

Standard Form of Agreement Between Owner and Construction Manager

AGREEMENT

made as of the Eighteenth day of December, In the Year of Two Thousand and Eight.

BETWEEN the Owner: Rochester Institute of Technology
 120 Lomb Memorial Drive
 Rochester, New York 14623-5608

and the Construction Manager:

FOR: RIT Project

The Architect is:

The Owner and Construction Manager agree as set forth below.

TABLE OF CONTENTS

ARTICLE 1 GENERAL PROVISIONS	1
1.1 RELATIONSHIP OF PARTIES	1
1.2 EXTENT OF THIS AGREEMENT	1
ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES	1
2.1 PRECONSTRUCTION PHASE	1
2.2 GUARANTEED MAXIMUM PRICE	2
2.3 CONSTRUCTION PHASE.....	3
2.4 PROFESSIONAL SERVICES	5
2.5 UNSAFE MATERIALS.....	5
ARTICLE 3 OWNER'S RESPONSIBILITIES	5
3.1 INFORMATION AND SERVICES.....	5
3.2 OWNER'S DESIGNATED REPRESENTATIVE.....	5
3.3 ARCHITECT.....	6
3.4 LEGAL REQUIREMENTS	6
ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES	6
4.1 COMPENSATION.....	6
4.2 PAYMENTS.....	6
ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES	6
5.1 COMPENSATION.....	6
5.2 GUARANTEED MAXIMUM PRICE	6
5.3 CHANGES IN THE WORK	6
ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE	6
6.1 COSTS TO BE REIMBURSED.....	6
6.2 COSTS NOT TO BE REIMBURSED	9
6.3 DISCOUNTS, REBATES AND REFUNDS	10
6.4 ACCOUNTING RECORDS	10
ARTICLE 7 CONSTRUCTION PHASE.....	11
7.1 PROGRESS PAYMENTS	11
7.2 FINAL PAYMENT	12
ARTICLE 8 INSURANCE AND BONDS	12
8.1 REFER TO GENERAL CONDITIONS ANNEXED HERETO.....	12
ARTICLE 9 MISCELLANEOUS PROVISIONS.....	12
9.1 DISPUTE RESOLUTION FOR THE PRECONSTRUCTION PHASE.....	12
9.2 OTHER PROVISIONS	12
ARTICLE 10 TERMINATION OR SUSPENSION	13
10.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE.....	13
10.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE.....	13
10.3 SUSPENSION.....	13
ARTICLE 11 OTHER CONDITIONS AND SERVICES	13
Attachments	AMENDMENT NO. 1 to Agreement Between Owner and Construction Manager

ARTICLE 1
GENERAL PROVISIONS

1.1 RELATIONSHIP OF PARTIES

The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Architect in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager and other persons or entities employed by the Owner for the Project.

1.2 EXTENT OF THIS AGREEMENT

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

1.2.2 Rochester Institute of Technology's Request for Proposal (Exhibit A) dated _____, The Construction Manager's original proposal (Exhibit B) dated _____, Rochester Institute of Technology's General Conditions of the Contract for Construction (Exhibit C), and Facilities Management Services Procurement Policy (Exhibit D) shall be attached to and considered part of this Agreement. Should there be any inconsistencies in this Agreement and these documents, the Owner shall be entitled to the level of service or benefit the Owner, in its sole judgment, considers better or higher or more cost effective.

ARTICLE 2
CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the services described in this Article. The services to be provided under Paragraphs 2.1 and 2.2 constitute the Preconstruction Phase services. If the Owner and Construction Manager agree, after consultation with the Architect, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases shall proceed concurrently.

2.1 PRECONSTRUCTION PHASE

2.1.1 PRELIMINARY EVALUATION

The Construction Manager shall provide a preliminary evaluation of the Owner's program and Project budget requirements, each in terms of the other.

2.1.2 CONSULTATION

The Construction Manager shall jointly schedule and attend regular meetings with the Owner and Architect. The Construction Manager shall consult with the Owner and Architect regarding site use and improvements, and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors

related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies.

2.1.3 PRELIMINARY PROJECT SCHEDULE

When Project requirements described in Subparagraph 3.1.1 have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Architect's review and the Owner's approval. The Construction Manager shall obtain the Architect's approval of the portion of the preliminary Project schedule relating to the performance of the Architect's services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Architect and Construction Manager. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long lead time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

2.1.4 PHASED CONSTRUCTION

The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work if such phased construction is appropriate for the Project, taking into consideration such factors as economics, time of performance, availability of labor and materials, and provisions for temporary facilities.

2.1.5 PRELIMINARY COST ESTIMATES

2.1.5.1 When the Owner has sufficiently identified the Project requirements and the Architect has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

2.1.5.2 When Schematic Design Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare for the review of the Architect and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

2.1.5.3 When Design Development Documents have been prepared by the Architect and approved by the Owner. The Construction Manager shall prepare a detailed estimate with supporting data for review by the Architect and approval by the Owner. During the preparation of the Construction Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

2.1.5.4 If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

2.1.6 SUBCONTRACTORS AND SUPPLIERS

The Construction Manager shall seek to develop subcontractor interest in the Project and prior to proposing a Guaranteed Maximum Price shall furnish to the Owner and Architect for their approval a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner know of any objection to such subcontractor or

supplier or if they wish to add to the list with the CM's approval. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier.

2.1.6.1 The Construction Manager shall be obligated to compile bid lists of sufficient size to satisfy the Owner's Procurement Policy and to add any subcontractors to these bid lists that the Owner may suggest. Additionally, the Construction Manager shall be obligated to conduct all bid openings in the presence of the Owner's representative and to not award any contracts without the prior approval of the Owner.

2.1.7 LONG LEAD TIME ITEMS

The Construction Manager shall recommend to the Owner and Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead time items.

2.1.8 EXTENT OF RESPONSIBILITY

The Construction Manager does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants. It is not the Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, the Construction Manager shall promptly notify the Architect and Owner in writing.

2.1.8.1 The Construction Manager's Services and any Additional Services authorized hereunder shall be provided in a manner and quality consistent with the standard of skill, care and diligence normally practiced by firms in performing services of a similar nature (the "Standard of Care"). Consistent with the Standard of Care, such services shall comply with applicable laws, regulations and rules, including (with respect to the performance of Construction Manager's Services only) local standards and codes applicable to the municipality or local government having jurisdiction over the location in which the Project is being performed, and provided that, with respect to code compliance, the Construction Manager shall not have code compliance responsibility for in-place Work that conforms to the requirements of the Contract Documents.

