRECTING DAMAGED OR DESTROYED WORK With regard to damage or loss attributable to the acts or omissions of the Owner or Others and not to the Construction Manager, the Owner may either (a) promptly remedy the damage or loss or (b) accept the damage or loss. If the Construction Manager incurs additional costs or is delayed due to such loss or damage, the Construction Manager shall request an equitable adjustment in the GMP, estimated Cost of the Work, Construction Manager's Fee, date of Substantial Completion or date of Final Completion and, if appropriate, the Compensation for Preconstruction Services.

## **ARTICLE 5 SUBCONTRACTS**

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

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

5.2.1 Prior to entering into a contract with any proposed Major Work Trade Package Subcontractor, the Construction Manager shall provide the Owner with the bid analysis and written rationale for awarding to other than the lowest pecuniary bid, if applicable. If the Owner has an objection to any proposed Major Work Trade Package Subcontractor, the Owner shall notify the Construction Manager in writing and the Construction Manager shall not contract with the proposed Major Work Trade Package Subcontractor. The Construction Manager shall propose another Major Work Trade Package Subcontractor for the Owner's review. Failure of the Owner to promptly object following receipt shall constitute acceptance. An appropriate Change Order shall reflect any increase or decrease in the GMP or dates of Substantial or Final Completion because of the substitution.

5.2.2 Prior to entering into a contract with any proposed Subcontractor, Subsubcontractor or Material Supplier, other than a Major Work Trade Package Subcontractor, the Construction Manager shall provide the Owner with the names of the proposed Subcontractor, Subsubcontractor, or Material Supplier. If the Owner has an objection to any proposed Subcontractor, Subsubcontractor, or Material Supplier, the Owner shall notify the Construction Manager in writing and the Construction Manager shall not contract with the proposed Subcontractor, Subsubcontractor, or Material Supplier. The Construction Manager shall propose another Subcontractor, Subsubcontractor, or Material Supplier for the Owner's review. Failure of the Owner to promptly object following receipt shall constitute acceptance. An appropriate Change Order shall reflect any increase or decrease in the GMP or dates of Substantial or Final Completion because of the substitution.

5.3 BINDING OF SUBCONTRACTORS AND MATERIAL SUPPLIERS The Construction Manager agrees to be responsible for and to bind every Subcontractor and Material Supplier (and require every Subcontractor to so bind its subcontractors and material suppliers) to all the provisions of this Agreement and the Contract Documents as they apply to the Subcontractor's or Material Supplier's portions of the Work. In accordance with Chapter 573 of the Code of Iowa, Construction Manager shall make prompt payments to Subcontractors for satisfactory performance of the Work. The Owner shall have no obligation

to pay or to see to the payment of any moneys to any Subcontractor except as may otherwise be required by law.

#### 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.4.1 If this Agreement is terminated, each subcontract and supply agreement shall be assigned by the Construction Manager to the Owner, subject to the prior rights of any surety, provided that: (a) this Agreement is terminated by the Owner pursuant to Sections 12.3 or 12.4; and (b) the Owner accepts such assignment after termination by notifying the Subcontractor and Construction Manager in writing, and assumes all rights and obligations of the Construction Manager pursuant to each subcontract agreement. The Owner does not assume responsibility for any of Contractor's obligations existing prior to the date of assumption unless expressly agreed to in writing.

5.4.2 If the Owner accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive Days, following termination, the Subcontractor's compensation shall be equitably adjusted as a result of the suspension. When the assignment of a subcontract is the result of Owner's termination as provided in Section 12.3, the costs of any adjustment to Subcontractor's compensation shall be the responsibility of the Construction Manager. Owner may deduct the costs of any adjustment to Subcontractor's compensation from any amounts due or to become due to the Construction Manager.

### ARTICLE 6 TIME

6.1 DATE OF COMMENCEMENT The Date of Commencement is the date established in the award of the first contract for the Work.

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

6.1.2 Time is of the essence for this Agreement and the Contract Documents.

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

#### 6.2 SCHEDULE OF THE WORK

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

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

### 6.3 DELAYS AND EXTENSIONS OF TIME

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

6.3.2 In addition, if the Construction Manager incurs additional costs as a result of a delay that is caused by items (a) through (d) immediately above, the Construction Manager may be entitled to an equitable adjustment in the GMP.

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

6.3.4 OWNER NOTICE OF DELAYS The Owner may direct a delay in the Work for any reason by providing prompt written notice to the Construction Manager of the cause of such delays after the OWNER first recognizes the need for the delay. The Owner and the Construction Manager agree to take reasonable steps to mitigate the effect of such delays. If the Construction Manager incurs additional costs as a result of a delay that is caused by items (a) through (d) in subsection 6.3.1, the Construction Manager may be entitled to an equitable adjustment in the Contract Price. For the avoidance of doubt, the Construction Manager shall not be entitled to an adjustment in the Contract Price as a result of a delay that is caused by items (e) through (m) in subsection 6.3.1.

