Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the ___ day of ___ in the year [Revised May 31, 2010; March 2011; October 2011]

BETWEEN the Owner:
(Name, legal status and address)

Case Western Reserve University
10900 Euclid Avenue
Cleveland, Ohio 44106-7228

and the Construction Manager:
(Name, legal status and address)

for the following Project:
(Name and address or location)

The Architect:
(Name, legal status and address)

The Owner’s Designated Representative:
(Name, address and other information)

Case Western Reserve University
10620 Cedar Avenue
Cleveland, Ohio 44106-7228
Attn:

The Construction Manager’s Designated Representative:
(Name, address and other information)

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User Notes:
The Architect’s Designated Representative:
(Name, address and other information)

The Owner and Construction Manager agree as follows.
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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner’s acceptance of the Construction Manager’s Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

### § 1.2 Relationship of the Parties

The Construction Manager accepts the fiduciary relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager’s best skill and judgment in furthering the interests of the Owner; to furnish efficient construction, construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner’s interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

### § 1.3 General Conditions

All references in this document to AIA Document A201™-2007, General Conditions of the Contract for Construction shall mean the attached version of said document, as modified by Owner. For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2007, which document is incorporated herein by reference. The term “Contractor” as used in A201–2007 shall mean the Construction Manager.
ARTICLE 2  CONSTRUCTION MANAGER'S RESPONSIBILITIES
The Construction Manager’s Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager’s Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase
§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner’s program, schedule and construction budget requirements, each in terms of the other.

§ 2.1.2 Consultation
The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 Preliminary Project Schedule
When Project requirements in Section 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 and the Owner’s approval for the portion of the preliminary Project schedule relating to the performance of the Architect’s services. The preliminary Project schedule shall coordinate and integrate the Construction Manager’s services, the Architect’s services, other Owner consultants’ services, and the Owner’s responsibilities and identify items that could affect the Project’s timely completion. The updated preliminary Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; review and approval of submittals; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner; the occupancy requirements of the Owner; the Owner’s milestone dates; and significant Owner’s activities and events (e.g., campus breaks, commencement exercises, special events, reading days, exam schedule).

§ 2.1.4 Phased Construction
The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates
§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect’s review and Owner’s approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect’s review and the Owner’s approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.
§ 2.1.6 Subcontractors and Suppliers
The Construction Manager shall develop bidders' interest in the Project. subcontractor interest in the Project and shall furnish to the Architect for its information and to the Owner for its approval, a list of possible, pre-qualified subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design of the Architect, from whom proposals will be requested for each principal portion of the Work. The Owner may designate specific persons or entities from who the Construction Manager shall obtain bids. The Architect or the Owner will promptly reply in writing to the Construction Manager if the Architect or the Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or the Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or the Architect later to object to or reject any proposed subcontractor or supplier.

§ 2.1.7 The Construction Manager shall prepare, for the Architect’s review and the Owner’s acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions reasonably acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility
The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws
The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time
§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, when the Drawings and Specifications are sufficiently complete to enable a detailed Guaranteed Maximum Price (GMP) to be prepared for the entire project clearly itemizing the costs of each component (such as site work, demolition, concrete, masonry, metals, thermal, moisture protection, roofing, doors & windows, finish, detail, plumbing, HVAC, electrical and the like) the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner’s review and acceptance. The Guaranteed Maximum Price in the proposal GMP will be the sum of the Construction Manager’s estimate of the Cost of the Work, including contingencies described in Section 2.2.1, and the Construction Manager’s Fee, direct cost of the Work, the general requirements, Construction Manager’s Fee for services, plus the guaranteed not-to-exceed general condition items, the Construction Manager’s estimated cost of all work within the scope defined in this Agreement, plus, the Construction Manager’s contingency, and the Owner Allowances. The GMP shall not include any other project expenses not directly involved in the scope of construction included in this Agreement, such as site acquisition, professional design fees, site survey, financing costs, or other contract costs for contracts directly with the Owner.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, system, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order. The proposed GMP will include a project design contingency which may be used by the Construction Manager with prior written approval of the Owner to cover...
(i) the amount of any excess of the amount bid by the successful Subcontractor for any Construction Work over the respective amount for that Construction Work in the Guaranteed Maximum Price Amendment, but not Construction Work to be performed by the Construction Manager, if the Construction Manager is permitted to self-perform some of the Construction Work; and

(ii) the amount of any other Actual Cost of the Construction Work to be performed by a Subcontractor (but not Construction Work to be performed by the Construction Manager, if the Construction Manager is permitted to self-perform some of the Construction Work).