2.1.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

2.2 GUARANTEED MAXIMUM PRICE

2.2.1 When the Drawings and Specifications are sufficiently complete, the Construction manager shall propose a Guaranteed Maximum Price, which shall be the sum of the estimated Cost of the Work and the Construction Manager's Fee.

2.2.2 As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Construction Manager shall provide in the Guaranteed Maximum Price for further development of the Drawings and Specifications by the Architect that is consistent with the contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

2.2.3 The estimated Cost of the Work shall include a contingency, a sum established to cover costs arising under Subparagraph 2.2.2 and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order. Any items proposed to be charged to the contingency by the Construction Manager shall be subject to the Owner's prior approval.

2.2.3.1 The Construction Manager in conjunction with Architect shall define the scope of testing prior to assembling the estimated Cost of the Work and will be responsible for construction phase testing with the scope of testing to be reviewed and approved by the Owner and test results submitted to the Owner as well as to the Construction Manager.

2.2.4 BASIS OF GUARANTEED MAXIMUM PRICE

The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:

.1 A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.

.2 A list of allowances and a statement of their basis.

.3 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.

.4 The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the fee that comprise the Guaranteed Maximum Price.

.5 The Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.

2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the Owner or Architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis or both.

2.2.6 Unless the Owner accepts the Guaranteed Maximum Price proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, The Guaranteed Maximum Price proposal shall not be effective without written acceptance by the Construction Manager.

2.2.6.1 Upon submission of the proposed GMP, the Owner shall accept, reject or renegotiate (as provided in 2.2.6.2, below) the proposed GMP submitted by the Construction Manager, within thirty (30) days after submission of the proposed GMP, during which period the proposed GMP may not be withdrawn or increased.

Should the Owner not accept or renegotiate the GMP submitted within such 30-day period, this Agreement shall be terminated.

2.2.6.2 In lieu of (a) accepting the GMP or (b) rejecting the GMP and terminating this Agreement, Owner may, at its sole option,

(a) issue a written authorization of an increase in the proposed GMP in excess of the Construction Budget or,

(b) require the Construction Manager, as part of its services under this Agreement included in its lump sum fee under Article 4.1.1, in consultation with the Architect and Owner, to revise the Project Scope or quality as required to reduce the GMP.

2.2.6.3 The GMP shall contain a combined design, bidding and construction contingency of \$ _____, which shall be maintained until such time as the Owner directs a reduction and release of some or all of such contingency. To the extent approved by Owner in advance, and upon the recommendation of the Architect, the Owner may direct the Construction Manager to issue certain bid packages, order certain materials, or perform work prior to acceptance of the GMP by the Owner. Such work, if approved in advance by the Owner, shall then be incorporated into the GMP at the time of fixing of the GMP. Upon the receipt and review of bids, and approval of all bids by the Owner, and provided that the aggregate, actual, construction costs are below the GMP, the difference between the GMP and the Subcontractor buyout amounts, along with any other savings realized based on such aggregate, actual construction costs shall be made available to the Owner at a point in the construction when mutually agreed upon risk reduction milestones are achieved. Upon acceptance of the GMP by the Owner, a copy of Appendix 1 shall be incorporated by reference into and shall become a part of this Agreement. The Owner shall participate fully in the review of bids and in any negotiations which take place with the proposed Subcontractors.

2.2.7 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

2.2.7.1 Upon acceptance by the Owner, the Guaranteed Maximum Price shall be subject to changes only for changes in the Project Scope (as defined in Articles 2.2.7.2 and 2.2.7.3, below). The Guaranteed Maximum Price shall not be subject to change due (a) to bids by Subcontractors that are higher than expected by the Construction Manager or (b) to change orders proposed by Subcontractors, unless such change orders are approved by Owner as to Scope Changes.

2.2.7.2 For purposes of this Section, Project Scope shall be defined as, for purposes of the GMP, the Project described in the Contract Documents.

2.2.7.3 After prior consultation with the Construction Manager and the Architect, the Owner may require or approve fundamental or material changes to the Project Scope (as defined in Section 2.2.7.2, above) ("Scope Changes"). Scope Changes may, but will not necessarily, increase or decrease the Guaranteed Maximum Price established in Article 2.2.6. Such Scope Changes may be made at any time without invalidating this Agreement and without notice to the Construction Manager's sureties, and the Construction Manager shall implement such Scope Changes. All Owner approvals of Scope Changes must be in writing. The Owner shall be permitted to request, and the Construction Manager shall implement, Scope Changes aggregating up to and including \$ _____ without increasing or decreasing the Construction Manager's Fee, which are hereafter referred to as "Below Threshold Scope Changes." The Construction

Manager's Fee shall be based on the Construction Manager's GMP prior to the addition of the Below Threshold Scope Changes, subject to adjustment as more fully provided in Article 2.2.8.2. The Owner shall carry a contingency equal to the amount of the Below Threshold Scope Changes.

2.2.7.4 In the event that a Scope Change is estimated by Construction Manager to increase or decrease the Guaranteed Maximum Price a separate Change Order will be prepared by the Construction Manager for review and approval by the Owner reflecting the effect of such Scope Change on the Guaranteed Maximum Price. No Scope Change shall increase the Guaranteed Maximum Price unless a Change Order is approved by the Owner in writing.

2.2.7.5 Upon acceptance of the Guaranteed Maximum Price by Owner, Construction Manager shall be responsible for, and shall bear, any excess in the Cost of the Work above the Guaranteed Maximum Price.

2.2.8 Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in Amendment No. 1. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents and the date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

2.2.8.1 The GMP shall be subject to change only (i) for changes in the scope of the Project specifically authorized in advance in writing by the Owner and, where required under any financing document to which the Owner may be a party, the prior written consent of its lender or (ii) for causes outside of the Construction Manager's reasonable control as defined in the General Conditions. The GMP shall not be subject to change due to higher equipment or material costs, or higher bids by subcontractors, than expected by the Construction Manager. The Construction Manager shall be responsible for, and shall bear, any excess in the Cost of the Work above the GMP.

2.2.8.2 The Owner may, at any time, by written order, make changes to this Agreement based upon Scope Changes as defined in Article 2.2.8.1. In the event of any such Scope Changes, the Construction Manager's fee shall be increased by an amount equal to _____ percent (____%), of the effect of each Scope Change upon the GMP, provided, however, that there shall be no adjustment unless the aggregate of approved Scope Changes exceeds \$ _____. Any claim of the Construction Manager for adjustment of its fee as a result of a Scope Change must be asserted in writing within 30 days from the date of receipt by the Construction Manager of the notification of Scope Change unless the Owner grants in writing a further period of time before the date of final payment under this Contract. No services for which an additional cost or fee will be charged by the Construction Manager shall be furnished without prior written authorization of the Owner. Requests for Extensions of Time shall not be considered Scope Changes for purposes of adjustment of the Construction Manager's fee.

