

CONTRACT FOR CONSTRUCTION MANAGEMENT SERVICES
THE BOARD OF GOVERNORS, WAYNE STATE UNIVERSITY
DETROIT, MI 48202

With

INSERT CM FIRM NAME
INSERT CM ADDRESS

For

Wayne State University
INSERT PROJECT NAME
WSU Project No. INSERT NUMBER

THIS AGREEMENT, entered into on _____, 20__, is by and between Board of Governors, WAYNE STATE UNIVERSITY, hereinafter called "University" and INSERT NAME hereinafter known as "Construction Manager", to provide preconstruction and construction phase services as outlined in the proposal dated [DATE], attached hereto as Exhibit A for the Project as set forth below.

The Construction Manager shall provide all necessary pre-construction and construction services necessary to develop the INSERT PROJECT NAME as described in the University's Request For Proposal dated INSERT DATE and the resultant response attached hereto as Exhibit A, dated INSERT DATE.

1.00 CONTRACT DOCUMENTS

The Contract Documents shall consist of this Agreement, the Construction Manager's Guaranteed Maximum Price (GMP) Proposal attached hereto as Exhibit A, the General Conditions of Construction, the Supplementary General Conditions and other documents listed in the Definitions. In the case of conflicts between the Construction Manager's GMP Proposal and any of the Contract Documents, the language of the other Contract Documents shall prevail.

2.00 DESIGN PROFESSIONAL

The Design Professional for this Project is:

Design Professional Name and Address

The University intends that the relationship between the Construction Manager, Design Professional and University function in the spirit of mutual cooperation and respect in order to promote efficiency and cooperation between all the parties.

3.00 CONSTRUCTION MANAGER'S RESPONSIBILITIES

3.01 Scope of Work

The Construction Manager shall provide various preconstruction services, leading to the development of an acceptable GMP and shall furnish all labor, materials, equipment, project management and construction superintendent services to construct the Work in accordance with the limits of the GMP, approved Contract and Construction Documents and executed Change Orders.

3.02 Trust and Cooperation

The Construction Manager accepts the relationship of trust and confidence bestowed by the University under the terms of this Agreement. In performing duties hereunder, the Construction Manager covenants with the University to furnish its best skill and judgment in furthering the interests of the University as defined in the Contract Documents. The Construction Manager agrees to perform all obligations hereunder using efficient business administration, superintendence and best efforts to facilitate the expeditious and timely completion of the Project consistent with the interests of the University as expressed in the Contract Documents. The Construction Manager acknowledges that significant effort will be invested in complying with the GMP, Master Project Schedule, and maintaining construction quality. Accordingly, it is further acknowledged that the greatest degree of professionalism is expected from the Construction Manager, Design Professional and the University in accomplishing these contractual obligations and that when potential conflicts exist, each shall demonstrate appropriate respect, professionalism and cooperation with each other in resolving such conflicts.

3.03 Preconstruction Services

3.03.1 Review of Schematic and Design Development Documents

The Construction Manager shall review the schematic and design development documents prepared by the Design Professional for means, methods, sequences, safety, constructability, completeness, adequacy and sufficiency, including any particular requirements unique to the Project. The Construction Manager shall attend meetings with the University and Design Professional, as may be required to fully and complete acquaint himself with all Project details. The Construction Manager shall perform such reviews to allow for his participation and leadership in value engineering, the development of the GMP, and preparation of the Schedules as set forth below.

3.03.2 Value Engineering

The Construction Manager shall provide value engineering services to the University and Design Professional during schematic and design development activities to assist and facilitate the development of a scope of work definition that is within the limitations of the GMP budget allowance established by the University. Such value engineering services shall include the provision of cost estimating services that quantify the probable Cost of Work and other GMP inclusions according to Construction Specifications Institute division designation or other work breakdown structure as may be accepted by the University and Design Professional. The intention of the cost estimating service shall be to provide cost details at a sufficiently defined level, to ascertain where the designed scope of Work is being invested and to facilitate decision making. Under circumstances where the Construction Manager's cost estimates exceed the defined GMP budget allowance, or when, in the Construction Manger's judgment, the design intent can be better satisfied by an alternative solution, means, method, or sequence without sacrificing the quality requirements associated with the Project, the Construction Manager shall submit revision recommendations to the University and Design Professional for consideration. The Construction Manager shall provide iterative value engineering services to find an optimal balance between budget, schedule and quality objectives for the Project, until the limits of the GMP budget allowance are satisfied or the University allocates additional funding.

3.03.3 Scheduling

The Construction Manager shall develop a Contractor's Construction Schedule and Master Project Schedule that clearly indicates the interrelationship of activities and defines the critical path of the entire Project, including preconstruction activities and milestones. The Construction Manager shall submit a preliminary Master Project Schedule, including preconstruction activities and milestones, reflecting the design details and intent by the earlier of fifteen (15) days from the Notice to Proceed or following execution of this Agreement. The Construction Manager shall provide iterative updates to the entire Master Project Schedule at each cost re-estimate during value engineering, specifically noting schedule impacts on activities, total project duration, any corresponding impacts on general

conditions costs and project management costs that may affect the GMP and scope of work decisions. During preconstruction, the Construction Manager will not be required to provide a resource loaded Master Project Schedule. However, within five (5) days of acceptance of the GMP by the University the Construction Manager shall prepare and submit a resource loaded Master Project Schedule to the University and Design Professional for approval. The requirements of this Agreement shall be in addition to the Scheduling requirements in Section 4.09 of the General Conditions.