The Construction Manager acknowledges that the drawings and specifications will be subject to further development that is consistent with the Guaranteed Maximum Price Amendment drawings, specifications, assumptions and clarifications. The Construction Manager understands and agrees that if the Construction Manager and the Owner agree on a GMP, the Construction Manager will be obligated to perform the Work in accordance with the Construction Documents thereafter approved by the Owner (regardless of whether approved by the Construction Manager) in return for payment by the Owner of an amount equal to the Actual Cost of the Work up to but not exceeding the Guaranteed Maximum Price except to the extent that the Construction Documents contain items or details that are not consistent with the GMP Drawings, Specifications, Assumptions and Clarifications and are not reasonably inferable therefrom. Therefore, in determining the proposed GMP, the Construction Manager will take into account such further development of the Design Submission Documents. The Owner and the Architect may review and discuss the GMP Drawings, Specifications, Assumptions and Clarifications with the Construction Manager in evaluating the proposed GMP. Any such review or discussion and any failure to review or comment on or to advise of any errors or omission in the GMP Drawings, Specifications, Assumptions and Clarifications by the Owner or the Architect shall not be a basis for the Construction Manager to place any responsibility on the Owner or the Architect for any deficiency in the accuracy or completeness of the GMP Drawings, Specifications, Assumptions or Clarifications or any error by the Construction Manager in preparing the proposed GMP. Construction Manager shall have responsibility to assure that the Guaranteed Maximum Price Amendment GMP Drawings, Specifications, Assumptions and Clarifications are an accurate and complete statement of the Construction Manager’s intent.

The only budget line items within Guaranteed Maximum Price Amendment that may be adjusted are:

1. Contingency; and
2. Amounts in the line items covering Construction Work to be performed by the Subcontractors (but not Construction Work to be performed by the Construction Manager if the Construction Manager is permitted to self-perform any Construction Work).

Regardless of any movement of amounts within the GMP, the Construction Manager shall have sole responsibility for completing the entire Construction Work within the Contract Time(s) for the Work and for an amount not-to-exceed the Guaranteed Maximum Price.

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

1. A complete list of all the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
2. A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications; All clarifications and assumptions should identify an associated value, if applicable;
3. A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, general conditions, and the Construction Manager’s Fee;
4. The anticipated date. A detailed critical-path-method schedule in accordance with Paragraph 3.10 of AIA Document A201-2007, including the Owner’s occupancy requirements, the Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based;
5. A date by which the Owner must accept the Guaranteed Maximum Price; and
6. A list of allowances and a statement of their basis.
§ 2.2.4 In preparing the Construction Manager’s Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager’s exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. The Construction Manager’s contingency shall only be available for use to cover the Construction Manager’s costs, expenses, overhead and profit attributable to (a) refinement of design details within the Scope of Work and standards of quality and quantity on which the GMP is based, (b) cost due to general area wide labor disputes, (c) increases in bid or purchase order agreements, (d) corrective work, and (e) labor disputes within manufacturing or transportation industries causing delays in receipt of materials or equipment not the fault of the Construction Manager. The Construction Manager’s contingency account is not available for overruns in general conditions, self-performed work, Owner increases in Allowances, or changes in the Scope of Work, including material or design changes.

§ 2.2.4.1 Construction Manager shall be required to obtain two written quotes for procurements over $5,000 but below $24,999.99 and formally bid (three bids minimum) all of the Work $25,000 and above including work related to general conditions cost, which shall not be included as part of the Direct Cost of the Work. The management fee for general conditions will be included in the Construction Manager’s base fee. If the Construction Manager is capable and desires to perform a portion of the Direct Work, the Construction Manager will be considered on the basis of a subcontract with a guaranteed maximum price competitively bid for that portion of the Work.

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

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 2.2.10 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made of the date to be fixed in a Notice to Proceed issued by the Owner.

(Insert date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a Notice to Proceed.)

Date of Commencement is:

§ 2.2.11 The Contract Time shall be measured from the date of commencement.

§ 2.2.12 The Construction Manager shall achieve Substantial Completion of the entire Work not later than the date established in the Guaranteed Maximum Price Amendment (the "Contract Time"), subject to adjustment as provided in the Contract Documents.
Substantial Completion is defined in accordance with Paragraph 9.8.1 of the AIA Document A201-2007 as the stage in
the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the
Contract Documents so that the Owner can occupy or utilize the Work for its intended use, which shall include receipt
of all applicable permits and approvals necessary to designated portion thereof to be deemed substantially complete.
also defined as the date that the Owner can operate the Project with a minimum of interference from the Contractor and
only minor punch list items should remain to be completed, and Contractor shall have already provided all Project
Record documents including, but not limited to, Operations and Maintenance Manuals and As-Built drawings to the
Owner.

Final Completion is defined as the date when all the Work under the Contract Documents has been fully performed
and is acceptable to the Architect/Engineer and the Owner.

§ 2.3 Construction Phase
§ 2.3.1 General
§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of
commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner’s acceptance of the Construction Manager’s
Guaranteed Maximum Price proposal or the Owner’s issuance of a Notice to Proceed, whichever occurs earlier; mutual
execution of the Guaranteed Maximum Price Amendment.