2.2.9 The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary) to reflect the agreed upon assumptions and clarifications contained in Amendment No. 1. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Architect and Construction Manager. The Construction Manager shall promptly notify the Architect and Owner if such revised Drawings and Specifications are inconsistent with the agreed upon assumptions and clarifications.

2.2.10 The Guaranteed Maximum Price shall include in the Cost of the Work only those applicable taxes which are enacted at the time the Guaranteed Maximum Price is established.

2.3 CONSTRUCTION PHASE

2.3.1 GENERAL

.1 The Construction Phase shall commence on the earlier of:

- (1) the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, or
- (2) the Owner's first authorization to the Construction Manager to:
 - (a) award a subcontract, or
 - (b) undertake construction Work with the Construction Manager's own forces, or
 - (c) Owner's directive to issue a purchase order for materials or equipment required for the Work.

2.3.2 ADMINISTRATION

.1 The Construction Manager shall not perform any work with its own personnel without obtaining the Owner's prior approval. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed. All bids shall be opened in the presence of the Owner. The Owner shall then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Architect, which bids will be accepted.

The general function of the Construction Manager (during the pre-construction and bidding periods) is to serve as the Owner's representative with responsibility directly to the Owner and as such should be free of any conflicts of interest. However, subject to the approval of Owner, if the low bid for any bid package exceeds the Construction Manager's budget line item price for such package, or if less than three bids are received in response to the advertisement of any bid package, one of the following procedures shall be followed:

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

The Construction Manager may perform work on the Project under the provisions of Article 2.3.2.1 above, and if approved by the Owner's Representative to participate in specific project elements as a competitive subcontractor, provided however, that there shall be no reduction of the scope or quality of the Project for any bid package in order to accomplish the Project within the Contract Sum. The CM shall be obligated to perform such work itself if necessary to complete the Project within the GMP.

If the Construction Manager performs any Work which would normally be performed by a Contractor, it shall be pursuant to a separate contract for such Work, and with respect to such Work the Construction Manager shall be deemed to be a Contractor, and all references to the Contractor herein and in the General Conditions of the Contract for Construction shall also mean the Construction Manager as a contractor under that separate contract.

The Construction Manager shall include as a part of all subcontractor bid packages or negotiations a copy of the General Conditions of the Contract for Construction, as well as such modifications, additions and Supplementary General Conditions as shall be agreed upon by the Owner and the Construction Manager for use on the Project. Contractors shall be required to make the same a part of all subcontracts for the Project. Other elements of contracts on the Project, including price, time of completion, insurance, incentive compensation and the like shall be discussed with the Owner, and all contracts shall have the Owner's input into their negotiation.

.2 If the Guaranteed Maximum Price has been established and a specific bidder among those whose bids are delivered by the Construction Manager to the Owner and Architect (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a change in the Work be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

.3 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Subparagraphs 7.1.8 and 7.1.9 and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

.4 The Construction Manager shall schedule and conduct meetings at which the Owner, Architect, Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

.5 Promptly after the Owner's acceptance of the Guaranteed Maximum Price proposal, the Construction Manager shall prepare a schedule in accordance with Paragraph 4.10 of the General Conditions including the Owner's occupancy requirements.

Consistent with the Project Construction Schedule annexed as Exhibit H, the Construction Manager shall update the Project Construction Schedule incorporating the activities of all subcontractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery of products requiring long lead time procurement. Such updates shall include the Owner's occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall update and reissue the Project Construction Schedule as required to show current conditions and revisions required by actual experience and ensure acceptance by subcontractors of revised schedules.

.6 The Construction Manager shall provide monthly cumulative written reports to the Owner and Architect on the progress of the entire Work, showing actual costs for activities in progress and estimates for uncompleted tasks and shall identify variances between actual and budgeted or estimated costs, and the foreseeable effect on the GMP, and shall advise the Owner and the Architect whenever projected costs exceed budgets or estimates. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Architect.

.7 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress

and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect at regular intervals.

.8 The Construction Manager shall monitor the performance of the Subcontractors, and notify the Owner of any discrepancies of which the Construction Manager has knowledge. If a Subcontractor fails to take immediate corrective action following notice by the Construction Manager or the Owner of any unsafe condition or deficiency in the Work, the Construction Manager, at the Subcontractor's expense, shall take all necessary corrective action as agent for the Owner, and enforce the Owner's rights against the Subcontractor.

.9 The Construction Manager shall provide administrative, management and related services as required to coordinate the Work of the subcontractors with each other and with the activities and responsibilities of the Construction Manager, the Owner and the Architect to complete the Project in accordance with the Owner's objectives for cost, time and quality. The Construction Manager shall provide sufficient organization, personnel and management to carry out the requirements of this Agreement.

.10 The Construction Manager shall use best efforts to achieve satisfactory performance from each of the subcontractors.

.11 The Construction Manager shall develop and administer an effective labor relations program for the Project that preserves the Owner's ability to achieve cost-effective, on-time construction through the use of both union and non-union subcontractors while avoiding labor disputes during construction. The Construction Manager shall also ensure that its employers and the employers of its subcontractors are legally authorized to work in the United States. The Construction Manager shall manage subcontractors to mitigate to the greatest extent possible jurisdictional disputes among unions and among union and non-union subcontractors. Should such disputes arise, the Construction Manager will use its best efforts to peacefully and efficiently resolve such disputes without adverse impact on either the Project Schedule or the GMP.

2.4 PROFESSIONAL SERVICES

The Construction Manager shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Construction Manager has specifically, agreed in writing to provide such services. In such event, the Construction Manager shall cause such services to be performed by appropriately licensed professionals.

2.5 UNSAFE MATERIALS

If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered but not created on the site by the Construction Manager, the Construction Manager shall, upon recognizing the condition, immediately stop work in the affected area and report the condition to the Owner and Architect in writing. The Owner shall be responsible for obtaining the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Construction Manager and, in the event such material or Substance is found to be present, to verify that it has been rendered harmless unless otherwise required by the Contract Documents. The Owner shall furnish in writing to the Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance.

ARTICLE 3

OWNER'S RESPONSIBILITIES

3.1 INFORMATION AND SERVICES

3.1.1 The Owner shall provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems and site requirements.

3.1.2 The Owner upon written request from the Construction Manager shall furnish evidence of Project financing prior to the start of the Construction Phase.

