

UNIVERSITY OF ROCHESTER
STANDARD GENERAL CONDITIONS
FOR THE CONSTRUCTION MANAGER AGREEMENT

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UNIVERSITY OF ROCHESTER
STANDARD GENERAL CONDITIONS
FOR THE CONSTRUCTION MANAGER CONTRACT

ARTICLE 1

CONTRACT DOCUMENTS

1.1 DEFINITIONS

1.1.1 The Contract Documents consist of the Construction Manager Agreement, the Conditions of the Contract (General, Supplementary, Special and Other Conditions), the Drawings, the Specifications, all documents incorporated by reference as set forth in Paragraph 1.1.2 below, and all Addenda issued prior to and all Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a written interpretation issued by the Consultant pursuant to Subparagraph 2.3.7, or (4) a written order for a minor change in the Work issued by the Consultant pursuant to Paragraph 7.4. The Contract Documents do not include Bidding Documents such as the Advertisement or Invitation to Bid, the Instructions to Bidders, sample forms, the Construction Manager's Bid or portions of Addenda relating to any of these, or any other documents, unless specifically enumerated in the Construction Manager Agreement.

1.1.2 DOCUMENTS: The following documents are incorporated by reference into the Standard General Conditions:

1.1.2.1 The latest edition of all applicable Local, State and Federal Codes, including but not limited to the State of New York Uniform Fire Protection and Building Codes, Department of Health, Joint Commission on Accreditation of Healthcare Organizations, Environment of Care, the Occupational Safety and Health Act, etc.

1.1.2.2 The standards of the NFPA, including the National Electrical Code, the Life Safety Code, etc.

1.1.2.3 Where the standards of Underwriter's Laboratories or the Factory Mutual Research Corp. apply, all equipment and materials furnished shall comply with these standards and be so listed and labeled for the specific application.

1.1.2.4 The standards of NEMA, BOCA, ASTM, ANSI, ASME and SMACNA.

1.1.2.5 Current requirements of the latest edition of University of Rochester Special Conditions, Supplementary Conditions, Design Standards, Division 0 & 1 Documents, and Hazardous Waste Management Standards.

1.1.2.6 The applicable provisions of the Standards described in this Paragraph apply in their entirety. Where conflicts exist between provisions of different Standards, the stricter provisions as determined by the Consultant shall apply. Where there is any doubt as to which provision is stricter and should apply, the Construction Manager shall promptly request a decision from the Consultant. Any work performed prior to resolution by the Consultant shall be at the Construction Manager's risk.

1.1.3 THE CONTRACT: The Contract Documents form the Contract for Construction. This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification as defined in Subparagraph 1.1.1. The Contract Documents shall not be construed to create any contractual relationship of any kind between the Consultant and the Construction Manager, but the Consultant shall be entitled to performance of obligations intended for his benefit, and to enforcement thereof. Nothing contained in

the Contract Documents shall create any contractual relationship between the Owner or the Consultant and any Subcontractor or sub-Subcontractor.

1.1.4 THE WORK: The Work comprises the completed or partially completed construction required by the Contract Documents and includes all labor and supervision necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction or required for the construction.

1.1.5 THE PROJECT: The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and may include construction by the Owner or by separate Subcontractors.

1.1.6 THE DRAWINGS: The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

1.1.7 THE SPECIFICATIONS: The 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.

1.1.8 THE PROJECT MANUAL: The Project Manual is the volume usually assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

1.1.9 MISCELLANEOUS DEFINITIONS

1.1.9.1 The terms “furnish” or “furnish all materials,” unless specifically noted otherwise, mean “supply and deliver to the job site all materials and/or equipment so specified.”

1.1.9.2 The terms “install” or “furnish all labor,” unless specifically noted otherwise, mean “perform all operations connected with installation of Work including unloading materials to be installed, supplying all necessary equipment and rigs to do the Work, test, place in operation, and service.”

1.1.9.3 The term “product” as used in these Contract Documents includes materials, systems, and equipment.

1.1.9.4 The term “provide,” unless specifically noted otherwise, means -furnish, install, connect, complete, test, place in operation, and service.”

1.1.9.5 Except as otherwise explicitly provided the words “Approved” or “Approval” shall be interpreted as written approval by the Consultant.

1.1.9.6 The contract time is the period of time allocated in the Contract Documents for completion of Work.

1.1.9.7 The date of commencement of the Work is ordinarily established in a notice to proceed. In the absence of a written notice the date will be the date of execution of the Agreement, or such later date as may be provided therein.

1.1.9.8 Herein the word “shall” indicates that the Construction Manager must perform or provide the services or material referenced, and at no cost additional to that prescribed in the Agreement.

1.1.9.9 The Tenant is the occupant or user of the facility(s) affected by the Agreement. All contacts with the Tenant, except as specifically provided below, shall be through the Project Manager.

1.1.9.10 Wherever the term “Consultant” is used, it shall mean the project professional design Consultant, be it Architect or Engineer

1.1.9.11 “Governmental Authority (Authorities)” shall mean the United States of America, the State of New York, the City of Rochester, County of Monroe, any political subdivision thereof and any agency, department, commission, board, bureau or instrumentality of any of the foregoing, now existing or hereafter created, having jurisdiction over the Project or any portion thereof or the curbs, sidewalks, and immediately adjacent curbs.

1.1.9.12 “Requirements” shall mean all present and future laws, rules, orders, ordinances, regulations, statutes, requirements, codes and executive orders, extraordinary as well as ordinary (including, without limitation, any of same relating to environmental and Hazardous Materials), of all Governmental Authorities, and of any applicable fire rating bureau, or other body exercising similar functions, affecting the Project or the maintenance, use or occupation thereof, or any street, avenue or sidewalk comprising a part of or in front thereof or any vault in or under the same, or requiring removal of any encroachment.

1.1.9.13 The terms “Owner” and the “University” are used interchangeably herein.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The Construction Manager Agreement shall be signed in not less than triplicate by the Owner and Construction Manager. If either the Owner or the Construction Manager or both do not sign the Conditions of the Contract, Drawings, Specifications, or any of the other Contract Documents, the Consultant shall identify such Documents and shall ensure that they are signed by both parties.

1.2.2 By executing the Contract, the Construction Manager represents that he has visited the site, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents. No allowance will be made for claims for concealed conditions which Construction Manager, in exercise of reasonable diligence in its observations of the Site and review of local conditions under which the Work is to be performed, learned or should have learned of, unless otherwise specifically agreed by Owner and Consultant in writing.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.4 The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Construction Manager in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.2.5 In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities, provided, however, that the most stringent condition shall control:

1. Addenda, with those of later date having precedence over those of earlier date;
2. The Agreement;
3. The Supplementary Conditions;
4. The General Conditions of the Contract for Construction;
5. Specifications; and
6. Drawings.

If there is any inconsistency in the Drawings or between the Drawings and the Specifications or between or within any of the Contract Documents, unless otherwise ordered in writing by the Owner, the Construction Manager shall

provide or abide by the better quality of or the greater quantity of, Work, product, or services for the benefit of the Owner.

1.2.6 When reference is made to Specifications of a manufacturer, trade association, governmental agency, reference standard, or similar source (such as ASTM, AISC, ACI, etc.) such is made part of these Contract Documents, having the force and effect as though reproduced herein, and upon entering into the Contract, Construction Manager acknowledges its familiarity with those pertaining to its Work.

1.2.7 Subject to Subparagraph 1.2.5, where a typical or representative detail is shown to constitute the standard of workmanship and materials throughout corresponding portions of the Work, the Construction Manager shall adopt such detail for use in said corresponding portions of the Work in a manner that is satisfactory to the Owner.

1.3 OWNERSHIP AND USE OF DOCUMENTS

1.3.1 Copies of all original Drawings, Specifications and other documents prepared by the Consultant remain the property of the Owner. They are to be used by the Construction Manager only with respect to this project and are not to be used on any other project. The Construction Manager, Subcontractors, sub-Subcontractors, and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Consultant appropriate to and for use in the execution of their work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents originally prepared by the Consultant. Submission or distribution of any such copies to meet official regulatory requirements or for other purposes in connection with this project is not to be construed as publication in derogation of the Consultant's common law copyright or other reserved rights of the Consultant or Owner.

1.3.2 Copies of any and all work product in any medium generated by Construction Manager or any person or entity hired by Construction Manager in conjunction with the Project remain the property of Owner. Such copies are to be used by Construction Manager only with respect to this Project and are not to be used on any other project. Such work product is to be provided to Owner upon request or at the completion of work, whichever occurs first. The Consultant is granted a limited license to use and reproduce applicable portions of the work product as necessary for use in the execution of its work under the Contract Documents. All copies made under this license shall bear any statutorily required copyright notice. Submission or distribution of any such copies to meet official regulatory requirements or for other purposes in connection with this project is not to be construed as publication in derogation of the Consultant's common law copyright or other reserved rights of the Consultant or Owner.

ARTICLE 2

ADMINISTRATION OF THE CONTRACT

2.1 THE CONSULTANT

2.1.1 The Consultant is the appropriate, lawfully licensed design professional, or an entity lawfully practicing architecture or engineering identified as such in the Construction Manager Agreement, with whom the University has a contractual relationship for the performance of the professional consulting services with regard to the Work. The term Consultant shall mean Consultant, his authorized representative, or his Subconsultant.

2.2 THE PROJECT MANAGER

2.2.1 The Project Manager is the person designated by the University as the Owner's representative for the Project. The Project Manager shall serve on the job as the Owner's prime contact with the Construction Manager. Subcontractors and workmen on the Project shall deal through the Construction Manager. This shall in no way limit the responsibility of the Consultant.

2.2.2 The Project Manager acts as the Owner's representative in administering the Contract as indicated in the General Conditions. Unless otherwise specified herein, whenever in the General Conditions there appears a reference to the "Owner", the Project Manager shall have authority to speak for and bind the University. This provision, however, shall not be construed to limit, abridge or dilute the authority of the Consultant as the initial interpreter of the requirements of the Contract Documents.

2.2.3 The Project Manager is authorized to halt the Work at his discretion. His name shall be made known to all persons involved so that he may exercise his authority. No other person representing the Owner may halt work unless obvious danger to life or property is believed to exist. The Construction Manager will not be compensated for time lost due to a properly ordered cessation of work where the cause was a failure to observe the provisions of the Contract Documents including but not limited to the provisions of OSHA and other governmental regulations.

2.2.4 Only the Project Manager may authorize a change in the Construction Manager Agreement.

2.2.5 All requests for payment or for change to the Construction Manager Agreement shall be processed through the Project Manager.

2.3 ADMINISTRATION OF THE CONTRACT

2.3.1 The Consultant will provide administration of the Contract as hereinafter described.

2.3.2 Subject to the overall authority of the Project Manager, the Consultant, in consultation with the Project Manager, shall act as the Owner's representative during construction and until final payment is due to the extent set forth in the Owner-Consultant Agreement and the General Conditions. The Consultant will regularly advise and consult with the Project Manager. The Owner's instructions to the Construction Manager shall be forwarded through the Project Manager, unless otherwise directed by the Project Manager. The Consultant will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

2.3.3 The Consultant shall visit the Project premises at intervals appropriate to the stage of construction as good design practice would require or as otherwise agreed by the Consultant in writing, to become familiar with the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents. However, the Consultant shall not be required to make exhaustive or continuous inspections at the Project premises to check the quality or quantity of the Work. On the basis of such on-site observations as a consultant, the Consultant shall keep the Owner informed of the progress and quality of the Work, and shall guard the Owner against defects and deficiencies in the Work of the Construction Manager. The Consultant will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and he will not be responsible for the Construction Manager's failure to carry out the Work in accordance with the Contract Documents, unless, in either case, the Consultant knows or should have known that the Construction Manager, Subcontractors, suppliers or other persons have failed to perform the Work or to carry out the Contract Documents, in which event the Consultant shall promptly notify and consult with the Owner. The Consultant will be responsible for the acts and omissions of his own agents and employees.

2.3.4 The Consultant and the Project Manager, along with such other Owner personnel as the Project Manager may designate, shall at all times have access to the Work wherever it is in preparation and progress. The Construction Manager shall provide facilities for such access so the Consultant and Project Manager may perform their functions under the Contract Documents.

2.3.5 The Consultant and Construction Manager shall advise and consult with the Project Manager during regularly scheduled construction meetings. The Consultant shall be responsible for the preparation and distribution, within five (5) days, of such meeting minutes, unless otherwise agreed.

2.3.6 Based on the Consultant's observations and an evaluation of the Construction Manager's Applications for Payment and no information concerning failure to pay any Subcontractors or sub-Subcontractors, the Consultant will determine the amounts owing to the Construction Manager and will approve Certificates for Payment in such amounts, as provided in Paragraph 9.4.

2.3.7 The Consultant will be the initial interpreter of the requirements of the Contract Documents and the judge of the performance thereunder by the Construction Manager. Interpretations and decisions of the Consultant will be consistent with the intent of and reasonable inferable from the Contract Documents and will be in writing or in the form of drawings.

2.3.8 The Consultant will render interpretations necessary for the proper execution or progress of the Work, with reasonable promptness and in accordance with any time limit agreed upon. The Consultant shall, however, reject Work if so directed by the Project Manager, where the Project Manager has found the Work to be of unacceptable quality. Either party to the Contract may make written request to the Consultant for interpretations. The actions of the Owner in so doing, shall not affect nor limit the Consultant's obligations hereunder.

2.3.9 The Consultant will have authority after specific approval by the Project Manager to reject Work which does not conform to the Contract Documents. Whenever, in his opinion after consulting with Project Manager, he considers it necessary or advisable for the implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the Work in accordance with Subparagraph 13.7.2 whether or not such Work be then fabricated, installed or completed. However, neither the Consultant's authority to act under this Subparagraph 2.3.8, nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Consultant to the Construction Manager, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

2.3.10 The Consultant will review and approve or take other appropriate action upon Construction Manager's submittals such as Shop Drawings, Product Data and Samples, for conformance with information given and the design concept expressed in the Contract Documents. Such review and approval of a specific item shall not indicate approval of an assembly of which the item is a component, except to the extent required to implement the design concept expressed in the contract documents. Such action shall be taken with reasonable promptness as to cause no delay. The Consultant's action shall be taken within ten working days of receipt of submittals except as individually authorized by the Owner. Review of such submittals is not conducted for the purposes of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems designed by the Construction Manager, all of which remain the responsibility of the Construction Manager to the extent required by the Contract Documents. The Consultant's review shall not relieve the Construction Manager of the obligations under Paragraphs 4.4, 4.6 and 4.13. The Consultant's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Consultant, of any construction means, methods, techniques, sequences, or procedures.

2.3.11 The Consultant will prepare Change Orders in accordance with Article 7 after consultation with the Project Manager.

2.3.12 The Consultant and the Project Manager will conduct inspections to determine the dates of Substantial Completion and Final Completion, will receive and review together written warranties and related documents required by the Contract and assembled by the Construction Manager, and will issue a final Certificate for Payment upon compliance with the requirements of Paragraph 9.9.

2.3.13 If the Owner and Consultant agree, the Consultant will provide one or more Project Representatives to assist the Consultant in carrying out his responsibilities at the site. The duties, responsibilities and limitations of authority of any such Project Representative shall be as set forth in an exhibit to be incorporated in the Contract Documents.

2.3.14 The Consultant's decisions, with agreement from the Project Manager, on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

2.3.15 The duties, responsibilities and limitations of authority of the Consultant as the Owner's representative during construction as set forth in the Contract Documents will not be modified or extended without written consent of the Owner, the Construction Manager and the Consultant.

2.3.16 In case of the termination of the employment of the Consultant, the Owner shall appoint a consultant against whom the Construction Manager makes no reasonable objection whose status under the Contract Documents shall be that of the former Consultant.

ARTICLE 3

OWNER

3.1 DEFINITION

3.1.1 The Owner is The University of Rochester. All references to the "Owner", the "University" or to "The University of Rochester" are equivalent. No persons shall be considered to speak for the Owner except as specifically provided herein. All expenses attendant to the Construction Manager's compliance with improper direction shall be the responsibility of the Construction Manager.

3.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

3.2.1 The Owner shall provide all surveys describing the physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Owner does not warrant the completeness, correctness or accuracy of the above-mentioned surveys. The Owner has employed the services of a registered land surveyor to perform these surveys and has relied solely upon the representations of the surveyor with respect to completeness, correctness and accuracy of the surveys.

3.2.2 Except for permits and fees which are the responsibility of the Construction Manager under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments, and charges required for construction, use or occupancy of permanent changes in existing facilities.

3.2.3 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work.

3.2.4 Unless otherwise provided in the Contract Documents, the Construction Manager will be furnished, free of charge, all copies of Drawings and Project Manuals reasonably necessary for the execution of the Work.

3.2.5 The Project Manager shall forward all instructions to the Construction Manager with simultaneous notification to the Consultant.

3.2.6 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Work by Owner or by Separate Contractors, Payments and Completion, and Insurance in Articles 6, 9 and 11 respectively.

3.3 OWNER'S RIGHT TO STOP THE WORK

3.3.1 If the Construction Manager fails to correct defective Work as required by Paragraph 12.2 or otherwise fails to comply with the Contract Documents or fails to carry out the Work in accordance with the Contract Documents, the Project Manager, by a written order temporarily or permanently as provided below may order the Construction Manager to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work shall not give rise to any duty on the part of the

Owner to exercise this right for the benefit of the Construction Manager or any other person or entity, except to the extent required by Subparagraph 6.1.3.

3.4 OWNER'S RIGHT TO CARRY OUT THE WORK

3.4.1 If the Construction Manager defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within three days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedy he may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Construction Manager the cost of correcting such deficiencies, including compensation for the Consultant's additional services made necessary by such default, neglect or failure. If the payments then or thereafter due the Construction Manager are not sufficient to cover such amount, the Construction Manager shall pay the difference to the Owner.

3.4.2 If there is an immediate need to correct such deficiencies, the Owner may proceed to correct them without notice to the Construction Manager, provided that notice will be furnished by the Owner after the fact in accordance with the notice provisions of this Agreement.