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

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

6.6 LIQUIDATED DAMAGES See Section 00 74 13 Project Requirements.

## **ARTICLE 7 COMPENSATION AND GUARANTEED MAXIMUM PRICE**

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

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

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

7.2 The compensation to be paid under Section 7.1 shall be limited to the GMP established in an Amendment, as the GMP may be adjusted under Article 9. If the total compensation to be paid under Section 7.1 is less than the GMP, the difference between the GMP and the total compensation to be paid shall accrue to the Owner.

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

7.3 CONSTRUCTION MANAGER'S FEE The Construction Manager's Fee shall be as identified in Article 1 subject to adjustment as provided in Section 7.4.

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

7.4.1 for changes in the Work as provided in Article 9, the Construction Manager's Fee shall be adjusted as follows:

7.4.1.1 If the changes in the aggregate increase the total GMP by six percent (6%) or less, there shall be no adjustment in the Construction Manager's Fee.

7.4.1.2 If the changes in the aggregate increase the total GMP by more than six percent (6%), there shall be no change to the fee for the first six percent (6%) and the fee for any and all other changes in the Work in excess of one hundred six percent (106%) of the total GMP shall be calculated at the rate included in subsection 1.2.1 multiplied by the estimated cost of such work and shall be agreed upon between the Construction Manager and the Owner as a fixed fee for the effect of the change.

7.4.1.3 If there is a material reduction in the scope of the work greater than fifteen percent (15%) of the Fixed Limit Cost of Construction the Owner shall be entitled to an equitable reduction in the Construction Manager's fee calculated at the rate included in subsection 1.2.1.

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

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

7.5 PRECONSTRUCTION SERVICES COMPENSATION The Construction Manager shall be compensated for Preconstruction Services as identified in Article 1.

## **ARTICLE 8 COST OF THE WORK**



8.1 The Owner agrees to pay the Construction Manager for the Cost of the Work as defined in this Article. This payment shall be in addition to the Construction Manager's Fee stipulated in Section 7.3. The Owner may require that a Cost of the Work form be filled out for each day's work and signed by an authorized representative of the Construction Manager and approved by the Owner's Representative. The Owner may also require that the Construction Manager provide sufficient documentation of actual expenses claimed under any of the following cost items.

## 8.2 COST ITEMS

8.2.1 Wages paid for labor in the direct employ of the Construction Manager in the performance of the Work. Labor costs shall be itemized to indicate trade, hourly rate, man hours, and total cost.

8.2.2 Salaries of the Construction Manager's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and employees from the principal or branch office performing the functions listed below directly attributable to the change. The Owner may require that the Construction Manager provide sufficient documentation of actual expenses claimed under this subsection.

8.2.3 Cost of all employee benefits and taxes, including but not limited to, workers' compensation, unemployment compensation, social security, health, welfare, retirement, and other fringe benefits as required by law, labor agreements, or paid under the Construction Manager's standard personnel policy, insofar as such costs are paid to employees of the Construction Manager who are included in the Cost of the Work pursuant to subsections 8.2.1 and 8.2.2 immediately above.

8.2.4 Reasonable transportation, travel, hotel and moving expenses of the Construction Manager's personnel incurred in connection with the Work.

8.2.5 Cost of all materials, supplies and equipment incorporated in the Work, including costs of inspection and testing if not provided by the Owner, transportation, storage, and handling. Material costs shall be itemized to include unit cost, quantity, and total cost for each item.

8.2.6 Payments made by the Construction Manager to Subcontractors for work performed under this Agreement. Subcontractor costs shall be appropriately itemized, and the Construction Manager shall furnish Subcontractor quotations or itemization for all costs included.

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

8.2.8 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from the Construction Manager or Others, including installation, repair and replacement, dismantling, removal, maintenance, transportation, and delivery costs. Rental from unrelated third parties shall be reimbursed at actual cost. Rentals from the Construction Manager or its affiliates, subsidiaries, or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to eighty-five percent (85%) of the value of the piece of equipment. Equipment costs shall be itemized to include equipment type, number of each, equipment charge out rate, and total cost for each item.

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

8.2.10 Sales, use, gross receipts, or other taxes, tariffs, or duties related to the Work for which the Construction Manager is liable; except when a sales tax exemption certificate has been provided as indication in Section 3.19.

8.2.11 Permits, fees, licenses, tests, and royalties.

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

8.2.13 All water, power, and fuel costs paid by the Construction Manager that are directly incurred to perform the Work.

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

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

## **ARTICLE 9 CHANGES**

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

### **9.1 CHANGE ORDER**

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

9.1.2 For changes in the Work, the Owner and the Construction Manager shall negotiate an equitable adjustment to the GMP or the date of Substantial Completion or date of Final Completion in good faith and conclude negotiations as expeditiously as possible. Acceptance of the Change Order and any equitable adjustment in the GMP or date of Substantial Completion or date of Final Completion shall not be unreasonably withheld. Any request for an adjustment in the Contract Time as a result of changes in the Work must be justified and presented in adequate detail showing that the proposed change will delay the date of Substantial Completion.