§ 2.3.2 Administration
§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the
Construction Manager’s own personnel shall be performed under subcontracts or by other appropriate agreements
with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the
Construction Manager shall obtain bids. The Construction Manager shall obtain bids from obtain, in accordance with
Section 2.2.4.1, bids from prequalified Subcontractors and from suppliers of materials or equipment fabricated
especially for the Work, all from a list previously approved by the Owner, and shall deliver such bids to the
Architect. The Owner shall, the Construction Manager will be responsible for analyzing then reviewing all bids with
the Architect and the Owner, and reviewing the complete scope, after which time a recommendation will be made for
approval by the Owner. The Owner will then determine, with the advice of the Construction Manager and the
Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to
whom the Construction Manager has reasonable objection. The Construction Manager will be the licensed builder on
this Project, coordinate the Work, and be responsible for delivery of the building on schedule and of the specified
quality. The Construction Manager will sign and hold the contracts with the various Subcontractors and suppliers and
be responsible to the Owner for the resultant work.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the
Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid
that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner
requires that another bid be accepted, then the Construction Manager may require that a Change Order 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 and time requirement of the subcontract or
other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and
shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is
awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive
the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager
in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party"
according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such
relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures,
progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly
§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the Work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 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 and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.4 Professional Services
Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials
Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER’S RESPONSIBILITIES
§ 3.1 Information and Services Required of the Owner
§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner’s objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner’s obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner’s ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner’s budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner’s other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner’s budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project’s scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner’s control and relevant to the Construction Manager’s performance of the Work with reasonable promptness after receiving the Construction Manager’s written request for such information or services. The Owner shall furnish reports, surveys, and other information to the Construction Manager and Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project’s scope and quality.

The American Institute of Architects

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§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish, if in Owner’s possession, surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a 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; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect 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 the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are reasonably requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner’s control and relevant to the Construction Manager’s performance of the Work with reasonable promptness after receiving the Construction Manager’s written request for such information or services.

§ 3.2 Owner’s Designated Representative
The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner’s representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2007, the Architect does not have such authority. The term “Owner” means the Owner or the Owner’s authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner’s needs and interests.

§ 3.3 Architect
The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B103™–2007, Standard Form of Agreement Between Owner and Architect, including any additional services reasonably requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner, upon request of the Construction Manager, shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement, from which compensation provisions may be deleted.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
§ 4.1 Compensation
§ 4.1.1 For the Construction Manager’s Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

§ 4.1.2 For the Construction Manager’s Preconstruction Phase services described in Sections 2.1 and 2.2:

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within (___) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager’s compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager’s personnel providing Preconstruction Phase services on the Project and the Construction Manager’s costs for the
mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments
§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments shall be made following the presentation of the Construction Manager’s invoice, including back-up documentation required by the Owner, as further described in Section 4.2.2.

§ 4.2.2 Payments are due and payable upon presentation for approved amounts are due and payable forty-five (45) days after the Owner’s approval of the Construction Manager’s invoice. Amounts unpaid as of forty-five (45) days after the invoice due date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager below.

(Insert rate of monthly or annual interest agreed upon.)

% — Key Bank, NA’s prime rate, Cleveland, Ohio

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
§ 5.1 For the Construction Manager’s performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. Funds for the Construction Manager’s performance of the Contract. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager’s Fee.

§ 5.1.1 The Construction Manager’s Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager’s Fee.)

For the Construction Manager’s performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager, in current funds, the Contract Sum consisting of the Cost of the Work as defined in Article 6 and the Construction Manager’s Fee determined as follows:

Shall be _____ % Fee on the Actual Direct Cost
Shall be _____ % Fee on the Actual Cost for Self-Performed Work

Direct Cost is defined as the actual cost of the subcontract amounts and materials purchased orders that are incorporated into the Work. Direct Cost does not include any subsequent change order amounts, contingency, general conditions, fees, or any other costs which are not incorporated into the Work or any amounts that would cause the Guaranteed Maximum Price to be exceeded. The Fee and contingency are calculated as a percentage of the actual Direct Cost before adding general conditions.

General Conditions shall mean the cost of facilities and services necessary for the proper execution and completion of the Work which do not become a permanent part of the Work.

§ 5.1.2 The method of adjustment of the Construction Manager’s Fee for changes in the Work:

Pursuant to Article 7 of AIA Document A201-2007

§ 5.1.3 Limitations, if any, on a Subcontractor’s overhead and profit for increases in the cost of its portion of the Work:

Pursuant to Article 7 of AIA Document A201-2007

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed percent (___ %) of the standard rate paid at the place of the Project the rates set forth in Section 6.5.2.

§ 5.1.5 Unit prices, if any:
(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)
§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

To the extent the Cost of the Work is less than the Guaranteed Maximum Price, the Construction Manager shall not be entitled to the difference or any portion thereof.