ARTICLE 4

CONSTRUCTION MANAGER

4.1 DEFINITION

4.1.1 The Construction Manager is the person or entity identified as such in the Construction Manager Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Construction Manager means the Construction Manager or his authorized representative.

4.2 REVIEW OF CONTRACT DOCUMENTS

4.2.1 The Construction Manager shall carefully study and compare the Contract Documents and shall at once report to the Consultant and the Project Manager any error, inconsistency or omission he may discover. The Construction Manager shall not be liable to the Owner or the Consultant for any damage resulting from any such errors, inconsistencies or omissions in the Contract Documents unless he knew or should have known of such errors and failed to notify the Consultant and the Project Manager. If the Construction Manager performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Consultant or Owner, the Construction Manager shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

4.2.2 The Construction Manager will verify all dimensions locating the Work and its relation to existing Work, all existing conditions and their relation to the Work, and all man-made obstructions and conditions, etc., affecting the completion and the proper execution of the Work as indicated in the Contract Documents.

4.2.3 During the progress of the Work, if the Construction Manager discovers any discrepancies between the Drawings and the Project Manual, errors or omissions in the Contract Documents, or any discrepancies between physical conditions, existing Work, the site and the Drawings, the Construction Manager shall immediately notify the Project Manager in writing, who will notify the Consultant, who will adjust same. Whether or not an error is believed to exist, deviations from the Drawings, dimensions, or the Project Manual shall be made only after approval in writing is obtained from the Project Manager (in consultation with the Consultant). Any Work performed after such discovery without the approval of the Consultant will be at the Construction Manager's risk and expense.

4.2.4 Whenever Drawings show existing conditions or other construction not required as part of the Work, it is understood that it is so shown as a matter of information and that Owner and Consultant, while

believing such information to be substantially correct, assume no responsibility therefore. The Construction Manager shall make himself familiar with all conditions affecting the nature and manner of conducting the Work.

4.2.5 The Construction Manager shall be familiar with the nominal Contract limits lines. Certain work may extend beyond these nominal limits however, and the Construction Manager shall note where such work is specified or implied.

4.3 EXAMINATION OF THE PREMISES

4.3.1 Before starting work the Construction Manager shall examine all work done under other contracts and other existing work which may have any effect on the satisfactory performance of his Contract and notify the Project Manager in writing, with copy to the Consultant, of any defects or deficiencies. The starting of the Construction Manager's work shall imply acceptance of any such work which may affect the Construction Manager's work.

4.3.2 Before starting work, the Construction Manager shall inspect the site in company with the Consultant and the Project Manager, and they shall jointly note all marks, defects, damage, blemishes, etc. in the project area as found. The Construction Manager shall record the results of this inspection and furnish the Project Manager with a written copy before starting work. Except as so recorded, the Construction Manager shall be responsible for the correction of all items noted in the Consultant's close-out inspection ("punch list").

4.3.3 Before ordering any material or doing any work, the Construction Manager shall verify all measurements and be responsible for the correctness of same. No extra charge or compensation will be allowed for duplicate work or material required because of an unverified difference between an actual dimension and the measurements indicated in the drawings. Any discrepancy found shall be submitted in writing to the Project Manager and Consultant for consideration before proceeding with the work.

4.3.4 Responsibility that new equipment be fabricated accurately to field measurements to properly fit the new construction shall be solely that of the Construction Manager, who shall pay all costs involved in replacing or correcting any fixed equipment improperly fitting as fabricated.

4.3.5 The drawings do not indicate all existing work and/or conditions. All existing work in the path of new Work shall be evaluated and analyzed by the Construction Manager, and any such existing work which may interfere with the Work shall be brought to the attention of the Project Manager and Consultant before proceeding with the Work.

4.3.6 At least 48 hours prior to commencing any excavation the Construction Manager shall request through the Project Manager stakeouts of all existing University owned utilities. The Construction Manager shall also call for stakeouts of all public utilities through the "Buried Cable Information" hotline, 1-800-962-7962 or any other source as necessary. Damage done to any existing utility through excavation, except in acting reasonably on information supplied by the University, shall be the Construction Manager's responsibility.

4.4 SUPERVISION AND CONSTRUCTION PROCEDURES

4.4.1 The Construction Manager shall supervise and direct the Work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures for Work done by his forces, for coordinating all portions of the Work under the Contract and for safety as well as conformity and timeliness of all portions of the Work under the Contract.

4.4.1.1 The Construction Manager shall coordinate through the Project Manager all of his own work with any work performed under other contracts. This shall include coordination of device location, cutting and patching, work schedules, etc. The Construction Manager shall make every effort to minimize disruption and expedite the work through close coordination and cooperation.

4.4.2 The Construction Manager shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the Construction Manager. All expense caused by correction of work improperly performed or the use of improper materials, as well as all expense due to untimely or improperly coordinated work, shall be the responsibility of the Construction Manager.

4.4.3 The Construction Manager shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents by, among other things: (i) the activities or duties of the Consultant in Consultant's administration of the Contract, or (ii) by inspections, tests or approvals required or performed under Paragraph 13.7 by persons other than the Construction Manager, or (iii) Owner's performance from time to time during the course of the Work of quality review inspections of all or any portion of the Work, and/or the issuance of quality review reports as a result of such inspections.

4.4.4 Where equipment lines, piping and conduit are shown diagrammatically, the Construction Manager shall be responsible for the coordination and orderly arrangement of the various lines of exposed piping and conduit included in the Work. He shall coordinate the Work of his Subcontractors and prevent all interferences between equipment, lines of piping, and Architectural features, and avoid any unsightly arrangements in the exposed Work.

4.4.5 The Construction Manager, his employees, Subcontractors, suppliers, representatives, invitees and agents will be subject to such rules and regulations for the conduct of Work as the Owner may establish. The Construction Manager will be responsible for the enforcement among his employees of the Owner's instructions.

4.4.6 Neither the Construction Manager nor any Subcontractor nor any other person employed at the site shall sell, use, permit or suffer intoxicating drink or illegal drugs upon or about the site, nor permit the use of unreasonably loud radios or tape players near occupied areas, nor permit cigarette, cigar and pipe smoking in any existing building or building area under construction.

4.4.6.1 The Construction Manager shall be responsible for harmony among the various craftsmen employed to perform the Work.

4.4.7 The Construction Manager shall provide the on-site services of a competent factory trained Engineer or authorized representative of the particular manufacturer of equipment installed as part of this project, such as for the air conditioning systems, fire alarm system, etc., to inspect, adjust, place in proper operating condition, and train University personnel in the use of any item provided by that manufacturer.

4.4.7.1 The Construction Manager, as applicable, shall commission and set in operating condition all major equipment systems, such as air handling systems, etc., in the presence of the applicable equipment manufacturer's representative(s) and University's representative. In no case will major systems and equipment be commissioned by any of the Subcontractor's or Construction Manager's forces alone, without the assistance or presence of the equipment's manufacturer.

4.4.7.2 The Construction Manager shall prepare and submit to the Consultant and Owner for acceptance, a schedule of anticipated system commissioning. The Construction Manager and University shall commission no system without prior acceptance of the schedule.

4.4.7.3 A written report shall be issued by the particular equipment manufacturer and each Subcontractor summarizing the results of the commissioning and performance of each system for the Construction Manager's records including documentation of baseline settings for all equipment. No additional compensation will be allowed for any Subcontractor for such services.

4.5 LABOR AND MATERIALS

4.5.1 Unless otherwise provided in the Contract Documents, the Construction Manager shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work, and insurance premiums which are the responsibility of Construction Manager hereunder.

4.5.2 The Construction Manager shall at all times enforce strict discipline and good order among his employees and other persons under its direction or control or in the vicinity of, the site in connection with the Work and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him. The Construction Manager shall ensure that federal, state and county of residence criminal background checks are conducted on all persons performing Work at the Site, and shall exclude from the Site any dishonest, dangerous or otherwise unqualified persons. The Construction Manager shall also perform a search of the U.S. Department of Justice National Sex Offender Public Website (or any equivalent successor, if the website is deactivated) for all persons performing Work at the Site and shall exclude from the Site any registered sex offender. The Construction Manager shall comply with all applicable laws, rules and regulations including, but not limited to the Fair Credit Reporting Act and/or any equal opportunity laws, rules, regulations or ordinances. The Construction Manager agrees that it shall make available to the University within one week after the University's request a list of all persons then engaged in performing Work at the Project location together with copies of all background checks for those persons. The Construction Manager shall be responsible to the University for acts and omissions of the Construction Manager's employees and Subcontractors and their respective agents and employees, and any other persons performing portions of the Work. The Construction Manager shall adopt and enforce regulations with respect to safety, fire prevention, smoking, the use of alcoholic beverages, illegal drugs and other controlled substances and other activities that may constitute a danger to life, health or property. At the University's instruction, the Construction Manager shall promptly remove from the Site any employee who, in the University's opinion, represents a threat to the safety or progress of the Project or persons on the Site or who has engaged in any improper conduct, including, but not limited to, conduct which the University perceives as constituting harassment of students or other persons.

4.5.3 Upon execution of the Contract, the Construction Manager will be expected to place firm orders with vendors for needed products. If deemed necessary to assure delivery of product at times needed, the Construction Manager, with approval of the Consultant and the Project Manager, may accept delivery of such product at any time and may include the cost of such product in his next monthly Application for Payment, provided such product has actually been delivered to the Construction Manager and properly stored by him with approval or under the direction of the Consultant and the Project Manager either at the site or in an approved storage shed or warehouse.

4.5.3.1 If stored off-site, the Construction Manager shall furnish proof of title for the Owner for such product, and provide adequate insurance coverage to protect Owner in the event of loss, which coverage is to be approved in advance by Owner,

4.5.3.2 The Construction Manager warrants that he has good title to all product used by him as part of the Work. No product or other supplies shall be purchased by the Construction Manager or any of his Subcontractors that are subject to a chattel mortgage, conditional sale, or other agreement by which an interest is retained by the seller.

4.5.4 The Construction Manager shall cause delivery of all product at such times as will ensure speedy and uninterrupted progress of the Work.

4.5.5 All product will be supplied, installed, connected, used, cleaned and conditioned in accordance with directions of the manufacturer unless otherwise specified herein.

4.5.6 The Construction Manager shall at all times maintain a full work force at the site as appropriate for the stage of the Work.

4.5.7 The Construction Manager shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Construction Manager shall ensure that employees are treated, during employment, without regard to their race, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The Construction Manager shall impose this same requirement on each Subcontractor directly or indirectly in his employ on this project.

4.5.8 The Construction Manager shall prepare and file all reports concerning non-discrimination as may be required under Federal or New York State law.

4.5.9 The Construction Manager shall hold regularly scheduled coordination and safety meetings with Subcontractors.

4.5.10 The Construction Manager, along with the Consultant, shall report project status and discuss any problems at regularly scheduled construction meetings.

4.5.11 In addition to its obligations under Article 11, Construction Manager shall assume all risk of loss and liability with respect to any product or other Work until the Work is finally accepted by Owner or Substantial Completion, whichever is earlier.

4.5.12 Construction Manager warrants to the Owner that the Work as performed by the Construction Manager and its Subcontractors shall comply with all applicable Requirements existing as of the date of this Agreement, including but not limited to any construction requirements promulgated by Governmental Authorities, and specifically including the requirements of the Americans with Disabilities Act provided, however, that this shall not impose design responsibilities upon the Construction Manager. Construction Manager shall verify the identity and employment of all its employees and those of any of its Subcontractors engaged in activities in connection with the Project, whether on or off-site, on or after the effective date of this Contract. The verification must comply with the documentation standards set forth in the Immigration Reform and Control Act of 1986 ("IRCA"), and any implementing regulations. Construction Manager further agrees to complete Immigration and Naturalization Service Form I-9, and to otherwise comply with the requirements of IRCA and its implementing regulations. Construction Manager will make the original Form I-9 available to the Owner within 2 business days of an oral or written request. Construction Manager agrees to indemnify the Owner against any liability or expense incurred by the Owner resulting from any alleged violation of IRCA relating to any individual employed by the Construction Manager or any of its Subcontractors in connection with the Project.

4.6 WARRANTIES AND MAINTENANCE

4.6.1 The Construction Manager warrants to the Owner and the Consultant that all materials and equipment furnished under this Contract will be new and will comply with the Consultant's specifications unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Consultant, the Construction Manager shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Paragraph 12.2.

4.6.2 Except as otherwise provided, all workmanship, material and equipment shall be new and unconditionally guaranteed for one year following the date of Substantial Completion. This guarantee shall include all parts and labor, both on and off-site, together with all necessary transportation and shipping charges. This guarantee shall be extended insofar as manufacturer's standard guarantees exceed those specified.

4.6.3 The Construction Manager (or manufacturer for extended guarantees) shall warrant that the Work or system shall continue to function as intended throughout the guarantee period in conformance with the Drawings and Specifications, and with the provisions of the maintenance and user's manuals. The Construction

Manager shall rectify all deficiencies appearing within the guarantee period and, at his option, repair or replace all defective material as required to accomplish this at no cost to the Owner.

4.6.4 The Construction Manager warrants that all manufacturers' or other warranties on all product furnished by the Construction Manager shall run directly to or be specifically assigned to the Owner.

4.6.5 The Construction Manager warrants that the installation of any and all product shall be in strict accordance with manufacturer's requirements. In the event the Owner seeks to enforce a claim based upon a manufacturer's warranty and should such manufacturer then fail to honor its warranty based, in whole or in part, on a claim of defective installation, the Owner shall be entitled to enforce said warranty against the Construction Manager in accordance with the terms of said warranty, except that a claim of defective installation shall not be a defense to any such warranty claim by the Owner against the Construction Manager.

4.6.6 Owner originated service calls which are demonstrated as not covered by this guarantee will be compensated at the Construction Manager's direct costs for materials and labor plus any agreed allowance for overhead and profit. The Owner will designate persons authorized to request service, and will not compensate the Construction Manager for unauthorized calls.

4.6.7 Components replaced under guarantee shall be turned over to the appropriate Campus Director of Maintenance for his examination. These will be returned to the Construction Manager for disposal.

4.6.8 All required maintenance shall be the Construction Manager's responsibility until the Project Manager has accepted the installation as complete, all required maintenance and user's manuals have been turned over to the Project Manager and the Owner's designated personnel have been instructed in the maintenance and operation of all systems. This maintenance shall include a complete turnover procedure at the time of completion to include complete cleaning, testing and adjustment.

4.6.9 The Construction Manager shall keep records of all maintenance performed as required under Subparagraph 4.6.8, including work performed and times and dates on which it was performed. These records shall be turned over to the Project Manager at close-out.

4.6.10 Maintenance reports shall be filed after each normal or emergency service call as follows: Orally, to a person designated by the appropriate Campus Director of Maintenance, on the spot; or in writing, to a person designated by the appropriate Campus Director of Maintenance, as soon as practicable, and in any case within five days of the call. A report shall be filed for each day on the job site.

4.6.11 The Warranties provided by this Paragraph are not limited by the remedy provisions of Article 12.

4.7 TAXES

4.7.1 The Construction Manager shall be solely liable for, and pay, all contributions, assessments or taxes for unemployment or old age insurance or annuities now or hereafter imposed by any government or governmental entity, as well as all union fees or payments which are measured by wages, salaries or other remuneration paid to persons employed by the Construction Manager or any Subcontractor, or by Work performed under this Contract.

4.7.2 Any sale to the University of materials or services with respect to this project will be exempt from the New York State Sales and Compensating Use Taxes ("Sales Taxes") if an Exempt Organization Certificate (form ST 119.1) is provided to the vendor at the time of the sale. In addition, any sale to the Construction Manager, a Subcontractor or a repairman of project materials that become part of the real property of the University will be exempt from Sales Taxes if a Construction Manager's Exemption Certificate (form ST 120.1) is provided to the vendor at the time of the sale. Construction Manager, each Subcontractor and repairman shall ensure that such forms are provided to vendors at the time of sale of materials or services.

4.7.3 It shall be the responsibility of the purchasing Construction Manager, Subcontractor or repairman to provide the appropriate exemption certificate to the vendor at the time of the sale. It shall also be the responsibility of the purchasing Construction Manager, Subcontractor or repairman to arrange for the negotiation of a sales contract with the University covering the "resale" to the University of specific project materials that will not become a part of the real property of the University. Copies of the University's Exempt Organization Certificate may be obtained from the University's Planning and Project Management division office.

4.8 PERMITS, FEES AND NOTICES

4.8.1 The Construction Manager shall procure and pay for the building permit and cause the procurement and payment of all other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily obtained after execution of the Contract and which are legally required at the time bids are received. The Construction Manager shall ensure that each Subcontractor secures and pays for his own permits and inspections.

4.8.2 The Construction Manager shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any governmental authority bearing on the performance of the Work. When there is an order of any Governmental authority, the Construction Manager shall immediately inform the Consultant and the Project Manager. The Construction Manager shall post all permits at the job site.

4.8.3 The Construction Manager shall review the Contract Documents for compliance with applicable Requirements. If the Construction Manager observes that any of the Contract Documents are at variance therewith in any respect, it shall promptly notify the Consultant and Owner in writing, and any necessary changes shall be accomplished by appropriate Modification and no portion of the Work shall be commenced until the Owner has issued a Construction Change Directive (Form UR 12) or Change Order (Form UR 08), unless the Owner otherwise directs, provided, however, that Construction Manager is required to continue with work not affected by the modification.

4.8.4 If the Construction Manager performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Consultant and the Project Manager, he shall assume full responsibility therefore and shall bear all costs attributable thereto.

4.8.5 The Construction Manager shall at inception of the work provide the Project Manager with copies of all required building and trade permits. Approval of payment applications will be withheld until this requirement is satisfied.

4.8.6 The Construction Manager shall be responsible for arranging all inspections and for securing all required signatures. Upon completion of the work, properly completed permits shall be returned to the Project Manager. The Construction Manager shall obtain and pay for any required Certificate of Occupancy.

4.9 ALLOWANCES

4.9.1 The Construction Manager shall include in the Contract Price all allowances stated in the Contract Documents. Items covered by these allowances shall be supplied for such amounts and by such persons as the Owner may direct, but the Construction Manager will not be required to employ persons against whom he makes a reasonable objection.