3.03.4 Guaranteed Maximum Price (GMP)

Upon completion of the Design Development Documents by Design Professional, the Construction Manager shall submit to the University for review and acceptance a proposal to establish a GMP for the Project, guaranteeing the maximum price to the University of the Contract Sum.

The Construction Manager shall provide a Guaranteed Maximum Price proposal in a format acceptable to the University. The GMP shall be inclusive of all Allowable Costs (including both the Cost of the Work and the Indirect Cost of the Work), including taxes upon the Work which Construction Manager is legally obligated to pay, and all costs for Trade Contracts, labor, materials, equipment, supervision, fees and costs of whatever nature, necessary to complete the Project in accordance with the approved Design Development Documents. The GMP shall be comprised of the following not-to-exceed values which shall be each operate as independent caps on costs and fees comprising the Contract Sum:

- a) Cost of the Work
- b) Indirect Cost of the Work:
 - 1. Cost of General Conditions
 - 2. Cost of On-Site Project Management Staff
 - 3. Preconstruction Costs
- c) Construction Manager's Overhead and Profit (Fee)
- d) Construction Contingency

The GMP shall include the preconstruction services cost, the construction Cost of Work, general conditions, general requirements, reimbursable expenses, construction contingencies, overhead and profit, and shall be subject to the written approval and acceptance by the University. The GMP may be subject to modification to reflect changes in the Project only through issuance of written Change Orders executed by the Construction Manager and the University. The Construction Manager shall be responsible for all costs exceeding the GMP.

3.03.4.1 Cost of the Work

The University agrees to pay the Construction Manager for the following costs. Such payment shall be in addition to the Construction Manager's fees.

3.03.4.1.1 Allowable Costs

- a) Wages paid for labor in the direct employ of the Construction Manager in the performance of the Work shall be those prevailing in the area, including benefits as may be payable with respect thereto.
- b) Salaries of Construction Manager's on-site project management staff, including Project Manager, Project Engineer (if recommended) and Superintendent, when stationed at the field office in whatever capacity employed, at the billing rates set forth in the Construction Manager's proposal. Personnel engaged at shop locations or on the road in expediting the production or transportation of materials or equipment shall be considered as stationed at the field office and their salaries paid only for that portion of their time spent in support of this Project.
- c) Cost of contributions, assessments, or taxes incurred during the performance of the Work for such items as unemployment compensation and social security, insofar as such cost is based on wages, salaries or other remuneration paid to employees of the Construction Manager and included in the Cost of the Work as defined above, and shall be included in the billing rates set forth in the Construction Manager's GMP Proposal.
- d) The portion of reasonable travel and subsistence expenses of the Construction Manager or of its office or employees incurred while traveling in discharge of its duties connected with the Work, but such costs shall not include normal daily travel to the work site or Construction Manager's home office.
- e) Cost of all materials, supplies and equipment incorporated in the Work, including costs of transportation thereof.
- f) Payments made by the Construction Manager to Trade Contractors for work performed pursuant to Subcontracts under this Agreement.
- g) Cost, including transportation and maintenance, of all material supplies, equipment, temporary facilities and hand tools not owned by the worker, which are consumed in the performance of the Work and cost less salvage value on such items used but not consumed which remain the property of the Construction Manager.
- h) Rental charges of all necessary machinery and equipment, exclusive of hand tools used at the site of this Work, whether rented from the Construction Manager or others, including installation, minor repairs, replacements, dismantling, removal, transportation and delivery costs thereof, at rental charges consistent with those prevailing in the area. The Blue Book rates shall not be used or accepted as prevailing charges unless the University specifically approves that use in writing.

- i) The portion of the Cost of Construction Manager's premiums for all bonds, excluding subcontractor bonds as set forth in Section 3.03.4.3.d, and insurance for which the Construction Manager is required by the Contract Documents to purchase and maintain that can be directly attributed to the Project.
- j) Sales, use or similar taxes related to the Work and for which the Construction Manager is liable, imposed by any governmental agency.
- k) Permit fees, royalties, and deposits lost for causes other than the Construction Manager's negligence.
- l) Expenses associated with the jobsite trailer, including the trailer building, office supplies, copy machine, fax machine, computers, temporary power, office furniture and water. Such expenses shall also include any charges for expedited delivery and postage. Ownership of any equipment or supplies purchased and charged as a Project Cost shall vest with the University.
- m) Expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage, progress photos, reproduction costs and similar cash items in connection with the Work.
- n) Expenses for temporary utilities at the project site, including electrical, heat, enclosure, water and temporary toilets.
- o) Other costs associated with maintaining the jobsite, including site security, fencing, barricades and project signage.
- p) Cost of removal of all debris, construction cleanup and final cleaning.
- q) Cost incurred due to an emergency affecting the safety of persons and property.
- r) Other costs incurred in the performance of the Work only if approved in advance in writing by the University.
- s) The construction contingency included in the GMP shall be available for the Construction Manager's use for the following reasons.
 - Items of Work within the GMP scope and Contract Documents but not included in a Trade Contractor's scope due to bidding or buy-out omissions.
 - Omissions of the Contract Documents for reasonably inferable scope of work.
 - Differences, variances or negative buy-out performance between GMP line item estimates and final actual cost results for that line item. However, amounts accumulated due to savings from buy-out performance shall then become added to the construction

contingency included in the GMP.

