



# UNIVERSITY OF KENTUCKY

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## Purchasing Division

Request for Proposal

UK-2301-23

Proposal Due Date – 11/23/2022

Construction Management Services  
For Pence Hall – Asset Preservation

Project# 2590.3



# UNIVERSITY OF KENTUCKY

## Purchasing Division

### REQUEST FOR PROPOSAL (RFP)

**ATTENTION: This is not an order. Read all instructions, terms and conditions carefully.**

**PROPOSAL NO.:** UK-2301-23  
**Issue Date:** 11/07/2022  
**Title:** CM Services for Pence Hall – Asset Preservation  
**Purchasing Officer:** Ken Scott  
**Phone/Email:** 859-323-5405/Kenneth.scott@uky.edu

**RETURN ORIGINAL COPY OF PROPOSAL TO:**  
**UNIVERSITY OF KENTUCKY**  
**PURCHASING DIVISION**  
**411 S LIMESTONE**  
**ROOM 322 PETERSON SERVICE BLDG.**  
**LEXINGTON, KY 40506-0005**

**IMPORTANT: PROPOSALS MUST BE RECEIVED BY: 11/23/2022 3 P.M. LEXINGTON, KY TIME.**

#### NOTICE OF REQUIREMENTS

1. The University's General Terms and Conditions and Instructions to Bidders, viewable at [www.uky.edu/Purchasing/terms.htm](http://www.uky.edu/Purchasing/terms.htm), apply to this RFP. When the RFP includes construction services, the University's General Conditions for Construction and Instructions to Bidders, viewable at [www.uky.edu/Purchasing/ccphome.htm](http://www.uky.edu/Purchasing/ccphome.htm), apply to the RFP.
2. Contracts resulting from this RFP must be governed by and in accordance with the laws of the Commonwealth of Kentucky.
3. Any agreement or collusion among offerors or prospective offerors, which restrains, tends to restrain, or is reasonably calculated to restrain competition by agreement to bid at a fixed price or to refrain from offering, or otherwise, is prohibited.
4. Any person who violates any provisions of KRS 45A.325 shall be guilty of a felony and shall be punished by a fine of not less than five thousand dollars nor more than ten thousand dollars, or be imprisoned not less than one year nor more than five years, or both such fine and imprisonment. Any firm, corporation, or association who violates any of the provisions of KRS 45A.325 shall, upon conviction, be fined not less than ten thousand dollars or more than twenty thousand dollars.

#### AUTHENTICATION OF BID AND STATEMENT OF NON-COLLUSION AND NON-CONFLICT OF INTEREST

I hereby swear (or affirm) under the penalty for false swearing as provided by KRS 523.040:

1. That I am the offeror (if the offeror is an individual), a partner, (if the offeror is a partnership), or an officer or employee of the bidding corporation having authority to sign on its behalf (if the offeror is a corporation);
2. That the attached proposal has been arrived at by the offeror independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other Contractor of materials, supplies, equipment or services described in the RFP, designed to limit independent bidding or competition;
3. That the contents of the proposal have not been communicated by the offeror or its employees or agents to any person not an employee or agent of the offeror or its surety on any bond furnished with the proposal and will not be communicated to any such person prior to the official closing of the RFP;
4. That the offeror is legally entitled to enter into contracts with the University of Kentucky and is not in violation of any prohibited conflict of interest, including, but not limited to, those prohibited by the provisions of KRS 45A.330 to .340, and 164.390;
5. That the offeror, and its affiliates, are duly registered with the Kentucky Department of Revenue to collect and remit the sale and use tax imposed by Chapter 139 to the extent required by Kentucky law and will remain registered for the duration of any contract award;
6. That I have fully informed myself regarding the accuracy of the statement made above.

#### SWORN STATEMENT OF COMPLIANCE WITH CAMPAIGN FINANCE LAWS

In accordance with KRS 45A.110 (2), the undersigned hereby swears under penalty of perjury that he/she has not knowingly violated any provision of the campaign finance laws of the Commonwealth of Kentucky and that the award of a contract to a bidder will not violate any provision of the campaign finance laws of the Commonwealth of Kentucky.

#### CONTRACTOR REPORT OF PRIOR VIOLATIONS OF KRS CHAPTERS 136, 139, 141, 337, 338, 341 & 342

The contractor by signing and submitting a proposal agrees as required by 45A.485 to submit final determinations of any violations of the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that have occurred in the previous five (5) years prior to the award of a contract and agrees to remain in continuous compliance with the provisions of the statutes during the duration of any contract that may be established. Final determinations of violations of these statutes must be provided to the University by the successful contractor prior to the award of a contract.

#### CERTIFICATION OF NON-SEGREGATED FACILITIES

The contractor, by submitting a proposal, certifies that he/she is in compliance with the Code of Federal Regulations, No. 41 CFR 60-1.8(b) that prohibits the maintaining of segregated facilities.

**SIGNATURE REQUIRED:** This proposal cannot be considered valid unless signed and dated by an authorized agent of the offeror. Type or print the signatory's name, title, address, phone number and fax number in the spaces provided. Offers signed by an agent are to be accompanied by evidence of his/her authority unless such evidence has been previously furnished to the issuing office.

<b>DELIVERY TIME:</b>	<b>NAME OF COMPANY:</b>	<b>DUNS #</b>
<b>PROPOSAL FIRM THROUGH:</b>	<b>ADDRESS:</b>	<b>Phone/Fax:</b>
<b>PAYMENT TERMS:</b>	<b>CITY, STATE &amp; ZIP CODE:</b>	<b>E-MAIL:</b>
<b>SHIPPING TERMS: F. O. B. DESTINATION PREPAID AND ALLOWED</b>	<b>TYPED OR PRINTED NAME:</b>	<b>WEB ADDRESS:</b>
<b>FEDERAL EMPLOYER ID NO.:</b>	<b>SIGNATURE:</b>	<b>DATE:</b>

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**Attachments:**

Attachment "A" General Conditions for CM at Risk

Attachment "B" Contract Agreement between the University of Kentucky and CM at Risk

Attachment "C" Special Conditions for CM at Risk

Attachment "D" Current Schedule

Attachment "E" Staffing Matrix

Attachment "F" Bonds and Affidavit

Attachment "G" DBE Participation Goals

Attachment "H" Tree Protection Standards

## 1.0 DEFINITIONS

The term "addenda" means written or graphic instructions issued by the University of Kentucky prior to the receipt of proposals that modify or interpret the RFP documents by additions, deletions, clarifications and/or corrections.

The term "competitive negotiations" means the method authorized in the Kentucky Revised Statutes, Chapter 45A.085.

The terms "offer" or "proposal" mean the offeror's/offers' response to this RFP.

The term "offeror" means the entity or contractor group submitting the proposal.

The term "contractor" means the entity receiving a contract award.

The term "purchasing agency" means the University of Kentucky, Purchasing Division, Room 322 Peterson Service Building, Lexington, KY 40506-0005.

The term "purchasing official" means the University of Kentucky's appointed contracting representative.

The term "responsible offeror" means a person, company or corporation that has the capability in all respects to perform fully the contract requirements and the integrity and reliability that will assure good faith performance. In determining whether an offeror is responsible, the University may evaluate various factors including (but not limited to): financial resources; experience; organization; technical qualifications; available resources; record of performance; integrity; judgment; ability to perform successfully under the terms and conditions of the contract; adversarial relationship between the offeror and the University that is so serious and compelling that it may negatively impact the work performed under this RFP; or any other cause determined to be so serious and compelling as to affect the responsibility of the offeror.

The term "solicitation" means RFP.

The term "University" means University of Kentucky.

## **2.0 GENERAL OVERVIEW**

### **2.1 Intent and Scope**

The University of Kentucky desires the services of an experienced and highly qualified construction management firm to provide "FULL SERVICE" construction management on the proposed project. The Construction Manager (CM) selected will become a responsible, cooperative and contributing member of the Owner's professional team for the design and construction of the project. The Construction Manager (CM) will provide assistance and advice and provide management services to the Owner and design consultants to assure the project is completed within defined budget, program and schedule.

The total scope of this project is currently \$32 million with a total maximum construction budget of approximately \$23,250,000, to include costs for Construction Management Services as well as for the award of trade contracts.

The contract established for construction management services will be of a pure agency relationship through Phase 4 Bidding, and then convert to a "LUMP SUM, AT RISK" contract. Contract award contingent on Board of Trustees approval.

The Construction Manager (CM) will not be allowed to self-perform work or bid on any of the proposed work categories. The Construction Manager will hold all construction contracts.

The CM shall break the trade packages down such that there are no fewer than ten (10) trade contracts.

A Pre-Proposal Conference will be held on 11/14/2022 at 10:00AM at Pence Hall - Building #: 0041, 175 Funkhouser Dr.40506. Please see Section 3.3 for additional information.

The Scope of Services is further defined in Section 7.0 of this Request for Proposal (RFP).

### **2.2 Background Information**

The Pence Hall Renovation project will entail a renovation of the existing 1907 building, and will most likely include classrooms, offices, group study rooms, class labs, research space, and student organizations for the College of Communications and Information. Renovations will address among other items; accessibility issues, exterior enclosure, mechanical, electrical, plumbing as well as interior modifications.

### **2.3 University Information**

Since his arrival, President Eli Capilouto has set forth an ambitious agenda to extend and enhance our role as Kentucky's land-grant and flagship research university. By focusing on infrastructure growth and improvement; creating opportunities for innovative teaching, learning, and academic excellence; fostering a robust research and creative scholarship enterprise; providing life-saving subspecialty care; empowering communities through service and outreach; and encouraging a transparent and shared dialogue about institutional priorities; the University of Kentucky will ensure a new century of promise for the people we impact.

Founded in 1865 as a land-grant institution adjacent to downtown Lexington, UK is nestled in the scenic heart of the beautiful Bluegrass Region of Kentucky. From its early beginnings, with only 190 students and 10 professors, UK's campus now covers more than 918 acres and is home to more than 30,000 students and approximately 14,500 employees, including more than 2,300 full-time faculty. UK is one of a small number of universities in the United States that has programs in agriculture, engineering, a full complement of health colleges including medicine and pharmacy, law and fine arts on a single campus, leading to groundbreaking discoveries and unique interdisciplinary collaboration. The state's flagship university consists of 17 academic and professional colleges where students can choose from more than 200 majors and degree programs at the undergraduate and graduate levels. The colleges are Agriculture, Food and Environment; Arts and Sciences; Business and Economics; Communication and Information; Dentistry; Design; Education; Engineering; Fine Arts; Graduate School; Health Sciences; Law; Medicine; Nursing; Pharmacy; Public Health; and Social Work. These colleges are supported by a modern research library system.

Research at the University of Kentucky is a dynamic enterprise encompassing both traditional scholarship and emerging technologies, and UK's research faculty, staff and students are establishing UK as one of the nation's most prolific public research universities. UK's research enterprise attracted \$285 million in research grants and contracts from out-of-state sources, which generated a \$580 million impact on the Kentucky economy. Included in this portfolio is \$153 million in federal awards from the National Institutes of Health, non-NIH grants from the Department Health and Human Services, the National Science Foundation, Department of Energy, Department of Agriculture and NASA, among others. The National Science Foundation ranks UK's research enterprise 44th among public institutions.

With more than 50 research centers and institutes, UK researchers are discovering new knowledge, providing a rich training ground for current students and the next generation of researchers, and advancing the economic growth of the Commonwealth of Kentucky. Several centers excel in the services offered to the public. The Gluck Equine Research Center is one of only three facilities of its kind in the world, conducting research in equine diseases.

The Center for Applied Energy Research is pursuing groundbreaking discovery across the energy disciplines. CAER staff are pioneering new ways to sustainably utilize Kentucky natural resources through carbon-capture algae technology, biomass/coal to liquid products and the opening of UK's first LEED-certified research lab to support the development of Kentucky's growing alternative energy industry. Among the brightest examples of UK's investment in transformative research is the Markey Cancer Center. As a center of excellence and distinction at UK, Markey's robust research and clinical enterprise is the cornerstone of our commitment to Kentucky – fundamental to our success in uplifting lives through our endeavors and improving the general health and welfare of our state – burdened by the nation's highest rate of cancer deaths per 100,000 people. In 2013, Markey earned the prestigious National Cancer Institute-designation (NCI) – one of 68 nationally and the only one in Kentucky.

The University of Kentucky was awarded a \$20 million Clinical Translational Sciences Award (CTSA) from the National Institutes of Health (NIH). As one of only 60 institutions with this research distinction, UK was awarded the CTSA for its potential in moving research and discovery in the lab into practical field and community applications. The CTSA and NCI are part of a trifecta of federal research grants that includes an Alzheimer's Disease Center. UK is one of only 22 universities in the country to hold all three premier grants from NIH.



Established in 1957, the medical center at UK is one of the nation's finest academic medical centers and includes the University's clinical enterprise, UK HealthCare. The 569-bed UK Albert B. Chandler Hospital and Kentucky Children's Hospital, along with 256 beds at UK Good Samaritan Hospital, are supported by a growing faculty and staff providing the most advanced subspecialty care for the most critically injured and ill patients throughout the Commonwealth and beyond. Over the last several years, the number of patients served by the medical enterprise has increased from roughly 19,000 discharges to more than 36,000 discharges in 2014.

UK Chandler Hospital includes the only Level 1 Trauma Center for both adult and pediatric patients in Central and Eastern Kentucky. In addition, UK HealthCare recently opened one of the country's largest robotic hybrid operating rooms and the first of its kind in the region. While our new patient care pavilion is the leading healthcare facility for advanced medical procedures in the region, our talented physicians consult with and travel to our network of affiliate hospitals so Kentucky citizens can receive the best health care available close to their home and never need to leave the Bluegrass for complex subspecialty care.

UK's agenda remains committed to accelerating the University's movement toward academic excellence in all areas and gain worldwide recognition for its outstanding academic programs, its commitment to students, its investment in pioneering research and discovery, its success in building a diverse community and its engagement with the larger society. It is all part of the University's fulfillment of our promise to Kentucky to position our state as a leader in American prosperity.

## **SUSTAINABILITY**

Sustainability is an institution-wide priority for the University of Kentucky. We strive to ensure that all activities are ecologically sound, socially just, and economically viable, and that they will continue to be so for future generations. This commitment also prioritizes the integration of these principles in curricula, research, athletics, health care, creative works, and outreach. This principled approach to operational practices and intellectual pursuits is intended to prepare students and empower the campus community to support sustainable development in the Commonwealth and beyond. The UK Sustainability Strategic Plan guides these efforts (<https://www.uky.edu/sustainability/sustainability-strategic-plan>).

## **2.4 Supplier Diversity and Procurement**

The University of Kentucky is committed to serve as an advocate for diverse businesses in their efforts to conduct business. Diverse Business Enterprises (DBE) consist of minority, women, disabled, veteran and disabled veteran owned business firms that are at least fifty-one percent owned and operated by an individual(s) of the aforementioned categories. Also included in this category are disabled business enterprises and non-profit work centers for the blind and severely disabled.

The University is committed to increasing the amount of goods and services acquired from businesses owned and controlled by diverse persons to 10% of all procurement expenditures. The University expects its suppliers to support and assist in this effort.

Among the University's goals for DBE participation in procurement are:

- To ensure the absence of barriers that reduce the participation of diverse suppliers
- Educate vendors on "how to" do business with the University
- Support diverse vendors seeking to do business with the University in the areas of goods, services, construction, and other areas of procurement
- Encourage participation of qualified diverse vendors by directing them to agencies that can benefit from their product or service
- Provide resources for diverse vendors
- Sponsor events to assist diverse vendors in becoming active, responsible, and responsive participants in the University's purchasing opportunities

For additional information regarding how diverse suppliers may participate in this Request for Proposal, submit any questions to the Purchasing Officer as indicated in Section 3.2 by the Deadline for Written Questions date.

### 3.0 PROPOSAL REQUIREMENTS

#### 3.1 Key Event Dates

PHASE 1	
Release of RFP	11/07/2022
Pre-Proposal Conference at 10:00AM	11/14/2022
*Deadline for Written Questions Phase 1	11/17/2022
RFP Proposals Due Date at 3:00 PM	11/23/2022
Evaluation of Phase 1 Proposals	11/29/2022

\*Decisions and Clarification's will be incorporated into the proposal documents by an addendum.

#### \*Questions

All questions should be submitted in writing to Ken Scott, Contracting Officer, no later than 11/17/2022. Please address e-mail to [kenneth.scott@uky.edu](mailto:kenneth.scott@uky.edu).

### **3.2 Offeror Communication**

To ensure that RFP documentation and subsequent information (modifications, clarifications, addenda, Written Questions and Answers, etc.) are directed to the appropriate persons within the offeror's firm, each offeror who intends to participate in this RFP is to provide the following information to the purchasing officer. Prompt, thorough compliance is in the best interest of the offeror. Failure to comply may result in incomplete or delayed communication of addenda or other vital information. Contact information is the responsibility of the offeror. Without prompt information, any communication shortfall shall reside with the offeror.

- Name of primary contact
- Mailing address of primary contact
- Telephone number of primary contact
- Fax number of primary contact
- E-mail address of primary contact
- Additional contact persons with same information provided as primary contact

This information shall be transmitted via fax or e-mail to:

Ken Scott  
Purchasing Division  
University of Kentucky  
322 Peterson Service Building  
Lexington, KY 40506-0005  
Phone: (859) 257-9102  
Fax: (859) 257-1951  
E-mail: [kenneth.scott@uky.edu](mailto:kenneth.scott@uky.edu)

All communication with the University regarding this active, public RFP, shall only be directed to the purchasing officer listed above. Attempts to gather information about this solicitation from the A/E Firm or University staff other than the Contracting Officer, is inappropriate and may result in disqualification.

### **3.3 Pre-Proposal Conference**

A Pre-Proposal Conference will be held on 11/14/2022 at 10:00AM at Pence Hall - Building #: 0041, 175 Funkhouser Dr. 40506, to allow prospective contractors an opportunity to ask questions and clarify the University's expectations. This conference provides offerors an opportunity for oral questions.

The following items should be noted in reference to the pre-proposal conference:

- Attendance at the pre-proposal conference is optional. At this conference, the scope of services will be discussed in detail.
- Offerors are encouraged to submit written questions after the conference by the date listed in Section 3.1.

The University will prepare written responses to all questions submitted and make them available to all offerors. The questions and answers will be made part of the RFP and may become part of the contract with the successful contractor. Answers given orally at the conference are not binding.

### **3.4 Offeror Presentations**

All Phase 2 Finalists shall be required to make a presentation to the evaluation committee. Actual interview date/times for the Phase 2 finalist will be scheduled at a later time. Also, an agenda for the Phase 2 finalist will be issued prior to the interviews.

The Financial Proposal shall be submitted only by the Offerors that are selected as Phase 2 Finalist for performing the Work. The Financial Proposal shall be a lump sum proposal to include all costs through warranty. Phase 2 Finalists must provide one (1) copy of the Financial Proposal at the interview presentation and addressed to:

Ken Scott  
Purchasing Division  
University of Kentucky  
411 South Limestone St.  
322 Peterson Service Building  
Lexington, KY 40506-0005

Financial Proposals shall be enclosed in envelopes to the above referenced address and shall show the solicitation number and the name and address of the Offeror on the face of the envelope.

The fee shall include no less than the services requested in the RFP, and as listed below:

- a. All pre-construction services and expenses
- b. All field office expenses
- c. All field staff expenses
- d. All office equipment and supplies
- e. All office maintenance and furnishings
- f. All communications services including phone and internet services
- g. All job-site computers, software and printers, including electronic submittals
- h. All project transportation costs including vehicles and travel
- i. All miscellaneous printing and photo costs for documents printed for the use of the CM's staff
- j. Costs for a thorough constructability and interdisciplinary coordination review of the Construction Documents. The Construction Manager will work with the University and the Designer of Record in identifying and preparing Bid Packages for soliciting trade representation. The University requires a minimum of seven (7) trade contracts, with more provided as appropriate.
- k. Three (3) detailed cost estimates at the end of each design phase of the project, plus a final cost estimate broken down to correspond to the respective trade contracts to be bid.
- l. All overhead and profit
- m. Premium from performance and payment bonds shall assume a **\$23,250,000** construction cost (construction costs will be the sum total of all trade contracts and the Construction Manager contract and will be adjusted after procurement of all trades).
- n) Premium for General Liability insurance shall assume a **\$23,250,000** construction cost (construction costs will be the sum total of all trade contracts and the Construction Manager contract and will be adjusted after procurement of all trades)

### **3.5 Preparation of Offers**

The offeror is expected to follow all specifications, terms, conditions and instructions in this RFP.

The offeror will furnish all information required by this solicitation.

Proposals should be prepared simply and economically, providing a description of the offeror's capabilities to satisfy the requirements of the solicitation. Emphasis should be on completeness and clarity of content. All documentation submitted with the proposal should be bound in the single volume except as otherwise specified.

An electronic version of the RFP, in .PDF format only, is available through the University of Kentucky Purchasing Division web site: <https://purchasing.uky.edu/bid-and-proposal-opportunities>.

### **3.6 Proposed Deviations from the RFP**

The stated requirements appearing elsewhere in this RFP shall become a part of the terms and conditions of any resulting contract. Any deviations therefrom must be specifically defined in accordance with the transmittal letter, Section 4.3 (d). If accepted by the University, the deviations shall become part of the contract, but such deviations must not be in conflict with the basic nature of this RFP.

Note: Offerors shall not submit their standard terms and conditions as exceptions to the University's General Terms and Conditions. Each exception to the University's General Terms and Conditions shall be individually addressed.

### **3.7 Proposal Submission and Deadline**

Offeror must provide (6) printed copies and two (2) digital (pdf) copies of each technical proposal under a sealed cover, prior to **3:00 P.M. Lexington, KY. time on 11/23/2022** and addressed to:

Mr. Ken Scott  
Purchasing Division  
University of Kentucky  
322 Peterson Service Building  
Lexington, KY 40506-0005

**Note: Proposals received after the closing date and time will not be considered. In addition, proposals received via fax or e-mail are not acceptable.**

**The University of Kentucky accepts deliveries of RFPs Monday through Friday from 8 a.m. to 5 p.m. Lexington, KY time. However, RFPs must be received by 3 p.m. Lexington, KY time on the date specified on the RFP in order to be considered.**

Proposals shall be enclosed in sealed envelopes to the above referenced address and shall show on the face of the envelope: the closing time and date specified, the solicitation number and the name and address of the offeror.

Note: In accordance with the Kentucky Revised Statute 45A.085, there will be no public opening.

### **3.8 Modification or Withdrawal of Offer**

An offer and/or modification of offer received at the office designated in the solicitation after the exact hour and date specified for receipt will not be considered.

An offer may be modified or withdrawn by written notice before the exact hour and date specified for receipt of offers. An offer also may be withdrawn in person by an offeror or an authorized representative, provided the identity of the person is made known and the person signs a receipt for the offer, but only if the withdrawal is made prior to the exact hour and date set for receipt of offers.

### **3.10 Rejection**

Grounds for the rejection of proposals include (but shall not be limited to):

- Failure of a proposal to conform to the essential requirements of the RFP.
- Imposition of conditions that would significantly modify the terms and conditions of the solicitation or limit the offeror's liability to the University on the contract awarded on the basis of such solicitation.
- Failure of the offeror to sign the University RFP. This includes the Authentication of Proposal and Statement of Non-Collusion and Non-Conflict of Interest statements.
- Receipt of proposal after the closing date and time specified in the RFP.

### **3.11 Addenda**

Any addenda or instructions issued by the purchasing agency prior to the time for receiving proposals shall become a part of this RFP. Such addenda shall be acknowledged in the proposal. No instructions or changes shall be binding unless documented by a proper and duly issued addendum.

### **3.12 Disclosure of Offeror's Response**

The RFP specifies the format, required information and general content of proposals submitted in response to this RFP. The purchasing agency will not disclose any portions of the proposals prior to contract award to anyone outside the Purchasing Division, the University's administrative staff, representatives of the state or federal government (if required) and the members of the committee evaluating the proposals. After a contract is awarded in whole or in part, the University shall have the right to duplicate, use or disclose all proposal data submitted by offerors in response to this RFP as a matter of public record.

Any submitted proposal shall remain valid six (6) months after the proposal due date.

The University shall have the right to use all system ideas, or adaptations of those ideas, contained in any proposal received in response to this RFP. Selection or rejection of the proposal will not affect this right.

### **3.13 Restrictions on Communications with University Staff**

From the issue date of this RFP until a contractor is selected and a contract award is made, offerors are not allowed to communicate about the subject of the RFP with any University administrator, faculty, staff or members of the board of trustees except: the purchasing office representative, any University purchasing official representing the University administration, others authorized in writing by the purchasing office and University representatives during offeror presentations. If violation of this provision occurs, the University reserves the right to reject the offeror's proposal.

**3.14 Cost of Preparing Proposal**

Costs for developing the proposals and any subsequent activities prior to contract award are solely the responsibility of the offerors. The University will provide no reimbursement for such costs.

**3.15 Disposition of Proposals**

All proposals become the property of the University. The successful proposal will be incorporated into the resulting contract by reference.

**3.16 Alternate Proposals**

Offerors may submit alternate proposals. If more than one proposal is submitted, all must be complete (separate) and comply with the instructions set forth within this document. Each proposal will be evaluated on its own merits.

**3.17 Section Titles in the RFP**

Section titles used herein are for the purpose of facilitating ease of reference only and shall not be construed to infer the construction of contractual language.

**3.18 No Contingent Fees**

No person or selling agency shall be employed or retained or given anything of monetary value to solicit or secure this contract, except bona fide employees of the offeror or bona fide established commercial or selling agencies maintained by the offeror for the purpose of securing business. For breach or violation of this provision, the University shall have the right to reject the proposal, annul the contract without liability, or, at its discretion, deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee or other benefit.

**3.19 Proposal Addenda and Rules for Withdrawal**

Prior to the date specified for receipt of offers, a submitted proposal may be withdrawn by submitting a written request for its withdrawal to the University purchasing office, signed by the offeror. Unless requested by the University, the University will not accept revisions or alterations to proposals after the proposal due date.



## **4.0 PROPOSAL FORMAT AND CONTENT**

### **4.1 Proposal Information and Criteria**

The following list specifies the items to be addressed in the proposal. Offerors should read it carefully and address it completely and in the order listed to facilitate the University's review of the proposal.

Proposals shall be organized into the sections identified below. The content of each section is detailed in the following pages. It is strongly suggested that offerors use the same numbers for the following content that are used in the RFP.

- Signed Authentication of Proposal and Statement of Non-Collusion and Non-Conflict of Interest Form
- Transmittal Letter
- Executive Summary and Proposal Overview
- Criteria 1 - Offeror Qualifications
- Criteria 2 – Project Team Qualifications
- Criteria 3 – Services Defined
- Criteria 4 – Scheduling Ability
- Criteria 5 – Constructability and Interdisciplinary Coordination Review

### **4.2 Signed Authentication of Proposal and Statements of Non-Collusion and Non-Conflict of Interest Form**

The Offeror will sign and return the proposal cover sheet and print or type their name, firm, address, telephone number and date. The person signing the offer must initial erasures or other changes. An offer signed by an agent is to be accompanied by evidence of their authority unless such evidence has been previously furnished to the purchasing agency. The signer shall further certify that the proposal is made without collusion with any other person, persons, company or parties submitting a proposal; that it is in all respects fair and in good faith without collusion or fraud; and that the signer is authorized to bind the principal offeror.

#### **4.3 Transmittal Letter**

The Transmittal Letter accompanying the RFP shall be in the form of a standard business letter and shall be signed by an individual authorized to legally bind the offeror. It shall include:

- A statement referencing all addenda and written questions, the answers and any clarifications to this RFP issued by the University and received by the offeror (If no addenda have been received, a statement to that effect should be included.).
- A statement that the offeror's proposal shall remain valid for six (6) months after the closing date of the receipt of the proposals.
- A statement that the offeror will accept financial responsibility for all travel expenses incurred for oral presentations (if required) and candidate interviews.
- A statement that summarizes any deviations or exceptions to the RFP requirements and includes a detailed justification for the deviation or exception.
- A statement that identifies the confidential information as described in Section 6.11.

#### **4.4 Executive Summary and Proposal Overview**

The Executive Summary and Proposal Overview shall condense and highlight the contents of the technical proposal in such a way as to provide the evaluation committee with a broad understanding of the entire proposal.

#### **4.5 Criteria 1 - Offeror Qualifications**

The purpose of the Offeror Qualifications section is to determine the ability of the offeror to respond to this RFP. Offerors must describe and offer evidence of their ability to meet each of the qualifications listed below.

- a) Please provide a brief narrative describing of the history of your firm. Identify the number of employees in your firm, and the ownership.
- b) Please provide an executive summary profile of your firm indicating the total annual volume of work; an overview of the firms resources; the approximate percentage of University related work versus other project types; a breakdown of your firms volume relative to CM @ Risk, CM Agency, Lump-sum negotiated, Lump- sum hard bid, design-build, etc.; Indicate whether your firm routinely self performs any trade work and if so the relative amount of self-performed work to the total volume. Indicate what resources, if any, your firm has regarding self-performed trade work. Provide any other information necessary to describe your core business parameters.
- c) Provide an organizational chart of your firm indicating the lines of authority for the senior personnel involved in performance of this contract and relationships of this staff to other programs or functions of the firm. This chart should show lines of authority to the next senior level of management beyond the project team level.

- d) Has your firm had a contract terminated for default in the last five years? If so, describe such incident.
- e) Indicate any other experience that demonstrates the qualifications of your firm for the performance of this contract.