4.9.2 Construction Manager and the Owner have worked together to review the allowances and their values based on design information then available to determine that the values constitute reasonable estimates for the allowances. Construction Manager and the Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the allowance values. Nothing herein is intended in any way to constitute a guarantee by Construction Manager that the allowance in question can be performed for the value specified.

4.9.3 No work shall be performed on any allowance item without Construction Manager first obtaining in writing advanced authorization to proceed from the Owner. The Owner agrees that if Construction Manager is not provided written authorization to proceed on an allowance item by the date set forth in the Project schedule, due to no fault of Construction Manager, Construction Manager may be entitled to an adjustment of the Contract Time(s) and Contract Price.

4.9.4 Unless otherwise provided in the Contract Documents:

4.9.4.1 These allowances shall cover the cost to the Construction Manager, less any applicable trade discount, of the materials and equipment required by the allowance delivered at the site, and all applicable taxes;

4.9.4.2 The Construction Manager's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the original allowance shall be included in the Contract Sum and not in the allowance;

4.9.4.3 Whenever the cost is more than or less than the allowance, the Contract Sum shall be adjusted accordingly by Change Order, the amount of which will recognize changes, if any, in handling costs on the site, labor, installation costs, overhead, profit and other expenses.

4.10 SUPERINTENDENT

4.10.1 The Construction Manager shall employ a competent, full-time Superintendent and necessary assistants. The Superintendent shall be in attendance at the Project site during the progress of the Work, whether performed by the Construction Manager's personnel or that of any Subcontractor. The Superintendent shall represent the Construction Manager and all communications given to the Superintendent shall be as binding as if given to the Construction Manager. All communications from the Superintendent to the Project Manager, Consultant or Subcontractors shall be as binding as if given by the Construction Manager. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.

4.10.2 The Construction Manager will not change the Superintendent during the course of the Work without prior notification to and written approval of the Project Manager and Consultant.

4.11 PROGRESS SCHEDULE

4.11.1 Prior to start of work, representatives of the Construction Manager, Subcontractors and Owner shall meet to coordinate the phasing and timing of the Work, in order that completion of the Work by the date specified in the Agreement may be achieved.

4.11.2 The Construction Manager shall prepare and submit to the Project Manager for approval an estimated progress schedule for each Phase of the Work. The progress schedule shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of each Phase of the Work, leading to a reasonable certainty of Substantial Completion by the date established in the Construction Manager Agreement. The Project Manager will review the proposed Schedule and accept it or return it to the Construction Manager for revision and resubmittal.

4.11.3 The Construction Manager will schedule and otherwise perform his Work as required so as not to interrupt or disturb the activities of the Owner or other Construction Managers employed at the site conducted within or about the Owner's buildings and lands adjacent to the site. Included in the foregoing, but not by way of limitation, are noxious or offensive odors; blockage of vehicular or pedestrian traffic by the Construction Manager's personnel, equipment, vehicles, debris or materials; loud noises or playing of radios near occupied areas; and interruption of utilities or services essential to the Owner's activities.

4.11.4 The Construction Manager shall prepare and keep current, for the Consultant's and Owner's approval, a schedule of submittals which is coordinated with the Construction Manager's construction schedule and allows the Consultant reasonable time to review submittals.

4.11.5 All expenses for overtime or premium costs for materials or shipping necessary for adherence to the schedule shall be the responsibility of the Construction Manager, who shall notify the Project Manager immediately of any delays that might affect the project schedule.

4.11.6 Before starting the work the Construction Manager shall hold a job start meeting at which his Superintendent and those of his Subcontractors, the Project Manager, representatives of the project Consultants and of the staff of the University's Planning and Project Management Division (if different) and such other parties as the Project Manager may designate shall be present. This meeting is intended to familiarize all personnel with the other parties to the Project, to review all requests for facilities by the Construction Manager and Subcontractors, to review the University's regulations and requirements, to permit the designers to review and interpret the project documents and for the Construction Manager to detail the project schedule established in the Agreement.

4.12 DOCUMENTS AND SAMPLES AT THE SITE

4.12.1 The Construction Manager shall maintain at the site for the Owner one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be updated daily, and shall be used for no other purpose. At the conclusion of the work these shall be turned over to the Consultant. If these fail to incorporate all such changes, the Construction Manager shall provide the services of a foreman to the Consultant for as long as may be required to determine and incorporate all necessary corrections.

4.13 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

4.13.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Construction Manager or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

4.13.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Construction Manager to illustrate a material, product or system for some portion of the Work.

4.13.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

4.13.4 The Construction Manager shall prepare, review, approve and simultaneously submit to the Consultant, with promptness and in such sequence as to cause no delay in the Work or in the work of the Owner or any separate Contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents.

4.13.4.1 The following general outline of submittals required is not intended to be detailed or comprehensive. Refer to the detailed specifications, drawings and other project documents for specific requirements. Submittals due within 10 working days of notification of selection for award of Contract: (1) Estimated progress schedule, (2) Insurance certificates, (3) Equal opportunity compliance, (4) Schedule of values. Submittals due during progress of the Work: (1) Manufacturer's data sheet and/or Shop Drawings, (2) Operation and maintenance manuals, (3) Guarantees.

4.13.5 Shop Drawings for all equipment or systems specified shall be submitted to the Consultant for approval. No equipment shall be released for manufacture before the Construction Manager has received a Shop Drawing signed as approved by the Consultant.

4.13.5.1 General bulletins or standard catalog sheets will be accepted as Shop Drawings only for standard, catalogued production line equipment, and only where clearly marked to indicate the specific item to be

furnished and all modifications, dimensions and other information as required for installation, coordination or evaluation. Shop Drawings for all custom or semi-custom products shall be scale assembly or fabrication drawings with all materials, dimensions, components, finishes, specifications, etc. clearly detailed.

4.13.5.2 All Shop Drawings shall be clearly identified with the following information: (1) Job Name, (2) The University's Project Number, (3) Construction Manager's Name and Approval, (4) Vendor's Name (if different from Construction Manager's), (5) Specification Division Number.

4.13.5.3 Shop Drawings received without Construction Manager's signed and dated approval for each item will not be accepted. No single sheet should have more than one approval note regardless of the number of items shown.

4.13.5.4 Approval of submitted drawings shall not be construed as authorizing changes in the specified products or as relieving the Construction Manager from performance under the Contract unless explicitly stated in writing. It shall be understood that Shop Drawings are intended solely to demonstrate that the Construction Manager understands the design concept, and that in the event of discrepancies between the approved Shop Drawings and the plans and/or specifications, the requirements of the plans and/or specifications shall rule.

4.13.5.5 One complete set of final approved Shop Drawings, Product Data corrected to respond to all approval notations, shall be included in each maintenance manual prepared for the Owner.

4.13.6 By preparing, approving and submitting Shop Drawings, Product Data and Samples, the Construction Manager represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, or will do so, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work, the Project and the Contract Documents.

4.13.7 The Construction Manager shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Consultant's approval of Shop Drawings, Product Data or Samples under Subparagraph 2.3.9 unless the Construction Manager has specifically informed the Consultant in writing of such deviation at the time of submission and the Consultant has given written approval to the specific deviation. The Construction Manager shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Consultant's approval thereof.

4.13.8 The Construction Manager shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Consultant on previous submittals.

4.13.9 No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the Consultant as provided in Subparagraph 2.3.9. All such portions of the Work shall be in accordance with approved submittals.

4.13.10 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Consultant shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

4.13.11 Within one month of completion of Shop Drawings approval, but in no case later than 10 days before the time of Substantial Completion, one paper set and one electronic set of maintenance manuals shall be turned over to the Project Manager. These sets shall be assembled into three ring binders by the Construction Manager from materials furnished by each trade. With the consent of the Project Manager, materials for all Divisions as specified may be separately bound. Each manual shall include the Shop Drawings specified in Subparagraph 4.13.5.5 above, together with complete parts lists, schematics, service and troubleshooting manuals, etc. as required by the Owner for the complete maintenance of the installation. Detailed assembly, component, schematic and test information are required for all equipment and subassemblies. The manual shall indicate recommended vendors and spare parts. All material shall reflect the as-installed system(s).

4.13.12 For equipment, systems, etc.: within one month of the completion of Shop Drawing approval, but in no case later than 10 days before the time of Substantial Completion of the Work, one paper copy and one electronic copy of a detailed system user's manual shall be turned over to the Project Manager. Each shall include complete instructions for operation of the materials provided, for all permissible user modifications and for routine operator maintenance of the equipment. The instructions shall comprise a fully integrated manual for the entire system. A collation of individual catalog sheets will not be acceptable.

4.13.13 When computer software, including data or operating program(s), is to be provided under the Contract: 10 days before the time of Substantial Completion of the Work, Construction Manager shall provide to the Project Manager three sets of ready-to-run CD's containing the specified software. The size and format of the CD's shall be as indicated in the Supplemental Specifications. Construction Manager shall also provide one paper copy and one electronic copy of a manual containing (1) complete instructions for the use of the software and (2) except where prevented by third party proprietary restrictions, hard copy printout(s) of the data and source code.

4.14 USE OF SITE

4.14.1 The Construction Manager shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and the Project Manager, and shall not unreasonably encumber the site with any materials or equipment. The Construction Manager agrees to store materials and equipment only within the areas designated by the Project Manager and will do so in such a way as not to interfere with or delay ongoing University activities near the site.

4.14.2 Arrangements for parking of the Construction Manager's personnel and delivery vehicles shall be made at the appropriate Parking Office. The Project Manager will designate areas for loading or unloading of materials. Where so indicated, sites within the work area may be occupied indefinitely by marked company delivery vehicles, or for reasonable intervals by other marked delivery vehicles. At all other delivery points delivery vehicles are limited, except by specific prior arrangement through the Project Manager, to 15 minutes occupancy, and only if the vehicle flashers are on. Construction Manager's personnel or agents who are required to visit the site for short, relatively infrequent time periods on business may park in designated Visitor's Lots upon payment of the usual fees. Yearly permits for such use may be obtained from the appropriate Parking Office. Parking is not permitted at metered locations or in visitor areas.

4.14.3 The Project Manager will designate access to the site and will define limits within which the Construction Manager shall control movements of his personnel. The Construction Manager shall ascertain these exact limits prior to starting work, and shall be responsible for all damage resulting in failure to either determine or observe such limits. Except as specifically authorized in writing by the Project Manager, or as specifically indicated in the Contract Documents, all access shall be via existing paved road or other ways. Except as so authorized these ways shall be maintained clean, safe and clear for the continued use of the University Community and the general public. No construction materials, debris or equipment shall be stored or allowed to accumulate on or adjacent to access ways. The Construction Manager is responsible for maintaining site security as more fully described in Paragraph 10.8.2.

4.14.3.1 All disturbance to access ways and related areas or facilities resulting from the Construction Manager's use shall be repaired at the Construction Manager's expense and as approved by the Project Manager.

4.14.3.2 The Construction Manager is required to obtain ID badges from the University, at the prevailing rate, for use by all personnel on site as a method of identification. This shall be coordinated with the Project Manager prior to the commencement of work. All Construction Manager personnel must wear their ID badges visibly when on University property.

4.14.4 On site material storage areas, if available, will be designated by the Project Manager. The availability of adequate, secure interior storage space cannot be guaranteed. Except as otherwise provided, the Construction Manager shall arrange for suitable off-site storage for all bulk storage, or storage of large individual items. The Project Manager shall witness and certify receipt of material stored off site, and shall receive the

Construction Manager's Certificates of Insurance for the stored materials, before invoices for these materials will be approved by the Owner.

4.14.4.1 Security of all materials, tools or equipment wherever stored or installed shall be the responsibility of the Construction Manager, who shall provide such temporary locks, gang boxes, watchmen, etc. as he may deem necessary for the security of his goods, and those of his Subcontractors. All such security arrangements are subject to the advance approval of the Project Manager. Where exterior storage is authorized, the Construction Manager shall be solely responsible for suitable protection of the stored goods. Both location and design of such facilities are subject to the approval of the Project Manager in advance. Such facilities shall be kept clean and orderly at all times. Where the Project Manager deems necessary he may have the area maintained by other forces and backcharge the Construction Manager.

4.14.5 Except as otherwise provided, the Construction Manager shall furnish, erect and maintain all staging and scaffolding required for the work. Staging and scaffolding shall be erected and removed by experienced staging builders and shall have the accident prevention devices required by State, Local and Federal laws. All staging and scaffolding will be stored and erected within a secure, protected area, subject to the general site security requirements set forth in Paragraph 10.8.2.

4.14.6 The Construction Manager shall furnish and maintain all temporary ladders, ramps, runways, chutes, derricks, stairs, hoists, cranes and similar items required for the proper execution of the work of the Contract, including the work of Subcontractors. Any and all of these facilities shall be constructed so as to prevent damage to, including staining or marring of, permanent work. All damage resulting from the use of such facilities shall be repaired by the Construction Manager at his expense.

4.14.6.1 Chutes shall be constructed of non-combustible materials and suitably enclosed throughout their entire length. Each chute shall be angled at least 15° off the vertical to ensure that waste material rides on the bottom. Each chute shall be supported adequately to maintain enclosure and angle during use.

4.14.6.2 Chutes shall discharge into a receiving container (roll-off, dump truck or other) which is sufficiently enclosed to prevent escape of waste material during use. Containers not easily movable shall be located at least 10' from a building wall. All containers used for storage of waste materials during non-working hours shall be closed with non-combustible, tamperproof covers.

4.14.6.3 All chutes shall discharge to the building exterior except as approved in writing by the Project Manager. Installation and location of all chutes shall be approved by the Project Manager in advance of their installation.

4.14.7 The Construction Manager shall receive prior approval of the Project Manager for all use of existing interior access ways, including elevators, stairs, dumbwaiters, etc. During such permitted use the Construction Manager shall fully protect all surfaces and equipment from damage, and shall restore all facilities to at least the quality of as-found conditions at the conclusion of the work. Costs for normal maintenance or electricity will be borne by the University.

4.14.8 Construction Manager shall not permit materials, rubbish or debris to drop free from locations above grade, but shall remove by use of material hoist or rubbish chute.

4.14.9 With the prior approval of the Project Manager, Construction Manager shall provide where required openings in slabs, walls, partitions, etc. for equipment access.

4.15 CUTTING AND PATCHING OF WORK

4.15.1 The Construction Manager shall be responsible for all cutting, fitting or patching that may be required to: (1) complete the Work (2) to make its several parts fit together properly; and (3) to finish after installation of the Owner's equipment. The Construction Manager shall be responsible for all cutting and patching, and shall coordinate the cutting and patching for all trades. Cutting shall be minimized by coordination of the work.

4.15.2 The Construction Manager shall not damage or endanger any portion of the Work or the work of the Owner or any separate Contractor by cutting, patching or otherwise altering any work, or by excavation. The Construction Manager shall not cut or otherwise alter the work of the Owner or any separate Construction Manager except with the written consent of the Project Manager and of such separate Construction Manager. The Construction Manager shall not unreasonably withhold from the Owner or any separate Construction Manager his consent to cutting or otherwise altering the Work.

4.15.3 No opening in any occupied building shall be cut larger than absolutely necessary to accomplish the task at hand. Pipe and conduit penetrations shall be core bored except as otherwise provided. Cutting of structural members is prohibited unless by written permission of the Consultant. If, however, the method of cutting is specifically included in the design and shown on approved drawings, no written permission is necessary. Where field cutting is authorized or directed, the Construction Manager shall provide adequate reinforcement of the weakened area in such form as is approved by the Project Manager.

4.15.4 The Construction Manager shall provide a water and fireproof barrier seal around all barrier penetrations. Such seals shall conform to all applicable State and Local Fire Codes.

4.15.5 The list of materials acceptable to the University for firestopping penetrations, including the sealing of sleeves, is set forth in the Specifications.

4.15.6 Barrier penetrations in an occupied building shall not remain open. Temporary seals (such as gypsum board or ceramic fiber at least as thick as the adjacent barrier, each sealed in place with a noncombustible material) shall be provided at the end of each work day, and permanent seals shall be provided within one week of the permanent installation of the penetrating element.

4.15.7 All work shall be patched except as otherwise explicitly directed. Patching shall include the restoration of all structure or finishes to as-found condition or better. All patch finishes shall match adjacent surfaces to the satisfaction of the Consultant. Replacement materials shall, in the judgment of the Consultant, be the equivalent of those pre-existing.

4.15.8 Patching shall be performed by a tradesman experienced in the material to be patched. Refinishing of surfaces will be inside corner to inside corner, outside corner to outside corner, floor to ceiling or any other reasonable criteria established by the Consultant and the Owner.

4.16 CLEANING UP

4.16.1 The Construction Manager at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations or those of his Subcontractors. In the event the Construction Manager's waste materials interfere with the Owner or the Owner's operations at any time, the Construction Manager shall remove such waste materials and rubbish daily. At the completion of the Work he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, scaffolding, temporary structures, machinery and surplus materials. The Construction Manager shall clean all glass surfaces and leave floors and benches, etc., "wet-mop clean" or its equivalent as determined by the Project Manager, except as otherwise specified. Grounds shall be swept and raked, and all marks due to the project eradicated.

4.16.2 The Construction Manager shall collect and remove from the University all waste material and rubbish resulting from the work of the Contract. University-owned or maintained receptacles or areas shall not be used for these purposes. The Construction Manager may, with the consent of and in location(s) designated by the Project Manager, provide and maintain rubbish containers of appropriate size for his use, but these shall be kept free from noxious or hazardous materials, and shall be maintained in a neat and orderly fashion. All such containers shall be removed from the University at the conclusion of the Work.

4.16.3 If the Construction Manager fails to clean up at the completion of the Work or daily if the Owner commences operations in part of the Project, the Owner may do so as provided in Paragraph 3.4 and the cost thereof shall be charged to the Construction Manager. If the Construction Manager fails to complete cleanup as

required hereunder, the Owner may do so and the cost thereof shall be charged to the Construction Manager without notice as provided in Paragraph 3.4.

4.17 COMMUNICATIONS

4.17.1 The Construction Manager shall forward all communications simultaneously to the Project Manager and the Consultant.

