**007200B01 - GENERAL CONDITIONS**
**OF THE CONTRACT**
**FOR CONSTRUCTION BY A CONSTRUCTION MANAGER AT RISK**
**University of Kentucky Capital Construction Division**

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These General Conditions are binding upon the Construction Manager and all Subcontractors 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 Subcontractor, 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 Subcontractors 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 Subcontractors. However, assignment of such responsibilities or actions to one or more Subcontractors 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 Subcontractor, 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 SUBCONTRACTOR - The term "Subcontractor" 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 that 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 of 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 Subcontractors 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® 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 Subcontractors 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 Subcontractors 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 Subcontractors 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 Subcontractor 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 Subcontractors. 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 Subcontractor 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 Subcontractor 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 Subcontractors 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 Subcontractor 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 Subcontractors. 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, Subcontractor 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 contactor 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 (permitee 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 permitee 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 Subcontractors 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 Subcontractors 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 Subcontractor 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 Subcontractors 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 Subcontractor 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 Subcontractors will be under the requirements of the OSHA Hazard Communication Standard (29) CFR 1910.1200. The Construction Manager and Subcontractors 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 Subcontractors 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 Subcontractors 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 Subcontractor 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 Subcontractors shall provide the Owner with a list of any hazardous materials that will be used on the job site. The Construction Manager and Subcontractors 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 Subcontractors 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 Subcontractor 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 Subcontractors 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 Subcontractor 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 Contracts. 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 Subcontractor(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 Subcontractor(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, tariffs that are imposed after the execution of this agreement, 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 Except for the reasons identified in Article 21.2.2, 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. | Apr. | May | Jun. | Jul. | Aug. | Sep. | 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 Subcontractor(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 Subcontractors 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 Subcontractors 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 Subcontractors. 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 For modular and prefabricated materials and structures the owner will pay 90% of the invoiced value less retainage for materials or systems stored offsite providing the above conditions are met. The Owner will pay 80% of the invoiced value less retainage for all other 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 Subcontractors 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 Subcontractors; 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 Subcontractor, 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 Subcontractor and material supplier upon receipt of payment from the Owner the amount to which said Subcontractor and supplier is entitled, reflecting the percentage actually retained from payments to the Construction Manager on account of such Subcontractor's work. The Construction Manager shall, by an appropriate Agreement with each Subcontractor and material supplier, require each Subcontractor and supplier to make payments to their Subcontractors, vendors and suppliers in similar manner.

The Consultant may, on request, furnish to any Subcontractor 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', Subcontractors' 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, Subcontractors, 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 Subcontractor 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 Subcontractor 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 Subcontractor, 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 Subcontractor 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 Subcontractor 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 Subcontractor to provide proof of this insurance for the Subcontractors' employees, unless such employees are covered by insurance provided by the Construction Manager.

35.4. The Construction Manager shall either require each Subcontractor to procure and maintain insurance of the type and limits stated during the terms of the Contract, or insure the activities of such Subcontractors 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 Subcontractors 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 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.

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, Subcontractors 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, Subcontractors, 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 Subcontractor 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 Subcontractor 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 Subcontractors. 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/SUBCONTRACTOR 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 Subcontractor(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 Subcontractors. 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 Subcontractor 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 five hundred thousand dollars ($500,000.00) 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 Subcontractor utilizes the services of fewer than eight (8) employees during the course of the Contract;

55.1.3 The Construction Manager or Subcontractor employs only family members or relatives;

55.1.4 The Construction Manager or Subcontractor 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.