#### **4.6 Criteria 2 – Project Team Qualifications**

- a) Please provide an organization chart, resumes of key team members, and brief description of roles and responsibilities.
- b) Complete and provide the detailed staffing chart for construction indicating the on-site staffing that you recommend to adequately provide the construction management services requested. Refer to Attachment ("F") Staffing Matrix.
- c) Please describe at least 5 projects of similar scale and complexity to which project members of the team have been involved and the level of their involvement. Provide the project name, size, cost, date, firm role, team member role, and owner contact information.
- d) The CM must commit that staff identified in your proposal will actually perform the assigned work and be committed for the duration. Describe the level of commitment and the ability your firm has regarding this assurance and the stability of the proposed team.

#### **4.7 Criteria 3 – Services Defined**

- a) The CM should provide documentation of their understanding of the services requested in the RFP and contract documents.
- b) Your proposal must provide for the completion of all work necessary to accomplish the scope of work defined in this RFP. Include a complete description of the proposed approach and methodology to accomplish the work described. The plan must be in sufficient detail to convey to the evaluation team the CM's knowledge of projects of similar scale and complexity and the CM's knowledge of the requirements, demands, and constraints of this project.
- c) Explain how your firm/team approaches budgeting and budget maintenance to assure a successful completion within budget.
- d) Describe your firm's Disadvantaged Business Enterprise program and strategy for achieving DBE participation as well as your strategy to promote local trade, contractor, and vendor participation this project.

**4.8 Criteria 4 – Scheduling Ability**

- a) Explain how your firm/team approaches scheduling and schedule maintenance to assure a successful on time completion of the design and construction phases.
- b) Provide examples of schedules your firm has generated in support of projects of the size and complexity of this project.

**4.9 Criteria 5 – Constructability and Interdisciplinary Coordination Review**

- a) Describe the process your firm will undertake to accomplish a comprehensive constructability and interdisciplinary coordination review of the final construction documents for Bid Packages. Confirm this process will identify constructability problems and document related conflicts which will be corrected and incorporated into bidding documents to reduce RFI's and minimize change orders.
- b) Provide examples of the final products of such reviews and describe how their results can be productively incorporated into the construction documents.

**5.0 EVALUATION CRITERIA PROCESS**

A committee of University officials appointed by the Director of Purchasing will evaluate proposals and make a recommendation to the Director of Purchasing. The University of Kentucky will use a multi-phase evaluation process as outlined below.

The evaluation will be based upon the information provided in the proposal, the Financial Proposal, additional information requested by the University for Clarification, information obtained from references and independent sources, and oral presentations, if requested.

The evaluation of proposals will include consideration of responses to the list of criteria in Section 4.1 through 4.9. Offerors must specifically address all criteria in their response. Any deviations or exceptions to the specifications or requirements must be described and justified in the Transmittal Letter. Failure to list such exceptions or deviations in the transmittal letter may be considered sufficient reason to reject the proposal.

The evaluation of responsive proposals shall then be completed by an evaluation committee and will be evaluated strictly in accordance with the requirements set forth in this RFP, including any addenda that are issued.

### Phase 1 Evaluation Process and Scoring

The evaluation committee shall review proposals and each committee member shall independently score each proposal based on the Phase 1 Evaluation Criteria contained in this document. The score as determined by each evaluation committee member will be averaged to determine the Phase 1 committee composite score for each Offeror. Insofar as it is practical, no less than two (2) Offerors will be selected to participate in Phase 2.

A minimum score to proceed to Phase 2 is 75.

The relative weight and available points/score of the criteria for Phase 1 is defined below:

Qualifications – Firm	20 Points
Project Team Qualifications	30 Points
Services Defined	30 Points
Scheduling Ability	10 Points
<u>Constructability and Interdisciplinary Coordination Review</u>	<u>10 Points</u>
Maximum Points available for Phase 1	100 Points

### Phase 2 Evaluation Process and Scoring

Each Offeror selected to participate in Phase 2 shall be required to participate in a Presentation before the evaluation committee and shall submit a Financial Proposal. Phase 2 finalist may also be required to submit additional information as requested by the University.

**Phase 2 Step 1** - The Phase 2 Presentations and any additional information supplied by the finalist shall be evaluated and ranked by the evaluation committee members, who shall not have knowledge of the Financial Proposal component. Each evaluator shall independently evaluate the Phase 2 non price offers and indicate a ranking (1st, 2nd, 3rd, etc...).

The evaluation committee shall then discuss and determine the ranking for each Offeror.

The relative weight and available points/score of the criteria for Phase 2 Step 1 is defined below:

<u>Rank</u>	<u>Points/Score</u>
1st	100 Points
2nd	75 Points
3rd	50 Points
4th or below	25 Points

The total maximum points/scores available for the Non Price committee composite score for Phase 2 Step 1 will be 100 points/score.

**Phase 2 Step 2** - A total average Non-Price score for Phase 1 and for Phase 2 Step 1 shall be calculated for each Offeror taking part in Phase 2. The maximum points/score available for Non-Price Score will be 200. The Offerors shall have their Non-Price Score determined by applying the following formula:

$$\text{Phase 1} + \text{Phase 2 Step 1} = \text{Phase 2 Step 2 Non-Price Score}$$

**Phase 2 Step 3** - The Financial Proposals are evaluated in Phase 2 Step 3. The maximum points/score available for Offeror's Financial Score will be 200. The Offeror proposing the lowest price/score shall receive the maximum price/score of 200 points. The Offerors shall have their price/score determined by applying the following formula:

$$\frac{\text{Lowest price}}{\text{Offeror's price}} \times 200 = \text{Offeror's Financial Score}$$

**Phase 2 Step 4** - The Offeror with the highest point total from Phase 2 Step 2 plus Phase 2 Step 3 shall receive the award unless the Financial Proposal is in excess of the authorized budget. If two or more of the Offerors achieve the same highest point total at the end of the final phase scoring, the purchasing officer shall request best and final proposals from each Offeror. The Offerors shall have their price/score determined by applying the following formula:

$$\text{Non Price Score (Phase 1 and Phase 2)} + \text{Offeror's Financial Score} = \text{Offeror's Total Score}$$

**The financial evaluation of this work will be based on the total lump sum for the two projects.**

### **Total Evaluation Scoring**

The relative importance and available points/score of the criteria for Phase 2 is defined below:

Maximum Financial Proposal Point/Score	200 (50%)
Maximum Non Price Points/Score for Phase 1 and Phase 2	200 (50%)

Maximum Points available for Financial and Non Price Score 400 Points

The evaluation will be based upon the information provided in the proposal, additional information requested by the University for clarification, information obtained from references and independent sources and oral presentations (if requested).

## **6.0 SUPPLEMENTAL CONDITIONS**

### **6.1 Terms and Conditions**

The General Conditions of the Contract for Construction by a Construction Manager at Risk are attached as Attachment “A”.

### **6.2 Contract**

The Contract between University of Kentucky and Construction Manager at Risk are attached as Attachment “B”.

The proposal shall include pricing for all phases as described herein.

### **6.3 Special Conditions**

The Special Conditions of the Contract for Construction by a Construction Manager are attached as Attachment “C”

### **6.4 Bonding**

Only Phase 2 Offerors shall submit a bid guarantee of not less than five (5%) percent of the amount of the base bid.

A 100% Performance Bond and 100% Payment Bond shall be furnished by the successful bidder. All bonding and insurance requirements are contained in the RFP and/or General Conditions.

It is further agreed, that in the event this Proposal is accepted by the Owner and the undersigned shall fail to execute the Contract and furnish satisfactory Payment and Performance Bond as defined in the Agreement, the Owner may at his option, determine that the undersigned has abandoned the Contract and thereupon, the Proposal shall become null and void.

The Construction Manager shall provide a Performance and Payment Bond initially in the amount of the Construction Management Service fee and, subsequently, the Construction Manager shall provide performance and payment bonds for each phase of the Work to be performed under the Contract at such time the phase of the Work is awarded, each in a penal amount equal to the dollar amount for the Work included in the applicable phase.

**6.5 Additions, Deletions or Contract Changes**

The University reserves the right to add, delete, or change related items or services to the contract established from this RFP. No modification or change of any provision in the resulting contract shall be made unless such modification is mutually agreed to in writing by the contractor and the Director of Purchasing and incorporated as a written modification to the contract. Memoranda of understanding and correspondence shall not be interpreted as a modification to the contract.

**6.6 Competitive Negotiation**

It is the intent of the RFP to enter into competitive negotiation as authorized by KRS 45A.085.

The University will review all proposals properly submitted. However, the University reserves the right to request necessary modifications, reject all proposals, reject any proposal that does not meet mandatory requirement(s) or cancel this RFP, according to the best interests of the University.

Offeror(s) selected to participate in negotiations may be given an opportunity to submit a Best and Final Offer to the purchasing agency. All information-received prior to the cut-off time will be considered part of the offeror's Best and Final Offer.

The University also reserves the right to waive minor technicalities or irregularities in proposals providing such action is in the best interest of the University. Such waiver shall in no way modify the RFP requirements or excuse the offeror from full compliance with the RFP specifications and other contract requirements if the offeror is awarded the contract.

**6.7 Appearance Before Committee**

Any, all or no offerors may be requested to appear before the evaluation committee to explain their proposal and/or to respond to questions from the committee concerning the proposal. Offerors are prohibited from electronically recording these meetings. The committee reserves the right to request additional information.

**6.8 Construction Manager Cooperation in Related Efforts**

The University of Kentucky reserves the right to undertake or award other contracts for additional or related work. The Construction Manager shall fully cooperate with such other Contractors and University employees and carefully fit their work to such additional work. The Construction Manager shall not commit or permit any act, which will interfere with the performance of work by any other Contractor(s) or by University employees. This clause shall be included in the contracts of all parties with whom this Construction Manager will be required to cooperate. The University shall equitably enforce this clause to all parties, to prevent the imposition of unreasonable burdens on any Construction Manager



**6.9 Construction Manager Responsibility**

Any contracts that may result from the RFP shall specify that the contractor(s) is/are solely responsible for fulfillment of the contract with the University.

**6.10 Method of Award**

It is the intent of the University to award a contract to the qualified offeror whose offer, conforming to the conditions and requirements of the RFP, is determined to be the most advantageous to the University, cost and other factors considered.

Notwithstanding the above, this RFP does not commit the University to award a contract from this solicitation. The University reserves the right to reject any or all offers and to waive formalities and minor irregularities in the proposal received.

**6.11 Confidentiality**

The University recognizes an offeror's possible interest in preserving selected information and data included in the proposal; however, the University must treat such information and data as required by the Kentucky Open Records Act, KRS 61.870, et seq.

Information areas which normally might be considered proprietary, and therefore confidential, shall be limited to individual personnel data, customer references, formulae and company financial audits which, if disclosed, would permit an unfair advantage to competitors. If a proposal contains information in these areas and the offeror declares them to be proprietary in nature and not available for public disclosure, the offeror shall declare in the Transmittal Letter the inclusion of proprietary information and shall noticeably label as confidential or proprietary each sheet containing such information. Proposals containing information declared by the offeror to be proprietary or confidential, either wholly or in part, outside the areas listed above may be deemed non-responsive and may be rejected.

The University's General Counsel shall review each offeror's information claimed to be confidential and, in consultation with the offeror (if needed), make a final determination as to whether or not the confidential or proprietary nature of the information or data complies with the Kentucky Open Records Act.

**6.12 Conflict of Interest**

This Request for Proposal and resulting Contract are subject to provisions of the Kentucky Revised Statutes regarding conflict of interest and the University of Kentucky's Ethical Principles and Code of Conduct ([www.uky.edu/Legal/ethicscode.htm](http://www.uky.edu/Legal/ethicscode.htm)). When submitting and signing a proposal, an offeror is certifying that no actual, apparent or potential conflict of interest exists between the interests of the University and the interests of the offeror. A conflict of interest (whether contractual, financial, organizational or otherwise) exists when any individual, contractor or subcontractor has a direct or indirect interest because of a financial or pecuniary interest, gift or other activities or relationships with other persons (including business, familial or household relationships) and is thus unable to render or is impeded from rendering impartial assistance or advice, has impaired objectivity in performing the proposed work or has an unfair competitive advantage.

Questions concerning this section or interpretation of this section should be directed to the University purchasing officer identified in this RFP.

**6.13 University Brand Standards**

The contractor must adhere to all University of Kentucky Brand Standards. University Brand Standards are maintained by the University Public Relations Office (UKPR) and can be viewed at <http://www.uky.edu/pmarketing/brand-standards>. Non-adherence to the standards can have a penalty up to and including contract cancellation. Only the UKPR Director or designee can approve exceptions to the University standards. Graphics standards for the UK HealthCare areas are governed by UK HealthCare Clinical Enterprise Graphic Standards, found at: <https://ourbrand.ukhealthcare.org>.

Contractor warrants that its products or services provided hereunder will be in compliance with all applicable Federal disabilities laws and regulations, including without limitation the accessibility requirements of Section 255 of the Federal Telecommunications Act of 1996 (47 U.S.C. § 255) and Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 1194. For purposes of clarity, updated regulations under Section 508 standards now incorporate WCAG 2.0, and for purposes of this agreement WCAG 2.0 Level AA compliance is expressly included. Contractor agrees to promptly respond to, resolve and remediate any complaint regarding accessibility of products or services in a timely manner and provide an updated version to University at no cost. If deficiencies are identified, University reserves the right to request from Contractor, a timeline by which accessibility standards will be incorporated into the products or services provided by Contractor and shall provide such a timeline within a commercially reasonable duration of time. Failure to comply with these requirements shall constitute a material breach of this Agreement and shall be grounds for termination of this Agreement.

Where any customized web services are provided, Contractor represents that it has reviewed the University's Web Policy and all products or services will comply with its published standards.

Contractor will provide University with a current Voluntary Product Accessibility Template (VPAT) for any deliverable(s). If none is available, Vendor will provide sufficient information to reasonably assure the University that the products or services are fully compliant with current requirements.

## 7.0 SCOPE OF SERVICES

The Construction Manager (CM) will provide the following services:

- Design Phase (Estimating, Budget Reconciliation, and Constructability Reviews for each phase, Schematic Design through Construction Documents)
- Bid and Award
- Construction, including Acceptance
- Post Construction, including Warranty.

The CM, in consultation with the Designer of Record (K Norman Berry) and the University, will recommend the deliverables of project schedule consistent with Bid Packages necessary to complete the construction within the specified time. Subject to the approval by both the Designer of Record (K Norman Berry) and University the CM will assume the lead in maintaining the project schedule, bidding, construction progress, facility acceptance, and all post construction activities.

### 7.1 Preliminary Project Schedule:

The proposed schedule for this project is as follows:

Schematic Design Complete	February 3, 2023
Design Development Complete	April 3, 2023
Construction Documents Complete	July 17, 2023
Bid and award Trade Contracts	September 27, 2023
Begin construction	June 3, 2024 *Estimated
Substantial Completion	May 3, 2025

(Bid and award dates contingent on determination of feasibility for the issuing of early bid packages.)

## **7.2 Proposal Submittal Requirement**

Each Offeror shall provide information, documentation and other necessary materials that best demonstrates and informs the University of the firm's abilities, professional competence, experience and expertise that will enable the firm to provide the construction management services desired. Demonstrated experience and success in promoting and achieving project MBE/WBE participation is desirable. Each Offeror is expected to examine all specifications, terms, conditions, and instructions in this Request for Proposal. Failure to do so will be at the Offeror's risk.

The submittal response should be focused with straightforward, concise descriptions of the firm's capabilities. In keeping with this requirement, the Offeror's response to this request should be no more than (50) fifty pages, not including any preprinted firm information and brochures. Broad scope of services that may be required on this project include, but not necessarily be limited to those described below:

## **7.3 Construction Management Team**

The ultimate success of the project is dependent on the skills and expertise of the CM Project Manager and the individuals assigned to provide the services required. The proposal shall provide detailed information on the key personnel and support staff proposed to be assigned on this project. The CM Project Manager is the individual who is assigned to the project to provide overall management during both design and construction and who has the total responsibility for the successful completion of the project. This submittal should include responsibilities of each team member along with resume and qualifications of each member proposed. The individuals named shall be available for assignment to this project. Team members proposed and/or assigned must be available for the duration of the project and cannot be changed or reassigned without the approval of the University of Kentucky. The University of Kentucky may request team members be replaced at any time.

Please complete the attached matrix entitled "Construction Phase Staffing Standardization Matrix", "Offeror's Recommended Staffing", Attachment "F" providing the staffing level you would recommend for the duration of construction activities.

## **7.4 Construction Management Experience**

The proposal submittal shall include projects completed or that are still under construction that demonstrates your experience in supplying construction management services on projects of similar size, type and complexity as the University of Kentucky's Improve Good Samaritan Hospital Facilities (UKGS IR) project. The Owner's and the design consultant's contact person(s) on each of the projects listed shall be provided along with current telephone numbers. The submittal should include a written narrative on how your organization managed the design and construction process on these projects. Select relevant projects. The projects selected should be projects completed by the personnel that will supply management services for this project.

## **7.5 Detailed Services Defined**

The University has retained the firm of K Norman Berry to provide design and conventional architectural contract administration services for the project. The CM, in consultation with K Norman Berry, and the University, will take the lead and develop the remainder of the project schedule, subject to approval by both the design team and the University.

The CM shall:

1. Provide all project scheduling as defined above, including the development of a CPM type master schedule for all significant activities during the pre-construction period. Also, prepare a CPM type master construction schedule for inclusion in the construction contract documents.
2. Assist the University and the design consultant in determining the feasibility of issuing of early bid packages or phasing of construction.
3. Prepare required detailed construction cost estimates to support the design process. Each estimate will be reconciled with an estimate compiled by the design team's cost consultant.
4. Prepare a report containing detailed value engineering assessments at the end of each phase of design. The report shall consider cost estimates, value engineering estimates, constructability, materials and construction techniques, sequencing of construction, separation of contracts, etc. Recommend action, if required, to maintain project budgets and schedule.
5. Participate in Phase I, II and III design progress review sessions for the purpose of providing input with respect to constructability, contractibility, value engineering, scheduling, and document development. In addition, the Construction manager will provide a comprehensive, independent constructability and interdisciplinary coordination review of the final construction documents for Bid Packages.
6. Provide Special Conditions for approval by K Norman Berry and the University and for inclusion in bidding and contract documents.
7. Identify and recommend the most cost-effective work categories, and provide the methods and means to clearly identify and define these cost effective construction categories, and their responsibilities to be included in the specifications and drawings.

## **7.6 Bid and Award Phase Services**

- 1) The CM shall assist the Owner's Capital Construction Procurement Division to insure that all bidding activities result in qualified contractors for the lowest possible costs.
- 2) Bids will be solicited by the University in accordance with the Commonwealth of Kentucky Model Procurement Code (KRS 045A). The CM will participate in the post bid evaluation and verification of the qualifications of the firms submitting apparent low bids for each of the bid packages for the project to assist in the determination of the proposals representing the best value to the University.
- 3) As each trade contract and/or purchase order is executed by the CM, the contract between the CM and the University shall be adjusted by an equal amount so that the total contract sum of the contract between the CM and the University equals the sum of the executed trade contracts and purchase orders, plus the base fee for CM Services previously established during Phase II of the CM selection process.

## 7.7 **Construction Phase Services**

The CM shall:

- 1) Enter into direct contracts with all Trade Contractors and Suppliers.
- 2) Assume the responsibility for the overall administration of construction contracts.
- 3) Provide full-time staff throughout construction for the purpose of monitoring, managing, inspecting, scheduling, and coordinating the timely progress, performance, quality and contract compliance of the trade contractors and suppliers.
- 4) Schedule and conduct meetings, as necessary, and prepare and distribute meeting minutes.
- 5) Develop and maintain a detailed master construction schedule in a format compatible with Primavera P6 scheduling software.
- 6) Request pricing, review and negotiate costs, and make recommendations on all necessary changes to the contracts and/or purchase orders. The contract between the CM and the University shall be amended by change order so that the total sum of the contract between the CM and the University equals the sum of the executed trade contracts and purchase orders, plus approved change orders to the trade contracts and purchase orders, plus the base fee previously established and described in Section 7.3.2, Par. 4, Bid and Award Phase Services, above.
- 7) Coordinate construction interfaces, methods, techniques, and sequences. The Design Team is utilizing Building Imaging Modeling (B.I.M.) to coordinate building systems and to help minimize space conflicts. To that end, the selected Construction Management Firm shall also use B.I.M. for coordination of the construction work, for conflict resolution and in conjunction with the design consultants. Any B.I.M. application used must be compatible with Revit Architecture as manufactured by Autodesk.
- 8) Institute and administer requirements and procedures for the electronic review and approvals of all submittals.
- 9) Prepare and administer all cost control procedures, including monthly pay requests, change order logs, etc. Prepare Budget Cost Summary Reports as required but no less frequently than monthly.
- 10) Coordinate all requirements of project commissioning and close-out procedures including but not limited to: inspections, Owner's orientation and familiarization, training of Owner's personnel, and collection of all electronic close-out documents. Develop with Owner an occupancy schedule.
- 11) Represent the owner, moderate, seek solutions, make recommendations or take other appropriate actions in matters relating in disputes between contractors, work stoppages, labor disputes, or other disruptions that may occur during the construction of this project.
- 12) Develop and maintain electronic systems for reporting and retrieval of project information.

**Note: Construction Phase Services as noted above should assume the durations listed in the enclosed schedule (Attachment "D") as well as the staffing levels dictated by the Staffing Matrix.**

**The University intends to conduct a reassessment of the schedule with full participation and agreement of the entire team. Should that effort alter these durations then the CM's Construction Phase Services will be amended accordingly and agreed to prior to start of the construction phase.**

## **7.8 Post Construction Phase Services**

The CM shall:

- 1) Warrant to the Owner and the Consultant that all materials and equipment furnished under the Trade Contracts and Purchase Orders shall be new and in accordance with the requirements of the contract documents, and that all Work shall be of good quality, free from faults and defects and in conformance with the Contract Documents
- 2) Guarantee that labor, material, and equipment shall be free of defects for a period of one (1) year from the date shown on the Certificate of Substantial Completion unless special conditions or additional warranty periods are required by the contract.
- 3) Warrant that the work performed under the contract between the CM and the Owner, when completed, will conform to the Contract Documents.

## **7.9 Compliance With State Laws**

resulting from this solicitation shall be governed under, and the rights and obligations of the parties hereto, shall be determined in accordance with the laws of the Commonwealth of Kentucky. The firm selected shall provide equal job opportunity and prohibit discrimination based on race, creed, color, sex, age, religion or national origin as required by Kentucky Revised Statutes 45:550 through 45:640. All contractors and subcontractors are required to comply with Federal Executive Order 11246 entitled "Equal Employment Opportunity" as amended by the Department of Labor regulations (41CFR, Part 60). The successful firm will be required to provide certificates of insurance showing proof of general, vehicle liability and Worker's Compensation insurance and a 100% Performance and Payment Bond for the full amount of the fee negotiated during Phase II of the selection process, adjusted to equal the total contract sum as described above. The CM fee should reflect bonding and insuring the project for the full stipulated amount of **\$23,250,000** however the actual bonds will not be required until the trade/work categories are awarded. For example, if the CM fee is \$200,000, then the University requires a bond for \$200,000 and as each trade/work category is awarded the bonds shall be increased to cover the awarded amount up to the stipulated amount.

## 8.0 FINANCIAL OFFER SUMMARY FORM

The **Financial Offer is not required with the first Phase submittal**. It will be requested from the firms that are moved to Phase 2 of the process based on the Evaluation Criteria Process defined in Section 5.0 of this RFP.

Please provide a lump sum firm fixed fee quotation to perform the Construction Management services required for the design, bidding, construction and post construction phases of the project.

The "Financial Score" used in the selection process will be based on the "Total Cost for the Project" (see below) although an initial contract will be awarded for Design Phase Services only. Bidding, construction and post-construction phase services will later be added by amendment to the initial contract (also ref. Article 5.0, EVALUATION CRITERIA PROCESS, Phase 2 Step 3).

Design Phase Services (to include detailed cost estimates, constructability and interdisciplinary coordination reviews for each design phase).

\$ \_\_\_\_\_

Bid and Award Phase Services (The CM shall provide a breakdown estimate for each bid package as determined by the agreed upon master schedule.)

\$ \_\_\_\_\_

Construction Phase Staffing Services  
(based on the Construction Staffing Standardization Matrix)

\$ \_\_\_\_\_

Construction Phase jobsite general conditions

\$ \_\_\_\_\_

Bonds

\$ \_\_\_\_\_

Insurance

\$ \_\_\_\_\_

Overhead & Profit

\$ \_\_\_\_\_

Post Construction Phase Services

\$ \_\_\_\_\_

Total Cost for the Project

\$ \_\_\_\_\_

## 8.1 Additional Cost to Complete

Additional fees for work the Owner requires on the part of the Construction Manager beyond the scope of services of this Request for Proposal shall be negotiated based on the additional services required.



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**GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION BY A  
CONSTRUCTION MANAGER AT RISK  
University of Kentucky  
Capital Construction Division**

These General Conditions are binding upon the Construction Manager and all Sub-contractors as each are subject to the provisions contained herein.

**ARTICLE 1 - DEFINITIONS**

1.1 Wherever used in these General Conditions or in other Contract Documents, the following terms have the meaning indicated which are applicable to both the singular and plural thereof:

1.1.1 ARCHITECT'S SUPPLEMENTAL INSTRUCTIONS (ASI) - The term "ASI" means a written order issued by the Consultant that clarifies or interprets the Contract Documents, that orders minor changes in the Work, that does not require an adjustment in either cost or time, and that does not require a Change Order.

1.1.2 BUSINESS DAY – The term "Business Day" means a Calendar Day that is not a Saturday, Sunday or legal holiday in Fayette County, Kentucky.

1.1.3 CALENDAR DAY - The term "Calendar Day" means a day of twenty-four hours measured from midnight to the next midnight

1.1.4 CHANGE ORDER - The term "Change Order" means a written order to the Construction Manager, signed by the Owner and issued after the execution of the Contract, directing a change in the Work or an adjustment in the Contract Amount or the Contract Time. A Change Order may be an agreed change by the Construction Manager and the Owner or it may be a unilateral change by the Owner.

1.1.5 CONSULTANT - The term "Consultant" means the person and/or entity, whether singular or plural, either Architect, Engineer or other Consultant, who is or are identified as such in the Contract Documents.

1.1.6 CONSTRUCTION MANAGER or CONSTRUCTION MANAGER AT RISK (CM) - The term "Construction Manager" or "Construction Manager at Risk" (CM) means the person or entity who will or has entered into a contract with the Owner that assumes the risk for construction of the Project as the construction manager, and who will provide consultation and collaboration regarding the construction during and after design of the Project. The CM shall execute and hold all construction Trade Contracts and Purchase Orders for the Project.

1.1.7 CONTRACT - The term "Contract" means the Contract between Owner and Construction Manager and consists of all Contract Documents as defined in Article 1.1.10 of these General Conditions.

1.1.8 CONTRACT AMOUNT - The term "Contract Amount" means the sum stated in the Agreement which represents the total amount payable by the Owner to the Construction Manager for the performance of the Work under the Contract Documents, plus or minus adjustments as provided for in the Contract Documents or by approved Change Orders.

1.1.9 CONTRACT DOCUMENTS - The "Contract Documents" include the Agreement of Contract between the Owner and the Construction Manager (the "Agreement"); the Request for Proposal; the General Conditions; the Special Conditions; the Construction Manager's Form of

Proposal; the Construction Manager's Bonds; the Specifications, Drawings and Addenda for the construction of the Project which are to be used for bidding of the bid pack/Trade Contracts; and any Change Orders issued after execution of this Contract. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Owner and any Sub-contractor, or any person or entity other than the Construction Manager. Documents not included or expressly contemplated in this Article do not, and shall not, form any part of the Contract for Construction. Without limiting the generality of the foregoing, shop drawings and other submittals from the Construction Manager or its Sub-contractors and suppliers do not constitute a part of the Contract Documents. Except as otherwise provided, where these Contract Documents obligate the Construction Manager to certain responsibilities or require the Construction Manager to perform certain actions, the Construction Manager may require these same responsibilities and/or actions of one or more Sub-contractors. However, assignment of such responsibilities or actions to one or more Sub-contractors shall not be construed to relieve the Construction Manager of its obligation to the University under this contract.—

1.1.10 CONTRACT TIME - The term "Contract Time", unless otherwise provided, means the specified number of consecutive Calendar Days following the stipulated commencement of the Work as stated in the Work Order, plus or minus adjustments as provided for by approved Change Orders, within which the Construction Manager shall complete the Work required by the Contract and shall achieve certification of substantial and final completion.

1.1.11 KRS REFERENCES - Reference to "KRS" means the "Kentucky Revised Statutes" adopted by the Commonwealth of Kentucky, including all laws that may have been revised, amended, supplemented or new laws enacted.

1.1.12 OWNER - The term "Owner" means the University of Kentucky, a statutory body corporate existing pursuant to Sections 164.100 et seq. of the Kentucky Revised Statutes.

1.1.13 PROJECT - The term "Project" means the total construction of the Work performed under the Contract Documents, which may be the whole or a part, and which may include construction by the Owner or by separate contracts.