4.18 ROYALTIES AND PATENTS

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

4.19 INDEMNIFICATION

4.19.1 To the fullest extent permitted by law (including the General Obligations Law of New York), Construction Manager shall defend, indemnify and hold harmless Owner and any entity directly or indirectly owned or controlled by Owner, and their respective trustees, directors, officers, employees, agents, volunteers and consultants (collectively, the "Indemnitees" and each, individually, an "Indemnitee") from and against all liabilities, claims, damages, losses, and expenses, including incidental and consequential damages and including but not limited to attorneys' fees (whether incurred as the result of a third party claim or a claim by an indemnitee hereunder), arising out of or resulting directly or indirectly from Construction Manager's performance or failure to perform the Work or this Agreement to the extent that any such liability, claim, damage, loss or expense (1) is attributable to bodily injury (including "grave injury" as defined in the Workers' Compensation Law), sickness, disease, or death, or to economic injury or destruction of property (in addition to the Project) including the loss of use resulting from such economic injury or destruction, and (2) is caused by or arises from, in whole or in part, any act, error, omission or willful misconduct of Construction Manager, any Subcontractor, any sub-Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts or omissions any of them may be liable except to the extent it is caused by the negligence of a person indemnified hereunder and indemnification of such person is precluded by statute.

4.19.2 In any and all claims against any Indemnitee by any employee of the Construction Manager, any Subcontractor, any sub-Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 4.19 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 or any Subcontractor under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.

4.19.3 The obligations of the Construction Manager under this Paragraph 4.19 shall not extend to the liability of the Consultant, his agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Consultant, his agents or employees provided such giving or failure to give is the primary cause of the injury or damage.

4.19.4 The Construction Manager represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents) which representations and warranties shall survive the execution and delivery of the Construction Manager Agreement and the final completion of the Work:

(a) that it is financially solvent, able to pay its debts as they mature and possesses sufficient working capital to complete the Work and perform its obligations under the Contract Documents;

(b) that it is able to furnish the tools, materials, supplies, equipment, supervision and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

(c) that it is authorized to do business in the State of New York and properly licensed by all necessary governmental, public and quasi-public authorities having jurisdiction over, it the Work and the site of the Project;

(d) that its execution of the Construction Manager Agreement and its performance thereof is within its duly authorized power; and

(e) that its duly authorized representative has visited the site of the Work, familiarized himself generally with the local conditions under which the Work is to be performed and correlated his observations with the requirements of the Contract Documents.”

4.20 PROJECT CLOSE-OUT

4.20.1 A portion of the contract amount (retainage), as specified in the Agreement, will be retained until the Owner determines by inspection that all provisions of the project documents have been fulfilled and the Project Manager certifies that all other provisions of the Agreement have been fulfilled.

4.20.2 Prior to release of this retainage, the Construction Manager shall have completed all punch list items to the satisfaction of the Consultant, provided all required documentation, performed all required tests, conducted all required demonstrations and instructional sessions and otherwise have completed the Work to the satisfaction of the Owner, and all certifications required by the governmental authorities having jurisdiction shall have been obtained.

4.20.3 The Construction Manager shall, with the Consultant and the University’s maintenance personnel, check out utilities, operational systems and equipment for readiness and assist in their initial start-up and testing. The Construction Manager shall deliver all maintenance manuals to the University, no later than (1) week prior to initial startup and testing and deliver all keys, record drawings and maintenance stocks to the University no later than one (1) week prior to occupancy by the University.

4.20.4 The Owner may further require at his discretion, before releasing the retainage, a job turnover meeting which shall be attended by such representative of the Construction Manager, his Subcontractors and suppliers as the Project Manager may designate, together with such persons as the Project Manager may invite. This meeting is intended to provide a final general review of the project by all interested parties, and an opportunity for the Owner’s personnel to become familiar with the design and prospective maintenance of the Work. The Construction Manager, Subcontractors and suppliers shall exhibit, demonstrate and explain all installations and systems as may be required.

4.21 FACILITIES AND SERVICES

4.21.1 The Project Manager may, upon request, designate specific existing University sanitary facilities for the use of the Construction Manager and Subcontractors. The University will require the use of such facilities where the work is primarily interior to an existing structure which will have operational sanitary facilities throughout the project.

4.21.1.1 Where the work is primarily exterior to existing structures, or where existing sanitary facilities will not be continuously available throughout the project, or where required by the Project Manager, the Construction Manager shall provide portable sanitary facilities in quantities adequate for the use of its employees and those of its Subcontractors. Siting and number of these facilities shall be approved in advance by the Project Manager.

4.21.1.2 The Construction Manager shall keep all sanitary facilities used by its employees and those of its Subcontractors clean and sanitary at all times. The Construction Manager shall remove and dispose of all waste.

4.21.2 The Project Manager will, upon request, designate a specific source of water. No other location on the Owner's property may be used.

4.22 ALTERNATES AND SUBSTITUTIONS

4.22.1 Neither alternate methods of construction nor substitution of materials for those specified will be allowed unless approved by the Consultant in advance and in writing. Proposals for such changes shall take the form of a Change Proposal, and shall detail the benefits to the Owner, such as reduced cost. Delays due to the failure to order materials in a timely manner will not be accepted as a reason for substitution, but the Construction Manager shall be responsible for all special charges for shipping, overtime, expedited manufacture and the like as required to obtain the specified product.

ARTICLE 5

SUBCONTRACTORS

5.1 DEFINITION

5.1.1 A Subcontractor is a person or entity who has a direct contract with the Construction Manager to perform any of the Work at the site. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representative. The term Subcontractor does not include any separate Contractor or his Subcontractors.

5.1.2 A sub-Subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the Work at the site. The Term sub-Subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a sub-Subcontractor or an authorized representative thereof.

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

5.2.1 Unless otherwise required by the Contract Documents or the Bidding Documents, the Construction Manager, as soon as practicable after the award of the Contract, shall furnish to the Project Manager and the Consultant in writing the names of the persons or entities proposed to act as Subcontractors or sub-Subcontractors or to furnish materials or equipment fabricated to a special design for each of the principal portions of the Work.

5.2.2 Any Subcontractor or sub-Subcontractor whose subcontract provides for or is expected to provide for the payment of \$10,000 or more shall be approved in advance pursuant to the Owner's qualification process. Owner shall provide Construction Manager upon request with a current list of the Subcontractors who are then currently approved pursuant to Owner's qualification process.

5.2.3 For any Subcontractor or sub-Subcontractors proposed by Construction Manager whose subcontracts do not exceed \$10,000, the Consultant will promptly reply to the Construction Manager in writing stating whether or not the Owner or the Consultant, after due investigation, has reasonable objection to any such proposed person or entity acting as a Subcontractor or sub-Subcontractor for the Work. Failure of the Owner or Consultant to reply promptly shall constitute notice of no reasonable objection.

5.2.4 The Construction Manager shall not subcontract, or permit its Subcontractors to subcontract, in the case of subcontracts described in Subparagraph 5.2.2, with any person or entity which has not been approved pursuant to Owner's qualification process, or in the case of Subcontractors described in

Subparagraph 5.2.3, with any such proposed person or entity to whom the Owner or the Consultant has made objection under the provisions of Subparagraph 5.2.3. The Construction Manager shall not be required to contract with anyone to whom it has a reasonable objection.

5.2.5 If the Owner or the Consultant has reasonable objection to any such proposed person or entity, the Construction Manager shall submit a substitute to whom the Owner or the Consultant has no objection. If the Owner or the Consultant refuses to accept any such person or organization because he is clearly inept or financially unsound, no increase in the Contract Sum shall be made and an appropriate substitution shall be made by Construction Manager at his own expense. However, no increase in the Contract Sum shall be allowed for any such substitution unless the Construction Manager has acted promptly, responsibly and responsively in submitting names as required by Subparagraph 5.2.1.

5.2.6 The Construction Manager shall make no substitution for any Subcontractor, person, or entity previously selected if the Owner or the Consultant makes objection to such substitution, provided that any acceptance by the Owner and the Consultant shall not be construed to extend the time for completion of the Work unless so provided in writing.

5.3 SUBCONTRACTUAL RELATIONS

5.3.1 By an appropriate written agreement, the Construction Manager shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Construction Manager by the terms of the Contract Documents, and to assume toward the Construction Manager all the obligations and responsibilities which the Construction Manager, by these Documents, assumes toward the Owner and the Consultant. Said agreement shall preserve and protect the rights of the Owner and the Consultant under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the Construction Manager-Subcontractor agreement, the benefit of all rights, remedies and redress against the Construction Manager that the Construction Manager, by these Documents, has against the Owner. Where appropriate, the Construction Manager shall require each Subcontractor to enter into similar agreements with his sub-Subcontractors. The Construction Manager shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph 5.3, and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to his sub-Subcontractors.

5.3.2 Within thirty days after receipt of payment from the Owner, the Construction Manager shall pay each Subcontractor. Construction Manager shall pay Subcontractors an amount equal to the percentage of completion allowed to the Construction Manager on account of such Subcontractors' work, less the percentage retained from payments to the Construction Manager. Construction Manager shall also require each Subcontractor to make payments to its sub-Subcontractors on no less favorable terms. Notwithstanding any other provision of the Contract Documents, however, Owner shall not be required to pay Construction Manager any amount for any Subcontractor to the extent such Subcontractor has not delivered the lien waiver (in form and substance satisfactory to Owner) applicable to the previous month's payment or to the extent Construction Manager is withholding payment for such Subcontractor. Upon removal of such impediments, Owner shall promptly pay Construction Manager the amount that would have otherwise been paid if such impediment had not existed."

5.3.3 Construction Manager shall direct and supervise each of its Subcontractors fully and shall have full and complete authority with respect to such direction and supervision subject to the terms of the Contract Documents. Construction Manager shall be responsible and liable to Owner for all acts or omissions of its Subcontractors and their agents and employees, and any other person performing any of the Work under an agreement with the Construction Manager.

5.3.4 In the event the Construction Manager fails to discharge or bond any lien placed upon the Work, the Premises or the Building within ten (10) days of filing, the Owner may pay such Subcontractor directly, less the amount to be retained under its Subcontract. Any amount so paid by the Owner shall be credited against

amounts due Construction Manager or repaid by the Construction Manager in the manner set forth in Paragraph 2.4 if insufficient credit exists.

ARTICLE 6

WORK BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to perform work related to the Project with his own forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or similar Conditions of the Contract. The Construction Manager will not claim that delay or additional cost is involved because of such action by the Owner unless the action by the Owner or the Owner's Contractors is negligent in timeliness of performance. During the progress of the Work it will be necessary for other Contractors to work in or about the Project. The Construction Manager is responsible for overall interface, coordination and harmony among the Contractors and their respective crafts at the site of the Work and shall have the authority of the Owner to effect coordination among the Contractors at the site of the Work. No such authority shall be exercised by the Construction Manager which will require the Owner to incur any additional expense or cost in connection with such interface and coordination, without the prior written consent of Owner. The Construction Manager shall so arrange and schedule the Work such that all Contractors are able to complete their work on a timely basis.

6.1.2 When separate contracts are awarded for different portions of the Project or other work on the site, the term Construction Manager in the Contract Documents in each case shall mean the Construction Manager who executes each separate Owner-Construction Manager Agreement.

6.1.3 The Owner will provide for the coordination of the work of his own forces with the Work of the Construction Manager, who shall cooperate therewith as provided in Paragraph 6.2.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Construction Manager shall afford the Owner and separate Contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate his Work with theirs as required by the Contract Documents.

6.2.2 If any part of the Construction Manager's Work depends for proper execution or results upon the work of the Owner or any separate Contractor, the Construction Manager shall, prior to proceeding with the Work, promptly report to the Project Manager and the Consultant any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Construction Manager to so report shall constitute an acceptance of the Owner's or separate Contractor's work as fit and proper to receive his Work, except as to defects which may subsequently become apparent in such work by others.

6.2.3 Any costs caused by defective or ill-timed work shall be borne by the party responsible therefore.

6.2.4 Should the Construction Manager wrongfully cause damage to the work or property of the Owner, or to other work on the site, the Construction Manager shall promptly remedy such damage as provided in Subparagraph 10.2.5.

6.2.5 Should the Construction Manager wrongfully cause damage to the work or property of any separate Contractor, the Construction Manager shall upon due notice promptly attempt to settle with such other Contractor by agreement, or otherwise to resolve the dispute. If such separate Contractor sues or initiates any legal proceeding against the Owner on account of any delay or damage alleged to have been caused by the Construction Manager, the Owner shall notify the Construction Manager who shall defend such proceedings at the Construction Manager's expense, and if any judgment or award against the Owner arises therefrom the Construction Manager

shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court costs which the Owner has incurred, if any.

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises between the Construction Manager and separate Contractor as to their responsibility for cleaning up as required by Paragraph 4.16, the Owner may clean up and charge the cost thereof to the Construction Managers responsible therefore as the Project Manager and the Consultant shall determine to be just.

ARTICLE 7

CHANGES IN THE WORK

7.1 CHANGE ORDERS

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

7.1.2 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and the Contract Time being adjusted accordingly except as otherwise provided in the Construction Manager Agreement. The Construction Manager shall advise the Owner of the additional cost and the extension of Contract Time required by all changes and no change in the general scope of the Contract or major Change Order shall be made without the Owner's advance approval. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents.

7.1.2.1 Changes to the Agreement may be initiated by the Construction Manager in the form of a Change Proposal or by the Owner in the form of a Request for Change Proposal, to which the Construction Manager shall respond with an appropriate Change Proposal.

7.1.2.2 All Change Proposals shall be in duplicate and numbered consecutively. A Change Proposal number shall not be duplicated, whether or not the Proposal is accepted. Where applicable, a Change Proposal shall clearly reference the associated Request for Proposal.

7.1.2.3 A Change Proposal shall not be revised by reason of a change in the substance of the described work but rather a new Change Proposal shall be issued under a new number.

7.1.2.4 Each Change Proposal shall be submitted on Owner's Change Proposal Form (Form URC 01), and shall be accompanied by appropriate backup sheets (Forms URC 2 – 6), which shall be fully completed.

7.1.2.5 Change Proposals do not become part of the Agreement until and unless returned by the Project Manager in the form of a Change Order, and this is executed by the Project Manager, the Consultant and the Construction Manager.

7.1.3 Pricing of Construction Contract Change Orders and Calculation of Reimbursable Personnel Costs.

7.1.3.1 Construction Manager agrees that it will incorporate the provisions of these articles into all agreements with lower tier Subcontractors, etc. It is further understood that these Change Order pricing provisions will apply to all types of contracts and or subcontracts including but not limited to lump sum contracts,

unit price contracts, and cost plus contract. Whenever Change Order proposals to adjust the contract price become necessary, the Owner will have the right to select the method of pricing to be used by the Construction Manager. The options will be 1) lump sum Change Order proposal, 2) unit price Change Order proposal, or 3) cost plus Change Order proposal as defined in the following provisions.

7.1.3.2 Lump Sum Change Order proposals - The Construction Manager shall submit a properly itemized Lump Sum Change Order Proposal covering the additional work and/or the work to be deleted. This proposal will be itemized for the various components of the work and segregated by labor, material, and equipment in a detailed format satisfactory to the Owner. The Owner will require itemized detail on all Change Order proposals from the Construction Manager, Subcontractors and sub-Subcontractors regardless of tier. Details to be submitted will include line item estimates showing material and labor quantity take-offs, material prices by item and related labor hour pricing information and extensions (by line item and by drawing as applicable).

7.1.3.3 Labor - Estimated labor costs to be included for self performed work shall be based on the actual cost per hour paid by the Construction Manager for those workers or crews of workers who the Construction Manager reasonably anticipates will perform the Change Order work. Estimated labor hours shall include hours only for those workmen and working foremen directly involved in performing the Change Order work. Supervision above the level of working foremen (such as general foremen, superintendent, project manager, etc.) is considered to be included in the agreed upon Markup Percentages as outlined in articles 7.1.3.7 and 7.1.3.8.

7.1.3.4 Labor Burden - Labor burden allowable in Change Orders and in calculating reimbursable personnel costs shall be defined as employers net actual cost of payroll taxes (FICA, Medicare, SUTA, FUTA), net actual cost for employer's cost of union benefits (or other usual and customary fringe benefits if the employees are not union employees), and net actual cost to employer for worker's compensation insurance taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self insured losses, assigned risk rebates etc. Construction Managers shall reduce their standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the annual maximum wage limitations payroll taxes are subject to. The hourly rate for a particular employee shall be calculated by dividing the employee's fully loaded annual salary (with labor burden calculated as set forth above) by 1,928, to yield an effective hourly rate for the employee.

7.1.3.5 Material - Estimated material Change Order costs shall reflect the Construction Manager's reasonably anticipated net actual cost for the purchase of the material needed for the Change Order work. Estimated material costs shall reflect cost reductions available to the Construction Manager due to trade discounts, free material credits, and/or volume rebates. Cash discounts on material purchased for Change Order work shall be credited to Owner if the Construction Manager is provided Owner funds in time for Construction Manager to take advantage of any such cash discounts. Price quotations from material suppliers must be itemized by each specific item to be purchased. "Lot pricing" quotations will not be considered sufficient substantiating detail.

7.1.3.6 Equipment - Allowable Change Order estimated costs may include appropriate amounts for rental of major equipment specifically needed to perform the Change Order work (defined as tools and equipment with an individual purchase cost of more than \$750). Further, for Construction Manager owned equipment, the aggregate equipment rent charges for any single piece of equipment used in any Change Order work shall be limited to 50% of the fair market value of the piece of equipment when the first Change Order is priced involving usage of the piece of equipment. Fuel necessary to operate the equipment will be considered as a separate direct cost associated with the Change Order work.

7.1.3.7 Maximum Markup Percentage Allowable on Self Performed Work - With respect to pricing Change Orders involving work performed by a Construction Manager or Subcontractor with their own forces, a single maximum Markup Percentage Fee shall be allowed to the Construction Manager or Subcontractor regardless of tier to compensate them for all overhead (indirect costs) and profit. Such Markup Percentage Fee shall be as follows: 15% of the net Change Order direct cost for self-performed work.

In the event that changes require deletions of work, no markup percentage fees shall be added to the credit and such credit shall be based on the net Change Order cost. Whenever changes include both additions and deletions in the work, the markup percentage fee shall be figured on the basis of the net increase, if any.

