

CONSTRUCTION MANAGER AGREEMENT

BETWEEN

THE UNIVERSITY OF ROCHESTER

AND

Insert CM Firm

Insert Name of Project

Insert Project Number

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

TABLE OF CONTENTS

	Page
ARTICLE 1 CERTAIN DEFINITIONS, PURPOSE AND INTENT	1
1.1 Certain Definitions.....	1
1.2 Two Phases of Services	3
1.3 Phase 1 Services.....	3
1.4 Phase 2 Services.....	3
1.5 Covenants of Construction Manager	3
1.6 Interpretation With General Conditions	4
1.7 Project Parameters	4
ARTICLE 2 PRECONSTRUCTION PHASE AND CONTINUING CONSULTING SERVICES	4
2.1 Cost Consultation.....	4
2.2 Review of Drawings and Specifications.....	5
2.3 Long Lead Time Procurement Identification.....	7
2.4 Coordination of Contract Documents	7
2.5 Project Schedule	8
2.6 Site Safety Recommendations	9
2.7 Labor Requirements.....	9
2.8 Permit Identification	9
2.9 Management Control System.....	9
ARTICLE 3 GUARANTEED MAXIMUM PRICE/FINAL GMP.....	11
3.1 Development of GMP	11
3.2 Presentation of GMP.....	12
3.3 Conversion of GMP to Final GMP.....	13
3.4 Effect of GMP, Final GMP	14
ARTICLE 4 COMPETITIVE BIDDING, BONDS, INSURANCE.....	15
4.1 Performance Bond by CM	15
4.2 Bonding of Subcontractors	16
4.3 Preparation of Bidding Documents, Conduct of Bidding Process.....	16
4.4 Objective.....	17
4.5 Formal Advertising	17
4.6 Pre-qualification of Bidders.....	17
4.7 No Conflicts of Interest.....	17
4.8 Work by Construction Manager with Own Forces	18
4.9 University's Right to Perform Work	19
4.10 Contract Awards	19
4.11 Insurance.....	19
4.12 Separate Contracts	20
ARTICLE 5 CONSTRUCTION SERVICES	20

5.1	Notice to Proceed.....	20
5.2	Award of Contracts.....	20
5.3	Establishment of Construction Manager Organization.....	21
5.4	Job and Progress Meetings	22
5.5	Construction Estimate and Construction Schedule Revisions	22
5.6	Shop Drawings, Materials, and Supplies	22
5.7	Supervision and Construction Procedures	23
5.8	Comprehensive Safety Program	24
5.9	Labor Relations.....	24
5.10	Building Permits	24
5.11	Job Site Records.....	24
5.12	Changes in the Work.....	25
5.13	Payments to the Subcontractors.....	25
5.14	Storage of Materials and Equipment	25
5.15	Equipment Startup	26
5.16	Substantial Completion.....	26
5.17	Standard of Performance	27
ARTICLE 6 REIMBURSABLE CONSTRUCTION MANAGER PERSONNEL COSTS AND NON-REIMBURSABLE COSTS		27
ARTICLE 7 GENERAL CONDITION ITEMS.....		29
ARTICLE 8 ADJUSTMENT FOR CHANGES IN SERVICES.....		32
ARTICLE 9 SUSPENSION OF WORK - DELAYS.....		32
ARTICLE 10 TERMINATION.....		33
ARTICLE 11 TIME FOR COMPLETION		33
ARTICLE 12 CONSTRUCTION MANAGER’S COMPENSATION.....		35
ARTICLE 13 GUARANTEE AND CORRECTION OF WORK.....		36
ARTICLE 14 INDEMNIFICATION.....		38
ARTICLE 15 AFFIRMATIVE ACTION.....		38
ARTICLE 16 MISCELLANEOUS PROVISIONS.....		39

Appendices

- Appendix 1 Enumeration of Contract Documents
- Appendix 2 Construction Budget
- Appendix 3 Project Phases
- Appendix 4 Project Description
- Appendix 5 Project Schedule -- Design and Construction Completion Dates
- Appendix 6 Form of Guaranteed Maximum Price Proposal
- Appendix 7 Form of Final GMP Proposal
- Appendix 8 Form of Construction Manager's Performance Bond
- Appendix 9 Form of Construction Manager's Payment Bond
- Appendix 10 Policies With Respect to Equal Employment Opportunity and Affirmative Action
- Appendix 11 Personnel Hourly Rate Schedule
- Appendix 12 Form of Application for Payment
- Appendix 13 Key Personnel
- Appendix 14 Form of Financial Report

CONSTRUCTION MANAGER AGREEMENT

This Agreement, dated as of Agreement Date, (the “Agreement”), is by and between THE UNIVERSITY OF ROCHESTER, an educational corporation organized under the laws of the State of New York, with an address for purposes of this Agreement c/o Planning and Project Management, 271 East River Road, P.O. Box 270347 Rochester, New York, 14627-0347 (“University”) and CM Name, a Type of Firm corporation with an office at CM Address (“Construction Manager”).

WITNESSETH:

WHEREAS, the University intends to Name of Project (the “Project”);

WHEREAS, the University has retained A/E Name (the “Consultant”), with its principal office at A/E Address which has, pursuant to the terms of an Owner Consultant Agreement dated as of Date, (the “Consultant Agreement”), together with any subconsultants it may retain, agreed to furnish design services to the University in connection with the Project and to prepare and furnish all Drawings and Specifications (the “Drawings and Specifications”) necessary to permit construction of the Project; and

WHEREAS, the University desires to engage a qualified and knowledgeable Construction Manager to provide pre-construction period services and construction period services, including construction of the Project, all as more fully set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and agreeing to be legally bound thereby, the University and Construction Manager agree as follows:

ARTICLE 1

CERTAIN DEFINITIONS, PURPOSE AND INTENT

1.1 Certain Definitions

(a) The “Construction Budget” shall be the aggregate of the construction budgets (including all design, bidding and price escalation contingencies as more fully described in this Agreement) for the Project. The Construction Budget is set forth in Appendix 2 hereto.

(b) The “Contract Documents” consist of this 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 of the General Conditions, all Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and all Modifications issued after execution of this Agreement; these form the Agreement, and are as fully a part of the Agreement as if attached to this Agreement or repeated herein. An enumeration of the Contract Documents, other than Modifications, appears in Appendix 1, which is to be completed at the time of submission of the Guaranteed Maximum Price.

(c) The “Cost of the Work” shall include the costs of all services, labor, materials, supplies and equipment required to complete the Work.

(d) The “Final GMP” shall be that number, which shall in all events be less than or equal to the GMP and shall be approved and accepted by the University, which shall reflect the aggregate of all subcontractor bids and approved self-performed work by the Construction Manager and which shall produce a fully bought-out Cost of the Work, eliminating all contingencies (except to the extent approved by the University) and transferring all bid savings to the University.

(e) The “Standard General Conditions for the Construction Manager Agreement” means the University of Rochester Standard General Conditions of the Contract for Construction, **Fourth Edition**, dated **January 10, 2017**, and as modified by any subsequent supplements.

(f) The “Guaranteed Maximum Price”, or “GMP”, shall be the sum of the various cost elements as more fully set forth in Article 3.1.3 herein.

(g) The “Project Phases” shall be consistent with and have the meaning ascribed to those Phases in the Consultant Agreement, and shall include the “Schematic Design Phase”, “Design Development Phase,” the “Construction Documents Phase,” the “GMP Assembly Phase,” the “Bidding and Negotiation Phase” and the “Construction Phase,” all as more fully described in Appendix 3.

(h) The “Project Scope” shall include all of the services required under the terms of this Agreement, as those services pertain to the basic elements of the Project described in Appendix 4 hereto.

(i) “Subcontractors” shall include all trade Contractors, separate Contractors and Subcontractors entering into contracts (“Subcontracts”) with the Construction Manager for the performance of the Work. Unless the University expressly enters into a separate Prime Contract with a Subcontractor for purposes of this Agreement the Construction Manager will be deemed to have contracted directly with the Subcontractors for the performance of work under the Contract Documents, and that the relationship between the Construction Manager and the Subcontractors will be that of a general contractor to its Subcontractors.

(j) The “Work” means the provision of all services, labor, materials, supplies and equipment required to complete the Project in accordance with the requirements of the Contract Documents (as the same may be modified, changed or amended).

(k) “Sustainability” is the ability of the Project to meet the University’s needs while utilizing sustainable site development techniques, conserving water, improving air quality, increasing the use of recycled and recovered materials, and minimizing waste, energy use, and the impact on ecosystems and future generations.

1.2 Two Phases of Services

This Agreement contemplates that the services to be performed by Construction Manager will be divided into two broad phases: Phase 1, covering pre-construction consultation and organizational services, and Phase 2, covering construction period management and construction services. In the Agreement, the Construction Manager shall sometimes be referred to as the “CM.” All references to the Construction Manager shall be deemed to include its Subcontractors and those under their direction or control. This Agreement is expressly terminable by the University for convenience at any time during Phase 1 or Phase 2 (in addition to the other termination provisions contained herein) as is more fully set forth in Articles 3 and 10.

1.3 Phase 1 Services

The primary purpose and intent of Phase 1 (set forth in Article 2 and Articles 3.1 and 3.2) of this Agreement is to secure the services of a Construction Manager which will act as an executive construction advisor to provide design phase consultation on the Project; to monitor Cost of the Work and endeavor to keep costs within established limitations; to schedule the Project efficiently for both pre-construction and construction phases so that the Project will be ready for occupancy at the earliest possible date and to review the design of the Project with respect to maintainability, functionality and life cycle costs and with the intent that the most efficient use of materials and methods will be employed to provide quality construction at the lowest cost.

1.4 Phase 2 Services

The primary purpose and intent of Phase 2 (set forth in Articles 3.3, 4 and 5) of this Agreement is to secure the services of a Construction Manager to construct the Project in accordance with the Project Scope, including, but not limited to: (a) the Drawings and Specifications, (b) the time limitations established in this Agreement, and (c) the provisions of Article 3 of this Agreement and the Guaranteed Maximum Price/Final GMP Proposals attached as Appendices 6 and 7 hereto (hereafter the “GMP” or “Guaranteed Maximum Price”).

1.5 Covenants of Construction Manager

Construction Manager accepts the relationship of trust and confidence established with the University by this Agreement. Construction Manager covenants with the University to further the interests of the University by furnishing the Construction Manager’s best skill and judgment in cooperation with, and in reliance upon, the services of the Consultant. Construction Manager agrees to furnish cost estimating, scheduling, administration and management services in accordance with good professional practice, to perform the Work in a good and workmanlike manner, and to perform all of its obligations under this Agreement in an expeditious and economical manner consistent with the interests of the University and in accordance with the standards prevailing nationally for construction management firms experienced in the construction of **(Customize as necessary for each project).**

1.6 Interpretation With General Conditions

In interpreting this Agreement in conjunction with the General Conditions, which are incorporated by reference into this Agreement, the words “Construction Manager” shall be substituted for the word “Contractor” and the words “Construction Manager Agreement” shall be substituted for the words “Owner-Contractor Agreement” whenever they appear in the General Conditions.

1.7 Project Parameters

The Project Scope, Project Schedule and Construction Budget set forth in Appendices 2, 4 and 5, respectively represent the University’s best current understanding of the goals and limits of the Project. Any activities of the Construction Manager in the performance of the Work hereunder which may violate these goals or exceed these limits must be approved in writing in advance by the University.

ARTICLE 2

PRECONSTRUCTION PHASE AND CONTINUING CONSULTING SERVICES

2.1 Cost Consultation

2.1.1 Construction Manager shall provide preliminary cost evaluation of the program and Construction Budget requirements, each in terms of the other. Construction Manager shall prepare Uniformat estimates of construction cost for (a) the Schematic Design Phase, (b) the Design Development Phase, and (c) at the points of completion of 25% of the Contract Documents and 50% completion of the Contract Documents. The estimates provided under (b) and (c) shall be detailed estimates. Construction Manager shall assist the University and Consultant in achieving program and Construction Budget requirements and other design parameters. Construction Manager shall provide continuing value engineering services appropriate to the nature and complexity of the Project, including but not limited to cost evaluations of alternative materials and systems, subject to the requirements in 2.1.1.1 through 2.1.1.4 below.