9.1.3 The Construction Manager shall be obligated to perform changes in the Work that impact the GMP or the estimated Cost of the Work, Construction Manager's Fee, date of Substantial Completion or date of Final Completion once a Change Order has been executed or a written Interim Directed Change has been issued.

9.1.4 The percentage mark-up for overhead and Profit on changes in the Work is subject to the following limits: (a) the percentage mark-up for the Construction Manager shall be limited to the Construction Manager's Fee percentage shall be as identified in Article 1; (b) fifteen percent (15%) maximum for Work directly performed by employees of a Subcontractor, or Sub-subcontractor; (c) five percent (5%) maximum for Work performed or passed through by a Subcontractor and passed through to the Owner by the Construction Manager; (d) five percent (5%) maximum Subcontractor's mark-up for Work performed by a Sub-subcontractor and passed through to the Owner by the Subcontractor and Construction Manager; and (e) the maximum allowable mark-up shall be twenty-five percent (25%) passed through to the Owner by the Construction Manager under any circumstances. Overhead and Profit shall be shown separately for the Construction Manager and each Subcontractor of any tier performing the Work.

### **9.2 INTERIM DIRECTED CHANGES**

9.2.1 The Owner may issue a written Interim Directed Change directing a change in the Work prior to reaching agreement with the Construction Manager on the adjustment, if any, in the GMP or the date of Substantial Completion or date of Final Completion.

9.2.2 The Owner and the Construction Manager shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the GMP or the date of Substantial Completion or date of Final Completion arising out of an Interim Directed Change. As the changed Work is performed, the Construction Manager shall submit its costs for such Work with its application for payment beginning with the next application for payment within thirty (30) Days of the issuance of the Interim Directed

Change. If there is a dispute as to the cost to the Owner, the Owner shall pay the Construction Manager amounts not in dispute. In such event, the Parties reserve their rights as to the disputed amount, subject to the requirements of Article 13.

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

### 9.3 DETERMINATION OF COST

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

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

9.3.1.2 a mutually accepted, itemized lump sum with the increase or decrease in the GMP or the Cost of the Work properly itemized and supported by sufficient substantiating data to permit evaluation.

If an increase or decrease cannot be agreed to as set forth in subsections 9.3.1.1 and 9.3.1.2 above, and the Owner issues an Interim Directed Change, the cost of the change in the Work shall be determined by the reasonable actual expense incurred and savings realized in the performance of the Work resulting from the Change. The Construction Manager shall maintain a documented, itemized accounting evidencing the expenses and savings.

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

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

9.3.4 If the Owner issues a written order for the Construction Manager to proceed, the Construction Manager shall perform the disputed work and the Owner shall pay the Construction Manager amounts not in dispute. In such event, both Parties reserve their rights as to whether the work was within the scope of the Work. The Owner's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of the Work. The Construction Manager's receipt of payment for the disputed work does not prejudice its right to receive full payment for the disputed work should it be determined that the disputed work is not within the scope of the Work.

9.4 CLAIMS FOR ADDITIONAL COST OR TIME Except as provided in subsection 6.3.2 and Section 6.4 for any claim for an increase in the GMP or the date of Substantial Completion or date of Final Completion, the Construction Manager shall give the Owner written notice of the claim within fourteen (14) Days after the occurrence giving rise to the claim or within fourteen (14) Days after the Construction Manager knows or should have known with the exercise of reasonable diligence of the condition giving rise to the claim, whichever is later. Except in an emergency, written notice shall be given before proceeding with the Work. Thereafter, the Construction Manager shall submit written documentation of its claim, including appropriate supporting documentation, within twenty-one (21) Days after giving notice, unless the Parties mutually agree in writing upon a longer period of time. Prior to submitting any claim by a Subcontractor for additional compensation, the Construction Manager shall have examined any such claim and verified its accuracy and completeness, and the Construction Manager shall have identified any Claim or portion of the Claim that is not the responsibility of the Owner. No later than fourteen (14) Days after receipt, the Owner shall

respond in writing denying or approving the claim. Owner's failure to so respond shall be deemed a denial of the claim. Any change in the GMP or the date of Substantial Completion or date of Final Completion resulting from such claim shall be authorized by Change Order. **IMPORTANT NOTICE REGARDING CLAIM PROCEDURES:** The Construction Manager's obligation to strictly follow the notice requirements of Article 9 in its entirety, including the giving of timely and complete notice of a claim, is a condition precedent to recovering under any claim. Failure of the Construction Manager to strictly follow these requirements shall constitute a waiver of the claim. An additional claim made after the initial claim has been made shall not be considered unless also submitted in accordance with Article 9 and in a timely manner.