7.1.3.8 Maximum Markup Percentage Allowable on Work Performed by sub-Subcontractor - With respect to pricing Change Orders involving work performed by sub-Subcontractors, the maximum Markup Percentage Fee allowable to the Construction Manager or Subcontractor supervising the sub-Subcontractor's work shall be as follows: 5% of the work performed by the sub-Subcontractor. No markups shall be permitted beyond two tiers of Subcontractors.

7.1.3.9 Maximum Markup Percentage Allowable on Work Performed by a Construction Manager's Supplier - With respect to materials supplied to a Construction Manager or Subcontractor whose vendor is installing the material, the maximum Markup Percentage Fee allowable to the Construction Manager or Subcontractor shall be 5% of the work performed by the supplying vendor: No markups shall be permitted beyond two tiers of suppliers.

7.1.3.10 Indirect Costs (Overhead) - As a further clarification, the agreed upon Markup Percentage Fee is intended to cover the Contractor's profit and all indirect costs (overhead) associated with the Change Order work. Items intended to be covered by the Markup Percentage Fee include, but are not limited to: home office expenses, branch office and field office overhead expense of any kind; project management; superintendents; general foremen; estimating; engineering; coordination; expediting; purchasing; detailing; legal; accounting; data processing or other administrative expenses; Shop Drawings; permits; auto and umbrella insurance; pickup truck costs; warranty as outlined in 4.6. The cost for the use of small tools is also considered to be covered by the Markup Percentage Fee. Small tools shall be defined as tools and equipment (power or non-power) with an individual purchase cost of less than \$750.

7.1.3.11 Unit Price Change Order Proposals - As an alternative to Lump Sum Change Order Proposals, the Owner may choose the option to use Contract Unit Prices. The Construction Manager will submit within seven (7) days after the receipt of the Owner's written request for the a Unit Price Proposal, a written Unit Price Proposal itemizing the quantities of each item of work for which there is an applicable Contract Unit Price. The quantities must be itemized in relation to each specific contract drawing.

7.1.3.12 Unit Prices - Contract Unit Prices will be applied to net differences of quantities of the same item. Such Contract Unit Prices will be considered to cover all direct and indirect costs of furnishing and installing the item including the Subcontractor's Markup Percentage Fee.

7.1.3.13 Cost Plus Change Order Proposals - As an alternative to either Lump Sum Change Order Proposals or Unit Price Change Order Proposals, the Owner may elect to have any extra work performed on a cost plus markup percentage fee basis. Upon written notice to proceed, the Construction Manager shall perform such authorized extra work at actual cost for direct labor, actual cost of labor burden, actual cost of material used to perform the extra work, and the actual cost of rental of major equipment (without any charge for administration, clerical expense, general supervision or superintendent of any nature whatsoever, including general foremen, or the cost of rental of small tools, minor equipment or plant) plus the approved mark up percentage fee. The intent of this clause is to define allowable cost plus chargeable costs to be the same as those allowable when pricing Lump Sum Change Proposals as outlined in articles 7.1.3.2 through 7.1.3.12 above. Owner and Construction Manager may agree in advance in writing on a maximum price for this work and Owner shall not be liable for any charges in excess of the maximum. Daily time sheets with names of all Construction Manager's employees working on the project will be required to be submitted to the owner for both labor and equipment used by the Construction Manager for time periods during which extra work is performed on a cost plus fee basis. Daily time sheets will break down the paid hours worked by the Construction Manager's employees showing both base contract work as well as extra work performed by the each employee.

7.1.3.14 Accurate Change Order Pricing Information - The Construction Manager, Subcontractors and lower tier sub-Subcontractor agree that they are responsible for submitting accurate cost and pricing data to support its Lump Sum Change and/or Cost Plus Change Order Proposals or other contract price adjustments under

the contract. Construction Manager and all other Subcontractors further agree to certify that the Change Order cost and pricing data submitted is accurate, complete, current and in accordance with the terms of the contract with respect to pricing of change order Change Orders.

7.1.3.15 Right to Verify Change Order Pricing Information - Construction Manager, Subcontractors, and lower tier sub-Subcontractors agree that any designated Owner's representative will have the right to examine the Construction Manager's records to verify the accuracy and the appropriateness of the pricing data used to price Change Order Proposals. Even after the Change Order Proposal has been approved, the Construction Manager and all lower tier Subcontractors agree that an appropriate contract price adjustment will be made, if it is later determined that the Change Order cost and pricing data submitted was inaccurate, incomplete, not current or not in compliance with these provisions.

7.1.3.16 Requirements for Detailed Change Order Pricing Information - Construction Manager agrees to provide and require all Subcontractors and lower tier sub-Subcontractors to provide a breakdown of allowable labor and labor burden cost information. This information will be used to evaluate the potential cost of labor and labor burden related to Change Order work. It is intended that this information represent an accurate estimate of the Construction Manager's actual labor and labor burden cost components and will be subject to verification of the underlying cost components. The Owner may elect to negotiate such labor rates, based upon the information submitted, with the understanding that such rates will become fixed and agreed upon for the purpose of pricing Change Order work. This information is not intended to establish fixed billing or Change Order pricing labor rates. However, at the time Change Orders are priced, the submitted cost data for labor rates may be used to price Change Order work. The accuracy of any such agreed upon labor cost components used to price Change Order s will be subject to later audit. Approved Change Order amounts may be adjusted later to correct the impact of inaccurate labor cost components if the agreed upon labor cost components are determined to be inaccurate.

7.1.4 Overhead and profit shall not be calculated on credits. The amount of credit to be allowed for a deletion or change which results in a net decrease in the Contract Sum shall be the actual net cost. When both additions and credits covering related work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any.

7.1.5 Unit prices subsequently agreed upon shall be attached to the Agreement as Exhibit "A" upon the award of bids. If the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or the Construction Manager, the applicable unit prices shall be equitably adjusted.

7.1.6 If any product previously required is omitted by written order of the Owner after it has been delivered to or partially worked on by the Construction Manager and consequently will not retain its full value for other uses, the Construction Manager shall be allowed its actual cost of such omitted product, less the fair market value of such product, as determined by the Consultant.

7.1.7 Cost shall not be allowed in excess of usual rental charges in the Rochester area for similar equipment of like size and condition, including costs of necessary supplies and repairs for operating equipment on site in connection with other Work unless its use directly causes actual and additional costs to the Construction Manager. If equipment not on site is required for a change in Work only, the cost of transporting equipment to and from the site will be allowed.

7.1.8 Authorized overtime work shall be reimbursed only for the difference between regular time and overtime for direct payroll cost and the related payroll taxes, insurances, and benefits, and Construction Manager shall not be entitled to any additional compensation for overhead or profit for inefficiencies or decline in productivity.

7.2 CONCEALED CONDITIONS

7.2.1 If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical

conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 7 days after first observance of the conditions. The Consultant will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Construction Manager's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Consultant determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Consultant shall so notify the Owner and Construction Manager in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 7 days after the Consultant has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Construction Manager cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Consultant for initial determination, subject to further proceedings pursuant to Paragraphs 7.3 or 8.3, as the case may be.

7.3 CLAIMS FOR ADDITIONAL COST

7.3.1 If the Construction Manager wishes to make a claim for an increase in the Contract Sum, he shall simultaneously give the Consultant and the Project Manager written notice thereof, using Owner's Form UR 13, within seven days after the occurrence of the event giving rise to such claim. This notice shall be given by the Construction Manager before proceeding to execute the Work, except in an emergency endangering life or property in which case the Construction Manager shall proceed in accordance with Paragraph 10.3. No such claim shall be valid unless so made. If the Owner and the Construction Manager cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined in the first instance by the Consultant in accordance with the provisions of Paragraph 7.1.3. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.

7.3.2 If the Construction Manager claims that additional cost is involved because of, but not limited to, (1) any written interpretation pursuant to Subparagraph 2.3.7, (2) any order by the Owner to stop the Work pursuant to Paragraph 3.3 where the Construction Manager was not at fault, or (3) failure of payment by the Owner pursuant to Paragraph 9.7, the Construction Manager shall make such claim as provided in Subparagraph 7.3.1.

7.3.3 All written claims for damage or extra Work shall include time of occurrence, location, and other identifying factors and shall be supported by letters, journals or diaries, instructions, vouchers, signed time and material slips or other pertinent and applicable records.

7.3.4 Owner shall not be liable to Construction Manager or his Subcontractors for damages caused by any breach of contract, delay in performance or other act of neglect by any other Contractor or Subcontractor having contracts for performance of any portion of Project.

7.4 MINOR CHANGES IN THE WORK

7.4.1 The Consultant, following consultation with and approval by the Project Manager, will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order, and shall be binding on the Owner and the Construction Manager. The Construction Manager shall carry out such written orders promptly.

ARTICLE 8

TIME

8.1 DEFINITIONS

8.1.1 Unless otherwise provided, the Contract Time is the period of time allotted in the Contract Documents for Substantial Completion of the Work as defined in Subparagraph 8.1.3, including authorized adjustments thereto.

8.1.2 The Date of Commencement of the Work is the date established in a notice to proceed sent by Owner to the Construction Manager or, in the absence of such notice, the date of execution of the Construction Manager Agreement, or such later date as may be provided therein.

8.1.3 The date of Substantial Completion of the Work or designated portion thereof is the date of the latter to occur of (i) the date certified by the Consultant and the Project Manager when construction is sufficiently complete, in accordance with the Contract Documents, so the Owner can occupy or utilize the Work or such designated portion thereof for the use for which it is intended and (ii) the date of issuance of a temporary Certificate of Occupancy by the municipal authority having jurisdiction. Substantial Completion does not relieve the Construction Manager of his obligations to complete the Work in accordance with the Contract Documents.

8.1.4 Work remaining to be completed after Substantial Completion, shall be limited to items which can ordinarily be completed within the thirty (30) day period (one month) before final payment is made.

8.1.5 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically designated.

8.2 PROGRESS AND COMPLETION

8.2.1 All time limits stated in the Contract Documents are of the essence of the Contract.

8.2.2 The Construction Manager shall begin the Work on the Date of Commencement as defined in Subparagraph 8.1.2. He shall carry the Work forward expeditiously with a full work force and shall achieve Substantial Completion within the Contract Time.

8.2.3 In no case shall Construction Manager delay the progress of the Work or any part thereof on account of changes in the scope of the Work or disputes arising from proposed or ordered changes in the Work or any disagreements as to the equitable value of changes made in the Work.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 The Construction Manager agrees that he has investigated the work to be performed on the site and will make no claims on account of delay for any reason except acts of God, the Consultant's or the Owner's failure to timely render decision on the Work, or other causes clearly beyond the control of the Construction Manager.

8.3.2 Any claim for extension of time shall be made in writing simultaneously to the Consultant and the Project Manager not more than seven days after the commencement of the delay; otherwise it shall be waived. In the case of a continuing delay only one claim is necessary. The Construction Manager shall provide an estimate of the probable effect of such delay on the progress of the Work.

8.3.3 If no agreement is made stating the dates upon which interpretations as provided in Subparagraph 2.3.7 shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until fifteen days after written request is made for them, and not then unless such claim is reasonable.

8.3.4 Except for an extension of time, the Construction Manager shall not be entitled to any damages for any delay in his Work arising, in whole or in part, from any act or omission of the Owner, the Consultant, or their respective employees, agents, representatives or Subcontractors, or anyone under the direction or control of the foregoing. The Construction Manager shall not be entitled to an extension of time if such delay arose in whole or in part from his own acts or omissions.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

9.1.1 The Contract Sum is stated in the Construction Manager Agreement and, including authorized adjustments thereto, is the total amount payable by the Owner to the Construction Manager for the performance of the Work under the Contract Documents.

9.2 SCHEDULE OF VALUES

9.2.1 Before the first Application for Payment, the Construction Manager shall submit to the Project Manager and the Consultant a complete schedule of values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Consultant and/or Project Manager may require. The Construction Manager shall include project close-out as a separate line item. The total sum of such values shall be the Contract Sum. Each subdivision or classification of the Work shall be identified by letter or code number with particular reference to each individual section of the Specifications, and the Construction Manager shall append a schedule of the names, referenced as individual, partnership or corporation, of each Subcontractor who is to perform all or any portion of each subdivision. This Schedule of Values, when approved by the Owner and the Consultant, shall be used for computing the amounts of the various partial payments and in requisitioning any payment on account. In the event that any Subcontractor(s) are not known at the time the Schedule of Values is prepared, an amendment or supplement to the Schedule of Values which shows the names of each additional Subcontractor, indicating their subdivision of the Work, shall be furnished to the Project Manager as soon as the information is available.

9.2.2 The Schedule of Values and Application for Payment shall be prepared by the Construction Manager using Owner's Form UR 05, University Payment Application Form. The Schedule of Values shall be submitted to the Project Manager and Consultant for review a minimum of thirty (30) days before the first Application for Payment. Profit and general office overhead shall be listed as a separate line item. All Applications and Recommendations for Payment, Change Orders, and other documents involving monetary statements shall have totals carried out to two decimal places.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 At least five (5) days before the date for each progress payment established in the Construction Manager Agreement, the Construction Manager shall submit an original and three (3) copies to the Consultant an itemized Application for Payment in the form required by Article 9.2.2, notarized if required, supported by such data substantiating the Construction Manager's right to payment as the Owner and the Consultant may require and reflecting retainage, if any, as provided elsewhere in the Contract Documents. Applications for Payment must include adjustments (adds or deducts) to the Lump Sum of the Contract, resulting from Work performed under approved Change Orders (specified under Article 7) and shall be shown separately on the Application for Payment. The Construction Manager shall provide a Partial Waiver of Lien warranting that title to all Work and product covered by the Application for Payment will pass to the Owner either by incorporation into the Work or upon receipt of payment by the Construction Manager, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, and that no Work or product covered by an Application for Payment will have been acquired by the Construction Manager or by any other person performing Work at the site or furnishing product for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Construction Manager or such other person.

9.3.2 Unless otherwise provided in the Contract Documents, payments will be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site. Payments for materials or equipment stored at the site shall be conditioned upon submission by the Construction Manager of bills of sale, proof of payment or such other evidence satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance and

transportation to the site for those materials and equipment stored off-site. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off-site at a location agreed upon in writing. Payment for materials and equipment stored on or off-site shall be conditioned upon compliance by the Construction Manager with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include applicable insurance, storage and transportation to the site for such materials and equipment stored off-site.

9.3.3 The Construction Manager warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Construction Manager, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 9 as "liens"; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Construction Manager, or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Construction Manager or such other person.

9.3.4 The Construction Manager shall not assign, sublet or transfer any interest in this Agreement or the payments due hereunder without the prior written consent of the Owner. The Construction Manager shall obtain the written agreement of all Subcontractors and sub-Subcontractors to comply with this provision.

9.4 CERTIFICATES FOR PAYMENT

9.4.1 The Consultant will, within ten days after the receipt of the Construction Manager's Application for Payment, either issue a Certificate for Payment to the Project Manager, with a copy to the Construction Manager, for such amount as the Consultant determines is properly due, less retainage of 10% until the final payment as provided below, or notify the Construction Manager in writing of the reasons for withholding a Certificate as provided in Subparagraph 9.6.1. This provision shall in no way affect the warranties of the entire Project which shall not commence until Final Completion and a Certificate of Occupancy have been accomplished for each Phase of the Work.

9.4.2 The issuance of a Certificate for Payment by the Consultant will constitute a representation by the Consultant to the Owner, based on his observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated; that, to the best of his knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in such Certificate); and that the Construction Manager is entitled to payment in the amount certified. However, by issuing a Certificate for Payment, the Consultant shall not thereby be deemed to represent that he has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, has reviewed the construction means, methods, techniques, sequences or procedures or has made any examination to ascertain how or for what purpose the Construction Manager has used the monies previously paid on account of the Contract Sum, except that when the Consultant knows the Construction Manager has not paid his Subcontractors or sub-Subcontractors, the Consultant shall so advise Owner in writing before recommending or issuing a qualified Certificate for Payment.

9.5 PROGRESS PAYMENTS

9.5.1 After the Consultant has issued a Project Certificate for Payment, Owner shall make payment in the manner and within the time provided in the Contract Documents. However, if after issuance of the Certificate for Payment Owner discovers mathematical errors in the Certificate, Owner shall notify the Consultant and the Construction Manager of the errors and make payments in the correct amount. The Owner shall make payments as follows:

9.5.1.1 Not later than forty five (45) days following receipt, by the Owner, of an acceptable Application for Payment and of a corresponding Certificate of Payment, 90% of the value of each line item based on the Construction Manager's prices for labor and product incorporated in the Work and product suitably stored up to the first day of the month in which such Application was submitted, as estimated by the Consultant, less the aggregate of the previous payments.

9.5.1.2 Forty five (45) days after the Consultant issues a final Certificate of Payment following Substantial Completion of the Work, provided the Work then is fully completed and accepted by the Owner and the Contract fully performed, the Owner shall make a final payment of the entire balance due the Construction Manager. The basis for payment shall be certificates as described in Article 9.

9.5.1.3 All Applications and Recommendations for Payment shall be notarized by a duly authorized Notary Public licensed in the State of New York.

9.5.2 The Construction Manager shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Construction Manager on account of such Subcontractor's Work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Construction Manager on account of such Subcontractor's Work. The Construction Manager shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to his Subcontractors in similar manner.

9.5.3 Either the Consultant or the Project Manager may, on request and at his discretion, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Construction Manager and the action taken thereon by the Consultant on account of Work done by such Subcontractor.

9.5.4 Neither the Owner nor the Consultant shall have any obligation to pay or to see to the payment of any moneys to any Subcontractor except as may otherwise be required by law.

