

AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER

Pre-Construction and Construction Phase Services

FP&M Project No, CP00**Error! Bookmark not defined.**

AGREEMENT made by and between the Board of Regents, State of Iowa, acting for Iowa State University, hereinafter called the Owner, and **Error! Bookmark not defined.** hereinafter called the Construction Manager. A strikethrough of paragraph(s) represents deleted or modified language. See Article 16 for deletions, modifications and additions to the Agreement.

The Owner intends to undertake on the Campus of Iowa State University a Project entitled:

Project Title: **Error! Bookmark not defined.**

The Project Design Professional is: **Error! Bookmark not defined.**

The Owner and Construction Manager agree as set forth below:

- I. The Construction Manager shall provide services for the Project in accordance with the TERMS AND CONDITIONS OF THE AGREEMENT.

The Construction Manager accepts the relationship of trust and confidence established between the Construction Manager and the Owner by this Agreement. The Construction Manager covenants with the Owner to furnish the Construction Manager's best skill and judgment and to cooperate with the Owner's Design Professional in furthering the interests of the Owner. The Construction Manager agrees to furnish efficient business administration and superintendence and to use the Construction Manager's best efforts at all times in the most expeditious and economical manner consistent with the interest of the Owner.

- II. The Owner shall compensate the Construction Manager in accordance with the TERMS AND CONDITIONS OF THE AGREEMENT.

A. Compensation for Pre-Construction Phase Services

1. For Pre-Construction Phase Services described in Article 2.2, compensation is comprised of costs of personnel engaged in the performance of services provided in this Agreement and directly attributable to the project in accordance with the schedule of Hourly Rates by Classification (Exhibit B), not to exceed a limit of **Error! Bookmark not defined.** and No/100 Dollars (**\$Error! Bookmark not defined.**).

OR

For Pre-Construction Phase Services compensation described in Article 2.3, the Owner shall pay the Construction Manager a stipulated sum of **Error! Bookmark not defined.** and No/100 Dollars (**\$Error! Bookmark not defined.**)

2. For Pre-Construction Phase REIMBURSABLE EXPENSES as described in Paragraph 12.3, the actual costs incurred by the Construction Manager in the interest of the Project shall not exceed **Error! Bookmark not defined.** and No/100 Dollars (**\$Error! Bookmark not defined.**).

B. Compensation for Construction Phase Services

1. For Construction Phase Services described in Article 2.3, the Owner shall pay the Construction Manager a fee amount based upon the current Construction Cost of **\$Error! Bookmark not defined.** The fee amount shall not exceed **Error! Bookmark not defined.** and No/100 Dollars (**\$Error! Bookmark not defined.**) (**Error! Bookmark not defined.**)% of the Construction Cost as defined in Paragraph 5.1). The stipulated sum amount will be adjusted by Amendment at the conclusion of the Construction Phase to reflect the actual construction cost but in no case shall exceed the amount included above.

OR

For Construction Phase Services compensation described in Article 2.3, the Owner shall pay the Construction Manager a stipulated sum of **Error! Bookmark not defined.** and No/100 Dollars (**\$Error! Bookmark not defined.**)

2. For Construction Phase REIMBURSABLE EXPENSES as described in Paragraph 12.3, the actual costs incurred by the Construction Manager in the interest of the Project and identified in the schedule of Reimbursable Expenses (Exhibit "C"). Reimbursable Expenses shall not exceed **Error! Bookmark not defined.** and No/100 Dollars (**\$Error! Bookmark not defined.**).
3. Reimbursable Expenses for General Requirements Reimbursable Expenses that will be provided by the Construction Manager during the construction phase will be added by Amendment to this Agreement at the time that the development of construction documents is sufficiently complete to determine these expenses accurately.

- C. For ADDITIONAL SERVICES, described in Article 3, and any other services specified in Article 16 as Additional Services, compensation shall be computed as agreed upon in writing at the time of the needed services.

III. Professional consultants retained by the Construction Manager for the services covered by this Agreement are:

(Professional Consultant's Firm Name and Discipline)

OR

(Error! Bookmark not defined.

Error! Bookmark not defined. Not Used

IV. The Construction Manager shall maintain, and require all of its professional consultants and subcontractors performing services in connection with this Agreement, to maintain insurance for the duration of the Project in such amounts and types as required below and in Article 11 of this Agreement. The insurance required shall be obtained from a company(ies) licensed to do business in the state of Iowa and hold a current financial rating from A. M. Best of no less than A-, financial size VII. The required minimum liability limits may be met through either the primary policy(ies), or a combination of primary and excess or umbrella policies.

A. Insurance coverage required:

- i. Workers compensation in compliance with statutory requirements, and Employers Liability with limits of no less than \$500,000 Each Accident for bodily injury \$500,000 Each Employee for bodily injury by Disease/ and \$1,000,000 Policy Limit for bodily

injury by Disease. The Construction Manager shall waive subrogation rights against the State of Iowa; the Board of Regents, State of Iowa; and, Iowa State University any claim paid or payable on this policy.

- ii. Commercial General Liability (ISO 1998 or later/equivalent form) covering all work and operations under the Agreement with limits of no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
 - iii. Automobile Liability of no less than \$1,000,000 each accident and annual aggregate, covering owned, leased, hired, non-owned, and employee non-owned vehicles.
 - iv. Professional Liability of no less than \$3,000,000 per claim and \$3,000,000 annual aggregate. Coverage should be on a claims made basis.
 - v. Umbrella Liability of no less than \$5,000,000 per occurrence providing excess of the General Liability, Automobile Liability and Employers Liability.
- B. The above liability insurance policies, with the exception of Professional and Workers Compensation coverage, shall name three entities: State of Iowa; Board of Regents, State of Iowa; and, Iowa State University as additional insureds. The additional insured shall be added to the policy and endorsed using CG 20 26 and CG 20 37 (7-04) or equivalent.
- C. The Construction Manager shall waive subrogation rights against the State of Iowa; the Board of Regents, State of Iowa; and, Iowa State University for any claim paid or payable by any of the above-required insurance policies. Endorsement form WC 00 03 13 may be attached to the certificate of insurance in lieu of waiver language being stated on the certificate.
- D. Neither the Owner, nor any additional insured required to be so named under this Agreement shall participate in any policy deductible or retention for claims. Any such deductible or retention shall be the sole responsibility of the Construction Manager.
- E. Certificate Holder address shall be as follows:
- Iowa State University
Facilities Planning & Management
200 General Services Building
Ames, IA 50011-4021

TERMS AND CONDITIONS OF AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER

ARTICLE 1. WORKING RELATIONSHIPS

1.1 OWNER'S REPRESENTATIVE

1.1.1 The Associate Vice President for Facilities or such other person as designated in writing by the Owner shall be the principal representative of the Owner (the "Owner's Representative"). The Owner's Representative hereby authorizes the following persons to represent the Owner in the fulfillment of their respective duties as hereinafter described in Article 4:

- .1 The Director for Design and Construction Services
- .2 The Owner's Project Manager
- .3 The Owner's Construction Manager (Employee of the Owner)

1.1.2 All communications between the Owner and the Construction Manager shall be made through the Owner's Representative. The Owner's Representative or a designee shall be at all meetings as required with the Construction Manager and other institutional personnel during the Project. The Owner's Representative shall render decisions in a timely manner pertaining to documents submitted by the Construction Manager in order to avoid unreasonable delay in the orderly and sequential progress of the Construction Manager's services.