- Changes in the market, local labor costs, or market conditions.
- Repair or replacement of damaged Work to the extent not reimbursed by Trade Contractors, third parties or Builder's Risk or other insurance applicable to the Work; Construction Manager to take all commercially reasonable efforts to avoid charging these costs to the construction contingency.
- Overtime or acceleration costs for which no allowances are included in the GMP, to expedite work to maintain project schedule performance or completion dates. Use of the construction contingency for overtime or acceleration shall require the prior written authorization of the University.

The construction contingency shall not be used for expenses associated with conditions not reasonably inferable, design errors, or scope of work changes that are subject to the change order provisions of the Contract Documents. However, the Construction Manager acknowledges that the University intends to spend and invest the construction contingency in its entirety. As a result, the Construction Manager shall work and protect the University interests in timely releasing and applying the construction contingency to additional work not included in the Contract Documents. The University and the Construction Manager shall jointly determine when the construction risks are sufficiently diminished to allow unspent construction contingency to be released to the University for additional Work.

The construction contingency shall be equal to no more than five percent (5%) of the estimated Cost of the Work before any of the Work has been bid or bought out. The amount of construction contingency shall commensurately be reduced with the amount of the Work being bought out. When the Guaranteed Maximum Price is established or when 90% or more of the Work has been bought out by the Construction Manager, the construction contingency amount shall be reduced to no more than 2.0% of the Cost of the Work.

The Construction Manager shall report construction contingency performance to the University on a monthly basis. All contingency use shall be reviewed with and approved by the University in advance, and such approval shall not be unreasonably withheld or delayed.

3.03.4.2 Costs Included in the Overhead and Profit Fee

- a) Salaries or other compensation of the Construction Manager's employees at the Construction Manager's principal office and branch offices, including home office personnel, administration, Project Director or Executive.
- b) Expenses of the Construction Manager's principal and branch offices other than the field office, including job accounting, payroll and personnel/human resource expenses or costs for procurement not performed by on-site personnel.

- c) Any part of the Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the work.
- d) Profit margin, overhead or general administrative expenses of any kind.

3.03.4.3 Costs Not Allowed

- a) With the sole exception of the charges allowed to the construction contingency in paragraph 3.03.4.1.1(s) above, cost due to negligence of the Construction Manager, any Subcontractor, Trade Contractor, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to the correction of defective or nonconforming work, disposal of materials and equipment wrongly supplied, or making good any property damage not covered by insurance.
- b) The cost of any item not specifically and expressly included in the items described in Article 3.03.4.1.1
- c) Costs in excess of the GMP.
- d) The Construction Manager shall subcontract with Subcontractors that are trustworthy, financially able, and have a track record in successfully completing trade works of similar size and complexity. Therefore, The Construction Manager may in its discretion, determine if any Subcontractors will need to supply performance and payment bonds. If bonds are required of any Subcontractors, all such bonds shall be (i) purchased solely at the expense of the Construction Manager (or the Subcontractor supplying them), without reimbursement under the Contract Sum or Guaranteed Maximum Price or otherwise, and (ii) dual obligee bonds, naming the University as one of the obligees. The University may in its discretion determine, with the recommendation of the Construction Manager, to require a Subcontractor to supply performance and payment bonds in addition to the Construction Manager's bond when (i) the subcontractor's bid including the added cost of the bond is significantly below the next bona fide bid, and (ii) the Construction Manager has no previous experience or work experience with the subcontractor, and (iii) it is necessary to accept the subcontractor's bid in order to meet the established Guaranteed Maximum Price. In such event, the University shall reimburse the Construction Manager for purchasing the bond for the subcontractor under the Contract Sum. University will not accept sub-guard insurance in lieu of performance and payment bond, nor reimburse the Construction Manager for the cost of any sub-guard policy.

3.03.5 Further Review of Design and Construction Documents and GMP Protection

Once accepted by the University and Design Professional, and during the Construction Document development phase, the GMP shall be used as a primary cost control tool. When the Construction Documents are complete for each work package, the Construction Manager shall evaluate the Scope of Work of the construction documents to ensure compliance with the GMP prior to bidding and its

various applicable qualifications, clarifications and exceptions. The Construction Manager shall advise the University and Design Professional in writing if, at any time, it appears that the designed scope of Work will exceed the GMP, and make recommendation and/or take corrective action at the direction and approval of the University. In recognition of the Design Professional's risk and obligation to redesign the Project at his expense for developing a scope of Work which exceeds the GMP after the acceptance and approval of the design at the previous or most recent design iteration, the Construction Manager shall endeavor to provide accurate and detailed cost re-estimates to best ensure the avoidance of the Design Professional's redesign costs. If such a situation develops, and it is demonstrated that the Construction Manager's cost estimates were inaccurate and caused the need to redesign any portion of the Work, the Construction Manager shall reimburse the Design Professional for the direct costs of all such incremental design effort. The Construction Manager shall indemnify and hold the University harmless from any redesign costs caused by Construction Manager errors, omissions or negligence.