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner’s prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. 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.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager’s Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 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 Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager’s Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

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 the standard paid at the place of the Project except with prior written consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner’s prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.
§ 6.2 Labor Costs

§ 6.2.1 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 prior approval, at off-site workshops, site. Cost to be reimbursed will be the actual wages paid to individuals performing the Work.

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

<table>
<thead>
<tr>
<th>Classification (Dollar amounts are all inclusive)</th>
<th>Name</th>
</tr>
</thead>
</table>

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager’s principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 6.2.3 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. Employee bonuses will not be considered reimbursable labor or labor burden costs. Bonuses paid to the Construction Manager employees will be considered a non-reimbursable cost considered to be included in the Construction Manager’s Fee.

§ 6.2.4 Costs—Net costs paid or incurred by the Construction Manager for payroll taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits—benefits agreed to in advance in writing by the Owner such as sick leave, medical and health benefit plans, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3. "Net costs" means actual costs incurred, after applying for the benefit of the Owner all related credits and adjustments available, including but not limited to experience modifiers for workers’ compensation insurance or program coverage, annual limitations on payroll taxes, effective rates, premium discounts, dividends, rebates, expense constants, and assigned risk-pool costs on taxes and insurance and any other credits and adjustments to these costs regardless of when such items first become available. Bonuses and training will not be reimbursed unless they are approved in advance in writing by the Owner. The Owner, in its sole discretion, may elect to permit the Construction Manager to charge and be paid during the course of the Project for such personnel taxes, insurance and benefits by using an agreed fixed provisional rate, which charges will be subject to audit by the Owner at any time including after the conclusion of the Project. In the event that any such audit reveals a difference between the agreed provisional rate and the actual net cost relating to the Project, an appropriate credit or payment will be made promptly by the appropriate party.

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

§ 6.2.4.2 Cost of the Work shall include the actual net cost of the Construction Manager for workers’ compensation insurance attributable to the wages chargeable to the Cost of the Work per this Agreement. The actual net cost of workers’ compensation shall take into consideration all cost adjustments due to experience modifiers, premium discounts, policy dividends, retrospective rating plan premium adjustments, assigned risk pool rebates, any applicable weekly maximums and any other cost adjustments not identified herein but applicable. The Construction Manager...
may charge an estimated amount for workers’ compensation insurance costs, but will make appropriate cost adjustments to actual costs within 45 days of receipt of actual cost adjustments from the insurance carrier.

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

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

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

<table>
<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Medical Insurance</td>
<td>10.00%</td>
</tr>
<tr>
<td>(2) Dental Insurance</td>
<td>1.00%</td>
</tr>
<tr>
<td>(3) AD&amp;D Insurance, Life Insurance</td>
<td>1.00%</td>
</tr>
<tr>
<td>(4) Holiday, vacation and other &quot;off&quot; paid time (not worked) does not include training</td>
<td>10.00%</td>
</tr>
<tr>
<td>(5) Pension Plan Contributions to Vested Employee Account</td>
<td>10.00%</td>
</tr>
</tbody>
</table>

For non-union personnel, no other fringe benefit costs (other than the five (5) specific categories listed immediately above shall be considered reimbursable Cost of the Work. Any labor burden costs that are in excess of the amounts considered reimbursable or are otherwise not considered reimbursable under the terms of this Agreement are intended to be included in and covered by the Construction Manager’s Fee.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner’s prior written approval.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts. The Construction Manager shall not, directly or indirectly, enter into any contract, purchase order or other agreement ("Arrangement") in connection with the Work with (a) any individual related by affinity or consanguinity within the third degree to any individual who is an owner or employee of the Construction Manager; or (b) any entity that controls, is controlled by or is under common control with the Construction Manager (each a "Related Party"), unless such Arrangement has been approved in writing by the Owner, after full disclosure in writing by the Construction Manager to the Owner of such affiliation or relationship and all details relating to the proposed Arrangement. The term "control", as used in the immediately preceding sentence, means, with respect to a corporation or a limited liability company, the right to exercise, directly or indirectly, fifty percent (50%) or more of the voting rights attributable to that corporation or limited liability company and, with respect to any individual, partnership, trust, association or other entity, the power, directly or indirectly, to direct or cause the direction of the management or policies of the controlled person or entity, through voting rights, contractual rights or otherwise. The terms of any such Arrangement must conform to the requirements of the Contract Documents. If any Related Party undertakes any portion of the Work pursuant to an Arrangement with the Construction Manager, such Arrangement shall provide for the right to audit all of the books and records pertaining to the Work undertaken by such Related Party, which audit may be undertaken by the Owner or its representative at any time. All savings under any Arrangement shall be applied to reduce the Cost of the Work under this Agreement, and no profit or fee shall be payable to any such Related Party except as approved in advance in writing by the Owner.

§ 6.3.1 Construction Manager shall invite bids from, and enter into contracts and material orders with, only subcontractors and suppliers who have first been approved by the Owner. After receiving such bids, the Construction Manager shall negotiate the contract terms and conditions.