1.2 CONSTRUCTION MANAGER'S REPRESENTATIVE

1.2.1 The Construction Manager shall designate one principal or representative approved in writing by the Owner to represent the firm in all communications and at all meetings with the Owner's Representative. All correspondence from the Owner to the Construction Manager shall be directed to this person. The Construction Manager's Representative shall not be changed without prior written consent of the Owner.

1.3 CONSTRUCTION MANAGER'S SERVICES

1.3.1 The Construction Manager's services consist of those services performed by the Construction Manager, Construction Manager's employees and Construction Manager's consultants and subcontractors as enumerated in Articles 2 and 3 of this Agreement and any other services included in Article 16.

1.3.2 The Construction Manager's services shall be provided in conjunction with the services of a Design Professional as described in the Agreement Between Owner and Design Professional.

1.3.3 The Construction Manager shall provide sufficient organization, personnel and management to carry out the requirements of this Agreement in an expeditious and economical manner consistent with the interests of the Owner. 1.3.4 The services covered by this Agreement are subject to the time limitations contained in Exhibit A.

1.3.5 The Construction Manager shall attend all meetings which may be necessary for the timely performance of all services.

1.3.6 The Construction Manager shall not enter into a contract with any professional consultant, subcontractor, or other third party for the rendering of any of the services provided under this Agreement without first obtaining the Owner's written approval.

1.4 DEFINITIONS

- 1.4.1 Bidding Documents: Construction Documents issued to bidders before signing of an owner-contractor agreement, which include, Bidding Requirements and Contract Documents.
- 1.4.2 Contract Documents: Are the legally enforceable requirements that become part of the contract when the agreement is signed which include all the Construction Documents.
- 1.4.3 Contractor: The Contractor is the person or entity identified as such in the Agreement between Owner and Contractor and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.
- 1.4.4 Construction Documents: Written and graphic documents prepared or assembled by the Design Professional for communicating the design of the project and administering the contract for its construction.
- 1.4.5 Construction Set Documents: Bidding Documents that have incorporated all Addendum items by the Design Professional.
- 1.4.6 Design Documents: Drawings and other documents that fix and describe the size and character of the entire project as to architectural, structural, mechanical and electrical systems, material and such other elements as may be appropriate.
- 1.4.7 Design Professional: The entity engaged to provide professional design services. The Design Professional may practice Architecture, Engineering, Interior Design, Landscape Architecture or other similar disciplines professionally qualified to provide the services described herein.
- 1.4.8 Project: The total construction of which the Work to be performed under this Agreement may be the whole or a part.
- 1.4.9 Project Manual: The volume usually assembled for the construction work, which includes the bidding requirements, sample forms, conditions of the contract and the specifications.

ARTICLE 2. SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES

2.1 DEFINITION

- 2.1.1 The Construction Manager's Basic Services consist of those described in Paragraphs 2.2 and 2.3 and any other services identified in Article 16 as part of Basic Services.

2.2 PRE-CONSTRUCTION PHASE

- 2.2.1 The Construction Manager shall review the program furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner.
- 2.2.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

- 2.2.3 The Construction Manager shall prepare a Project Management Plan for the Project. In preparing the Project Management Plan, the Construction Manager shall consider the Owner's schedule, cost and general design requirements for the Project. The Construction Manager shall then develop various alternatives for the sequencing and management of the Project and shall make recommendations to the Owner. The Project Management Plan shall also include a description of the procurement strategies recommended for the Project.
- 2.2.4 Based on early schematic designs and other design criteria prepared by the Design Professional, the Construction Manager shall prepare preliminary estimates of Construction Cost for program requirements using area, volume or similar conceptual estimating techniques. The Construction Manager shall provide cost evaluations of alternative materials and systems.
- 2.2.5 The Construction Manager shall expeditiously review design documents during their development and advise on proposed site use and improvements, selection of materials, building systems and equipment, and methods of Project delivery. The Construction Manager shall provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, and possible economies.
- 2.2.6 The Construction Manager shall prepare and periodically update a Project Schedule for the Design Professional's review and the Owner's acceptance. The Construction Manager shall obtain the Design Professional's approval for the portion of the preliminary project schedule relating to the performance of the Design Professional's services. In the Project Schedule, the Construction Manager shall coordinate and integrate the Construction Manager's services, the Design Professional's services and the Owner's responsibilities with anticipated construction schedules, highlighting critical and long-lead-time items.
- 2.2.7 As the Design Professional progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Design Professional, estimates of Construction Cost of increasing detail and refinement. The estimated cost of each work package shall be indicated with supporting detail. Such estimates shall be provided for the Design Professional's review and the Owner's approval. The Construction Manager shall advise the Owner and Design Professional if it appears that the Construction Cost may exceed the latest approved Project budget and make recommendations for corrective action. The Design Professional will also obtain a cost estimate as described in the Agreement Between Owner and Design Professional. The Construction Manager will work with the Owner and Design Professional to rectify differences between the Construction Manager estimate and that provided by the Design Professional.
- 2.2.8 The Construction Manager shall consult with the Owner and Design Professional regarding the Construction Documents and make recommendations whenever design details adversely affect constructability, cost or schedules.
- 2.2.9 The Construction Manager shall provide recommendations and information to the Owner regarding the assignment of responsibilities for temporary Project facilities and equipment, materials and services for common use of the Contractors. The Construction Manager shall verify that such requirements and assignment of responsibilities are included in the proposed Contract Documents.