3.03.6. Discounts, Rebates and Refunds

All cash discounts shall accrue to the University. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to the University.

3.03.6.1 Shared Savings – SECTION DELETED

3.03.7 Subcontractor and Vendor Qualification

Prior to conducting any bidding, the Construction Manager will screen and pre-qualify, utilizing appropriate industry standards, potential principal Trade Contractors for the Work. The Construction Manager shall secure University approval of all Trade Contractors. Such approval shall not be unreasonably withheld.

The Construction Manager shall develop Trade Contractor and vendor interest in the Project, establish bidding schedules, and conduct pre-bid conferences to familiarize bidders with the bidding documents, and management techniques to be employed on the Project and with any special systems, materials or methods to be incorporated in the Project.

3.03.8 Prepare Bidding-Packages

The Construction Manager, with the assistance of the Design Professional, shall prepare bidding packages to facilitate the bidding and awarding of Trade Contracts, subject to the University's approval. In preparing bid packages, the Construction Manager shall take into consideration such factors as cost, time for performance, project schedule, availability of labor and material, scope of Work, University standards for construction and other University requirements and any other pertinent criteria.

3.03.9 Conduct Competitive Trade Contractor Bidding

The Construction Manager shall conduct competitive Trade Contractor bidding in accordance with University criteria and solicit at least three (3) bids from pre-approved Trade Contractors acceptable to the University. If the Construction Manager desires to perform with its own forces in one or more trade Work ("Self-performed Trade Work"), Construction Manager may participate in competitively bidding for such Self-performed Trade Work only with University's prior written authorization providing that the Construction Manager delivers the University the bids for the Self-performed Trade Work twenty-four (24) hours or one full (1) business day before all the other bids for the same Trade Work are due. All other bids shall be received by the University. Where the Construction Manager participates in competitively bidding Self-Performed Trade Work. "Self-performed Trade Work" shall include any work performed by its own forces, or any forces of a "Related Party," as any tier contractor or subcontractor. The term "Related Party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above. No more than Twenty Five Percent (25%) of the value of all Trade Work shall be bid and/or awarded as Self-performed Trade Work. The University maintains the right to waive all bid irregularities and award any trade work to the Construction Manager or to a Subcontractor that in the University's judgment is deemed better qualified and/or suited to perform such Work. The Construction Manager's method for procurement shall be reviewed and approved by the University, and if applicable the Department of Technology, Management and Budget, prior to implementation. The University, at its sole option and request, shall be entitled to participate in the bid openings. Upon receiving bids, the Construction Manager shall prepare a bid analysis, review the responsiveness and responsibility of each bid received, and make recommendations to accept or reject bids. The University shall participate in authorizing all awards, and the Construction Manager shall submit a bid tabulation with each authorization request and indicate the GMP allowance for the subject award. Following the University's approval, the Construction Manager shall award Trade Contracts consistent with all obligations and conditions defined in the Contract Documents.

3.03.10 Purchase of Long Lead Items

The Construction Manager shall, with the University's written approval, purchase long-lead construction items, in compliance with requirements established by the University. Early bidding and awards for Trade Contractors shall be subject to receipt of written authorization from the University and shall be pursued as appropriate to achieve Substantial Completion.

3.04 Construction Phase

3.04.1 Trade Contracts and Purchase Agreements

All portions of the work shall be performed under Trade Contracts, except those items which may be customarily performed by the Construction Manager's self-performing trades subject to University's approval. The Construction Manager shall award Trade Contracts after competitive bidding as required by this Agreement, and after the proposals are reviewed by the Construction Manager, the Design Professional and the University. If the University refuses to accept a Trade Contractor recommended by the Construction Manager, the Construction Manager shall recommend an acceptable substitute. An appropriate adjustment to the GMP may be made only if the price of the approved substitute Trade Contractor is more than the recommended Trade Contractor and exceeds the allowances of the GMP.

The Trade Contracts shall be solely between the Construction Manager and the Trade Contractors. Nothing in any Trade Contract shall establish any contractual relationship between the University and any Trade Contractor. Since the University is an intended third-party beneficiary of all Trade Contracts and subcontracts, purchase orders and other agreements, the Construction Manager shall incorporate the obligations of this Agreement as well as the General Conditions of Construction and Supplementary Conditions into its respective Trade Contracts, subcontracts, supply agreements and purchase orders.

The Construction Manager shall obtain appropriate guarantees and warranties from the Trade Contractors running directly to the University.

3.04.2 Construction Supervision

- a) The Construction Manager shall establish sufficient on-site organization, staffing and support as well as clear lines of authority in order to expeditiously complete the Project in accordance with the Contract Documents, in every aspect, on a totally coordinated basis.
- b) The Construction Manager shall maintain a competent full-time staff at the site to supervise, schedule and coordinate the Work of all Trade Contractors in accordance with the University's objectives including cost, time for completion and quality of the Work. The Construction Manager's Staff shall include the team members identified in the Construction Manager's proposal dated [DATE] (the "Key Team Members").

