**Standard Form Agreement Between**

**Owner and Construction Manager**

Where the Construction Manager is also

**The Constructor**

**AGREEMENT**

Made as of the **<<Date>>** of **<<Month>>** in the year of **<<Year>>**

Between Owner:

**the Board of Regents of the University of Nebraska,**

a public body corporate of the State of Nebraska, (the “Owner”)

and Construction Manager:

**<<Legal Contractor Name>>**

**<<Contractor Address>>**

**<<City State Zip>>**

This Agreement is for the construction of a project identified as:

Project:

**University of Nebraska - <<City>>**

**<<Project Name>>**

Project Number: **<<#####>>**

Architect:

**<<Legal Architect Name>>**

**<<Architect Address>>**

**<<City State Zip>>**

The Owner and Construction Manager agree as set forth below.

|  |
| --- |
| Table of Contents |
| **ARTICLE 1 GENERAL PROVISIONS** |  | **ARTICLE 7 CONSTRUCTION PHASE** |
|  |  |  |  |  |  |  |
|  | 1.1 | Relationship of Parties |  |  | 7.1 | Progress Payments |
|  | 1.2 | General Conditions |  |  | 7.2 | Final Payment |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
| **ARTICLE 2 CONSTRUCTION MANAGER’S** |  | **ARTICLE 8 INSURANCE AND BONDS** |
|  |  | **RESPONSIBILITIES** |  |  |  |  |
|  |  |  |  |  | 8.1 | Insurance Required of the Construction Manager |
|  | 2.1 | Preconstruction Phase |  |  | 8.2 | Insurance Required of the Owner  |
|  | 2.2 | Guaranteed Maximum Price Proposal and Contract |  |  | 8.3 | Owners Protective Bond  |
|  | 2.3 | Construction Phase |  |  |  |  |
|  | 2.4 | Professional Services |  | **ARTICLE 9 MISCELLANEOUS PROVISIONS** |
|  | 2.5 | Unsafe Materials |  |  |  |  |
|  |  |  |  |  | 9.1 | Dispute Resolution for the Preconstruction Phase |
|  |  |  |  |  | 9.2 | Dispute Resolution for the Construction Phase |
| **ARTICLE 3 OWNER’S RESPONSIBILITIES** |  |  | 9.3 | Other Provisions |
|  |  |  |  |  |  |  |
|  | 3.1 | Information and Services |  |  |  |  |
|  | 3.2 | Owner’s Designated Representative |  | **ARTICLE 10 TERMINATIONS OR SUSPENSION** |
|  | 3.3 | Architect |  |  |  |  |
|  | 3.4 | Legal Requirements |  |  | 10.1 | Termination Prior To Establishing Guaranteed  |
|  |  |  |  |  |  | Maximum Price |
|  |  |  | 10.2 | Termination Subsequent to Establishing Guaranteed  |
| **ARTICLE 4 COMPENSATION AND PAYMENTS FOR** |  |  |  | Maximum Price |
|  |  | **PRECONSTRUCTION PHASE SERVICES** |  |  | 10.3 | Suspension |
|  |  |  |  |  |  |  |
|  | 4.1 | Compensation |  |  |  |  |
|  |  |  |  | **ARTICLE 11 OTHER CONDITIONS AND SERVICES** |
|  |  |  |  |  |  |  |
| **ARTICLE 5 COMPENSATION FOR CONSTRUCTION**  |  |  |  |  |
|  |  | **PHASE SERVICES** |  | **ADDENDUM A: CMR PRICE PROPOSAL****ADDENDUM B: TERMS AND CONDITIONS** |
|  |  |  |  |
|  | 5.1 | Compensation |  |  |  |  |
|  | 5.2 | Guaranteed Maximum Price |  |  |  |  |
|  | 5.3 | Changes in the Work |  |  |  |  |
|  |  |  |  | **Attachments: AMENDMENT 1 to Agreement Between Owner and Construction Manager.** |
|  |  |  |  |
| **ARTICLE 6 COST OF THE WORK FOR**  |  |  |  |  |
|  |  | **CONSTRUCTION PHASE** |  |  |  |  |
|  |  |  |  |  |  |  |
|  | 6.1 | Cost to Be Reimbursed |  |  |  |  |
|  | 6.2 | Costs Not to Be Reimbursed |  |  |  |  |
|  | 6.3 | Discounts, Rebates and Refunds |  |  |  |  |
|  | 6.4 | Accounting Records |  |  |  |  |

Standard Form of Agreement Between Owner and Construction Manager Where the Construction Manager is also the Constructor

**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 General Conditions**

For the Construction Phase, the general conditions of the Contract shall be the University of Nebraska General Conditions found at: <https://nebraska.edu/docs/facilities/007213General-Conditions.pdf>. For the Preconstruction Phase, or in the event that the Preconstruction and Construction Phases proceed concurrently, then the General Conditions shall apply to the Preconstruction Phase only as specifically provided in this Agreement. The term “Construction Manager” as used in this agreement the term “Contractor” as used in the University of Nebraska General Conditions shall mean and refer to the Construction Manager, **<<Contractor Name>>, of <<Contractor Address, City State Zip>>.**

**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 both phases shall proceed concurrently.

* 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.

* + 1. **Consultation**

The Construction Manager with the Architect 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 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.

* + 1. **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 and 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 drawing and samples, procurement and delivery of materials or equipment requiring long-lead time procurement, Owner’s occupancy priority, and proposed date of Substantial Completion. **The Construction Manager shall coordinate with the Owners Representative/Architect in the development of a Critical Path Method schedule for the preparation and processing of shop drawings and samples. The resulting schedule must be mutually agreed to by the Construction Manager and the Owners Representative/Architect.** If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manger shall make appropriate recommendation to the Owner and Architect.

* + 1. **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 economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

* + 1. **Preliminary Cost Estimates**
			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. 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 the Intermediate Design documents have been prepared by the Architect and approved by the Owner, the Construction Manger shall propose a Guaranteed Maximum Price, which shall be the sum of the estimated Cost of the Work and the Construction Manager’s Fee. **During the preparation of the Construction Documents, the Construction Manger shall monitor such documents in comparison to their Guaranteed Maximum Price. Should changes in such documents occur which would impact the Guaranteed Maximum Price, the Construction Manager shall promptlyinform the Owner and the Architect.**

**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. Should the Construction Managers estimate exceed previously approved estimates or the Owner’s budget, the Construction Manager shall meet with the Architect and the Owner to reconcile the differences between their two estimates.**

* + 1. **Subcontractors and Suppliers**

The Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a list of possible qualified 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 knows of any objection to such subcontractor or supplier. 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 or reject any proposed subcontractor or supplier.