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

## **ARTICLE 10 PAYMENT**

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

### **10.2 PROGRESS PAYMENTS**

**10.2.1 APPLICATIONS** The Construction Manager shall submit to the Owner and, if directed, the Design Professional a monthly application for payment for the preceding monthly pay period on a form furnished by the Owner. The Construction Manager's applications for payment shall be itemized and supported by the Construction Manager's schedule of values and any other substantiating data as required by this Agreement. Applications for payment shall include payment requests on account of properly authorized Change Orders or Interim Directed Changes. The Owner shall pay the amount otherwise due on any payment application in the manner and within the time provided in the Contract Documents. The Owner shall first deduct from any progress payment any amounts due to the Owner under the terms of this Agreement, including, but not limited to items listed in Section 10.3. The Owner shall then deduct from the adjusted progress payment amounts to be retained pursuant to subsection 10.2.4.

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

**10.2.3 LIEN WAIVERS AND LIENS.** The Construction Manager represents and warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Construction Manager further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Construction Manager's knowledge, information and belief, be free and clear of liens, Claims, security interests or encumbrances in favor of the Construction Manager, Subcontractors, material suppliers or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

10.2.3.1 The Owner reserves the right to request monthly lien waivers and/or subcontractor claim releases as a condition of payment of any progress payment. Subcontractor claim releases shall be submitted on the Owner's standard form.

10.2.4 RETAINAGE The Owner will withhold five percent (5%) from each progress payment, after any applicable adjustments in accordance with this Agreement, until final payment, consistent with the provisions of Chapters 262 and 573 of the Code of Iowa.

10.3 ADJUSTMENT OF CONSTRUCTION MANAGER'S PAYMENT APPLICATION The Owner may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to (a) protect the Owner from loss or damage or (b) pay or reimburse the Owner for any amounts due to the Owner under the terms of this Agreement, including, but not limited to, the following:

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

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

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

10.3.4 rejected, nonconforming or defective Work not corrected in a timely fashion;

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

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

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

10.3.8 Any other deduction that represents a payment due to the Owner from the Construction Manager in accordance with the terms of this Agreement.

Except for deductions or adjustments made under subsection 10.3.8, which payments shall become the property of the Owner, within fourteen (14) Days after receipt of an application for payment, the Owner shall give written notice to the Construction Manager, stating its specific reasons for any rejection, or nullification of an application for payment, and the remedial actions to be taken by the Construction Manager in order to receive payment, if any.

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

#### 10.5 SUBSTANTIAL COMPLETION

10.5.1 The Construction Manager shall notify the Owner and, if directed, the Design Professional when it considers Substantial Completion of the Work or a designated portion to have been achieved. The Owner, with the assistance of its Design Professional, shall promptly conduct an inspection to determine whether the Work or designated portion can be occupied or used for its intended use by the Owner without excessive interference in completing any remaining unfinished Work. If the Owner determines that the Work or designated portion has not reached Substantial Completion, the Owner,

with the assistance of its Design Professional, shall promptly compile a list of items to be completed or corrected so the Owner may occupy or use the Work or designated portion for its intended use. The Construction Manager shall promptly complete all items on the list.

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

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

10.5.4 At any time after all or any part of the work is substantially completed in accordance with subsection 10.5.1 above, the Construction Manager may request the release of all or part of the retainage owed in accordance with the provisions of sections 262.34, Code of Iowa. Any request for release of retainage under this section 10.5.4 must be submitted on the form supplied by the Owner. In addition to any requirements under Iowa Code section 262.34 or other applicable law, such request shall be accompanied by (a) subcontractor claim releases and/or waiver of claim rights for all portions of the Work for which release of retainage is requested on the Owner's form, and (b) the written consent of any surety to payment of the balance due for portions of the Work that are fully completed and accepted. Any request for release of retainage must be submitted to the individual designated by the Owner as its representative. Any request for release of retainage that does not conform with the requirements of this subsection 10.5.4 is deemed denied for failure to comply with the requirements of this Agreement.

## 10.6 PARTIAL OCCUPANCY OR USE

10.6.1 The Owner may occupy or use completed or partially completed portions of the Work when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) consent to the occupancy or use, and (c) public authorities authorize the occupancy or use. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and the Construction Manager have accepted in writing the responsibilities assigned to each.

## 10.7 FINAL COMPLETION AND FINAL PAYMENT

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

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

10.7.3 When the Work is found acceptable under the Contract Documents, the Owner will promptly issue a Certificate of Final Completion. Such notice will establish the date of Final Completion upon which the Contract is accepted as complete and upon which all remaining guarantees and warranties under the Contract shall commence.

10.7.4 The date of Final Completion shall also establish the commencement of the thirty-day period during which final payment of the balance due under the contract must be retained by the Owner under the provisions of Chapter 573, Code of Iowa and per the provisions of this Agreement. The Owner shall release retained funds in accordance with the provisions of Chapters 262 and 573, Code of Iowa, and per the provisions of this Agreement. Final Completion is contingent upon submission of the following to the Owner: (a) As-Built Documents, manuals, warranties and all other close-out documents, which have been reviewed and approved by the Design Professional or Others as directed by the Owner, required by the Contract Documents in the agreed upon format; (b) consent of any surety; (c) any outstanding known and unreported accidents or injuries experienced by the Construction Manager or its Subcontractors at the Worksite; and (d) Targeted Small Business Final Payment Reporting Form(s).