- 2.2.10 The Construction Manager shall provide recommendations and information to the Owner regarding the allocation of responsibilities for safety programs among the Contractors.
- 2.2.11 The Construction Manager shall advise on the division of the Project into individual Contracts for various categories of Work, including the method to be used for selecting Contractors and awarding Contracts. The Construction Manager shall endeavor to develop bid packages that will encourage Iowa based construction companies to submit bids for the contracts to be awarded. If multiple Contracts are to be awarded, the Construction Manager shall review the Construction Documents and make recommendations as required to provide that (1) the Work of the Contractors is coordinated, (2) all requirements for the Project have been assigned to the appropriate Contract, (3) the likelihood of jurisdictional disputes has been minimized, and (4) proper coordination has been provided for phased construction.
- 2.2.12 The Construction Manager shall prepare a Project construction schedule providing for the components of the Work, including phasing of construction, times of commencement and completion required of each Contractor, ordering and delivery of products requiring long lead time, and the occupancy requirements of the Owner. The Construction Manager shall provide the current Project construction schedule for each set of bidding documents.
- 2.2.13 The Construction Manager shall investigate and recommend a schedule for the Owner's 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 Design Professional.
- 2.2.14 The Construction Manager shall assist the Owner in selecting, retaining and coordinating the professional services of special consultants required for the Project.
- 2.2.15 The Construction Manager shall provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. The Construction Manager shall make recommendations for actions designed to minimize adverse effects of labor shortages. The Construction Manager shall strive to support the Owner's objective of maximizing the involvement of local and State of Iowa contractors.
- 2.2.16 The Construction Manager shall assist the Owner in obtaining information regarding applicable requirements for equal employment opportunity programs for inclusion in the Contract Documents.
- 2.2.17 Following the Owner's approval of the Construction Documents, the Construction Manager shall update and submit the latest estimate of Construction Cost and the Project construction schedule for the Design Professional's review and the Owner's approval.
- 2.2.18 The Construction Manager shall make recommendations, develop, and implement criteria acceptable to Owner for qualification of Bidders. The Construction Manager shall establish bidding schedules and develop Bidders' interest in the Project. The Construction Manager shall participate in pre-bid conferences to familiarize Bidders with the Bidding Documents and management techniques and with any special systems, materials or methods. The Construction Manager shall assist the Design Professional with regard to questions from Bidders, and with the issuance of Addenda.
- 2.2.19 The Construction Manager shall assist the Owner in preparing and placing notices and advertisements to solicit bids or purchase order quotations for the Project.

- 2.2.20 The Construction Manager shall assist the Owner in receiving bids, prepare bid analyses and make recommendations to the Owner for the Owner's award of Contracts or rejection of bids.
- 2.2.21 The Construction Manager shall assist the Owner in preparing Construction Contracts and advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Contractors.

2.3 CONSTRUCTION PHASE

- 2.3.1 The Construction Phase will commence with the award of the initial Construction Contract or purchase order and, together with the Construction Manager's obligation to provide Basic Services under this Agreement, will end at the conclusion of the one (1) year warranty period following the date of Substantial Completion.
- 2.3.2 The Construction Manager shall provide administration of the Contracts for Construction in cooperation with the Design Professional as set forth below and in the General Conditions of the Contract for Construction.
- 2.3.3 The Construction Manager shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the Contractors with each other and with those of the Construction Manager, the Owner and the Design Professional to endeavor to manage the Project in accordance with the latest approved estimate of Construction Cost, the Project Schedule and the Contract Documents.
- 2.3.4 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress and scheduling. The Construction Manager shall prepare and promptly distribute minutes to the Owner, Design Professional and Contractors.
- 2.3.5 Utilizing the Construction Schedules provided by the Contractors, the Construction Manager shall update the Project construction schedule incorporating the activities of the Contractors on the Project, including 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 and procurement. The Project construction schedule shall include the Owner's occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall update and reissue the Project construction schedule as required, but not less than monthly, to show current conditions. If an update indicates that the previously approved Project construction schedule may not be met, the Construction Manager shall recommend corrective action to the Owner and Design Professional.
- 2.3.6 Consistent with the various bidding documents, and utilizing information from the Contractors, the Construction Manager shall coordinate the sequence of construction and assignment of space in areas where the Contractors are performing Work.
- 2.3.7 The Construction Manager shall endeavor to obtain satisfactory performance from each of the Contractors. The Construction Manager shall recommend courses of action to the Owner when requirements of a Contract are not being fulfilled.
- 2.3.8 The Construction Manager shall provide regular monitoring of the approved estimate of Construction Cost, showing actual costs for activities in progress and estimates for uncompleted tasks. The Construction Manager shall identify variances between actual and budgeted or estimated costs, and advise the Owner and the Design Professional whenever projected costs exceed budgets or estimates. At least once each month, the

Construction Manager shall prepare and distribute Project Cost Reports during the Construction Phase. The Reports shall specify actual Project and Construction Costs compared to the Project and Construction Budget.

- 2.3.9 The Construction Manager shall develop cash flow reports and forecasts for the Project and advise the Owner as to variances between actual and budgeted or estimated costs.
- 2.3.10 The Construction Manager shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records.
- 2.3.11 The Construction Manager shall develop and implement procedures for the review, approval, processing and payment of applications by Contractors for progress payments in accordance with the Owner's payment application procedures. The Construction Manager shall review the payment applications submitted by each Contractor and determine whether the amount requested reflects the progress of the Contractor's work. The Construction Manager shall make appropriate adjustment to each payment application and shall prepare and forward to the Owner a Progress Payment Report. The Report shall state the total contract price, payments to date, current payment, requested retainage and actual amounts owned for the current period.
- 2.3.12 The Construction Manager shall review the safety programs developed by each of the Trade Contractors for purposes of coordinating the safety programs with those of the other Contractors. However, Construction Manager is not responsible, but rather the Contractors are solely responsible for their safety precautions and programs in connection with the Work. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager, nor shall it relieve the Contractor of its obligations, duties and responsibilities for safety. Notwithstanding the forgoing, if the Construction Manager deems any part of the Work or Worksite unsafe, the Construction Manager, without assuming responsibility for the Contractor's safety program, may require the Contractor to stop performance of the Work and/or take corrective measures satisfactory to the Construction Manager. The Construction Manager shall report the issue to the Owner..
- 2.3.13 The Construction Manager shall determine in general that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents, endeavoring to guard the Owner against defects and deficiencies in the Work. As appropriate, the Construction Manager shall have authority, upon written authorization from the Owner, to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. The Construction Manager, in consultation with the Owner and Design Professional, may reject Work which does not conform to the requirements of the Contract Documents.
- 2.3.14 The Construction Manager shall schedule and coordinate the sequence of construction in accordance with the Contract Documents and the latest approved Project construction schedule.
- 2.3.15 With respect to each Contractor's own Work, the Construction Manager shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractors, since these are solely the Contractors'

responsibility under the Contract for Construction. The Construction Manager shall not be responsible for a Contractor's failure to carry out the Work in accordance with the respective Contract Documents but the Construction Manager will endeavor to determine in general that the Contractor carries out its work in accordance with the terms and conditions of its contract. The Construction Manager shall not have control over or charge of acts or omissions of the Contractors, Subcontractors, or their agents or employees, or any other persons performing portions of the Work not directly employed by the Construction Manager.