* + 1. **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.

* + 1. **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 Manger recognizes that portions of the Drawings and Specifications are at variance therewith, the Construction Manager shall promptly notify the Architect and Owner in writing.

* + 1. **Equal Employment Opportunity and Affirmative Action**

The Construction Manger 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 Proposal and Contract Time**

* + 1. When the Intermediate Design Documents are approved by the Owner, 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. 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.
		3. The estimated Cost of the Work shall include the Construction Manager’s contingency, a sum established by the Construction Manager for the Construction Manager’s exclusive use 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.
		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 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.

* + 1. 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. 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.
		3. 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.
		4. Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in Amendment 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.
		5. 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 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.
		6. The Guaranteed Maximum Price shall include in the Cost of the Work only those taxes which are enacted at the time the Guaranteed Maximum Price is established.

**2.3 Construction Phase**

* + 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 issue a purchase order for materials or equipment required for the Work.

* + 1. **Administration**

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. The Construction Manager shall develop Subcontractor interest in the Project and publicly advertise and conduct pre-bid conferences with firms interested in submitting bids as Subcontractors. The Construction Manager shall obtain competitive bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work. The Construction Manager may require bidders to participate in interviews, and/or to submit qualifications, bid bonds, or other bid security acceptable to the Construction Manager, as a prerequisite to bidding on portions of the Work to be performed by Subcontract. The Construction Manager shall determine, with advice from and subject to reasonable objection of the Owner, which qualified Subcontractors will be accepted as the lowest responsible bidders for portions of the Work to be performed by Subcontract. The Owner may designate specific persons or entities from whom the Construction Manager shall obtain bids; however, if the Guaranteed Maximum Price has been established, the Owner may not prohibit the Construction Manager from selecting bids from other qualified bidders. To ensure the most bids possible, the Construction Manager shall use its best efforts to receive a minimum of three (3) bids for subcontracted portions of the Work. If fewer than three bids are received, the Construction Manager shall reach out to potential bidders to determine why bids were not submitted and all responses to such inquiries shall be shared with the Owner upon Owner’s request. If fewer than three (3) bids are received for a Subcontract, the Owner may, at the Owner’s discretion, permit the Construction Manager to proceed with selection.

**2.3.2.2** 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, (4) complies with all Contract Documents to include providing manufacturers and models specified,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.

**2.3.2.3** Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Subparagraph 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.

**2.3.2.4** 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. The Construction Manager will maintain record of all meeting minutes within the Owners Project Management System.

**2.3.2.5** Promptly after the Owner’s acceptance of the Guaranteed Maximum Price proposal, the Construction Manager shall prepare a Critical Path Method schedule formatted to the Owners needs and including the Owner’s occupancy requirements.

**2.3.2.6**  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 maintained within the Owners Project Management System.

**2.3.2.7** 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.

**2.3.2.8** TheConstruction Manager shall develop and maintain a program, acceptable to the Owner and the Architect, to assure quality control of the construction. The Construction Manager shall supervise the Work of all Subcontractors, providing instruction to each when its Work does not conform to the requirements of the plans and specifications and continue to manage each Subcontractor to ensure that corrections are made in a timely manner so as not to affect the progress of the Work. Should disagreement occur between the Construction Manager and the Architect over acceptability of Work and conformance with the requirements of the plans and specifications, the Owner shall be the final judge of performance and acceptability*.*

**2.3.2.9** The Construction Manager shall maintain exclusively for the Project a competent full-time staff at the Project Site to coordinate and direct the Work and progress of the Subcontractors. All of the Construction Manager’s Project management and on-site supervisory personnel shall be consistent with the Construction Manager’s interview presentation and shall not be removed or replaced without the Owner’s consent, which consent will not be unreasonably withheld. The Owner shall have the right to direct the Construction Manager to remove or replace any on-site personnel whose performance becomes unsatisfactory to the Owner. In such event, the Construction Manager shall promptly replace such personnel, without consideration of any additional compensation for the replacement.

**2.3.2.10** The Construction Manager shall establish on-site organization and lines of authority in order to carry out the overall plans of construction. The Construction Manager shall identify an on-site staff member to represent the Construction Manager, on a daily basis with authority to negotiate change orders and contract modifications on behalf of the Construction Manager. The Construction Manager shall make available such executive personnel as necessary to execute change orders or other contract modifications on behalf of the Construction Manager so as not to delay the progress of Work.

**2.3.2.11** The Construction Manager shall establish procedures for coordination among the Owner, Architect, Subcontractors and Construction Manager with respect to all aspects of the Work. The Construction Manager shall require of the various Subcontractors coordination drawings as may be necessary to properly coordinate the Work among the Subcontractors.

**2.3.2.12** In coordination with the Architect, the Construction Manager shall establish and implement procedures for tracking and expediting the processing of Shop drawings and samples, as required by the General Conditions of the Contract and the Construction Documents. All Submittals shall be processed within the Owner’s Project Management System. The Contractor is required to attend training for the Owner’s Project Management System.

**2.3.2.13** The Construction Manager shall determine the adequacy of Subcontractors’ personnel and equipment, and the availability of materials and supplies to meet the Project Schedule. In consultation with the Owner and Architect, the Construction Manager shall take necessary corrective actions when requirements of a Subcontract or a Subcontractor’s schedule are not being met.

**2.3.2.14** The Construction Manager shall develop and maintain an effective system of Project costs control which is satisfactory to the Owner. The Construction Manager shall identify variances between actual and budgeted or estimated costs and advise the Owner and Architect whenever projected costs exceed budgets or estimates. Upon request cost control reports shall be included as part of the monthly written report to be provided by the Construction Manager to the Owner.

**2.3.2.15** The Construction Manager shall maintain a system of accounting consistent with generally accepted accounting principles. The Construction Manager shall preserve all accounting records for a period of four (4) years after final acceptance of Work. The Owner shall have access to all such accounting records at any time during the performance of the Work and for a period of four (4) years after final acceptance of the Work.

**2.3.2.16** The Construction Manager shall develop and implement a system for the preparation, review and processing of change orders. Without assuming any of the Architect’s responsibilities for design, the Construction Manager shall recommend necessary or desirable changes to the Owner and the Architect and shall review requests for changes and submit recommendations to the Owner and Architect. All change management and/or requests for information, shall be processed within the Owner’s Project Management System.

**2.3.2.17** Upon request by the Owner or Architect, the Construction Manager shall promptly prepare and submit estimates of probable cost for changes in the Work, including similar estimates from the Subcontractors. If directed by the Owner, the Construction Manager shall promptly secure formal written Change Order Proposals from a Subcontractor.