9.5.5 No Certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

9.6 PAYMENTS WITHHELD

9.6.1 The Consultant, following consultation with the Project Manager, may decline to certify payment and may withhold the Certificate in whole or in part, to the extent reasonably necessary to protect the Owner, if in his opinion he is unable to make representations to the Owner as provided in Subparagraph 9.4.2. If the Consultant is unable to make representations to the Owner as provided in Subparagraph 9.4.2 and to certify payment in the amount of the Application, he will notify the Construction Manager as provided in Subparagraph 9.4.1. If the Construction Manager and the Consultant cannot agree on a revised amount, the Consultant will promptly issue a Certificate for Payment for the amount for which he is able to make such representations to the Owner. The Consultant may also decline to certify payment or, because of subsequently discovered evidence or subsequent observations, he may nullify the whole or any part of any Certificate for Payment previously issued, to such extent as may be necessary in his opinion to protect the Owner from loss because of:

9.6.1.1 Defective Work not remedied,

9.6.1.2 Third party claims filed or reasonable evidence indicating probable filing of such claims,

9.6.1.3 Failure of the Construction Manager to make payments properly to Subcontractors or for labor, materials or equipment,

9.6.1.4 Reasonable doubt that the Work can be completed for the unpaid balance of the Contract Sum,

- 9.6.1.5 Damage to the Owner or another Construction Manager,
 - 9.6.1.6 Reasonable doubt that the Work will be completed within the Contract Time,
 - 9.6.1.7 Failure to carry out the Work in accordance with the Contract Documents, or
 - 9.6.1.8 Any or all conditions for which payment could be refused under Paragraph 9.4.2.
- 9.6.2 When the above grounds in Subparagraph 9.6.1 are removed, payment shall be made for amounts withheld because of them.

9.7 FAILURE OF PAYMENT

9.7.1 If the Consultant does not issue a Certificate for Payment through no fault of the Construction Manager, within ten days after receipt of the Construction Manager's Application for Payment, or if the Owner does not pay the Construction Manager within forty five (45) days after the Owner receives from the Consultant the Certificate for Payment any amount certified by the Consultant, then the Construction Manager may, upon thirty additional days' written notice to the Owner and the Consultant, stop the Work until payment of the amount owing has been received. The Contract Sum shall be increased by the amount of the Construction Manager's reasonable costs of shut-down, delay and start-up, which shall be effected by appropriate Change Order in accordance with Article 7.

9.8 SUBSTANTIAL COMPLETION

9.8.1 Within one week after the Construction Manager considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete as defined in Subparagraph 8.1.3, the Construction Manager in the presence of the Consultant and the Project Manager, shall walk through the Work and the Consultant shall prepare and submit a comprehensive list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents. The Construction Manager shall proceed promptly to complete and correct items on the list. Upon notification by the Construction Manager that the corrective work is complete, the Consultant will make an inspection to determine whether with Work or designated portion thereof is substantially complete. If the Consultant's inspection discloses any item, whether or not included on the Construction Manager's list, which is not in accordance with the requirements of the Contract Documents, the Construction Manager shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Consultant. The Construction Manager shall then submit a request for another inspection by the Consultant to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, and the Consultant, on the basis of an inspection and consultation with the Project Manager, determines that the Work or designated portion thereof is substantially complete, the Consultant will then prepare a Certificate of Substantial Completion of the Work, using Owner's Form UR 07, which shall establish the Date of Substantial Completion of the Work except as otherwise provided in Subparagraph 8.1.3, shall establish the responsibilities of the Owner and the Construction Manager for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Construction Manager shall complete the items listed therein. The Certificate of Substantial Completion of the Work shall be submitted to the Owner and the Construction Manager for their written acceptance of the responsibilities assigned to them in such Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided to the Owner and Construction Manager for their written acceptance of responsibilities assigned to them in such Certificate.

9.8.2 Upon Substantial Completion of the Work for each Phase or designated portion thereof and upon application by the Construction Manager and certification by the Consultant, the Consultant will promptly issue a final Certificate for Payment stating that to the best of the Consultant's knowledge, information and belief, and on the basis of the Consultant's observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due to the Construction Manager and noted in said final Certificate is due and payable. The Consultant's final Certificate for Payment will

constitute a further representation that conditions listed in Subparagraph 9.9 as precedent to the Construction Manager's being entitled to final payment have been fulfilled. The Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof, as provided in the Contract Documents.

9.9 FINAL COMPLETION AND FINAL PAYMENT

9.9.1 Neither the final payment nor the remaining retainage shall become due until the Construction Manager submit all documents required in 9.9.1.1 and proof satisfactory to Consultant and Owner of the satisfaction of all other requirements in 9.9.1.1. If any Subcontractor or sub-Subcontractor refuses to furnish a release required by the Owner, the Construction Manager may furnish a bond satisfactory to the Owner to indemnify the Owner against any such lien. If any such lien remains unsatisfied after all payments are made, the Construction Manager shall refund to the Owner all monies that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees, together with interest thereon at Owner's primary cost of borrowing.

9.9.1.1 Final payment shall not be issued until the following have occurred: (1) acceptance of the Work by the Consultant and the Owner as fully performed under the terms of the Contract Documents; (2) labor and materials payment bond requirements under the Contract Documents have been furnished and completed and all accounts for extra Work, product, and allowances for omissions have been rendered, audited, and agreed to and incorporated in such recommendation; (3) Construction Manager has submitted, and Consultant and owner have approved, Owner's Form UR 03, Contractor's Affidavit of Payment of Debts and Claims, and Owner's Form UR 04, Contractor's Affidavit of Release of Liens; (4) where applicable, Construction Manager has obtained from the surety company and submitted to Owner, and Owner and Consultant have approved, Owner's Form UR 01, Consent of Surety to Final Payment; (5) Verification that all warranties and guarantees required by the Contract Documents were delivered before project occupancy; (6) Verification that one paper copy of Maintenance Manuals bound in 3-ring binders and one electronic copy were delivered before project occupancy; (7) Project Record Documents as required; (8) Construction Manager has submitted and Owner has approved a reasonably detailed breakdown of all dollars paid to Minority, Women and Disadvantaged Businesses Enterprises in format acceptable to the Owner. Breakdown to include, but not limited to, Construction Manager, Subcontractors, sub-Subcontractor and material suppliers.

9.9.2 If, after Substantial Completion of the Work, Final Completion thereof is materially delayed through no fault of the Construction Manager or by the issuance of Change Orders affecting Final Completion, and the Consultant so confirms, the Owner shall, upon application by the Construction Manager and certification by the Consultant, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract Documents, and if bonds have been furnished as provided in Paragraph 13.5, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Construction Manager to the Consultant prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

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

9.9.3.1 Unsettled liens, or claims,

9.9.3.2 Faulty or defective Work appearing after Substantial Completion,

9.9.3.3 Failure of the Work of that Phase to comply with the requirements of the Contract Documents, or

9.9.3.4 Terms of any special warranties and indemnities required by the Contract Documents.

9.9.4 The acceptance of final payment shall constitute a waiver of all claims by the Construction Manager, Subcontractor or material supplier, as the case may be, except those previously made in writing and identified by the Construction Manager as unsettled at the time of the Final Application for Payment for that Phase.

9.9.5 All provisions of this Agreement, including without limitation those establishing obligations and procedures, shall remain in full force and effect notwithstanding the making or acceptance of final payment prior to the Date of Substantial Completion of the Project.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The Construction Manager shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. In that regard, the Construction Manager shall review the safety programs developed by each of the Subcontractor and prepare and submit to the University a comprehensive safety program which complies with the requirements of the Occupational Safety and Health Act of 1970 and any other applicable state, local or federal laws or regulations. (Performance of such services will not relieve the Subcontractor of their respective responsibilities for safety of persons and property or from compliance with all applicable statutes, rules, regulations or orders.) Such review shall not create or impose a liability on the Owner with respect to site safety precautions. During construction, the Construction Manager shall ensure compliance by the Subcontractors with their contractual safety requirements and report deficiencies. The Construction Manager shall initiate and be responsible for conducting safety meetings with its employees and those of its Subcontractors.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Construction Manager shall take all necessary precautions for the safety of, and shall provide all necessary protection to prevent damage, injury or loss to:

10.2.1.1 all employees on the Work and all other persons who may be affected thereby;

10.2.1.2 all the Work and all materials and equipment to be incorporated therein, whether in storage off-site or on site;

10.2.1.3 other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and

10.2.1.4 the work of the Owner or other separate Contractors.

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

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

10.2.4 When the use or storage of hazardous materials or equipment is necessary for the execution of the Work, the Construction Manager shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

10.2.5 If the Construction Manager fails to take immediate corrective action following notice from the Project Manager or the Consultant of any unsafe condition or deficiency in the Work, or any failure to meet the obligations of Paragraphs 10.1.1 through 10.2.4, the Project Manager, on behalf of the Owner, shall take all necessary corrective action at the Construction Manager's expense. The charge-back shall also include a charge for the time of any University employees involved in taking such corrective action.

10.2.6 The Construction Manager shall promptly remedy all damage or loss (other than damage or loss insured under Paragraph 11.1) to any property referred to in Clauses 10.2.1.2 through 10.2.1.4 caused in whole or in part by the Construction Manager, any Subcontractor, any sub-Subcontractor, or anyone directly or indirectly employed by any of them, or under the direction and control of any of them, or by anyone for whose acts any of them may be liable and for which the Construction Manager is responsible under Clauses 10.2.1.2 through 10.2.1.4, except damage or loss attributable to faulty Drawings or Specifications or the acts or omissions of the Owner or the Consultant or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Construction Manager. The foregoing obligations of the Construction Manager are in addition to his obligations under Paragraph 4.19. The Construction Manager will be held responsible for any and all breakage and other damage to any materials or equipment until acceptance by the University.

10.2.7 The Construction Manager shall designate a responsible member of his organization at the site whose duty shall be to maintain a safe worksite and the prevention of accidents. This person shall be the Construction Manager's superintendent unless otherwise designated by the Construction Manager in writing to the Project Manager and the Consultant.

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

10.2.9 The Construction Manager shall save the Owner harmless from all claims arising from the use of public street, sidewalks, and adjoining premises for construction purposes.

10.2.10 Only signs pertaining to safety may be displayed on the Owner's premises, unless written permission is obtained from the Project Manager.

10.3 EMERGENCIES

10.3.1 In any emergency affecting the safety of persons or property, the Construction Manager shall act, at his discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Construction Manager on account of emergency work shall be determined as provided in Article 7 for Changes in the Work.

10.3.2 Personnel of the University Security, Environmental Health & Safety and Facilities Departments/Divisions are authorized to stop operations upon observation or determination of a violation of any requirements of Paragraph 10.2 that presents an immediate threat to life or property.

10.4 FIRE PROTECTION

10.4.1 Gasoline and other flammable liquids shall be stored in and dispensed from UL listed safety containers in conformance with the National Board of Fire Underwriters recommendations. Storage locations shall be approved in advance by the University Fire Marshal.

10.4.2 Fire shall not be started on University property for any purpose, including work operations, heating or smoking, until the location and conditions of use are approved by the University Fire Marshal. Incineration is prohibited. A Hot Work permit must be secured from the University Fire Marshal prior to commencing any flame producing operations. Attendance at a Hot Work training class is a mandatory prerequisite for obtaining a Hot Work permit.

10.4.3 The Construction Manager shall maintain on the project site fire extinguishers per NFPA 241 "Safeguarding Construction, Alteration, and Demolition Operations".

10.4.4 No gas or electric welding or flame cutting, or any other operation involving the use of flame or arc, shall be conducted until a "hot permit" has been approved by the University Fire Marshal. Applications for such permits shall be obtained as directed by the Project Manager. Completed permit(s) shall be posted at the site where the operation(s) are conducted.

10.5 WELDING AND CUTTING

10.5.1 Site preparation

10.5.1.1 The area shall be cleared of loose combustibles within a minimum radius of 35 feet around the operation. Where it is impractical to relocate combustible materials, they shall be protected with flame-proofed covers or curtains or metal guards. The edges of protective materials shall be dressed tight to adjacent noncombustible surfaces to prevent the entry of sparks, etc.

10.5.1.2 Cracks or openings in surfaces within 35 feet of the operation shall be tightly covered with noncombustible material to prevent to passage of sparks, etc. Duct or conveyor systems operating within 35 feet of the operation shall be shut down or suitably protected to prevent the transport of sparks.

10.5.1.3 Adjacent and nearby combustible surfaces shall be protected from flame or sparks by use of suitable fire-resistant shields or guards.

10.5.1.4 The Construction Manager shall arrange through the Project Manager for any fire detection devices in the immediate area to be taken out of service prior to the start of operations, and to be returned to service immediately after operations stop. The Construction Manager shall be liable for all damages for false triggering of a fire alarm due to welding or cutting operations, and for all damages due to the failure of a fire alarm device not returned to service due to failure to properly notify the Project Manager.

10.5.2 A 10 lb. minimum ABC fire extinguisher shall be provided and maintained within 35 feet of the operation.

10.5.3 Supervision

10.5.3.1 The Construction Manager shall establish and maintain a Fire Watch independent of the operator where:

10.5.3.1.1 after all practical removals, appreciable combustible material remains loose or in the building construction, closer than 35 feet to the operation, including breaks and lunches.

10.5.3.1.2 combustible materials are separated from the operations only by metal walls, partitions, ceilings, roofs, etc.

10.5.3.1.3 openings in building surfaces within 35 feet of the operation expose combustible materials or concealed spaces.

10.5.3.2 The Fire Watch shall be properly trained and equipped to cope with fire, and shall be maintained for at least one-half hour after cessation of the operation.

10.5.3.3 When a Fire Watch is not required, the operator shall remain in the immediate area for at least one half hour after operations end to detect and extinguish possible fires.

10.6 OPEN FLAME SOLDERING

10.6.1 Site preparation

10.6.1.1 The area shall be cleared of loose combustibles within a minimum radius of 5 feet around the operation. Where it is impractical to relocate combustible materials, they shall be protected with flame-proofed covers or curtains or metal guards.

10.6.1.2 Adjacent and nearby combustible surfaces shall be protected from flame by the use of suitable fire resistant shields or guards.

10.6.1.3 The Construction Manager shall arrange through the Project Manager for any fire detection devices in the immediate area to be taken out of service prior to the start of operations, and to be returned to service immediately after operations stop. The Construction Manager shall be liable for all damages for false triggering of a fire alarm due to soldering operations, and for all damages due to the failure of a fire alarm device not returned to service due to failure to properly notify the Project Manager.

10.6.2 A 10 lb. minimum ABC fire extinguisher shall be provided and maintained within 35 feet of the operation.

10.6.3 The operator shall remain in the immediate area for at least one half hour after soldering operations end to detect and extinguish possible fires, including breaks and lunches.

10.7 PHYSICAL PROTECTION

10.7.1 The Construction Manager shall provide proper protection for all new and existing work, furnishings and fixtures subject to possible damage, and shall cover work-related exterior openings with watertight protection at the end of each day's work where such are liable to damage.

10.7.2 The Construction Manager shall protect finished surfaces, including jambs, sills and soffits of openings used as passageways or through which materials are handled, against possible damage resulting from conduct of work by trades. Tight wood sheeting shall be laid under all materials stored on finished surfaces. Planking shall be laid before moving materials over finished areas. Transport devices used over such areas shall have rubber-tired wheels.

10.7.3 Finished surfaces, including factory-finished and job-finished items shall be clean and unmarred upon the turnover of the work to the Owner. The Construction Manager shall, without extra compensation, refinish or replace such surfaces where they are damaged.

10.7.4 The Construction Manager shall protect finished floors from dirt and damage by covering as approved by the Project Manager. The Construction Manager shall restore all existing surfaces damaged by work under this Contract to a condition equal to or better than that existing at start of work.

10.8 SITE ENCLOSURES AND SITE PROTECTION

10.8.1 Except as otherwise specifically provided, the Construction Manager shall provide secure temporary enclosures around all work areas and restricted access ways thereto to protect the safety of both personnel and property. Additionally, the Construction Manager shall provide such fences, barricades and protective facilities as may be required for protection of personnel or the public in accordance with all applicable governmental regulations and as required to bar unauthorized personnel from hazardous areas. The location and design of all such facilities shall receive prior approval of the Project Manager.

10.8.2 The Construction Manager shall be responsible for excluding unauthorized persons from the work area and for providing a level of site security during non-work hours that is commensurate with heightened federal, state and local security concerns about unauthorized access to public buildings, loading areas, HVAC intake areas and sources of water supply. The Project Manager will provide the Construction Manager with a list of persons authorized by the University to enter the work area.

10.9 HAZARDOUS OR NOXIOUS WORK

10.9.1 The Construction Manager shall advise the Project Manager in writing and in advance of all plans for painting, blasting, pile driving, demolition of structures or other activities that may reasonably pose a danger or nuisance to members of the University Community or general public, or to the physical facilities of the University. The Project Manager shall approve all schedules and methods proposed for such work before the start of the work. In particular, the Construction Manager shall be alert to the existence of, and dangers posed by, asbestos, lead-based paint, PCBs in transformers or light ballasts, toxic mold behind walls or above ceilings, urea formaldehyde used as an insulating material, mercury, pesticides, or cleaning or laboratory chemicals that, if improperly handled or removed, could present a health risk to employees of the Construction Manager or its Subcontractors or to members of the University Community. If the Construction Manager encounters any materials which it believes present a health or safety threat, it is required to immediately stop work in the affected area and notify the Project Manager, who will in turn notify the University's Department of Environmental Health & Safety.

10.10 CRANES

10.10.1 The Construction Manager shall define and enclose an area around any crane in his use sufficient to insure the protection of unauthorized personnel. Where it is impractical to divert unauthorized personnel or vehicles for the area throughout the project, delineators and flagmen shall be provided as approved by the Project Manager. Appropriate signs shall be posted to mark the area.

10.10.2 Special precautions as approved by the Project Manager shall be taken to ensure the security of adjacent areas against penetration by any part of the crane or its loads.

10.11 ASBESTOS

10.11.1 Much of the pipe and duct insulation, fireproofing, etc. placed in older University buildings contains amounts of friable asbestos in quantities sufficient to pose a hazard both to the Construction Manager's personnel and to the public at large. When the presence of asbestos has been identified in the Contract Documents, or if it is uncovered in the course of construction the Construction Manager shall immediately stop work in the affected area and notify the Project Manager. The extent of the asbestos and the means of dealing with it shall be determined by consultation with and approval of the University's Environmental Health & Safety Department.