1.1.14 PROJECT MANAGER - The term "Project Manager", when used alone, means the Owner's representative responsible for administration and management of the Project. The Owner's Project Manager during construction shall be the designated University of Kentucky Capital Projects Management Project Manager that is in charge of the Project. The term "CM Project Manager" means the individual employed by the Construction Manager who is assigned to the Project to provide overall management during both the design and construction phases of the Project, and who has total responsibility for the successful completion of the Project

1.1.15 PROVIDE - The term "Provide," as used throughout the specifications, shall mean furnish, install and pay for.

1.1.16 SHOP DRAWINGS - The term "Shop Drawings" means drawings, diagrams, schedules, and other data specially prepared for the Work by the Construction Manager or any Sub-contractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

1.1.17 SUBSTANTIAL COMPLETION - The term "Substantial Completion" is the point at which, as certified in writing by the Owner, a project is at the level of completion, in strict compliance with the contract, where (a) necessary approval by public regulatory authorities (and by other authorities having jurisdiction or as identified in Article 11.2, as necessary) has been given; (b) the Owner has received all required warranties and documentation, and (c) the Owner may enjoy beneficial use or

occupancy and may use, operate, and maintain the project in all respects, for its intended purpose. Partial use or occupancy shall not necessarily result in the project being deemed substantially complete and shall not be evidence of Substantial Completion. In order for the Owner to enjoy beneficial use or occupancy and use, operate, and maintain the project in all respects, for its intended purpose, the stage or progress of the Work or a designated portion thereof shall be sufficiently complete, accessible, operable and usable, and all parts, systems and site Work shall be 100% complete, cleaned and available for the Owner's full use without interruption in accordance with the Contract Documents, including but not limited to the provisions of Article 28 of these General Conditions. The Work will not be considered acceptable for Substantial Completion review until all Project systems included in the Work are operational as designed and scheduled, all designated or required governmental inspections and certifications have been made and approvals provided to the Owner, designated instruction of the Owner's personnel in the operation of systems has been completed, and all final finishes within the Contract Documents are in place. In general, the only remaining Work shall be minor in nature so that the Owner and/or the Owner's tenants could occupy the Project on that date and the completion of the Work by the Construction Manager would not materially interfere or hamper the Owner's or the Owner's tenants' normal business operations. As a further condition of Substantial Completion acceptance, the Construction Manager shall certify in writing that all remaining Work, the same being solely of a "punch list" nature, will be completed within thirty (30) consecutive Calendar Days following the date of Substantial Completion.

1.1.17.1 The parties agree that "substantial completion" as defined in Article No. 2 of the Agreement and Article 1 of the General Conditions, as extended by approved Change Order(s) pursuant to Article 18.1 of the General Conditions, shall be the "date of completion specified in the contract" for purposes of KRS. 45A.250(2).

1.1.18 SUB-CONTRACTOR - The term "Sub-contractor" means the person, company, corporation, joint venture or other legal entity with whom the Construction Manager has executed a Contract for a portion of the Work.

1.1.19 WORK - The term "Work" means the scope of construction and services required by the Contract Documents and all approved Change Orders, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Construction Manager to perform and complete the Construction Manager's obligations under the Contract in an expeditious, orderly and workmanlike manner. The Work may constitute the whole or a part of the Project.

1.1.20 WORK ORDER - The term "Work Order" means a written notice by the Owner to the Construction Manager authorizing the Construction Manager to commence Work under the Contract and establishing the beginning date from which the time for Substantial and Final Completion shall be established.

1.1.21 UNIT PRICE - The term "Unit Price" means the amount per unit of measurement for materials or services as described in the bid documents.

## **ARTICLE 2 - CONSULTANT**

2.1 The Consultant will be the Owner's representative during construction and until the Work is complete. The Consultant will advise and consult with the Owner. The Owner's instructions to the Construction Manager may be forwarded through the Consultant.

2.2 The Consultant will regularly, but no less frequently than monthly, visit the site to become familiar with the progress of the Work, the quality of the Work being provided and to determine if the

Work is proceeding in accordance with the Contract Documents. On the basis of these on-site inspections, the Consultant will inform the Owner of the progress of the Work, will advise the Owner of any defects and deficiencies observed in the Work and, when appropriate, will certify to the Owner that the Work in place equals or exceeds the amount requested by the Construction Manager on all applications for progress payments.

2.2.1 If applicable for the Work, the Consultant will verify to the Owner that the Construction Manager is performing erosion prevention and sediment control inspections as required by the Kentucky Division of Water Construction General Permit (KYR10) at least once every 7 days and shall include the findings in the site visit reports.

2.3 The Consultant will be the interpreter of the requirements of the drawings and specifications and any changes made to the drawings and specifications.

2.4 Claims, disputes, and other matters in question that arise relating to the execution or the progress of the Work shall be referred in writing to the Consultant by the Construction Manager. The Consultant will provide a response in accordance with and subject to the provisions of Article 38 of these General Conditions.

2.5 The Consultant will have the authority to reject Work which does not conform to the Contract Documents or to the required level of quality and performance.

2.6 The Consultant will review and approve, or take other appropriate action upon receipt of the Construction Manager's submittals such as Shop Drawings, product data, and samples. The review of submittals will be for general conformance with the design concept of the work, and for compliance with the information provided by the Contract Documents. Such review will not relieve the Construction Manager of any responsibility for errors or omissions in submittals, and will in no way constitute a waiver of or change to the requirements of the Contract Documents.

2.6.1 The Consultant's review and response will be completed with reasonable promptness with a goal of ten (10) business days or less. The Consultant's review of a specific item shall not indicate approval of an assembly of which the item is a component.

2.7 The Consultant will prepare Change Orders for the Owner to direct changes in the Work. Minor changes in the Work, not involving modifications to the contract cost or completion times and that are consistent with the purpose of Work, may be directed by the Consultant through Architect's Supplemental Instructions (ASI).

2.8 When requested by the Construction Manager, the Consultant will conduct inspections to determine if the Project is at the level of completion required by and is in strict compliance with the Contract such that the Owner may enjoy beneficial use or occupancy and may use, operate, and maintain the project in all respects for its intended purpose, as further defined in the Contract. If the level of completion warrants, the Consultant will confirm that all necessary approvals by public regulatory authorities or other authorities having jurisdiction have been given, will confirm that the Owner has received all required warranties and documentation, will recommend dates for certification of Substantial Completion and Final Completion by the Owner, and will complete and submit the Notice of Termination of coverage under the KPDES General Permit for Storm Water Discharges Associated with Construction Activity.

2.9 The Construction Manager will accept direction for the Work on the Project only from the Owner's Project Manager or from the Consultant. Requests for information from the Construction Manager shall be directed to the Consultant.

### **ARTICLE 3 - CORRELATION AND INTENT OF CONTRACT DOCUMENTS**

3.1 Execution of the Contract by the Construction Manager is a representation that the Construction Manager has or shall thoroughly and carefully examine the site of the Work; shall timely investigate all conditions which can affect the Work or its cost, including but not limited to availability of labor, materials, supplies, water, electrical power, roads, access to the site, uncertainties of weather, water tables, the character of equipment and facilities needed to perform the Work, and local conditions under which the Work is to be performed; and further, that the Construction Manager shall insure that the documents issued for bidding by Sub-contractors reflect the results of this investigation and are adequate to complete the Work. It is the responsibility of the Construction Manager to be familiar with and comply with all Federal, State, and local laws, ordinances, and regulations which might affect those engaged in the Work, and to be familiar with the materials, equipment, or procedures to be used in the Work, or which in any other way could affect the completion of the Work. The Construction Manager shall carefully study and compare the Contract Documents with each other and with other information provided to the Construction Manager by the Consultant or the Owner pursuant to the Contract Documents and shall notify the Owner and the Consultant in writing of any errors, inconsistencies or omissions in the Contract Documents recognized by the Construction Manager. Any failure to properly familiarize itself with the proposed Work shall not relieve the Construction Manager from the responsibility for completing the Work in accordance with the Contract Documents.

3.2 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Construction Manager. All labor or materials which are reasonably inferable from the Contract Documents and which are necessary to produce the desired result, even though not specifically mentioned in the Contract Documents, shall be included in the Work at no additional cost to the Owner.

3.3 In the event a question arises regarding the meaning or intent of the Contract Documents, the Construction Manager shall report it by preparing an RFI in eCommunication<sup>®</sup> to the Consultant. The Consultant shall furnish, with reasonable promptness and with a goal of three (3) business days and by whatever means as may be appropriate, additional instructions necessary for the proper execution of the Work. All such drawings and instructions shall be consistent with the Contract Documents, true developments thereof, and reasonably inferable therefrom. The Work shall be executed in conformity therewith and the Construction Manager shall do no Work without proper drawings and instructions. Items indicated on drawings as "N.I.C." or "Not In Contract" are shown for explanation purposes only and are not to be included in this Contract.

3.4 The Contract Documents are complementary, and what is required by one shall be binding as if required by all. In case of conflicts between the various documents, the order of precedence will be as follows: (1) Addenda, (2) Special Conditions, (3) General Conditions, (4) Technical provisions of the Specifications and (5) Drawings.

3.5 Any notice to the Construction Manager from the Owner regarding this Contract shall be in writing and delivery and service of such notice shall be considered complete when sent by certified mail to the Construction Manager at Construction Manager's last known address. Such notice may also, at the Owner's election, be hand-delivered to the Construction Manager or the Construction Manager's authorized representative.

## **ARTICLE 4 - PRE-CONSTRUCTION CONFERENCE**

4.1 Following the execution of the Contract, a pre-construction conference will be held. Representatives of the Capital Project Management Division, Consultant, Construction Manager, and all major Sub-contractors shall be present to discuss the time for construction, methods and plan of operation, authority of the Consultant, procedures for handling shop drawings, progress estimates and requests for payments, and other relevant issues. The time and location of this meeting will be the responsibility of the Construction Manager in consultation with the Consultant, Owner and other interested parties.

4.2 Environmental aspects of the project, including erosion prevention and sediment control (EPSC) and storm water management shall be discussed during this conference. The Group shall discuss the Storm Water Pollution Prevention Plan (SWPPP) to ensure that all parties understand the requirements. During this meeting the responsibility for reading the rain gage on a daily basis will be established. The Construction Manager will identify the initial measures to be installed prior to land disturbing activities beginning. Any modifications to the SWPPP due to constructability issues should be discussed at this conference.

## **ARTICLE 5 - SHOP DRAWINGS**

5.1 The Construction Manager shall submit a shop drawing and product sample submittal schedule to the Consultant establishing dates for the submission of Shop Drawings and product samples prior to the submittal of the Construction Manager's first application for payment for construction phase services. The schedule shall have been coordinated with all Sub-contractors and material suppliers as well as the Construction Manager's construction schedule and shall allow for adequate and reasonable time for review of the samples and submittals by the Consultant. The Construction Manager shall be responsible for compliance with the submittal schedule and shall insure that the submittal schedule is maintained in order to accurately reflect the status of processing all required submittals.

5.2 The Construction Manager shall review product samples and Shop Drawings for compliance with the requirements of the Contract Documents, and shall submit them to the Consultant in accordance with submittal procedure and schedule established. The Construction Manager's review and submittal to the Consultant of any Shop Drawing or sample shall constitute a representation to the Owner and Consultant that a) the Construction Manager has determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data, or assumes full responsibility for doing so, and that b) each Shop Drawing or sample has been reviewed or coordinated with the requirements of the Work and the Contract Documents. Shop Drawings and submittal requirements shall not be deemed satisfied until approvable documents are received by the Consultant. Incorrect or incomplete submittals will be returned to the Construction Manager without action. No claim for additional time or extension of the contract will be considered if such claim is the result of failure by the Construction Manager to provide correct, accurate, complete and approvable submittals.

5.3 The Consultant will review submittals with reasonable promptness, and take appropriate action or return submittals to the Construction Manager for corrections as may be required. The Construction Manager shall make any corrections required by the Consultant for compliance with the Contract and shall return the required number of corrected copies of Shop Drawings and resubmit new samples until approved. The Construction Manager shall direct specific attention, in writing, or on resubmitted Shop Drawings, to revisions other than the corrections called for by the Consultant on previous submissions.



5.4 Where a Shop Drawing or sample submission is required by the specifications, no related Work shall be commenced until the submission has been accepted in writing by the Consultant. The review and acceptance shall be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents. The acceptance of a separate item will not indicate acceptance of the assembly in which the item functions. A copy of each accepted Shop Drawing and product sample shall be kept in good order by the Construction Manager at the site and shall be made available to the Consultant on request.

5.5 The Consultant's acceptance of Shop Drawings or samples shall not relieve the Construction Manager from the responsibility for any deviations from the requirements of the Contract Documents unless the Construction Manager has in writing called the Consultant's attention to such deviation at the time of submission and the Consultant has given written approval to the specific deviation. Any acceptance by the Consultant does not relieve the Construction Manager from responsibility for errors or omissions in the Shop Drawings.

## **ARTICLE 6 - LAYING OUT WORK**

6.1 The Construction Manager will secure all data at the site of the building such as grades of lot, convenience of receiving and sorting material, location of public services, and other information which will have a bearing proposals or on the execution of the Work and shall address these issues in the preparation of scopes of work for the Subcontract bid packages. No allowance shall be made for failure of the Construction Manager to obtain such site information prior to submitting their proposal or to include such information in the Subcontract bid packages, and no adjustment to the Construction Manager's Contract amount or stipulated time for completion shall be allowed when due to failure by the Construction Manager to do so.

6.2 The Construction Manager shall be responsible for all lines, levels and measurements of all Work executed under the Contract. The Construction Manager shall verify all dimensions before laying out the Work and will be held responsible for any error resulting from failure to do so. Working from lines and levels established by the property survey or by other Contract Documents, and as shown in relation to the Work, the Construction Manager will establish and maintain bench marks and other dependable markers to set lines and levels for Work at each area of construction and elsewhere on the site as needed to properly locate each element of the entire Project. The Construction Manager shall calculate and measure from the bench marks and dependable markers required dimensions as shown (within recognized tolerances if not otherwise indicated), and shall not scale drawings to determine dimensions. The Construction Manager shall advise Sub-contractors and trades persons performing Work of marked lines and levels provided for their use in layout work. The Construction Manager shall verify layout information shown on drawings as required for the Work.

6.3 The Construction Manager shall be responsible for coordination of the installation of all elements of the Work, including preparation of coordination drawings if required by the Contract Documents or deemed necessary by the Construction Manager for performance of the Work.

6.4 If any encroachments are made by the Construction Manager or any Sub-contractor on any adjacent property, the Construction Manager shall, at the Construction Manager's expense, and within thirty (30) Calendar Days after written notice from the Owner or the Consultant, correct any encroachments and obtain approval from the owner of such adjacent property for any encroachments that cannot be feasibly corrected. The Construction Manager shall not be entitled to any adjustment to the Contract Amount or the Contract Time as a result of any such encroachment or the correction thereof.

## **ARTICLE 7 - PLANS, DRAWINGS, SPECIFICATIONS AND RECORD DRAWINGS**

7.1 Unless otherwise provided in the Contract Documents, the Owner will furnish the Construction Manager free of charge one electronic or reproducible copy of the Drawings and Specifications for execution of the Work. The Construction Manager shall pay for the cost of duplication of all sets required over and above this amount.

7.2 The cost of additional plans, specifications and official contract documents for use by Sub-contractors for bidding and for construction shall be borne by the Construction Manager or by the Sub-contractors. Arrangements for orders and payment for plans, specifications and other contract documents must be made with Lynn Imaging, Lexington, Kentucky (<http://www.ukplanroom.com>) or by phone at 1.800.888.0693 or 859.255.1021) before a set of documents will be issued.

7.3 The Construction Manager shall keep one copy of all Contract Documents, including Drawings, Specifications and Shop Drawings on the site and in good order. A qualified representative of the Construction Manager shall record on these documents, from day to day as Work progresses, all changes and deviations from the Contract Documents. Prior to Substantial Completion, the Construction Manager shall complete and turn over to the Consultant the As-Built drawings, with a digital copy (in PDF format) submitted to the Owner simultaneously. The As-Built drawings shall consist of a set of drawings which indicate all field changes that were made to adapt to field conditions, changes resulting from Change Orders and all concealed and buried installations of piping, conduit and utility services. All buried and concealed items, both inside and outside the facility, shall be accurately located on the As-Built drawings as to depth and in relationship to not less than two permanent features such as interior or exterior wall faces. The As-Built drawings shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in a contrasting color. For any changes or corrections in the Work which are made subsequent to the Substantial Completion Inspection, revisions shall be made to the As-Built drawings and submitted to the Consultant prior to final payment. Approval of the final payment request shall be contingent upon compliance with these provisions.

7.4 All drawings, specifications and copies thereof, furnished by the Consultant to the Owner, are the property of the University of Kentucky. They shall not be used by the Consultant, Construction Manager, or any Sub-contractor or Supplier on any other Project.

## **ARTICLE 8 - TEMPORARY UTILITIES**

8.1 The Construction Manager shall provide and pay for, unless modified in the Special Conditions, all temporary conveniences including, but not limited to, wiring, lighting, power and electrical outlets, heat, water, and sanitary facilities required for construction. In the event the Owner elects to make available, at no cost to the Construction Manager, the electric power required for construction activities, the electric power supplied shall not be utilized as a means to provide temporary heat or for welding.

8.2 The Construction Manager is responsible for paying all utility costs, whether the costs are from an outside utility company or from the University, for utility services used in the course of completing the Work. The Construction Manager shall provide temporary heating, ventilation, telephones, water, electricity, portable gas, lighting for the Work, safety lighting, security lighting, and trash removal/dumpster service for both Construction Manager and Sub-contractor use during the Project. Work and safety lighting shall be provided continuously during working hours. Security lighting shall be provided at all hours of darkness.

## **ARTICLE 9 - MATERIALS, EQUIPMENT, APPLIANCES, AND EMPLOYEES**

9.1 Unless otherwise provided in the Contract Documents, the Construction Manager shall provide and pay for all materials, labor and personnel, tools, equipment, construction equipment and machinery, utilities, supplies, appliances, transportation, taxes, temporary facilities, licenses, permits and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and the proper execution and completion of the Work safely, without damage to persons and property, and in compliance with all applicable law. The Construction Manager shall furnish, erect, maintain, and remove at the completion of the Contract, all temporary installations as may be required during the construction period.

9.2 Immediately following the execution of each of the Trade Contracts, the Construction Manager shall determine the source of supply for all materials required under that Trade Contract and the length of time required for their delivery, and shall assure that orders are placed for such materials in sufficient time to assure delivery to the site so that such materials are available to be incorporated into the Work when needed to comply with the schedule of Work.

9.3 The Construction Manager shall immediately notify the Consultant in writing of any known problems with the procurement, fabrication or ordering of any materials. Unless changes are approved in writing by the Consultant, the Construction Manager will not be excused for delays in securing materials specified.

9.4 The Construction Manager or Sub-contractors shall not place purchase orders or issue contracts for materials, supplies, equipment and services necessary to complete this Project using the name of the University of Kentucky. All orders placed by the Construction Manager that are related to this Project must use the name of the Construction Manager or Sub-contractor placing the order. The use of the University of Kentucky's name for ordering purposes is strictly prohibited. Payment for all goods and services required for the completion of the Work is the sole responsibility of the Construction Manager. Any invoices received at the University that are related to this Project will be immediately forwarded to the Construction Manager. Copies of these invoices will be made and placed in the Construction Manager's file and proof must be provided that these invoices have been paid in full prior to the processing of the next scheduled application for progress payment.

9.5 The route for delivery of all materials to the Project shall be coordinated with the Owner's Project Manager.

9.6 The Construction Manager shall be responsible for the proper and adequate storage of materials and equipment. Unless otherwise provided in the Contract Documents, all materials shall be of good quality and new. Workmanship and materials supplied and incorporated into this Work shall be of first quality. The Construction Manager, if required, shall furnish satisfactory evidence as to the kind and quality of materials.

9.7 The Construction Manager shall at all times enforce strict discipline and good order among all employees and Sub-contractors. The conduct of all individuals performing Work or operations related to the Work is the responsibility of the Construction Manager. The consumption of alcohol or drugs on the job by any workers is strictly prohibited. Any individual apprehended under the influence of alcohol or drugs on the premises at any time shall be subject to automatic removal from the Project by the Construction Manager, the Consultant or the Owner. Improper conduct of any kind will not be permitted and may result in the offending individual, Sub-contractor or Construction Manager being barred from the Owner's premises. The Construction Manager shall not permit the employment on the Project of any person unfit or not skilled in the Work assigned.

## ARTICLE 10 - ROYALTIES AND PATENTS

10.1 The Construction Manager shall pay all royalties and license fees. If a particular process, product or device is specified in the Contract Documents and it is known to be subject to patent rights or copyrights, the existence of such rights shall be disclosed in the Contract Documents and the Construction Manager is responsible for payment of all associated royalties. The Construction Manager hereby agrees to indemnify, defend and hold the Owner, and any subsidiary, parent, or affiliates of the Owner, or other persons or entities designated by the Owner, and their respective directors, officers, agents, employees and designees (collectively, the "Indemnities") harmless from all losses, claims, liabilities, injuries, damages and expenses, including attorneys' fees and legal expenses, that the Indemnities may incur as a result of the Construction Manager's failure to strictly comply with its obligations under this Paragraph 10.1.

## ARTICLE 11 - SURVEYS, PERMITS, REGULATIONS, AND STANDARD CODES

11.1 The Owner will furnish only such surveys that are specifically required by the Contract Documents. Approvals, assessments, and easements for permanent structures or permanent changes in existing structures shall be secured and paid for by the Owner, unless otherwise specified. All required utility tap-on fees shall be secured and paid for by the Construction Manager, or included in a Trade Contract, including the Lexington-Fayette Urban County Government (LFUCG) sewer tap-on fee. All construction permits, where required by local ordinances, except excavation permit, shall be obtained by the Construction Manager, but no fee shall be charged to or paid by the Construction Manager as the Owner is exempt from such charges. A Contractor's license fee for doing business in the locale, if applicable, shall be paid for by the Construction Manager.

11.2 All branches of Work shown on the plans and specifications shall be executed in strict compliance with all state and federal regulations and codes, with all national codes, and with the requirements of both ADA and JCAHO when applicable.

11.3 The Contractor, on projects disturbing 1 acre or more, or projects less than 1 acre that are part of a large common development plan, including grading, clearing, excavation, material laydown or other earth moving activities, shall assure full compliance with the requirements of the KYR10 and shall:

11.3.1 File a Notice of Intent (KPDES FORM eNOI-SWCA) with the Kentucky Division of Water and copy the UKCPM Project Manager and Water Quality Manager prior to the start of any excavation, grading or site development work.

11.3.2 The permittee (contractor) shall develop a Stormwater Pollution Prevention Plan (SWPPP) based on the Erosion Prevention and Sediment Control Plan (EPSC) as a minimum design standard. Ensure all requirements of KYR10 are fully addressed in the SWPPP. **Once the SWPPP is written, forward a copy to the Capital Projects Project Manager and to the Water Quality Manager for approval. Work cannot begin until SWPPP is approved and permit coverage obtained.**

11.3.3 Install BMP's such as, basins, traps, drainage, and sediment barriers before beginning land disturbing activities, including the construction entrance/exit. Once prevention measures have been installed, grading can commence. In the event a new construction entrance is added to the site, this new entrance must be built according to the EPSC design details with a wheel wash, a water supply and a sediment catch basin for washed wheel sediment.

11.3.4 Maintain all measures in working condition. Perform maintenance activities identified during inspections prior to the next rain event. Remove sediment from BMPs when 1/3 the storage volume has been filled.

11.3.5 Stabilize disturbed areas within 14 days of inactivity or reaching final grade on any portion of the site according to permit requirements.

11.3.6 Inspect the site every 7 calendar days and after each rainfall of ½" or more. Document site conditions, rainfall, maintenance activities needed and performed, stabilization needed and performed, and where new measures are needed. Discuss deficiencies with UK Project Manager and Water Quality Manager and note on the SWPPP Inspection Sheets.

Per the KPDES Permit, Section 2.1.7. "Inspections – Permittee Conducted". "Inspections shall be performed by personnel knowledgeable and skilled in assessing conditions at the construction site that could impact storm water quality and assessing the effectiveness of erosion prevention measures, sediment control measures, and other site management practices chosen to control the quality of the storm water discharges. Inspectors shall have training in storm water construction management such as Kentucky Erosion Prevention & Sediment Control (KEPSC), Certified Professional in Stormwater Quality (CPSWQ), Certified Erosion, Sediment and Stormwater Inspector (CESSWI), or other similar training."

Inspections shall include a tour of the total site and verification that all BMPs are performing as constructed. Inspector shall certify that all observations are correct as stated and sign and date the inspection form.

11.3.7 Keep Permit, SWPPP, weekly/rain event inspections sheets in binder in construction trailer. Any BMP change/alteration from SWPPP and EPSC plan must be noted on the EPSC and SWPPP.

**11.3.8 No soil and sediment shall leave the construction site. BMPs shall be repaired immediately if failure has occurred. No Mud shall be permitted on any street. All entrances/exits shall have a means by which to wash wheels. If an entrance/exit does not have a wheel wash, that exit shall not be used in muddy conditions. If for any reason mud is tracked offsite, the area must be cleaned in such a way as to prevent sediment from entering the storm sewer system. The use of tractor brooms solely will not be permitted.**

11.3.9 When it is necessary to dewater an excavation, proper BMPs must be implemented. Dewatering filter bags must be sized and used according to manufacturer's requirements and Standard Operating Procedures for Dewatering Bags.

11.3.10 UK (the MS4) routinely inspects sites for compliance with the EPSC/SWPPP. Any deficiencies noted become record for the Kentucky Division of Water and shall be remedied/installed as soon as site conditions are favorable but no more than 7 days from the inspection date.

11.3.11 At the conclusion of the project and all bare areas, slopes and ditches are 70% vegetated with the permanent ground cover, the contractor shall notify the UK Project Manager and Water Quality Manager and request a final site inspection prior to filing a "Notice of Termination (NOT)" with the state. This inspection verifies that Construction BMPs can be removed, and Post-Construction BMPs are in place and functioning.

**11.3.12 Failure of the site contractor (permittee of the KPDES Permit) to timely comply with requirements of KPDES, the Construction Manager shall inform the site contractor that a third party contractor shall be retained to remediate all BMP deficiencies immediately, and all third party costs shall be passed to the permittee of the KPDES Permit. Any fines or other costs**

**resulting from failure to comply, levied against the Owner will be assessed against the Construction Manager's or General Constructor's funds.**

11.3.13 Refer to 334000S01 STORM DRAINAGE UTILITIES – Information for Consultants & Contractors.

11.3.14 Reference to standards, codes, specifications, and regulations refer to the latest edition of printing in effect at the date of issue shown in the Contract Documents unless another date is implied by the suffix number of the standard.

11.4 Reference to standards, codes, specifications, and regulations refer to the latest edition of printing in effect at the date of issue shown in the Contract Documents unless another date is implied by the suffix number of the standard

11.5 The Construction Manager shall furnish a final occupancy permit from the proper agency or agencies as required.

11.6 The Construction Manager shall, by provision within each applicable subcontract or by inclusion in the lump sum fee proposed to the Owner, insure the payment of all sales, consumer, use and similar taxes for materials, equipment and supplies incorporated into the Work, by unless otherwise specified in the bid documents.

## **ARTICLE 12 - PROTECTION OF WORK, PROPERTY, AND PUBLIC**

12.1 The Construction Manager shall continuously maintain adequate protection of all Work from damage and shall protect the Owner's property from injury or loss arising in connection with this Contract. Except as otherwise covered by Builder's Risk insurance, the Construction Manager shall pay for any damage, injury, or loss, except such as may be directly due to errors in the Contract Documents or caused by agents or employees of the Owner. The Construction Manager shall adequately protect adjacent property as provided by law and the Contract Documents.

12.2 In an emergency affecting the safety of life, or of the Work, or of adjoining property, the Construction Manager, without special instruction or authorization from the Consultant or the Owner, is obligated to act to prevent such threatened damage, loss or injury.

12.3 The Construction Manager shall maintain fire protection as required by the Kentucky Building Code. Access to the Project site and surrounding buildings for local fire truck access during construction must be maintained. The Construction Manager shall maintain construction to allow access to new, existing or temporarily relocated standpipes, fire hydrant connections and fire alarm communication panels pursuant to Section 3018.8 of the Kentucky Building Code. If the Construction Manager utilizes the Owner's fire protection equipment, the Construction Manager shall replace any such materials lost, consumed or misplaced during the Contract period. The Construction Manager is responsible for any false alarms caused by dust created in the Work area or dust traveling to areas beyond the Work area due to inadequate dust protection barriers. Should there be a need for any existing or newly installed fire alarm system, or parts of a system that requires service, to be removed from service or disconnected, prior approval must be obtained from the Owner and the Construction Manager shall immediately provide alternate protection such as a fire watch until such systems are returned to full normal operations. When work or service is completed on a disabled fire alarm system, the Owner shall be immediately notified so the system can be placed in service.

12.4 The Construction Manager and Sub-contractors are responsible for the security of their own materials, tools and equipment at the Project site.

12.5 The Construction Manager shall provide to the Owner's Project Manager a key to Construction Manager's field office or job trailer.

### **ARTICLE 13 - BLASTING**

13.1 Blasting is not allowed unless permission is granted in the Special Conditions. Should blasting be allowed by the Special Conditions, it shall be completed in accordance with all laws, regulations, ordinances and instructions contained in the Special Conditions.

### **ARTICLE 14 - CONSTRUCTION AND SAFETY DEVICES**

14.1 The Construction Manager shall provide safety controls for protection of the life and health of employees and visitors. The Construction Manager will utilize precautionary methods for the prevention of damage to property, materials, supplies, and equipment, and for avoidance of work interruptions in the performance of this Contract. In order to provide such safety control, the Construction Manager shall comply with all pertinent provisions of the Kentucky Fire Prevention Code, Kentucky Building Code, Kentucky Labor Cabinet's Division of Occupational Safety and Health Program Construction Standards and Federal Occupational Safety and Health (Construction) Standards that are in effect at the time the Contract is entered into and during the period in which the Contract is to be performed.