**2.3.2.18** The Construction Manager shall make provisions for Project security acceptable to the Owner to protect the Project site and materials stored off-site against theft, vandalism, fire and accidents, as required by job and location conditions. Mobile equipment and operable equipment at the site, and hazardous parts of new construction subject to mischief, shall be locked or otherwise made inoperable or protected when unattended.

**2.3.2.19** Upon request by Owner, the Construction Manager shall identify the type and percentage of Work to be self-performed. If requested, Construction Manager shall provide a time-and-materials itemization of all self-performed portions of the Work, including but not limited to: work logs, payment logs, and daily assignment logs, and Construction Manager will provide Owner with physical access to such logsr without limitation.

**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 agreed in writing. In such event, the Construction Manager shall cause such services to be performed by appropriately licensed professionals.

**2.5 Unsafe Materials**

In addition to the provisions of Paragraph 10.3.1 in the University of Nebraska's General Conditions, 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. The Construction Manager and Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Construction Manager and Architect have no reasonable objection.

**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 at the time of commencement of the Construction Phase and from time to time thereafter as the Construction Manager may request. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. Any such evidence furnished to the Construction Manager shall be kept confidential.

**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 3.1.1.4, except to the extent that the Construction Manager knows of any inaccuracy.

**3.1.4.1** Reports, surveys, drawings and tests concerning the conditions of the Project site which are required by law. If the Construction Manager requests additional testing in excess of the budgeted amount for testing in the Owner’s Program Statement, such testing must receive prior written approval from the Owner.

**3.1.4.2** 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.

**3.1.4.3** 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.

**3.1.4.4** 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.

**3.1.4.5** The service of other consultants requested by the Construction Manager when such services are reasonably required by the scope of the Project and are agreed to by the Owner.

**3.1.4.6** All Tests, Surveys and Reports are the property of the Owner and shall be retained with the Owners’ Project Management System.

**3.2 Architect**

The Owner shall retain an Architect to provide Basic Services, including normal structural, mechanical and electrical engineering services, 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. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the Owner’s Agreement with the Architect, from which compensation provisions may be redacted.

**3.3** **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 Article 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 services described in Paragraphs 2.1 and 2.2 the Construction Manager’s compensation shall be calculated as follows: As outlined on the General Conditions worksheet “Addendum A”.

**4.1.1** Commencing with the execution of this Agreement, the Construction Manager may bill monthly for actual costs not to exceed **<< Printed Dollar Amount>>** (U.S.) (**$<<Numerical Dollar Amount.00>>**) for such services. The owner shall pay such agreed upon amounts, as approved by the Owner, within forty-five (45) days from receipt of each invoice. If the Project proceeds into the Construction Phase, the Construction Manager’s sole compensation for the Project, including compensation for services described in Paragraph 2.1 and 2.2 shall be as provided below in Article 5.

**4.1.2** Compensation for Preconstruction Phase services shall be equitably adjusted if such services extend beyond 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 of agreed upon amounts are due and payable (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 rate entered below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

**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** The Owner and the Construction Manager agree that in the absence of the Owner and Construction Manager agreeing to Guaranteed Maximum Price and executing Amendment 1, the Owner shall pay the Construction Manager in current funds the Contract Sum consisting of (a) the Cost of the Work as defined in Articles 6 and 7, and (b) the Construction Manager’s Fee (for both Preconstruction Phase services described in Paragraphs 2.1 and 2.2 and Construction Phase services to be determined as a portion of the costs listed in Addendum A CMR Price Proposal.

The Construction Manager’s fee and overhead shall be calculated at a percentage not to exceed **\_\_\_%** of the cost of the work as defined by Article 6.

The Construction Manger’s general conditions shall be at the actual cost but shall not to exceed **\_\_\_%** of the cost of the work as defined by Article 6.

In addition, the Construction Manager’s general requirement costs shall be at actual cost but shall not exceed **\_\_\_%** of the cost of the work defined by 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 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 (GMP) to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. Any savings to the Guaranteed Maximum Price shall be returned one hundred percent (100%) to the Owner.

**5.2.2** GMP shall be established at the end of Intermediate Design.

**5.2.3** GMP/cost savings are going to be figured as a net-out basis as opposed to a cost category analysis.

**5.3 Changes in the Work**

**5.3.1** Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of Amendment 1 may be determined by any of the methods listed in Article 7 of the University of Nebraska’s General Conditions.

**5.3.2** Adjustments to subcontracts awarded with the Owner’s prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

**5.3.3** In calculating adjustments to the Contract, the terms “cost” and “costs” as used in the above-referenced provisions of the University of Nebraska’s General Conditions shall mean the Construction Manager’s Fee as defined in Subparagraph 5.1.1 of this Agreement.

**5.3.4** 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. Requests for change in fee resulting from changes to Insurance or Bonding requirements will require proof of Insurance or Bond modification prior to consideration for payment.

**ARTICLE 6**

**COST OF THE WORK FOR CONSTRUCTION PHASE**

**6.1 Costs to be Reimbursed**

**6.1.1** 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.

* + 1. **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 agreement, at off-site workshops.

 **.2** Wages or salaries of the Construction Manager’s supervisory and administrative personnel when stationed at the site or office with the Owner’s agreement, as outlined in the Construction Manager’s proposal in Addendum 1.

 **.3** Wages and salaries of the Construction Manager’s supervisory or administrative personnel 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.

 **.4** 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 that such costs are based on wages and salaries included in the Cost of the Work under Clauses 6.1.2.1 through 6.1.2.3.

 **.5** Monies paid to Construction Manager’s personnel for performance-based bonus shall be included as a portion of the General Conditions.

**6.1.3 Subcontract Costs**

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

**6.1.3.1** Construction manager bid work and acting as General Contractor: If the Construction manager competitively bids a segment of the project work and is the low bidder on that work then the Construction Manager shall treat that segment of work as a subcontract and the project cost is a fixed amount subject to the contract amendment or changes clause.

**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 Clause 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 the Owner as a deduction from the Cost of the Work.

* + 1. **Cost of Other Materials and Equipment, Temporary Facilities and Related Items**

**.1** Cost 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** Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

 **.5** That portion of the reasonable travel and subsistence expenses of the Construction Manager’s personnel incurred while traveling in discharge of duties connected with the Work.

* + 1. **Miscellaneous Cost**

**.1** That portion directly attributable to this Contract of premiums for insurance and bonds.

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

 **.3** 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.

 **.4** 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 Clause 6.1.8.2.

 .**5** Royalties and license fees paid for the use of 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 defense, 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 last sentence of Subparagraph 3.17.1 of the University of Nebraska’s General Conditions or other provisions of the Contract Documents.