Construction Manager agrees to assign the above listed Key Team Members to the Project. Construction Manager shall promptly notify the University if services of any one of the listed Key Team Members become unavailable due to circumstances beyond the Construction Manager's control – e.g., extended illness or disability, death, or termination of employment, etc. The University shall have the right to interview and select alternate team member(s) employed by the Construction Manager to replace the unavailable team member. Construction Manager shall agree to provide the services of the alternate team member(s) selected by the University. Construction Manager is not entitled to additional compensation for any such substitution(s) of

the project team members. In addition to any other remedy by the University, the University may require Construction Manager to surrender ten percent (10%) of Construction Manager's Overhead and Profit for each replaced Key Team Member.

- c) The Construction Manager shall conduct preconstruction conferences with Trade Contractors and schedule and conduct regular progress meetings to be attended by all parties in interest to discuss such matters as procedures, progress, job problems, scheduling, changes, and related matters.
- d) The Construction Manager shall take, transcribe and promptly distribute to all parties, including the University, minutes of such progress meetings with the Trade Contractors, weekly job meetings and monthly management meetings.
- e) The Construction Manager shall maintain an on-site daily log of construction progress, problems and items of special interest. The Construction Manager shall provide film and developing for all photographs, videotapes or other means of recording Project status or progress. Such logs, records, photographs and videotapes shall be immediately available to the University upon request.
- f) The Construction Manager shall furnish monthly written progress reports on the Trade Contractors' work in a form acceptable to the University and assist the Design Professional and the University with periodic and final inspections of the Work. At all inspections preceding the final inspection, the Construction Manager shall furnish a detailed report to the University of observed discrepancies, deficiencies, and omissions in the Work performed by any Trade Contractor.
- g) The Construction Manager shall provide and maintain a correct layout of the structures and monitor the Work to verify that all lines and levels are adhered to by the Trade Contractors. The Construction Manager shall immediately report in writing all discrepancies with respect to design details for prompt disposition by the Design Professional.
- h) The Construction Manager shall supervise and direct the Work using the Construction Manager's best skill and attention. The Construction Manager shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures and safety, and for coordinating all portions of the Work under the Contract Documents or that which is reasonably inferable for the completion of the Project.
- i) The Construction Manager shall be responsible to the University for acts and omissions of the Construction Manager's employees, Trade Contractors, Subcontractors and their agents and employees, and other persons performing any portion of the Work under a contract with the Construction Manager.
- j) The Construction Manager shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities of the University, Design Professional, or by

tests, inspections or approvals required or performed by persons other than the Construction Manager, except where such relief is authorized by the Design Professional or the University in writing in accordance with this Agreement.

- k) The Construction Manager shall be responsible for inspection of portions of Work performed or portions of existing facilities being renovated in this Project to determine that such portions are in proper condition to receive subsequent Work. Further, the Construction Manager shall plan for and call for the review of the Work by the University's commissioning agents as required. The Master Project Schedule shall include activities that recognize this coordination responsibility.

3.04.3 Trade Contract Management

The Construction Manager shall maintain at the job site, on a current basis, all Project documents including plans, specifications, shop drawings, samples, submittal, purchase orders, Trade Contracts, material specifications, and any other related documents, and revisions thereto, which arise out of or relate to the Project, this Agreement or the Work. Prior to final payment, copies of all such records will be provided to the University.

The Construction Manager shall be responsible for reviewing, processing and paying applications by Trade Contractors for progress and final payment. The University will compensate the Construction Manager monthly based on the requirements of Article 4.02, Application For Payment. Sworn statements and lien waivers certifying previous payments made to each Trade Contractor, and properly completed Certified Payroll Form WH-347 shall be required with each new requisition for payment. The University reserves the right to require other supporting documentation to evidence prior payments made to Trade Contractors and those under them.

The Construction Manager shall prepare and submit to the University every three months a report of the total M/WBE participation in the Project, together with a projection of M/WBE participation through Final Completion.

3.04.4 Cash Flow Estimates and Cost Control

The Construction Manager shall prepare a Cash Flow Estimate indicating the anticipated schedule of payment application amounts as soon as the Project Budget has been approved and Project requirements have been identified no later than the date the GMP is accepted. The Cash Flow Estimate shall be revised periodically no less frequently than every three months unless significant deviations are expected to reflect actual job conditions or as requested by the University.

The Construction Manager shall use its best skill, judgment, expertise and knowledge of the construction industry to control actual Project costs and shall strictly comply with the GMP. The Construction Manager shall revise and refine the actual Project cost and cash flow estimates, as may be required or requested by the University, while construction proceeds. All recommendations and communications by the Construction Manager to the University relating to issues that will or could

affect the Project cost, or the time of completion of the Project shall be made and confirmed in writing. The University may also require other recommendations and communications by the Construction Manager to be made or confirmed in writing.

The Construction Manager shall review requests for changes with the University, and with the University's approval, obtain quotations from affected Trade Contractors. Bulletins to Trade Contractors shall define the scope of the change and require pricing using either lump sum, time and materials or cost of Work for all items of Work, including overhead and profit as may be defined in the Proposal and this Agreement. Where both additions and deductions are involved, each should be calculated separately. Construction Manager shall be responsible for reviewing the pricing submitted by Trade Contractors for accuracy, completeness, and reasonableness.