2.1.1.1 Construction Manager shall promptly submit written value engineering suggestions to the University and its Consultant in the event that Construction Manager recognizes potential value enhancing changes in materials, equipment, systems, or finishes that optimize the cost, schedule, Sustainability, and quality of the Work without materially affecting the design concept, aesthetics, function, scope, size, and integrity of the Project.

2.1.1.2 Upon the University’s request, or in the event that Construction Manager submits a construction cost estimate that exceeds its prior construction cost estimate, or in the event that Construction Manager submits a Preliminary Project Schedule that exceeds the duration of its prior Preliminary Project Schedule, Construction Manager shall exercise best

efforts to submit value engineering suggestions to the University and its Consultant to eliminate such difference.

2.1.1.3 Before seeking the University's acceptance of a value engineering suggestion, which shall be at Owner's sole discretion, Construction Manager shall request that Consultant evaluate the suggested value engineering change, and Construction Manager shall provide Owner in detail all anticipated benefits, costs, effects, and consequences of adopting the suggested change.

2.1.1.4 If accepted by the University, Consultant shall incorporate the value engineering suggestion into the Contract Documents, and Construction Manager shall adjust its construction cost estimates and Preliminary Project Schedules accordingly.

2.1.2 Construction Manager shall provide ongoing services throughout the life of the Project, estimates, evaluations and recommendations of specific construction cost impact for life cycle cost analyses, alternative systems evaluations and value-engineering alternatives proposed by the Consultant.

2.1.3 Construction Manager shall provide, throughout the life of the Project, updates of on-going cost and budget impact. Provide a continuous cost consultation service for the duration of this Agreement and prepare, and be responsible for, all procurement and construction cost estimates. Construction Manager shall notify the University by written report within two (2) calendar days after learning (or after it should have learned, in the exercise of reasonable care) that the estimated construction cost appears to exceed the Construction Budget or the design is such as to preclude meeting the Project Schedule.

2.2 Review of Drawings and Specifications

2.2.1 Construction Manager shall review all Drawings and Specifications during Phase 1, and advise on congruence with the University's program and project concept, systems, materials and equipment, construction feasibility, availability of labor and materials, time requirements for procurement, installation and construction, relative costs, and provide recommendations for economics as appropriate, including but not limited to costs of alternative designs or materials, scheduling and construction methods.

2.2.2 Construction Manager shall provide technical consultation to the Consultant or other professional disciplines, but shall not infringe upon the design responsibility of those disciplines. If the Construction Manager makes recommendations relating to the cost of a particular design or material selection, and such recommendations are accepted for incorporation into the project design, their application with regard to structural stability and life safety shall be the responsibility of the Consultant.

2.2.3 In preparing the GMP as provided in Article 3, the Construction Manager shall consult with the University and the Consultant to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, shall

suggest reasonable adjustments in the scope of the Project, and shall suggest alternate bids in the Contract Documents to adjust the Construction Cost to the GMP.

2.2.4 Construction Manager shall provide construction feasibility reviews of all Contract Documents at each interval set forth in the Project Schedule at Appendix 5.

2.2.5 Construction Manager's construction feasibility reviews shall take into account and consider factors, such as

- (a) Sustainability, and the effect that the construction means, methods, techniques, procedures, processes, and sequences will have on the Project attaining the Sustainability requirements;
- (b) the existing conditions;
- (c) accessibility, timing, and sequencing of the Work;
- (d) availability, skill, cost, and use of labor;
- (e) availability, procurement, delivery, quality, cost, and installation of materials;
- (f) availability, quality, cost, versatility, and use of construction equipment;
- (g) alternate designs and materials;
- (h) prefabrication of various components;
- (i) location, orientation, and integration of Work in connection with existing structures, utilities, and systems; and
- (j) installation, sequencing, and coordination of the various trade work in confined spaces.

2.2.6 Construction Manager shall use best efforts to identify, as early in the design process as possible, whether reflected in the then current Contract Documents or not, potential construction problems, conflicts, complications, and impacts that reasonably could result from the intended design of the Project. Promptly thereafter, Construction Manager shall make reasonable recommendations in writing to the University and its Consultant to modify the intended design in order to avoid or mitigate the potential construction problems, conflicts, complications, or impacts based upon Construction Manager's knowledge of construction means, methods, techniques, procedures, processes, and sequences.

2.2.7 Construction Manager shall immediately notify the University and its Consultant if, in Construction Manager's opinion, all or any portion of the Contract Documents are not reasonably constructible within the time, budget, or quality constraints required by this Agreement or otherwise developed during the design of the Project.

2.2.8 Before submitting the GMP Proposal, Construction Manager shall verify that the Contract Documents upon which the GMP Proposal is based are adequately complete, coordinated, and contain sufficient detail, such that a prudent construction manager with experience in constructing [medical center/university] buildings could determine a fair guaranteed maximum price and a reasonable Contract Time for performing the Work.

2.2.9 Within thirty (30) days of receiving the Contract Documents, Construction Manager shall verify that the Contract Documents, and any revisions thereto, are complete, coordinated, and contain sufficient detail to properly and timely perform the Work.

2.2.10 Construction Manager shall notify the University and its Consultant in writing within the thirty (30) day period set forth in Subsection 2.2.9 above in the event Construction Manager does not believe that the Contract Documents are complete, coordinated, and contain sufficient detail to properly and timely perform the Work, stating in detail all bases for such belief. [If Construction Manager fails to state any such basis, then any Claim related thereto shall be deemed waived and released.]

2.3 Long Lead Time Procurement Identification

If requested by and subject to the approval of the University, Construction Manager shall identify equipment, materials and supplies that require long lead time for procurement or manufacture. Construction Manager shall participate with the Consultant, if requested by the University and subject to the approval of the University, in the preparation of performance specifications and requests for technical proposals for the procurement and installation of systems components of the construction and for procurement of long lead time equipment and materials. If requested by the University and subject to the approval of the University, issue requests for technical proposals to qualified sources and receive proposals and assist in their evaluation. If requested by, and subject to approval of the University, identify, estimate and recommend approval to proceed with early start work, including ordering of materials and equipment, as may be required to expedite and maintain the overall project schedule.

2.4 Coordination of Contract Documents

2.4.1 Construction Manager shall coordinate Contract Documents by consulting with the University and the Consultant regarding Drawings and Specifications as they are being prepared, and recommending alternative solutions whenever design details affect construction feasibility, cost, or schedules without, however, assuming any of the Consultants responsibility for design.

2.4.2 Construction Manager shall make recommendations to the University and the Consultant regarding the division of work into separate contracts to affect economy and permit phasing of procurement and construction. Construction Manager shall consider such factors as type and scope of work, time of performance, availability of labor and materials, community relations, factory vs. on-site production costs, shipping costs and size limitations, building code restrictions, and other limiting factors.

2.4.3 Throughout Phase 1, Construction Manager shall continuously review plans, specifications and schedules for the Project to eliminate conflict and overlap of jurisdiction between Subcontractors.

2.4.4 Throughout Phase 1, Construction Manager shall continuously review plans, specifications and schedules for the Project in order to assure all work scope is included in the GMP or Final GMP in order to ensure a completed Project. Notify Consultant and The University, in writing, of potential document conflicts that could result in work scope not being included in the GMP or Final GMP.

2.4.5 Throughout Phase 1, Construction Manager shall carefully study and compare all existing conditions, Drawings, Specifications and other Contract Documents in order to verify all figures on the Drawings before laying out the Work and notify the Consultant and the University, in writing, of all errors, inconsistencies, or omissions which Construction Manager discovers immediately upon such discovery. In such event, Construction Manager shall obtain specific instructions in writing before proceeding with the Work. Construction Manager shall not take advantage of any apparent error or omission which may be found in the Drawings or Specifications, but shall cooperate in good faith with the University and its Consultant to resolve any ambiguities, inconsistencies or defects in the Contract Documents in a manner that will not result in an increase in the Guaranteed Maximum Price or the Cost of the Work or a delay in the progress of the Work. In its review of the Contract Documents, the Construction Manager shall not be held to the standard of a licensed architect or engineer but shall be held to the standard of a highly experienced and expert construction manager that participated with an architect or engineer in the development of the Contract Documents and performed value engineering functions.

2.5 Project Schedule

2.5.1 Construction Manager shall prepare a preliminary construction schedule for initial review and approval by the University. Construction Manager shall provide for the University's review and acceptance, and monthly update, a Project Schedule that coordinates and integrates the Construction Manager's services, the Consultant's services and the University's responsibilities with anticipated construction schedules. Construction Manager shall notify the University by written report within two (2) calendar days after learning (or after it should have learned, in the exercise of reasonable care) that the latest estimated schedule appears to exceed the Project Construction Schedule. Construction Manager shall produce a final construction schedule that integrates the various Subcontractors' schedules into one complete and realistic schedule. Construction Manager shall provide for an occupancy schedule prepared in consultation with the University.

2.5.2 Construction Manager shall develop a Project Construction Schedule providing for all major elements such as phasing of construction and times of commencement and completion required of each Subcontractor. Construction Manager shall provide the Project Construction Schedule for each set of bidding documents.

2.5.3 Construction Manager shall investigate and provide a schedule, consistent with the requirements of Article 2.3, for the purchase of materials and equipment requiring long lead time procurement, and coordinate the schedule with the early preparation of portions of the Contract Documents by the Consultant. Construction Manager shall expedite and coordinate delivery of these purchases, if authorized by the University.

2.6 Site Safety Recommendations

2.6.1 Construction Manager shall review the Specifications to ensure that they contain provision for all temporary facilities necessary to enable the Subcontractors to perform their work, and provisions for all of the job site facilities necessary to manage, inspect and supervise construction.

2.6.2 Construction Manager shall, consistent with its responsibilities under Article 10 of the General Conditions, provide recommendations and information to the University and the Consultant regarding the assignment of responsibilities for safety precautions and programs; temporary Project facilities; and equipment, materials and services for common use of Subcontractors. Construction Manager shall verify that the assignment of responsibilities as respects the Subcontractors is included in the proposed Contract Documents.

2.7 Labor Requirements

2.7.1 Construction Manager shall provide an analysis of the types and quantities of labor required for the Project, taking into account any applicable prevailing wage requirements, and review the availability of appropriate categories of labor required for critical Phases. Construction Manager shall make recommendations for actions designed to minimize adverse effects of labor shortages.

2.7.2 Construction Manager shall identify or verify applicable requirements for equal employment opportunity programs for inclusion in the proposed Contract Documents, including University's policy with respect to equal opportunity and the promotion of open competition among all qualified firms in the marketplace.

2.8 Permit Identification

2.8.1 Construction Manager shall assist the University and the Consultant in identifying approvals and permits that will need to be obtained from authorities having jurisdiction over the Project, and assist, as required by the University during the preconstruction phase, in obtaining such approvals.

2.9 Management Control System

2.9.1 Consistent with the Project Construction Schedule established under Article 2.5, Construction Manager shall develop, during the Preconstruction Phase, and implement, during the Construction Phase, a management control system (MCS) for the design and construction of the Project using both manual and automated procedures to support such functions as planning, organizing, scheduling, budgeting, reporting construction progress and

expenditures, accounting, documentation, identifying variances and problems, decision making, and decision implementation. The data provided by the management control system must be timely, must be responsive to the needs of management at all levels, and must be fully capable of providing a sound basis for management decisions.

2.9.2 The management control system shall incorporate three major subsystems - Planning and Progress Monitoring, Budget Control and Accounting, and Documentation and Historical - for use in meeting the objectives of the project in a timely, economical and acceptable manner. Construction Manager shall provide the services, facilities and support equipment necessary to implement the MCS on the project.

2.9.3 The objectives of the three subsystems are as follows:

(a) Planning and Progress Monitoring Subsystem - Produce a schedule, consistent with the requirements of Article 2.5, for accomplishing the Project design effort that coordinates and integrates the activities of all the entities participating in the design phase of the Project including, but not limited to the following:

- **Insert any specific UR staff/departments that will be involved.**
- **Customize as necessary for each project.**
- _____

(b) Budget Control and Accounting Subsystem - Provide for the periodic collection of proposed changes in the proposed Guaranteed Maximum Price for all uncompleted tasks. Identify variances between the proposed Guaranteed Maximum Price and the Construction Budget. These variances (plus contingencies as described in Article 3) are Project cost overruns or underruns, as the case may be. These reports, to be produced weekly during the Construction Phase, shall be based on a CSI format approved by the University in advance.

(c) Documentation and Historical Subsystem - Provide documentation of all changes made in the approved schedule and approved Guaranteed Maximum Price so that complete traceability is maintained between the original Project Schedule and GMP and the latest approved Project Schedule and GMP.