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User Notes:
Manager shall always analyze them and make recommendations for awards, accompanying its recommendations with all pertinent data required for decision upon the award, and certifying that, to the best of its knowledge, the bid of the recommended subcontractor or supplier is bona fide, fair and reasonable.

§ 6.3.2 When the Owner has approved the award of any such subcontract or purchase order, the Construction Manager shall contract in its own name and behalf, and not in the name or on behalf of the Owner, with the specified subcontractor or supplier. The Construction Manager’s subcontract and purchase order forms shall provide that Subcontractor shall perform its portion of the Work and all applicable provisions of this Agreement and the Contract Documents.

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

§ 6.3.4 If the net effect of the Owner’s designation as the selected subcontractors and suppliers (taking into account both subcontractors and suppliers whose bids exceed those of bidders recommended by the Construction Manager and those bids are less than those recommended by the Construction Manager) is the selection of subcontractors and suppliers whose bids, in the aggregate, exceed those of the bidders recommended by the Construction Manager, the Estimated Construction Manager’s Cost and the GMP Cost shall be increased by the lesser of (i) the amount by which the bids of the designated subcontractors and suppliers exceed the bids of the bidders recommended by the Construction Manager or (ii) the amount by which the bids of the designated subcontractors and suppliers exceed the amount utilized by the Construction Manager in calculating the GMP Cost. The Construction Manager’s Fee shall not be increased on account of Owner’s designation of subcontractors or suppliers, regardless of the number of such designations or the resulting increase in the GMP Cost, if any.

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

§ 6.3.6 For scope of work bid packages typically performed by subcontractors, the Construction Manager may "self-perform" such work on a cost plus fee (Not-To-Exceed 10%) basis subject to an agreed upon guaranteed maximum price for the "self-performed work." The Construction Manager may bid its proposed GMP for the Work to be "self-performed" against at least three other interested trade contractors. Any subcontract for "self-performed work" will provide for payment in an amount equal to the cost of the Work (as defined by this Agreement) and will not exceed the agreed upon subcontract guaranteed maximum price. All terms and provisions of any subcontract for "self-performed work" shall be applied to reduce the Cost of the Work under this Agreement and the GMP. For purposes of defining "self-performed work" subject to this Agreement provision, any division of the Construction Manager or any separate Contractor or subcontractor that is partially owned or wholly owned by the Construction Manager or any of its employees or employee’s relatives will be considered a related party entity and will be subject to this provision regarding "self-performed work." No "self-performed work" will be allowed to be performed on a lump sum basis.

§ 6.3.7 The Construction Manager (with respect to its suppliers, subcontractors and all lower tier subcontractors) shall provide the Owner advance written notice and shall obtain the Owner’s written approval for any proposed subcontract change order, material purchase order, or other financial commitment in an amount in excess of $5,000 prior to placing such order or entering into such agreement (regardless of whether or not such commitment will affect the prime contract GMP). It is agreed that sums applicable to any subcontract change order, purchase order or other financial commitment entered into in violation of the above notice and approval requirement shall not be included in the amounts owing to the Construction Manager, Subcontractor or Suppliers whether as a Cost of the Work or as reasonable termination costs in the event of termination.

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

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

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner’s property at the completion of the Project.
of the Work or, at the Owner’s option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items
§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Major repairs, overhauls and/or replacements are to be covered by the rental rates, and are not reimbursable. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner’s prior approval written approval.

§ 6.5.2.1 All costs incurred for minor maintenance and repairs of rented tools or equipment shall be reimbursable at actual cost. Such costs include routine and preventative maintenance, minor repairs, and other incidental costs.

§ 6.5.2.2 Proposed rental rates and related fair market values for equipment owned by the Construction Manager or a Related Party shall be submitted to and approved by the Owner in writing prior to being used in connection with the Work. The projected usage for each piece of equipment proposed to be rented, and estimated total rentals, shall be submitted for approval in writing in advance in a form satisfactory to the Owner, so that an appropriate lease versus buy decision can be made. The projected usage for each piece of equipment to be rented for use on the project and the estimated total rentals shall be considered by the Construction Manager before the piece of equipment is rented so that an appropriate rent versus buy decision can be made. Purchased equipment shall be considered ”job owned”. At the completion of the project, the Construction Manager may keep any such equipment for an appropriate fair market value credit to job cost, which will be mutually agreed to by the Owner and the Construction Manager.

§ 6.5.2.3 Each piece of equipment to be rented shall have hourly, daily, weekly, and monthly rates and the most economical rate available shall be reimbursed based on the circumstances of actual need and usage of the piece of equipment while it is stationed at the jobsite. When the piece of equipment is no longer needed for the Work, no rental charges will be reimbursed if the piece of equipment remains at the jobsite for the convenience of the Construction Manager.