10.7.5 The Final Payment due to the Construction Manager, if any, shall be determined by the Owner after making necessary adjustments for any deduction that represents a payment due to the Owner from the Construction Manager in accordance with the terms of this Agreement, which deductions or adjustments shall become the property of the Owner. The Owner reserves the right to issue Final Payment to the Construction Manager as determined by the Owner and in accordance with applicable law, regardless of whether Construction Manager has submitted an application for Final Payment.

10.7.6 OWNER RESERVATION OF CLAIMS By issuing final payment to the Construction Manager, the Owner does not waive, and hereby reserves, any and all claims it may have against the Construction Manager, including, but not limited to, claims relating to liens or similar encumbrances, warranties, Defective Work, latent defects, breach of contract, and any other claim at law or in equity.

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

10.8 LATE PAYMENT Payments due but unpaid shall bear interest from the date payment is due in accordance with the provisions of Chapter 573, Code of Iowa.

## **ARTICLE 11 INDEMNITY, INSURANCE, AND BONDS**

### 11.1 INDEMNITY

11.1.1 To the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless the Owner, Owner's officers, directors, members, consultants, agents, employees, successors and assigns (the Indemnitees) from and against all claims, damages, losses, and expenses, including but not limited to reasonable attorney's fees, arising out of a claim for bodily injury



and/or property damage, other than to the Work itself and other property insured, but only to the extent caused by the negligent or wrongful acts or omissions in the performance of the terms and conditions of this Agreement 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. Such obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person.

11.1.2 NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of the Construction Manager, anyone directly or indirectly employed by the Construction Manager or anyone for whose acts the Construction Manager may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Construction Manager under workers' compensation acts, disability benefit acts, or other employment benefit acts. The requirements for insurance are not intended to limit, qualify or restrict the liabilities and obligations otherwise assumed by the Construction Manager in this Agreement, including provisions concerning indemnification.

## 11.2 INSURANCE

11.2.1 Before commencing the Work, the Construction Manager shall purchase from and maintain with a company or companies lawfully authorized to do business in the State of Iowa such insurance as specified in Section 00 74 13 Project Requirements that will protect the Construction Manager from Claims set forth below which may arise out of or result from the Construction Manager's operations under the Contract and for which the Construction Manager may be legally liable, whether such operations be by the Construction Manager or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

11.2.1.1 Claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed.

11.2.1.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Construction Manager's employees.

11.2.1.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Construction Manager's employees.

11.2.1.4 Claims for damages insured by standard personal injury liability coverage which are sustained (a) by a person as a result of an offense directly or indirectly related to employment of such person by the Construction Manager, or (b) by another person.

11.2.1.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom.

11.2.1.6 Claims for liability that may result from injuries or damage arising out of completed work.

11.2.1.7 Claims for damages to existing adjacent property that may arise from the performance of Work to the extent caused by the negligent acts or omissions of the Construction Manager.

11.2.1.8 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle.

11.2.1.9 Claims involving contractual liability insurance applicable to the Construction Manager's obligations under Section 11.1.

11.2.2 The Construction Manager shall take out insurance policies with requirements as specified in Section 00 74 13 Project Requirements, on a primary, non-contributory basis and issued by an insurance company or companies legally authorized to conduct business in the State of Iowa with an A.M. Best rating of A-, VII or better. The insurance requirements may be arranged under a single

policy for the full limits required or by a combination of underlying policies with the balance provided by following form Excess or Umbrella Liability policies.

11.2.3 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These Certificates and the insurance policies required by Section 11.2 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment, the Construction Manager shall renew policies which expire during the period of required coverage and, prior to each renewal date, shall notify the Owner of such renewal.

11.2.4 The insurance required by Section 11.2 shall be written for not less than limits of liability specified in Section 00 74 13 Project Requirements or required by law, whichever coverage is greater. Coverages shall be written on an occurrence basis, and shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment; except that products and completed operations coverage must be maintained for a minimum of two years after final payment.

11.2.5 The Construction Manager shall either (a) require each Subcontractor to procure and to maintain, for the period of time required in Section 11.2, Subcontractor's Liability Insurance of the type and in the same amounts as specified above or (b) insure the activities of the Subcontractors in the Construction Manager's own policy.

### 11.3 PROPERTY INSURANCE

11.3.1 Unless specified otherwise in Section 00 74 13 Project Requirements and before work commences, the Owner shall purchase and maintain Builder's Risk Insurance in an amount equal to the construction cost, less insurance exclusions, until final payment has been made or otherwise agreed to in writing by all persons and entities who are beneficiaries of such insurance or until no person or entity, other than the Owner, has an insurable interest in the property.

The Owner shall be the named insured on such policy. This insurance shall also name the Construction Manager, Subcontractors, Sub-subcontractors and Material Suppliers as loss payees.