2.9.4 The MCS, when fully implemented, will generate all reports necessary for effective management by the University of the overall Project as it relates to project scope, schedule and budget. Reports will be provided to University on a daily, weekly and monthly basis (as specified by University, and shall be prepared and presented in a clear, consistent and comprehensible form). Reports will be provided to subordinate levels of University's management in sufficient detail consistent with their respective requirements and responsibilities.

2.9.5 Notwithstanding, and without limiting, the requirements of Articles 2.9.3 and 2.9.4 above, on not less than a **PICK ONE** basis during all Phases of the Work, Construction Manager shall prepare, provide, and, at the University's request, present to the

University in meeting format, a report of the Project's status ("Periodic Status Report") in such form as the University requests. Each Periodic Status Report shall concisely but completely describe, in narrative form, the then current status of the Work, including, without limitation:

- (a) a review of actual progress during the time period, and cumulative progress to date, in comparison to the scheduled progress and, if actual progress is behind schedule, a discussion of any "work-around" or "catch-up plan" that the Construction Manager has employed or will employ to recover the original schedule;
- (b) color, digitized progress photographs as necessary or as requested by the University to document the then-current status of the Work;
- (c) a review of any significant technical problems encountered during the month, and the resolution or plan for resolution of such problems;
- (d) a review of the financial status of the Project in a Financial Report format as set forth in Appendix 14 hereto (or such other form acceptable to or required by the University);
- (e) a complete review of the status of Change Orders, including a review of any changes in the critical path of the Project Schedule which result from Change Orders approved by the University during the applicable time period, as well as a review of the schedule impact of Change Order Requests then pending;
- (f) a summary of any claims anticipated by the Construction Manager with respect to the Work arising within the applicable time period, including the anticipated cost and schedule impacts of any such claims; and
- (g) a cumulative summary of the number of days and the extent to which the progress of the Work was delayed by adverse weather during the applicable time period, including a tabulation and comparison of the actual days of adverse weather to the days of adverse weather for which provision has been made in the Project Schedule.

2.9.6 To the extent Construction Manager fails to summarize any incurred adverse weather delays or other basis for which a Claim may be warranted in a Periodic Status Report generated under Article 2.9.5, any Claims related thereto shall be deemed waived and released.

ARTICLE 3

GUARANTEED MAXIMUM PRICE/FINAL GMP

3.1 Development of GMP

3.1.1 When the Drawings and Specifications have been developed to the levels specified for the various Project Elements in Appendix 5, the Construction Manager shall prepare an itemized Guaranteed Maximum Price for the entire Project, clearly delineating and

summarizing the costs for each component of the work in each Project Element as it will be packaged and bid. The amount of contingency for each Project Element shall be established by the Construction Manager and clearly explained.

3.1.2 Each of the percentages of completion of the Drawings and Specifications for the Project Elements described in Appendix 5 will be determined by the University in consultation with the Consultant and the Construction Manager.

3.1.3 The Guaranteed Maximum Price shall be the sum of:

(a) Reimbursable Construction Manager Personnel Costs - A not-to-exceed lump sum estimate of the cost of the reimbursable Construction Manager Personnel Costs as defined in Article 6 and calculated in accordance with Paragraph 7.1.3.4 of the General Conditions; plus

(b) A not-to-exceed lump sum estimate of the cost of the general condition items as described in Article 7 of this Agreement; plus

(c) Cost of the Work - Construction Manager's estimate of the sum defined in Article 1.1(c) above, which shall include but not be limited to the cost of the work to be performed and material to be purchased by separate Subcontract, including the cost of any separate contract permits, fees, taxes, patents, copyrights, royalties, and performance and payment bonds to complete construction of the Project; plus

(d) The cost of the Construction Manager's services as a fixed fee, as set forth in Article 12; plus

(e) Contingencies for design, bidding and price escalation (each, a "Contingency").

3.1.4 The Guaranteed Maximum Price shall not include (unless specifically designated as part of the Construction Manager's services under the Contract Documents) such Project expenses as the initial site investigations, professional design fees, University's Project inspection personnel, moveable equipment, finance costs and furnishings, or the non-reimbursable costs described in Article 6.1.4 below. In conjunction with the Consultant, the Construction Manager shall define the scope of testing prior to assembling the GMP and will be responsible for coordination of construction phase testing with the scope of testing to be reviewed and approved by the University and test results submitted to the University as well as to the Construction Manager.

3.2 Presentation of GMP

3.2.1 Construction Manager shall submit the GMP to the University for its approval and acceptance on the form provided in Appendix 6 within **thirty (30)** calendar days after receiving the Drawings and Specifications from the Consultant at the points of development described in Article 3.1.1. Upon submission of the GMP, the University shall accept, reject or renegotiate (as provided in Article 3.2.2, below) the GMP submitted by the Construction

Manager, within **sixty (60)** calendar days after submission of the GMP, during which period the proposed GMP may not be withdrawn or increased. Should the University not accept or renegotiate the GMP submitted within such **sixty (60)** calendar day period, this Agreement shall be terminated. Upon acceptance and execution by the University, Appendix 6 shall be incorporated by reference into and shall become part of this Agreement.

3.2.2 In lieu of (a) accepting the GMP or (b) rejecting the GMP and terminating this Agreement as provided in Article 3.2.1 above the, University may, at its sole option,

(a) Accept the proposed GMP even though it is in excess of the Construction Budget or,

(b) Require the Construction Manager, as part of its services under this Agreement included in its lump sum fee under Article 12.1, in consultation with the Consultant and the University, to revise the Project Scope or quality as required to reduce the GMP.

3.3 Conversion of GMP to Final GMP

3.3.1 The parties understand and agree that once bids have been received and accepted for the Project and the Project is fully “bought out”, the GMP will be reduced to a figure that reflects actual, bid costs, exclusive of contingencies and that this Agreement will be amended to incorporate this figure, referred to as the “Final GMP”. The intent of this process is to transfer bid savings to the University at the time of establishing the Final GMP. Upon acceptance of a GMP by the University, the Construction Manager will proceed to issue bid packages upon completion of Contract Documents as provided in Article 4 of this Agreement. The Construction Manager shall provide a Final GMP within 100 days of receipt of 100 % construction documents or within 30 days of the time at which 90% of all bids have been received, whichever is the shorter duration, unless otherwise approved by the University Project Manager. Provided that the aggregate of the bids (which shall include all bids required for performance of the Work), and the Construction Manager’s fee (as defined in Article 12) is lower than the GMP established in Article 3.2.1 or 3.2.2 and accepted by the University, the Construction Manager shall submit a Final GMP to the University for its approval and acceptance on the form provided in Appendix 7. Construction Manager’s Fee, as set forth in Article 12, will initially be calculated on the basis of a percentage of the GMP, and then will be recalculated at the time of acceptance of the Final GMP. The University will reflect the adjustment in a change order at the time of the next application for payment following acceptance of the Final GMP. In the event the aggregate, actual, construction costs are below the Guaranteed Maximum Price, the difference between the GMP and the trade contractor buyout amounts as reflected in the Final GMP shall accrue 100% to the University at the time of the acceptance by the University of the Final GMP. Upon acceptance by the University, Appendix 7 as amended shall be incorporated by reference into and shall become a part of this Agreement. The University shall participate fully in the review of bids and in any negotiations that take place with the proposed Subcontractors. Final selection of Subcontractors shall be by mutual agreement between the Construction Manager and the University.

3.4 Effect of GMP, Final GMP

3.4.1 Upon acceptance by the University, the Guaranteed Maximum Price (including the Final GMP, if any) shall be subject to changes only for changes in the Project Scope (as defined in Articles 3.4.2 and 3.4.3, below). The Guaranteed Maximum Price/Final GMP shall not be subject to change due (a) to bids by Subcontractors that are higher than expected by the Construction Manager or (b) to change orders proposed by Subcontractors, unless such change orders pertain to Scope Changes. As described in **Appendix 7**, for purposes of the Final GMP, the Construction Manager shall eliminate all contingencies for design, bidding and price escalation and shall instead establish, to be held inside the Final GMP, a bid packaging contingency of % identified in RFP response for contingency needed at Final GMP% of the aggregate of the Final GMP (the “Bid Packaging Contingency”). This contingency shall include allowances for inconsistencies and errors in the coordination and packaging of Drawings and Specifications and their inclusion in the bidding packages, but shall not include allowances for design errors which are solely the responsibility of Consultant or for circumstances in the prosecution of the Work which could not have been reasonably foreseen by the Construction Manager or its Subcontractors. Construction Manager is permitted to transfer amounts between only the Final GMP’s cost of materials and separate construction contracts and the Bid Packaging Contingency. In the event of design errors or omissions which are solely the responsibility of Consultant and which require additional services by the Construction Manager, for which it is entitled to additional compensation, the Construction Manager shall not have to look to Consultant for payment of this additional compensation.

3.4.2 For purposes of this Article, Project Scope shall be defined as:

(a) For purposes of the GMP, the Project described in the Contract Documents developed to the point determined by the University pursuant to Article 3.1.2 (including all elaborations that would be necessary to construct the Project as described in those Contract Documents) and

(b) For purposes of the Final GMP, the Project described in the Contract Documents at the point of 100% completion of the Contract Documents (including all elaborations necessary to construct the Project as described in those Contract Documents).

3.4.3 After prior consultation with the Construction Manager and the Consultant, the University may require or approve cardinal changes to the Project Scope (as defined in Article 3.4.2, above) (“Scope Changes”). **A cardinal change is one that is fundamental or material, or that alters the assumptions under which the University and the Construction Manager entered into this Agreement.** Scope Changes shall not include changes necessary or required to enable the Construction Manager or any Subcontractor to carry out the intent of the Contract Documents. Scope Changes may, but will not necessarily, increase or decrease the Guaranteed Maximum Price or Final GMP established in Article 3.2. Such Scope Changes may be made at any time without invalidating this Agreement and without notice to the Construction Manager’s sureties, and the Construction Manager shall implement such Scope Changes. All University approvals of Scope Changes must be in writing. The University shall be permitted to request, and the Construction Manager shall implement, Scope Changes

aggregating up to and including **% identified in RFP that construction \$\$ can increase w/o increase in CM fee,** % of the GMP (or Final GMP) without increasing the Construction Manager's Fee, which are hereafter referred to as "Below Threshold Scope Changes."

3.4.4 Prior to implementing a Scope Change, the Construction Manager may request and the University shall furnish reasonable proof that the University has the capability to finance such changes. In the event that a Scope Change is estimated by Construction Manager to increase or decrease the Guaranteed Maximum Price (or Final GMP) a separate Scope Change Order will be prepared by the Construction Manager for review and approval by the University reflecting the effect of such Scope Change on the Guaranteed Maximum Price. No Scope Change shall increase the Guaranteed Maximum Price unless the University approves a Scope Change Order.

3.4.5 Upon acceptance of the Guaranteed Maximum Price (or Final GMP) by University, Construction Manager shall be responsible for, and shall bear, any excess in Project Cost above the Guaranteed Maximum Price.

3.4.6 The submittal of the Final Guaranteed Maximum Price is the total cost of construction of the Project including all labor, materials and other items required to provide a complete, functional facility whether shown on said plans and specifications or not and including compliance with all local, state and federal requirements. The final plans and specifications will become part of this Agreement with no increase in the Final GMP or time period. It is understood and agreed that while the Construction Manager is assuming design elaboration risk (e.g. in the submittal process), as more fully set forth in this Article, it is not assuming design liability.

ARTICLE 4

COMPETITIVE BIDDING, BONDS, INSURANCE

4.1 **Performance Bond by CM**

Upon acceptance of the GMP by the University, the Construction Manager **PICK ONE** required to post performance and payment bonds each in the amount of 100% of the Guaranteed Maximum Price (which amount may be adjusted to conform to the Final GMP) in substantially the form of Appendices 8 and 9 hereto, and on written notice to proceed as provided in Article 5.1 shall immediately begin the bidding process as provided under Article 4 of this Agreement. Construction Manager acknowledges that, in addition to its own investigations, it has reviewed all information prepared or supplied by the University and Consultant as it deems necessary to complete the Project in accordance with the GMP (or Final GMP), and after execution of this Agreement the Construction Manager shall make no claim, except as allowed under Article 7.2.1 of the General Conditions, that such investigations or information were inadequate or insufficient to construct the Project in accordance with this Agreement.