14.2 The Construction Manager shall provide a written safety program which includes all pertinent written specialty standards such as, but not limited to, Control of Hazardous Energy Sources (Lockout/Tagout), Hazard Communications Program, First Aid, Blood Borne Pathogen Program, Respirator Use Program and Hearing Conservation Program. The Construction Manager shall require all Sub-contractors to have an effective written safety program or be required to follow the Construction Manager's written safety program.

14.3 The Construction Manager shall maintain an accurate record of and shall report to Kentucky Labor Cabinet's Division of Occupational Safety and Health in the manner and on the forms prescribed by that Division, exposure data and all accidents resulting in death, traumatic injury, or occupational disease. The Construction Manager shall maintain an accurate record of and shall report to the Owner's Project Manager, any damage to property, materials, supplies, or equipment incident to Work under this Contract.

14.4 The Kentucky Labor Cabinet's Division of Occupational Safety and Health may notify the Construction Manager of any noncompliance with the foregoing provisions. The Construction Manager shall, upon receipt of such notice, immediately correct the cited conditions. Notice delivered to the Construction Manager or the Construction Manager's representative at the site of the Work shall be deemed sufficient for this purpose. If the Construction Manager fails or refuses to comply promptly, the Owner may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. Failure or refusal to comply with the order will be grounds for reducing or stopping all payments due under the Contract to the Construction Manager. No part of the construction time lost due to any such stop order shall be cause for, or the subject of a claim for, extension of time or for additional costs or damages by the Construction Manager.

14.5 The Construction Manager or any Sub-contractor shall immediately contact the University of Kentucky's Department of Occupational Health and Safety through the Owner's Project Manager

should they be selected for an inspection by the Kentucky Occupational Safety and Health Compliance Division.

14.6 Compliance with the provisions of the foregoing sections by Sub-contractors shall be the responsibility of the Construction Manager.

14.7 Nothing in the provisions of this Article 14 shall prohibit the U.S. Department of Labor or the Kentucky Department of Labor Division of Occupational Safety and Health from enforcing pertinent occupational safety and health standards as authorized under Federal or State Occupational Safety and Health Standards.

14.8 The Construction Manager shall take all necessary precautions for the safety of employees on the Work, and shall comply with all applicable provisions of federal, state, and municipal safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the premises where the Work is being performed. If the Construction Manager or any Sub-contractor has questions related to the health or safety required by their written safety program, they should contact the Kentucky Labor Cabinet Occupational Safety and Health Program Division of Education and Training. The Construction Manager shall designate a responsible member of the on-site work force as the safety officer and shall report to the Consultant and to the Owner the name of the person selected. The duties of the safety officer include the enforcement of safety regulations.

## **ARTICLE 15 - HAZARDOUS MATERIALS**

15.1 If the Construction Manager encounters material reasonably believed to be or suspected to be asbestos containing material, lead, polychlorinated biphenyls (PCBs), fluorescent light bulbs and ballasts, mercury or other hazardous material, the following procedures must be followed:

15.1.1 The Construction Manager shall immediately stop work in the affected area and notify the Owner's Project Manager. The Owner's Project Manager will contact the Owner's Environmental Health and Safety unit to arrange for collection of samples, review of existing data, or other testing necessary to confirm the presence of hazardous materials. The Owner's Project Manager will notify the Construction Manager in writing of the results. Until that notification is received, the Work must not continue in the affected area.

15.1.2 If the material is confirmed to be asbestos, lead, polychlorinated biphenyls (PCBs), fluorescent light bulbs and ballasts, mercury or other hazardous material, the Owner will take appropriate action to remove the material before the Construction Manager can continue Work in the affected area.

15.1.3 The Construction Manager shall not be required to perform any Work related to asbestos, lead, polychlorinated biphenyls, or other hazardous material. The Construction Manager is advised that certain classes of building materials (thermal system insulation, sprayed or troweled surfacing materials, and resilient flooring) installed before 1981 are required by law to be treated as asbestos containing until proven otherwise. These presumed asbestos containing materials must not be disturbed without confirmation from the Owner that asbestos is not present.

15.2 The Owner, the Construction Manager, and Sub-contractors will be under the requirements of the OSHA Hazard Communication Standard (29) CFR 1910.1200. The Construction Manager and Sub-contractors must provide their own written Hazard Communication Program. The Hazard Communication Standard must include: (1) A list of the hazardous chemicals to which the Construction Manager's employees may be exposed; (2) Statement of the measures that Construction Manager's employees and Sub-contractors may take to lessen the possibility of exposure to the



hazardous materials; (3) The location of and access to the Material Safety Data Sheets (MSDS's) related to the hazardous chemicals located in the Work area; (4) Procedures that the Construction Manager's employees and Sub-contractors are to follow if they are exposed to hazardous chemicals above the Permissible Exposure Limit (PEL). Material Safety Data Sheets may be reviewed upon request by the Construction Manager or any Sub-contractor as they pertain to the Work areas of the Project. Photocopies of the MSDS's may be made by Construction Manager at its expense.

15.3 The Construction Manager and Sub-contractors shall provide the Owner with a list of any hazardous materials that will be used on the job site. The Construction Manager and Sub-contractors shall provide the Owner with copies of Material Data Sheets for all such materials to be used.

15.4 It is the policy of the Owner that PCB containing equipment will be treated by the Construction Manager and the Owner in a manner that conforms to the intent of all applicable laws and regulations (primarily 40 CFR Part 761). The following procedures shall be followed by the Construction Manager and Sub-contractors while present on the Owner's Project or other property: (1) Only authorized, trained personnel may inspect, repair, or maintain PCB transformers; and (2) No combustible materials may be stored within a PCB transformer room or within five meters of a PCB transformer. Such materials include, but are not limited to, paints, solvents, plastic, paper, and wood. The Construction Manager shall not use rooms containing PCB transformers for storage rooms, staging areas, job site offices or break rooms. Violation of this policy may be grounds for dismissal of the offending Construction Manager and/or Sub-contractor from the Project. All PCB transformers at the University of Kentucky are identified by a PCB label as defined in federal regulations. If the Construction Manager should have a question as to the location of a PCB transformer, it should contact the Owner's Project Manager.

15.5 The Construction Manager shall ensure that NO asbestos-containing materials (including but not limited to: drywall, joint compound, roof mastic or floor tile adhesive) will be install on any University project without prior written approval of the University's Environmental Health and Safety Division. Additionally, the Construction Manager shall submit MSDS sheets and have prior approval before installing any materials that contains hazardous substances or could pose an environmental hazard. If any environmental hazardous materials are installed without written approval of the University, the Construction Manager will be responsible for all material replacement cost, all removal and all other associated damages. Any materials removed shall be taken out in accordance with all applicable federal, state and local regulations.

## **ARTICLE 16 - INSPECTION OF WORK**

16.1 Inspections, tests, measurements or other acts of the Consultant are for the sole purpose of assisting the Consultant in determining if the Work, materials, rate of progress, and quantities comply with the Contract Documents. These acts or functions shall not relieve the Construction Manager from performing the Work in full compliance with the Contract Documents, nor relieve the Construction Manager from any of the responsibility for the Work assigned to it by the Contract Documents. No inspection by the Consultant shall constitute or imply acceptance. Approval of material is general and shall not constitute waiver of the Owner's right to demand full compliance with Contract Documents.

16.2 All Work completed and all materials incorporated for the Project are subject to inspection by the Owner, the Consultant or their representatives to determine conformance with the Contract Documents. The Owner, Consultant and their representatives shall at all times have access to the Work whenever it is in preparation or progress. The Construction Manager shall provide, at no additional cost to the Owner, any facilities necessary for sufficient and safe access to the Work to complete any inspections required. The Consultant shall be given timely notification in order to

arrange for the proper inspections to be performed on any Work outside of the normal working day or week. If the Consultant provides the Construction Manager with a list of construction milestones that require inspection, the Construction Manager shall provide the Consultant with at least five (5) Business Days written notice prior to the commencement of Work with respect to such milestone in order to permit the Consultant time to coordinate an inspection of the commencement of the applicable Work.

16.2.1 Normal Work hours are defined as a period between 7:00 a.m. and 5:00 p.m. Monday through Friday. The Construction Manager shall notify the Owner's Project Manager at least one working day prior to performance of any Work for permission to do any Work during non-normal Work hours.

16.3 If the Specifications, the Consultant's instructions, laws, ordinances, or any public authority require any Work to be specially inspected, tested or approved, the Construction Manager shall give the Consultant timely notice of the readiness of the Work for inspection. The Consultant shall promptly make all required inspections. If any portion of the Work should be covered contrary to the request of the Consultant, or to the requirements specifically expressed in the Contract Documents, the Work must be uncovered for inspection and observation and shall be uncovered and replaced at the Construction Manager's expense.

16.4 If any other portion of the Work has been covered, which the Consultant has not specifically requested to observe prior to being covered, the Consultant, with the Owner's approval, may request to see such Work and it shall be uncovered by the Construction Manager. If such Work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement shall be charged to the Owner by appropriate Change Order. If such uncovered Work is not in accordance with the Contract Documents, the Construction Manager shall pay all costs for uncovering and replacement of such Work.

## **ARTICLE 17 - SUPERINTENDENT - SUPERVISION**

17.1 The Construction Manager shall completely and thoroughly direct and superintend the Work in accordance with the highest standard of care for the Construction Manager's profession so as to ensure expeditious, workmanlike performance in accordance with requirements of the Contract Documents. Except as otherwise dictated by specific requirements of the Contract Documents, the Construction Manager shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures. The Construction Manager shall be responsible for the acts and omissions of all Sub-contractors and persons directly or indirectly employed by the Construction Manager in the completion of the Work. The Construction Manager shall be responsible for coordinating and scheduling all portions of the Work unless the Contract Documents give other specific instructions. The Construction Manager shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by the activities of the Consultant in the administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Construction Manager.

17.2 The Construction Manager shall have a competent superintendent on the Project site at all times during the process of the Work. The superintendent shall have authority to act on the Construction Manager's behalf with regard to all aspects of performance of this Contract. The superintendent shall have such assistants with individual specialized competencies as may be necessary to fully understand and oversee all aspects of the Work. The Construction Manager shall also provide administrative, supervisory and coordinating personnel required to fully perform the Work and for interfacing the Work with other work of the Project. The superintendent and all assistants shall be physically fit for their work and capable of going to all locations where Work is being performed. A communication given to the superintendent shall be binding on the Construction

Manager. Immediately after the award of Contract, the Construction Manager shall submit to the Consultant a list of Construction Manager's employees and consultants, including names, positions held, addresses, telephone numbers and emergency contact numbers.

17.3 The superintendent assigned shall not be changed except under the following circumstances: (1) Where the superintendent ceases to be employed by the Construction Manager, in which case the Construction Manager shall give timely written notice to the Owner of the impending change of the superintendent and a reasonable explanation for the change; or (2) Where the Owner or the Consultant have reasonable grounds for dissatisfaction with the performance of the superintendent and give written notice to the Construction Manager of the grounds. In either case, the Construction Manager shall obtain prior written approval from the Owner of the qualifications of the proposed replacement superintendent. Such prior approval will not be unreasonably withheld.

17.4 If the Owner or Consultant determines that the superintendent is not performing, or is incompetent to perform the required Work, the Owner may direct the Construction Manager to remove the superintendent from the Project and replace the superintendent with an employee who has the necessary expertise and skills to satisfactorily perform the Work.

## **ARTICLE 18 - CHANGES IN THE WORK**

18.1 The Owner, at any time after execution of the Contract, may make changes within the general scope of the Contract or issue additional instructions, require additional Work, or direct the deletion of Work. The Owner's right to make changes shall not invalidate the Contract or relieve the Construction Manager of any obligations under the Contract Documents. All such changes to the Work shall be authorized in writing by Change Order and shall be executed under the conditions of the Contract Document. Any adjustment of the Contract Amount or Time of Completion, as may be appropriate, shall be made only at the time of ordering such change. Change order proposals based on a reservation of rights, whether for additional compensation to be determined at a later date or for an extension of time to be determined at a later date, will not be considered for approval and shall be returned to the Construction Manager without action.

18.2 The cost or credit resulting from a change in Work shall be determined in one or more of the following ways:

18.2.1 By unit prices named in the Contract or additional unit prices subsequently agreed upon;

18.2.2 By agreement on a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

18.2.3 By an amount agreed upon by the Construction Manager and the Owner as a mutually acceptable fixed or percentage fee.

18.3 All lump sum proposals shall include a detailed cost breakdown satisfactory to the Consultant and to the Owner for each component of Work indicating both labor and material costs. This cost breakdown shall be submitted to the Consultant promptly and with a goal of seven (7) Calendar Days or less after receipt of the proposal request.

18.3.1 In computing labor costs, the hourly labor rates shall not exceed a mutually agreeable combined hourly labor rate plus fringe benefits negotiated with the Owner based on a presentation of acceptable documentation by the CM. For the purposes of this Article, the term "fringe benefits" shall mean those funds transferred irrevocably to a third party for payment/distribution. In addition,

there may be added by the Sub-contractor an amount agreed upon, but not to exceed ten percent (10%) of the actual cost, for overhead and profit.

18.3.2 The CM is entitled to a mark-up for bonds and insurance on all change orders. For change orders coded "End User Requested Changes" or "Other Owner Requested Changes" the CM may add overhead & profit in addition to the bonds and insurance referenced above. The mark-ups shall not exceed the combined percentage for overhead and profit, bonds, and insurance stated in the CM's "Financial Proposal Summary". These mark-ups will not be added to the individual change orders but will be reconciled by amendment at the completion of the project and/or on an annual basis for those projects exceeding 12 months in duration.

18.4 If none of the above methods are mutually agreed upon or if the Construction Manager does not respond promptly, a change may be made by unilateral determination by the Owner and/or the Consultant of reasonable costs or savings attributable to the change, including a reasonable allowance for overhead and profit. If this method is utilized, the Construction Manager shall promptly proceed with the Work involved in the change upon receipt of a written order signed by the Owner. In such case, the Construction Manager shall keep and present an itemized accounting of labor, equipment, material and other costs, in such form as may be prescribed by the Consultant.

18.5 In all cases where Change Orders are determined by unit prices set forth in the Contract Documents, no amount is to be added for additional overhead and profit.

18.6 The Construction Manager shall keep and present in such form as the Consultant may direct, a correct account of all items comprising the net cost of such Work, together with vouchers. The determination of the Consultant and/or the Owner shall be final upon all questions of the amount and cost of extra Work and changes in the Work, and it shall include in such cost, the cost to the Construction Manager of all materials used, the cost of all labor (including social security, old age and unemployment insurance, fringe benefits to which the employee is entitled, and Workers Compensation insurance), and the fair rental of all machinery used upon the extra Work, for the period of such use, which was upon the Work before or which shall be otherwise required by or used upon the Work before or after the extra Work is done. If the extra Work requires the use of machinery not already on the Project site, or to be otherwise used upon the Work, then the cost of transportation of such machinery to and from the Project site shall be added to the fair rental value. Transportation costs shall not be allowable for distances exceeding one hundred (100) miles.

18.7 The Construction Manager shall not include or allow to be included in the cost of change in the Work any cost or rental of small tools, or any portion of the time of the Construction Manager or the superintendent, or any allowance for the use of capital, or for the cost of insurance or bond premium or any actual or anticipated profit, or job or office overhead. These items are considered as being covered under the added amount for general overhead addressed in Article 18.3

18.8 The Owner will not pay claims made for lost opportunities, claims made for lost production or production inefficiencies or claims made that are formula based.

18.9 Pending final determination of value, partial payments on account of changes in the Work may be made on recommendation of the Consultant. All Change Orders shall be in full payment and final settlement of all claims for direct, indirect and consequential costs, including all items covered and affected. Any such claim not presented by the Construction Manager for inclusion in the Change Order shall be waived.

18.10 The Consultant may authorize minor changes in the Work which do not involve additional cost or extension of the Contract Time, and which are not inconsistent with the intent of the Contract

Documents. Such changes shall be made by an ASI issued by the Consultant, and shall be binding on the Owner and the Construction Manager. The Construction Manager shall carry out such orders promptly. If the Construction Manager should claim that an ASI involves additional cost or delay to the completion of the Work, the Construction Manager shall give the Consultant written notice thereof within ten (10) Calendar Days after receipt of the written ASI. If this notification does not occur, the Construction Manager shall be deemed to have waived any right to claim or adjustment to the contract sum or to the contract completion time.

18.10.1 If the Construction Manager claims that any instructions by the Consultant involve additional cost or time extension, the Construction Manager shall give the Consultant written notice thereof within ten (10) Calendar Days after the receipt of such instructions and before proceeding to execute the change in Work. The written notice shall state the date, circumstances, whether a time extension will be requested, and the source of the order that the Construction Manager regards as a Change Order. Unless the Construction Manager acts in accordance with this procedure, any oral order shall not be treated as a change and the Construction Manager hereby waives any claim for an increase of the Contract amount or extension of the contract time.

18.11 Requests for extension of time related to changes in the Work shall be submitted in accordance with the requirements of Article 21 of these General Conditions.

18.12 Prior to final payment, the Construction Manager shall provide to the Owner a full accounting of executed change orders by and between the Construction Manager and the Trade Contractors. The Construction Manager shall also provide a reconciliation of that accounting against the executed change orders by and between the Owner and the Construction Manager.

## **ARTICLE 19 - RULES AND MEASUREMENTS FOR EXCAVATION**

19.1 If applicable, the following Rules and Measurements shall apply to the use of Unit Prices for the excavation portion of the Work:

19.1.1 Except as provided in this Article 19 for arbitrary measurements, the quantity of excavation shall be its in-place volume before removal.

19.1.2 No allowance will be made for excavating additional material of any nature taken out for the convenience of the Construction Manager beyond the quantity computed under these "Rules and Measurements."

19.1.3 The quantities of excavation shall be computed from instrument readings taken by the Consultant's representative in vertical cross sections located at such intervals that will assure accuracy.

19.1.4 "Trench Excavation" for pipes shall arbitrarily be assumed to be two feet (2') wider than the outside diameter of the pipe barrel and with sides vertical.

19.1.5 The quantities shall be computed from plan size, or if there are no drawings, from actual measurements of the Work in place.

19.1.6 Each unit price shall cover, among other things, engineering (surveying) costs and keeping excavating dry.

19.1.7 Earth excavation for structures will be measured between the vertical planes passing 18 inches beyond the outside of the footings and from the surface of the ground to the neat lines of the bottom of the structure.

19.1.8 Rock excavation for structures will be measured between the vertical planes passing 18 inches beyond the outside of the footings and from the surfaces of the rock to the neat lines of the bottoms of the structures or the actual elevation of the rock ledge.

19.1.9 Rock excavation for pipelines trenches, unless otherwise provided for in the Specifications, shall be measured as follows: An arbitrary width of 18 inches plus the nominal diameter of the pipe multiplied by the depth from the surface the rock to six (6) inches below the invert for pipe 24 inches in diameter or less and eight (8) inches below the invert for all pipe greater than 24 inches in diameter. No additional compensation will be allowed for excavation for bell holes, gates or other purposes. The measurement of rock excavation for manholes shall be in accordance with Section 19.1.8 above.

19.1.10 Unclassified excavation shall be measured in the same manner as earth excavation.

## **ARTICLE 20 - CONCEALED CONDITIONS**

20.1 The Contract Drawings show the approximate location of the existing and new utility lines. These lines have been identified and located as accurately as possible using available information. The Construction Manager is responsible for verifying all actual locations. If utilities require relocation or rerouting that is not shown or indicated to be relocated or rerouted, the Construction Manager shall contact and cooperate with the Consultant to make the required adjustments. Any request for change in the Contract Amount by the Construction Manager shall be made pursuant to Article 18 of the General Conditions.

20.2 If any charted or uncharted utility service is interrupted by activities of the Construction Manager or the Construction Manager's Sub-contractor(s) for any reason, the Construction Manager shall work continuously to restore service to the satisfaction of the Owner.

20.2.1 If any charted utility service, or any uncharted utility service the existence of which could have been discovered by careful examination and investigation of the site of the Work by the Construction Manager, is interrupted by activities of the Construction Manager or the Construction Manager's Sub-contractor(s) for any reason, the entire cost to restore service to the satisfaction of the Owner shall be paid by the Construction Manager. Should the Construction Manager fail to proceed with appropriate repairs in an expedient manner, the Owner reserves the right to have the work/repairs completed and the cost of such work/repairs deducted from the monies due or to become due to the Construction Manager pursuant to Article 22 of the General Conditions.

20.3 The Construction Manager shall promptly, but in no case more than ten (10) Calendar Days from the time of discovery, and before the conditions are disturbed, notify Consultant in writing of:

20.3.1 Subsurface or latent physical conditions or any condition encountered at the site which differ materially from those indicated in the Contract Documents and which were not known by Construction Manager or could not have been discovered by careful examination and investigation of the site of the proposed Work;

20.3.2 Unknown and unexpected physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered in the locale or generally recognized as inherent in the Work provided for in this Contract or,

20.3.3 Concealed or unknown conditions in an existing structure which are at variance with the conditions indicated by the Contract Documents, which are of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in this Contract, and which were not known by the Construction Manager and could not have been discovered by careful examination and investigation of the site of the Work.

20.4 The Consultant shall promptly investigate the conditions discovered. If the Consultant finds that conditions, which are materially different from those ordinarily encountered and generally recognized as inherent in the Work provided for in this Contract, were not known by the Construction Manager, and could not have been discovered by careful examination and investigation of the site of the Work, have caused or would cause a material increase or decrease in the Construction Manager's cost of construction or the time required for performance of any part of the Work under this contract, the Consultant will recommend and the Owner will make an equitable adjustment in the Contract Amount and/or the time allotted for performance in the Contract Documents. Failure by the Construction Manager to provide written notice to the Owner of such claims for additional compensation or time for performance within ten (10) Calendar Days of discovery of such conditions shall constitute a waiver by the Construction Manager of the right to make such claims. The Owner will not pay claims made for lost opportunities, claims made for lost production or production inefficiencies or claims made that are formula based.

20.5 If the Consultant determines that changed conditions do not exist or are not materially different and no adjustment in the Contract Amount or time is warranted, the Construction Manager shall continue performance of the Contract as directed by the Consultant. No claim by the Construction Manager under this clause shall be allowed unless the required written notice is given and the Consultant is given adequate opportunity to investigate the conditions encountered prior to disturbance. The failure of the Construction Manager to give the Consultant proper notice of a differing site condition shall not affect the Owner's right to an equitable adjustment of the contract price or time if there is a decrease in the Contract Amount or time required to perform the Work.

## **ARTICLE 21 - DELAYS AND EXTENSION OF TIME**

21.1 It is agreed that time is of essence for each and every portion of this Contract and where additional time is allowed for the completion of the Work or any part of the Work under this Contract, the new time limit fixed by such time extension shall be of the essence of this Contract. An extension of time shall not be cause for extra compensation under this Contract, except as set forth in Article 21.10 below.

21.2 The Construction Manager will, subject to the provisions of Articles 21.7, 21.8 and 21.9 below, be granted an extension of time and/or relief from liquidated damages when the delay in completion of the Work is due to:

21.2.1 Any preference, priority, or allocation order duly issued by the government;

21.2.2 Unforeseeable causes beyond the control and without the fault or negligence of the Construction Manager including, but not limited to, acts of God, or of the public enemy, acts of the Owner, acts of another contractor in the performance of a contract with the Owner, floods, epidemics, quarantine restrictions, strikes, and freight embargoes.

21.2.2.1 For such delays which stop all work on the Project for thirty (30) Calendar Days or more, the Construction Manager shall be authorized at its discretion to remove its people from the site and return when the normal progress of the work may continue.

21.2.3 Regardless of the cause of a delay, the Construction Manager shall expend all reasonable effort to mitigate the impact of any delay.

21.2.4 Requests for additional time due to delays in transportation or due to failures of suppliers shall not be considered for approval.

21.3 Requests for extensions of time and/or relief from liquidated damages, except for weather related claims, shall be made in writing not later than ten (10) Calendar Days after the beginning of the delay. Requests for extension of time or relief from liquidated damages shall be stated in numbers of whole Calendar Days.

21.4 Except as otherwise provided in the Contract Documents, extensions of the contractually required completion dates may be granted for unusually bad weather on the Project. Unusually bad weather as used herein means daily temperature or precipitation that exceeds the normal weather recorded and expected for the locality and/or the season or seasons of the year. For the purposes of this contract, it is mutually agreed that the following chart accurately defines the number of days in each month on which bad weather can reasonably be anticipated to impact weather dependent construction operations, and the Construction Manager shall anticipate this normal seasonal weather in the development of the Project baseline schedule.

Mean Number of Days When	Jan.	Feb	Mar	Ap	May	Jun	Jul.	Aug	Se	Oct	Nov.	Dec.
Max Temp 32° or Below	9	6	1	0	0	0	0	0	0	0	1	5
Precip. Is 0.10 Inch or Greater	7	6	9	7	8	8	8	6	5	5	7	7

For the purpose of this Contract, “unusually bad weather” shall be interpreted as either 1) those days in a given month on which rainfall was 0.10 inch or more that exceed the number of days shown in the row for “Precip” or 2) those days in a given month on which maximum temperature was 32 degrees F or below that exceed the number of days shown in the row for “Max Temp”, whichever is greater.

21.4.1 Requests for extension of time due to unusually bad weather that could not reasonably have been anticipated at the time of execution of the Contract shall be made in writing not later than the tenth calendar day of the month following the month in which the delay occurred.

21.4.2 Requests for an extension of time due to unusually bad weather shall be considered for approval only if it is shown that a) the unusual weather event delayed work on a specific weather dependent activity or activities that had been planned to be underway on the date(s) on which the weather event occurred, as shown in the most recent update to the Project schedule that had been submitted to the Owner prior to the date of the event, and b) only if the delay to that activity or activities is shown to be the proximate cause of a corresponding delay to the contractually required completion dates for the Project shown in the most recent update to the Project schedule. The actual dates on which the delay(s) occurred must be stated and the specific activities that were directly impacted must be identified. In the event of concurrent delays, only those activities actually



impacting contractually required completion dates will be considered in evaluating the merit of a delay request. Time extensions will not be considered if such adjustments do not exceed the total or remaining "float" associated with the impacted activities at the time of delay as shown in the most recent update to the Project schedule, nor for concurrent delays not caused by the Owner.

21.4.3 In anticipation of the possibility of delay due to unusually bad weather, the Construction Manager shall identify those activities in the baseline schedules, and those activities subsequently added to updated schedules, that might reasonably be expected to be delayed by such weather.

21.4.4 Delays caused by unusually bad weather shall be incorporated in the Project schedule when the schedule is next updated by showing actual dates and/or percent complete for those activities that were impacted by the unusually bad weather as well as the effects of any effort to mitigate such delays. When claims are submitted for time extensions resulting from more than one occurrence of unusually bad weather during a month, the Project schedule shall be updated to reflect such separate events sequentially so that the impact of each subsequent occurrence is shown on an adjusted Project schedule that includes all prior claims for additional time.

21.5 In addition to the requirements of Article 21.7 and Article 21.8 below, any request for an extension of time for strikes or lockouts shall be supported by a written statement of facts concerning the strike including, but not limited to, the dates, the craft(s) affected, the reason for the strike, efforts to resolve the dispute, and efforts to minimize the impact of the strike on the Project.

21.6 Approval of time extensions for changes in the Work will depend upon the extent, if any, to which the changes cause delay in the completion of the various elements of construction. The Change Order granting the time extension may provide that the Contract Time will be extended only for those specific elements so delayed and that other Work will not be altered.

21.7 The Contract Time will only be adjusted for causes specified above. Extensions of time will only be approved if the Construction Manager provides justification supported by the Project schedule or other acceptable data that 1) such changes are, in fact, on the critical path and extend the contractually required completion dates, and 2) the Construction Manager has expended all reasonable effort to minimize the impact of such changes on the construction schedule. No additional extension of time will be granted subsequently for claims having the basis in previously approved extensions of time.

21.8 In support of requests for an extension of time not caused by unusual inclement weather, and concurrently with the submittal of any such request, the Construction Manager shall submit to the Consultant and the Owner a written impact analysis showing the influence of each such event on contractually required completion dates as shown in the updated Project schedule most recently submitted to the Owner prior to the event. The analysis shall include a partial network diagram showing a sequence of new or revised activities and/or durations that are proposed to be added to the existing schedule including related logic (a "fragnet"). This impact analysis and the fragnet shall include the new activities and/or activity revisions proposed to be added to the existing schedule and shall demonstrate the claimed impact on the critical path and the contractually required completion dates. The Construction Manager will not be granted an extension of time and/or relief from liquidated damages when the delay to completion of the work is attributable to, within the control of, or due to the fault, negligence, acts, or omissions of the Construction Manager and/or the Construction Manager's contractors, subcontractors, suppliers, or their respective employees and agents. Time extensions will not be considered in the event such adjustments do not exceed the total or remaining "float" associated with the impacted activities at the time of delay, nor for concurrent delays not caused by the Owner. In the event of concurrent delays, only that event actually impacting contractually required completion dates will be considered in adjusting the schedule and evaluating the merit of a

delay claim. Requests for an extension of time which are not supported by this information shall not be considered for approval.

21.9 Approved extensions of time not caused by unusual inclement weather shall be incorporated in a revised schedule at the time of approval. No subsequent requests for time extension will be considered unless all previous approved time extensions have been incorporated in the Project schedule on which the requests are based.