3.04.5 Prohibition Against Undisclosed Bidding

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

3.04.6 Minority/Women Business Enterprise Participation - SECTION DELETED

3.04.7 Time of Completion

The Construction Manager understands and acknowledges that time is of the essence in performing and completing the Project. Accordingly, Construction Manager shall comply with the activity and milestone completion dates as defined in the Master Project Schedule as mutually agreed by the Construction Manager, University and Design Professional. The Construction Manager shall provide, prepare and/or participate in developing cost estimates, schedules, design details, submittals, shop drawings, construction schedules, close out documents, or other activities consistent with the conditions of the Contract Documents and as set forth below:

- A. Program Statement: [ENTER COMPLETION DATE]
- B. Schematic Design and Outline Specifications: [ENTER COMPLETION DATE]
- C. Design Development: [ENTER COMPLETION DATE]

- D. Construction Documents [LIST AND ENTER COMPLETION DATES FOR EACH WORKPACKAGE]
1. Bid Pack No. 1:
 2. Bid Pack No. 2:
 3. Bid Pack No. 3:
 4. Bid Pack No. 4:
 5. Bid Pack No. 5:
- E. The GMP: [ENTER COMPLETION DATE]
- F. Substantial Completion: [ENTER COMPLETION DATE]
- G. Punchlist Completion: [ENTER COMPLETION DATE]
- H. Final Completion: [ENTER COMPLETION DATE]

3.04.8 Liquidated Damages and Early Completion Bonus

Should the Construction Manager fail, neglect, or refuse to complete the Work on or before the Substantial Completion date or any proper extension thereof documented in a duly executed written Change Order, then the Construction Manager does hereby agree, as a part of the consideration for the awarding of this contract, to pay the University as liquidated damages, and not as a penalty, the sum of [ENTER DOLLAR VALUE] dollars (\$) per day for each and every calendar day or partial day that the Construction Manager may be in default of Substantial Completion of the Work embraced under this contract.

The University shall be entitled to retain from the Construction Manager those liquidated damages incurred upon the Construction Manager's default of Substantial Completion, as provided above.

Should the Construction Manager achieve and receive certification for Substantial Completion ahead of the Substantial Completion date, then the Construction Manager shall receive an early completion bonus of [ENTER DOLLAR AMOUNT] per calendar day for each day of early completion. Such early completion bonus shall be capped and not exceed [ENTER DOLLAR VALUE] and such payment shall only be from GMP contingency reserves, if any, remaining at final completion.

The Construction Manager further agrees to complete 100% of all punchlist items, documented on the Substantial Completion certificate, within forty-five (45) days of the date of Substantial Completion. The Construction Manager's failure to complete all punchlist items within 45 days of Substantial Completion may, at the University discretion, result in the imposition of liquidated damages and/or nullify any eligibility for early completion bonus.

LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for damages mutually agreed as liquidated damages in paragraph 3.04.8 and claims covered by insurance policies and

programs required in the Contract Documents, the University and Construction Manager agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement. The University agrees to waive consequential and indirect damages for loss of use of the Project, any rental expenses incurred, loss of income, profit or financing related to the Project, as well as the loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, loss of reputation, or insolvency. The Construction Manager agrees to waive consequential and indirect damages including but not limited to loss of business, income, profit, financing, principal office overhead and expenses, and/or loss of profits not related to this Project, loss of or damage to reputation, or insolvency. The provision of this Paragraph shall also apply to the termination of this Agreement and shall survive such termination.

4.00 CONSTRUCTION MANAGER'S COMPENSATION

4.01 Construction Manager's Fee and Compensation

In consideration of the performance of this Agreement, the University shall pay the Construction Manager the Contract Sum in current funds for its services. The Contract Sum is the sum of the Allowable Costs, as set forth in Section 3.03.4.1.1, for the Cost of the Work and Indirect Cost of the Work, plus the Construction Manager's Overhead and Profit as defined in Section 4.01.3.

4.01.1 Preconstruction Services Fees

The Construction Manager shall perform certain preconstruction services as defined in its Proposal dated [ENTER DATE]. As compensation for this service, the University shall pay the Construction Manager the amount of [ENTER DOLLAR AMOUNT]. This amount is to be included in the GMP.

4.01.2 NOT USED

4.01.3 Construction Manager's Overhead and Profit

The University shall compensate the Construction Manager an overhead and profit fee of [ENTER PERCENTAGE AND/OR DOLLAR AMOUNT] for performance of the Work plus Indirect Cost of Work and services under this Agreement. This fee shall address the Construction Manager's costs associated with home office personnel/administration, job accounting, payroll, personnel/human resource, procurement not performed by on-site personnel, the Project Director/Executive and profit margin; all of which are specifically prohibited from being included in the Cost of Work or General Requirements. Unless specifically noted elsewhere in the Contract Documents, this fee shall be applied to the Cost of Work including change orders that result in an adjusted GMP, and including other accepted general requirements, Preconstruction Services, Project Management Services, and the construction contingency, and shall be included in the GMP.

4.01.4 Guaranteed Maximum Price

The Guaranteed Maximum Price (“GMP”) for the Project is maximum value of the Contract Sum and includes the costs for the Construction Manager to provide preconstruction services, project management services, overhead and profit, and the scope of Work associated with this Agreement. The extent any cost under this Agreement exceeds the GMP, as it may be amended from time to time by mutual written agreement of the parties, the Construction Manager shall bear such costs in excess of the GMP without reimbursement or additional compensation from the University.