4.2 Bonding of Subcontractors

Bonding of Subcontractors will be required for Subcontracts over [\$500,000] (including work performed by CM with Own Forces), and, for those Subcontracts under [\$500,000], when recommended by the Construction Manager and approved by The University. A specific statement with reference to bonding requirements shall be included in the information to bidders on each separately bid Subcontract. Any decision by the Construction Manager not to recommend bonding of a Subcontractor must be approved by The University who shall also have final approval of the amount of the bond required of any Subcontractor. Where bonding is not required, it shall be stated clearly.

4.3 Preparation of Bidding Documents, Conduct of Bidding Process

Construction Manager shall develop pre-qualification criteria, in consultation with and subject to the approval of the University, for bidders and develop bidders' interest in the Project. Construction Manager shall review the bidding documents with the Consultant, assemble bid data including copies of Drawings and Specifications provided by the Consultant, in order to obtain competitive bids on appropriate segments of construction, including procurement of equipment, materials and supplies purchased separately. The University shall approve all bidding documents prior to their distribution to bidders. Construction Manager shall establish bidding schedules and issue bidding documents to bidders. Construction Manager shall conduct, with the participation of the University and the Consultant, pre-bid conferences to familiarize bidders with the bidding documents and management techniques and with any special systems, materials or methods, and shall issue any Addenda. Construction Manager shall comply with Planning and Project Management standing policies with respect to the selection of bidders for the Work. This shall include University policy with respect to equal opportunity and, subject to the considerations set forth in this Article 4.3.1, the promotion of open competition among all qualified firms within the marketplace, as more fully set forth in the "University of Rochester Policy With Respect to Equal Employment Opportunity and Affirmative Action" annexed as Appendix 10 hereto. The University shall review proposed bidder lists and shall have the right to suggest additional bidders subject to reasonable objections by the Construction Manager.

4.3.1 Construction Manager shall include as a part of all Subcontractor bid packages or negotiations a copy of the General Conditions of the Contract for Construction, as well as all Supplementary General Conditions. Subcontractors shall be required to make the same a part of all Subcontracts for the Project.

4.3.2 With the University's full participation, the Construction Manager shall receive bids, prepare bid analyses and make initial determinations, subject to the requirements of Article 4.9, for award of Contracts or rejection of bids.

4.3.3 With the University's full participation, the Construction Manager shall conduct pre-award conferences with successful bidders.

4.4 Objective

The bidding on Subcontracts must be conducted so as to achieve maximum competition among qualified bidders in order to obtain the most reasonable price for acceptable work. Therefore, competitive bidding by formal advertising is the preferred method of contracting under this Agreement.

4.5 Formal Advertising

For the purposes of this policy, the term “formal advertising” entails preparation of the invitation for bids describing the building design and specifications clearly, accurately, and completely, but avoiding unnecessarily restrictive specifications or requirements which might unduly limit the number of bidders.

4.6 Pre-qualification of Bidders

4.6.1 Bidders may be required to meet specified qualifications before being invited to submit a bid on a separate bid package. To facilitate the pre-qualification of bidders, a consolidated announcement for publicizing a series of separate bid packages may be issued. Each bid package included in the consolidated announcement shall be described in sufficient detail to inform prospective bidders of the nature and scope of the work and shall contain instructions to interested bidders for submitting qualifications. All interested bidders who have been pre-qualified in accordance with the established criteria shall be invited to submit a bid on the respective bid package(s). To avoid an unreasonable length of time between the issuance of an announcement and the invitation to bid on a specific bid package, the announcement shall not be issued more than six (6) months in advance of the date of the invitation. All other requirements for formal advertising as set forth in Article 4.5 above shall apply.

4.7 No Conflicts of Interest

The general function of the Construction Manager (during the pre-construction and bidding periods) is to serve as the University’s representative with responsibility directly to the University. Its conduct should be such as to preclude any conflict of interest. In particular, the Construction Manager shall not bid any work in competition with bidding Contractors. Further, no firm in which the Construction Manager, or a member, principal or officer of the Construction Manager, or a family member of any such individual, owns five percent (5%) or more of the issued stock or otherwise owns a five percent (5%) ownership interest, or has any other financial interest, shall, during the term of this Agreement, make or cause to be made any bid for construction work of the Project referred to in this Agreement. Construction Manager warrants that no Trustee or employee of the University, or of its Affiliates (or a close relative or a member of any such an individual’s household) who (1) owns 5% (or more) stock or other interest in the Construction Manager, (2) serves as an officer, director, employee, proprietor, partner, trustee, or consultant of the Construction Manager, (3) stands to profit financially or personally in any way from the acquisition by the University of services from the Construction Manager, or (4) receives compensation in any form or in any amount the Construction Manager, has participated, or will participate, in the decision to acquire services from the Construction Manager.

Notwithstanding the foregoing, however, if the low bid for any bid package exceeds the Construction Manager's budget line item price for such package, or if less than three bids are received in response to the advertisement of any bid package, with the University's approval, one of the following procedures shall be followed:

- (a) Construction Manager shall negotiate with the low bidder to reduce the price of the bid package to a cost which will not exceed the budget line item price; or
- (b) Construction Manager shall reject all bids and issue a revised invitation to bid (which may include minor revisions in the Work) prepared in conjunction with the Consultant and approved by the University; or
- (c) Construction Manager shall award to the low bidder for a price above the budget line item, recognizing that there shall be no increase in the GMP in this event; or
- (d) Construction Manager shall perform the work itself for the amount of the budget line item price, recognizing that there shall be no increase in the overall project GMP, or its actual cost if lower than the budget price.
- (e) Construction Manager shall not, without the University's consent, reject the low bid for any work on the Project or any portion thereof if such low bid is within the estimated cost of such work as set out in the GMP and is fully qualified as a complete scope for the respective bid package.

4.8 Work by Construction Manager with Own Forces

4.8.1 Construction Manager may only perform work on the Project in compliance with the provisions of Article 4.7 above. Whichever of the foregoing procedures is followed, there shall be no reduction of the scope or quality of the Project for any bid package in order to accomplish the Project within the GMP Sum. Construction Manager shall be obligated to perform such work itself if necessary to complete the Project within the GMP Sum.

4.8.2 If the Construction Manager performs any work which would normally be performed by a Subcontractor, it shall submit to the University for the University's approval a separate Scope of Work for that work, providing for a Contract Sum allocable to that Work and for a separate accounting to the University of the costs of performing that work. With respect to such work the Construction Manager shall be deemed to be a Subcontractor, and shall be paid therefore on a reimbursable basis and all references to the Subcontractors herein and in the General Conditions of the Contract for Construction shall also mean the Construction Manager as a Subcontractor under that separate Scope of Work.

4.8.3 When the Construction Manager performs any of the work on the Project with its own forces, all applicable provisions of the General Conditions and Supplemental Conditions relative to the Subcontractors shall apply to the Construction Manager. Construction Manager shall be reimbursed monthly for all such work performed, on a cost reimbursement basis, with no separate fee or overheads charged. The cost of all such work shall be included in the cost of the Project and shall be subject to the GMP.

4.9 University's Right to Perform Work

As provided in Article 6 of the General Conditions, the University reserves the right to perform work related to the Project with its own forces, and to award separate contracts for work related to the Project. Such awards and such work shall be made and performed in accordance with the requirements of the General Conditions.

4.10 Contract Awards

Construction Manager shall be responsible for awarding all Subcontracts after evaluation and approval by the University.

4.11 Insurance

4.11.1 Construction Manager shall be required to purchase and maintain, and shall require each of its Subcontractors to purchase and maintain, such minimum insurance as set forth in Article 11 of the General Conditions as will protect the University and the Construction Manager from claims which may arise out of or result from the Construction Manager's operations under this Agreement, whether such operations be by Construction Manager itself or by any Subcontractor or by anyone for whose acts any of them may be liable. By requiring such minimum insurance, the University shall not be deemed or construed to have assessed the risk that may be applicable to Construction Manager hereunder. Construction Manager shall assess its own risks and, if it deems appropriate or prudent, maintain either higher limits or broader coverages or both. Construction Manager is not relieved of any liability or other obligation assumed in or pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration or types. The insurance coverages required hereunder do not replace any surety bonds required by this Agreement, if any. Such insurance must be written on a primary basis, be non-contributory with any other insurance coverages or self insurance carried by, or available to, the University, and shall include a waiver of subrogation clause as provided for in Article 4.11.5.

4.11.2 Construction Manager shall either (1) require each of its Subcontractors to procure and to maintain during the life of its Subcontract, Subcontractor's Comprehensive General Liability, Automotive Liability, and Property Damage Liability Insurance of the type and in the same amounts as specified in Article 4.11.1 above, or (2) insure the activity of its Subcontractors under its own policy. Construction Manager's and its Subcontractors' liability insurance shall include adequate protection against special hazards. Prior to releasing the bidding documents to potential Subcontractors, the Construction Manager shall secure University's prior written approval of the amounts and types of insurance commercially available at reasonable rates required of such Subcontractors and their Subcontractors.

4.11.3 Certificates of Insurance and endorsements acceptable to the University shall be filed with the University prior to commencement of the work. These certificates and endorsements shall contain a provision that coverages afforded under the policies will not be cancelled, non-renewed, or materially changed or altered until at least sixty (60) calendar days' prior written notice has been given to the University via certified mail, and shall conform to the

requirements of Article 11.1.2.5 of the General Conditions. Construction Manager shall comply with the requirements set forth in Articles 11.1.2.6, 11.1.3 and 11.1.4 of the General Conditions.

4.11.4 The University, along with its construction lender and any indenture trustees or permanent lenders required by the form of financing employed by the University shall be named as additional insured on all insurance described in Article 11.1.2.2 through 11.1.2.4 of the General Conditions. The University and the Construction Manager will be responsible for any deductibles and co-insurance penalties with respect to the insurance they respectively provide hereunder.

4.11.5 All insurance policies of the Construction Manager and any Subcontractor shall contain endorsements providing that the respective underwriters and insurers waive and shall not have any right of subrogation against the Indemnitees (as that term is defined in Article 14.1) however, such waiver shall not include the professional liability of the Consultant.

4.11.6 The premiums and any other costs for all insurance as set forth in Article 11 of the General Conditions shall be paid by Construction Manager, and are included in the Construction Manager's compensation authorized in Article 12.1 and 12.2 of the Construction Managers Agreement and shall not be passed through separately to Owner as an element of General Conditions costs (pursuant to Article 7) or any other reimbursable costs.

4.12 Separate Contracts

Each Subcontract awarded by the Construction Manager is a separate contract awarded on the basis of competitive bidding. These contracts are referred to as subcontracts to conform to insurance terminology utilized in standard insurance policies. For insurance purposes the relationship of the Construction Manager to the Subcontractor is the same as that of a general contractor to a subcontractor.

ARTICLE 5

CONSTRUCTION SERVICES

In addition to continuing to provide the consulting and management control services set forth in Article 2, during the Construction Phase the Construction Manager shall also provide the Construction Services set forth in this Article.

5.1 Notice to Proceed

Construction Manager's obligation to provide Construction Services under this Article will commence with the issuance of a notice to proceed by the University.

5.2 Award of Contracts

Construction Manager shall award and enter into as a general contractor the separate Subcontracts as required to provide all labor and materials for the construction of the Project in accordance with the requirements of the Contract Documents.

5.3 Establishment of Construction Manager Organization

5.3.1 Construction Manager shall establish organization and lines of authority required to carry out requirements of this Agreement in order to organize and direct the complete construction of the Project and to implement the Management Control System described in Article 2.9. A list of personnel, approved by the University, shall be included as Appendix 13 to this Agreement, and shall be the key personnel to be used on the Project.

5.3.2 Under the basic fee, the Construction Manager will furnish the services of the key personnel named in the list of personnel attached hereto. Construction Manager will make no substitution of any of the key personnel without the prior written consent of the University. Before any such substitution the Construction Manager shall submit to the University a detailed justification supported by the qualification of any proposed replacement.

5.3.3 The services to be performed hereunder shall be performed by the Construction Manager's own staff, unless otherwise authorized by the University. The employment of, contract with, or use of the services of any other person or firm by the Construction Manager, as consultant or otherwise, shall be subject to the prior written approval of the University. Such approval shall not be construed as constituting an agreement between the University and any such person or firm.