10.11.2 Removal of asbestos shall be the Owner's responsibility except as otherwise provided in the Supplementary Conditions. The Project Manager will stop work of the project if removal or disturbance of asbestos without the approval of the University's representative is discovered and will not allow work to be resumed until the asbestos has been abated. The Construction Manager will not be entitled to compensation for time lost due to such shutdown.

10.11.3 All removal, encapsulation or other handling of asbestos shall be in compliance with NYS Industrial Code No. 56.

10.11.4 The Construction Manager shall, prior to start of any asbestos removal procedures, meet on the job site with a representative of the University to review University procedures and requirements.

10.11.5 The Construction Manager shall maintain a log to record the names of personnel (other than employees of the Construction Manager) who enter the asbestos removal area. This log shall record the date and the person's name, affiliation, purpose, time in and time out. A copy of this log shall be transmitted to the University's representative. The Construction Manager shall allow only those persons not in his employ who are explicitly authorized by the University to enter the asbestos removal area, and shall require all such individuals to follow the same access procedures prescribed herein for his employees.

10.11.6 All material required to be sent to the Hazardous Materials & Environmental Permitting shall be mailed or hand delivered to:

Hazardous Materials & Environmental Permitting
University of Rochester Facilities and Services
520 Intercampus Drive, RC Box 270475
Rochester, NY 14627

10.12 RCRA HAZARDOUS WASTE

10.13 All shipments of RCRA Hazardous Waste must be coordinated through the University's Hazardous Waste Management Unit (HWMU). All Hazardous Waste Manifests must be reviewed and signed by a representative of HWMU prior to any RCRA Hazardous Waste being removed from the property. HWMU should be contacted in regards to testing of the waste as well as container management for the waste. This should be done well in advance of the start of the work that will generate the waste. In addition, copies of the waste haulers permit and a capacity assurance letter from the Treatment Storage and Disposal Facility (TSDF) must be on file with HWMU prior to shipping any waste from the property.

ARTICLE 11

INSURANCE

11.1 CONSTRUCTION MANAGER'S LIABILITY INSURANCE

11.1.1 The Construction Manager shall purchase and maintain such insurance as will protect him and the Owner from claims set forth below which may arise out of or result from the Construction Manager's operations under the Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

11.1.1.1 claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts;

11.1.1.2 claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;

11.1.1.3 claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;

11.1.1.4 claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Construction Manager, or (2) by any other person;

11.1.1.5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

11.1.1.6 claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle; and

11.1.1.7 claims involving contractual liability insurance applicable to the Construction Manager's obligations under Paragraph 4.19.

11.1.2 The insurance required by Subparagraph 11.1.1 shall be written for not less than any limits of liability specified below or elsewhere in the Contract Documents, or required by law, whichever is greater. Before starting and until Final Payment (except that products, contractual liability, and pollution liability coverage shall continue in force until three years after the date of Final Payment), the Construction Manager shall procure and maintain with a company licensed to do business in New York and possessing a minimum A.M. Best's Insurance Guide rating of A VII, insurance satisfactory to the Owner, written on an occurrence basis, as follows:

11.1.2.1 Workers' Compensation and Employers' Liability Insurance as required by the Workers' Compensation and other laws of the State of New York and/or the state of hire.

11.1.2.2 Comprehensive General Liability Insurance covering Bodily Injury & Property Damage as follows:

Comprehensive General Liability insurance written on occurrence basis with the following limits:

Bodily Injury and Property Damage Limit	\$1M per occurrence
Products/Completed Operations	\$1M per occurrence/aggregate
Personal Injury and Advertising Injury Limit	\$1M person or organization
Medical Payments (to any one person)	\$10,000
General Aggregate Limit	\$ 2M

No exclusions for:

- Premises and Operations
- Product/Completed operations
- Contractual Liability
- Independent Contractors
- Personal and Advertising Injury
- XCU Hazards

For contracts involving potential pollution risk to the environment or losses caused by pollution conditions, including asbestos, that may arise from the Construction Manager's performance of the Work, add the following coverages:

Pollution Legal Liability with no exclusion for Asbestos Removal or Testing	\$5M/\$5M aggregate
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11.1.2.3 Automobile Liability: Owned, Hired and Non-owned Autos

Combined Single Limit (CSL) for Bodily Injury and Property Damage	\$ 1M each accident
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11.1.2.4 Excess "Umbrella" Liability

The umbrella coverage should be no more restrictive than underlying coverages and shall include subsections 11.1.2.1, 11.1.2.2, and 11.1.2.3 above	\$5M each occurrence and aggregate (min); \$10M each occurrence and aggregate (min) for projects valued at \$5M or above. The Construction Manager will be advised, prior to submission of bids, if the size or nature of the project will require a higher limit.
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11.1.2.5 All policies shall be so written that the Owner will be notified, in writing by certified mail, of cancellation, material change, or non-renewal at least 60 days prior to the effective date of such cancellation, material change or non-renewal. Certificates of insurance and endorsements from the insurance carrier stating the limits of liability and expiration date shall be filed in triplicate with the Owner before operations are begun. Such certificates and endorsements not only shall name the types of policy provided, but also shall refer specifically to this Contract and the articles and the above paragraphs in accordance with which insurance is being furnished, and shall state that such insurance is being required by such paragraphs of this Contract, and shall be sufficiently comprehensive as to insure the Owner as well as the Construction Manager and certify that the coverage extends to acts or omissions of Subcontractors, as to permit the Owner to determine that the required insurance coverage has been provided without the necessity of examining the individual insurance policies.

11.1.2.6 If the initial insurance is due to expire prior to completion of the Work, renewal certificates shall be furnished to Owner no fewer than 15 days prior to any such expiration.

11.1.2.7 The Construction Manager shall require each of his Subcontractors to procure and maintain, until the completion of that Subcontractor's work, insurance of the types specified in Subparagraphs 11.1.2.1 to 11.1.2.4, inclusive, above (i) containing a waiver of subrogation against the Indemnitees, (ii) extending to the acts or omissions of the Subcontractors, and (iii) written on a primary basis, non-contributory with any and all other insurance coverage of Owner or available to owner, including self insurance. Unless specifically required by Owner, no Subcontractor shall be required to carry umbrella coverage exceeding \$5M per occurrence. It shall be the responsibility of the Construction Manager to ensure that all his Subcontractors comply with all of the insurance requirements contained herein relating to such Subcontractors. Certificates of insurance and endorsements substantiating Subcontractor's compliance with the requirements of this paragraph shall be provided by Construction Manager to Owner upon request. *[If Owner is an affiliate of the University of Rochester, consult with risk management to ascertain if the University should also be listed as additional insured.]*

11.1.2.8 The Owner and not the Construction Manager shall carry all-risk Builders Risk Insurance, including but not limited to the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism and malicious mischief, collapse, false work, temporary buildings, and debris removal including demolition by enforcement of any applicable legal requirements and shall cover reasonable compensation for Consultant's services and expenses required as a result of such insured loss to the full replacement value of all the Work and all materials, equipment and supplies on or near the site of the Work. Such Insurance shall cover the interests of the Owner, the Construction Manager, Subcontractors and Sub-Subcontractors as their interests may appear; all such policies shall contain appropriate waivers of subrogation as against all parties in form satisfactory to the Owner. Proceeds of the All Risk Builders Risk Insurance policy shall be payable to the Owner who will distribute such proceeds among the Owner, Construction Manager, Subcontractors and sub-Subcontractors in accord with the agreed amount of loss incurred by each party. The Construction Manager shall be responsible for any deductible amounts under the policy. The Construction Manager, Subcontractors, and sub-Subcontractors shall be responsible for insuring their own tools, equipment, and appliances.

11.1.2.9 The Comprehensive General Liability Insurance required under Paragraph 11.1.2.2 above shall comply with the following requirements in addition to the general requirements set forth elsewhere in this Article 11:

11.1.2.9.1 Coverage shall be written on ISO Form CG0001 or an equivalent form providing equivalent coverage.

11.1.2.9.2 The General Aggregate Limit shall be a Designated Construction Project General Aggregate, as shown on ISO endorsement CG2503 or its equivalent.

11.1.2.9.3 Coverage shall not be limited for liability arising from explosion, collapse, underground property damage, or damage to the Work.

11.1.2.9.4 The Pollution Liability insurance required under Paragraph 11.1.2.2 shall comply with the following requirements in addition to the general requirements set forth elsewhere in this Article 11:

11.1.2.9.5 Coverage shall extend to Construction Manager's completed operations

11.1.2.9.6 Coverage shall apply to sudden and gradual pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, gases, natural gas, waste materials, or other irritants, contaminants, or pollutants, including asbestos.

11.1.2.9.7 Pollution Liability coverage may be written on a claims-made basis. However, in such event, Construction Manager warrants that any retroactive date applicable to coverage under such policy precedes the effective date of this Contract and that continuous coverage will be maintained until three (3) years after the date of Final Payment.

11.1.2.10 The Automobile Liability Insurance required under Paragraph 11.1.2.3 shall include contractual liability coverage in addition to complying with the general requirements set forth elsewhere in this Article 11.

11.1.2.11 In addition to the coverages required under Paragraphs 11.1.2.1, 11.1.2.2, 11.1.2.3 and 11.1.2.4, Construction Manager shall obtain Installation Floater Insurance Coverage with a limit of \$100,000, written on a Special Covered Cause of Loss Form. Such insurance shall cover materials and equipment to be installed at the Project Site in the event of theft, facility workmanship, mechanical or electrical damage during testing, labor costs incurred to repair damaged work, and expediting expenses. Coverage shall include losses to materials and equipment to be installed at the Project Site while in transit and while stored at a temporary construction location. Coverage for loss incurred as a result of a [flood or earthquake] shall also be included. Such policy shall not include a coinsurance provision or any exclusions for underground exposures. The coverage required by this section shall be held until such time as the Work is accepted by Owner. In the event of a loss to materials and equipment to be installed at the Project Site before such installation, Construction Manager will make a claim for such loss against the insurance described in this paragraph, in addition to any other actions taken by Owner.

11.1.3 If at any time any of the insurance required to be provided by the Construction Manager should be canceled, terminated or modified so that the required insurance is not in effect, the Owner may require the Construction Manager to suspend performance of the Work. No extension of time shall be allowed to the Construction Manager in the event of any such suspension. Whether or not the Work is suspended, the Owner may, at its option, obtain replacement coverage in whole or in part, the cost of which shall be payable by the Construction Manager to the Owner.

11.1.4 Neither the procurement nor the maintenance of any insurance by the Owner or the Construction Manager shall in any way be construed or deemed to limit, discharge, waive or release the Construction Manager from any obligation under the Contract, nor to limit the liability of the Construction Manager for any act or omission.

11.1.5 All insurance policies required by Construction Manager in Subparagraphs 11.1.2.1-11.1.2.4 shall be endorsed to contain a waiver of subrogation against the Indemnitees (excluding Owner's consultants). All such insurance, except Workers' Compensation, shall be endorsed naming Owner as an additional insured and shall be written on a primary basis, non-contributory with any and all other insurance coverages of Owner, or available to Owner, including self insurance. In addition, relevant portions of any endorsements or policy provisions covering the requirements of this paragraph will be provided upon Owner's request. *[If Owner is an affiliate of the University of Rochester, consult with risk management to ascertain if the University should also be listed as additional insured.]*

11.1.6 Construction Manager shall be responsible for and assume liability for loss or damage to all construction tools, equipment and other property owned, rented or borrowed by Construction Manager and/or any and all of his Subcontractors, employees, agents and representatives in the performance of this Contract. Construction Manager agrees to waive all right of recovery against Owner, its trustees, agents, employees, for any damages or loss to the aforesaid items notwithstanding the fact that said damage shall be due to the negligence of

Owner, its trustees, agents and employees. This waiver shall apply to damage and loss which occurs while this Agreement is in effect and thereafter.

11.1.7 Failure of the Construction Manager to comply with the requirements of this Article 11 during the term of the Contract will be considered a material breach of the Contract and will be cause for the immediate termination of the Contract at the option of the Owner.

ARTICLE 12

UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 If any portion of the Work should be covered contrary to the request of the Consultant or the Project Manager or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Consultant or the Project Manager, be uncovered for their observation and shall be replaced at the Construction Manager's expense and without change in the Contract time.

12.1.2 If any other portion of the Work has been covered which the Consultant or the Project Manager has not specifically requested to observe prior to being covered, the Consultant with the prior consent of the Project Manager may request to see such Work and it shall be uncovered by the Construction Manager. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work be found not in accordance with the Contract Documents, the Construction Manager shall pay such costs unless it be found that this condition was caused by the Owner or a separate Construction Manager as provided in Article 6, in which event the Owner shall be responsible for the payment of such costs.

12.2 CORRECTION OF WORK

12.2.1 The Construction Manager shall promptly correct all Work rejected by the Consultant as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Consultant shall consult with the Project Manager prior to rejecting any Work. The Construction Manager shall bear all costs of correcting such rejected Work, including compensation for the Consultant's additional services made necessary thereby.

12.2.2 If, within one year after the Date of Substantial Completion of the Work or designated portion thereof or within one year after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Construction Manager shall correct it promptly after receipt of a written notice from the Owner to do so. This obligation shall survive both final payment for the Work and termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

12.2.3 The Construction Manager shall remove from the site all portions of the Work which are defective or non-conforming and which have not been corrected under Subparagraphs 4.6.1, 12.2.1 and 12.2.2, unless removal is waived by the Owner.

12.2.4 If the Construction Manager fails to correct defective or nonconforming Work as provided in Subparagraphs 4.6.1, 12.2.1 and 12.2.2, the Owner may correct it in accordance with Paragraph 3.4.

12.2.5 If the Construction Manager does not proceed with the correction of such defective or non-conforming Work within a reasonable time fixed by written notice from the Consultant, the Owner may remove it and may store the materials or equipment at the expense of the Construction Manager. If the Construction Manager does not pay the cost of such removal and storage within ten days thereafter, the Owner may upon ten additional days' written notice sell such Work at auction or at private sale and shall account for the net proceeds

thereof, after deducting all the costs that should have been borne by the Construction Manager, including compensation for the Consultant's additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Construction Manager should have borne, the difference shall be charged to the Construction Manager and an appropriate Change Order shall be issued. If the payments then or thereafter due the Construction Manager are not sufficient to cover such amount, the Construction Manager shall pay the difference to the Owner.

12.2.6 The Construction Manager shall bear the cost of making good all work of the Owner or separate Contractors destroyed or damaged by such correction or removal.

12.2.7 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to any other obligation which the Construction Manager might have under the Contract Documents, including Paragraph 4.6 hereof. The establishment of the time period of one year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Construction Manager to correct the Work, and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Construction Manager's liability with respect to his obligations other than specifically to correct the Work.

12.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

12.3.1 If the Project Manager prefers to accept defective or non-conforming work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

13.1.1 This Agreement, including any dispute or controversy arising out of or related to this Agreement or the breach hereof, shall be subject to, governed by and construed in accordance with the substantive and procedural laws of the State of New York without reference to its principles of conflicts of law. Each of the parties hereby irrevocably consent to the exclusive jurisdiction and venue of the courts of the State of New York located in Monroe County and the Federal Court for the Western District of New York in connection with any action or proceeding arising out of or related to this Agreement.

13.2 SUCCESSORS AND ASSIGNS

13.2.1 The Owner and the Construction Manager each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. The Construction Manager shall not assign the Contract as a whole or any moneys due or to become due to him hereunder, without the previous written consent of the Owner.

13.3 WRITTEN NOTICE

13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or entity or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to him who gives the notice, provided, however, that any written notice to be given to Owner must, in order to be effective, be delivered or sent by registered or certified mail to:

Project Manager (Name as given in the instructions to bidders)

University of Rochester
Planning and Project Management
271 East River Road, Box 270347
Rochester, New York 14627-0347

13.4 CLAIMS FOR DAMAGES

13.4.1 Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of the other party's employees, agents or others for whose acts such party is legally liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage. All written claims for damage or extra Work shall include time of occurrence, location, and other identifying factors and shall be supported by letters, journals or diaries, instructions, vouchers, signed time and material slips or other pertinent and applicable records.

13.5 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

13.5.1 The Owner shall have the right to require the Construction Manager to furnish bonds covering the faithful performance of and labor and materials under the Contract and the payment of all obligations arising thereunder if and as required in the Bidding Documents or in the Contract Documents.

13.6 RIGHTS AND REMEDIES

13.6.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. Any provision of law required to be set forth herein shall be deemed to be set forth herein as if originally included herein in full.

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

13.7 TESTS

13.7.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Construction Manager shall give the Consultant and the Project Manager timely notice of his readiness so the Consultant and the Project Manager may observe such inspection, testing or approval. The Construction Manager shall bear all costs of such inspections, tests or approvals conducted by public authorities. Unless otherwise provided, the Owner shall bear all costs of other inspections, tests or approvals.

13.7.2 If the Consultant determines that any work requires special inspection, testing, or approval which Subparagraph 13.7.1 does not include, he will, upon written authorization from the Project Manager, instruct the Construction Manager to order such special inspection, testing or approval, and the Construction Manager shall give notice as provided in Subparagraph 13.7.1. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents or Consultant, the Construction Manager shall bear all costs thereof, including compensation for the Consultant's additional services made necessary by such failure; otherwise the Owner shall bear such costs, and an appropriate Change Order shall be issued.

13.7.3 Required certificates of inspection, testing or approval shall be secured by the Construction Manager and promptly delivered by him to the Project Manager and the Consultant.

13.7.4 If the Consultant is to observe the inspections, tests or approvals required by the Contract Documents, he will do so promptly and, where practicable, at the source of supply.

13.7.5 Any product to be furnished shall be subject to inspections and tests in the shop and field as may be ordered by the Consultant. Shop inspection shall not relieve the Construction Manager of the responsibility for furnishing satisfactory product, and the right is reserved to reject any product at any time prior to final acceptance of the Work, when, in the opinion of the Consultant, the product and workmanship do not conform to the Contract Documents.

13.7.6 Test specimens will be submitted to an independent laboratory designated by the Consultant. Test data will be furnished to the Construction Manager by the Consultant.

13.8 DISPUTES

13.8.1 Unless otherwise agreed in writing, the Construction Manager shall carry on the Work and maintain its progress during any court proceedings, and the Owner shall continue to make payments to the Construction Manager in accordance with the Contract Documents.