3.1.3 The Owner shall establish and update an overall budget for the Project based on consultation with the Construction Manager and Architect which shall include contingencies for changes in the Work and other costs which are the responsibility of the Owner.

3.1.4 STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS AND REPORTS

In the Preconstruction Phase, the Owner shall furnish the following with reasonable promptness and at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests described in Clauses 3.1.4.1. through 3.1.4.4, except to the extent that the Construction Manager knows, or in the exercise of due diligence, should know, of any inaccuracy:

3.1.4.1 Reports, surveys, drawings and tests concerning the conditions of the site which are required by law.

.1 Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights of way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a project benchmark.

.2 The services of geotechnical engineers when such services are requested by the Construction Manager. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

.3 Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

.4 The services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Construction Manager.

3.2 OWNER'S DESIGNATED REPRESENTATIVE

The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. This representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets and changes in the Work, and shall render such decisions

promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager.

3.3 ARCHITECT

The Owner shall retain an Architect to provide the Basic Services, including normal structural, mechanical and electrical engineering services, other than cost estimating services, described in the Owner's Architect Agreement. The Owner shall authorize and cause the Architect to provide those Additional Services described in this Agreement requested by the Construction Manager which must necessarily be provided by the Architect for the Preconstruction and Construction Phases of the Work. Such services shall be provided in accordance with time schedules agreed to by the Owner, Architect and Construction Manager.

3.4 LEGAL REQUIREMENTS

The Owner shall determine and advise the Architect and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal services as are necessary to provide the information and services required under Paragraph 3.1.

ARTICLE 4

COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

The Owner shall compensate and make payments to the Construction Manager for Preconstruction Phase services as follows:

4.1 COMPENSATION

4.1.1 For the services described in Paragraphs 2.1 and 2.2 the Construction Manager's compensation shall be calculated as follows:

4.1.2 Compensation for Preconstruction Phase services shall be equitably adjusted if such services extend beyond _____ months from the date of this Agreement or if the originally contemplated scope of services is significantly modified.

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

4.2 PAYMENTS

4.2.1 Payments shall be made monthly following presentation of the Construction Manager's invoice and, where applicable, shall be in proportion to services performed.

4.2.2 Payments are due and payable not later than forty five (45) days from the date the Construction Manager's invoice is received by the Owner. Amounts unpaid after the date on which payment is due shall bear interest at the Prime Rate as published in The Wall Street Journal.

ARTICLE 5

COMPENSATION FOR CONSTRUCTION PHASE SERVICES

The Owner shall compensate the Construction Manager for Construction Phase services as follows:

5.1 COMPENSATION

5.1.1 For the Construction Manager's performance of the Work as described in Paragraph 2.3, the Owner shall pay the Construction Manager _____% of the final contract sum of all separate construction Contracts administered by the Construction Manager and any work self performed as permitted by Paragraph 2.3.2.1. This fee shall include an allocation for all required insurances and bonds but shall not apply to items listed as Reimbursables in Article 6.

5.2 GUARANTEED MAXIMUM PRICE

5.2.1 The sum of the Cost of the Work and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount provided in Amendment No. 1, subject to additions and deductions by changes in the Work as provided in the Contract Documents, Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

5.2.2 Any change order that purports to change the GMP shall so indicate. The Construction Manager may not claim an increase in the GMP unless a change order explicitly raising the GMP and clearly delineating the proposed change to the GMP has been approved and executed by the Owner, and, if required, its lender. Any other change orders executed or provided in the Contract Documents shall not affect the GMP, regardless of whether they have been approved by the Owner.

5.3 CHANGES IN THE WORK

5.3.1 Adjustments to the Guaranteed Maximum Price and adjustments to subcontracts on account of changes in the Work subsequent to the execution of Amendment No. 1 may be determined by any of the methods listed in Subparagraph 12.1.3 of the General Conditions.

5.3.2 In calculating adjustments to the Contract, the terms "cost" and "costs" shall mean the Cost of the Work as defined in Article 6 of this Agreement and the terms "and a reasonable allowance for overhead and profit" shall mean the Construction Manager's Fee as defined in Subparagraph 5.1.1 of this Agreement.

5.3.3 If no specific provision is made in Subparagraph 5.1.1 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Subparagraph 5.1.1 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the basis of the fee established for the original Work.

ARTICLE 6

COST OF THE WORK FOR CONSTRUCTION PHASE

6.1 COSTS TO BE REIMBURSED

6.1.1 Costs to be reimbursed must be agreed to in advance by the Owner.

The term "Cost of the Work" shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such COSTS shall be at rates not higher than those customarily paid at the place of the Project

except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 6.

6.1.2 LABOR COSTS

.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's approval, at off-site workshops.

.2 Cost to be reimbursed will be the actual wages paid to the individuals performing the work.

.3 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's approval. No Construction Manager personnel stationed at the Construction Manager's home or branch offices shall be charged to the *Cost of the Work*. Non-field office based Construction Manager management and support personnel are expected to provide service and advice from time to time throughout the job and their time devoted to project matters is considered to be covered by the Construction Manager's Fee.

.4 Wages and salaries of the Construction Manager's supervisory or administrative personnel who would normally be stationed at the field office in accordance with Subparagraph 6.1.2.3 but who become engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

Employee bonuses will not be considered reimbursable labor or labor burden costs. Bonuses paid to the Construction Manager's employees will be considered a non-reimbursable cost considered to be covered by the Construction Manager's Fee.

.5 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the *Cost of the Work* under Subparagraphs 6.1.2.1 through 6.1.2.3.

.6 When computing actual costs chargeable to the *Cost of the Work* for payroll taxes, the Construction Manager shall give proper consideration to the annual limitations of the wages subject to applicable payroll taxes. The Construction Manager may accomplish this through the use of an accounting system which computes actual costs for payroll taxes when incurred up to the wage limit cut-off and allocated same to all jobs by individual based on the time worked on each job by the individual. Alternatively, the Construction Manager may use an estimated net effective payroll tax percentage to allocate payroll tax costs during the year and make appropriate adjustments at the end of the year or at the end of the project (whichever is more appropriate) to adjust the costs to actual net payroll tax cost. Using the latter approach, if 50% of the wages paid to an employee during the year were chargeable to the *Cost of the Work*, then only 50% of the actual annual costs of payroll taxes would be allocable to the *Cost of the Work*, etc.

.7 *Cost of the Work* shall include the actual net cost to the Construction Manager for worker's compensation insurance attributable to the wages chargeable to the *Cost of the Work* per this agreement. The actual net cost of worker's compensation shall take into consideration all cost adjustments due to experience modifiers, premium discounts, policy dividends, retrospective rating plan premium adjustments, assigned risk pool rebates, any applicable weekly maximums, etc. The Construction Manager may charge an estimated amount for worker's compensation insurance costs, but will make appropriate cost adjustments to actual costs within 45 days of receipt of actual cost adjustments from the insurance carrier.