21.10 Except as provided for in Article 21.10.1 through 21.10.3 below, no payment or compensation shall be made to the Construction Manager and extensions of the time fixed for completion of the Contract shall be the Construction Manager's sole remedy for any and all delays, hindrances, obstructions or impacts in the orderly progress of the Work.

21.10.1 In addition to the provisions of Articles 18.3 and 18.3.1 above, and subject to the requirements of Article 21.8 and 21.8.1 above, if the Owner orders changes to the scope of Work for the Project that extend the then current contractually required completion dates of the Project, the Construction Manager shall be entitled to reimbursement for job site, general conditions and staffing costs associated with such delay.

21.10.2 If delays, hindrances, impacts or obstructions of the Construction Manager's performance of the Contract are in whole or in part within the control of the Owner and, subject to the requirements of Article 21.8 and 21.8.1, extend contractually required completion dates of the Project, the Construction Manager shall be entitled to reimbursement for job site, general conditions and staffing costs for that portion of the costs caused by acts or omissions of the Owner.

21.10.3 Such reimbursements shall not include consequential or similar damages, exemplary damages, damages based on unjust enrichment theory, formula based delay claims, or any element of home office overhead.

## **ARTICLE 22 - CORRECTION OF WORK BEFORE FINAL PAYMENT**

22.1 The Construction Manager shall promptly remove from the site and replace any material and/or correct any Work found by the Consultant to be defective or that fails to conform to the requirements of the Contract, whether incorporated in the Work or not, and whether observed before or after Substantial or Final Completion. The Construction Manager shall bear all costs of removing, replacing or correcting such Work or material including the cost of additional professional services necessary, and the cost of repairing or replacing all Work of separate contractors damaged by such removal or replacement.

22.2 The Consultant will notify the Construction Manager and the Owner immediately upon its knowledge that additional services will be necessary. The Owner may consent to accept such nonconforming Work and materials with an appropriate adjustment in the Contract Amount. Otherwise, the Construction Manager shall promptly replace and re-execute the Work in accordance with the Contract Documents and without expense to the Owner and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement. If the Construction Manager fails to commence and continue to correct non-conforming Work within a reasonable time as determined by the Consultant, the Owner may without limitation of other rights available to the Owner and without prejudice to other remedies, take any necessary action to make the necessary corrections. If the Owner makes required corrections for non conforming Work or materials, a Change Order will be issued reflecting an equitable deduction from the Contract Amount. This amount will be deducted from payments due to the Construction Manager or, if no additional

payments are due, Construction Manager or the Construction Manager's surety shall be responsible for payment of this amount.

## **ARTICLE 23 - CORRECTION OF WORK AFTER FINAL PAYMENT**

23.1 Neither the final certificate of payment nor any provisions in the Contract Documents shall relieve the Construction Manager of responsibility for materials and equipment incorporated into the Work that fails to meet specification requirements, or for the use of faulty materials or poor quality workmanship. If within one year after the date of Substantial Completion of the Work or designated portion thereof, any of the Work is found to be defective or not in accordance with the requirements of the Contract Documents, the Construction Manager shall correct it promptly after receipt of written notice from the Owner to do so. The Construction Manager shall correct any defects due to these conditions and pay for any damage to other Work resulting from their use. Nothing contained in this clause shall be construed to establish a period of limitation with respect to any obligation of the Construction Manager under the Contract including, but not limited to, warranties. The obligation of the Construction Manager under this section shall be in addition to and not in limitation of any obligations imposed by special guarantees or warranties required by the Contract, given by the Construction Manager, or otherwise recognized or prescribed by law.

23.2 In addition to being responsible for correcting the Work and removing any non-conforming Work or materials from the job site, the Construction Manager shall bear all other costs of bringing the affected Work into compliance with the Contract requirements. This includes costs of any required additional testing and inspection services, Consultant's services, and any resulting damages to other property or to work of other contractors or of the Owner.

23.3 If the Construction Manager fails to correct nonconforming Work within a reasonable time as determined by the Consultant, the Owner may take necessary actions to make the necessary corrections. If the Owner makes required corrections for nonconforming Work or materials after Final Payment to the Construction Manager, the Owner shall be entitled to recover all amounts for such corrections, including costs and attorney's fees, from Construction Manager or surety.

## **ARTICLE 24 - TERMINATION OF CONTRACT FOR CONVENIENCE OF OWNER**

24.1 The Owner, by written notice to the Construction Manager, may terminate this Contract in whole or in part when it is in the interest of the Owner, at the sole discretion of the Owner. In such case, the Construction Manager shall be paid for all Work in place and a reasonable allowance for profit and overhead on Work done, provided that such payments shall not exceed the total Contract price as reduced by the value of the Work as yet not completed. The Construction Manager shall not be entitled to profit and overhead on Work not performed.

## **ARTICLE 25- OWNER'S RIGHT TO STOP WORK**

25.1 If the Construction Manager fails to correct defective Work as required, or persistently fails to carry out the Work in accordance with the Contract Documents, the Owner by written notice may order the Construction Manager to stop the Work or any portion of the Work until the cause for the order has been eliminated to the satisfaction of the Owner. The Consultant may stop Work without written notice for 24 hours whenever in its professional opinion such action is necessary or advisable to insure conformity with the Contract Documents. The Construction Manager shall not be entitled to an adjustment in the Contract Time or Amount under this clause in the event such stoppages are determined to be the fault of the Construction Manager or its Sub-contractor(s). The right of the Owner or Consultant to stop Work shall not give rise to a duty on the part of the Owner or Consultant to exercise this right for the benefit of the Construction Manager or others.

## **ARTICLE 26 -TERMINATION OF CONTRACT FOR DEFAULT ACTION OF CONSTRUCTION MANAGER**

26.1 In addition to its rights under Articles 24 and 25, the Owner may terminate the contract upon the occurrence of any one or more of the following events:

26.1.1 If the Construction Manager refuses or fails to prosecute the Work (or any separable part thereof) with such diligence as will insure its completion within the agreed upon time; or if the Construction Manager fails to complete the Work within such time;

26.1.2 If the Construction Manager is adjudged a bankrupt or insolvent, or makes a general assignment for the benefit of creditors, or if the Construction Manager or a third party files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws concerning the Construction Manager, or if a trustee or receiver is appointed for the Construction Manager or for any of the Construction Manager's property on account of the Construction Manager's insolvency, and the Construction Manager or its successor in interest does not provide adequate assurance of future performance in accordance with the Contract within ten (10) days of receipt of a request for assurance from the Owner;

26.1.3 If the Construction Manager repeatedly fails to supply sufficient qualified supervision of the work, or repeatedly fails to ensure that Sub-contractors supply adequate supervision, suitable materials or equipment, or adequate numbers of skilled workmen and supervision to the Work;

26.1.4 If the Construction Manager repeatedly fails to make prompt payments to Sub-contractors or suppliers at any tier, or for labor, materials or equipment;

26.1.5 If the Construction Manager disregards laws, ordinances, rules, codes, regulations, orders or similar requirements of any public entity having jurisdiction;

26.1.6 If the Construction Manager disregards the authority of the Consultant or the Owner;

26.1.7 If the Construction Manager performs Work which deviates from the Contract Documents, and neglects or refuses to correct rejected Work; or

26.1.8 If the Construction Manager otherwise violates in any material way any provisions or requirements of the Contract Documents.

26.2 Once the Owner determines that sufficient cause exists to justify the action, the Owner may terminate the Contract without prejudice to any other right or remedy the Owner may have, after giving the Construction Manager and its Surety three (3) Calendar Days notice by issuing a written Declaration of Default. The Owner shall have the sole discretion to permit the Construction Manager to remedy the cause for the contemplated termination without waiving the Owner's right to terminate the Contract.

26.3 In the event that the Contract is terminated, the Owner may demand that the Construction Manager's Surety take over and complete the Work on the Contract. The Owner may require that in so doing, the Construction Manager's Surety not utilize the Construction Manager in performing the Work. Upon the failure or refusal of the Construction Manager's Surety to take over and begin completion of the Work within twenty (20) Calendar Days after the demand, the Owner may take over the Work and prosecute it to completion as provided below.

26.3.1 In the event that the Contract is terminated and the Construction Manager's Surety fails or refuses to complete the Work, the Owner may take over the Work and prosecute it to completion in accordance with the laws of the Commonwealth, by contract or otherwise, and may exclude the Construction Manager from the site. The Owner may take possession of the Work and of all of the Construction Manager's tools, appliances, construction equipment, machinery, materials, and plant which may be on the site of the Work, and use the same to the full extent they could be used by the Construction Manager, without liability to the Construction Manager. At the Owner's sole discretion, the Owner has the right to take assignment of any or all portions of the contract work in order to prosecute the completion of the Work. In exercising the Owner's right to prosecute the completion of the Work, the Owner may also take possession of all materials and equipment stored at the site or for which the Owner has paid the Construction Manager but which are stored elsewhere, and finish the Work as the Owner deems expedient. In such case, the Construction Manager shall not be entitled to receive any further payment until the Work is finished.

26.3.2 If the unpaid balance of the Contract Price exceeds the direct and indirect costs and expenses of completing the Work including compensation for additional professional and Consultant services, such excess shall be used to pay the Construction Manager for the cost of the Work it performed and a reasonable allowance for overhead and profit. If such costs exceed the unpaid balance, the Construction Manager or the Construction Manager's Surety shall pay the difference to the Owner. In exercising the Owner's right to prosecute the completion of the Work, the Owner shall have the right to exercise its sole discretion as to the manner, methods, and reasonableness of the costs of completing the Work and the Owner shall not be required to obtain the lowest figure for Work performed in completing the Contract. In the event that the Owner takes bids for remedial Work or completion of the Project, the Construction Manager shall not be eligible for the award of such Contract.

26.3.3 The Construction Manager shall be liable for any damage to the Owner resulting from the termination or the Construction Manager's refusal or failure to complete the Work, and for all costs necessary for repair and completion of the Project above the amount of the Contract. The Construction Manager shall be liable for all attorney's fees, costs and expenses incurred by the Owner to enforce the provisions of the Contract.

26.3.4 If liquidated damages are provided in the Contract and the Owner terminates the Contract, the Construction Manager shall be liable for such liquidated damages, as provided for in Article 29.2 and 29.3 below, until Substantial Completion and Final Completion of the Work are achieved.

26.3.5 In the event the Contract is terminated, the termination shall not affect any rights of the Owner against the Construction Manager. The rights and remedies of the Owner under this Article are in addition to any other rights and remedies provided by law or under this Contract. Any retention or payment of monies to the Construction Manager by the Owner will not release the Construction Manager from liability.

26.3.6 In the event the Contract is terminated under this Article, and it is determined for any reason that the Construction Manager was not in default under the provisions of this Article, the termination shall be deemed a Termination for Convenience of the Owner pursuant to Article 24 and the rights and obligations of the parties shall be determined in accordance with Article 24.

## **ARTICLE 27 - SUSPENSION OF WORK**

27.1 The Owner or the Consultant may, at any time and without cause, order the Construction Manager in writing or cause the Construction Manager to suspend, delay or interrupt all or any part of the Work for such period of time as the Owner may determine to be appropriate for its convenience.

Adjustment may be made for any increase in the Contract time necessarily caused by such suspension or delay, in accordance with Article 21.

## **ARTICLE 28 - TIME OF COMPLETION**

28.1 The Construction Manager shall begin the Work on the date of commencement as specified in the Work Order. All time limits stated in the Contract Documents are of the essence of the Contract. The actual end of the Contract Time shall be the date specified on the approved certificate of Substantial Completion. The time for completion set forth in the Contract is a binding part of the Contract upon which the Owner may rely in planning the use of the facilities to be constructed and for all other purposes.

28.2 Substantial Completion is defined in Article 1.1.17 of these General Conditions. Only incidental corrective Work under punch lists and final cleaning (if required) for Owner's full use shall remain for Final Completion. The ability to occupy or utilize shall include regulatory authority approval unless regulatory approval is delayed due to actions of the Owner or the Consultant. When the Owner accepts and occupies a portion of the Project, the operation, maintenance, utilities, and insurance of that portion of the Project becomes the responsibility of the Owner.

28.3 The date of Substantial Completion shall be that date certified by the Owner, in accordance with the following procedures, that the Work is sufficiently complete to occupy or utilize as defined above.

28.3.1 When the Construction Manager considers the entire Work is substantially complete as defined in Article 1.1.17 of these General Conditions, and is ready for its intended use, the Construction Manager shall notify the Consultant in writing and request an inspection. The declaration and request shall be accompanied by a list prepared by the Construction Manager of those items of Work still to be completed or corrected. The failure of the Construction Manager or Consultant to include any item or items which are not completed or which need correction on such list shall not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents.

28.3.2 The Consultant shall, within a reasonable time after receipt of notification from the Construction Manager of a declaration of Substantial Completion and request for inspection, make such inspection. Prior to the Substantial Completion Inspection and within sufficient time to allow the Consultant's review, the Construction Manager shall submit all As-Built drawings, Notice of Termination, catalog data, complete operating and maintenance instructions, manufacturer specifications, certificates, warranties, written guarantees and related documents required by the contract. The Consultant shall review said documents for accuracy and compliance with the Contract Documents and incorporate them into complete operating instructions and deliver them to the Owner.

28.3.3 If the Consultant considers the Work substantially complete, the Consultant shall recommend that the Owner prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion and the responsibilities between the Owner and Construction Manager for security, maintenance, heat, utilities and insurance, if not otherwise provided for in the Contract Documents, and a tentative list of items to be completed or corrected, and shall fix the time within which the Construction Manager shall complete the items listed therein. This time shall not exceed thirty (30) Calendar Days unless otherwise provided for in the Work Order. The Certificate of Substantial Completion shall be submitted to the Consultant and Construction Manager for their written acceptance of the responsibilities assigned to them in the certificate. The Project shall not be deemed substantially complete until the certificate is issued. If, after making the inspection, the

Consultant does not consider the Work substantially complete, the Consultant will notify the Owner and the Construction Manager in writing

**28.4 Operation and Maintenance Manual Deliverables.** In anticipation and preparation of completion of the Work and the closing out of the Project, and to facilitate training of the Owner's personnel in the maintenance and operation of the new installations, the Construction Manager shall comply with the requirements of Article 8.7 of the Special Conditions. (For the purposes of this article, air test and balance reports may be submitted at a later date with the request for certification of substantial completion.) These manuals shall be submitted to the Consultant for approval, and subsequently forwarded to the Owner's Project Manager by or before the time construction is 75% complete, as reflected by the Contractor's most recently submitted Application for Payment.

**28.4.1** The provisions of Article 30.11 notwithstanding, if the Construction Manager meets the requirements of Article 28.4 above with respect to timely submittal of approvable Operation and Maintenance manuals and provided the project construction is 1) at least 75% complete and 2) is equal to or ahead of the approved progress schedule and 3) the Work completed is in compliance with the requirements of the contract documents, the Owner, at the sole discretion of the Director, Capital Projects Management Division may reduce the retainage to not less than three percent (5%) of the current Contract Amount. In the event the Construction Manager fails to submit acceptable O&M manuals prior to reaching 75% completion, it is agreed that the Owner at its sole discretion may deduct from the current and subsequent Applications for Payment an amount deemed by the Owner to be sufficient to encourage prompt compliance with this contractual requirement, until such time as acceptable O&M manuals are received.

**28.5 Project Close Out.** When the Construction Manager considers that all Work required by the Contract is 100% complete, including correction of any remaining punch list work or deficiencies, the Construction Manager shall notify the Consultant in writing and request a final inspection. The Consultant, upon receipt of written notice from the Construction Manager that the Work is complete and is ready for final inspection and acceptance, will promptly make such inspection and if the Consultant finds the Work completed and acceptable under the Contract Documents and the Contract fully performed, the Consultant will notify the Construction Manager in writing to submit, and will certify to the Owner a final Certificate for Payment in accordance with Articles 30.9 and 30.9.1 of these General Conditions. If the Construction Manager does not complete the punch items within the time designated, the Owner retains the right to have these items corrected at the expense of the Construction Manager including all architectural, engineering and inspection costs and expenses incurred by the Consultant and the Owner, and to deduct such costs and expenses from the funds being held in retainage. The Owner shall not be required to release the retainage until such items have been completed.

## **ARTICLE 29 - LIQUIDATED DAMAGES**

**29.1** The Owner and the Construction Manager recognize and agree that time is of the essence of this Contract and that the Owner will suffer financial loss if the Work is not completed within the time specified in the Contract plus any extensions that may be allowed. The parties further recognize the delays, expense and difficulties involved in proving the actual loss suffered by the Owner should the Work not be completed on time. The Owner and the Construction Manager agree on the amounts stated as liquidated damages in the Agreement. The Owner and Construction Manager agree that the amount stated as liquidated damages are not intended to be penalties.

**29.2** Should the Construction Manager fail to satisfactorily complete the Work under Contract on or before the date stipulated for Substantial Completion, as adjusted by approved Change Orders, if any, the Construction Manager will be required to pay liquidated damages to the Owner for each

consecutive Calendar Day that the Owner is deprived of full use of the area beyond the date specified unless otherwise stipulated elsewhere by Owner. After the date for Substantial Completion has been certified by the Owner, the Construction Manager shall cease to owe liquidated damages until the date established for Final Completion.

29.3 If Final Completion is not achieved by the date established for Final Completion, as adjusted by approved Change Orders, if any, liquidated damages in the amount stipulated in the Agreement will become due and collectable. The Contract will be considered complete and Final Completion shall be deemed to have occurred when all Work has been completed in compliance with the Contract Documents and the Certificate of Final Completion has been issued by the Owner. No deduction or payment of liquidated damages will, in any degree, release the Construction Manager from further obligations and liabilities to complete the entire Contract. Permitting the Construction Manager to continue and finish the Work, or any part of it, after expiration of the Contract Time, shall in no way constitute a waiver on the part of the Owner of any liquidated damages due under the Contract.

### **ARTICLE 30 - PAYMENT TO THE CONSTRUCTION MANAGER**

30.1 Payments on account of this Contract shall be made monthly as Work progresses. The Construction Manager shall submit to the Consultant, in the manner and form prescribed, an application for each payment, and, if required, receipts or other vouchers showing payments made for materials and labor, including payments to Sub-contractors. All payments shall be subject to any withholding or retainage provisions of this contract. All pay request documents, except the final payment, shall be submitted in whole dollar amounts. All payment applications from the Construction Manager shall include line items for overhead, profit and general condition costs.

30.2 The Consultant shall, within ten (10) Business Days after receipt of each application for payment, certify approval of payment in writing to the Owner and present the application to the Owner, or return the application to the Construction Manager indicating in writing its reasons for refusing to approve payment. The Owner, provided no exception is taken to the application for payment submitted by the Consultant, will issue payment on or within thirty (30) Business Days from the date received from the Consultant. A reasonable delay on the part of the Owner in making payment to the Construction Manager for any given payment shall not be grounds for breach of Contract. The Consultant may refuse to approve the whole or any part of any payment if it would be incorrect to make such presentation to the Owner.

30.3 If payment is requested on the basis of materials and equipment not incorporated in the Work, but delivered and suitably stored at an off jobsite location agreed to in writing by the Owner that meets the manufacturer's requirements for the stored material and not-comingled with other material, the Construction Manager must furnish the following:

30.3.1 A list of the materials consigned to the Project (which shall be clearly identified), giving the place of storage, together with copies of invoices.

30.3.2 Certification that all items have been tagged for delivery to the Project and that they will not be used for any other purpose.

30.3.3 A letter from the Surety indicating that the Surety agrees to the arrangements and that payment to the Construction Manager shall not relieve either the Construction Manager or its Surety of their responsibility to complete the Work.

30.3.4 Evidence of adequate insurance listing the Owner as an additional insured covering the material in storage.



30.3.5 Evidence that representatives of the Consultant have visited the Construction Manager's place of storage and checked all items listed on the Construction Manager's certificate. They shall certify, insofar as possible, that the items are in agreement with the Specifications and approve their incorporation into the Project.

30.4 The Owner will pay 80% of the invoiced value less retainage for materials stored off site providing the above conditions are met.

30.5 The Construction Manager's signature on each subsequent application for payment shall certify that all previous progress payments received on account of the Work have been applied to discharge in full all of the Construction Manager's obligations reflected in prior applications for payment.

30.6 Each payment made to the Construction Manager shall be on account of the total amount payable to the Construction Manager and the Construction Manager warrants and guarantees that the title to all materials, equipment and Work covered by the paid partial payment shall become the sole property of Owner free and clear of all encumbrances. Nothing in this Article shall be construed as relieving Construction Manager from the sole responsibility for care and protection of materials, equipment and Work upon which payments have been made or restoration of any damaged Work or as a waiver of the right of Owner to require fulfillment of all terms of the Contract Documents.

30.7 Within thirty (30) Calendar Days of the award of any Trade Contracts, and prior to submitting the next application for payment, the Construction Manager shall submit to the Consultant and the Owner for approval a detailed breakdown of the Contract Amount including all trade contracts that have been awarded as of the date of that application for payment pursuant to CSI specification divisions, divided so as to facilitate payment and correlated to the schedule required by General Conditions Article 32 of the Contract Documents. The total value of all activities shall add up to the Contract Amount. When approved by the Consultant and the Owner, this schedule shall be used as a basis for Construction Manager's applications for payment and may be used by the Owner to determine costs or credits resulting from changes in the Work. Failure to obtain the approval of the Schedules of Values shall be a basis for withholding payment to the Construction Manager.

30.8 Retainage – The Owner will retain ten percent (10%) of the Construction Manager's progress payments, including amounts claimed for construction management fee until fifty one percent (51%) of the construction project has been completed. Thereafter, if the Work is fully in compliance with the requirements of the Contract and except as provided for in Article 28.4.1 above, the Owner shall retain five percent (5%) of the total contract amount until Substantial Completion and acceptance of all Work covered by this Contract, as collateral security to insure successful completion of the Work. For the purposes of this Article, the term "in full compliance" shall mean 1) that the progress of the Work is equal to or ahead of that predicted by the Project Baseline schedule and 2) the Work completed is in compliance with the requirements of the contract documents. Subsequent to the issuance of the Substantial Completion Certificate and depending upon the cost involved for the completion and/or correction of punch list items, the Consultant may recommend to the Owner an adjustment to the amount being held as retainage and, if approved by Owner, the amount of retainage may then be reduced and a sufficient sum retained by Owner to assure completion of the remaining unfinished Work. Retainage reduction as provided for in this Article 30.8 is contingent upon the Construction Manager and/or Sub-contractors being on or ahead of the approved progress schedule and on verification by the Consultant that the Work completed is in compliance with the requirements of the contract documents.

30.8.1 In addition to the retainage set forth above, the Owner may withhold from any monthly progress payments or nullify any progress payments in whole or in part as necessary to protect the Owner from loss on account of:

30.8.1.1 Defective Work which has not been remedied or completed Work which has been damaged requiring correction or replacement, or

30.8.1.2 Action required by the Owner to correct Defective Work or complete Work which the Construction Manager has failed or refused to correct or complete, or

30.8.1.3 Failure of the Construction Manager to perform any of its obligations under the Contract, or

30.8.1.4 Failure of the Construction Manager to make payment properly to Sub-contractors; suppliers of material, services or labor; or to reimburse the University for utilities or other services as provided for in the Contract;

30.8.1.5 Amounts to be withheld as liquidated damages for failure to complete the Project in the allotted Contract time.

30.8.2 When the Owner is satisfied that the Construction Manager has remedied any such deficiency, payments shall be made of the amount being withheld on the next scheduled application for payment.

30.9 Final Payment – When all Work is completed and acceptable and the Contract is fully performed, the Construction Manager will be directed to submit a final payment application for certification and the entire balance shall be due and payable upon a certification of completion by the Consultant that the Work is in accordance with the Contract Documents. Final change order reconciliation as per Article 18.12 must be provided prior to final payment.

30.9.1 Upon issuance of the Certificate of Final Completion by the Owner and submittal by the Construction Manager of all required documents and releases, all retained amounts shall be paid to the Construction Manager as part of the Final Payment. By accepting such payment, the Construction Manager certifies that all amounts due or that may become due to any Sub-contractor, any Consultant of the Construction Manager, or any vendors or material suppliers, have been paid or will be paid from the proceeds of the final payment; and that, further, there are not liens, claims or disputes involving the Owner or the Consultant that are outstanding or unresolved.

30.10 The Construction Manager shall promptly pay each Sub-contractor and material supplier upon receipt of payment from the Owner the amount to which said Sub-contractor and supplier is entitled, reflecting the percentage actually retained from payments to the Construction Manager on account of such Sub-contractor's work. The Construction Manager shall, by an appropriate Agreement with each Sub-contractor and material supplier, require each Sub-contractor and supplier to make payments to their sub-contractors, vendors and suppliers in similar manner.

The Consultant may, on request, furnish to any Sub-contractor or material supplier information regarding the percentages of completion applied for by the Construction Manager and the action thereon by the Consultant.

30.10.2 Neither the Owner nor the Consultant shall have any obligation to make payment to any Sub-contractor or material supplier except as may otherwise be required by law.

## ARTICLE 31 - AUDITS

31.1 The Construction Manager's Trade Contractors', sub-contractors' and/or vendor's "records" shall upon reasonable notice be open to inspection and subject to audit and/or reproduction during normal business working hours as may be deemed necessary by the Owner at its sole discretion. Such audits may be performed by an Owner's representative or an outside representative engaged by the Owner. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of three years after final payment, or longer if required by law. Owner's representative may (without limitation) conduct verifications such as counting employees at the Construction Site, witnessing the distribution of payroll, verifying information and amounts through interviews and written confirmations with Construction Manager's employees, field and agency labor, Trade Contractors and vendors.

31.2 "Records" as referred to in this Contract shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, superintendents' reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in the Owner's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include hard copy, as well as computer readable data if it can be made available, written policies and procedures; time sheets; payroll registers; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; invoices and related payment documentation; general ledger; records detailing cash and trade discounts earned; insurance rebates and dividends; and any other Construction Manager or contractor records which may have a bearing on matters of interest to the Owner in connection with the Construction Manager's dealings with the Owner (all foregoing hereinafter referred to as the "records") to the extent necessary to adequately permit evaluation and verification of any or all of the following:

- Compliance with Contract requirements for deliverables;
- Compliance with approved plans and specifications;
- Compliance with Owner's business ethics expectations;
- Compliance with Contract provisions regarding the pricing of change orders;
- Accuracy of Construction Manager representations regarding pricing of invoices; and
- Accuracy of Construction Manager representations related to claims submitted by the Construction Manager or its payees.

31.3 The Construction Manager shall require all payees (examples of payees include Trade Contractors, Sub-contractors, vendors, and/or material suppliers) to comply with the provisions of this Article by including the requirements hereof in a written contract agreement between the Construction Manager and payees. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-subcontractors, material suppliers, etc. The Construction Manager will cooperate fully and will cause all related parties and all of the Construction Manager's Trade Contractors and/or subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested, in an expeditious manner, any and all such information, materials and data.

31.4 Owner's authorized representative or designee shall have reasonable access to the Construction Manager's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract and shall provide adequate and appropriate work space in order to conduct audits in compliance with this Article. The Construction Manager and its payees agree bear their costs and expenses relating to any inspections and audits.

31.5 If an audit inspection or examination in accordance with this Article discovers any fraud or misrepresentation, or discloses overpricing or overcharges (of any nature) by the Construction Manager to the Owner, in addition to making adjustments for the overcharges, the reasonable actual cost of the Owner's audit shall be reimbursed to the Owner by the Construction Manager. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Construction Manager's invoices and/or records shall be made within Ninety (90) Calendar Days from presentation of the Owner's findings to the Construction Manager.

31.6 The provisions of Articles 31.1, 31.2 and 31.5 notwithstanding, the Owner shall have the right to conduct inspections and audits of any matter relating to the Contract Documents or the Work, which shall be for the Owner's sole benefit and shall not relieve the Construction manager, its sureties, contractors, subcontractors suppliers and their respective employees and agents of any obligations under the Contract Documents.

31.7 Any audits or inspections under Article 31 shall not constitute a waiver of any right the Owner has to accounting or discovery of records in the possession, custody or control of the Construction Manager, its sureties, contractors, subcontractors, vendors and their respective employees and agents

## **ARTICLE 32 - PROGRESS & SCHEDULING**

32.1 If requested by the Owner during the Design Phase of the Project, and working in cooperation with the Owner and the Consultant(s), the Construction Manager shall prepare a Critical Path Method (CPM) type Design Phase schedule incorporating design phase and review activities through completion of the design and bidding of the Trade Contracts, shall include in this Design Phase schedule the broad categories of Work to be accomplished in the subsequent implementation of the design and construction of the Project, and shall modify and update this Design Phase schedule as necessary to reflect the actual status and then current plan for the Project.

32.2 The schedules submitted for this Project shall be prepared using Primavera P6 scheduling software. If approved by the University, and at the sole discretion of the University, schedules submitted using earlier versions of Primavera scheduling software (Primavera SureTrak or Primavera P3) may be converted to Primavera P6 format by the University for review purposes. However, the University will not be responsible for any inaccuracies that may result from such conversions.

32.2.1 Prior to bidding Trade Contracts, the Construction Manager shall prepare and submit to the Owner and the Consultant a preliminary CPM construction schedule for the Work that will be included in the Project bidding documents.

3.2.2.2 The schedules submitted for this Project shall coordinate Work in accordance with all schedules included in the Owner's approved Program. Construction work shall be scheduled and executed such that operations of the University are given first priority. This applies particularly to outages and restriction of access.