 .**6** Data processing costs related to the Work.

 **.7** 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.

 **.8** Expenses incurred in accordance with the Construction Manager’s standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.

* + 1. **Other Costs**

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 Subparagraph 6.1.1 which are incurred by the Construction Manager:

 .**1** In taking action to prevent threatened damage, injury or loss in the case of an emergency affecting the safety of persons and property, as provided in Paragraph 10.2 of the University of Nebraska’s 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.

**6.1.9** The costs described in Subparagraphs 6.1.1 through 6.1.8 shall be included in the Cost of the Work notwithstanding any provision of the University of Nebraska’s 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 Paragraph 6.2.

**6.2 Costs Not to Be Reimbursed**

* + 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, except as specifically provided in Clauses 6.1.2.2 and 6.1.2.3.

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

 **.3** Overhead and general expenses, except as may be expressly included in Paragraph 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 Subparagraph 6.1.5.2.

 **.6** Except as provided in Clause 6.1.8.2, 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 the Preconstruction Phase Services.

 **.8** Except as provided in Clause 6.1.7.1, any cost not specifically and expressly described in Paragraph 6.1.

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

**6.3 Discounts, Rebates and Refunds**

**6.3.1** 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 therefore 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.

**6.3.2** 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 ACCOUNTING RECORDS**

**6.4.1** 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 four (4) years after final payment, or for such longer period as may be required by law.

**ARTICLE 7**

**CONSTRUCTION PHASE**

**7.1 Progress Payments**

**7.1.1** Based upon Application for Payment submitted to the Owner’s Representative by the Construction Manager, 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.

**7.1.3** TheOwner shall make payment of agreed upon amount to the Construction Manager not later than forty-five days from receipt of the Application for Payment.

**7.1.4** With each Application for Payment, the Construction Manager shall submit payrolls, upon request, petty cash accounts, receipted invoices or invoices with check vouchers attached, Construction Managers Contingency Report, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of 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 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 Owner may require. This schedule, unless objected to by the Owner, 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 the 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.

* + 1. 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. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Subparagraph 7.3.7 of the University of Nebraska’s General Conditions, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.

 **.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 Five percent (5%). 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 Owner has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the University of Nebraska General Conditions.

**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 Application for Payment, the Architect/Owner 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 Owner 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 Owner has made exhaustive or continuous on-site inspections or that the Owner 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.

**7.2 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, as provided in Subparagraph 12.2.1 of the University of Nebraska’s General Conditions, 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; and (3) a final Certificate for Payment has then been issued by the Architect Owner; such final payment shall be made by the Owner not more than 45 days after the issuance of the Owner’s final Certificate for Payment, or as follows:

* + 1. The amount of the final payment shall be calculated as follows:

**.1** Take the sum of the Cost of 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 Owner withholds, in whole or in part, a final Certificate for Payment as provided in Subparagraph 9.5.1 of the University of Nebraska’s General Conditions or other provisions of the Contract Documents.

 **.3** Subtract the aggregate of previous payments made by the Owner.

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

(If the aggregate of previous payments made by the Owner exceed 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 pay applicationwithin 45 days after delivery of the final accounting to the Owner 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 Owner will, within seven days after completion of the written report of the Owner’s accountants, either issue a final Certificate for Payment to the Construction Manager or notify the Construction Manager in writing of the Owner’s reasons for withholding a certificate. The time periods stated in this Paragraph 7.2 supersede all others

**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. 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 the Owner’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 Owner’s final Certificate of Payment.

**7.2.5** If, subsequent to final payment and at the Owner’s request, the Construction Manager incurs costs described in Paragraph 6.1 and not excluded by Paragraph 6.2 (1) 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 Insurance Required of the Construction Manager**

**8.1.1** Refer to Article 11 of the University of Nebraska’s General Conditions. The Construction Manager will require Subcontractors to maintain insurance that complies with Article 11 of the University of Nebraska’s General Conditions

**8.2Insurance Required of the Owner**

**8.2.1** The Owner will provide Builder’s Risk insurance as outlined in §11.4 of the University of Nebraska’s General Conditions.

**8.3 Owners Protective Bond**

**8.3.1** Construction Manager will require an Owners Protective Bond ([UNFP 6.3.1.1.6](https://nebraska.edu/docs/facilities/OwnersProtectiveBond.doc)) of all self-performed work and subcontractors when the subcontract amount exceeds Fifteen Thousand Dollars ($15,000.00), **unless the Owner waives such requirement**. An original of all such bonds shall be delivered to the Owner prior to the start of work. The costs of such bonds shall be included in the subcontract price that becomes part of the Cost of the Work.

**ARTICLE 9**

**MISCELLANEOUS PROVISIONS**

* 1. **Dispute Resolution for the Preconstruction Phase**

**9.1.1** No claim or dispute among any of the parties shall be submitted to arbitration for resolution unless the parties involved agree in writing to do so after such claim or dispute has arisen, and any provision that may require arbitration under any circumstance in the Contract Documents shall have no effect.

**9.2 Dispute Resolution for the Construction Phase**

* + 1. No claim or dispute among any of the parties shall be submitted to arbitration for resolution unless the parties involved agree in writing to do so after such claim or dispute has arisen and any provision that may require arbitration under any circumstance in the Contract Documents shall have no effect.

**9.3 Other Provisions**

**9.3.1** Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in the University of Nebraska’s General Conditions found at: <https://nebraska.edu/docs/facilities/007213General-Conditions.pdf>.

**9.3.2 Extent of Contract**

This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Owner and Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

* + 1. **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.

* + 1. **Governing Law**

The Contract shall be governed by the law of the place where the Project is located.

* + 1. **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**

* 1. **Termination Prior To Establishing Guaranteed Maximum Price**
		1. Prior to execution by both parties of Amendment 1 establishing the Guaranteed Maximum Price, the Owner may terminate this Contract at any time without cause, and the Construction Manager may terminate this Contract for any of the reasons described in Subparagraph 14.1.1 of the University of Nebraska’s General Conditions.
		2. If the Owner or Construction Manager 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 or Construction Manager 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:

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

 .2Add 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 as negotiated between the Owner and the Construction Manager.

 .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 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 1, the Contract may be terminated as provided in Article 14 of the University of Nebraska's General Conditions.

* + 1. In the event of such termination by the Owner, the amount payable to the Construction Manager pursuant to Subparagraph 14.1.2 of the University of Nebraska’s General Conditions 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 under Subparagraph 14.1.2 of the University of Nebraska's General Conditions shall not exceed the amount the Construction Manager would be entitled to receive under Subparagraphs 10.1.2 or 10.1.3 above, except that the Construction Manager’s Fee shall be calculated as if the Work had been fully completed by the Construction Manager, including a reasonable estimate of the Cost of the Work for Work not actually completed.