.8 Overtime wages paid to salaried personnel (if approved in advance in writing by the Owner) will be reimbursed at the actual rate of overtime pay paid to the individual. No time charges for overtime hours worked on the project will be allowed if the individual is not paid for the overtime worked.

.9 Any overtime premium or shift differential expense to be incurred by Construction Manager for hourly workers shall require Owner's advance written approval before the incremental cost of the overtime premium or shift differential will be considered a reimbursable cost. If the Construction Manager is required to work overtime as a result of an inexcusable delay or other coordination problems caused by the Construction Manager or anyone they are responsible for, the overtime premium and/or shift differential expense portion of the payroll expense and related labor burden costs will be considered as cost not to be reimbursed.

.10 Reimbursable labor burden costs will be limited to payroll taxes, worker's compensation insurance, the employer's portion of union benefit costs for union employees working on the project, and the actual verifiable fringe benefit costs incurred by Construction Manager for non-union individuals working on the project subject to the following maximum percentages for the following reimbursable non-union fringe benefit costs. The following maximums (as a percentage of reimbursable actual wages by individual) shall apply for each of the following types of fringe benefit costs specifically attributable to the each of the non-union personnel working on the project:

Medical Insurance	10.00%
Dental Insurance	1.00%
AD&D Insurance, Life insurance	1.00%
Holiday, vacation and other paid time not worked	10.00%
Pension Plan Contributions to Vested Employee Account	10.00%

Note: For non-union personnel, no other fringe benefit costs (other than the 5 specific categories listed immediately above shall be considered reimbursable *Cost of the Work*. Any labor burden costs that are in excess of the amounts considered reimbursable or are otherwise not considered reimbursable under the terms of this agreement are intended to be covered by Construction Manager's fee.

6.1.3 SUBCONTRACTOR COSTS

.1 Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

.2 For scope of work bid packages typically performed by Subcontractors, the Construction Manager may "self-perform" such work on a cost plus fee (Not-To-Exceed 7.5%) basis subject to an agreed upon guaranteed maximum price for the "self-performed work". The Construction Manager may bid their proposed Guaranteed Maximum Price for the work to be "self-performed" against at least three other interested trade contractors. Any subcontract for "self-performed work" will provide for payment in an amount equal to the *Cost of the Work* (as defined in this agreement) and will not to exceed the agreed upon subcontract guaranteed maximum price. All terms and provisions of any subcontract for "self-performed work" will be consistent with the terms and conditions of this agreement with the exception of the agreed upon Fee percentage. All savings under any such subcontract for "self-performed work" shall be applied to reduce the *Cost of the Work* under this Agreement and the Guaranteed Maximum Price of this Agreement. For purposes of defining "self-performed work" subject to this contract provision, any division of Construction Manager, or any separate Construction Manager or Subcontractor that is partially owned or wholly owned by the Construction Manager or any of their employees or employee's relatives will be considered a related party entity and will be subject to this provision regarding "self-performed work". No self-performed work will be allowed to be performed on a lump sum basis.

.3 Construction Manager (with respect to its suppliers, Subcontractors and all lower tier Subcontractors) shall provide Owner advance written notice and shall obtain Owner's approval for any proposed subcontract change order, material purchase order, or other financial commitment in an amount in excess of \$5,000 prior to placing such order or entering into such agreement (regardless of whether or not any such commitment will affect the prime contract Guaranteed Maximum

Cost). It is agreed that sums applicable to any subcontract change order, purchase order or other financial commitment entered into in violation of the above notice and approval requirement shall not be included in the amounts owing to Construction Manager, Subcontractors or Suppliers whether as *Costs of the Work* or as reasonable termination costs in the event of termination.

6.1.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

.1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

.2 Costs of materials described in the preceding Subparagraph 6.1.4.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

6.1.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

.1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.

.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

.3 Costs of removal of debris from the site.

.4 Reasonable petty cash items in connection with the work.

.5 When pre approved by the owner that portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling out of town in discharge of duties connected with the Work.

6.1.6 MISCELLANEOUS COSTS

.1 That portion of insurance and bond premiums that can be directly attributed to this Contract.

.2 The Construction Manager's actual cost for insurance shall be considered to be included within the Maximum limit for General Conditions costs. All premiums for any insurance and bonds required for the project shall reflect the net actual costs to Construction Manager after taking into consideration cost adjustments due to experience modifiers, premium discounts, policy dividends, retrospective rating plan premium adjustments, assigned risk pool rebates, refunds, etc.

.3 In the event that the Construction Manager elects to utilize worker's compensation insurance programs that involve either self-insurance

and/or large deductibles, the maximum amount to be considered reimbursable costs under this contract will not exceed an amount equal to 40% of the standard state worker's compensation rates applicable times Construction Manager straight time wages. Any Construction Manager costs incurred in connection with the Construction Manager's elected worker's compensation insurance program that exceeds the amount reimbursed by the Owner under the formula in this paragraph will be considered to be covered by the Construction Manager's FEE.

.4 In the event that the Construction Manager elects to utilize a Subcontractor default insurance program (sometimes referred to as SUBGUARD), the maximum amount to be considered reimbursable costs under this contract will not exceed .6% of the total amount of prime subcontracts covered by such an insurance program. Any Construction Manager costs incurred in connection with the Construction Manager's elected Subcontractor default insurance program that exceeds the amount reimbursed by the Owner under the formula in this paragraph will be considered to be covered by the Construction Manager's FEE.

.5 In the event that the Construction Manager elects to utilize a Contractor Controlled Insurance Program (CCIP) the maximum to be considered reimbursable costs under this contract will be 2% of the final agreed upon Guaranteed Maximum Price of this contract. This 2% cost factor will cover all insurance required to be carried by the prime contractor and all applicable Subcontractors covered by this agreement (specifically worker's compensation insurance, general liability insurance, excess liability insurance, umbrella liability insurance). Any contractor costs incurred in connection with the Construction Manager's elected CCIP program that exceeds the amount reimbursed by the Owner under the formula in this paragraph will be considered to be covered by the Construction Manager's fee.

.6 Sales use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.

.7 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay:

.8 Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Subparagraph 6.1.8.2.

.9 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or the Guaranteed Maximum Price and provided that such royalties, fees and costs are not excluded by the General Conditions or other provisions of the Contract Documents.

.10 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.

.11 Legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work and with the Owner's written permission, which permission shall not be unreasonably withheld.