32.2.3 The schedules submitted for this Project shall not exceed time limits established for the Project. Schedules which reflect a duration less than the Contract Time are for the convenience of the Construction Manager and shall not be the basis of any claim for delay or extension of time.

32.2.4 Schedules shall be revised at appropriate intervals as required by the condition of the Work and the Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

32.2.5 The Construction Manager shall also submit a payment schedule indicating the percentage of the Contract Amount and the amount of the anticipated monthly payments that will be requested as the Project proceeds.

32.2.6 The Owner may withhold approval of all or a portion of progress payments until the progress payment schedule and construction schedule have been submitted by the Construction Manager.

32.3 The Construction Manager shall prepare and keep current, for the Consultant's approval, a separate schedule of submittals coordinated with the Construction Manager's CPM construction schedule that provides reasonable time for the Consultant to review the submittals.

32.4 The Construction Manager shall cause the work to be performed pursuant to the most recent schedules.

### **ARTICLE 33 - USE OF COMPLETED PORTIONS**

33.1 Upon mutual Agreement between the Owner, Construction Manager, and Consultant, the Owner may use a completed portion of the Project after an inspection is made. Such possession and use shall not be deemed as acceptance of any Work not completed in accordance with the Contract Documents, nor shall such possession and use be considered to alter warranty obligations or cause any warranty period to commence prior to Substantial Completion.

### **ARTICLE 34 - INDEMNIFICATION**

34.1 To the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless the Owner, its consultants, and their respective employees and agents from and against all claims, damages, losses and expenses, including attorney's fees, provided that any such claim, loss, damage or expense: (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (b) is caused in whole or in part by any negligent act or omission of the Construction Manager, any Sub-contractor or material supplier, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This basic obligation to indemnify shall not be construed to nullify or reduce other indemnification rights which the Owner, its consultants, and their respective employees and agents would otherwise have.

34.2 The Construction Manager shall also indemnify and hold harmless the Owner, its consultants, and their respective employees and agents from any claims relating to the Project brought against the Owner, its consultants, and their respective employees and agents by any Sub-contractor unless such claims are due to the gross negligence or misconduct of the Owner or Consultant.

34.3 In any and all claims against the Owner its consultants, and their respective employees and agents, by any employee of the Construction Manager, any Sub-contractor, any one directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Construction Manager or any Sub-contractor under Worker's Compensation acts, disability benefit acts or other employee benefit acts.

34.4 The obligations of the Construction Manager under this Article shall not extend to the liability of the Consultant, his agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the

giving of or the failure to give directions or instructions by the Consultant, his agents or employees, provided such giving or failure to give is the primary cause of injury or damage.

## **ARTICLE 35 - INSURANCE**

35.1 The Construction Manager shall furnish the Owner the Certificates of Insurance or other acceptable evidence that insurance is effective, and guarantee the maintenance of such coverage during the term of the Contract. Each policy of insurance, except Workers Compensation, shall name the University of Kentucky and the directors, officers, trustees and employees of the University as additional insured on a primary and non-contributory basis as their interest appears. Waiver of subrogation in favor of the University of Kentucky shall apply to all policies. Any endorsements required to validate such waiver of subrogation shall be obtained by the Construction Manager at the Construction Manager's expense.

35.2 The Construction Manager shall not commence, nor allow any Sub-contractor to commence Work under this Contract, until the Owner has reviewed the certificates and approved coverages and limits as satisfying the requirements of the bidding process.

35.3 Workers' Compensation and Employers' Liability Insurance. The Construction Manager shall acquire and maintain Workers' Compensation insurance with Kentucky's statutory limits and Employers' Liability insurance as defined in the Special Conditions for all employees who will be working at the Project site. In the event any Work is sublet, the Construction Manager shall require any Sub-contractor to provide proof of this insurance for the Sub-contractors' employees, unless such employees are covered by insurance provided by the Construction Manager.

35.4. The Construction Manager shall either require each Sub-contractor to procure and maintain insurance of the type and limits stated during the terms of the Contract, or insure the activities of such Sub-contractors under a blanket form as described below:

35.4.1 Commercial General Liability Insurance. The Construction Manager shall acquire and maintain a Broad Form Comprehensive General Liability (CGL) Insurance Policy including premises - operations, products/completed operations, blanket contractual, broad form property damage, real property fire legal liability and personal injury liability coverage. The Insurance Policy must be on an "occurrence" form only, unless approved by the Owner. Contractual liability must be endorsed to include defense costs. Products and completed operations insurance must be carried for two years following completion of the Work. Policies which contain Absolute Pollution Exclusion endorsements are not acceptable. Coverage must include pollution from "hostile fires". Where required by the risks involved, Explosion, Collapse and Underground (XCU) coverages shall be added by endorsement. If the work involved requires the use of helicopters, a separate aviation liability policy as defined in the Special Conditions will be required. If cranes and rigging are involved, a separate inland marine policy with liability limits as defined in the Special Conditions will be required.

35.4.1.1 The limits of liability shall not be less than defined in the Special Conditions.

35.4.2 Comprehensive Automobile Liability Insurance. The Construction Manager shall show proof and guarantee the maintenance of insurance to cover all owned, hired, leased or non-owned vehicles used on the Project. Coverage shall be for all vehicles including off the road tractors, cranes and rigging equipment and include pollution liability from vehicle upset or overturn. Policy limits shall not be less than defined in the Special Conditions.

35.4.3 **Excess or Umbrella Liability Insurance.** The Construction Manager shall acquire and maintain a policy of excess liability insurance in an umbrella form for excess coverages over the required primary policies of broad form commercial general liability insurance, business automobile liability insurance and employers' liability insurance. This policy shall have a minimum as defined in the Special Conditions for each occurrence in excess of the applicable limits in the primary policies. The excess liability policy shall not contain an absolute pollution exclusion and shall include coverages for pollution that may occur due to hostile fires and vehicle upset and overturn. The limits shall be increased as appropriate to cover any anticipated special exposures.

35.5 **Builders Risk Insurance.** The Construction Manager shall purchase and maintain an "all risk" Builder's Risk Insurance policy upon the Work at the site to the full insurable value thereof. Such insurance shall include interests of the Owner, Construction Manager, and all Sub-contractors and of their subcontractors. It shall insure against perils of fire, extended coverage, vandalism and malicious mischief. Construction Manager's work performed, and materials to be incorporated into the project and stored on the jobsite, will be covered. Builder's Risk does not include temporary buildings, or Construction Manager or Construction Manager's tools, equipment, or trailers and contents.

35.6 **Insurance Agent and Company Insurance** as required in the bidding process of the Project shall be written according to applicable state law in Kentucky. The policies shall be written by an insurer duly authorized to do business in Kentucky in compliance with KRS: 304.1-.100 and -110.

## **ARTICLE 36 - PERFORMANCE AND PAYMENT BONDS**

36.1 The Construction Manager shall furnish a Performance Bond in the form provided in the Contract Documents in the full amount of the Contract Amount as security for the faithful performance of the Contract. The Construction Manager shall also furnish a Payment Bond in the form provided in the Contract Documents in the full amount of the Contract Amount for the protection of all persons performing labor or furnishing materials, equipment or supplies for the Construction Manager or its Sub-contractors for the performance of the Work provided for in the Contract, including security for payment of all unemployment contributions which become due and payable under Kentucky Unemployment Insurance Law.

36.2 Each bond furnished by the Construction manager shall incorporate by reference the terms of the Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Amount is adjusted by Change Order, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amounts.

36.3 The performance and payment bonds shall be executed by a surety company authorized to do business in the Commonwealth of Kentucky, and the contract instrument of bonds must be countersigned by a duly appointed and licensed resident agent.

## **ARTICLE 37 - DAMAGED FACILITIES**

37.1 The Construction Manager shall repair or replace, at no expense to the Owner, any damaged section of existing buildings, paving, landscaping, streets, drives, utilities, watersheds, etc. caused by Work performed under the Contract or incidental thereto, whether by the Construction Manager's own forces, Sub-contractors or by material suppliers. Such repair or replacement shall be performed by craftsmen skilled and experienced in the trade or craft for the original Work.

37.2 Water damage to the interior of any building caused by Work performed under the Contract or incidental thereto, whether by the Construction Manager's own forces, Sub-contractors, or by material suppliers, and whether occurring in a new or existing building, shall be repaired by the

Construction Manager at the Construction Manager's expense, and any materials damaged inside the building, including personal property, shall be repaired or replaced at the full replacement cost by the Construction Manager at the Construction Manager's expense.

37.3 For existing buildings, the Construction Manager, along with the Owner's Representative and Consultant, will tour the Project site to evaluate existing conditions and determine any existing damage before any Work on this Contract is done.

37.4 Should the Construction Manager fail to proceed with appropriate repairs in an expedient manner, the Owner reserves the right to have the Work/repairs completed and deduct the cost of such Work/repairs from amounts due or to become due to the Construction Manager. If the Owner deems it not expedient to repair the damaged Work, or if repairs are not done in accordance with the Contract, an equitable deduction from the Contract price shall be made.

## **ARTICLE 38 - CLAIMS & DISPUTE RESOLUTION**

38.1 All Construction Manager's claims and disputes shall be referred to the Consultant for review and recommendation. All claims shall be made in writing to the Consultant and to the Owner's Project Manager not more than ten (10) days from the occurrence of the event which gives rise to the claim or dispute, or not more than ten (10) days from the date that the Construction Manager knew or should have known of the claim or dispute. Unless the claim is made in accordance with these requirements, it shall be waived. Any claim not submitted before Final Payment shall be waived. The Consultant shall render a written decision within fifteen (15) days following receipt of a written demand for the resolution of a claim or dispute.

38.1.1 The provisions of Article 43.2 notwithstanding, claims and disputes between the Construction Manager and any Sub-contractor or supplier shall not be referred to the Consultant except to request interpretation and/or clarification of the intent of the plans or specifications. Such claims and disputes between the Construction Manager and any Sub-contractor shall be resolved between those parties as required by Article 43.4 of these General Conditions.

38.2 The Consultant's decision shall be final and binding on the Construction Manager unless the Construction Manager submits to the Consultant and the Owner's Project Manager a written notice of appeal within fifteen (15) Calendar Days of the Consultant's decision. The Construction Manager must present within fifteen (15) Calendar Days of such notice to appeal a narrative claim in writing with complete supporting documentation. After receiving the written claim, the Project Manager will review the materials relating to the claim and may meet with the Consultant and/or the Construction Manager to discuss the merits of the claim. The Project Manager will render a decision within thirty (30) Calendar Days after receiving the written claim and supporting documentation. The decision of the Project Manager shall be final and binding pending further appeal as provided for in Article 39. If the Consultant or the Project Manager do not issue a written decision within thirty (30) calendar days after receiving the claim and supporting documentation, or within a longer period as may be established by the parties to the Contract in writing, then the Construction Manager may proceed as if an adverse decision had been received.

38.3 If the Project Manager does not agree with the Consultant's decision on a claim by the Construction Manager, the Project Manager shall notify the Construction Manager and the Consultant and direct the Construction Manager to perform the Work about which the claim was made and the Construction Manager shall proceed with such Work in accordance with the Project Manager's instruction. If the Construction Manager disagrees with a decision of the Project Manager concerning a Construction Manager's claim, the Construction Manager shall proceed with the Work as indicated by the Project Manager's decision.



38.4 The Construction Manager shall continue to diligently pursue Work under the Contract pending resolution of any dispute, and the Owner shall continue to pay for undisputed work in place.

#### **ARTICLE 39 - CLAIMS FOR DAMAGE**

39.1 Should either party to the Contract suffer damage because of wrongful act or neglect of the other party, or of anyone employed by them, or others for whose act they are legally liable, or if other controversy should arise under the Contract, such claim or controversy shall be made in writing to the other party within thirty (30) days after the first occurrence of the event. Prior to the institution of any action in court, the claim or controversy (together with supporting data) shall be presented in writing to the Director of the Capital Project Management Division at the University of Kentucky ("Director") or his designee. The Director, or designee, is authorized, subject to any limitations or conditions imposed by regulations, to settle, comprise, pay, or otherwise adjust the claim or controversy with the Construction Manager. The Director, or designee, shall promptly issue a decision in writing. A copy of the decision shall be mailed or otherwise furnished to the Construction Manager. The decision rendered shall be final and conclusive unless the Construction Manager files suit pursuant to KRS 45A.245. If the Director, or designee, does not issue a written decision within one hundred and twenty (120) days after written request for a final decision, or within a longer period as may be established by the parties to the Contract in writing, then the Construction Manager may proceed as if an adverse decision had been received.

39.2 Any legal action on the Contract shall be brought in the Franklin Circuit Court and shall be tried by the Court sitting without a jury. All defenses in law or equity, except the defense of government immunity, shall be preserved to the Owner. The Owner shall recover from the Construction Manager all attorney's fees, costs and expenses incurred to the extent the Owner prevails in defending or prosecuting each claim in litigation of disputes under the Contract. The Owner is the prevailing party under this provision and is entitled to recover attorneys' fees, costs and expenses on a claim-by-claim basis to the extent the Owner successfully defeats or prosecutes each claim. A recovery of a net judgment by the Construction Manager shall not be determinative of the Owner's right to recover attorneys' fees, expenses and costs. Rather, such a determination shall be made based on the extent that the Owner successfully defends or prosecutes each distinct claim in litigation under the Contract, even if the Owner does not prevail on every claim. The Construction Manager shall be liable to the Owner for all attorney's fees, costs and expenses incurred by the Owner to enforce the provisions of the Contract.

#### **ARTICLE 40 - LIENS**

40.1 The filing and perfection of liens for labor, materials, supplies, and rental equipment supplied on the Work are governed by KRS 376.195 et seq.

40.2 Statements of lien shall be filed with the Fayette County Clerk and any action to enforce the same must be instituted in the Fayette Circuit Court, pursuant to KRS 376.250 (5).

40.3 The lien shall attach only to any unpaid balance due the Construction Manager for the improvement from the time a copy of statement of lien, attested by the Fayette County Clerk, is delivered to the Owner, pursuant to the provisions of KRS 376.240.

#### **ARTICLE 41 - ASSIGNMENT**

41.1 Neither party to the Contract shall assign the Contract, or any portion thereof without the prior written consent of the other, which consent may be granted or withheld in the granting party's

sole and absolute discretion. The Construction Manager shall not assign any amount or part of the Contract or any of the funds to be received under the Contract unless the Construction Manager has the prior written approval of the Owner (which approval may be granted or withheld in the Owner's sole and absolute discretion) and the Surety on the Construction Manager's bond has given written consent to any such assignment.

## **ARTICLE 42 - SEPARATE CONTRACTS**

42.1 The Owner reserves the right to enter into other Contracts in connection with the Project or to perform any work with the Owner's forces in the normal sequence of the work as depicted in the then current construction schedule. Except for work performed by University personnel, such contracts shall be assignable to the Construction Manager and shall contain the same terms and conditions as the contracts between the Construction Manager and the Sub-contractors. The Construction Manager will be entitled to a maximum of three percent (3%) overhead and profit on the value of such assigned contracts. The Construction Manager shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate its Work with theirs in such manner as the Consultant may direct.

42.2 Should the Construction Manager cause damage to any separate contractor on the Work, and the separate contractor sues the Owner on account of any damage alleged to have been so sustained, the Construction Manager shall be responsible for all costs, attorney's fees and expenses incurred by the Owner for defending such proceedings unless the Owner prevails on behalf of the Construction Manager in which case fees and expenses will be the responsibility of the separate contractor and if any judgment against the Owner arises therefrom, the Construction Manager shall pay or satisfy it and shall pay all costs, attorney's fees and expenses incurred by the Owner.

42.3 If any part of the Construction Manager's Work depends upon the work of any other separate contractor, the Construction Manager shall promptly report to the Consultant any observed defects in such work that render it unsuitable for proper execution connection. The failure to inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of the work, except as to defects which may develop in the other contractor's work after the execution of the work.

42.4 Whenever work being done by the Owner's forces or by other contractors is contiguous to work covered by this Contract, the respective rights of the various parties involved shall be established by the Owner to secure the completion of the various portions of the Work in general harmony.

## **ARTICLE 43 - CONSTRUCTION MANAGER/SUB-CONTRACTOR RELATIONSHIP**

43.1 The Construction Manager is fully responsible to the Owner for the acts and omissions of the Sub-contractors and of persons either directly or indirectly employed by them. The Construction Manager is responsible for the acts and omissions of persons employed directly by the Construction Manager and for the coordination of the Work, including placement and fittings of the various component parts. No claims for extra costs as a result of the failure to coordinate the Work, or by acts or omissions of the various Sub-contractors, will be paid by the Owner.

43.2 Except as otherwise provided in these Contract Documents, the Construction Manager agrees to bind every Sub-contractor by the terms and conditions of the Contract Documents as far as applicable to their portion of the Work. Upon request, the Construction Manager shall provide copies of any subcontracts and purchase orders to the Owner or Consultant.

43.3 The Construction Manager shall make no substitution or change in any Sub-contractor listed and accepted by the Consultant or Owner except as approved in writing by the Owner. The Construction Manager shall not employ any Sub-contractor or supplier against whom the Owner or the Consultant has made reasonable and timely objection. The Construction Manager (CM) will not be allowed to self-perform work or bid on any of the proposed work categories unless a subcontractor fails to perform and upon prior approval by the Universities authorized representatives.”

43.4 Nothing contained in the Contract Documents shall create any contractual relationship between the Owner and any Sub-contractor, Trade Contractor or Supplier, nor shall the Construction Manager include any language in their contracts with any Sub-contractor, Trade Contractor and/or Supplier that might imply such a relationship. The Construction Manager is hereby notified that it is the Construction Manager's contractual obligation to settle disputes between Sub-contractors, Trade Contractors, and/or Suppliers. Neither the Owner nor the Consultant will settle disputes between the Construction Manager and any Sub-contractor, Trade Contractor, and/or Supplier or between Sub-contractors, Trade Contractors, and/or Suppliers.

43.4.1 The Owner does not waive sovereign immunity under KRS 45A.245(1) for any claim or claims made by parties not having a written contract with the University of Kentucky.

43.4.2 Third party and/or flow-through type claims, from Sub-contractors and/or suppliers or any other entity not having a written contract directly with the University, are specifically prohibited by this Contract and no provision of the Construction Manager’s contracts with such entities shall indicate otherwise.

43.4.3 The Construction Manager shall indemnify and hold harmless the Owner and its agents and employees from any claims relating to the Project brought against the Owner by any of the Construction Manager’s Sub-contractors or suppliers, or between their sub-contractors or suppliers.

#### **ARTICLE 44 - CASH ALLOWANCE**

44.1 The Construction Manager is to provide or require the Sub-contractor(s) to include in the Contract Amount all costs necessary to complete the Work. Costs based on “allowances” shall be permitted only for objectively quantifiable material items and only with the prior written approval of the Owner.

#### **ARTICLE 45 - PROJECT SITE LIMITS**

45.1 The Construction Manager shall confine the apparatus, the storage of materials, and the operations of Workmen to Project site limits indicated in the Contract Documents and as permitted by law, ordinances, and permits, and shall not unreasonably encumber the site with materials and equipment.

#### **ARTICLE 46 - CLEAN UP**

46.1 The Construction Manager shall at all times keep the premises free from accumulation of waste material or rubbish caused by the operations in connection with the Work. All corridors and exit doors must be kept clear at all times. All exit ways, walks, and drives must be kept free of debris, materials, tools and vehicles.

46.2 At the completion of the Work, and prior to final inspection and acceptance, the Construction Manager shall remove all remaining waste materials, rubbish, Construction Manager's construction equipment, tools, machinery, and surplus materials and shall leave the Work in a clean and usable

condition, satisfactory to the Consultant and the Owner. If the Construction Manager fails to clean up as provided in the Contract Documents, the Owner may perform the cleaning tasks and charge the cost to the Construction Manager.

#### **ARTICLE 47 - POINTS OF REFERENCE**

47.1 The Construction Manager shall carefully preserve bench marks, reference points and stakes, and in case of willful or careless destruction, the Construction Manager shall be charged with the resulting expense of replacement and shall be responsible for any mistake that may be caused by their loss or disturbance.

#### **ARTICLE 48 - SUBSTITUTION - MATERIALS AND EQUIPMENT**

48.1 Reference to or the listing of items to be incorporated in the construction without referring to any specific article, device, equipment, product, material, fixture, patented process, form, method or type of construction, or by name, make, trade name, or catalog number shall be interpreted as establishing the general intent of the Contract and the general standard of quality for that item.

48.2 Specific references in the Contract Documents to any article, device, equipment, product, material, fixture, patented process, form, method or type of construction, or by name, make, trade name, or catalog number, with the words "or equal", shall be interpreted as establishing a minimum standard of quality, and shall not be construed as limiting competition.

48.2.1 Substitution of other equipment and materials as "or equal" to items named in the specifications will be allowed provided the proposed substitution is approved by the Consultant and will perform the functions called for by the general design, be similar and of equal quality to that specified and be suited to the same use and capable of performing the same function of that specified. The Construction Manager has the burden to prove equality of any substitution requested.

48.3 Specific references in the Contract Documents to any article, device, equipment, product, material, fixture, patented process, form, method or type of construction, or by name, make, trade name, or catalog number, without the words "or equal", shall be interpreted as defining an item or source that has after careful consideration been determined by the University as necessary to be compliant with, and/or to function properly within, the University operational system. No substitutions will be allowed.

48.3.1 In the event the Contract Documents contain specific reference to two or more items as described in Article 48.3, any of those listed will be acceptable.

48.4 Substitution of equipment and materials previously submitted by the Construction Manager and approved by the Consultant will be considered only for the following reasons:

48.4.1 Unavailability of the materials or equipment due to conditions beyond the control of the supplier.

48.4.2 Inability of the supplier to meet Contract Schedule.

48.4.3 Technical noncompliance to specifications.

48.5 In substituting materials or equipment, the Construction Manager assumes responsibility for any changes in systems or modifications required in adjacent or related work to accommodate such substitutions, despite consultant approval, and all costs associated with the substitution shall be the

responsibility of the Construction Manager. The Consultant shall be reimbursed by the Construction Manager for any architectural or engineering revisions required as the result of such substitutions.

48.6 Inclusion of a certain make or type of materials or equipment in the Construction Manager's bid proposal shall not obligate the Owner to accept such materials or equipment if they do not meet the requirements of the Contract Documents and any such substitutions in the preparation of the bid without written approval shall be at the sole risk of the Construction Manager.

## **ARTICLE 49 - TEST AND INSPECTION**

49.1 Regulatory agencies of the government having jurisdiction may require any Work to be inspected, tested or approved. The Construction Manager shall assume full responsibility therefore, pay all costs in connection therewith, unless otherwise noted, and furnish the Consultant the required certificates of inspection, testing or approval.

49.2 The Construction Manager shall give the Consultant timely notice of readiness of the Work for all inspections, tests or approvals.

49.3 The technical specifications may indicate specific testing requirements to be performed by the Construction Manager. Unless otherwise provided in the Contract Documents, the cost of all such testing shall be the responsibility of the Construction Manager. Testing shall be completed using a testing facility or laboratory approved by the Owner.

49.4 The costs of all inspection fees as may be required to construct and occupy the Work shall be the responsibility of the Construction Manager.

## **ARTICLE 50 - WARRANTY**

50.1 The Construction Manager warrants to the Owner and the Consultant that all materials and equipment furnished under this Contract shall be new and in accordance with the requirements of the Contract Documents, and that all Work shall be of good quality, free from faults and defects and in conformance with the Contract Documents. If required by the Consultant or the Owner, the Construction Manager shall furnish satisfactory evidence as to the kind and quality of materials and equipment. If the Construction Manager requests approval of a substitution of material or equipment, the Construction Manager warrants that such installation, construction, material, or equipment will equally perform the function for which the original material or equipment was specified. The Construction Manager explicitly warrants the merchantability, the fitness for a particular purpose, and quality of all substituted items in addition to any warranty given by the manufacturer and/or supplier. Approval of any such substitution is understood to rely on such warrant of performance. Prior to the Substantial Completion inspection, the Construction Manager shall deliver to the Consultant all warranties and operating instructions required under the Contract or to which the Construction Manager is entitled from manufacturers, suppliers, and Sub-contractors. All warranties for products and materials incorporated into the Work shall begin on the date of Substantial Completion. The warranty provided in this Article 50 shall be in addition to and not a limitation of any other warranty or remedy required by law or by the Contract Documents, and such warranty shall be interpreted to require the Construction Manager to replace defective material and equipment and re-execute defective Work which is disclosed to the Construction Manager by or on behalf of the Owner within a period of one (1) year after Substantial Completion of the entire Work in addition to other warranty obligations beyond one year from Substantial Completion as provided for by law or by the Contract Documents.

50.2 Neither the final payment, any provision in the Contract Documents nor partial or entire use or occupancy of the premises by the Owner shall constitute an acceptance of Work not done in accordance with Contract Documents or relieve the Construction Manager or its Sureties of liability with respect to any warranties or responsibilities for faulty materials and workmanship. The Construction Manager or its sureties shall remedy any defects in Work and any resulting damage to Work at the Construction Manager's own expense. The Construction Manager shall be liable for correction of all damage resulting from defective Work. If the Construction Manager fails to remedy any defects or damage, the Owner may correct Work or repair damages and the cost and expense incurred in such event shall be paid by or be recoverable from the Construction Manager or the surety. The Owner will give notice of observed defects with reasonable promptness.

50.3 The Construction Manager shall guarantee that labor, material, and equipment will be free of defects for a period of one (1) year from the date shown on the Certificate of Substantial Completion unless special conditions or additional warranty periods are required by the contract pursuant to Article 23 in addition to warranty obligations which extend beyond one year from Substantial Completion. The Owner will give notice of observed defects with reasonable promptness. Expendable items and wear from ordinary use are excluded from this warranty.

50.4 Should the Construction Manager be required to perform tests that must be delayed due to climate conditions, it is understood that such tests will be accomplished by the Construction Manager at the earliest possible date with provisions of the general warranty beginning upon satisfactory completion of said test. The responsibility of the Construction Manager under this Article will not be abrogated if the Owner should elect to initiate final payment. If the Owner initiates final payment, consent of Construction Manager's surety acknowledging that Work not yet tested is required. The Construction Manager shall warrant that the entire Project will conform to the Contract Documents.

50.5 In addition to the foregoing, the Construction Manager shall warrant for a period of one (1) year that all buildings and other improvements constructed as a part of the Work shall be watertight and leak proof at every point and in every area. The Construction Manager shall, immediately upon notification by or on behalf of the Owner of water penetration, determine the source of water penetration and, at the Construction Manager's expense, (a) do any work necessary to make such buildings or improvements watertight and (b) repair and replace any other damaged material, finishes and furnishings damaged as a result of such water penetration and return the buildings or other improvements to their original condition.

50.6 The Construction Manager shall address and resolve to the Owner's satisfaction any warranty claims made by or on behalf of the Owner during the above described warranty period and all repairs and replacements made by the Construction Manager pursuant to this Article 50 shall be warranted by the Construction Manager, on the terms set forth in this Article 50, for a period of time commencing upon the completion of such repairs and replacements and ending on the later of (a) the expiration of the one (1) year warranty period provided for above or (b) six (6) months after the date such repair or replacement is completed.

50.7 All costs, attorney's fees and expenses incurred by the Owner as a result of the Construction Manager's failure to honor any warranty for the Work shall be paid by or recoverable from the Construction Manager.

## **ARTICLE 51 - PREVAILING WAGE LAW REQUIREMENTS (NO LONGER USED AS OF 1/9/17)**

## **ARTICLE 52 - APPRENTICES**

52.1 Apprentices (for all classifications of work) shall be permitted to work only under an apprenticeship agreement approved by the Kentucky Supervisor of Apprenticeship and by the Kentucky Apprenticeship and Training, United States Department of Labor.

## **ARTICLE 53 - GOVERNING LAW**

53.1 This Contract and all issues and disputes arising out of this Contract shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Kentucky without consideration of its conflicts of laws principles.

## **ARTICLE 54 - NONDISCRIMINATION IN EMPLOYMENT**

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

54.1.1 The Construction Manager will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, or disability in employment. The Construction Manager will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, age, national origin, or disability in employment. 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 setting forth the provisions of this nondiscrimination clause.

54.1.2 The Construction Manager will, in all solicitations or advertisements for employees placed by or on behalf of the Construction Manager; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin or disability in employment.

54.1.3 The Construction Manager will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representatives of the Construction Manager's commitments under this Article, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

54.2 Failure to comply with the above nondiscrimination clause constitutes a material breach of Contract.

## **ARTICLE 55 - AFFIRMATIVE ACTION; REPORTING REQUIREMENTS**

55.1 The Construction Manager and any Sub-contractor is exempt from any affirmative action or reporting requirements, under the Kentucky Equal Employment Opportunity Act of 1978, KRS 45.550 to KRS 45.640 "The Act", if any of the following conditions are applicable:

55.1.1 The Trade Contract awarded is in the amount of two hundred and fifty thousand dollars (\$250,000.00) or less, and the amount of the Trade Contract is not a subterfuge to avoid compliance with the provisions of the Act;

55.1.2 The Construction Manager or Sub-contractor utilizes the services of fewer than eight (8) employees during the course of the Contract;

55.1.3 The Construction Manager or Sub-contractor employs only family members or relatives;

55.1.4 The Construction Manager or Sub-contractor employs only persons having a direct ownership interest in the business and such interest is not a subterfuge to avoid compliance with the provisions of The Act.