* 1. **SUSPENSION**

After commencement of the Construction Phase, the Work may be suspended by the Owner as provided in Article 14 the University of Nebraska’s General Conditions; in such case, the Guaranteed Maximum Price, if established, shall be increased as provided in Subparagraph 14.3.2. the University of Nebraska’s General Conditions, except that the term “profit” shall be understood to mean the Construction Manager’s Fee as described in Subparagraph 5.3.4 of this Agreement.

**ARTICLE 11**

**OTHER CONDITIONS AND SERVICES**

* 1. **TIME OF SUBSTANTIAL COMPLETION**
		1. The process by which the Construction Manager shall achieve Substantial Completion of the Construction Phase Work will be determined at the time of established GMP and submitted as part of Amendment 1.
	2. **DAMAGES FOR FAILURE TO ACHIEVE TIMELY SUBSTANTIAL COMPLETION**
		1. Expediting To Maintain Schedule. Construction Manager, at its sole expense, shall take all reasonable steps to expedite performance of any activity, contract, delivery, or inspection where necessary to mitigate any delay, caused by or under the control of Construction Manager or its subcontractors, to maintain the Preliminary or Construction Schedules, and to achieve Substantial Completion by the Substantial Completion Date. The Construction Manager shall sequence the work, provide temporary enclosures, provide additional labor, extend work hours or make other provisions necessary to complete the work on schedule should unusually inclement weather occur.

**11.2.2** Liquidated Damages. Owner and Construction Manager recognize that the Owner’s damages will be extremely difficult if not impossible to calculate should Construction Manager not substantially complete the Work within the Contract Time. In the event that Construction Manager does not achieve Substantial Completion within Contract Time, as such Contract Time may be modified by Change Order, Construction Manager shall pay Owner the amount of **$<<Numerical Dollar Amount.00>>** per day.

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first above written.

|  |  |  |
| --- | --- | --- |
| **<<LEGAL NAME OF COMPANY>>** |  | **THE BOARD OF REGENTS OF THE** |
|  |  | **UNIVERSITY OF NEBRASKA** |
|  |  |  |
|   |  |   |
| Signature |  | Signature |
|   |  |  |
| Printed Name |  | Printed Name |
|   |  |  |
| Title |  | Title |
|  |  |  |
| Date |  | Date |

**CERTIFIED COPY OF RESOLUTION**

BE IT RESOLVED, that the following named individuals, and each of them, are hereby authorized as employees of **<<**Legal Name of Company**>>** to execute in its behalf all contracts, agreements and releases which they, in their discretion, approve, each such employee being separately and independently authorized to so act without the concurrence or joinder in such action by and of the other named employees (List individual name(s) below):

|  |  |  |
| --- | --- | --- |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

BE IT FURTHER RESOLVED, that any such contract, agreement or release executed by any of the above-name employees in the name of **<<**Legal Name of Company**>>** should be considered a contract, agreement, or release of **<<**Legal Name of Company**>>** and shall be binding upon it.

BE IT FURTHER RESOLVED, that any similar authority heretofore granted by the Board of Directors of the Company to employees other than those named above be and hereby is terminated as of this date, and the authority granted above shall commence this date and shall continue until revoked by resolution of the Board of Directors.

I hereby certify that I am Secretary of **<<**Legal Name of Company**>>**, that as such I have access to the books and records of the Corporation; that the foregoing is an excerpt from the minutes of the Board of Directors' Meeting of **<<**Legal Name of Company**>>** a **<<**State**>>** Corporation, held on the \_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , 20\_\_\_\_\_, a quorum being present; and that no action has been taken by the Board of Directors of said Corporation since said date that would have effect of changing or altering the authority granted therein.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  | Secretary of the Corporation  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  | Signature |
|  |  |  |  |  |
|  |  |  |  | Printed Name |
|  |  |  |  |  |
| Corporation |  |  | Date |

**CERTIFIED COPY OF RESOLUTION**

BE IT RESOLVED, that the following named individuals, and each of them, are hereby authorized as employees of **<<**Legal Name of Company**>>** to execute in its behalf all contracts, agreements and releases which they, in their discretion, approve, each such employee being separately and independently authorized to so act without the concurrence or joinder in such action by and of the other named employees (List individual name(s) below):

|  |  |  |
| --- | --- | --- |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

BE IT FURTHER RESOLVED, that any such contract, agreement or release executed by any of the above-name employees in the name of **<<**Legal Name of Company**>>** should be considered a contract, agreement, or release of **<<**Legal Name of Company**>>** and shall be binding upon it.

BE IT FURTHER RESOLVED, that any similar authority heretofore granted by the Members/Managers of the Company to employees other than those named above be and hereby is terminated as of this date, and the authority granted above shall commence this date and shall continue until revoked by resolution of the Members/Managers.

I hereby certify that I am Secretary of **<<**Legal Name of Company**>>**, that as such I have access to the books and records of the Company; that the foregoing is an excerpt from the minutes of the Members/Managers' Meeting of **<<**Legal Name of Company**>>** a **<<**State**>>** Limited Liability Company, held on the \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_, a quorum being present; and that no action has been taken by the Members/Managers of said Company since said date that would have effect of changing or altering the authority granted therein.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  | Secretary of the Company |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  | Signature |
|  |  |  |  |  |
|  |  |  |  | Printed Name |
|  |  |  |  |  |
| LLC/Partnership |  |  | Date |

**CERTIFIED COPY OF RESOLUTION**

BE IT RESOLVED, that the following named individuals, and each of them, are hereby authorized as employees of **<<**Legal Name of Company**>>** to execute in its behalf all contracts, agreements and releases which they, in their discretion, approve, each such employee being separately and independently authorized to so act without the concurrence or joinder in such action by and of the other named employees (List individual name(s) below):

|  |  |  |
| --- | --- | --- |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

BE IT FURTHER RESOLVED, that any such contract, agreement or release executed by any of the above-name employees in the name of **<<**Legal Name of Company**>>** should be considered a contract, agreement, or release of **<<**Legal Name of Company**>>** and shall be binding upon it.

BE IT FURTHER RESOLVED, that any similar authority heretofore granted by the Sole Proprietor of the Company to employees other than those named above be and hereby is terminated as of this date, and the authority granted above shall commence this date and shall continue until revoked by resolution of the Sole Proprietor.