13.9 MECHANIC'S LIENS

13.9.1 If at any time during the course of the project and the first six months after final completion any notices of lien are filed for labor performed or materials or equipment manufactured, furnished, or delivered to or for the Work, the Construction Manager shall within ten days of the date of the filing of such notice of lien, discharge or remove or bond such lien and until such discharge or removal or bonding, the Project Manager shall have the right to retain from any moneys payable hereunder an amount which, in his sole judgment, he deems appropriate to satisfy such liens and pay the costs and expenses, including attorneys' fees, of defending any actions brought to enforce the same, or incurred in connection therewith or by reason thereof. Construction Manager agrees that Owner may, at Construction Manager's expense, make payments to lien claimants and incur reasonable attorneys' fees, and expenses in removing all liens which Construction Manager has failed to promptly remove. All such costs and expenses incurred by Owner shall be chargeable to and reimbursed by Construction Manager. Construction Manager agrees that any failure by it to bond off or otherwise remove any liens asserted against the Project in accordance with this paragraph, shall operate as a complete, total and absolute waiver and relinquishment of any right which Construction Manager has to receive any further payments from Owner under the amount of such liens or claims, in connection with, or in any way relating to the Project and the Contract. The breach of any of the foregoing agreements or covenants shall constitute a substantial breach of the Contract, entitling Owner to exercise any or all of the rights and remedies available to it under Article 14 of the General Conditions, as well as all other rights and remedies granted to Owner by law.

13.9.2 If at any time during the course of the project and the first six months after final completion there be any evidence of any claims for which the Construction Manager is or may be liable or responsible hereunder, the Construction Manager shall promptly settle, bond in an amount satisfactory to the Project Manager, or otherwise dispose of the same, and until such claims are settled, so bonded, or disposed of, the Owner may retain from any moneys which would otherwise be payable hereunder so much thereof as, in his sole judgment, it may deem appropriate to settle or otherwise dispose of such claim and to pay the costs and expenses, including attorneys' fees, of defending any actions brought to enforce such claims, or incurred in connection therewith or by reason thereof

13.9.3 The Owner may apply any moneys retained hereunder to reimburse itself for any and all costs, expenses, losses, damage and damages, liabilities, suits, judgments and awards incurred, suffered or sustained by the Owner and chargeable to the Construction Manager hereunder or as determined hereunder.

13.10 OWNER'S USE OF THE PREMISES

13.10.1 Unless otherwise shown or specified, any existing building facilities and utilities, heating, lighting, plumbing, gas, fire alarms, etc., must be kept in operation at all times. Normal business activities and use of buildings affected by the project will continue during the progress of the Work except for such limited periods and to such extent as may be specified in the project documents or arranged through the Project Manager. Parts of the building outside the contract area shall be protected from dust and vapors with temporary dust-tight, vapor-tight

partitions. The Construction Manager shall confer, prior to commencement of the Work, with the Project Manager to determine all special protective measures of a temporary nature which may be required by the Drawings, the Specifications, the University, and the applicable local building code and regulations. The cost of such items of temporary protection shall be included in the Contract Price.

13.10.2 Work shall be scheduled and performed by the Construction Manager to afford minimal interruption to normal and continuous operation of utility systems. The Construction Manager shall submit to the Project Manager, for approval, a proposed schedule for performing work, including construction of new utilities, re-routing of existing utilities and final connections of new work to existing work. The schedule shall indicate shutdown time required for each operation. To minimize disruption to facilities remaining in use, except as otherwise specifically provided, shutdowns to utilities shall be performed during late evening or weekend hours, subject to the direction of the Project Manager.

13.10.3 The Construction Manager shall notify the Project Manager seven days in advance of a proposed time for shutting down or interrupting any utilities, services or facilities which may affect the operation of other portions of the building or of other buildings, services or facilities of the University. In no case may any shutdown or interruption of any utilities, services or facilities be made without the approval and authorization of the Project Manager. Where required by the Project Manager the Construction Manager shall provide temporary services for maintaining existing utilities, services or facilities. In patient areas, sudden termination of shutdown may be required by the University at any time. The Construction Manager will be compensated for proven additional costs due to such termination.

13.10.4 Every reasonable means shall be employed by the Construction Manager to minimize vibration and noise which may result from work, and to minimize the length of any utility outage.

13.10.5 The Construction Manager shall coordinate through the Project Manager any work in connection with adjacent occupied buildings or areas, driveways, walks, or other facilities which would tend to prevent access thereto or interrupt, restrict, or otherwise infringe upon the University's use thereof.

13.10.6 The Construction Manager shall not enter or have access to space in existing occupied buildings in order to perform work required without first having given timely notice, through the Project Manager, to the Tenant so that necessary arrangements may be made, and without first having received permission, through the Project Manager, from the Tenant to enter, or have access to, such place. In passing through or working in such space in these buildings in the performance of the Work, the Construction Manager shall furnish and maintain proper protection, subject to the Project Manager's approval, for the Owner's floors, walls, ceilings, utilities, services, fixtures, equipment and/or furniture. Under no circumstances shall lavatories or other facilities except as provided in Article 4.4 be used by workmen on this project. Necessary inspection of work to be performed will be arranged by the Project Manager at the mutual convenience of the Construction Manager and the Tenant.

13.11 OCCUPANCY PRIOR TO SUBSTANTIAL COMPLETION

13.11.1 The Owner shall have the right, at any time, to occupy portions of the Project upon written notification to the Construction Manager. Such occupancy shall not constitute acceptance of the Work, nor act to waive any requirements of the Contract Documents. The Owner shall take reasonable precautions so as not to unduly interfere with the progress of the Work. The Construction Manager shall exercise caution regarding, and be responsible for damage to, any property of the Owner moved into the occupied portions of the Project.

13.11.2 The Construction Manager shall permit the placement and installation of fixed Owner provided and installed material prior to the contractual date of Substantial Completion, regardless of the condition of the Work. The Construction Manager agrees that such placement or installation shall not evidence completion of the Work or portion thereof, nor signify the Owner's acceptance of the Work or portion thereof.

13.11.3 The Construction Manager shall adjust his work schedule and coordinate the work of all trades to make ready for the scheduled arrival of Owner furnished and installed equipment. In particular, required structures and services shall be made ready.

13.11.4 The Construction Manager shall be liable for all damage done to Owner supplied and installed equipment until acceptance or occupancy of the Work by the University, except that the Owner shall be liable for all damage done by its own forces in the placement and installation of the materials.

13.11.5 The provisions of this Paragraph shall not be construed to relieve the Construction Manager of any of his duties or responsibilities under this Contract with respect to materials provided by the Owner for the Construction Manager's installation or use.

13.11.6 The Construction Manager shall cooperate with the Owner in order to make portions of Project available as soon as possible.

13.11.7 Should there be in the opinion of the Consultant an unwarranted delay on the part of any Construction Manager in the completion of incomplete or defective Work or other requirements of the Contract Documents, and the Consultant so certifies, the Owner may have full or partial use and occupancy of any or all portions of buildings as required for moving in or installing furniture, fixtures, supplies, or equipment and for general cleaning and maintenance work. In such event, the Construction Manager whose unfinished Work is done subsequent to the moving and installation of furniture, fixtures, supplies and equipment shall be responsible for the prevention of any damage to such installation. Such use or occupancy by Owner shall in no instance constitute acceptance of any of the Work.

13.12 MATERIAL REMOVED

13.12.1 Except as specifically provided in the Contract Documents, all existing material shall remain as found and be protected as provided in Article 13.10 or be restored to at least "as-found" condition.

13.12.2 Material to be reused shall be carefully removed and stored, and shall be reinstalled in "as-found" condition, except as otherwise provided, where shown on the Drawings. The Construction Manager shall point out all existing defects in material to be reused to the Project Manager prior to removal of the material. Damage to or loss of material to be reused shall be the Construction Manager's responsibility, and he shall repair or replace said material with equivalent material acceptable to the Consultant.

13.12.3 All existing materials not specifically scheduled for reuse or disposal shall be offered to the Project Manager for salvage before dismounting, disassembly or removal. Materials refused for salvage in writing shall become the Construction Manager's property and be removed from the premises forthwith. Materials accepted for salvage shall be delivered to the Owner at the indicated locations. The Construction Manager shall give the Project Manager two weeks' written notice prior to delivering these materials. Except as otherwise provided, the Construction Manager shall deliver all materials selected for salvage to the sidewalk at the storage location designated below:

Eastman:	Such location within the Eastman School of Music as the Project Manager may designate.
Medical:	Such location within the Medical Center as the Project Manager may designate.
River Campus:	As designated by Project Manager.
Central Utilities:	Loading dock, power plant, 390 Elmwood Avenue.
Memorial Art Gallery:	Such location within the Memorial Art Gallery as the Project Manager may designate.

13.13 INSTALLATION

13.13.1 All systems and equipment shall be installed so as to promote accessibility for service and maintenance. All items which may require periodic or occasional manual operation, inspection, access, attention or care shall be generously sized and easily accessible.

13.13.2 All instruments shall be located to facilitate reading, calibration and operation. Layout and location of all instruments shall be approved by the Consultant prior to installation.

13.13.3 All systems, equipment, etc. shall be installed so that they do not interfere with access to existing passageways, equipment, junction boxes, etc., nor reduce clearances below legal minimum. Where a conflict appears to exist between this provision and any other of the Project Documents this shall be called to the Consultant's attention prior to proceeding with the work.

13.13.4 All systems, equipment, etc. shall be installed as indicated in the Contract Documents except as may be authorized in writing by the Consultant. All conflicts shall be brought to the Project Manager's attention for resolution by the Consultant.

13.13.5 A finished and complete installation is intended, and all hangers, fasteners, offsets, elevation changes, etc. required shall be provided by the Construction Manager whether specifically detailed or not.

13.14 CONFIDENTIAL INFORMATION

13.14.1 "Confidential Information" means any and all information written and/or oral in whatever form or media pertaining to the University and/or its Affiliates and their operations that is not generally known or readily ascertainable by other persons or entities including trade secrets. Confidential Information includes, but is not limited to, technical and non-technical information, materials, processes, ideas and techniques, information pertaining to finances, processes, customers, clients, patients, employees, students, fees, rates, accounting data, statistical data, marketing, research and development plans, projects, and findings, business plans, and the terms of any contracts. All current and future products, processes, and techniques, research findings and data, systems, designs, ideas, computer programs, and related documentation, and technical information disclosed by or learned from the University or its Affiliates are acknowledged to be University trade secrets. Confidential Information does not include information which the Construction Manager can substantiate by written documentation became available to the Construction Manager on a non-confidential basis from a source other than the University provided such source is not bound by a confidentiality obligation of secrecy to the University or another party.

13.14.2 The Construction Manager may use Confidential Information only in the performance of its obligations to the University and may disclose such information only to its employees on a need-to-know basis provided the Construction Manager has taken appropriate action to cause such persons not to misuse or disclose any such information. The Construction Manager's obligations hereunder shall continue for five (5) years from the last to occur of (i) the date the particular Confidential Information was disclosed to the Construction Manager or (ii) termination of the contract between the Construction Manager and the University pursuant to which the Construction Manager learned the particular Confidential Information except that the Construction Manager's obligations with respect to trade secrets shall continue for as long as trade secret status is maintained. The Construction Manager acknowledges that unauthorized disclosure or use of Confidential information may cause the University irreparable harm. Accordingly, the Construction Manager agrees that the University shall have the right to obtain immediate injunctive relief for any breach of this section by the Construction Manager, which shall be in addition to any other rights and remedies that it may have available.

13.15 USE OF THE UNIVERSITY'S NAME

13.15.1 The Construction Manager agrees that it will not use the University's name or the fact that the Construction Manager has a contract with the University in any press release, advertising or promotional materials, or public announcement without permission of the University.

ARTICLE 14

TERMINATION OF THE CONTRACT

14.1 TERMINATION BY THE CONSTRUCTION MANAGER

14.1.1 If the Work is stopped for a period of 60 days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making product unavailable, through no act or fault of the Construction Manager or a Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Construction Manager, then the Construction Manager may, upon seven additional days' written notice to the Owner and the Consultant, terminate the Contract and recover from the Owner payment for all Work executed and for any proven loss necessarily sustained upon any product, equipment, tools, construction equipment and machinery thereon but, in no event shall the Owner be liable to the Construction Manager for any prospective loss including but not limited to lost profits or unabsorbed overhead. However, such payments to the Construction Manager shall be less any setoffs to which the Owner may be entitled.

14.2 TERMINATION BY THE OWNER

14.2.1 If the Construction Manager is adjudged a bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he is placed in reorganization or if he refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper product, or if he fails to make prompt payment to Subcontractors or for materials or labor, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a violation of a provision of the Contract Documents or if the Construction Manager fails to substantially complete the Work by the dates set forth herein respectively according to the schedule, then the Owner, may, without prejudice to any right or remedy and after giving the Construction Manager and his surety, if any, ten days' written notice, terminate the employment of the Construction Manager and take possession of the site and of all product, equipment, tools, construction equipment and machinery thereon owned by the Construction Manager and may finish the Work by whatever method he may deem expedient. In such case the Construction Manager shall not be entitled to receive any further payment until the Work is finished.

14.2.2 If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including compensation for the Consultant's and Owner's additional services made necessary thereby, such excess shall be paid to the Construction Manager. If such costs exceed the unpaid balance, the Construction Manager shall pay the difference to the Owner. The amount to be paid to the Construction Manager or to the Owner, as the case may be, shall be certified by the Consultant, upon application, in the manner provided in Paragraph 9.4, and this obligation for payment shall survive the termination of the Contract.

14.2.3 The Owner, for his convenience, may at any time upon notice to the Construction Manager suspend the Work for periods not exceeding seven days individually and thirty days in the aggregate. The Owner for any reason, in his sole discretion may terminate this Contract upon written notice to the Construction Manager. If the Owner so terminates this Contract, the Owner shall pay the Construction Manager for all Work performed, all loss necessarily sustained upon the plant or material, and any other expense, loss or damage which the Construction Manager incurs under this Contract and would otherwise be entitled to receive less any setoffs to which the Owner may be entitled. In no event shall the Owner be liable to the Construction Manager in an amount greater than the Contract Sum or for any prospective loss of profits or unabsorbed overhead nor shall the cost of termination exceed that portion of the Contract Sum which the completed portion of the Work (plus additional obligations approved by the Consultant) bears to the contemplated total value of the Work. Nothing in this Paragraph shall in any way affect the Owner's right to terminate because of the Construction Manager's default, as set forth in Subparagraph 14.2.1 hereof, nor affect any remedies therefore.

14.2.4 Upon a termination under this Article 14 the Construction Manager, every Subcontractor, and every sub-Subcontractor shall assign or otherwise make available to the Owner, as the Owner in his discretion may direct, all contracts, purchase orders, product, supplies and equipment and any other items pertaining to the Work.

ARTICLE 15

OWNER'S RIGHT TO AUDIT

15.1 OWNER'S RIGHT TO AUDIT

15.1.1 The Construction Manager grants to the Owner and its designated representatives the right to review, copy, and audit, on one or more occasions both before Final Completion and for a period of up to six (6) years after Final Completion, all books, records, correspondence and notes maintained by the Construction Manager and any of its Subcontractors with respect to work performed under this Agreement. The phrase "books, records, correspondence and notes" is intended to include all electronic and physical documents that relate in any way to the Cost of the Work, Reimbursable Expenses, Change Orders, Claims, or any other cost or expense arising out of or relating to the performance of the Work. Similar provisions shall be included by Construction Manager in all subcontracts entered into in connection with this Agreement.

15.1.2 Construction Manager shall keep and maintain full and detailed accounts in accordance with generally accepted accounting practices and exercise such costs controls as may be necessary for proper financial management under the Contract. Construction Manager's accounting and control system shall be satisfactory to the Owner.

15.1.3 Before Construction Manager submits its first Application for Payment of the Work, the Owner and Construction Manager shall meet to discuss the auditing process for the Project and Construction Manager's accounting and control system, and to establish labor rates, based upon company-wide audited labor burdens and benefits, and other matters that may facilitate auditing the Project.

15.1.4 Construction Manager shall fully cooperate with the Owner during the conduct of any audit related to the Project, including by way of illustration and not limitation:

- (a) providing adequate and appropriate work space at Construction Manager's facilities to the Owner for the purpose of conducting any such audit,
- (b) providing support services, such as locating requested Records, explaining the manner in which the Records are organized and kept, substantiating all charges related to the Agreement, coordinating with copy services, providing contact information of all current and former employees and Subcontractors, making arrangements for the Owner to interview former and current employees and Subcontractors, and
- (c) making its employees and Subcontractors reasonably available to the Owner to discuss matters relevant to the audit.

15.1.5 The application for Final Payment shall contain a detailed description of costs incurred along with a final accounting which compares costs and fees charged by Construction Manager to the components of the adjusted Guaranteed Maximum Price. All costs shall be actual costs, irrespective of (i) whether any adjustments have been made to the Guaranteed Maximum Price by lump sum change orders or otherwise, (ii) whether the Owner has approved any "Construction Manager rates" for salaried personnel of Construction Manager for purposes of establishing the Guaranteed Maximum Price or any of its components, the schedule of values, change orders, applications for progress payments or otherwise, or (iii) whether non-actual costs have been utilized in calculating Construction Manager's applications for payments, the Owner's payments to Construction Manager, or otherwise. This submission, along with all Project-related records of the Construction Manager, shall be subject to the Owner's audit and approval by the Owner (or the Owner's representative) within [90 days] of receipt, as an additional condition of the Owner's issuance of the Final Payment under this Agreement. If the Owner does not perform such audit within the stipulated [90 day] period, such audit shall no longer be a precondition to final payment, but it shall not affect the Owner's continuing rights to perform audit(s) as set forth in the Contract Documents and to require repayment by Construction Manager of any amounts determined upon audit to have been improperly paid.

15.1.6 Construction Manager shall promptly refund any overpayment, plus interest at the maximum statutory rate from the date of the overpayment until the date of the refund, in the event that the Owner determines that the substantiated Cost of the Work is less than the amount applied for and paid to or on behalf of Construction Manager through the effective date of the audit.