.12 Data processing costs related to the Work.

.13 However, any such data processing costs will be limited to the cost of personal computer hardware used at the field office in the normal day to day administration, management and control of the project. The aggregate charges for any such hardware shall not exceed the FMV of the at the time it was brought to the field office. If the total charges for any particular piece of hardware reach an amount equal to the FMV, that particular piece of hardware and software shall be turned over to the Owner whenever they are no longer needed for the project. If

the Construction Manager elects to keep the particular piece of hardware and software, the job costs shall be credited with a mutually agreeable amount which shall represent the FMV of the particular piece of hardware at the time it was no longer needed for the job. Software or other costs associated with the use of computer programs shall not be considered to be a reimbursable cost and will be considered to be covered by the Construction Manager's Fee.

.14 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner as set forth in the Contract Documents.

.15 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work and with the Owner's prior written approval; which approval shall not be unreasonably withheld.

6.1.7 OTHER COSTS

.10 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

6.1.8 EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK

The Cost of the Work shall also include costs described in Article 6.1 which are incurred by the Construction Manager:

.1 In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property as provided in Paragraph 10.3 of the General Conditions.

.2 In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement of the Construction Manager or the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, or the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, Subcontractors or suppliers.

.3 The costs described in Article 6.1 shall be included in the Cost of the Work notwithstanding any provision of the General Conditions or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Article 6.2.

6.2 COSTS NOT TO BE REIMBURSED

6.2.1 The Cost of the Work shall not include:

.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office.

.2 Expenses of the Construction Manager's principal office and offices other than the site office except as specifically provided in Article 6.1.

.3 Overhead and general expenses, except as may be expressly included in Article 6.1.

.4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

.5 Rental costs of machinery and equipment, except as specifically provided in Article 6.1.

.6 Except as provided in Article 6.1 costs due to the negligence of the Construction Manager or to the failure of the Construction Manager to fulfill a specific responsibility to the Owner set forth in this Agreement.

.7 Costs incurred in the performance of Preconstruction Phase Services.

.8 Except as provided in Article 6.1, any cost not specifically and expressly described in Article 6.1.

.9 Costs which would cause the Guaranteed Maximum Price to be exceeded.

.10 Miscellaneous office supplies, hard hats, safety glasses and the like used by supervisory personnel.

.11 The Construction Manager hereby acknowledges its involvement in the design, planning and permitting process through its provision of preconstruction services to the Owner and, as a result, is fully aware of and hereby confirms its understanding of the Owner's program requirements and design intent. Therefore, execution of the GMP Amendment to this Agreement by the Construction Manager is a representation by the Construction Manager, subject to any assumptions or clarifications set forth in the GMP Proposal, that the Contract Documents are sufficiently complete to enable the Construction Manager to: (a) determine the Cost of the Work required therein or contemplated thereby; and (b) construct the Work outlined therein and/or reasonably inferable therefrom and otherwise to fulfill all of the Construction Manager's obligations hereunder including, but not limited to, the Construction Manager's obligations to construct the Work for an amount not to exceed the Guaranteed Maximum Price on or before the date of Substantial Completion established in the Contract Documents. The Construction Manager further acknowledges that as a result of the Construction Manager's involvement in the design process through its provision of preconstruction services to the Owner, the Construction Manager has knowledge of the Owner's design intent and program requirements from review of progress prints of the Contract Documents, attendance at design meetings, and participation in discussions between the Owner and Architect with respect to program requirements and design intent. The Construction Manager further acknowledges and declares that it has visited and examined the Project site, inspected all physical, legal and other conditions affecting the Work including, without limitation, local conditions affecting labor ability, availability and productivity, and is fully familiar with all of the conditions affecting the same. The Construction Manager specifically represents to the Owner that it has, by such careful examination, reasonably satisfied itself as to, among other things: (1) the nature, location and character of the Project and the site, including, without limitation, all surface conditions of the site and all structures and obstructions thereon, both natural and man-made, and all surface water conditions of the site and the surrounding area; (2) the nature, location and character of the general area in which the Project is located including, without limitation, its normal climatic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; and (3) the quality and quantity of all materials, supplies, tools, equipment, labor and professional services necessary to complete the Work in the manner and within the Guaranteed Maximum Price and time frame required by the Contract Documents.

.12 Any increase in the Construction Manager's Fee other than as specifically allowed by Article 6.1 herein.

6.3 DISCOUNTS, REBATES AND REFUNDS

.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured.

.2 Amounts which accrue to the Owner in accordance with the provisions of Subparagraph 6.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

6.4 SUBCONTRACTS AND OTHER AGREEMENTS

.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons or entities from which the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

.2 Construction Manager shall invite bids from, and enter into contracts and material orders with, only Subcontractors and suppliers who have first been approved by Owner. After receiving such bids, Construction Manager shall always analyze them and make recommendations for awards, accompanying its recommendation with all pertinent data required for decision upon the award, and certifying that, to the best of its knowledge, the bid of the recommended Subcontractor or supplier is bona fide, fair and reasonable.

.3 When Owner has approved the award of any such subcontract or purchase order, Construction Manager shall contract in its own name and behalf, and not in the name or behalf of Owner, with the specified Subcontractor or supplier. Construction Manager's subcontract and purchase order forms shall be subject to approval of Owner and shall provide that Subcontractor shall perform its portion of the Work and all applicable provisions of this Agreement and the Contract Documents.

.4 Construction Manager shall add specific Owner directed contract clauses to the standard subcontract and purchase order forms to be used for the project. Construction Manager shall submit its subcontract and purchase order forms to Owner for approval prior to use in connection with the project, and shall promptly deliver to Owner a copy of all executed subcontracts and purchase orders entered into in connection with the project.

.5 If the net effect of Owner's designation as the selected Subcontractors and suppliers (taking into account both Subcontractors and suppliers whose bids exceed those of bidders recommended by Construction Manager and those whose bids are less than bidders recommended by Construction Manager) is the selection of Subcontractors and suppliers whose bids, in the aggregate, exceed those of the bidders recommended by the Construction Manager, the Estimated Construction Manager's Cost and the Guaranteed Maximum Cost shall be increased by the lesser (i) the amount by which the bids of the designated Subcontractors and suppliers exceed the bids of the bidders recommended by Construction Manager or (ii) the amount by which the bids of the designated Subcontractors and suppliers exceed

the amount utilized by the Construction Manager in calculating the Guaranteed Maximum Cost. The Construction Manager's Fee shall not be increased on account of Owner's designation of Subcontractors or suppliers, regardless of the number of such designations or the resulting increase in the Guaranteed Maximum Cost, if any.