I hereby certify that I am the Sole Proprietor of **<<**Legal Name of Company**>>**, that as such that no action has been taken by the Sole Proprietor of said Company that would have effect of changing or altering the authority granted therein.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  | Sole Proprietor  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  | Signature |
|  |  |  |  |  |
|  |  |  |  | Printed Name |
|  |  |  |  |  |
| Sole Proprietor  |  |  | Date |

**Addendum A**

**CMR Price Proposal**

**Addendum B**

**Terms & Conditions**

1. **General.** The Agreement may not be changed in any way except by an instrument in writing signed by both parties. The Contract Documents cancel and supersedes any prior understandings or agreements between the parties with respect to the subject matter hereof. Failure of any party to enforce its right under the Contract Documents shall not constitute a waiver of such rights or of any other rights under the Contract Documents.

2. **Termination for Cause.** Owner may terminate the Agreement at any time if Construction Manager fails to carry out its terms or fails to make substantial progress toward the fulfillment of those terms. In such an event, Owner shall provide Construction Manager with a thirty (30) day written notice of the terms in breach. If after such notice, Construction Manager fails to remedy the breach within those 30 days, Owner may immediately cancel the Agreement.

3. **Contract Assignment.** The Agreement shall not be transferred or assigned without prior written consent of Owner.

4. **Indemnity, General and Patent**. Construction Manager shall indemnify and save harmless Owner and its respective officers, agents and employees from and against any and all liabilities and losses whatsoever, including without limitation, costs and expenses in connection therewith, on account of, or by reason of, injury to or death of, any person whosoever, or loss of or damage to any property whatsoever, suffered or sustained in the case of, or in connection with, the negligent performance of the Agreement, except for that liability and loss arising from the acts or omissions of Owner or its agents. With respect to anything provided to Owner by Construction Manager, Construction Manager shall indemnify Owner and its respective officers, agents and employees against liability, including costs and attorney's fees for infringement of any United States patent, copyright, trade infringement or other intellectual property right arising out of the manufacture, delivery and use of such by Owner.

5. **Governing Law; Venue.** The laws of the State of Nebraska shall govern. Any dispute arising under the Agreement, which is not settled by agreement of the parties, shall be resolved in forums (except for applicable federal appellate courts) located in the State of Nebraska.

6. **Force Majeure.** Neither party shall be liable to the other for damages for any delay in performance arising out of causes beyond its reasonable control and without its fault or negligence, including without limitation: (1) fire, flood or water damage, elements of nature or other acts of God, including any of the foregoing that are harmful to electronic circuitry; (2) outbreak or escalation of hostilities, war, riots, or civil disorders in any country; (3) act or omission of the other party or any governmental authority, (4) labor disputes (whether or not the employees’ demands are reasonable or within the party’s power to satisfy), (5) non-performance by a third party (including any voice or data telecommunications common carrier), (6) failures or fluctuations in telephone, computer or other telecommunications equipment or lines or other equipment, (7) the real, potential, or credible threat of terrorist activity, or (8) a health emergency (e.g. serious outbreak of contagious disease such as a influenza pandemic) which in the judgment of Owner poses a serious threat to the public health. In the case of any such excusable delay, the non-performing party will be excused from performance of any affected obligation only for so long as the cause of the excusable delay prevails and such party continues to use commercially reasonable efforts to re-commence performance of its obligations as soon as possible; provided however, that the parties may mutually agree that such excusable delay is cause to cancel the Agreement in its entirety, in which case neither party shall be liable to the other for any further performance in relation obligations arising after cancellation.

7. **Compliance with Laws and Regulations;** **Gramm Leach Bliley; University of Nebraska Policies.** This Agreement must comply with all applicable federal, state and local laws, specifically including all laws and regulations related to the protection and security of any personal information gathered by Construction Manager, such as the Gramm Leach Bliley Act implemented at the University of Nebraska by Presidential Executive Memorandum No. 26 which requires specific contract provisions; and all other applicable policies of the University of Nebraska. Construction Manager agrees to indemnify Owner against any loss, cost, liability, or damage by reason of Construction Manager’s violation of any applicable law or regulation. Construction Manager must be qualified to conduct the business necessary to the performance of the Agreement in the State of Nebraska throughout the duration of the Agreement term or any renewal thereof. Construction Manager shall obtain, at its own cost and expense, all necessary licenses, professional certifications and permits and shall assume the responsibility for and pay all applicable fees and all other taxes, which are now or may be imposed in the future by any governmental authority arising out of the conduct of Construction Manager’s business.

8. **Sexual Harassment.** State and federal law, as well as the policies of the Board of Regents of the University of Nebraska, prohibit sexual harassment of members of the University community. Sexual harassment includes any unwelcome sexual advance, any request for a sexual favor, or any other verbal or physical conduct of a sexual nature that is so pervasive as to create a hostile or offensive environment. The Owner’s Construction Managers, sub-contractors and suppliers for this project are required to exercise control over their employees so as to prohibit acts of sexual harassment of University employees, students and other members of the University community. The employer of any person who, in its reasonable judgment, determines has committed an act of sexual harassment agrees as a term and condition of any contract awarded hereunder to cause such person to be removed from the project site and from Owner’s premises and to take such other action as may be reasonably necessary to cause the sexual harassment to cease.

9. **Drug Free Workplace.** Construction Manager agrees that in the performance of this Agreement, neither Construction Manager nor any of its employees shall engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity covered by the Agreement. Owner reserves the right to request a copy of Construction Manager’s Drug Free Workplace Policy. Construction Manager further agrees to insert a provision similar to this statement in all subcontracts or services hereunder.

10. **Weapons Policy.** Possession of dangerous weapons (concealed or unconcealed) on Owner’s property, on the work site, in the Owner’s vehicles, or in personal vehicles when on the Owner’s property shall be a violation of Owner’s policy. (A dangerous weapon shall include guns, knives, explosives, or any other device as determined by Owner, which in the manner used or intended is capable of producing death or bodily injury. Devices authorized by the Vice Chancellor for Business and Finance and/or provided to its employees for the purpose of carrying out work responsibilities shall not be deemed dangerous weapons for the purpose of this policy.) Violations of this policy shall make the offender subject to appropriate disciplinary action. Should the Owner in its reasonable judgment, determine that Construction Manager, or its employee or agent, has committed an act in violation of this policy, the Construction Manager agrees as a term and condition of the Agreement, to cause such person and weapon, to be removed from the project site, and from the Owner’s premises, and to take such other action as may be reasonably necessary, to ensure compliance with this weapons policy.