5.3.4 All services under this Agreement shall be performed in a competent and efficient manner and in accordance with the standards set forth in Articles 1.5 and 5.17. The University may, in writing, require the Construction Manager to remove from the work any employee the University deems incompetent, careless, or otherwise objectionable and replace any such employee with suitable personnel.

5.3.5 Construction Manager shall prepare and publish a field operation manual to implement the administration of the work to be performed under the terms of this Agreement. The manual shall include the following data:

- (a) Directory of Personnel;
- (b) Correspondence;
- (c) Reports and Records;
- (d) Inspection Procedures (as prepared by others);
- (e) Shop Drawing Submittal;
- (f) Testing Laboratories Procedures (as prepared by others);
- (g) Contract Changes;
- (h) Extensions of Time;

- (i) Progress Payments;
- (j) Final Acceptance Procedures; and
- (k) Additional Instructions.

5.4 Job and Progress Meetings

Construction Manager shall schedule and conduct meetings to be attended by the Construction Manager, the Subcontractors and representatives of the University and the Consultant to discuss matters of procedures, progress, problems, scheduling, and equal employment opportunity provisions. Construction Manager shall take, transcribe, and distribute minutes of such meetings to individuals in attendance. In addition to these meetings, the Construction Manager will attend other meetings as deemed necessary by the University.

5.5 Construction Estimate and Construction Schedule Revisions

5.5.1 Consistent with the Project Construction Schedule issued with the Bidding Documents, and utilizing the Subcontractors' Construction Schedules provided by the Subcontractors, Construction Manager shall update the Project Construction Schedule monthly, based on current conditions, previous revisions, and the coordinated Subcontractors' Construction Schedules. Include the activities of Subcontractors on the Project, activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery of products requiring long lead time procurement. Include the University's occupancy requirements and graphically illustrate portions of the Project having occupancy priority. The University, Contractor, and Subcontractors will review, revise, and accept each reissued schedule.

5.5.2 Construction Manager shall review and refine construction estimates monthly as construction proceeds, and as required to incorporate approved changes to the Project as they occur. As provided in Article 2.1, the Construction Manager shall advise the University in writing within two (2) calendar days whenever the Cost of the Work deviates from the costs set forth in the itemized Guaranteed Maximum Price.

5.5.3 Construction Manager shall provide, in addition to the accounting supplied with its monthly applications for payment, regular monthly cumulative reports on the Cost of the Work, identifying any variances from the GMP.

5.6 Shop Drawings, Materials, and Supplies

Construction Manager shall establish and implement procedures to be followed for expediting the processing and approval of shop drawings, catalogs and samples, and the scheduling of material requirements. Construction Manager shall receive from the Subcontractors and review all Shop Drawings, Product Data, Samples and other submittals for conformance with the Contract Documents. Construction Manager shall coordinate them with information contained in related documents and transmit to the Consultant and the University those recommended for approval.

5.7 Supervision and Construction Procedures

5.7.1 Construction Manager shall maintain a competent full-time supervisory staff at the job site for the coordination and direction of the work of the Subcontractors. Construction Manager shall supervise and direct the Work, using its best skill and attention. Construction Manager shall be solely responsible for all construction means, methods, techniques, sequences and procedures for the Work, for coordinating all portions of the Work, and for safety as well as conformity and timeliness of all portions of the Work, all as more fully set forth in Article 4.4 of the General Conditions.

5.7.2 As more fully set forth in Article 4.5 of the General Conditions, the Construction Manager shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation and other facilities and services necessary for the proper execution and completion of the Work in accordance with the requirements of the Contract Documents.

5.7.3 The Consultant and the University shall have the sole authority to reject Work that does not conform to the Contract Documents. In the event an interpretation of the meaning and intent of the working Drawings and Specifications becomes necessary during the construction, the Construction Manager shall consult with the University and the Consultant, obtain the interpretation in writing, and transmit the same to the appropriate Subcontractor.

5.7.4 Construction Manager shall ensure that the work of each Subcontractor is being performed in accordance with the requirements of the Contract Documents. Construction Manager is responsible for coordination of construction phase testing and (subject to the approval requirements set forth in Subparagraph 3.1.4) shall conduct special inspection or testing of work not in accordance with the provisions of the Contract Documents whether or not such work be then fabricated, installed or completed.

5.7.5 Construction Manager shall ensure that the work of each Subcontractor is performed with a minimum of noise and disruption of building occupants. University of Rochester Project Manager will provide specific times when noise, and therefore work, must be severely restricted in order to conduct sensitive research. Construction Manager is responsible for the scheduling of work to avoid the creation of noise during these periods or patient care periods and can, with prior approval from the Project Manager, schedule work for a period outside the normal 7:30 am to 3:30 pm time period.

5.7.6 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. Daily, the Construction Manager shall collect and removed from the site all waste materials and rubbish resulting from the work of the Contract, monitor public areas throughout the work day for waste and rubbish, and control dust in all areas, including wet-mopping. University-owned or maintained receptacles or areas shall not be used for these purposes. 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. At the completion of the Work, the Construction Manager shall remove all such waste materials and rubbish from and about the Project as well as all its waste containers, tools, construction equipment, scaffolding, temporary structures, machinery and surplus materials. The Contractor 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. If the Construction Manager fails to clean up at the completion of the Work or daily if the University commences operations in part of the Project, the University may do so and the cost thereof shall be charged to the Construction Manager without notice.

5.8 Comprehensive Safety Program

As provided in Article 10 of the General Conditions, the Construction Manager is responsible for 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 Subcontractors 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 Subcontractors 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 University 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.

5.9 Labor Relations

Construction Manager shall make recommendations and render assistance as necessary for the development and administration of an effective labor relations program for the Project and the avoidance of labor disputes during construction.

5.10 Building Permits

Construction Manager shall obtain building permits and special permits, as required by Article 4.8 of the General Conditions.

5.11 Job Site Records

5.11.1 Construction Manager shall maintain at the job site on a current basis records of all Subcontracts including shop drawings; samples; purchases; subcontracts; materials; equipment; applicable handbooks; Federal, commercial and technical standards and specifications; and any other related documents and revisions thereto which arise out of this contract or the construction work. Prior to final payment, copies of the records will be delivered to the University.

5.11.2 Construction Manager shall maintain cost accounting records in accordance with established procedures with respect to portions of the work to be performed by

change orders or otherwise on a time and materials, unit cost, or similar basis requiring the keeping of records and computation therefrom.

5.11.3 Construction Manager shall keep accurate and detailed written records of the progress of the Project during all stages of construction; submit monthly written progress reports to the University including, but not limited to, information concerning the work of each of the Subcontractors, the percentage of completion and the number and amount of change orders. Construction Manager shall maintain a daily detailed log of all events occurring on the job site or connected with progress of the Project. The log shall be open to the University and the Consultant at all times and a copy shall be turned over to the University at the completion of the construction or upon earlier termination of this Agreement by the University.

5.11.4 Construction Manager shall maintain copies of the Critical Path Schedule at the job site to reflect current conditions and provide copies to the University with periodic reports as to deviations from the schedule, the causes of the deviations, and the corrective action taken.

5.11.5 Construction Manager shall maintain at the job site a current marked set of working drawing prints and specifications to facilitate the preparation of record drawings. Record drawings shall be those drawings prepared by the Consultant based upon marked Drawings provided by the Subcontractors.

5.11.6 Construction Manager shall furnish certified records in duplicate of building lines; elevations of bottoms of footings, floor levels and approaches made as the work progresses; furnish an as-built site survey.

5.12 Changes in the Work

5.12.1 Construction Manager shall make recommendations to the University for such changes in the work as the Construction Manager may consider necessary or desirable or as requested by the University.

5.12.2 Construction Manager shall provide to the University and the Consultant such information including costs as the Consultant may require preparing necessary change orders, and insuring that the work associated with all change orders is properly carried out.

5.13 Payments to the Subcontractors

Construction Manager shall review, process and approve (except for any Subcontracts held by the University) all applications by the Subcontractors for progress payments and final payments. Construction Manager shall make payment to the Subcontractors.

5.14 Storage of Materials and Equipment

Construction Manager shall accept receipt of all materials and equipment, provide storage and protection for materials and equipment as provided in Article 4.14.4 of the General Conditions.

5.15 Equipment Startup

5.15.1 Each Subcontractor shall provide, at the appropriate time or as directed by the Construction Manager, 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.

5.15.2 Each Subcontractor, 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), Construction Manager, 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.

5.15.3 Each Subcontractor shall prepare and submit to the Construction Manager for acceptance, a schedule of anticipated system commissioning. Construction Manager and University shall commission no system without prior acceptance of the schedule.

5.15.4 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.

5.16 Substantial Completion

5.16.1 With the Consultant and the University's maintenance personnel, Construction Manager shall observe the Subcontractors' checkout of utilities, operational systems and equipment for readiness and assist in their initial start-up and testing. Construction Manager shall deliver all maintenance manuals to the University, no later than (1) week prior to initial startup and testing. Construction Manager shall deliver all keys, record drawings and maintenance stocks to the University no later than one (1) week prior to occupancy by the University.

5.16.2 When the Construction Manager considers each Subcontractor's work or a designated portion thereof substantially complete, the Construction Manager shall prepare for the Consultant and the University a list of incomplete or unsatisfactory items and a schedule for their completion. Construction Manager shall assist the Consultant and the University in conducting inspections. Construction Manager shall coordinate the correction and completion of the work.

5.16.3 Construction Manager shall assist the Consultant in determining when the Project or a designated portion thereof is substantially complete.

5.16.4 Following the Consultant's issuance of a Certificate of Substantial Completion of the Project or designated portion thereof, Construction Manager shall ensure the

completion of the work of the Subcontractors and make recommendations to the Consultant and the University when work is ready for final inspection. Construction Manager shall assist the Consultant in conducting final inspections. Construction Manager shall secure and transmit to the University required guarantees, affidavits, releases, bonds and waivers.

5.16.5 The extent of the duties, responsibilities and limitations of authority of the Construction Manager as a representative of the University during construction shall not be modified or extended without the written consent of the University and the Construction Manager.

5.17 Standard of Performance

5.17.1 Construction Manager shall perform its services consistent with good professional practice (with respect to its construction management services) and in a good and workmanlike manner (with respect to its construction obligations), and in an expeditious and economical manner consistent with the interests of the University and in accordance with the standards prevailing nationally for construction managers experienced in the construction of **(Customize as necessary for each project).**

5.17.2 Construction Manager shall not be responsible for design errors or omissions. It shall, however, use its best efforts to bring to the attention of University and Consultant any defects in design or specifications that it may detect.

ARTICLE 6

REIMBURSABLE CONSTRUCTION MANAGER PERSONNEL COSTS AND NON-REIMBURSABLE COSTS

6.1 Reimbursable Construction Manager Personnel Costs are defined as those costs and expenses incurred by the Construction Manager (exclusive of executive and management time and profit) in connection with the Project for which the University may authorize reimbursement, in writing. Reimbursable Construction Manager Personnel Cost items shall be subject to a not-to-exceed amount. The not-to-exceed amount for Reimbursable Construction Manager Personnel Cost shall be (a) itemized and set forth in a schedule for University's approval and (b) subject to the review and approval of the University. This amount shall be fixed at the time of the acceptance by the University of the GMP. Reimbursable Construction Manager Personnel Costs shall only include those categories of costs, subject to the not-to-exceed amount, which are approved in writing by the University in advance. All invoices for reimbursable costs submitted by the Construction Manager shall be accompanied by documentation reasonably satisfactory to the University substantiating such claims for payment. No reimbursable costs and expenses shall be paid by University unless they are reasonably and necessarily incurred in the proper performance of the Work. Notwithstanding anything in the Contract Documents to the contrary, all Reimbursable Construction Manager Personnel Costs and expenses shall be subject to the GMP.

6.1.1 The following reimbursable personnel costs shall be allowed:

(a) An agreed-upon hourly rate for the Construction Manager's employees when stationed at the field office to the extent performing work directly for the Project and, to the same extent, for Construction Manager's employees in the main or branch office performing the following functions: the Project Administrator, the Project Manager, the Project Engineer, the Cost and Scheduling Engineer, the Expediting Engineer, the Safety Engineer, the Mechanical/Electrical Engineer and any non-officer home office personnel devoting time specifically to this Project. The hourly rate of the Construction Manager's employees includes direct salary compensation, employee fringe benefits, insurance and taxes, as more specifically described in Paragraph 7.1.3.4 of the General Conditions.