4.01.5 Change Order Markup Allowances

For scope of work increases that result in change orders increasing the GMP, Trade Contractors, or the Construction Manager if self-performing, shall be entitled to a mark-up of no more than [ENTER PERCENTAGE] on the Cost of Work for the change. This mark-up shall include all overhead, profit, impact, lost productivity due to the change or any other costs relating to the change. The Construction Manager shall be entitled to a marked-up of no more than [ENTER PERCENTAGE] on the Cost of Work for scope of work increases that result in change orders increasing the GMP. All lump sum Change Orders shall include any mark-up. These same mark-up percentages shall be applied to deductive change orders.

4.01.6 Shared Savings Allowance – SECTION DELETED

4.02 Applications for Payment

The Construction Manager shall prepare and deliver to the University an itemized Application for Payment on a monthly basis. The University shall pay the Construction Manager within thirty (30) days of receipt of a properly submitted, complete and correct Application for Payment. The Applications for Payment shall include a Schedule of Values or work breakdown structure detailing every Trade Contractor and material or equipment supplier describing the services included and Work completed in the Application for Payment. No interest shall accrue on any unpaid portion of the Applications for Payment or any other sums that the Construction Manager or any Trade Contractor or supplier claim are or may be due under this Agreement.

The Application for Payment shall constitute a representation by the Construction Manager to the University that the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Construction Manager is entitled to payment. No progress payment, partial use or entire use of the Project by the University shall constitute acceptance of work not in conformity with the Contract Documents.

The Construction Manager shall keep records of cost and expense to support the Construction Manager's Applications for Payment. Records shall be kept on a generally recognized accounting basis, as approved by the University. Such records shall be available to the University for inspection and audit for a period of five years after the Project Close-out and Final Payment to the Construction Manager.

The Application for Payment shall be accompanied by sworn statements and lien waivers executed by Construction Manager and the Trade Contractors, subcontractors and suppliers whose work is included in the Application for Payment, as well as other documentation that may be required by the University, stating that all have been paid in full for Work performed through the last or most recent progress payment.

These requirements are complementary with the requirements of Article 8.00 Payment and Completion of the General Conditions.

4.03 Retainage

Payments to the Construction Manager shall be subject to retainage of ten percent (10%) for total Work completed and stored to-date less the cost of general condition and project management services completed to-date for each Application for Payment. The University and Construction Manager may agree upon (i) a mutually acceptable procedure for review and approval of payments to Subcontractors and (ii) a reduction in the percentage of retainage held on Subcontracts. The University may, in its sole discretion, elect to continue to subject future payments for the Work on the Project, or as applicable, the Work of any particular Subcontractor, to retainage of ten percent (10%) and not release any portion of retained amounts as provided above.

4.04 Final Payment

Issuance of Final Payment shall be conditional on certification of Substantial Completion, certification of Punchlist completion and written acceptance of closeout documents by the Design Professional and University.

5.00 PREVAILING WAGES

The Contractor acknowledges and shall abide by the University's prohibition on use of 1099 independent contractors and owner / operator business entities wherein such individuals or entities are not able to secure and maintain workers compensation insurance. The Contractor shall ensure that all classifications of laborers and construction mechanics performing Work on the Project job site are employees of the Contractor or any Trade Contractor for any tier thereof, and that each worker is covered by workers compensation insurance

5.01

The Construction Manager, Trade Contractors and each subcontractor shall pay to each class of mechanics and laborers not less than the wage and fringe benefit rates prevailing in the Detroit Metropolitan Area, as determined by the Michigan Department of Labor. The Trade Contractor shall post on site, in a conspicuous place, a copy of all applicable wage and benefit rates.

5.02

The Construction Manager, Trade Contractors and each subcontractor shall keep an accurate record showing the name and occupation / classification of and the actual benefits and wages paid to each laborer and mechanic who performed work or service at the project job site in connection with this contract. The Construction Manager, Trade Contractors and each subcontractor shall provide a properly completed certified payroll form WH-347 to the University's with each application for payment request.

5.03

If the Construction Manager, a Trade Contractor or subcontractor fails to pay the applicable prevailing rates of wages and fringe benefits and does not cure such failure within ten (10) days after notice to do so by the University, the University shall have the right, at its option, to do any or all of the following:

5.03.1 Withhold all or any portion of payments due the Trade Contractor as may be considered necessary by the University to pay laborers and mechanics the difference between the rates of wages and fringe benefits required by this Agreement and the actual wage and fringe benefits paid.

5.03.2 Terminate part or all of this Agreement or any subagreement and proceed to complete the Agreement or subagreement by separate agreement with another Trade Contractor or otherwise, in which case the Trade Contractor and its sureties shall be liable to the University for any excess costs incurred by the University.

5.04

The Construction Manager and Trade Contractors shall include terms identical or substantially similar to this section in any Agreement or subagreement pertaining to the project.

6.00 OWNERSHIP OF DOCUMENTS

All drawings and specifications prepared and furnished by the University, the Design Professional and/or the Construction Manager shall become the property of the University. The Construction Manager shall have no claim for further employment or additional compensation as a result of exercise by the University of its full rights to ownership of said documents and materials. The Construction Manager shall not use or copy such documents for any purpose other than this Project.