This insurance shall be written as a Builder's Risk Policy or equivalent form to cover all risks of physical loss except those specifically excluded by the policy, and shall insure (a) at least against the perils of fire, lightning, explosion (including boilers), windstorm, hail, smoke, aircraft and vehicles, riot and civil movement, water damage, wind damage, collapse however caused; (b) resulting damage from defective design, workmanship or material; and (c) direct damage caused by interruption of gas, electric, water and steam service.

11.3.2 The Builder's Risk Insurance provided by the Owner shall not cover any tools, apparatus, machinery, scaffolding, hoists, forms, staging, shoring, and other similar items commonly referred to as construction equipment, which may be on the site and the capital value of which is not included in the Work. The Construction Manager shall make arrangements for any insurance desired on such construction equipment.

11.3.3 The Owner shall make available a copy of the policy for viewing by the Construction Manager on the Owner's premises, at a location specified by the Owner.

11.3.4 Construction Manager is required to immediately notify the Owner upon discovery of any loss. If a claim is expected to be made against the Owner's Builder's Risk Insurance policy, the Construction Manager must notify the Owner within forty-eight (48) hours after discovery of the loss. An initial detailed written report of the loss must be furnished to the Owner within ten (10) working days of the loss.

11.3.5 The Construction Manager shall be responsible for the deductible for each claim made against the Owner's Builder's Risk Insurance policy. Risk of loss or damage to the Work that is not covered

by insurance shall be the responsibility of the Construction Manager until the date of Substantial Completion unless otherwise agreed to by the Parties.

**11.4 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.

#### **11.5 BONDS**

**11.5.1 Performance and Payment Bonds** are required of the Construction Manager. Performance and Payment Bonds must be executed solely by corporations authorized to contract as surety in Iowa and who are not affiliated with or owned by the Construction Manager. Attorney's-in-fact who sign surety bonds must file with each bond a certified and effectively dated copy of their power of attorney. The Owner's acceptance of the bonds shall not be withheld without a reasonable cause. The penal sum of the bonds shall each be one hundred percent (100%) of the GMP and subsection 1.2.3. and shall provide coverage for any and all change orders unless otherwise instructed by the Owner. The Owner reserves the right to require that the Construction Manager provide a rider in an amount to be determined by the Owner for any increase in the original GMP. The Construction Manager shall endeavor to keep its surety advised of changes potentially impacting the GMP and Contract Time, though the Construction Manager shall require that its surety waives any requirement to be notified of any alteration or extension of time. A copy of the Construction Manager's Payment Bond for the Project, if any, shall be furnished by the Owner or the Construction Manager upon the Subcontractor's written request.

**11.5.2** If the Construction Manager is a Targeted Small Business, the Construction Manager may be eligible to receive a waiver of the performance, payment, or bid bond requirements pursuant to the provisions of the Iowa Satisfaction and Performance Bond Program, Chapter 12.44, Code of Iowa. Certification of eligibility to participate in the Iowa Satisfaction and performance Bond Program is determined by the Department of Inspections and Appeals.

**11.6 PROFESSIONAL LIABILITY INSURANCE** To the extent the Construction Manager is required to procure design services in accordance with Section 3.17, the Construction Manager shall require its design professionals to obtain professional liability insurance if required by Section 00 74 13 Project Requirements.

### **ARTICLE 12 SUSPENSION, NOTICE TO CURE, AND TERMINATION**

#### **12.1 SUSPENSION BY OWNER FOR CONVENIENCE**

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

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

**12.2 NOTICE TO CURE A DEFAULT** If the Construction Manager persistently fails to supply enough properly qualified workers, proper materials, or equipment to maintain the approved Schedule of the Work or fails to make prompt payment to its workers, Subcontractors, or Material Suppliers, disregards Laws or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, the Construction Manager may be deemed in default. If the Construction Manager fails

within seven (7) Days after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, then the Owner shall give the Construction Manager a second notice to correct the default within a three (3) Day period. If the Construction Manager fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, the Owner without prejudice to any other rights or remedies may: (a) take possession of the Worksite; (b) complete the Work utilizing reasonable means; (c) withhold payment due to the Construction Manager; and (d) as the Owner deems necessary, supply workers and materials, equipment, and other facilities for the satisfactory correction of the default, and charge the Construction Manager, the costs and expenses, including reasonable Overhead, Profit, and attorneys' fees.

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

### 12.3 OWNER'S RIGHT TO TERMINATE FOR DEFAULT

12.3.1 TERMINATION BY OWNER FOR DEFAULT If, within seven (7) Days of receipt of a notice to cure pursuant to Section 12.2, the Construction Manager fails to commence and satisfactorily continue correction of the default set forth in the notice to cure, the Owner may notify the Construction Manager, and if applicable, the surety, that it intends to terminate this Agreement for default absent appropriate corrective action within fourteen (14) additional Days. After the expiration of the additional fourteen (14) Day period, the Owner may terminate this Agreement by written notice absent appropriate corrective action. Termination for default is in addition to any other remedies available to the Owner under Section 12.2. If the Owner's costs arising out of the Construction Manager's failure to cure, including the costs of completing the Work and reasonable attorneys' fees, exceed the unpaid GMP, the Construction Manager shall be liable to the Owner for such excess costs. If the Owner exercises its rights under this section, upon the request of the Construction Manager, the Owner shall furnish to the Construction Manager a detailed accounting of the costs incurred by the Owner.