§ 6.5.2.4 The reimbursable equipment rental rates for Construction Manager owned tools and equipment shall not exceed 75% of the published rates based on the latest edition of ”Rental Rates and Specifications” published by the Associated Equipment Distributors (AED). If the AED publication does not contain information related to the type of equipment rented, the Construction Manager will be allowed to use a maximum equipment rental rate equal to 75% of the current competitive rental rates from local third party equipment rental companies.

§ 6.5.2.5 The aggregate rentals chargeable for each piece of Construction Manager owned tools or equipment shall not exceed 50% of the fair market value of such equipment at the time of its commitment to the Work. The original purchase price and date of purchase of the equipment will be documented with a copy of the purchase invoice for the piece of equipment. Such aggregate limitations will apply and no further rentals shall be charged even if a piece of equipment is taken off the job and is later replaced by a similar piece of equipment. For purpose of computing the aggregate rentals applicable to aggregate rental limitations, rental charges for similar pieces of equipment will be combined if the pieces of equipment were not used at the same time.

§ 6.5.2.6 Fair market value for used material and equipment as referred to in this Agreement shall mean the estimated price a reasonable purchaser would pay to purchase the used material or equipment at the time it was initially needed for the job. Note: This is usually lower than the price a reasonable purchaser would pay for similar new construction material or construction equipment.
§ 6.5.2.7 Rental charges for equipment which is not owned by the Construction Manager or any of its affiliates, subsidiaries, or other related parties and is rented from third parties for use in proper completion of the Work shall be considered reimbursable and will be reimbursed at actual costs, as long as rental rates are consistent with those prevailing in the locality. Any lease/purchase rental arrangements must be disclosed to the Owner in advance. For any lease/purchase arrangements where any of the lease/purchase rental charges were charged to the Owner as reimbursable job costs, appropriate credit adjustments to job cost will be made for an appropriate pro rata share of the fair market value of the equipment at the time it was last used on the job.

§ 6.5.2.8 All losses resulting from lost, damaged, or stolen tools and equipment shall be the sole responsibility of the Construction Manager, and not the Owner, and the cost of such losses shall not be reimbursable under this Contract.

§ 6.5.2.9 The Construction Manager shall be required to maintain a detailed equipment inventory of all job-owned equipment (either purchased and charged to job cost or job-owned through aggregate rentals) and such inventory shall be submitted to the Owner each month. For each piece of equipment, such inventory must include a minimum (1) original purchase documents including price or acquisition cost (2) acquisition date (3) approved Fair Market Value (FMV) at the time the piece of equipment was first used on the job and (4) final disposition.

§ 6.5.2.10 All costs incurred for minor maintenance and repairs shall be reimbursed at actual cost. Such costs include routine and preventive maintenance, minor repairs and other incidental costs. Repairs and/or replacements of a capital nature are considered to be covered by rental rates. Major repairs and overhauls are not considered routine and ordinary consequently such costs are not reimbursable and are intended to be covered by rental rates.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office. Reproduction costs will be the actual costs of reproduction subject to a maximum of seven cents ($0.07) per square foot for prints and a maximum of five cents per 8 1/2 x 11 inch page for offset print or photo copied contract documents, specifications, etc. Telephone costs will be the actual costs paid to the third party telephone company for the field office telephone.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager’s supervisory or administrative personnel incurred while traveling in discharge of duties directly connected with the Work. Project related travel expenses shall be reimbursed at actual cost and mileage shall only be reimbursed when traveling on project related business, in a personal vehicle. Reimbursable mileage shall be reimbursed in accordance with the current IRS Standard Business Mileage Rate. Mileage shall not be reimbursed for travel in a company vehicle to or from an employee’s home, to or from the main office, for training or other company related business. Any travel involving airfare will require advance written approval by the Owner.

Reimbursables meals shall not include alcoholic beverages.

Reimbursement for meals shall be expensed in accordance with the current USGSA per diem rate for Cleveland, Cuyahoga County, Ohio. Expenses shall be for employees of the Contractor only when engaged in work directly associated with the Work. CWRU does not pay for mark-ups on reimbursable expenses.

Charges listed on the invoice should match precisely with supporting itemized documentation. Supporting itemized documentation for all reimbursable costs is required for reimbursement.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner’s prior approval, written approval and proof of insurance of the stored materials and equipment. Construction Manager will provide to the Owner any and all supporting documentation reasonably requested and access to stored materials and equipment.

§ 6.6 Miscellaneous Costs
§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner’s prior written approval.
1. The Construction Manager’s actual cost for insurance coverages shall be considered to be included within the maximum limit for General Condition costs. All premiums for any insurance and bonds required for the Project shall reflect the net actual costs to the Construction Manager after taking into consideration cost adjustments due to experience modifiers, premium discounts, policy dividends, retrospective rating plan premium adjustments, assigned risk pool rebates, refunds or any other reduction not noted.