55.2 The Construction Manager and any Sub-contractor, not otherwise exempted, shall:

55.2.1 For the length of the Contract, hire DBE's from within the drawing area to satisfy the agreed upon goals and timetables. Should the union with which the General Contractor or Sub-contractor have collective bargaining agreements be unwilling to provide sufficient DBE's to satisfy the agreed upon goals and timetables, the General Contractor and Sub-contractors shall hire DBE's from other sources within the drawing area.

Diverse Business Enterprises (DBE) consist of minority, women, disabled, veteran and disabled veteran owned business firms that are at least fifty-one percent owned and operated by an individual(s) of the aforementioned categories. Also included in this category are disabled business enterprises and non-profit work centers for the blind and severely disabled. MBE, WBE, Veterans, Disabled Veterans and Disabled make up Diverse Business Enterprises (DBE)

55.2.2 The equal employment provisions of The Act may be met in part by the Construction Manager contracting to a DBE contractor or Sub-contractor. A DBE contractor, or Sub-contractor shall mean a business established under the definition of a DBE in Article 55.2.1

55.2.3 The Construction Manager shall, for the length of the Contract, furnish such information as required by The Act and by such rules, regulations and orders issued pursuant thereto and will permit access by the contracting agency and the department to all books and records pertaining to its employment practices and Work sites for purposes of investigation to ascertain compliance with The Act and such rules, regulations and orders issued pursuant thereto.

55.3 If the Construction Manager is found to have committed an unlawful practice against a provision of The Act during the course of performing under this Contract, a Trade Contract or a subcontract covered under The Act, the Owner may cancel or terminate the Contract, conditioned upon a program for future compliance approved by the Owner. The Owner may also declare such Construction Manager ineligible to submit proposals on further contracts until such time as the Construction Manager complies in full with the requirements of The Act.

55.4 Any provisions of The Act notwithstanding, the Construction Manager shall not be required to terminate an existing employee, upon proof that employee was employed prior to the date of the Contract, nor to hire anyone who fails to demonstrate the minimum skills required to perform a particular job.

END OF DOCUMENT



**ATTACHMENT "B"**

AGREEMENT BETWEEN  
UNIVERSITY OF KENTUCKY  
AND CONSTRUCTION MANAGER AT RISK

THIS AGREEMENT, made the \_\_\_\_\_ day of \_\_\_\_\_ 2022 by and between \_\_\_\_\_ ("Construction Manager"), and the UNIVERSITY OF KENTUCKY, ("Owner"), is to bind the parties hereto to the principles and terms set forth herein, and shall be binding upon the parties hereto.

WITNESSETH, that the Construction Manager and Owner for the consideration hereinafter named, agree as follows:

ARTICLE No. 1 SCOPE OF WORK:

Construction Management Services to renovate Pence Hall. This renovation project will entail a renovation of the existing 1907 building, and will most likely include classrooms, offices, group study rooms, class labs, research space, and student organizations for the College of Communications and Information. Renovations will address among other items; accessibility issues, exterior enclosure, mechanical, electrical, plumbing as well as interior modifications.

PROJECT: #2590.3 Construction Management Services for Pence Hall – Asset Preservation (the "Project")

The Scope of Work consists of the Request for Proposal, UK-2301-23, dated November 7, 2022; the Construction Manager's Form of Proposal dated November 23, 2022, including Addendums 1,2,3 etc, the General Conditions, the Special Conditions, the Construction Manager's Bonds and Insurance and Affidavit, the Specifications, the Drawings including Supplemental Drawings and Change Orders issued after execution of the Contract for the Work described in Article No. 1 of this Agreement, all of which are incorporated in and made a part thereof of reference, and which shall be binding upon the Construction Manager and Owner.

ARTICLE No. 2 TIME OF COMPLETION:

The Construction Manager must begin Work specified by the written Work Order from the Owner. Substantial Completion for Project# 2590.1 shall be four hundred sixty-seven (467) consecutive calendar days from the date of commencement as specified in the Work Order letter and Final Completion shall be thirty (30) consecutive calendar days thereafter.

ARTICLE No. 3 LIQUIDATED DAMAGES:

3.1 Should the Construction Manager fail to achieve Substantial Completion of the Work under this Contract on or before the date stipulated for Substantial Completion (or such later date as may result from extensions in the Contract Time granted by the Owner), he agrees that the Owner is entitled to, and shall pay the Owner as liquidated damages the sum of **Seven Hundred Ninety-One Dollars (\$791.00)** for each consecutive calendar day that Substantial Completion has not been met.

3.2 Should the Construction Manager fail to achieve Final Completion of the Work under this Contract on or before the date stipulated for Final Completion (or such later date as may result from extensions in the Contract Time granted by the Owner), he agrees that the Owner is entitled to, and shall pay the Owner as liquidated damages the sum of **One Hundred Six Dollars (\$106.00)** for each consecutive calendar day until Final Completion is reached. See Article 3 of the Agreement.

ARTICLE No. 4 THE CONTRACT AMOUNT:

Subject to additions and deductions for Change Orders made in accordance with the Contract Documents, the Owner shall pay the Construction Manager as full consideration for the Construction Manager's satisfactory performance of the Contract obligations the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

ARTICLE No. 5 SPECIAL NOTICE:

The Construction Manager certifies that it is fully informed of the conditions relating to construction and labor under which the Work under this Agreement is to be performed, and agrees that it shall employ, methods and means in carrying out the Work so as not to interfere with or interrupt the Work of any other Contractor working on/or adjacent to the site for this Work.

IN WITNESS WHEREOF this Agreement is executed in two (2) counterparts, each one of which shall be deemed an original and adequate proof of this Agreement, on the date and year first herein before written.

WITNESS:

CONSTRUCTION MANAGER: \_\_\_\_\_  
Company Name

\_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_

Title: \_\_\_\_\_

Approved for Legality and Form

Recommended By:

APPROVED: \_\_\_\_\_

\_\_\_\_\_  
Kevin Locke  
AVP Capital Planning, Design & Construction

UNIVERSITY OF KENTUCKY

By: \_\_\_\_\_  
Eric Monday  
Executive Vice President for Finance and  
Administration

**Pence Hall  
2590.3**

CURRENT DATE: 7-Nov-22

<u>DATE</u>	<u>ACTIVITY</u>	<u>DAYS TO NEXT TASK</u>		
Wed, 27 Jul '22	Project Advertised for Consultant	7		
Wed, 3 Aug '22	Site Walk-Through with Design Teams	7		
Wed, 10 Aug '22	Consultants' Submittals Due	5		
Mon, 15 Aug '22	Selection Committee Short List Meeting	14		
Mon, 29 Aug '22	Consultant Interviews	1		
Tue, 30 Aug '22	Consultant selected and notified	14		
Tue, 13 Sep '22	Contract negotiated	9		
Thu, 22 Sep '22	Programming & Facility Assessment	60		
Mon, 21 Nov '22	Program Review Meeting	0	Mon, 7 Nov '22	<b>CM Selection</b>
				Release of RFP
				Pre-Proposal Conference at 10:00 AM
Mon, 21 Nov '22	Begin Phase 1 Design	60	Mon, 14 Nov '22	Deadline for Written Questions Phase 1
				Addendum out
Fri, 20 Jan '23	Phase 1 Documents submitted to CPMD	14	Thu, 17 Nov '22	RFP Proposals Due Date at 3:00 PM*
Fri, 3 Feb '23	Phase 1 Review Meeting	45	Fri, 18 Nov '22	Evaluation of Phase 1 Proposals
				<b>PHASE 2**</b>
Mon, 20 Mar '23	Phase 2 documents submitted to CPMD	14	Tue, 29 Nov '22	Notification of Phase 2 Finalist
				Offeror Presentations from Phase 2 Finalist
Mon, 3 Apr '23	Phase 2 Review Meeting	84	Fri, 2 Dec '22	Offeror Financial Proposal
Mon, 26 Jun '23	Phase 3 documents submitted to CPMD	21	Fri, 2 Dec '22	Contract Award
Mon, 17 Jul '23	Phase 3 Review Meeting	21	Fri, 2 Dec '22	
Mon, 7 Aug '23	Final Documents presented to CPMD	21	Thu, 15 Dec '22	
Mon, 28 Aug '23	Advertise for Bidding	15	Thu, 15 Dec '22	
Tue, 12 Sep '23	Pre-Bid Conference	15	Thu, 5 Jan '23	
Wed, 27 Sep '23	Bid Date	14		
Wed, 11 Oct '23	Contract Awarded (457 calendar days)	0		
Wed, 11 Oct '23	Submittal Review/Order Materials	89		
Mon, 8 Jan '24	Construction Begins	457		
Wed, 9 Apr '25	Substantial Completion	30		
Fri, 9 May '25	Final Completion	365		
Sat, 9 May '26	Warranty Expires			

**Attachment “E”**

**Construction Phase On-Site Staffing Matrix**

TOTAL PROJECT STAFFING LEVEL				
Position	No.	Months	% of Time	Comments
Project Executive				
Project Manager				
Superintendent				
Engineer				
Assistant Superintendent				
MEP Coordinator				
Safety Engineer				
Administrative Assistant				
Other				
Other				

A F F I D A V I T

Comes the affiant and after having been duly sworn states as follows:

1. That affiant is the contractor awarded a contract by the University of Kentucky on **Project#2590.3 / UK-2301-23 Construction Management Services for Pence Hall – Asset Preservation (the “Project”)**.
2. That all contractors and subcontractors employed, or that will be employed, under the provisions of this contract are in compliance with Kentucky requirements for Workers' Compensation Insurance according to KRS Chapter 342 and Unemployment Insurance according to KRS Chapter 341.

Further, the affiant sayeth naught.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Contractor: \_\_\_\_\_

State of \_\_\_\_\_)

County of \_\_\_\_\_)

Subscribed and sworn to before me by \_\_\_\_\_ on this \_\_\_\_\_  
day of \_\_\_\_\_, 2022.

My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public, State at Large

**UNIVERSITY OF KENTUCKY  
CAPITAL CONSTRUCTION PROCUREMENT SECTION**

**PAYMENT BOND**

Bond Number: [NUMBER]

**KNOW ALL PERSONS BY THESE PRESENTS:**

**WHEREAS**, the University of Kentucky (the “Owner”) and [CONTRACTOR’S NAME] (the “Principal”) have entered into a contract for the construction of Project#2590.3 / UK-2301-23 Construction Management Services for Pence Hall – Asset Preservation (the “Project”), with the contract price or amount of \$[AMOUNT].

**WHEREAS**, the Principal is required to furnish a payment bond for the protection of all persons performing, supplying, or furnishing labor, materials, equipment, or supplies to the contractor or its subcontractors for the performance of the work provided for in the contract, including security for payment of all unemployment contributions which become due and payable under Kentucky unemployment insurance law, in an amount equal to one hundred percent (100%) of the original contract price or amount, executed by a surety company authorized to do business in the Commonwealth of Kentucky, and satisfactory to the Commonwealth; and

**WHEREAS**, [SURETY’S NAME] (the “Surety”), a surety company authorized to do business in the Commonwealth of Kentucky, has agreed to issue such bond.

**NOW, THEREFORE**, for the value received and intending to be legally bound hereby, the Principal and Surety agree to the following terms and conditions of this obligation:

1. **Recitations:** The recitals above are true and substantive parts of this instrument.
2. **Definitions:** The following terms are defined for the purposes of this instrument:
  - (a) **Bond** means this instrument and the terms and conditions of the Contract (as defined herein), both express and implied, which are incorporated herein by reference and constitute a part of this instrument to the same extent and effect as though copied verbatim herein, and are legally binding on the Principal and Surety including the obligations of the Surety provided therein.
  - (b) **Claimants** means all persons having just and lawful claims for (i) labor, materials, services, insurance, supplies, machinery, equipment, rentals, fuels, oils, implements, tools, appliances, and any other items of whatever nature, furnished for, used or consumed in the prosecution of the work called for by the Contract, whether lienable or non-lienable and whether or not permanently incorporated in said work; (ii) pension, welfare, vacation, and other supplemental employee benefit contributions payable under collective bargaining agreements with respect to persons employed upon said work; and (iii) federal, state, and local taxes and contributions required by law to be withheld and paid with respect to the employment of persons upon said work.

- (c) **Contract** means that certain agreement dated [DATE] for the construction of Project#2590.3 / UK-2301-23 Construction Management Services for Pence Hall – Asset Preservation (the “Project”), all documents that comprise the agreement, any documents incorporated therein by reference, and any Contract Changes (as defined herein).
- (d) **Contract Change** means any change order, change of time, extension of time, amendment, modification, addition, or other alteration, material or otherwise, to the Contract, the contract price or amount, the work to be performed under the Contract, or the specifications accompanying same.
3. **Guaranty:** The Principal and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner, as obligee of the Bond, to pay all Claimants having just and lawful claims (as defined above). The Principal and Surety likewise guarantee the faithful payment of the prevailing hourly wage as set forth in the schedule incorporated into the bid documents unless the Project is exempt from the prevailing wage requirements of KRS 337.505 through 337.550.
4. **Bond Amount:** The bond amount is \$[AMOUNT]. This amount shall be increased automatically by Contract Changes to the contract price or amount and shall not limit the Surety’s obligation or liability under the Bond for paying attorney fees, costs, or other legal expenses incurred by the Owner, which may be in excess of the bond amount as increased.
5. **Defeasance:** Except as provided by the Contract, the Principal and Surety shall have no obligations under the Bond if the Principal during the original term of the Contract, any extensions thereof which may be granted by the Owner with or without notice to the Surety, the guaranty period, the warranty period, and other periods limited only by statutes of limitation (a) promptly pays all Claimants; (b) satisfies all claims and demands incurred under the Contract; and (c) fully indemnifies and saves harmless the Owner from all costs, damages, attorney fees, consultant fees, and other expenses that it may suffer by reason of the Principal’s failure to do so. The Bond will otherwise remain in full force and effect.
6. **Amendment:** The Bond, including without limitation the Bond Amount, will be deemed amended, automatically and immediately without separate or written amendments hereto, upon any Contract Changes. The Principal and Surety agree to be bound by any Contract Changes. The Surety waives notice of any Contract Changes.
7. **Interpretation:** The Bond will be interpreted and enforced in accordance with Kentucky law. The Principal and Surety agree that they have taken part in drafting the Bond, which will not be construed against or in favor of any other party on the basis of drafting. To the extent that this instrument contradicts the Contract, the Contract will control.
8. **Beneficiaries:** The Principal and Surety agree that (a) the Bond will insure to the benefit of the Owner and all Claimants having just and lawful claims (as defined above) (collectively the “Beneficiaries”), whether or not they have any direct contractual relationship with the Principal; (b) the Beneficiaries may maintain independent actions upon this Bond in their own names; and (c) no final settlement between the Owner and Principal will abridge the right of other Beneficiaries with unsatisfied claims.



**IN WITNESS WHEREOF**, the Principal and Surety, by their duly authorized representatives, have executed this instrument, which is effective as of [DATE].

ATTEST:

WITNESSES:

\_\_\_\_\_  
PRINCIPAL

\_\_\_\_\_  
Witness as to PRINCIPAL

\_\_\_\_\_  
By

\_\_\_\_\_  
Witness as to PRINCIPAL

\_\_\_\_\_  
Title

ATTEST:

WITNESSES:

\_\_\_\_\_  
SURETY

\_\_\_\_\_  
Witness as to SURETY

\_\_\_\_\_  
By

\_\_\_\_\_  
Witness as to SURETY

\_\_\_\_\_  
Attorney-in-Fact

**UNIVERSITY OF KENTUCKY  
CAPITAL CONSTRUCTION PROCUREMENT SECTION**

**PERFORMANCE BOND**

Bond Number: [NUMBER]

**KNOW ALL PERSONS BY THESE PRESENTS:**

**WHEREAS**, the University of Kentucky (the “Owner”) and [CONTRACTOR’S NAME] (the “Principal”) have entered into a contract for the construction of Project#2590.3 / UK-2301-23 Construction Management Services for Pence Hall – Asset Preservation (the “Project”), with the contract price or amount of \$[AMOUNT].

**WHEREAS**, the Principal is required to furnish a performance bond for the faithful performance of the contract in an amount equal to one hundred percent (100%) of the contract price or amount as it may be increased, executed by a surety company authorized to do business in the Commonwealth of Kentucky, and satisfactory to the Commonwealth; and

**WHEREAS**, [SURETY’S NAME] (the “Surety”), a surety company authorized to do business in the Commonwealth of Kentucky, has agreed to issue such bond.

**NOW, THEREFORE**, for the value received and intending to be legally bound hereby, the Principal and Surety agree to the following terms and conditions of this obligation:

1. **Recitations:** The recitals above are true and substantive parts of this instrument.
2. **Definitions:** The following terms are defined for the purposes of this instrument:
  - (a) **Bond** means this instrument and the terms and conditions of the Contract (as defined herein), both express and implied, which are incorporated herein by reference and constitute a part of this instrument to the same extent and effect as though copied verbatim herein, and are legally binding on the Principal and Surety including the obligations of the Surety provided therein.
  - (b) **Contract** means that certain agreement dated [DATE] for the construction of Project#2590.3 / UK-2301-23 Construction Management Services for Pence Hall – Asset Preservation (the “Project”), all documents that comprise the agreement, any documents incorporated therein by reference, and any Contract Changes (as defined herein).
  - (c) **Contract Change** means any change order, change of time, extensions of time, amendment, modification, addition, or other alteration, material or otherwise, to the Contract, the contract price or amount, the work to be performed under the Contract, or the specifications accompanying same.

3. **Guaranty:** The Principal and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner, as obligee of the Bond, for the full and faithful performance of the Contract and any Contract Changes. The Principal and Surety likewise guarantee the faithful performance of the prevailing hourly wage as set forth in the schedule incorporated into the bid documents unless the Project is exempt from the prevailing wage requirements of KRS 337.505 through 337.550.
4. **Bond Amount:** The bond amount is \$[AMOUNT]. This amount shall be increased automatically by Contract Changes to the contract price or amount and shall not limit the Surety's obligation or liability under the Bond for paying attorney fees, costs, or other legal expenses incurred by the Owner, which may be in excess of the bond amount as increased.
5. **Defeasance:** Except as provided by the Contract, the Principal and Surety shall have no obligations under the Bond if the Principal during the original term thereof, any extensions thereof which may be granted by the Owner with or without notice to the Surety, the guaranty period, the warranty period, and other periods limited only by statutes of limitation (a) well, truly, and faithfully performs its duties to the Owner; (b) performs the Contract; (c) satisfies all claims and demands incurred under the Contract; (d) fully indemnifies and saves harmless the Owner from all costs, damages, attorney fees, consultant fees, and other expenses that it may suffer by reason of the Principal's failure to do so; and (e) reimburses and repays the Owner all such expenses and outlay, without limitation, which the Owner may incur in making good any default. The Bond will otherwise remain in full force and effect.
6. **Amendment:** The Bond, including without limitation the Bond Amount, will be deemed amended, automatically and immediately without separate or written amendments hereto, upon any Contract Changes. The Principal and Surety agree to be bound by any Contract Changes. The Surety waives notice of any Contract Changes.
7. **Interpretation:** The Bond will be interpreted and enforced in accordance with Kentucky law. The Principal and Surety agree that they have taken part in drafting the Bond, which will not be construed against or in favor of any other party on the basis of drafting. To the extent that this instrument contradicts the Contract, the Contract will control.

**IN WITNESS WHEREOF**, the Principal and Surety, by their duly authorized representatives, have executed this instrument, which is effective as of [DATE].

ATTEST:

WITNESSES:

\_\_\_\_\_  
PRINCIPAL

\_\_\_\_\_  
Witness as to PRINCIPAL

\_\_\_\_\_  
By

\_\_\_\_\_  
Witness as to PRINCIPAL

\_\_\_\_\_  
Title

ATTEST:

WITNESSES:

\_\_\_\_\_  
SURETY

\_\_\_\_\_  
Witness as to SURETY

\_\_\_\_\_  
By

\_\_\_\_\_  
Witness as to SURETY

\_\_\_\_\_  
Attorney-in-Fact



## **DBE Participation Goals**

### **PART 1 - GENERAL**

- 1.1 The University of Kentucky requests all potential contractors to make a concerted effort to include Diverse Business Enterprises (DBE's) as subcontractors or suppliers in their bids.
- 1.2 Toward that end, the University of Kentucky has established 10% of total procurement costs as a Goal for participation of Diverse Business Enterprises on this contract.
- 1.3 **It is therefore a request of each Bidder to include in its bid, 10% for DBE participation and other requirements as outlined in this section.**

### **PART 2 - PROCEDURES**

- 2.1 The successful bidder will be required to report to the University of Kentucky, the dollar amounts of all purchase orders submitted to DBE subcontractors and suppliers for work done or materials purchased for this contract.
- 2.2 Replacement of a DBE subcontractor or supplier listed in the original submittal must be requested in writing and must be accompanied by documentation of Good Faith Efforts to replace the subcontractor / supplier with another DBE Firm; subject to approval by the University of Kentucky.
- 2.3 For assistance in identifying qualified, certified businesses to solicit for potential contracting opportunities, bidders may contact:
  - A. The University of Kentucky, Facilities Management Contractor/Supply chain Coordinator (859-257-3204)
  - B. Tri-State Minority Supplier Development Council in Louisville, KY (502-625-0135)
  - C. The Kentucky Cabinet for Economic Development, Small & Minority Business Division in Frankfort, KY (502-564-2064)
  - D. The Office of Equal Employment Opportunity, Contract Compliance Division in Frankfort, KY (502-564-2874)
- 2.4 The University of Kentucky will make every effort to notify interested DBE subcontractors and suppliers of each Bid Package, including information on the scope of work, the pre-bid meeting time and location, the bid date, and all other pertinent information regarding the project.

PART 3 - DEFINITIONS

- 3.1 Diverse Business Enterprises (DBE) consist of minority, women, disabled, veteran and disabled veteran owned business firms that are at least fifty-one percent owned and operated by an individual(s) of the aforementioned categories. Also included in this category are disabled business enterprises and non-profit work centers for the blind and severely disabled. MBE, WBE, Veterans, Disable Veterans and Disabled make up Diverse Business Enterprises (DBE).

PART 4 - OBLIGATION OF BIDDER

- 4.1 **The bidder shall make a Good Faith Effort to achieve the Participation Goal for DBE subcontractors/suppliers. The failure to meet the goal shall not necessarily be cause for disqualification of the bidder; however, bidders not meeting the goal are required to furnish with their bids written documentation of their Good Faith Efforts to do so.**
- 4.2 Award of Contract shall be conditioned upon satisfaction of the requirements set forth herein.
- 4.3 The Form of Proposal includes a section entitled "Identification of Diverse Business Enterprise Subcontractors and Material Suppliers". The Advertisement for Bid includes a section entitled "Diverse Business Enterprise Participation". The Determination of Responsibility includes a section entitled "Participation of Diverse Business Enterprise owned contractors and businesses". The applicable information must be completed and submitted as outlined.
- 4.4 **Failure to submit this information as requested may be cause for rejection of the bid.**

PART 5 - DOCUMENTATION REQUIRED

- 5.1 The prime contractor must provide the University of Kentucky with a "DBE percent of contract report "detailing subcontracting activity within 90 days of prime contract award. Projects containing multiple bid packs will update reports within 90 days of contract award throughout project duration. The report shall reflect the total dollar amount awarded to all DBE subcontractors (including suppliers) utilized under this contract.
- a. Prime Contractors will report the following items individually to satisfy reporting requirements
    - i. Project Name, UK Project Number, and UK CPMD Project Manager assigned to the project
    - ii. Total dollar value of the prime contract with the University of Kentucky
    - iii. Total dollar value of all contracts assigned to DBE firms
- 5.2 Bidders not reaching the Goal must submit both the "DBE percent of contract report "and a written statement documenting their Good Faith Effort to do so (If bid includes no DBE participation, bidder shall enter "None" on the subcontractor / supplier form). In addition, the bidder may submit the following as proof of Good Faith Efforts to meet the Participation Goal:

- A. Advertisement by the bidder of DBE Contracting opportunities associated with this bid in at least two (2) of the following:
  - 1. A periodical in general circulation throughout the region
  - 2. A Minority-Focused periodical in general circulation throughout the region
  - 3. A Trade periodical aimed at the DBE community in general circulation throughout the region
  - 4. Bidder shall include copies of dated advertisement with his submittal
- B. Evidence of written notice of contracting opportunities to at least five (5) DBE firms serving the construction industry at least seven (7) days prior to the bid opening date.
- C. Copies of quotations submitted by DBE firms which were not used due to uncompetitive pricing or other factors and/or copies of responses from firms that were contacted indicating that they would not be submitting a bid.
- D. Documentation of Bidder's utilization of the agencies identified to help locate potential DBE firms for inclusion on the contract including responses from agencies.
- E. Failure to submit any of the documentation requested in this section may be cause for rejection of bid. Bidders may include any other documentation deemed relevant to this requirement. "Record of DBE Solicitation" and other required documentation of Good Faith Efforts are to be submitted with the bid, if participation Goal is not met.

University of Kentucky – Capital Project Management  
DBE Percent of Contract Report

## 1) Identification of Participating DBEs

Project Name / Number: \_\_\_\_\_

UK Project Manager: \_\_\_\_\_

Total Contract Value: \_\_\_\_\_

DBE Name, Address & Phone	Work to be Performed	Dollar Value of Work	% Value of Total Contract
1.		\$	%
2.		\$	%
3.		\$	%
4.		\$	%

The undersigned submits the above list of DBE firms to be used in accomplishing the work contained in this Bid.

Company: \_\_\_\_\_ By: \_\_\_\_\_

Date: \_\_\_\_\_ Title: \_\_\_\_\_



University of Kentucky

# Tree Protection Standards

## **010000S02 Tree Protection Standards**

**Article 56 is in addition to, and takes precedence over the provisions of the Special Conditions for the Project.**

### **ARTICLE 56**

#### **PART 1 –GENERAL**

##### **56.1.1 SUMMARY**

- A. The scope of work includes all labor, materials, tools, equipment, facilities, transportation and services necessary for, and incidental to performing all operations in connection with protection of existing trees and other plants as shown on the drawings and as specified herein.
  - 1. Provide preconstruction evaluations and Arborist Report.
  - 2. Provide tree and plant protection fencing.
  - 3. Provide protection of root zones and above ground tree parts and plants.
  - 4. Provide pruning of existing trees and plants.
  - 5. Provide all insect and disease control.
  - 6. Provide maintenance of existing trees and plants including irrigation during the construction period as recommended by the Arborist Report.
  - 7. Provide maintenance of existing trees and plants including irrigation during the post construction plant maintenance period.
  - 8. Remove tree protection fencing and other protection from around and under trees and plants.
  - 9. Clean up and disposal of all excess and surplus material.

##### **56.1.2 CONTRACT DOCUMENTS**

- A. Shall consist of specifications, general conditions and the drawings. The intent of these documents is to include all labor, materials, and services necessary for the proper execution of the work. The documents are to be considered as one. Whatever is called for by any parts shall be as binding as if called for in all parts.
- B. It is the intent of this section that the requirements apply to all sections of the project specification such that any subcontractor must comply with the restrictions on work within designated Tree and Plant Protection Areas.

## **010000S02 Tree Protection Standards**

### **56.1.3 RELATED DOCUMENTS AND REFERENCES**

#### **A. Related Documents:**

1. Drawings and general provisions of contract including general and supplementary conditions and Division I specifications apply to work of this section.
2. Section -Planting Soil
3. Section -Irrigation
4. Section -Planting
5. Section –Lawn

B. References: The following specifications and standards of the organizations and documents listed in this paragraph form a part of the specification to the extent required by the references thereto. In the event that the requirements of the following referenced standards and specification conflict with this specification section the requirements of this specification shall prevail. In the event that requirements of any of the following referenced standards and specifications conflict with each other the more stringent requirement shall prevail.

1. ANSI A 300 (Part 5) – Standard Practices for Tree, Shrub and other Woody Plant Maintenance, Management of Trees & Shrubs During Site Planning, Site Development & Construction. Most current editions.
2. ANSI A 300 (Part 1) – Standard Practices for Tree, Shrub and other Woody Plant Maintenance, Pruning. Most current editions.
3. ANSI Z133 Safety Requirements for Arboricultural Operations.
4. Glossary of Arboricultural Terms, International Society of Arboriculture, Champaign IL, most current edition.

### **56.1.4 VERIFICATION**

A. All scaled dimensions on the drawings are approximate. Before proceeding with any work, the Contractor shall carefully check and verify all dimensions and quantities, and shall immediately inform the Owner's Representative of any discrepancies between the information on the drawings and the actual conditions, refraining from doing any work in said areas until given approval to do so by the Owner's Representative.

## **010000S02 Tree Protection Standards**

### **56.1.5 PERMITS AND REGULATIONS**

A. The Contractor shall obtain and pay for all permits related to this section of the work unless previously excluded under provision of the contract or general conditions. The Contractor shall comply with all laws and ordinances bearing on the operation or conduct of the work as drawn and specified. If the Contractor observes that a conflict exists between permit requirements and the work outlined in the contract documents, the Contractor shall promptly notify the Owner's Representative in writing including a description of any necessary changes and changes to the contract price resulting from changes in the work.

B. Wherever references are made to standards or codes in accordance with which work is to be performed or tested, the edition or revision of the standards and codes current on the effective date of this contract shall apply, unless otherwise expressly set forth.

C. In case of conflict among any referenced standards or codes or between any referenced standards and codes and the specifications, the more restrictive standard shall apply or Owner's Representative shall determine which shall govern.

### **56.1.6 PROTECTION OF WORK, PROPERTY AND PERSON**

A. The Contractor shall protect the work, adjacent property, and the public, and shall be responsible for any damages or injury due to his/her actions.