(b) This hourly rate shall be calculated by dividing an employee's fully loaded annual salary (including salary, fringe benefits, insurance and taxes) by 1,928, to yield an effective hourly rate for that employee. That rate will be used to calculate the Reimbursable Construction Manager Personnel Cost for that employee whether the employee is assigned full time (40 hours/week), part time (less than 40 hours/week) or if the employee has scheduled absences away from the Project that require a deduction from the scheduled full or part-time pay rate.

6.1.2 A personnel hourly rate schedule shall be appended to this Agreement as Appendix 11. The rate schedule shall be prepared by the Construction Manager for the University's approval and shall include the following data:

(a) A classification for each category of labor to be employed by the Construction Manager in performance of the General Condition items and Reimbursable Construction Manager Personnel Costs.

(b) A specific rate for reimbursement of labor expended under each classification of labor in the performance of the General Condition items and Reimbursable Construction Manager Personnel Costs. The rates must be substantiated and based on actual salary and benefits paid by the Construction Manager, calculated as set forth in Paragraph 6.1.1.b. and Paragraph 7.1.3.4 of the University's Standard General Conditions.

6.1.3 The personnel hourly rate schedule shall be used in determining the reimbursable amount due the Construction Manager in performance of the General Condition items and Reimbursable Costs.

6.1.4 The following items will not be reimbursed to Construction Manager:

(a) Salaries or other compensation of the Construction Manager's personnel at the Construction Manager's principal office and branch offices other than salaries of persons set forth in Article 6 hereof.

(b) Charges for the persons set forth in Article 6 hereof to the extent any such charges exceed the criteria for allowable charges otherwise set forth in the Contract Documents.

(c) Salaries or other compensation of the personnel described in the Contract Documents hereof as personnel whose compensation shall not be reimbursed to the Construction Manager.

(d) Cost of overtime for Construction Manager's or any Trade Contractor's personnel, unless specifically approved by the Owner in advance as a reimbursable cost.

(e) Expense of repairs to machines and equipment.

(f) Expenses of the Construction Manager's principal and branch offices other than the field office, except as otherwise set forth in the Contract Documents.

(g) Any part of the Construction Manager's capital expenses including, without limitation, interest on the Construction Manager's capital employed for the Work.

(h) Overhead or general expenses of any kind, including home office overhead, computer and data processing expenses, and any taxes other than those expressly enumerated as reimbursable in the Contract Documents.

(i) Costs due to the negligence of or failure to comply with the Contract Documents by the Construction Manager, any Trade Contractor, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, including but not limited to correction of defective or nonconforming Work, disposal of materials and equipment wrongly supplied, or making good any damage to property.

(j) The cost of any item not specifically and expressly included in Article 6 or Article 7 as reimbursable costs.

(k) Costs, if any, which would cause the Guaranteed Maximum Price to be exceeded. These costs shall be borne solely by the Construction Manager.

6.1.5 Costs reimbursed to Construction Manager under one provision of the Contract Documents may not also be reimbursed to Construction Manager under any other provision.

ARTICLE 7 GENERAL CONDITION ITEMS

7.1 General Condition items shall be restricted to support type operations and shall not include labor and material utilized in construction of the Project and resulting in a permanent part of the construction. All General Condition items shall be (a) itemized and set forth in a schedule for the University's approval, (b) subject to a lump sum not-to-exceed amount and (c) subject to the review and approval of the University.

7.2 General Condition items include the following, as well as such other items as may be agreed upon by the University and Construction Manager from time to time:

- (a) Watchmen
- (b) Temporary toilets
- (c) Temporary fencing
- (d) Sidewalk bridges
- (e) First aid station
- (f) Temporary elevators
- (g) Signs
- (h) Safety barricades
- (i) Temporary Roadways
- (j) Cleaning Trucking Refuse disposal
- (k) Temporary heat, water and electricity
- (l) Field office, field office equipment and furnishings and their related actual costs (with no overhead and profit), including telephone, temporary electric/water for trailer, janitorial, supplies and postage, copier and paper, computer expenses, travel and subsistence and relocation
- (m) Messenger service

7.3 General Conditions costs also include the following:

- (a) The costs of all job site materials used in providing the General Condition items.
- (b) Wages paid for labor in the direct employ of the Construction Manager to the extent paid for the performance of General Condition items for the Project under applicable collective bargaining agreements or under a salary or wage schedule agreed upon by the University and the Construction Manager, including such benefits as may be payable with respect thereto, calculated in accordance with Paragraph 7.1.3.4 of the University's Standard General Conditions.
- (c) The cost of all plant equipment owned by the Construction Manager at rates to be determined by the University in accordance with established principles for the derivation of costs of plant properly chargeable to job-site operations. Construction Manager shall furnish its own plant and equipment, if available. For these purposes the rate on self-owned equipment shall be as computed in accordance with the Contractor's Equipment and Ownership Expense schedule published by the Associated General Contractors of America for the particular item of equipment (provided, however, that these rates shall not exceed rental rates generally

available in Monroe County, New York) and any item of equipment required for a period of less than one (1) month shall be prorated accordingly. However, the total amount of rental to be allowed by the Project Manager hereunder for any item of self-owned equipment shall not exceed the fair market value of such item at the time of its first use on the Project. The options for purchase of Construction Manager owned equipment shall be the same as provided for rental equipment under d, below.

(d) Rental costs of equipment rented from others; provided, however, that every agreement under which the Construction Manager rents equipment from others shall contain an option or options for the Construction Manager's purchase of such equipment, if available. A copy of each such agreement shall be filed promptly with the University. Construction Manager shall exercise any such option at the request of the University. In such event the University shall reimburse the Construction Manager for such purchase price and the Construction Manager shall dispose of such equipment as directed by the University and shall credit the proceeds thereof to the University.

(e) Transportation costs on equipment and materials.

(f) Restricted quantities of small tools and supplies, which shall include among other items, all fire extinguishers and all special and protective wearing apparel.

(g) The cost of fuel and lubricants, power, light, water, and telephone service if not provided directly by the University.

(h) The amounts paid in accordance with subcontracts for General Condition items approved by the University.

(i) Cost of the premiums for all additional insurance and bonds that the Construction Manager is required to procure by this Agreement or as otherwise reasonably approved by the University.

(j) Costs incurred due to an emergency affecting the safety of persons and property provided such emergency was not reasonably foreseeable and not caused by the fault of the Construction Manager, its Contractors or Subcontractors or those under their direction and control.

(k) Safety equipment and first aid supplies.

7.4 On all of the aforesaid items the University shall be credited with (a) such discounts of invoices as may be obtainable; (b) the salvage value of materials charged to the University and taken over by the Construction Manager (with the University's approval) for its use or sale when no longer needed by it in its performance of this Agreement; and (c) any rebates, refunds, returned deposits or other allowances properly credited to the Construction Manager's reimbursable costs and expenses hereunder.

ARTICLE 8

ADJUSTMENT FOR CHANGES IN SERVICES

The University may, at any time, by written order, make changes to this Agreement based upon Scope Changes as defined in Article 3.4.2. In the event of any such Scope Changes, the Construction Manager's fee shall be increased or decreased, as appropriate, by an amount equal to **% identified in RFP response for increase of CM fee**% of the effect of each Scope Change upon the GMP, provided, however, that there shall be no adjustment unless the aggregate of approved Scope Changes exceeds **% identified in RFP that construction \$\$ can increase w/o increase on CM fee,** % of the GMP. Construction Manager's fee shall not be subject to any decrease as a result of the final adjustment change order reconciling the GMP with the actual cost of the Project. Any claim of the Construction Manager for adjustment of its fee as a result of a Scope Change must be asserted in writing within thirty (30) calendar days from the date of receipt by the Construction Manager of the notification of Scope Change unless the University grants in writing a further period of time before the date of final payment under this Contract. No services for which an additional cost or fee will be charged by the Construction Manager shall be furnished without prior written authorization of the University. Requests for Extensions of Time shall not be considered Scope Changes for purposes of adjustment of the Construction Manager's fee except for Requests covering periods beginning three (3) months after the completion date established in Appendix 5.

ARTICLE 9

SUSPENSION OF WORK - DELAYS

The University may order the Construction Manager in writing to suspend, delay, or interrupt all or any part of the work on the Project for such period of time as it may determine to be appropriate for the convenience of the University.

Except as provided in the preceding paragraph, if the performance of all or any part of the work on the Project is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the University in the administration of the Project, an adjustment shall be made for any increase in the cost of performance of this Agreement necessarily caused by such unreasonable suspension, delay or interruption and this Agreement modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent (a) that performance would have been so suspended, delayed, or interrupted by any other cause, including without limitation the fault or negligence of the Construction Manager, or (b) for which an equitable adjustment is provided for or excluded under any other provision of this Agreement.

In the event Work on the Project is suspended or otherwise delayed, the Construction Manager shall make all reasonable efforts to mitigate any damages incurred as a result of such suspension or delay and shall reduce the size of his staff for the remainder of the delay or suspension as directed by the University. During such period, the University shall reimburse the Construction Manager for the direct costs of all services properly rendered hereunder plus, upon

the receipt of documentation reasonably satisfactory to University, an amount equal to such direct costs actually incurred for related payroll taxes, insurance, pensions and fringe benefits. Upon the termination of the suspension or delay the Construction Manager shall restore his staff to its former size, subject to the approval of the University.

ARTICLE 10 TERMINATION

10.1 During any phase of the Work, the University may terminate all or any portion of the services to be performed by the Construction Manager under this Agreement, or any additions or modifications thereof, for any reason or for no reason, upon giving the Construction Manager fourteen (14) calendar days' written notice of such termination. In addition, the University may terminate this Agreement without providing fourteen (14) calendar days' written notice in the event it elects not to accept the GMP, as provided in Article 3.2.2. In the event of termination, the Construction Manager shall deliver to the University copies of all reports, estimates, schedules and other documents and data prepared pursuant to this Agreement, along with source codes and technical manuals necessary to enable the University to access such data.

10.2 In the event of termination pursuant to Article 3.2, due to University's decision not to accept either the GMP or the Final GMP submitted by the Construction Manager, the Construction Manager shall receive the balance of its fee as provided in Article 12.1 for services properly performed to the point of termination.

10.3 In the event of termination not the fault of the Construction Manager other than pursuant to Article 3.2, the Construction Manager shall be compensated for all services properly performed, or caused to be performed, to the termination date and as otherwise directed by University, together with reimbursable costs and expenses then incurred and due under this Agreement, including any applicable payment of the earned share of the Construction Manager's fee, set forth in Article 12.2. In the event of any dispute over the amount due the Construction Manager, the University shall pay the amount not in dispute, subject to the University's right to withhold payment for any of the reasons set forth in Article 9.6 of the General Conditions. Prior to payment, the Construction Manager shall furnish the University with a release of all claims against the University, by the Construction Manager and applicable Contractors and Subcontractors at any time other than claims in stated amounts as may be specifically excepted by the Construction Manager from the operation of the release.

ARTICLE 11

TIME FOR COMPLETION

11.1 The Schedule showing required design and construction completion dates is included in Appendix 5 attached to this Agreement and incorporated herein by reference. Construction Manager acknowledges the inclusion of a 3-month "float", to be applied by the University at its discretion. This schedule may be amended from time to time by mutual agreement of University and Construction Manager.

11.2 (Liquidated Damages - Checked Option 1 or 2 below)

[Option 1 11.2.1 Liquidated Damages is applicable to this project.] **If this option is checked, Section 11.2.1 below applies and the blank shall be completed to indicate the method of calculating liquidated damages.**

[Option 2 11.2.1 Liquidated Damages is not applicable to this project.] **If this option is checked, Section 11.2.1 below does not apply to this Agreement.**

11.2.1 Liquidated Damages. Construction Manager expressly acknowledges that if the portions of the Work designated in Appendix 3 have not achieved “Substantial Completion” by the dates specified in Appendix 3, as amended, the University will incur financial losses including, without limitation, loss of revenue, increased financing costs, increased professional services fees, increased internal project management costs, additional costs for alternate facilities and services, the loss of tax advantages and other additional expenses. Construction Manager agrees that it is aware of, anticipates, and foresees these consequences and that such losses will be compensable to Owner by Construction Manager under this Agreement as liquidated damages, not as a penalty, at the rate of \$enter amount, if Option 1 is selected, for each calendar day beyond the date specified in Appendix 3 that the designated portion of the Work is not complete. Construction Manager agrees that if a liquidated damages amount is set forth herein then the actual damages that would be incurred by the University due to late completion would be substantial, but difficult to quantify and calculate, and that the liquidated damages amount represents a reasonable estimate by the parties of the actual damages that the University would incur for each calendar day of late completion.