- 2.3.16 The Construction Manager shall transmit to the Design Professional requests for interpretations of the meaning and intent of the Drawings and Specifications, and assist in the resolution of questions that may arise.
- 2.3.17 The Construction Manager shall review requests for changes, assist in negotiating Contractors' proposals, submit recommendations to the Design Professional and Owner, and, if they are accepted, assist the Owner in preparation of Change Orders and Construction Change Directives which incorporate the Design Professional's modifications to the Documents. At least once each month during the Construction Phase, the Construction Manager shall prepare and distribute Change Order Reports.
- 2.3.18 The Construction Manager shall assist the Owner and Design Professional in the review, evaluation and documentation of Claims.
- 2.3.19 The Construction Manager shall assist the Owner in evaluating certificates of insurance from the Contractors.
- 2.3.20 In collaboration with the Design Professional and Owner, the Construction Manager shall establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals. The Construction Manager shall review all Shop Drawings, Product Data, Samples and other submittals from the Contractors. The Construction Manager shall coordinate submittals with information contained in related documents and transmit to the Design Professional those which have been approved by the Construction Manager. The Construction Manager's actions shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner or Contractors.
- 2.3.21 The Construction Manager shall record the progress of the Project. The Construction Manager shall provide a monthly progress report summarizing the activities of the previous month including information on each Contractor and each Contractor's Work as well as the entire Project, showing percentages of completion. The submittal of this report shall coincide with the submittal of the Construction Manager's invoice for professional services as described in Paragraph 12.1 and Subparagraph 12.1.1. The Construction Manager shall keep a daily log containing a record of weather, each Contractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as the Owner may require.
- 2.3.22 The Construction Manager shall maintain at the Project site for the Owner one record copy of all Contracts, Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition, approved Shop Drawings, Product Data, Samples and similar required submittals. The Construction Manager shall maintain records of principal building layout lines certified by an Iowa licensed surveyor or professional engineer. The Construction Manager shall make all such records available to the Design Professional and upon completion of the Project shall deliver them to the Owner.

- 2.3.23 The Construction Manager shall work with the Owner to arrange for the delivery, storage, protection and security of Owner-purchased materials, systems and equipment that are a part of the Project until such items are incorporated into the Project.
- 2.3.24 With the Design Professional and the Owner's personnel, the Construction Manager shall observe the Contractors' final testing and start-up of utilities, operational systems and equipment.
- 2.3.25 When the Construction Manager considers each Contractor's Work or a designated portion thereof substantially complete, the Construction Manager shall, jointly with the Contractor, prepare for the Design Professional a list of incomplete or unsatisfactory items and a schedule for their completion. The Construction Manager shall assist the Owner and Design Professional in conducting inspections to determine whether the Work or designated portion thereof is substantially complete.
- 2.3.26 The Construction Manager shall coordinate the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager shall evaluate the completion of the Work of the Contractors and make recommendations to the Design Professional when Work is ready for final inspection. The Construction Manager shall assist the Design Professional in conducting final inspections.
- 2.3.27 The Construction Manager shall secure and transmit warranties and similar submittals required by the Contract Documents for delivery to the Owner and deliver all keys, manuals, record drawings and maintenance stocks to the Owner.
- 2.3.28 Duties, responsibilities and limitations of authority of the Construction Manager as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Construction Manager, Design Professional and Contractors. Consent shall not be unreasonably withheld.
- 2.3.29 During the one (1) year warranty period following the date of Substantial Completion, the Construction Manager shall work with the Owner's Representative to oversee, monitor, and coordinate the remedial work of the Contractors, including, but not limited to, making certain that the appropriate Contractors are notified of the extent and nature of the remedial work which needs to be done and that such work is done in a timely and satisfactory manner.
- 2.3.30 The Construction Manager shall accompany the Owner's Representative and Design Professional on a post-occupancy and warranty review prior to the expiration of the warranty period but sufficiently after occupancy to allow the Owner adequate opportunity to observe for defective conditions. This review shall take place at a mutually agreed-upon time and date.

ARTICLE 3. ADDITIONAL SERVICES

- 3.1 The services described in this Article 3 are not included in Basic Services unless so identified in Article 16, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services specified in Paragraph II.A. of the Agreement Between Owner and Construction Manager.

- 3.1.1 Providing services required because of significant changes in the Project including, but not limited to, changes in size, quality, complexity or the Owner's schedule.
- 3.1.2 Providing consultation concerning significant replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.
- 3.1.3 Providing services made necessary by the termination or default of the Design Professional or a Contractor, by major defects or deficiencies in the Work of a Contractor, or by failure of performance of the Owner, or a Contractor under a Contract for Construction.
- 3.1.4 Providing services in evaluating an extensive number of claims submitted by a contractor or others in connection with the work to the extent such claims are not caused by the Construction Manager's services.
- 3.1.5 Providing services in connection with a public hearing, arbitration proceeding or legal proceeding except where the Construction Manager is party thereto.
- 3.1.6 Providing services relative to future facilities, systems and equipment not covered in this agreement.
- 3.1.7 Providing services to verify the accuracy of drawings or other information furnished by the Owner.
- 3.1.8 Providing services related to Owner-furnished furniture, furnishings and equipment which are not a part of the Project.
- 3.1.9 Providing any other services not otherwise included in this Agreement.
- 3.1.10 The Construction Manager shall have the right under this Article to claim additional compensation for any services not specifically covered herein, provided that such Additional Services are identified as such and are authorized in writing by the Owner's Representative prior to their performance.

ARTICLE 4. OWNER'S RESPONSIBILITIES

- 4.1 The Owner shall provide full information regarding the requirements of the Project, including a program, which shall set forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems and site requirements.
- 4.2 The Owner shall establish and update an overall budget for the Project based on consultation with the Construction Manager and Design Professional, which shall include the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.
- 4.3 The Owner shall either retain a Design Professional whose services, duties and responsibilities are described in the Agreement between Owner and the Design Professional or provide design services with the Owner's own forces. The Terms and Conditions of the Agreement between Owner and Design Professional will be furnished to the Construction Manager upon request. The Construction Manager shall not be responsible for actions taken by the Design Professional.

- 4.4 The Owner shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.
- 4.5 The Owner shall furnish such legal, accounting and insurance counseling services as may be necessary for the Project, including such auditing services as the Owner may require to verify the Project Applications for Payment or to ascertain how or for what purposes the Contractors have used the money paid by or on behalf of the Owner.
- 4.6 The Owner shall furnish the Construction Manager with a sufficient quantity of Construction Documents.
- 4.7 The services, information and reports required by Paragraphs 4.3 through 4.6, inclusive, shall be furnished at the Owner's expense.
- 4.8 Prompt written notice shall be given by the Owner to the Construction Manager and Design Professional if the Owner becomes aware of any fault or defect in the Project or non-conformance with the Contract Documents.
- 4.9 The Owner reserves the right to perform construction and operations related to the Project with the Owner's own forces, and to award contracts in connection with the Project which are not part of the Construction Manager's responsibilities under this Agreement. The Construction Manager shall notify the Owner if any such independent action will interfere with the Construction Manager's ability to perform the Construction Manager's responsibilities under this Agreement. When performing construction or operations related to the Project, the Owner agrees to be subject to the same obligations and to have the same rights as the Contractors to the extent permitted by law.
- 4.10 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Construction Manager's services and the progress of the Work.