7.00 CONFIDENTIALITY

7.01 Definition

The term Confidential Information as used herein means all information and data whether of a technical, engineering, operating or economic nature, supplied to or obtained by the Construction Manager during the course of this Agreement, whether in writing, in the form of drawings, orally or by observation.

7.02 Maintenance of Confidential Information

The Construction Manager acknowledges that certain of the University's valuable, confidential, and proprietary information may come into the Construction Manager's possession. Since it is difficult to separate confidential and proprietary information from that which may not be, the Construction Manager shall regard all information that it obtains as a result of services rendered under this Agreement as confidential and proprietary. Accordingly, Construction Manager agrees to hold all information it obtains from or about University in strictest confidence, not to use such information other than for the performance of the services and to cause any of its employees or consultants to whom such information is transmitted to be bound to the same obligation of confidentiality to which Construction Manager is bound. Construction Manager shall not communicate University's information in any form to any third party without the University's prior written consent. The Construction Manager shall use reasonable security practices, including administrative, physical and technical safeguards and shall take all security measures necessary to protect the security and confidentiality of University's confidential information. Such practices shall at a minimum include compliance with University's information systems policies and procedures, and compliance with common practices in the information systems industry. The Construction Manager shall promptly disclose to University, in writing, any improper or unauthorized use, disclosure, access or request for access to Confidential Information. In the event of any violation of this provision, the University shall be entitled to preliminary and permanent injunctive relief as well as an equitable accounting of all profits or benefits arising out of such violation, which remedy shall be in addition to any other remedy or right to which University may be entitled.

7.03 Period of Confidentiality

The obligations of confidentiality stated in this Agreement with respect to confidential information shall survive the termination of this Agreement for any reason whatsoever and shall continue in full force and effect until the earliest of the following should occur: (a) such confidential information has become available to the general public through no fault of the Construction Manager, or (b) such confidential information is received by the Construction Manager from third parties who are in lawful possession of such and who by such disclosures are not breaching any obligation owed to the University, or (c) such confidential information is disclosed by the

Construction Manager under legal compulsion from any governmental/regulatory agency having jurisdiction to request such information; provided, however, that the Construction Manager shall notify the University prior to any such disclosure that confidential information is being disclosed to the governmental/regulatory agency involved.

8.00 SUCCESSORS AND ASSIGNS

This contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that none of the parties hereto shall assign this contract without the prior written consent of the other.

9.00 GOVERNING LAW

This contract shall be governed and construed in accordance with the laws of the State of Michigan.

10.00 NON-DISCRIMINATION

10.01 General

The Construction Manager will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, age, sex, height, weight or marital status. The Construction Manager will ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, national origin, age, sex, height, weight or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

10.02 Solicitation/Advertisements

The Construction Manager will, in all solicitation 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, color, religion, national origin, age, sex, height, weight or marital status.

10.03 Rules/Laws

At the Owner's written request, the Construction Manager will comply with all current published rules, regulations, directives, and orders of the Michigan Civil Rights Commission.

10.04 Reports

Provided the Owner has directed the Construction Manager in writing to obtain a Michigan Civil Rights Commission Certificate of Awardability per section 10.03 above, the Construction Manager

shall furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission; said forms may also elicit information as to the practices, policies, program, and employment statistics of the Construction Manager and of each Trade Contractor. The Construction Manager will permit access to all books, records, and accounts by the Michigan Civil Rights Commission and/or its agents, for purposes of investigation to ascertain compliance with this contract and with rules, regulations, and orders of the Michigan Civil Rights commission.

10.05 Persons with Disabilities

The Construction Manager shall also comply with the provisions of M.C.L. 37.1101, et seq., 1976 PA 220, as amended, concerning the civil rights of disabled persons.

10.06 Contract Provisions

The Construction Manager will include, or incorporate by reference, the provisions of this Article in every Trade Contract, subcontract or purchase order unless exempted by the rules, regulations or orders of the Michigan Civil Rights Commission, and will provide in every Trade Contract, subcontract or purchase order that said provisions will be binding upon each Trade Contractor, subcontractor or seller.

11.00 INCLUSION BY REFERENCE

This Contract hereby includes, by reference, the Guaranteed Maximum Price Proposal (when approved), the General Conditions of Construction and Supplementary General Conditions, the Request for Proposal by University, Construction Manager's Proposal, the plans and specifications and other Project documents. The Construction Manager acknowledges that it has read the Design Professional's agreement, and that while it is not incorporated herein, the Construction Manager will cooperate and coordinate its activities with the Design Professional and University to enable the successful performance of the Design Professional and University. The Construction Manager, however, does not assume any responsibility for any obligation or service of the Design Professional including indemnification arising exclusively from design errors or omissions, as provided in the University's Contract for Professional Design Services.

12.00 COMPLETE AGREEMENT: MODIFICATION

The Contract Documents constitute the entire agreement and contract between the parties. Any modification of these Contract Documents must be in writing and signed by the duly authorized representatives of the parties.

IN WITNESS WHEREOF, each of the parties has caused this contract to be executed by its duly authorized representative on the dates shown beside their respective signatures, with the contract to be effective upon the date set forth above.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____