11.3 If Construction Manager’s rate of progress is such that the total amount of Work and/or the degree of completion of the Work accomplished by Construction Manager and its Subcontractors within any time period required by the Project Schedule or the Contract Documents is less than the amount therein specified to be completed within such time, and it reasonably appears that Construction Manager and its Subcontractors will be unable to achieve completion of any Project Element by the dates set forth in the Project Schedule or Substantial Completion of the Work by the Date of Substantial Completion, the University may notify Construction Manager of the same and, in such event, Construction Manager shall have the duty to demonstrate to the University that, based upon its estimate of the remainder of the Project Schedule and potential for early completion of portions of the Work, Construction Manager will be able to achieve completion of such Project Element and Substantial Completion of the Work on or before the Date of Substantial Completion. If the University, acting reasonably, does not agree that Construction Manager has demonstrated its ability to achieve completion of any such Project Element or Substantial Completion of the Work on or before the Date of Substantial Completion, the University may direct Construction Manager to accelerate the Work by issuing a notice to Construction Manager pursuant to this Article 11.3. Upon such direction, Construction Manager shall be obligated to employ such extraordinary measures as necessary to bring the Work into conformity with the Project Schedule. If the anticipated delay results from an Excusable Event of Delay under the Agreement, Construction Manager will be entitled to compensation for Cost of the Work actually incurred as a direct result of such acceleration. If at the time of such acceleration there remains any Contingency, Construction Manager shall be entitled to utilize any such Contingency for costs incurred to accelerate the Work.

11.4 In addition to the University’s right to accelerate the Work pursuant to Article 11.3, the University may direct Construction Manager to accelerate the Work without cause by issuing a written notice to Construction Manager requesting such acceleration. If the Owner directs acceleration pursuant to this Article and that acceleration causes Construction Manager to incur additional Cost of the Work, Construction Manager expressly agrees that its sole and exclusive remedy for such acceleration shall be an adjustment of the GMP by Change Order equal to the Subcontractor’s Costs reasonably incurred directly by reason of the acceleration less the reduction in the Cost of the Work resulting from the shorter overall Project Schedule. The University shall not be required to pay any Cost of the Work incurred pursuant to this Article 11.4 and Construction Manager shall be deemed to have waived its right to recover any such Cost of the Work, unless such Cost of the Work are incurred in response to a written directive from the University to Construction Manager that authorizes Construction Manager to incur such costs and explicitly acknowledges that the University will pay such costs.

ARTICLE 12

CONSTRUCTION MANAGER’S COMPENSATION

12.1 The University will pay the Construction Manager as total compensation for services under Article 2 and Articles 3.1 and 3.2 the fee of: **CM Pre-construction phase services fee total.**

Progress payments shall be made on the basis of the satisfactory completion of the pre-construction phases as follows:

<u>Phase</u>	<u>Portion of Fee</u>
Schematic Design	\$ <input style="width: 50px;" type="text"/>
Design Development	\$ <input style="width: 50px;" type="text"/>
Construction Documents	\$ <input style="width: 50px;" type="text"/>
Assembly of GMP	\$ <input style="width: 50px;" type="text"/>
Total	\$ <input style="width: 50px;" type="text"/>

12.2 The University will pay the Construction Manager as total compensation for services under Articles 3, 4 and 5 (exclusive of Reimbursable Costs, General Conditions items, and cost of construction as described in Articles 5, 6 and 7), the fee of: **At GMP Contract stage(s), insert Construction Phase fee total.**

12.3 The amounts paid to the Construction Manager under this Agreement shall not exceed the Guaranteed Maximum Price or, if a Final GMP is established, the Final GMP established in Appendix 7.

12.4 Payments to the Construction Manager will be made for services under this Agreement within forty-five (45) days after receipt of properly executed requests for payments as follows:

(a) The fee for services performed under Articles 4 and 5 on the basis of and in proportion to the percentage of total completion of construction as determined by the University, subject to a holdback by the University of ten percent (10%), will be paid upon satisfactory completion by the Construction Manager of all closeout requirements set forth herein and in the General Conditions.

(b) The cost of the work performed on separate Subcontracts (including work performed by Construction Manager with its own forces) less a separate retainage as provided in subparagraph (e) on each Subcontract, all as more fully provided in Article 9 of the General Conditions and in subparagraph (e), below, shall be paid to Construction Manager upon satisfactory completion and final acceptance of the work under the specific Subcontract (or, in the University's discretion, of the completion and final acceptance of each Project Element).

(c) For reimbursement of Reimbursable Costs and General Condition items, the Construction Manager shall be paid monthly.

(d) After completion and acceptance of all construction work and upon receipt of a release of claims pertaining to all work performed under the terms of this Agreement, the full amount due the Construction Manager shall be paid, subject to the requirements of Article 9.9 of the General Conditions.

(e) University shall withhold a retainage of ten percent (10%) on each payment submitted by the Construction Manager until project is substantially complete. Retainage will not be held on Construction Manager's Reimbursable Construction Manager Personnel Costs and General Condition Items.

(f) All applications for payment, whether by Subcontractors or by the Construction Manager for work done with its own forces, shall conform to the requirements of Article 9.3 of the General Conditions. The monthly applications shall conform to Appendix 12.

12.5 Construction Manager shall neither file nor permit to be filed by any subcontractor or supplier any mechanic's or materialman's lien, or maintain or permit to be maintained by any subcontractor or supplier any claim against the University's real estate or improvements for or on account of any work done, labor performed or materials furnished under this Construction Management Agreement, and shall obtain a similar covenant from its Subcontractors and suppliers.

ARTICLE 13

GUARANTEE AND CORRECTION OF WORK

13.1 Construction Manager warrants and guarantees that title to all work, materials and equipment covered by an application for payment, whether incorporated in the Project or not, will pass to the University upon the receipt of payment for such work by the Construction Manager, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to 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.

13.2 Correction of Work

13.2.1 Construction Manager shall promptly provide for correction of all work rejected by the Consultant or the University 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. Construction Manager shall bear all cost of correcting such rejected work, including the cost of the Consultant's additional services thereby made necessary.

13.2.2 If, within one (1) year after the Date of Substantial Completion or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, any of the work is found to be either defective or not in accordance with the Contract Documents, the Construction Manager shall correct it promptly after receipt of a written notice from the University to do so unless the University has previously given the Construction Manager a written acceptance of such specific condition (latent defects excepted). The University shall give such notice promptly after discovery of the condition.

13.2.3 If the Construction Manager does not remove such defective or non-conforming work within a reasonable time fixed by written notice from the Consultant, the University may remove it and may store the materials or equipment at the expense of the Construction Manager. If the Construction Manager fails to correct the defective work within a reasonable time after written notice from the Consultant, the University may proceed to correct the work and charge the Construction Manager for the cost of the correction and any time and expenses of University's personnel or agents involved in the correction, all as more fully set forth in Article 12 of the General Conditions.

13.2.4 Unless otherwise agreed in writing, the Construction Manager shall continue to carry on the Work and maintain its progress during any disputes or litigation arising out of this Agreement, and the University shall continue to make payments in accordance with the provisions of this Agreement and the Contract Documents, except with respect to the items or areas in dispute.

13.2.5 Construction Manager shall not be required to perform or, with respect to its own comprehensive general liability insurance policy, insure asbestos removal or hazardous materials removal activities. The Construction Manager acknowledges that, in the renovation of the existing Facility, there may be asbestos present. If specifically required by the Owner, the Construction Manager shall be expected to enter into subcontract, which shall be within the scope of this Agreement, with a licensed asbestos abatement firm approved by the University to perform asbestos abatement work. Construction Manager shall coordinate with the University the timing and logistics of the testing and removal, and schedule its own activities accordingly. The University shall indemnify and hold the Construction Manager harmless from any existing

or future asbestos or PCB-related claims, judgments, losses, or damages, including legal fees, arising in connection with the Project provided the Construction Manager and those under its direction and control exercise reasonable prudence and immediately notify the Consultant and the University if they discover or suspect the discovery of any asbestos or other hazardous materials and await instructions before proceeding with work in the affected area. Construction Manager shall request University to examine any such area before proceeding with any demolition or other work. Construction Manager shall incorporate the requirements of this paragraph in any Subcontracts for the performance of the work on the Project.

ARTICLE 14

INDEMNIFICATION

14.1 To the fullest extent permitted by law (including the General Obligations Law of New York), Construction Manager shall defend, indemnify and hold harmless the University and any entity directly or indirectly owned or controlled by the University, and their respective trustees, directors, officers, employees, agents, volunteers, and consultants (collectively, the “Indemnitees” or 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, anyone directly or indirectly employed by Construction Manager, or anyone for whose acts or omissions Construction Manager 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.

14.2 In any and all claims against any Indemnitee by any employee of the Construction Manager, a Subcontractor, a Sub-subcontractor at any tier, anyone directly or indirectly employed or retained by any of them or anyone for whose acts any of them may be liable, the Construction Manager’s indemnification obligations under Article 14.1 or the Contract Documents 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, the contractor or any subcontractor under worker’s or workmen’s compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 15

AFFIRMATIVE ACTION

In connection with the Project, the University may be required to meet certain affirmative action goals, including but not limited to the engagement of minimum numbers of women-owned

and minority-owned businesses. Construction Manager acknowledges these requirements are set forth in Appendix 10 attached hereto and agrees to undertake and fulfill them. Any failure to meet such requirements shall be the responsibility of the Construction Manager, and Construction Manager's indemnification obligation hereunder and under the Contract Documents shall also be construed to apply to Construction Manager's failure to satisfy such requirements.

ARTICLE 16

MISCELLANEOUS PROVISIONS

16.1 In the performance of any construction work under this Agreement, whether with its own forces or through Subcontractors, the Construction Manager shall be considered an independent contractor and not an officer or employee of the University. Construction Manager shall perform its tasks and duties consistently with such status, and will make no claim or demand for any right or privilege applicable to an officer or employee of the University, including, but not limited to, worker's compensation, disability benefits, accident or health insurance, unemployment insurance, social security or retirement membership.

16.2 This Agreement shall be governed by the laws of New York without regard to principles of conflicts of law.

16.3 The University and the Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement, and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the University nor the Construction Manager shall assign, sublet or transfer any interest in this Agreement without the written consent of the other.

16.4 This Agreement represents the entire and integrated agreement between the University and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the University and the Construction Manager.

16.5 Nothing contained herein shall be deemed to create any contractual relationship between the Construction Manager and the Consultant; nor shall anything contained in this Agreement be deemed to give any third party any claim or right of action against the University or the Construction Manager which does not otherwise exist without regard to this Agreement.

16.6 Construction Manager represents and warrants that it is a corporation existing and in good standing under the laws of the State of New York and that the officer who has executed this Agreement is duly authorized to enter into this Agreement on behalf of the Construction Manager. Construction Manager further represents and warrants that it is aware of no defaults under any agreement, contract or obligation that would impair its ability to enter into or perform this Agreement.

16.7 Whenever in this Agreement the term “University” or “University’s” is used, it shall mean the University’s Project Manager as designated by University and described in Article 2.2 of the University’s Standard General Conditions of the Contract for Construction. All communications with or through University shall be directed to that individual or his designee.

16.8 Construction Manager consents to the jurisdiction and venue of the United States District Court for the Western District of New York and the New York State Supreme Court, venued in Monroe County, for purposes of litigation arising out of or related to this Agreement.

16.9 Construction Manager grants to the University and its designated representatives the right to audit, for a period of up so 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, including, but not limited to, cost estimates and calculations. A similar provision shall be included by the Construction Manager in all subcontracts entered into in connection with this Agreement.

16.10 The Construction Manager shall address all correspondence, except invoices, to the attention of the Project Manager. Invoices shall be addressed to the attention of the **Financial Manager**. All correspondence and invoices shall be addressed to the University of Rochester, Planning and Project Management, 271 East River Road, Box 270347, Rochester, New York 14627. All documentation shall clearly show the University’s project name and the University’s project number.

[The remainder of this page is intentionally left blank.]