11. **Equal Opportunity in Procurement and Contracts.** The Owner recognizes the importance of a strong culturally diverse business community and the positive impact that successful businesses have upon the people of the State of Nebraska. The Owner assumes a leadership role in actions that will provide business opportunities for all businesses in the State of Nebraska. Accordingly, the Owner reaffirms its policy of providing equal opportunity to small business enterprises and to minority, disadvantaged, and women owned business enterprises in all aspects of the Owner’s procurement and contracting activities. This includes procurement of contracts for operational supplies and equipment, construction projects and materials, service contracts and License agreements. It is also the Owner’s policy that any person or business seeking the opportunity to do business with the Owner shall not be discriminated against on the basis of race, color, religion, sex, national or ethnic origin, age, disability, marital status, or veteran status. The Owner conducts its procurement and contracting activities in a manner designed to prevent unlawful discrimination. The Owner’s policies are consistent with applicable state and federal laws and regulations prohibiting unlawful discrimination.

12. **Proprietary Information; Confidential Employee Information; HIPAA; FERPA.** It is to be expected that the parties to the Agreement may find it necessary to reveal certain proprietary information to each other. The Agreement may, when proprietary information is exchanged, include certain provisions to mutually protect against the use and disclosure of the proprietary information of each party. In the unusual circumstance that the Agreement should result in the sharing of employee information protected by the law or University of Nebraska policy, information protected by the Health Insurance Portability and Accountability Act, information protected by the Family Educational Rights and Privacy Act of 1974, or any other information deemed confidential and protected by the law, the parties to the Agreement agree to maintain the confidentiality of such information to the extent and manner required by the law and University policy.

13. **Sub-Contractors.** Construction Manager shall not subcontract all or substantially all of any facet of the Work without the prior written approval of Owner. Construction Manager shall be fully responsible for the acts and omissions of its sub-contractors and of the persons directly or indirectly employed by them. Every sub-contractor shall be bound by the terms of the Contract Documents; provided however, that no contractual relationship shall exist between any sub-contractor and Owner, unless it is evidenced in a separate contract independent of the Agreement with Construction Manager.

14. **Legislative Funding Out Clause.** Notwithstanding any provision in the Agreement to the contrary, if the legislative body appropriating funds, does not allocate sufficient funds to allow Owner to make any periodic payment agreed to in the Agreement for any future fiscal period, Owner will not be obligated to pay the Agreement balance remaining at the time of the governmental funding short-fall.

15. **Parking**. Owner shall not be responsible for providing parking for Construction Manager’s parking needs. Construction Manager and/or its employees and agents will be solely responsible for any fines resulting from parking violations occurring on Owner’s property. To obtain information regarding parking and to obtain permits, it is recommended that Construction Manager and any temporary employees contact the Parking and Transit Services at:

 **UNL:** 625 Stadium Drive, Suite A, Lincoln, Nebraska, Telephone (402) 472-1800

 **UNO:** 1313 S. 67th Street, Omaha, NE 68182, Telephone: 402.554.PARK (7275)

 **UNK:** 2501 19th Avenue, Kearney, NE 68849, Telephone (308) 865-8367

16. **Building Rules and Regulations; Tobacco Use.** Employees of Construction Manager and any sub-contractors shall comply with all Owner rules and regulations pertaining to conduct in Owner’s facilities. Owner reserves the right to request the removal or replacement of Construction Manager or sub-contractor employee who fails to comply with such rules and regulations. All buildings, property and University owned vehicles are tobacco-free. Use of tobacco products is not permitted in or on any Owner facility/property. The Construction Manager is expected to respect this tobacco-free policy and fully comply with it.

17. **Use of Premises.** To the extent that the Agreement requires Construction Manager or its employees or agents to be present on or within Owner’s properties, then Construction Manager shall limit its presence and activities to such areas as are reasonably necessary in order to perform under the Agreement. The Construction Manager shall take such precautions as are required to avoid damage to buildings, facilities, utilities, ground resources, trees and landscape amenities, and other properties adjacent to Construction Manager’s activities within the scope of the Agreement and agrees to be responsible and/or carry out any repairs for which it is liable, as a result of its performance under the Agreement.

18. **Hazardous Waste Generated by Construction Managers and or sub-contractors.** Any hazardous waste, which is generated from the performance of the Agreement, shall be properly disposed of by Contractor, in a timely fashion, and in accordance with applicable hazardous waste laws and regulations. The cost for hazardous waste management and disposal is Contractor’s responsibility. Should Owner deem it prudent to dispose of any hazardous waste left on its property, as a result of Contractor’s failure to meet its responsibilities, all costs associated with such disposal shall be deducted from any amount yet to be paid to the Contractor and/or billed to the Contractor. University Environmental Health Services is to be notified of all hazardous waste issues. Any non-hazardous waste generated in the performance of this Agreement must be disposed of off campus by Contractor.

19. **Delivery; F.O.B.; Shipping.** Construction Manager shall bear all costs of transportation, packing, crating, delivery, installation, storage, and service under warranty for any goods or related services, delivered pursuant to the Agreement. Construction Manager shall be responsible for and make delivery, including costs of delivery, cartage, temporary storage, off-loading costs, and insurance, F.O.B. destination: University of Nebraska. Unless otherwise specified, all shipments will utilize the best commercial practice to insure safe arrival at the Owner’s delivery point.

20. **Quantity.** With respect to quantity of any good purchased under the Agreement, Owner need not accept any variation in quantity except as specified in the Contract Documents. Over-shipments may be returned to Construction Manager at its expense, which shall include a reasonable cost for Owner handling, or be retained by Owner at no increase in price.

21. **Inspection.** Owner may, at any time in the course of the Agreement, inspect and test materials and supplies being used in the performance of the Agreement, including at the point of manufacture. If inspection and tests are made on Construction Manager's premises, Construction Manager without additional charge, shall provide reasonable facilities and assistance for the safety and convenience of the testing/inspection personnel. Except as otherwise agreed in writing, all goods, equipment and supplies furnished under the Agreement shall be subject to final inspection and acceptance by Owner at the delivery destination.

22. **Defective Goods or Work.** Owner, notwithstanding any prior acceptance, at its option, may reject or require prompt correction (in place or elsewhere) of any goods, equipment, supplies, or other work, which are defective in material or workmanship or otherwise fail to meet the requirements of the Agreement. All supplies furnished under the Agreement shall be subject to inspection at F.O.B. destination, and Construction Manager shall be given notice of any defects, other than latent defects, within a reasonable time after receipt of the goods, equipment, and supplies, along with all records of delivery. Owner may, in addition to any rights it may have by law, prepare for shipment and ship the defective goods, equipment, and supplies to Construction Manager, require Construction Manager to remove them, or direct a correction in place. The expense of any such remedy shall be borne by Construction Manager, including any excess cost.

23. **Liens.** Construction Manager warrants that it has title to any goods delivered under the Agreement and shall deliver same free of all liens, claims, and encumbrances.