ARTICLE 5. CONSTRUCTION COST

5.1 DEFINITION

- 5.1.1 The Construction Cost shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Design Professional.
- 5.1.2 The Construction Cost shall include a reasonable allowance for contingencies for market conditions at the time of bidding and for changes in the Work during construction. Except as provided in Subparagraph 5.1.3, Construction Cost shall also include the compensation of the Construction Manager and Construction Manager's consultants.
- 5.1.3 Construction Cost does not include the compensation of the Design Professional and Design Professional's consultants, costs of the land, rights-of-way, financing or other costs which are the responsibility of the Owner as provided in Article 4. If any portion of the Construction Manager's compensation is based upon a percentage of Construction Cost, then Construction Cost, for the purpose of determining such portion, shall not include the compensation of the Construction Manager or Construction Manager's consultants.

5.2 RESPONSIBILITY FOR CONSTRUCTION COST

- 5.2.1 Evaluations of the Owner's Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Cost prepared by the Construction Manager represent

the Construction Manager's best judgment as a person or entity familiar with the construction industry. It is recognized, however, that neither the Construction Manager nor the Owner has control over the cost of labor, materials or equipment, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the Project budget proposed, established or approved by the Owner, or from any cost estimate or evaluation prepared by the Construction Manager.

- 5.2.2 If the lowest bonafide bid exceeds the Owner's budgeted Construction Cost, the Owner may choose to revise the Project scope and/or quality as required to reduce projected construction costs. If the Owner chooses to proceed in this manner, the Construction Manager shall cooperate with the Owner and Design Professional as necessary to bring the Construction Cost within the Owner's budgeted Construction Cost. No charges for Basic Services and Additional Services or Reimbursable Expenses shall be incurred by the Owner for services relevant to Subparagraph 5.2.2 to the extent such services are caused by the Construction Manager's errors or omissions in providing estimates of the Construction Cost. The accounting records of the Construction Manager shall distinguish services provided in accordance with Subparagraph 5.2.2 from all other services provided under this Agreement.
- 5.2.3 No fixed limit of Construction Cost shall be established as a condition of this Agreement by the furnishing, proposal or establishment of a Project budget unless such fixed limit has been agreed upon in writing and signed by the parties hereto. If such a fixed limit has been established, the Construction Manager shall be permitted to include contingencies for design, bidding and price escalation, and shall consult with the Design Professional to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to suggest reasonable adjustments in the scope of the Project, and to suggest inclusion of alternate bids in the Construction Documents to adjust the Construction Cost to the fixed limit. Fixed limits, if any, shall be increased in the amount of any increase in the Contract Sums occurring after execution of the Contracts for Construction.
- 5.2.4 If the Bidding Phase has not commenced within 90 days after submittal of the Construction Documents to the Owner, due to causes beyond the Construction Manager's control, any fixed limit of Construction Cost established as a condition of this Agreement shall be adjusted to reflect any change in the general level of prices in the construction industry occurring between the originally scheduled date and the date on which bids are received.
- 5.2.5 If a fixed limit of Construction Cost (adjusted as provided in Subparagraph 5.2.3) is exceeded by the sum of the lowest bona fide bids or negotiated proposals plus the Construction Manager's estimate of other elements of Construction Cost for the Project, the Owner shall:
- .1 give written approval of an increase in such fixed limit;
 - .2 authorize rebidding or renegotiating of the Project within a reasonable time;
 - .3 if the Project is abandoned, terminate in accordance with Paragraph 9.4; or
 - .4 cooperate in revising the Project scope and quality as required to reduce the Construction Cost.

- 5.2.6 If the Owner chooses to proceed under Sub-subparagraph 5.2.4.4, the Construction Manager, without additional charge, shall cooperate with the Owner and Design Professional as necessary to bring the Construction Cost within the fixed limit, if established as a condition of this Agreement. No charges for Basic Services and Additional Services or Reimbursable Expenses shall be incurred by the Owner for services relevant to Subparagraph 5.2.5 to the extent such services are caused by the Construction Manager's errors or omissions in providing estimates of the Construction Cost. The accounting records of the Construction Manager shall distinguish services provided in accordance with Subparagraph 5.2.5 from all other services provided under this Agreement.

ARTICLE 6. CONSTRUCTION SUPPORT ACTIVITIES

- 6.1 Construction support activities, if provided by the Construction Manager, shall be as indicated in Exhibit A and paid for as Reimbursable Expenses pursuant to Article 12.3.
- 6.2 Reimbursable expenses listed in Exhibit A for construction support activities may be subject to trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment which shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured.

ARTICLE 7. OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

- 7.1 The Drawings, Specifications and other documents prepared by the Design Professional are instruments of service through which the Work to be executed by the Contractors is described and are the property of the Owner. The Construction Manager may retain one record set. The Construction Manager shall not own or claim a copyright in the Drawings, Specifications and other documents prepared by the Design Professional. All copies of them, except the Construction Manager's record set, shall be returned or suitably accounted for to the Owner, on request, upon completion of the Project. The Drawings, Specifications and other documents prepared by the Design Professional, and copies thereof furnished to the Construction Manager, are for use solely with respect to this Project. They are not to be used by the Construction Manager on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner. The Construction Manager is granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Design Professional appropriate to and for use in the performance of the Construction Manager's services under this Agreement. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Design Professional. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Design Professional's copyright or other reserved rights.
- 7.2 All documents, including electronic data, required by this Agreement and prepared by the Construction Manager as instruments of service, are the property of the Owner whether the work for which they are made be executed or not. Any reuse without the specific written verification or adaptation by the Construction Manager will be at the Owner's sole risk and without liability or legal exposure to the Construction Manager. The Construction Manager shall not acquire a copyright for project documents, but shall be permitted to retain copies including reproducible copies or electronic data of drawings, specifications and other project documents prepared by the Construction Manager.

ARTICLE 8. DISPUTES

- 8.1 Any dispute between the Construction Manager and the Owner regarding, but not limited to project budget, project scope, project layout, or types and quality of materials, shall be submitted in writing within 21 days after occurrence of the event giving rise to the claim to be resolved by the Owner's Representative. If not resolved by the Owner's Representative within 10 days, then the Construction Manager may submit in writing the issues(s) in dispute to the Vice President for Business and Finance as the University President's designee. The determination of the Vice President for Business and Finance is the final institutional decision.