.6 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without prior consent of the Owner.

6.5 CONTINGENCY FUND

.1 The Owner and Construction Manager agree that a not-to-exceed fund for "contingency" costs totaling \$_____ has been included in the contract guaranteed maximum price. Any unused contingency amounts shall be credited to the guaranteed maximum contract price before computing the savings. All charges to the "contingency" must be approved in advance by the Owner using contract administration procedures similar to those required for change order approvals.

6.6 Cost Limitations and Documentation

.1 The Cost of the Work for reimbursable costs (those costs and expenses incurred by the Construction Manager, exclusive of executive and management time and profit) in connection with the Project, as defined in the previous parts of this section, shall be subject to a not-to-exceed amount of _____. This amount shall be fixed at the time of the acceptance by the Owner of the GMP. All invoices for reimbursable costs submitted by the Construction Manager shall be accompanied by documentation reasonably satisfactory to the Owner substantiating such claims for payment. No reimbursable costs and expenses shall be paid by Owner unless they are reasonably and necessarily incurred in the proper performance of the Work.

6.7 ACCOUNTING RECORDS

.1 The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Construction Manager shall preserve these for a period of six years after final payment, or for such longer period as may be required by law. Construction Manager understands and agrees that in the event of any billing adjustments in respect of amounts previously paid to Construction Manager from Owner as a result of Owner's (or its representatives') inspection or audit, such adjustment shall be final, binding and conclusive if Construction Manager cannot provide adequate documentation to support the amount in dispute. Construction Manager shall immediately refund to Owner any overpayments that, pursuant to an audit, have been determined to have been made by Owner to Construction Manager. Any billing adjustments in respect of amounts previously paid to Construction Manager from Owner shall bear interest at the rate of one percent (1%) above the prime rate as set forth in The Wall Street Journal from the date such amount was initially paid by Owner until the date repaid by Construction Manager.

.2 The provisions of this Article shall survive the expiration or earlier termination of this Agreement.

ARTICLE 7
CONSTRUCTION PHASE

7.1 PROGRESS PAYMENTS

7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

7.1.3 Provided an Application for Payment is received by the Architect not later than the 5th day of a month, the Owner shall make payment to the Construction Manager not later than the 20th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above payment shall be made by the Owner not later than 45 days after the Architect receives the Application for Payment.

7.1.4 With each Application for Payment, the Construction Manager shall submit lien releases from all vendors and/or sub-contractors with whom the Construction Manager has entered into contracts, payrolls, petty cash accounts receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

7.1.5 Each Application for Payment shall be based upon the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

7.1.6 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.

.3 Add the Construction Manager's Fee, less retainage of ten percent (10%).

The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Clauses at the rate stated in Subparagraph 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Subparagraph, shall be an amount which bears the same ratio to that fixed sum Fee as the Cost of the Work in the two preceding Clauses bears to a reasonable estimate of the probable Cost of the Work upon its completion.

.4 Subtract the aggregate of previous payments made by the Owner.

.5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Subparagraph 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation.

.6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of AIA Document A201.

7.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than ten percent (10%). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Subparagraph 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on site inspections or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

7.1.11 At all times Construction Manager and its Subcontractors and materialmen shall fully and promptly (and in all events within fourteen (14) days after receipt of a claim) pay and discharge any and all commitments and claims and wholly protect and save harmless Owner, the Site, and the Project from and against any and all mechanics' or materialmen's liens in connection with the Work, provided that, to the extent Owner is obligated to pay for such item or portion of the Work as set forth in this Agreement, Construction Manager has been paid by Owner for the portion thereof which is the subject of such demand or claim. If Construction Manager shall be contesting the validity of any claim, Construction Manager may bond the lien in lieu of payment thereof. Should any mechanics' or materialmen's lien or claim be filed in connection with the Work and not discharged by Construction Manager (or one of its Subcontractors or proceedings to effect such discharge shall not have been commenced) within fourteen (14) days after such filing, Owner may thereafter bond or otherwise discharge the lien and withhold the amount of any such claim, together with an amount equal to all costs and expenses which Owner reasonably estimates will be incurred in connection therewith, from payments thereafter to be made to Construction Manager, until such time as the mechanics' and materialmen's liens and claims have been properly discharged. If Construction Manager shall receive (i) any notice from a Subcontractor of its intention to file a lien in connection with

the Work, or (ii) a copy of any lien which actually has been filed in connection with the Work, Construction Manager shall forward a copy of same to Owner and Project Manager immediately upon receipt.

7.2 FINAL PAYMENT

7.2.1 Final payment shall be made by the Owner to the Construction Manager when (1) the Contract has been fully performed by the Construction Manager except for the Construction Manager's responsibility to correct nonconforming Work, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner's accountants; (3) complete Operating and Maintenance ("O&M") manuals and copies of all approved submittals have been submitted to the Owner in the following formats: three hard-copy sets of O&Ms and submittals in binders and electronic copies of all O&Ms in a format acceptable to the owner, to be conveyed to the Owner on a CD; and (4) a final Certificate for Payment has then been issued by the Architect; such final payment shall be made by the Owner not more than 45 days after the issuance of the Architect's final Certificate for Payment, or as follows:

7.2.2 The amount of the final payment shall be calculated as follows:

.1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee; but not more than the Guaranteed Maximum Price.

.2 Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment as provided in Subparagraph 9.6.1 of the General Conditions or other provisions of the Contract Documents.

If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner.

7.2.3 The Owner's accountants will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Subparagraph 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Subparagraph 9.6.1 of the General Conditions.

7.2.4 If the Owner's accountants report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 9 without a further decision of the Architect. Unless agreed to otherwise, a demand for mediation or arbitration of the disputed amount shall be made by the Construction Manager within 60 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to make such demand within this 60 day period shall result in the substantiated amount reported by the Owner's accountants becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

7.2.5 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Article 6.1 and not excluded by Article 6.2 to correct nonconforming Work, or (2) arising from the resolution of disputes, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8

INSURANCE AND BONDS

8.1 REFER TO GENERAL CONDITIONS ANNEXED HERETO

ARTICLE 9

MISCELLANEOUS PROVISIONS

9.1 DISPUTE RESOLUTION FOR THE PRECONSTRUCTION PHASE

REFER TO GENERAL CONDITIONS ANNEXED HERETO

9.2 OTHER PROVISIONS

9.2.1 Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in the General Conditions of the Contract for Construction annexed hereto.