2. In the event that the Construction Manager elects to utilize workers’ compensation insurance programs that involve either self-insurance and/or large deductibles, the maximum amount to be considered reimbursable costs under this contract will not exceed an amount equal to 40% of the standard state workers’ compensation rates applicable to Construction Manager straight time wages. Any Construction Manager costs incurred in connection with the contractor’s elected workers’ compensation insurance program that exceed the amount reimbursed by the Owner under the formula in this paragraph will be considered included in and covered by the Construction Manager’s Fee.

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

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

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable, but does not include commercial activity tax or gross receipts tax. The Owner, a tax exempt entity, shall provide the Construction Manager with a tax exemption certificate for any taxes for which the Construction Manager may claim an exemption.

§ 6.6.3 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 shall be reimbursed at actual cost imposed by the issuing authority.

§ 6.6.4 Fees. Upon prior written approval of the Owner, fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and 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. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager’s Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work. Permit fees, licenses, tests, royalties, damages for infringement on patents and costs of defending suits thereof, and deposits lost for causes other than the Construction Manager’s negligence. If royalties or losses and damages, including the cost of defense, are incurred which arise from a particular design, process or the product of a particular manufacturer or manufacturers specified by the Owner or Architect, and the Construction
Manager has no reason to believe there will be an infringement of patent rights, such royalties, losses and damages shall be paid by the Owner and not considered as within the GMP.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner’s prior written approval.

§ 6.6.7 Deposits lost for causes other than the Construction Manager’s negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys’ fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner’s prior approval, which shall not be unreasonably withheld.

§ 6.6.9 Subject to the Owner’s prior approval, expenses incurred in accordance with the Construction Manager’s standard written personnel policy for relocation and temporary living allowances of the Construction Manager’s personnel required for the Work, Expenses incurred for temporary living allowance buy only with the Owner’s prior written approval and a Not-To-Exceed basis for the cost of personnel required for the Work, in case it is necessary to temporarily relocate such personnel from distant locations.

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and only to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager. Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2007 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 Section 6.8.

§ 6.7.5 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2007 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 Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

.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 Section 6.2, or as may be provided in Article 11;

.2 Expenses of the Construction Manager’s principal office or offices other than the site office;

.3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7–6.7. Costs of the Construction Manager’s home office computer services or other outside computer processing services shall be considered overhead and general expense. Accordingly the Construction Manager should not plan to perform any such computer related services or alternatives at the field office when such services or functions can be performed at the Construction Manager’s home or branch offices, or other outside service locations;

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

.5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by
any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

6. Any cost not specifically and expressly described in Sections 6.1 to 6.7;
7. Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
8. Costs for services incurred during the Preconstruction Phase.

§ 6.9 Discounts, Rebates and Refunds
§ 6.9.1 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 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 obtained.

1. Cost of the Work will be credited with all insurance policy discounts, performance and payment bond rebates or refunds, refunds or return premiums from any Subcontractor default insurance, refunds or rebates from any Construction Manager controlled insurance programs applicable to the project, merchandise rebates of any nature, refunds of any nature, insurance dividends; and a portion of any volume rebates or free material credits earned with purchase of material or other goods and services charged to the job.

2. "Cash" discounts which may accrue to the Construction Manager will be limited to a maximum of 1% of indirect cost. All "Cash" discounts greater than 1% shall automatically accrue to the Owner if the Construction Manager is eligible to take advantage of the discounts.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions
§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, in its sole discretion, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner, in its sole discretion, fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records
The Construction Manager shall keep full and detailed books, records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner’s auditors. Owner’s accountants and project management and internal auditor staff shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager’s records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor’s proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. For any proper purpose, including verification of the Construction Manager’s compliance with Contract requirements and provisions for pricing change orders and evaluating invoices or claims, the Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.
ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, Payment, reviewed by the Architect and signed to evidence review, but not approval, by the Construction Manager and approved in writing by the Owner and Certificates for Payment reviewed by the Architect, and approved by the Owner, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

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

§ 7.1.3 Provided that an Application for Payment is received by the Architect Owner not later than the first day of a month, and provided such Application for Payment is reviewed by the Architect and approved by the Owner in accordance with the terms of the Contract Documents, the Owner shall make payment of the certified amount to the Construction Manager not later than the first day of the following month. If an Application for Payment is received by the Architect Owner after the application date fixed above, and provided such Application for Payment is reviewed by the Architect and approved by the Owner in accordance with the terms of the Contract Documents, payment shall be made by the Owner not later than forty-five (45) days after the Architect Owner receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices with sufficient detail including Company Name, Address, Phone Number and with a detailed description including labor, equipment and materials identifying the number of hours and rates included, or detailed invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less Manager; less (2) that portion of those payments attributable to the Construction Manager’s Fee, plus Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values Owner approved detailed schedule of values which at a minimum shall identify each subcontractor and all components of the Guaranteed Maximum Price (General Conditions, Direct Cost, Contingency, Allowances, Fee and a distribution of Change Orders) submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager’s Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect Owner may require. This schedule, unless objected to by the Architect 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 of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of 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 that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

1. Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of 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 shall be...
included as provided in Section 7.3.9 of AIA Document A201–2007.