ARTICLE 9. TERMINATION, SUSPENSION OR ABANDONMENT

- 9.1 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.
- 9.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Construction Manager's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Construction Manager's services.
- 9.3 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Construction Manager in the event that the Project is permanently abandoned. If the Project is abandoned by the Owner for more than 90 consecutive days, the Construction Manager may terminate this Agreement by giving written notice.
- 9.4 Failure of the Owner to make payments to the Construction Manager in accordance with this Agreement shall be considered substantial nonperformance and cause for termination.
- 9.5 Provided that the Construction Manager has met the material intent of the terms and conditions of this contract, and the Owner fails to make payment when due the Construction Manager for services and expenses, the Construction Manager may, upon seven days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Construction Manager within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Construction Manager shall have no liability to the Owner for delay or damage caused to the Owner because of such suspension of services.
- 9.6 In the event of termination not the fault of the Construction Manager or its employees, professional consultants, subcontractors, or anyone for whom it is legally liable, the Construction Manager shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Paragraph 9.7.
- 9.7 Termination Expenses are those costs directly attributable to termination for which the Construction Manager is not otherwise compensated and for which the Construction Manager has submitted appropriate supporting documentation to the Owner. Termination Expenses do not include lost profits or consequential damages.

ARTICLE 10. MISCELLANEOUS PROVISIONS

- 10.1 This Agreement shall be governed by the law of the State of Iowa.
- 10.2 Terms in this Agreement shall have the same meaning as those in the Board of Regents, State of Iowa Uniform General Conditions of the Contract.

- 10.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion, or the date of issuance of the final Project Certificate for Payment for acts or failures to act occurring after Substantial Completion.
- 10.4 Waivers of Subrogation. The Owner and Construction Manager waive all rights against each other and against the Contractors, Design Professional, consultants, agents and employees of any of them, for damages, but only to the extent covered by property insurance during construction. The Owner and Construction Manager each shall require similar waivers from their Contractors, Design Professional, consultants, agents, and persons or entities awarded separate contracts administered under the Owner's own forces.
- 10.5 Unless otherwise provided in this Agreement, the Construction Manager and the Construction Manager's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.
- 10.6 ELECTRONIC TRANSACTIONS AND EXECUTION IN COUNTERPARTS
- 10.6.1 To the fullest extent permitted by Iowa Code Chapter 554D, the parties agree that electronic records, signatures, systems, formats, transmissions and communications (collectively, Electronic Transactions) may be utilized for this Project and this Agreement and all related documents, records, submissions, approvals, and communications (Ancillary Agreements). The parties agree that electronic signatures are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility. The parties further agree that Electronic Transactions may be relied on for the purposes of binding information transfer for this Project. Unless otherwise agreed to in writing by the parties, the following shall be deemed an acceptable electronic signature for the purposes of this subsection: an electronic symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
- In the event the laws, rules, or regulations of a third party governmental agency or entity do not permit the use of Electronic Transactions or Electronic Signatures, then this section shall not apply but only to the extent necessary to comply with the laws, rules, or regulations of the third party governmental agency or entity.
- 10.6.2 This Agreement, and any Ancillary Agreements, may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed to be one and the same agreement. A signed copy of this Agreement, or any Ancillary Agreement, transmitted by any means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement or such Ancillary Agreement.
- 10.7 RIGHTS AND REMEDIES The Parties' rights, liabilities, responsibilities, and remedies with respect to this Agreement, whether in contract, tort, negligence, or otherwise, shall be exclusively those expressly set forth in this Agreement.

ARTICLE 11. INSURANCE AND INDEMNIFICATION

- 11.1 The Construction Manager shall purchase from and maintain in a company or companies lawfully authorized to do business in the state of Iowa such insurance as will protect the Construction Manager from claims set forth below which may arise out of or result from the Construction Manager's operations under this Agreement and for which the Construction Manager may be legally liable.
- .1 claims under workers compensation, disability benefit and other similar employee benefit acts which are applicable to the operations to be performed;
 - .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Construction Manager's employees;
 - .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Construction Manager's employees;
 - .4 claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Construction Manager, or (2) by another person;
 - .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
 - .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle.
- 11.2 The insurance required by Subparagraph 11.1.1 shall be written for not less than limits of liability specified in Paragraph III, or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of operations under this Agreement until date of final payment and termination of any coverage required to be maintained after final payment.
- 11.3 The Construction Manager shall furnish certificates to the Owner showing insurance coverage. Certificates shall identify the name of the Project and shall provide Owner with a minimum 30 days notice of cancellation. Upon written request of the Owner, the Construction Manager agrees to provide copies of any or all insurance policies required in Paragraph III., within 30 days of such request.
- 11.4 To the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless the Owner, its officers, directors, members, consultants, agents, employees, successors and assigns, from and against all claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees arising out of or resulting from a claim for bodily injury or property damage but only to the extent caused by any negligent or wrongful act or omission in the performance of the terms and conditions of this Agreement of the Construction Manager, its consultants or anyone employed directly or indirectly by any of them or anyone for whose acts or omissions any of them may be liable. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person.
- 11.5 **NO LIMITATION ON LIABILITY** In any and all claims against the Indemnitees by any employee of the Construction Manager, anyone directly or indirectly employed by the Construction Manager or anyone for whose acts the Construction Manager may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Construction Manager under workers' compensation acts, disability benefit acts, or other employment benefit acts. The requirements for insurance are not intended to

limit, qualify or restrict the liabilities and obligations otherwise assumed by the Construction Manager in this Agreement, including provisions concerning indemnification.

- 11.6 The Owner will require that any Constructor or Subcontractor performing work in connection with Construction Documents produced under this Agreement to hold harmless, indemnify and defend the Owner and the Construction Manager, their consultants and each of their officers, agents and employees from any and all claims, losses, damages or expenses, including reasonable attorney's fees, arising out of the Contractor's or Subcontractor's wrongful or negligent acts or omissions in the performance of the work described in the Contract Documents, but not including liability that may be due to the wrongful or negligent acts or omissions of the Owner, the Construction Manager, their consultants or their officers, agents and employees.
- 11.7 To the extent permitted by Iowa Code Chapter 669 and Article VII, Section 1 of the Iowa Constitution, the Owner shall indemnify and hold harmless the Consultant, its officers, directors, members, consultants, agents, employees, successors and assigns from and against all claims, damages, losses and expenses, including but not limited to reasonable attorney's fees, arising out of or resulting from a claim for bodily injury and/or property damage, but only to the extent caused by any wrongful or negligent act or omission of the Owner in the performance of the terms and conditions of this Agreement.

ARTICLE 12. PAYMENTS TO THE CONSTRUCTION MANAGER

- 12.1 Construction Manager shall submit a monthly statement to Owner in the Owner's standard format listing all compensation then due to Construction Manager, including a breakdown of Construction Manager's compensation by Fee, Costs of the Services, Reimbursable Expenses, and General Conditions Items

12.2 DIRECT PERSONNEL EXPENSE

12.2.1 Direct Personnel Expense is defined as the direct salaries of the Construction Manager's personnel as identified in Exhibit B and engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

12.2.2 Personnel rates shall include only Direct Personnel Expense, as identified in Paragraph 12.2.1 as stated in Exhibit B. Any costs included in the hourly rate other than Direct Personnel Expense must be specifically identified in Exhibit B.

12.3 REIMBURSABLE EXPENSES

12.3.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Construction Manager and Construction Manager's employees and consultants in the interest of the Project, as identified in the following subparagraphs and Exhibit C.