24. **Federal, State and Local Sales Taxes; Federal Excise Taxes.** Purchases made by the Owner are exempt from the payment of State Sales and Use Taxes and Federal Excise Taxes. Certification of these exemptions will be provided to Construction Manager following the execution of the contract documents.

25. **Ambiguities.** Should Construction Manager perceive an ambiguity in the Contract Documents, Construction Manager shall request an interpretation from Owner before proceeding. If Construction Manager fails to make such a request, failure to perform with respect to the alleged ambiguity shall not be excused.

26. **Recycling Policy.** When purchasing products, materials, or supplies for use, Owner, when making such purchases shall actively pursue the purchase of products, materials, or supplies which are manufactured or produced with at least 10% post-consumer recycled materials. This policy shall not operate when it would result in the purchase of products, materials, or supplies that are of inadequate quality, not readily available or substantially higher in cost. It is the intent of Owner to continually increase the percentage produced from post-consumer recycled material, and, to increase each year the types and variety of products, materials, or supplies purchased with post-consumer recycled material.

27. **Construction Manager Identification.** Construction Manager shall cause each of its employees or any person acting on behalf of the Construction Manager, while providing goods/services to Owner under this Agreement and working on Owner’s property, to carry identification, with photo, showing that the individual is an employee or person acting on behalf of the Construction Manager. A badge worn outside of clothing is appropriate for this purpose. Such identification shall be produced upon request of any Owner representative, in order to confirm that the Construction Manager's representative is authorized to be present on Owner’s property and/or performing as authorized by the Agreement. Whereas campus security is of utmost importance, failure of any Construction Manager representative to produce the requisite identification upon request, shall be a material breach of the Agreement and shall be cause, at the discretion of Owner, for immediate termination of the Agreement. For those who commonly wear a work uniform, such uniform shall be worn while providing the services related to this Agreement in order that Owner may quickly and clearly identify Construction Manager's service representatives when necessary. A uniform, however, does not take the place of a photo identification badge.

28. **Legal Relationship.** Construction Manager shall under no circumstances be considered as an agent or employee of Owner and shall have no right or authority to, in any manner, obligate Owner to any person or company except as authorized in writing by Owner.

29. **Use of University Names and Logos.** Construction Manager shall not use any University name, sign, logo, symbol, etc. for any purpose, without the prior written approval of Owner. Use of University brands generally requires licensing.

30. **Improper Business Relationships and Conflict of Interest Prohibited.** In connection with this Agreement, Construction Manager shall ensure that no improper, unethical, or illegal relationships, or conflict of interest exists between or among Construction Manager, the Owner and any staff and faculty, and any other party to this Agreement. Owner reserves the right to determine the materiality of such relationships, when discovered or disclosed, whether intended or not; and to decide whether or not cancellation of award shall result. Such cancellation shall be at no fault or liability whatsoever to Owner.

31. **Electronic and Information Technology Accessibility**. All electronic and information technology procurements, agreements, and contracts shall comply with Americans with Disabilities, Section 508 or the Rehabilitation Act of 1998 as amended and the Nebraska Accessibility Policy to be found at: <https://nitc.nebraska.gov/standards/2-Chapter.pdf> .

32. **LB403 Compliance.** Construction Manager, on behalf of itself and any sub-contractor to the Agreement, agrees that it shall use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska pursuant to Neb. Rev. Stat. 4-108 to 4-114 as amended.

33. **Equal Opportunity Clause Certification of Non-Segregated Facilities, Executive Order 11246**. This form will be provided and shall be executed by the Construction Manager upon notice of award.

34. **Construction Manager's Certificate of Insurance.** Construction Manager will be required to furnish a certificate of insurance with bodily injury/personal injury/liability coverage, property damage liability coverage, and workman's compensation coverage. This certificate must be on file prior to any commencement of Work. It is absolutely necessary that the “Board of Regents of the University of Nebraska” is listed as an additional insured" be added to the face of the certificate for all coverage except worker's compensation. The above statement must be worded in this manner. It is also absolutely necessary that a “Completed Operations Coverage” must be included as part of Construction Manager’s General Liability.

35. **Debarment.** Construction Manager certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transaction (Agreement), by any governmental department or agency. If Construction Manager cannot certify this statement, submit a written explanation for review by Owner.

**Amendment 1 to Agreement**

**Between Owner and Construction Manager**

Pursuant to Paragraph 2.2 of the Agreement, dated between **The University of Nebraska <<Campus>>, <<Department Name>>,** and **<<Legal Name of Company>>** the Owner and Construction Manager establish a Guaranteed Maximum Price and Contract Time for the Work as set forth below.

**ARTICLE 1**

**GUARANTEED MAXIMUM PRICE**

**University of Nebraska at <<City/Campus>>**

**<<Name of Project>> - Project Number <<#####>>**

The Construction Manager's Guaranteed Maximum Price for the Work described in the Exhibits attached hereto, including the estimated Cost of the Work as defined in the Agreement, the Construction Manager's Fee as defined in the Agreement, Construction Manger's general conditions costs for items listed on the Fee and General Conditions Worksheet, and Construction Manager's direct costs for items listed on the Fee and General Conditions Worksheet, is **<< Printed Dollar Amount>> and 00/100’s dollars** (U.S.) (**$<<Numerical Dollar Amount.00>>**) **as defined in GMP proposal dated <<Date>>.**

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

**Exhibit A** 95% GMP Drawing - <<Dated>>

**Exhibit B** 95% GMP Specifications - <<Dated>>

**Exhibit C** 100% GMP Drawings - <<Dated>>

**Exhibit D** 100% GMP Specifications - <<Dated>>

**Exhibit E** Assumptions and clarifications made in preparing the Guaranteed Maximum Price

**ARTICLE 2**

**CONTRACT TIME**

The date of Substantial Completion established by this Amendment is: **<<Date Month, Year>>**

|  |  |  |
| --- | --- | --- |
| **<< LEGAL NAME OF COMPANY>>** |  | **THE BOARD OF REGENTS OF THE** |
|  |  | **UNIVERSITY OF NEBRASKA** |
|  |  |  |
|   |  |   |
| Signature |  | Signature |
|   |  |  |
| Printed Name |  | Printed Name |
|   |  |  |
| Title |  | Title |
|  |  |  |
| Date |  | Date |

**Exhibit A**

95% GMP Drawing

**Exhibit B**

95% GMP Specifications

**Exhibit C**

100% GMP Drawings

**Exhibit D**

100% GMP Specifications

**Exhibit E**

Assumptions and clarifications made in preparing the Guaranteed Maximum Price