The UNIVERSITY AND THE CONSTRUCTION MANAGER have, on the day, month and year first written, executed this Agreement in two counterparts, each of which shall, without proof or accounting for the other counterparts, be deemed an original thereof.

UNIVERSITY:

CONSTRUCTION MANAGER:

THE UNIVERSITY OF ROCHESTER

Name of CM Firm

Wayne Goodwin _____

Name: _____

Director of Operations

Title: _____

LIST OF APPENDICES

- Appendix 1 - Enumeration of Contract Documents
- Appendix 2 - Construction Budget
- Appendix 3 - Project Phases
- Appendix 4 - Project Description
- Appendix 5 - Project Schedule -- Design and Construction Completion Dates
- Appendix 6 - Form of Guaranteed Maximum Price Proposal
- Appendix 7 - Form of Final GMP Proposal
- Appendix 8 - Form of Construction Manager's Performance Bond
- Appendix 9 - Form of Construction Manager's Payment Bond
- Appendix 10 - Policies With Respect to Equal Employment Opportunity and Affirmative Action
- Appendix 11 - Personnel Hourly Rate Schedule
- Appendix 12 - Form of Application for Payment
- Appendix 13 - Key Personnel
- Appendix 14 - Form of Financial Report

APPENDIX 1

ENUMERATION OF CONTRACT DOCUMENTS

Contract Documents utilized to develop GMP:

Enumerate documents used to develop GMP & Final GMP. Include: Name of A/E firm, date of documents, type of documents: drawings, specs, etc.

APPENDIX 2

CONSTRUCTION BUDGET

A target construction budget shall be established for the basic Project. The target construction budget is inclusive of a design and bidding contingency along with the Contractor's overhead and profit and is intended to be reflective of the level at which a contract will be established. As specific bid packages are developed, these target budgets will be repackaged to represent the ultimate contracting plan. The target construction budget for the Project is as follows:

ITEM	TOTAL COST
Construction	<u>Identify the target construction cost for the project, NOT TOTAL PROJECT COST</u>

APPENDIX 3

PROJECT PHASES

Identify the number of phases the project will have, generally one

APPENDIX 4

PROJECT DESCRIPTION

Provide the overall project description. Usually the one provided in the RFP and/or BOT Resolution.

APPENDIX 5

PROJECT SCHEDULE – DESIGN AND CONSTRUCTION COMPLETION DATES

Insert Project Schedule (reference exhibit)

APPENDIX 6 – 2 Pages

FORM OF GUARANTEED MAXIMUM PRICE PROPOSAL

Insert project number & project name

Insert date

Guaranteed Maximum Price

We hereby submit to the University of Rochester (“University”), pursuant to the provisions of Article 3 of the Construction Manager Agreement dated _____, (the “Agreement”) between the University of Rochester and _____ (“Construction Manager”), a Guaranteed Maximum Price for the Project (based on the Contract Documents developed as determined by the University pursuant to Article 3.1.3 of the Agreement) as follows:

- I. A lump sum, not-to-exceed amount for Reimbursable Construction Manager Personnel Costs for services provided under Article 6.

Total Not-to-exceed Amount: \$ _____

- II. A lump sum, not-to-exceed amount for General Conditions items provided by the Construction Manager under Article 7.

Total Not-to-exceed Amount: \$ _____

- III. Cost of materials and separate construction contracts (exclusive of contingencies for design, bidding and price escalation)

Total Not-to-exceed Amount: \$ _____

- IV. Contingencies for design, bidding, and price escalation

Total Not-to-exceed Amount: \$ _____

- V. Total of Construction Manager fees described in Article 12.1 and 12.2

a. Fee for services performed under Articles 3, 4 and 5 \$ _____

b. Fees for services performed Article 2, 3.1 and 3.2 and other fees \$ _____

Total Fees \$ _____

Totals of I-V \$ _____

This figure shall be the GMP, which we hereby guarantee to the University.

Attached is a breakdown showing the dollar amount allocated to each bidding package; all of which total the GMP amount.

\$ _____

The parties hereby agree to amend the following Appendices to read in their entirety as shown on the attached:

Please select... dated 00/00/00 - # page(s).
Please select... dated 00/00/00 - # page(s).
Please select... dated 00/00/00 - # page(s).
Please select... dated 00/00/00 - # page(s).
Please select... dated 00/00/00 - # page(s).
Please select... dated 00/00/00 - # page(s).

Enter Firm Name

By: _____

Printed Name: Enter Name of Signer

Title: Enter Signer's Title

Date: _____

Accepted and Agreed

THE UNIVERSITY OF ROCHESTER

By: _____

Printed Name: Holly G. Crawford

Title: Sr VP for Admin and Finance and CFO

Date: _____

APPENDIX 7 – 2 Pages

FORM OF FINAL GMP PROPOSAL

Insert project number & project name

Insert date

Guaranteed Maximum Price

We hereby submit to the University of Rochester (“University”), pursuant to the provisions of Article 3 of the Construction Manager Agreement dated _____, (the “Agreement”) between the University of Rochester and _____ (“Construction Manager”), a Guaranteed Maximum Price for the Project (based on the Contract Documents developed as determined by the University pursuant to Article 3.1.3 of the Agreement) as follows:

- I. A lump sum, not-to-exceed amount for reimbursable costs for services provided under Article 6 (exclusive of contracts for materials and construction).

Total Not-to-exceed Amount: \$ _____

- II. A lump sum, not-to-exceed amount for General Conditions items provided by the Construction Manager under Article 7.

Total Not-to-exceed Amount: \$ _____

- III. Cost of materials and separate construction contracts

Total Not-to-exceed Amount: \$ _____

- IV. Bid Package Contingency

Total Not-to-exceed Amount: \$ _____

- V. Total of Construction Manager fees described in Article 12.1 and 12.2

a. Fee for services performed under Articles 3, 4 and 5 \$ _____

b. Fees for services performed Article 2, 3.1 and 3.2 and other fees \$ _____

Total Fees \$ _____

Totals of I-V \$ _____

This figure shall be the GMP, which we hereby guarantee to the University.

Attached is a breakdown showing the dollar amount allocated to each bidding package; all of which total the GMP amount.

\$ _____

The parties hereby agree to amend the following Appendices to read in their entirety as shown on the attached:

Please select... dated 00/00/00 - # page(s).
Please select... dated 00/00/00 - # page(s).
Please select... dated 00/00/00 - # page(s).
Please select... dated 00/00/00 - # page(s).
Please select... dated 00/00/00 - # page(s).
Please select... dated 00/00/00 - # page(s).

Enter Firm Name

By: _____

Printed Name: Enter Name of Signer

Title: Enter Signer's Title

Date: _____

Accepted and Agreed

THE UNIVERSITY OF ROCHESTER

By: _____

Printed Name: Holly G. Crawford

Title: Sr VP for Admin and Finance and CFO

Date: _____

APPENDIX 8

FORM OF CONSTRUCTION MANAGER'S PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That _____, a
_____ corporation having its principal office at _____
_____ as Principal, and _____, a
_____ corporation having its principal office at _____
and authorized to do business in the State of New York as Surety, are held and firmly bound unto
the University of Rochester as Oblige, in the amount of _____ Dollars
(\$_____), for the payment whereof Principal and Surety bind themselves, their heirs,
executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, PRINCIPAL HAS BY A WRITING dated as of _____, 20__, entered
into a Construction Manager Agreement with the Oblige (the "Agreement") whereby the
Principal covenanted with the Oblige to perform certain pre-construction and construction
period services in connection with the proposed _____ Addition (the "Project"), which
Agreement is incorporated herein by reference.

NOW, THEREFORE, THE CONDITION OF SURETY'S OBLIGATION is such that, if
Principal promptly and faithfully performs each and all of its duties and obligations contained in
said Agreement at the times and in the manner described therein and fulfills any and all
warranties of work and materials furnished under the Agreement for the time and under the terms
specified in the Agreement then the Surety's obligation shall be null and void; otherwise it shall
remain in full force and effect.

ARTICLE 1.

Whenever Principal shall be, and declared by Oblige to be in default under the
Agreement, the Oblige having performed Oblige's obligations thereunder, the Surety may
promptly remedy the default, or shall promptly:

- (a) Arrange for the Principal, with consent of the Oblige, to perform and complete
the Agreement; or
- (b) Undertake, with consent of the Oblige, to perform and complete the Agreement
itself, through its qualified agents or through qualified independent Contractors;
or
- (c) Obtain bids or negotiated proposals from qualified Contractors acceptable to the
Oblige to enter into a contract to perform and complete Principal's obligations
under the Agreement, arrange for a contract to be prepared for execution by the
Oblige and a contractor selected with the University's concurrence, to be secured
with a performance bond executed by a qualified surety equivalent to and in the
form of this Bond.

In addition to any one of the above actions, the Surety's obligation hereunder is such that the Surety will pay to the Obligee any damages arising from Principal's breach of the Agreement which are recoverable under the Agreement.

ARTICLE 2.

Should the Surety for any reason be required to fulfill its obligation hereunder, then the responsibilities of Surety to the Obligee shall not be greater than those of the Principal under the Agreement and the responsibilities of the Obligee to the Surety shall not be greater than those of the Obligee under the Agreement. To the limit of the dollar amount of this Performance Bond, as stated above, the Surety is obligated for all of the Principal's obligations under the Agreement, including, without limitation:

- (a) The responsibilities of the Principal for correction of defective work and completion of its Obligations under the Agreement;
- (b) Additional legal, design professional and delay costs resulting from the Principal's failure to perform under the Agreement or resulting from the actions or failure to act of the Surety hereunder; and
- (c) Liquidated or other damages resulting from delayed performance or non-performance of Principal or Surety.

ARTICLE 3.

The Surety hereby stipulates and agrees that the obligations of the Surety hereunder shall be in no way impaired or affected by any extension of time or forbearance, modification, omission, addition or change in or to the Agreement or the work to be performed thereunder, or by any supervision or inspection or omission to supervise or inspect the work thereunder, or by any payment thereunder prior to the time provided for therein, or by any waiver of any provision or condition thereof, or by settlement or compromise of any claim or dispute relating thereto, or by any assignment, subletting or other transfer thereof or of any part thereof, or of any moneys due or to become due thereunder; and the Surety hereby waives notice of any and all such extensions, forbearances, modifications, omissions, additions, changes, payments, waivers, settlements, compromises, assignments, subcontracts and transfers.

ARTICLE 4.

The Surety agrees that the obligations of the Surety under this bond shall be in no way impaired or affected by any winding up, insolvency, bankruptcy or reorganization of the Principal or by any other arrangement or rearrangement of the Principal for the benefit of creditors.

ARTICLE 5.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Obligee named herein or its successors in interest.

IN WITNESS WHEREOF, the Principal and Surety have caused this Agreement to be executed as of this ____ day of _____, 20__.

PRINCIPAL:

(Printed Name)

By: _____

Its: _____

SURETY:

(Printed Name)

By: _____

Its: _____

STATE OF _____
COUNTY OF _____

I HEREBY CERTIFY, that on this ____ day of _____, 20__, before me personally appeared _____, to me known to be the person described in and who executed the foregoing instrument on behalf of the Principal therein, and acknowledged the execution thereof to be a free act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal the date aforesaid.

Notary Public, State of _____
My Commission Expires: _____

STATE OF _____
COUNTY OF _____

I HEREBY CERTIFY, that on this ____ day of _____, 20__, before me personally appeared _____, to me known to be the person described in and who executed the foregoing instrument on behalf of the Principal therein, and acknowledged the execution thereof to be a free act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal the date aforesaid.

Notary Public, State of _____
My Commission Expires: _____

APPENDIX 9

FORM OF CONSTRUCTION MANAGER'S PAYMENT BOND

[Use AIA A311 "Labor and Material Payment Bond
or equivalent (subject to approval of University)]

APPENDIX 10

**POLICIES WITH RESPECT TO EQUAL EMPLOYMENT OPPORTUNITY AND
AFFIRMATIVE ACTION**

[TO BE PROVIDED BY THE UNIVERSITY.]

APPENDIX 11

PERSONNEL HOURLY RATE SCHEDULE

Insert hourly rates for CM staff provided in RFP response.

APPENDIX 12

FORM OF APPLICATION FOR PAYMENT

Insert "Use UR-06 Application for Payment Construction Manager & Continuation sheets".

APPENDIX 13

KEY PERSONNEL

Insert names & titles of key personnel of project.

APPENDIX 14

FORM OF FINANCIAL REPORT

Insert Form of Financial Report.