12.3.2 Reimbursable expenses are subject to the "Guidelines for Reimbursable Transportation and Travel Expenses by Professional Consultants" and "Guidelines for Submission of Reimbursable Construction Phase Expenses Construction Manager (CM Agent)" located on the Owner's web site: <http://www.fpm.iastate.edu/planning/professionalconsultants/>.

12.3.3 Costs of supplies and services incurred in the performance of services provided in this Agreement and directly attributable to the project. Costs to be reimbursed include those identified below and shall be actual costs, without markup:

- 12.3.3.1 Reasonable costs and expenditures necessary for operation of the Construction Manager's site office, such as furniture, fixtures, telephone services at the site, office equipment, field computer services, office supplies, reproduction, postage, utilities, maintenance and other miscellaneous expenses normally and necessarily incurred in connection with the services provided in this Agreement.
 - 12.3.3.2 Reimbursable transportation and travel expenses shall be limited to those incurred in travel to locations out of the State of Iowa on behalf of the Project. Such travel shall be taken only when authorized in advance by the Owner's Representative. No travel to locations in the State of Iowa including, but not limited to, site visits or on-campus meetings shall be reimbursed for Construction Manager's personnel except for personnel based on the project work site and specifically identified in Exhibit A.
 - 12.3.3.3 Cost or fair rental value of all materials, supplies, tools, temporary facilities, and equipment used in performing the services provided in this Agreement including costs of transportation, storage, loading, unloading, operation, use, repair, and maintenance..
 - 12.3.3.4 Rental charges for temporary facilities and equipment necessary for operation of the Construction Manager's site office; however, any rental charges shall not exceed the purchase price of such temporary facilities and equipment.
 - 12.3.5 Cost of all insurance and bonds which Construction Manager is required to procure by this Agreement or is deemed necessary by Construction Manager at cost or at agreed upon rates.
 - 12.3.3.5 Cost of Construction Support Activities and General Requirements work performed in support of other contractors work and identified in Exhibit C.
- 12.3.4 Costs not to be reimbursed include:
- 12.3.3.1. Salaries and other compensation of the Construction Manager's officers at the Construction Manager's principal office, except for the personnel listed in Exhibit B.
 - 12.3.3.2 Expenses of the Construction Manager's principal office and offices other than an office established on the site for purpose of managing project site operations.
 - 12.3.3.3 Any part of the Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.
- 12.3.5 The Construction Manager shall have the right under this Article to claim reimbursable expenses for any items not specifically covered herein, provided that such reimbursable expenses are identified as such and are authorized in writing by the Owner's Representative prior to their incurrence.
- 12.3.6 No deductions shall be made from the Construction Manager's compensation on account of penalty, liquidated damages or other sums withheld from payments to Contractors, or on account of the cost of changes in Work other than those for which the Construction Manager has been found to be liable.

12.4 CONSTRUCTION MANAGER'S ACCOUNTING RECORDS

- 12.4.1 Records of the Construction Manager's costs pertinent to compensation under this Agreement shall be:
- 12.4.1.1 Kept in accordance with generally accepted accounting practices.
 - 12.4.1.2 Kept for not less than five years after completion of Services provided under this Agreement.
 - 12.4.1.3 Made available to the Owner upon request or shall be made available for examination by the Owner's Representative at mutually convenient times at no expense to the Owner.
- 12.4.2 If any federal, state, or local government or government agency has provided funds for the Project, then the Construction Manager shall maintain such records as are required by such governmental entity. If the Construction Manager is requested by any such entity to disclose any records relating to this Project for the purpose of an audit or investigation, the Construction Manager shall notify the Owner of the request and shall make available to the Owner, upon request, all such records.

ARTICLE 13 SUCCESSORS AND ASSIGNS

- 13.1 The Owner 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 Owner nor the Construction Manager shall assign, sublet or transfer any interest in this Agreement without the prior written consent of the other.

ARTICLE 14 EXTENT OF AGREEMENT

- 14.1 This Agreement represents the entire and integrated agreement between the Owner 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 Owner and the Construction Manager.
- 14.2 Nothing contained herein shall be deemed to create any contractual relationship between the Construction Manager and the Design Professional or any of the Contractors, Subcontractors or material suppliers on the Project; nor shall anything contained in this Agreement be deemed to give any third party any claim or right of action against the Owner or the Construction Manager which does not otherwise exist without regard to this Agreement.

ARTICLE 15 EQUAL EMPLOYMENT OPPORTUNITY

- 15.1 The Construction Manager shall not discriminate against any employee or applicant for employment because of race, creed, color, religion, national origin, sex, age, physical or mental disability, sexual orientation, gender identity, or status as a U.S. veteran. The Construction Manager shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, religion, national origin, sex, age, physical or mental disability, sexual orientation, gender identity, or status as a U.S. veteran except where it relates to a bona fide occupational qualification. Such action shall include, but not be limited to the following: employment upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and,

selection for training, including apprenticeship. The Construction Manager agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Owner setting forth provisions of this nondiscrimination clause.

- 15.2 The Construction Manager shall, in all solicitations or advertisements for employees placed by or on behalf of the Construction Manager state that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sex, age, physical or mental disability, sexual orientation, gender identity, or status as a U.S. veteran except where it relates to a bona fide occupational qualification.
- 15.3 The Construction Manager shall send to each labor union or representative of workers with which the Construction Manager has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or worker's representative of the Construction Manager's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 15.4 The Construction Manager shall comply with all relevant provisions of state and federal laws and regulations. The Construction Manager shall furnish all information and reports requested by the Owner or required by or pursuant to the rules and regulations herein and shall permit access to payroll and employment records by the Owner or the Owner's Representatives for the purposes of investigation to ascertain compliance with such rules, regulations or requests, or with this nondiscrimination clause.
- 15.5 In the event of the Construction Manager's noncompliance with the nondiscrimination clauses of the Agreement or with any of the aforesaid rules, regulations or requests, this Agreement may be canceled, terminated or suspended in whole or in part and the Construction Manager may be declared ineligible for further Agreements with the Owner. In addition, the Owner may take such further action, and such other sanctions may be imposed and remedies invoked, as provided by the Code of Iowa as heretofore and hereafter amended, or by the rules and regulations of the Owner or as otherwise provided by law.
- 15.6 The Construction Manager shall include the provisions of this Article 15 hereof in every agreement with Professional Consultants unless specifically exempted by approval of the Owner, in accordance with the rules and regulations of said Owner, so that such provisions shall be binding on each Professional Consultant. The Construction Manager shall take such action with respect to any Professional Consultant as the Owner or the Owner's authorized representative may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Construction Manager becomes involved in, or is threatened with, litigation by a Professional Consultant as a result of such direction by the Board of Regents, State of Iowa or its institutions, the Construction Manager may request the state of Iowa to enter into such litigation to protect the interests of the State of Iowa.