9.2.2 OWNERSHIP AND USE OF DOCUMENTS

The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Construction Manager, are for use solely with respect to this Project. They are not to be used by the Construction Manager, Subcontractors, Sub subcontractors or suppliers on other projects, or for additions to this Project outside the scope of the Work without the specific written consent of the Owner and Architect. The Construction Manager, Subcontractors, Sub subcontractors and suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents.

9.2.3 GOVERNING LAW

The Contract shall be governed by the law of the State of New York without regard to principles of conflicts of law. The Construction Manager consents to the jurisdiction and venue of the U.S. District Court for the Western District of New York and the New York State Supreme Court sitting in Monroe County.

9.2.4 ASSIGNMENT

The Owner and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

ARTICLE 10

TERMINATION OR SUSPENSION

10.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE

10.1.1 Prior to execution by both parties of Amendment No. 1 establishing the Guaranteed Maximum Price, the Owner may terminate this Contract at any time without cause.

10.1.2 If the Owner terminates this Contract pursuant to this Paragraph 10.1 prior to commencement of the Construction Phase, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Subparagraph 4.1.1.

10.1.3 If the Owner terminates this Contract pursuant to this Paragraph 10.1 after commencement of the Construction Phase, the Construction Manager shall in addition to the compensation provided in Subparagraph 10.1.2. be paid an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Construction Manager.

.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Paragraph 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Paragraph, an amount which bears the same ratio to that fixed sum Fee as the Cost of Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion.

.3 Subtract the aggregate of previous payments made by the Owner on account of the Construction Phase.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Clause.

10.1.3.1 To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

Subcontracts, purchase orders and rental agreements entered into by the Construction Manager with the Owner's written approval prior to the execution of Amendment No. 1 shall contain provisions permitting assignment to the Owner as described above. If the Owner accepts such assignment, the Owner shall reimburse or indemnify the Construction Manager with respect to all costs arising under the subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager shall terminate such

subcontract, purchase order or rental agreement and the Owner shall pay the Construction Manager the costs necessarily incurred by the Construction Manager by reason of such termination.

10.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE

Subsequent to execution by both parties of Amendment No. 1, the Contract may be terminated as provided in the General Conditions annexed hereto.

10.2.1 In the event of such termination by the Owner, the amount payable to the Construction Manager shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Subparagraphs 10.1.2 and 10.1.3 of this Agreement.

10.2.2 In the event of such termination by the Construction Manager, the amount to be paid to the Construction Manager shall not exceed the amount the Construction Manager would be entitled to receive under Subparagraphs 10.1.2 or 10.1.3 above.

10.3 SUSPENSION

The Work may be suspended by the Owner; as provided in the General Conditions annexed hereto; in such case, the Guaranteed Maximum Price, if established, shall be increased as provided therein.

ARTICLE 11

OTHER CONDITIONS AND SERVICES

Agent for Sales Tax Purposes. [If IDA Financing is involved] Owner has been appointed by the IDA as its agent to construct the Project, and has been authorized to purchase on behalf of the IDA materials, equipment and supplies necessary for the Project. Owner in turn hereby designates and appoints Construction Manager as its agent for the purpose of purchasing, leasing and renting on its behalf all materials, equipment and services to be used on or incorporated into the Project as more fully set forth herein. This appointment includes authority to purchase on behalf of Owner all materials to be incorporated into and made an integral part of the Project, and the following activities as they relate to any construction, erection and completion of any buildings, whether or not any materials, equipment or supplies described below are incorporated into or become an integral part of the Project: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with the acquisition, construction and equipping of the Project, (ii) all purchases, rentals, uses or consumption of supplies, materials, utilities and services of every kind and description used in connection with the acquisition, construction and equipping of the Project and (iii) all purchases, leases, rentals and uses of equipment, machinery, and other tangible personal property (including installation costs), installed or placed in, upon or under the Project, including all repairs and replacements of such property. The agency appointment includes the power to delegate such agency appointment, in whole or in part, to Construction Manager's agents, subagents, subcontractors, materialmen, suppliers and vendors of and to such other parties as Construction Manager chooses so long as they are engaged, directly or indirectly, in the activities hereinbefore described. This is a limited agency granted for the sole purpose of complying with the New York Tax Law with respect to the obtaining of a sales tax exemption for the purchase, leasing and renting of equipment, materials and services, and not for any other purpose. Construction Manager shall furnish a Contract in Lieu of Exemption Certificate, Subcontractor Notification Letter and Exempt Purchase Certificate (From ST-119.1) in the form of Appendix ___ to all subcontractors and suppliers.

This Agreement entered into as of the day and year first written above.

OWNER:

ROCHESTER INSTITUTE OF TECHNOLOGY

By: _____
Signature

Date: _____

James H. Watters
Senior Vice President
Finance and Administration

CONSTRUCTION MANAGER:

By: _____
Signature

Date: _____

Print Legal Name

EXHIBIT A

REQUEST

FOR

PROPOSAL

EXHIBIT B

PROPOSAL

EXHIBIT C

GENERAL CONDITIONS OF THE CONTRACT

EXHIBIT D

FACILITIES MANAGEMENT SERVICES

PROCUREMENT POLICY

AMENDMENT NO. 1 TO AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER

Pursuant to Paragraph 2.2 of the Agreement, dated between ROCHESTER INSTITUTE OF TECHNOLOGY (Owner) and (Construction Manager), for (the Project), the Owner and Construction Manager establish a Guaranteed Maximum Price and Contract Time for the Work as set forth below.

ARTICLE I
GUARANTEED MAXIMUM PRICE

The Construction Manager's Guaranteed Maximum Price for the Work, including the estimated Cost of the Work as defined in Article 6 and the Construction Manager's Fee as defined in Article 5, is Dollars (\$).

This Price is for the performance of the Work in accordance with the Contract Documents listed and attached to this Amendment and marked Exhibits E through J as follows:

- Exhibit E Drawings, Specifications, addenda and General, Supplementary and other Conditions of the Contract on which the Guaranteed Maximum Price is based, pages ____ through __, dated
- Exhibit F Allowance items, pages ____ through __, dated
- Exhibit G Assumptions and clarifications made in preparing the Guaranteed Maximum Price, pages ____ through __ dated
- Exhibit H Completion schedule, pages ____ through __, dated
- Exhibit I Alternate prices, pages ____ through __, dated
- Exhibit J Unit prices, pages ____ through __, dated

ARTICLE II
CONTRACT TIME

The date of Substantial Completion established by this Amendment is:

OWNER: ROCHESTER INSTITUTE OF TECHNOLOGY

CONSTRUCTION MANAGER:

BY: _____
Signature

BY: _____
Signature

James H. Watters
Senior Vice President
Finance and Administration

Print Name and Title

Date: _____

Date: _____