### **56.1.7 CHANGES IN THE WORK**

A. The Owner's Representative may order changes in the work, and the contract sum should be adjusted accordingly. All such orders and adjustments plus claims by the Contractor for extra compensation must be made and approved in writing before executing the work involved.

## 010000S02 Tree Protection Standards

### 56.1.8 DEFINITIONS

All terms in this specification shall be as defined in the "Glossary of Arboricultural Terms" or as modified below.

- A. Owner's Representative: The person appointed by the Owner to represent their interest in the Tree and Plant Protection and approval of the work and to serve as the contracting authority with the Contractor. The Owner's Representative may appoint other persons to review and approve any aspects of the work.
- B. Reasonable and Reasonably: When used in this specification is intended to mean that the conditions cited will not affect the establishment or long term stability, health or growth of the plant. This specification recognizes that plants are not free of defects, and that plant conditions change with time. This specification also recognizes that some decisions cannot be totally based on measured findings and that professional judgment is required. In cases of differing opinion, the Owner's Representative expert shall determine when conditions within the plant are judged as reasonable.
- C. Shrub: Woody plants with mature height approximately less than 25 feet.
- D. Tree and Plant Protection Area: Area surrounding individual trees, groups of trees, shrubs, or other vegetation to be protected during construction, and defined by a circle centered on the trunk with each tree with a radius equal to the crown dripline unless otherwise indicated by the owner's representative.
- E. Tree: Single and multi-stemmed plants with anticipated mature height approximately greater than 25 feet or any plant identified on the plans as a tree.

## 010000S02 Tree Protection Standards

### 56.1.9 SUBMITTALS

A. ARBORIST REPORT: Prior to the start of construction, submit, for approval by the Owner's Representative, the report of a consulting arborist who is a Registered Consulting Arborist® (RCA) with American Society of Consulting Arborists or an ISA Board Certified Master Arborist, which details the following information for all trees to remain within the area designated on the drawings as the Tree and Plant Protection Area. The report shall include the following:

1. A description of each tree to protect indicating the following:
  - a. Genus and species
  - b. Condition including any visible damage to the root system or soil within the root zone
  - c. Tree diameter at 4.5 feet above grade
  - d. Tree height
  - e. Crown width
  - f. Any visible disease and/or insect infestations
  - g. Branch and/or trunk structural deficiencies.
  - h. Appraisal of value
  - i. Appraisal of benefits (storm water interception, heating/cooling, carbon sequestration)
2. The report shall note all trees or parts of trees, which are considered a hazard or significant or extreme risk level. Include the International Society of Arboriculture Tree Risk Assessment evaluation sheet for each tree, which may reasonably be identified as a potential hazard tree.
3. Recommendations as to treatment of all insect, disease and structural problems encountered.
4. Recommendations for fertilizer treatments, if any.
5. A plan of the site showing the location of all trees included in the report.

B. PRODUCT DATA: Submit manufacturer product data and literature describing all products required by this section to the Owner's Representative for approval. Provide submittal four weeks before the start of any work at the site.

C. QUALIFICATIONS SUBMITTAL: For each applicable person expected to work on the project, provide copies of the qualifications and experience of the Consulting Arborist, proof of either the registered Consulting Arborist® (RCA) with American Society of Consulting Arborists or an ISA Board Certified Master Arborist and any required Herbicide/Pesticide license to the Owner's Representative, for review prior to the start of work.

### 56.1.10 OBSERVATION OF THE WORK

A. The Owner's Representative may inspect the work at any time.

## **010000S02 Tree Protection Standards**

### **56.1.11 PRE-CONSTRUCTION CONFERENCE**

A. Schedule a pre-construction meeting with the Owner's Representative at least seven (7) days before beginning work to review any questions the Contractor may have regarding the work, administrative procedures during construction and project work schedule.

1. The following Contractors shall attend the preconstruction conference:

- a. General Contractor.
- b. Consulting Arborist.
- c. Subcontractor assigned to install Tree and Plant Protection measures.
- d. Earthwork Contractor.
- e. All site utility Contractors that may be required to dig or trench into the soil.
- f. Landscape subcontractor.
- g. Irrigation subcontractor

B. Prior to this meeting, mark all trees and plants to remain and or be removed as described in this specification for review and approval by the Owner's Representative.

### **56.1.12 QUALITY ASSURANCE**

A. Contractor qualifications:

- 1. All pruning, branch tie back, tree removal, root pruning, and fertilizing required by this section shall be performed by or under the direct supervision of an ISA Certified Arborist. Submit aforementioned individual's qualifications for approval by the Owner's Representative.
- 2. All applications of pesticide or herbicide shall be performed by a person maintaining a current state license to apply chemical pesticides valid in the jurisdiction of the project. Submit copies of all required state licensing certificates including applicable chemical applicator licenses.

### **56.1.13 DAMAGE OR LOSS TO EXISTING PLANTS TO REMAIN**

- A. Specimen trees within or adjacent to construction areas will be identified by the Owner's Representative and the Architect, and marked with green tags. Loss of any of these trees will result in fines assessed at a minimum of \$10,000 (or higher appraised amount that may be determined by the University prior to construction) per tree. Damage to all other trees on the property will be assessed at the rate of \$200 per diameter inch of the tree measured 4.5' above grade.
- B. Any trees or plants designated to remain and which are damaged by the Contractor shall be replaced in kind by the Contractor at their own expense in addition to fines and penalties.

## 010000S02 Tree Protection Standards

Tree(s) shall be replaced with a tree(s) of similar species and equivalent trunk diameter to the tree(s) being replaced. For example, if a 20" diameter tree is to be replaced, the Contractor can provide ten (10) two inch diameter trees. Depending on site accommodations and landscape design, the replacement trees may be installed outside of the project site as directed by the Owner's Representative. Shrubs shall be replaced with a plant of similar species and equal size or the largest size plants reasonably available whichever is less. Where replacement plants are to be less than the size of the plant that is damaged, the Owner's Representative shall approve the size and quality of the replacement plant.

1. All trees and plants shall be installed per the requirements of Specification Section Planting.
- C. Plants that are damaged shall be considered as requiring replacement or appraisal in the event that the damage affects more than 25 % of the crown, 25% of the trunk circumference, or root protection area, or the tree is damaged in such a manner that the tree could develop into a potential hazard. Trees and shrubs to be replaced shall be removed by the Contractor at his own expense.
  1. The Owner's Representative may engage an independent arborist to assess any tree or plant that appears to have been damaged to determine their health or condition.
- D. Any tree that is determined to be dead, damaged or potentially hazardous by the Owner's arborist and upon the request of the Owner's Representative shall be immediately removed by the Contractor at no additional expense to the owner. Tree removal shall include all clean-up of all wood parts and grinding of the stump to a depth sufficient to plant the replacement tree or plant, removal of all chips from the stump site and filling the resulting hole with topsoil.
- E. Any remedial work on damaged existing plants recommended by the Consulting Arborist shall be completed by the Contractor at no cost to the owner. Remedial work shall include but is not limited to: soil compaction remediation and vertical mulching, pruning and or cabling, insect and disease control including injections, compensatory watering, additional mulching, and could include application tree growth regulators (TGR). Any remedial work is to be performed by an ISA Certified Arborist, ISA Board Certified Master Arborist or a Registered Consulting Arborist.
- F. Remedial work may extend up to two years following the completion of construction to allow for any requirements of multiple applications or the need to undertake applications at required seasons of the year.

### 56.1.14 LOSS OF TREES DUE TO CONSTRUCTION FOOT PRINT

- A. Any trees or plants designated as removals to accommodate construction shall be replaced. Tree(s) shall be replaced with a tree(s) of similar species and equivalent trunk diameter to the tree(s) removed. For example, if a 20" diameter tree is removed, the Contractor can provide ten (10) two inch diameter trees. Depending on site accommodations and landscape design, the replacement trees may be installed outside of the project site as



## **010000S02 Tree Protection Standards**

directed by the Owner's Representative. Shrubs shall be replaced with a plant of similar species and equal size or the largest size plants reasonably available whichever is less.

### **PART 2 –PRODUCTS**

#### **56.2.1 MULCH**

The coarse grade Mulch specified here is considered superior for its water retention and soil building properties in areas of tree and shrub roots when irrigation is drip, bubblers or flood methods.

A. Mulch shall be coarse, ground, from tree and woody brush sources. The minimum range of fine particles shall be 3/8 inch or less in size and a maximum size of individual pieces shall be approximately 1 to 1-1/2 inch in diameter and maximum length of approximately 4 to 8 inches. No more than 25% of the total volume shall be fine particles and no more than 20% of total volume be large pieces. Mulch will be applied to a depth of 3 to 5 inches. Mulch shall not come into contact with the tree trunk.

1. It is understood that Mulch quality will vary significantly from supplier to supplier and region to region. The above requirements may be modified to conform to the source material from locally reliable suppliers as approved by the Owner's Representative.

B. Submit supplier's product data that product meets the requirements and two-gallon sample for approval.

#### **56.2.2 WOOD CHIPS**

A. Wood Chips from an arborist chipping operation with less than 20% by volume green leaves. Chips stockpiled from the tree removal process may be used. Mulch will be applied to a depth of 5 to 8 inches. Mulch shall not come into contact with the tree trunk.

#### **56.2.3 TREE PROTECTION FENCING**

A. Chain link fencing shall be installed around all existing trees to remain. Fencing shall be 6' tall galvanized nine gauge, with 3" end and line post and 1" minimum top rails, and bottom tension wire a maximum of 3" off the ground. Post shall be driven into the ground and spacing shall not exceed 8 feet.

6 feet tall metal chain link fence set in metal frame panels on movable core drilled concrete blocks of sufficient size to hold the fence erect in areas of existing paving to remain.

B. Orange plastic fencing shall be installed on the outside of the chain link fencing to provide high visibility.

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C. GATES: For each fence type and in each separate fenced area, provide a minimum of one 3-foot-wide gate. Gates shall be lockable. The location of the gates shall be approved by the Owner's Representative.

D. Submit supplier's product data that product meets the requirements for approval.

### 56.2.4 TREE PROTECTION SIGN

A. Heavy-duty laminated or all weather signs, 11 inches x 17 inches, white colored background with black 2 inch high or larger block letters. The signs shall be attached to the tree protection fence every 50 feet. The tree protection sign shall read:

#### **"Tree Protection Area - Keep Out"**

The following information shall also be included on the sign:

- i. Genus and species
- ii. Tree diameter
- iii. Tree height
- iv. Appraised value of tree
- v. Benefits provided
  1. Storm water interception in gallons
  2. Carbon sequestration in pounds
  3. Energy Savings

### 56.2.5 TREE (Plant) GROWTH REGULATOR (TGR/PGR)

A. Active ingredient Paclobutrazol i.e. (ShortStop, Cambistat 25C, Profile 2SC or other)

B. Submit supplier's product data that product meets the requirements for approval.

### 56.2.6 SOIL & ROOT PROTECTION

On projects where the tree protection fencing cannot be installed to create the desired protection zone.

A. Matting for vehicle and work protection shall be heavy duty matting designed for vehicle loading over tree roots, Alturnamats as manufactured by Alturnamats, Inc. Franklin, PA 16323 or approved equal.

B. 1/2" Steel plates - Following the recommendations of the project arborist steel plates shall be installed to protect the roots from Construction activities.

C. Submit suppliers' product data that product meets the requirements for approval.

### 56.2.7 GEOGRID

A. Geogrid shall be woven polyester fabric with PVC coating, Uni-axial or biaxial geogrid, inert to biological degradation, resistant to naturally occurring chemicals, alkalis, acids.

Manufacturers: GSE Environmental, TenCate, Terram

B. Submit suppliers' product data that product meets the requirements for approval.

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### **56.2.8 GEOTEXTILE**

A. Geotextile shall be nonwoven polypropylene fibers, inert to biological degradation and resistant of naturally occurring chemicals, alkalis and acids.

Manufacturers: GSE Environmental, TenCate, Terram

B. Submit supplier's product data that product meets the requirements for approval.

## **PART 3 –EXECUTION**

### **56.3.1 SITE EXAMINATION**

A. Examine the site, tree, plant and soil conditions. Notify the Owner's Representative in writing of any conditions that may impact the successful Tree and Plant Protections that is the intent of this section.

### **56.3.2 COORDINATION WITH PROJECT WORK**

A. The Contractor shall coordinate with all other work that may impact the completion of the work.

B. Prior to the start of Work, prepare a detailed schedule of the work for coordination with other trades.

C. Coordinate the relocation of any irrigation lines currently present on the irrigation plan, heads or the conduits of other utility lines or structures that are in conflict with tree locations. Root balls shall not be altered to fit around lines. Notify the Owner's Representative of any conflicts encountered.

### **56.3.3 TREE AND PLANT PROTECTION AREA**

A. The Tree and Plant Protection Area is defined as all areas indicated on the tree protection plan. Where no limit of the Tree and Plant Protection area is defined on the drawings, the limit shall be the drip line (outer edge of the branch spread) of each tree.

### **56.3.4 PREPARATION**

A. Prior to the preconstruction meeting, layout the limits of the Tree and Plant Protection Area and then alignments of required Tree and Plant Protection Fencing and root pruning. Obtain the Owner's Representative's approval of the limits of the protection area and the alignment of all fencing and root pruning.

B. Flag all trees and shrubs to be removed by wrapping blue plastic ribbon around the trunk and obtain the Owner's Representative's approval of all trees and shrubs to be removed prior to the start of tree and shrub removal. After approval, mark all trees and shrubs to be removed with blue paint in a band completely around the base of the shrub(s) and around the trunk of the tree(s) 4.5 feet above the ground.

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C. Flag all trees and shrubs to remain with green plastic ribbon tied completely around the trunk or each tree and on a prominent branch for each shrub. Obtain the Owner's Representative's approval of all trees and shrubs to remain prior to the start of tree and shrub removal.

D. Prior to any construction activity at the site including utility work, grading, storage of materials, or installation of temporary construction facilities, install all tree protection fencing, Geotextile Fabric, silt fence, tree protection signs, Geogrid, Mulch and or Wood Chips as shown on the drawing.

### 56.3.5 SOIL MOISTURE

A. Volumetric soil moisture level, in all soils within the Tree and Plant Protection Area shall be maintained above permanent wilt point to a depth of at least 8 inches. No soil work or other activity shall be permitted within the Tree and Plant Protection Area when the volumetric soil moisture is above field capacity. The permanent wilt point and field capacity for each type of soil texture shall be defined as follows (numbers indicate percentage volumetric soil moisture).

Soil Type	Permanent wilt point v/v	Field Capacity v/v
Sand, Loamy sand, Sandy Loam	5-8%	12-18%
Loam, Sandy clay, Sandy clay loam	14-25%	27-36%
Clay loam, Silt loam	11-22%	31-36%
Silty clay, Silty clay loam	22-27%	38-41%

1. Volumetric soil moisture shall be measured with a digital, electric conductivity meter. The meter shall be the Digital Soil Moisture Meter, DSMM500 by General Specialty Tools and Instruments, or approved equivalent meter.

B. The Contractor shall confirm the soil moisture levels with a moisture meter. If the moisture is too high, suspend operations until the soil moisture drains to below field capacity.

### 56. 3.6 ROOT PRUNING

A. Prior to any excavating into the existing soil grade within 25 feet of the limit of the Tree and Plant Protection Area or trees to remain, root prune all existing trees to a depth of 24 inches below existing grade in alignments following the edges of the Tree and Plant Protection Area or as directed by the Owner's Representative. Root pruning shall be in conformance with ANSI A300 Root Management Standard (part 8) latest edition.

1. Using an air excavation tool to expose roots within 2 feet of the limit of grading.

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2. After completion of excavation, make clean cuts with a lopper, saw or pruner to sever roots so they will not be torn, ripped or damaged by the excavation, and backfill the trench immediately with existing soil, filling all voids.

### 56.3.7 INSTALLATION OF GEOGRIDS, GEOTEXTILE FABRICS, MATTING, WOOD CHIPS AND OR MULCH

A. Install geogrids, geotextile fabric, matting, wood chips and or mulch in areas and depths shown on the plans and details or as directed by the Owner's representative. In general, it is the intent of this specification to provide the following levels of protection:

1. All areas within the Tree and Plant Protection area provide a minimum of 5 inches of wood chips or mulch.
2. Areas where foot traffic or storage of lightweight materials is anticipated to be unavoidable provide a layer of Filter Fabric under the 5 inches of wood chips or mulch.
3. Areas where occasional light vehicle traffic is anticipated to be unavoidable, provide approved matting or a layer of geogrids under 8 inches of wood chips or mulch.
4. Areas where heavy vehicle traffic is unavoidable provide approved matting or a layer of geogrids under 8 -12 inches of wood chips or mulch and a layer of matting over the wood chips or mulch.

B. The Owner's Representative shall approve the appropriate level of protection.

C. In the above requirements, light vehicle is defined as a track skid steer with a ground pressure of 4 psi or lighter. A heavy vehicle is any vehicle with a tire or track pressure of greater than 4 psi. Lightweight materials are any packaged materials that can be physically moved by hand into the location. Bulk materials such as soil, or aggregate shall never be stored within the Tree and Plant Protection Area.

### 56.3.8 PROTECTION

A. Protect the Tree and Plant Protection Area at all times from compaction of the soil; damage of any kind to trunks, bark, branches, leaves and roots of all plants; and contamination of the soil, bark or leaves with construction materials, debris, silt, fuels, oils, and any chemicals substance. Notify the Owner's Representative of any spills, compaction or damage and take corrective action immediately using methods approved by the Owner's Representative.

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### 56.3.9 GENERAL REQUIREMENTS AND LIMITATIONS FOR OPERATIONS WITHIN THE TREE AND PLANT PROTECTION AREA:

A. The Contractor shall not engage in any construction activity within the Tree and Plant Protection Area without the approval of the Owner's Representative including: operating, moving or storing equipment; storing supplies or materials; locating temporary facilities including trailers or portable toilets and shall not permit employees to traverse the area to access adjacent areas of the project or use the area for lunch or any other work breaks. Permitted activity, if any, within the Tree and Plant Protection Area may be indicated on the drawings along with any required remedial activity as listed below.

B. In the event that construction activity is unavoidable within the Tree and Plant Protection Area, notify the Owner's Representative and submit a detailed written plan of action for approval. The plan shall include: a statement detailing the reason for the activity including why other areas are not suited; a description of the proposed activity; the time period for the activity, and a list of remedial actions that will reduce the impact on the Tree and Plant Protection Area from the activity. Remedial actions shall include but shall not be limited to the following:

1. In general, demolition and excavation within the drip line of trees and shrubs shall proceed with extreme care either by the use of hand tools, directional boring and or air excavation where indicated or with other low impact equipment that will not cause damage to the tree, roots or soil.
2. When encountered, exposed roots, 1 inches and larger in diameter shall be worked around in a manner that does not break the outer layer of the root surface (bark). These roots shall be covered in Wood Chips and shall be maintained above permanent wilt point at all times. Roots one inch and larger in diameter shall not be cut without the approval of the Owner's Representative. Excavation shall be tunneled under these roots without cutting them. In the areas where roots are encountered, work shall be performed and scheduled to close excavations as quickly as possible over exposed roots.
3. Tree branches that interfere with the construction may be tied back or pruned to clear only to the point necessary to complete the work. Other branches shall only be removed when specifically indicated by the Owner's Representative. Tying back or trimming of all branches and the cutting of roots shall be in accordance with accepted arboricultural practices (ANSI A300, parts 1 and 8) and be performed by or direct under supervision of an ISA Certified Arborist.
4. Matting: Install temporary matting over the Wood Chips or Mulch to the extent indicated. Do not permit foot traffic, scaffolding or the storage of materials within the Tree and Plant Protection Area to occur off of the temporary matting.
5. Trunk Protection: Protect the trunk of each tree to remain by covering it with a ring of 8-foot-long 2-inch x 6 -inch planks loosely banded onto the tree with 3 steel bands.

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Staple the bands to the planks as necessary to hold them securely in place. Trunk protection may be kept in place no longer than 12 months. If construction requires work near a particular tree to continue longer than 12 months, the steel bands shall be inspected every six months and loosened if they are found to have become tight.

6. Air Excavation Tool: If excavation for footings or utilities is required within the Tree and Plant Protection Area, air excavation tool techniques shall be used where practical or as designed on the drawings.

- a. Remove the Wood Chips from an area approximately 18 inches beyond the limits of the hole or trench to be excavated. Cover the Wood Chips for a distance of not less than 15 feet around the limit of the excavation area with Filter Fabric, tarp plastic sheeting to protect the Wood Chips from silt. Mound the Wood Chips so that the plastic slopes towards the excavation.

- b. Using a sprinkler or soaker hose, apply water slowly to the area of the excavation for a period of at least 4 hours, approximately 12 hours prior to the work so that the ground water level is at or near field capacity at the beginning of the work. For excavations that go beyond the damp soil, rewet the soil as necessary to keep soil moisture near field capacity.

- c. Using an air excavation tool specifically designed and manufactured for the intended purpose, and at pressures recommended by the manufacturer of the equipment, fracture the existing soil to the shape and the depths required. Work at rates and using techniques that do not harm tree roots. Air pressure shall be a maximum of 90-100 psi.

- i. The air excavation tool shall be either the "Air-Spade" as manufactured by Division of Guardair Corporation 47 Veterans Drive Chicopee, MA 01022 (800)-482-7324, or Supersonic Air Knife as manufactured by Easy Use Air Tools, Inc. Allison Park, Pa (866) 328-5723 or approved equal.

- d. Using a commercial, high-powered vacuum truck if required, remove the soil from the excavation produced by the Air Knife excavation. The vacuum truck should generally operate simultaneously with the hose operator, such that the soil produced is picked up from the excavation hole, and the exposed roots can be observed and not damaged by the ongoing operation. Do not drive the vacuum truck into the Tree and Plant Protection Area unless the area is protected from compaction as approved in advance by the Owner's Representative.

- e. Remove all excavated soil and excavated wood chips, and contaminated soil at the end of the excavation.

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- f. Schedule the work so that foundations or utility work is completed immediately after the excavation. Do not let the roots dry out. Mist the roots several times during the day. If the excavated area must remain open overnight, mist the roots and cover the excavation with black plastic.
- g. Dispose of all soil in a manner that meets local laws and regulations.
- h. Restore soil within the trench as soon as the work is completed. Utilize soil of similar texture to the removed soil and lightly compact with hand tools. Leave soil mounded over the trench to a height of approximately 10% of the trench depth to account for settlement.
- i. Restore any geogrids, filter fabric, wood chips or mulch and or matting that was required for the area.

### **56.3.10 GRADING AND FILLING AROUND TREES**

- A. Maintain existing grade within drip line of trees. Any variance to this will be executed only after consultation and recommendation from the Campus Arborist.
- B. Where existing grade is above new finish grade shown around trees, carefully hand excavate within drip line to new grade. Cut exposed roots approximately 3" below elevation of new finish grade. Engage an ISA certified Arborist to recommend procedures to compensate for loss of roots and to provide initial services such as pruning of branches and stimulation of root growth. Provide subsequent maintenance during contract period as recommended by the arborist. Provide Grounds Superintendent with typed instructions for recommended long range maintenance procedures to be followed after completion of construction operations.
- C. For minor fills where the existing grade is 4" or less below elevation of finish grade shown, use a topsoil type fill material rich in organic matter and loamy in texture. Place in single layers not more than two inches at a time and do not compact.
- D. Fills greater than four inches shall only be attempted after consultation with the Campus Arborist. Detailed shop drawings of proposed work shall be submitted and approved by the Campus Arborist prior to any work. A progress schedule shall be established to monitor the work.

### **56.3.11 TREE REMOVAL:**

- A. Tree removals shall be performed by ISA Certified Arborists and companies shall have appropriate licenses and insurance for tree removal operations.
- B. Remove all trees indicated by the drawings and specifications, as requiring removal, in a manner that will not damage adjacent trees or structures or compacts the soil.



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- C. Remove trees that are adjacent to trees or structures to remain, in sections, to limit the opportunity of damage to adjacent crowns, trunks, ground plane elements and structures.
- D. Do not drop trees with a single cut unless the tree will fall in an area not included in the Tree and Plant Protection Area and there are no underground utilities that may be damaged. No tree to be removed within 50 feet of the Tree and Plant Protection Area shall be pushed over or up-rooted using a piece of grading equipment.
- E. Protect adjacent paving, soil, trees, shrubs, ground cover plantings and understory plants to remain from damage during all tree removal operations, and from construction operations. Protection shall include the root system, trunk, limbs, and crown from breakage or scarring, and the soil from compaction.
- F. Remove stumps and immediate root plate from existing trees to be removed. Grind trunk bases and large buttress roots to a depth of the largest buttress root or at least 18 inches below the top most roots whichever is less and over the area of three times the diameter of the trunk (DBH).
  - 1. For trees where the stump will fall under new paved areas, grind roots to a total depth of 18 inches below the existing grade. If the sides of the stump hole still have greater than approximately 20% wood visible, continue grinding operation deeper and or wider until the resulting hole has less than 20% wood. Remove all wood chips produced by the grinding operation and back fill in 8 inch layers with controlled fill of a quality acceptable to the site engineer for fill material under structures, compacted to 95% of the maximum dry density standard proctor. The Owner's Representative shall approve each hole at the end of the grinding operation.
  - 2. In areas where the tree location is to be a planting bed or lawn, remove all woodchips and backfill stump holes with planting soil as defined in Specification Section Planting Soil, in maximum of 12 inch layers and compact to 80-85% of the maximum dry density standard proctor.
- G. Wood salvaged for up cycling will be identified by the Owner's Representative.
  - 1. Sections of salvaged wood shall have a clean, flat cut across both ends.
  - 2. Ends of wood sections shall be sealed with AnchorSeal after being cut and before being loaded. Branch cuts on the length of wood sections shall be sealed with AnchorSeal.
  - 3. Care shall be taken when loading wood and logs not to damage the bark connection to the wood.
  - 4. Wood and logs shall be stored so there is no contact with the ground. Wood and logs should be elevated from the ground by placing on cross beams of wood, concrete or steel. Wood and logs may also be stored on a gravel, concrete or asphalt pad.

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### **56.3.12 PRUNING:**

- A. Within six months of the estimated date of substantial completion, prune all dead or hazardous branches larger than 2 inch in diameter from all trees to remain.
- B. Implement all pruning recommendations found in the Arborist Report.
- C. Prune any low, hanging branches and vines from existing trees and shrubs that overhang walks, streets and drives, or parking areas as follows:
  - 1. Walks - within 7 feet vertically of the proposed walk elevation.
  - 2. Parking areas - within 10 feet vertically of the proposed parking surface elevation.
  - 3. Streets and drives - within 12 feet vertically of the proposed driving surface elevation.
- D. All pruning shall be done in accordance with ANSI A300 (part 1), ISA BMP Tree Pruning (latest edition, and the "Structural Pruning: A Guide for the Green Industry", Edward Gilman, Brian Kempf, Nelda Matheny and Jim Clark, 2013 Urban Tree Foundation, Visalia CA.
- E. Perform other pruning task as indicated on the drawings or requested by the Owner's Representative.
- F. Where tree specific disease vectors require, sterilize all pruning tools between the work in individual trees.

### **56.3.13 TREE (Plant) GROWTH REGULATOR APPLICATION (TGR/PGR)**

- A. At the start of, or prior to, the construction contract period, treat all trees indicated on the Plan with Tree Growth Regulator at the recommended rates, time of year and methods indicated by the product distributor.

### **56.3.14 WATERING**

- A. The Contractor shall be fully responsible to ensure that adequate water is provided to all plants to be preserved during the entire construction period. Adequate water is defined to be maintaining soil moisture above the permanent wilt point to a depth of 8 inches or greater.
- B. The Contractor shall adjust the automatic irrigation system, if available, and apply additional water, using hoses or water tanks as required.
- C. Periodically test the moisture content in the soil within the root zone to determine the water content.

### **56.3.15 TURF AND WEED MAINTENANCE**

- A. Turf areas within the Tree and Plant Protection area shall be maintained in a manner that is consistent with University turf maintenance standards. This includes mowing, weed eating, edging, fertilization, weed control and leaf collection.

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B. During the construction period, control any plants that seed in and around the fenced Tree and Plant Protection area at least three times a year.

1. All plants that are not shown on the planting plan or on the Tree and Plant Protection Plan to remain shall be considered as weeds.

C. At the end of the construction period provide one final mowing and weeding of the Tree and Plant Protection Area.

### **56.3.16 INSECT AND DISEASE CONTROL**

A. Monitor all plants to remain for disease and insect infestations during the entire construction period. Provide all disease and insect control required to keep the plants in a healthy state using the principles of Integrated Plant Management (IPM). All pesticides shall be applied by a certified pesticide applicator.

### **56.3.17 CLEAN-UP**

A. During tree and plant protection work, keep the site free of trash, pavements reasonably clean and work area in an orderly condition at the end of each day. Remove trash and debris in containers from the site no less than once a week.

1. Immediately clean up any spilled or tracked soil, fuel, oil, trash or debris deposited by the Contractor from all surfaces within the project or on public right of ways and neighboring property.

B. Once tree protection work is complete, wash all soil from pavements and other structures. Ensure that Mulch is confined to planting beds.

C. Make all repairs to grades, ruts, and damage to the work or other work at the site.

D. Remove and dispose of all excess Mulch, Wood Chips, packaging, and other material brought to the site by the Contractor.

### **56.3.18 REMOVAL OF FENCING AND OTHER TREE AND PLANT PROTECTION**

A. At the end of the construction period or when requested by the Owner's Representative remove all fencing, Wood Chips or Mulch, Geogrids and Geotextile Fabric, trunk protection and or any other Tree and Plant Protection material.

END OF SECTION