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

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

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

### 12.4 TERMINATION BY OWNER FOR CONVENIENCE

12.4.1 Upon written notice to the Construction Manager, the Owner may, without cause, terminate this Agreement effective upon the date identified by the Owner in the written notice. The Construction Manager shall immediately stop the Work, follow the Owner's instructions regarding shutdown and termination procedures, and strive to minimize any further costs. Provisions of law as contained in Chapter 573A, Code of Iowa, which pertains to termination of contracts for construction of public improvements when Work thereon is stopped because of a national emergency, shall apply to and be a part of this Agreement and binding upon all Parties hereto, including Subcontractors and Sureties.

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

## 12.5 CONSTRUCTION MANAGER'S RIGHT TO TERMINATE

12.5.1 Upon seven (7) Days' written notice to the Owner, the Construction Manager may terminate this Agreement if the Work has been stopped for a thirty (30) Day period through no fault of the Construction Manager for any of the following reasons: (a) under court order or order of other governmental authorities having jurisdiction; (b) as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of the Construction Manager, materials are not available; or (c) suspension by the Owner for convenience pursuant to Section 12.1.

12.5.2 In addition, upon seven (7) Days' written notice to the Owner, the Construction Manager may terminate this Agreement if the Owner: (a) assigns this Agreement over the Construction Manager's reasonable objection, or (b) fails to pay the Construction Manager in accordance with this Agreement and the Construction Manager has complied with Section 10.5, or (c) upon termination by the Construction Manager in accordance with this section, the Construction Manager shall be entitled to recover from the Owner payment for all Work properly executed.

12.6 If this Agreement is terminated for any reason, the Construction Manager shall: (a) execute and deliver to the Owner all papers, documents, and submissions required under this Agreement whether in draft or final form; (b) take all action required to assign, transfer, and vest in the Owner the rights of the Construction Manager to all materials, supplies, and equipment for which payment has been or will be made in accordance with the Contract Documents and all subcontracts, orders, and commitments which have been made in accordance with the Contract Documents; (c) exert reasonable effort to reduce to a minimum the Owner's liability for subcontracts, orders, and commitments that have not been fulfilled at the time of the termination; (d) cancel any subcontracts, orders and commitments as the Owner directs; and (e) sell at prices approved by the Owner any materials, supplies, and equipment as the Owner directs, with all proceeds paid or credited to the Owner.

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

## ARTICLE 13 DISPUTE MITIGATION AND RESOLUTION

13.1 WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, the Construction Manager shall continue the Work and maintain the Schedule of the Work during any dispute mitigation or resolution proceedings. If the Construction Manager continues to perform, the Owner shall continue to make payments in accordance with this Agreement.

13.2 DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of this Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) Business Days from the date of first discussion, the Parties' representatives shall immediately inform senior executives or administrators of the Parties in writing that resolution was not affected. Upon receipt of such notice, the senior executives or administrators of the Parties shall meet within five (5) Business Days to endeavor to reach resolution.

## ARTICLE 14 MISCELLANEOUS

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

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

14.3 GOVERNING LAW This Agreement shall be governed by the laws of the State of Iowa, and any action or suit arising out of or related to this Agreement shall be initiated in the courts in the county in which the project is located.

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

14.5 NO WAIVER OF PERFORMANCE The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance or any other term, covenant, condition, or right, nor shall such action or failure to act constitute approval or acquiescence in a breach unless specifically agreed to in writing.

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

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

#### 14.8 ELECTRONIC TRANSACTIONS AND EXECUTION IN COUNTERPARTS

14.8.1 To the fullest permitted by Iowa Code Chapter 554D, the Parties agree that electronic records, signatures, systems, formats, transmissions and communications (collectively, Electronic Transactions) may be utilized for this Project and this Agreement and all related documents, records, submissions, approvals, and communications (Ancillary Agreements). The Parties agree that electronic signatures are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility. The Parties further agree that Electronic Transactions may be relied on for the purposes of binding information transfer for this Project. Unless otherwise agreed to in writing by the Parties, the following shall be deemed an acceptable electronic signature for the purposes of this subsection: an electronic symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

In the event the laws, rules, or regulations of a third-party governmental agency or entity do not permit the use of Electronic Transactions or Electronic Signatures, then this section shall not apply but only to the extent necessary to comply with the laws, rules, or regulations of the third-party governmental agency or entity.

14.8.2 This Agreement, and any Ancillary Agreements, may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed to be one and the same agreement. A signed copy of this Agreement, or any Ancillary Agreement, transmitted by any means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement or such Ancillary Agreement.

14.9 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.