ARTICLE 16 OTHER CONDITIONS OR SERVICES

16.1 MODIFICATIONS TO THE TERMS AND CONDITIONS OF THE AGREEMENT:

16.1.1 The following Paragraphs are deleted from this Agreement:

Not Used

16.1.2 The following Paragraphs have been modified in this Agreement:

Not Used

16.1.3 The following Paragraphs have been added to this Agreement:

Not Used

16.2 ELECTRONIC PROJECT COMMUNICATIONS

7.4.1 Electronic Project Communications, including but not limited to the systems, formats and transmission methods identified in this article and elsewhere in the Contract Documents, will be utilized for this project and may be relied on for purposes of binding information transfer for this Project. All parties agree that transactions may be conducted by electronic means in accordance with the provisions of Chapter 554D of the Code of Iowa except as noted below.

7.4.2 All parties are required to acquire and/or maintain the following hardware, software, services and other electronic processes and versions, including payment for all royalty or license fees for their use, necessary to effectively and reliably transmit and receive Project-related Electronic Communications:

Minimum System and Software Requirements:

- (a) Operating Systems: Windows XP, Windows 7
- (b) Minimum 1 GB RAM
- (c) Processor: PC Compatible, 2 GHz Pentium 4 or better
- (d) Minimum 65 MB free hard disk space for application
- (e) Minimum 130 MB of temporary free hard disk space used during installation
- (f) Video Card and display capable of True Color (24-bit) with at least 32 MB memory
- (g) Internet connection (high speed 10 Mbps or higher required)
- (h) Internet Explorer 7.0, 7.0 SP1, 8.0, 9.0 (32-bit only)
- (i) Scanner
- (j) Printer

File formats: The following file formats are permitted. Each Party shall maintain hardware and software as required to read each of these formats and to produce the formats for the types of documents they are responsible for creating or revising.

- | | |
|----------------|---|
| (a) PDF, | Adobe Portable Document Format |
| (b) RTF, | Rich Text Format |
| (c) GIF, | CompuServe Graphic Interchange Format |
| (d) JPG, | JPEG, or JIFF compliant format |
| (e) TIF, | Tagged Image File Format |
| (f) DWG, | Autodesk or Open Design Alliance (free viewers available) |
| (g) DOCX, DOC, | Microsoft Word (Recommended) |
| (h) XLSX, XLS, | Microsoft Excel (Recommended) |
| (i) PPTX, PPT, | Microsoft PowerPoint (Recommended) |
| (j) MSG, | Microsoft Outlook (Recommended) |

7.4.3 **Project Communication and Management System (CentricProject):** An Internet based project communication and management system (project web site) will be utilized on this project to share information among team members and conduct and track project communications. The Construction Manager is required to participate with the project team and use the system for viewing correspondence and information posted by other project team members, posting correspondence and information for viewing by other project team members, and logging and/or responding to such as Change Requests, RFI's and Shop

Drawings. There are no fees required for access to the system. The Construction Manager shall provide required user information to the OWNER after award of contract. Security levels, access to information, and authorization is controlled by the OWNER. Iowa State University will provide project team members with password protected access privileges to the project web site.

- 7.4.4 **Electronic Payment Application System (eznetpay®):** The pay application process will be conducted utilizing the eznetpay® system. Eznetpay® is an online application to manage and transmit payment applications for certification and approval. No hardware or software purchase is required to operate eznetpay®. eznetpay® can be operated with access to the internet and a standard email account.

7.4.4.1 eznetpay® is accessed on the internet at <https://go.eznetpay.com>. Users must enter their Logon ID and password to log on. Individual Users of eznetpay® are assigned their own unique and confidential Logon ID and a temporary Password to use the system. After the first log on, Users will be required to update their Password. Payment applications are electronically processed through eznetpay's automated process. All supporting documentation relating to payment application requests such as pictures, photocopies of priced invoices for all material included in Stored Materials on the pay application, and any other required documents shall be uploaded.

7.4.4.2 Construction Manager shall provide required user information to the OWNER. Security levels, access to information, and authorization is controlled by the OWNER. Digital signatures track action steps taken by individual Users. Users may view digital signatures of all authorized persons within the assigned contract.

- 7.4.5 **Field Office Internet Service:** The Construction Manager shall maintain internet service to the field office throughout the Project. Service shall be maintained until substantial completion or longer if necessary. Construction Manager shall provide, install, and remove any cables required from the construction trailer to the connection point of service. At least one computer with monitor, printer and internet access, email service, etc. shall be maintained in the field office. Internet access and data service may be made available from the Iowa State University network upon request and approval. All devices that connect to the Iowa State University network need to be registered before they will be allowed to connect.

- 7.4.6 **Access the ISU Network and Wireless Access on Campus:** Access to the Iowa State University network may be authorized by the Owners Representative upon submittal of MAC addresses as required to allow devices to be sponsored and registered appropriately. The Construction Manager agrees be accountable for using these resources in a secure, ethical and respectful manner and follow all policies and procedures as outlined in the Iowa State University policy for Acceptable Use of Information Technology Resources available at: <http://policy.iastate.edu/ITacceptableuse>. The Construction Manager is responsible for the security of their computers or other network devices and is subject to the provisions of the Information Technology Security Policy available at <http://policy.iastate.edu/policy/it/security>. The university may disable service to an individual or a computing device, when it has been determined that a violation of this code or an apparent misuse of university computing facilities or networks has occurred.

16.3 PROPOSAL LETTER:

16.3.1 The Construction Manager's proposal letter of 9/20/2016 is appended and incorporated into this Agreement by reference as Exhibit A. If there are any inconsistencies between the proposal letter and this Agreement, the terms of this Agreement shall control.

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

Construction Manager:

Error! Bookmark not defined.

by: _____

Dated: _____

FEIN No: _____

E-Mail: _____

Recommended by:

Iowa State University

by: _____

David J. Miller
Associate Vice President for Facilities

Dated: _____

by: _____

Kate Gregory
Senior Vice President for University Services

Dated: _____

Owner:

Board of Regents, State of Iowa

by: _____

Robert Donley
Executive Director

Dated: _____

Exhibits are for reference only in this master – separate documents should be provided and labeled appropriately as Exhibit A, Exhibit B and Exhibit C – will not have page numbers within the actual Agreement.

**EXHIBIT A
Construction Manager's Proposal Letter
Basis Of Stipulated Sum**

SAMPLE

EXHIBIT B
Hourly Rates By Classification

(ISU can provide an excel form to Construction Manager to use upon request.)

SAMPLE

EXHIBIT C
Reimbursable Expenses For Construction Support Activities
(Submit on form provided by ISU)

SAMPLE

c: **Error! Bookmark not defined.**
Project Web Site

Error! Bookmark not defined.-CM Agreement - Pre-Construction and Construction Phase Services

G:\Template\PM Clerical\Agreement Templates \CM Agreement 04-12
Rev 02-13
Rev 01-14
Rev 07-15