#### 14.10 CODE OF FAIR PRACTICES

14.10.1 During the performance of this Contract, the Construction Manager agrees as follows:

14.10.1.1 The Construction Manager will not discriminate against any employee or applicant for employment because of race, creed, color, religion, national origin, sex, age or physical or mental disability, or status as a U.S. veteran. The Construction Manager will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regards to their race, creed, color, religion, national origin, sex, age, physical or mental disability, or status as a U.S. veteran except where it relates to a bona fide occupational qualification. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, layoff or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Construction Manager agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Board of Regents, State of Iowa setting for the provisions of this nondiscrimination clause;

14.10.1.2 The Construction Manager will in all solicitations or advertisements for employees placed by or on behalf of the Construction Manager, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sex, age, physical or mental disability, or status as a U.S. veteran except where it relates to a bona fide occupational qualification;

14.10.1.3 The Construction Manager will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of the Construction Manager's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment;

14.10.1.4 The Construction Manager will comply with all relevant provisions of state and federal laws and regulations, and all provisions relevant to fair application of the rules and regulations of the Board of Regents, State of Iowa and of its institutions. The Construction Manager will furnish all information and reports requested by the Board of Regents, State of Iowa or its institutions or required by or pursuant to the rules and regulations thereof and will also permit access to its payroll and employment records by the Board of Regents, State of Iowa or its institutional representatives for purposes of investigation to ascertain compliance with such rules, regulations or requests, or with this nondiscrimination clause;

14.10.1.5 In the event of the Construction Manager's noncompliance with the nondiscrimination clauses of this Contract or with any of the aforesaid rules, regulations or requests, this Contract may be canceled, terminated, or suspended in whole or in part and the Construction Manager may be declared ineligible for further contracts with the Board of Regents, State of Iowa. In addition, the Board of Regents, State of Iowa or its institutions may take such further action, as heretofore and hereafter amended, or by the rules and regulations of the Board of Regents, State of Iowa or its institutions or as provided by law; and

14.10.1.6 The Construction Manager will include the provisions of subsection 14.10.1.1 through 14.10.1.5 in every subcontract and purchase order unless specifically exempted by approval of the Board of Regents, State of Iowa, in accordance with the rules and regulations of the Board, so that such provisions will be binding on each Subcontractor and vendor. The Construction Manager will take action with respect to any Subcontractor or vendor as the Board of Regents, State of Iowa or its institutions or the authorized representative thereof may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that in the event the Construction Manager becomes involved in or is threatened with litigation by a Subcontractor or vendor as a result of such direction by the Board of Regents, State of Iowa or its institutions, the Construction Manager may request the State of Iowa to enter into such litigation to protect the interests of the State of Iowa.

14.11 NOTICES Any notice, demand or communication required or permitted to be delivered or given by the provisions of this Agreement shall be deemed to have been effectively delivered or given and received on the date (a) personally delivered to the individual identified below, (b) when deposited by registered or certified mail, with postage and charges prepaid and addressed to individual at the address identified below, or (c) when sent and actually received through electronic mail by the Owner's Representative and/or the Construction Manager's Project Manager.

## ARTICLE 15 CONTRACT DOCUMENTS

EXISTING CONTRACT DOCUMENTS This instrument, together with the documents enumerated below, form the Agreement, and they are as fully a part of the Agreement as if hereto attached:

1. Request for Qualifications and Addenda
2. Request for Proposals and Addenda
3. Cost Proposal for Construction Manager at Risk Services
4. Notice of Award
5. Contract Performance and Payment Bond
6. 00 73 13 Institution Requirements
7. 00 74 13 Project Requirements
8. General Requirements (Division 01)
9. Technical Specifications (All Other Divisions)
10. Drawings.

### 15.1 INTERPRETATION OF CONTRACT DOCUMENTS

15.1.1 The Drawings and Specifications are complementary. If Work is shown only on one but not on the other, the Construction Manager shall perform the Work as though fully described on both consistent with the Contract Documents and reasonably inferable from them.

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

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

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

15.1.5 ORDER OF PRECEDENCE In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders to this Agreement; (b) Amendments to this Agreement; (c) the Agreement; (d) subject to subsection 15.1.2



the drawings, specifications, and addenda issued prior to the execution of this Agreement; (e) approved submittals; (f) information furnished by the Owner pursuant to subsection 3.15.4 or designated as a Contract Document; (g) other documents listed in this Agreement. Among all the Contract Documents, the term or provision that is most specific or includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered to be a conflict or inconsistency. If any provision of this Agreement conflicts with or is inconsistent with any other provision of other Contract Documents, the provision of this Agreement governs, unless the other provision specifically refers to the provision it supersedes and replaces in this Agreement.

This Agreement becomes effective the day and year signed by the Owner below.

**Construction Manager:**

\_\_\_\_\_

by: \_\_\_\_\_

Dated: \_\_\_\_\_

FEIN No: \_\_\_\_\_

E-Mail: \_\_\_\_\_

**Recommended by:**

by: \_\_\_\_\_  
The University of Iowa

Dated: \_\_\_\_\_

**Owner:**

Board of Regents, State of Iowa

by: \_\_\_\_\_  
Executive Director

Dated: \_\_\_\_\_