Owner approved schedule of values:

2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, by the Owner in writing, (and provided that the Construction Manager, shall provide the Owner with a certificate of insurance for full replacement and naming Owner as an additional insured, provide a bill of sale, and provide for on-site inspection 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 percent ( %) Fee. The Construction Manager’s Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion as a percentage of the Direct Cost of the Work.

4 Subtract retainage of ten percent ( 10 %) from that portion of the Work that the Construction Manager self-performs.

5 Subtract the aggregate of previous payments made by the Owner;

6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner’s auditors in such documentation; and

7 Subtract amounts, if any, for which the Architect-Owner has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 7.1.8.1 Notwithstanding anything to the contrary in this Agreement and to the fullest extent permitted under Ohio law, the Owner shall be entitled to withhold ten percent (10%) of the Cost of the Work, Construction Manager’s Fee, and General Conditions, as statutory retainage, to be held until thirty (30) days following final completion of the Work. Further, Construction Manager shall be required to contract with Subcontractors to withhold ten percent (10%) of the contract amount of each of Contractor’s subcontracts. Amounts retained may be released to Construction Manager’s Subcontractors only upon Owner’s prior written approval.

§ 7.1.8.2 Notwithstanding anything contained in the Contract Documents to the contrary, the Construction Manager shall not be entitled to any progress payment for any Work performed unless the Owner shall have received when due, and approved the following: (i) Insurance Certificates; (ii) Payment & Performance Bonds, if required; and (iii) appropriate waiver of liens from the Construction Manager and all tier-subcontractors and suppliers.

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

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

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

1 the Construction Manager has fully performed the Contract except for the Construction Manager’s responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which necessarily extend beyond final payment;
The Owner’s final payment to the Construction Manager shall be made no later than 30-45 days after the issuance and owner approval of the Architect’s final Certificate for Payment, or as follows, Payment. Without limiting the generality of the above, the Owner’s approval shall be subject to the following non-exclusive requirements:

| a. | Achievement of Final Completion, including, but not limited to, receipt of a Certificate of Occupancy and a Certificate of Substantial Completion. |
| b. | Owner’s receipt and approval of a final Change Order establishing the final Contract Sum, and such Change Order shall include a detailed final accounting of all contingencies, allowance, savings, and costs. |
| c. | Owner’s receipt of written assignment by all Subcontractors and suppliers of material and equipment of all warranties and guarantees in the form provided by the Owner. |
| d. | Owner’s receipt of three (3) copies of any Maintenance Manual issued by any manufacturer and/or supplier. |
| e. | Owner’s receipt of the Project Record reproducible drawing redlined showing all changes. |
| f. | Owner’s receipt of conditional written releases of all liens and/or requests to file Mechanics’, material-men’s, and like liens against the Project, signed by each Subcontractor and material-man who performed labor or furnished materials in connection with the Work. If any Subcontractor or material or equipment supplier refuses to furnish a release or waiver, the Construction Manager shall furnish a bond satisfactory to the Owner to indemnify him against any such possible lien. |
| g. | Owner’s receipt of all deliverables as specified in the Project Specifications and Contract Documents. |
| h. | If required by the Owner, Owner’s receipt of other data establishing payment or satisfaction of all such obligations. |
| i. | Owner receipt of all keys issued to Construction Manager and subcontractors. |

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

| a. | Take the sum of the Cost of the Work substantiated by the Construction Manager’s final accounting and the Construction Manager’s Fee, but not more than the Guaranteed Maximum Price. |
| b. | Subtract amounts, if any, for which the Owner withholds, in whole or in part, a final Certificate for Payment as provided in Section 9.5.1 of A201-2007, or other provisions of the Contract Documents. |
| c. | Subtract the aggregate of previous payments made by the Owner. |

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

§ 7.2.2 The Owner’s auditors will review and report in writing on the Construction Manager’s final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon each Cost of Work as the Owner’s auditors report to be substantiated by the Construction Manager’s final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner’s auditors, final Application for Payment, either issue to the Owner for Owner’s approval a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect’s or Owner’s reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Construction Manager’s final accounting.

§ 7.2.3 If the Owner’s auditors 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 request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager’s receipt of a copy of the Architect’s final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner’s auditors becoming binding on the Construction
If, subsequent to final payment and at the Owner’s request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager’s Fee applicable thereon 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 as provided in Section 5.2.1, 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
For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2007.

<table>
<thead>
<tr>
<th>Type of Insurance or Bond</th>
<th>Limit of Liability or Bond Amount ($0.00)</th>
</tr>
</thead>
<tbody>
<tr>
<td>See Sample Certificate of Liability Insurance dated 9/29/11, attached as Attachment 5 of Exhibit A GMP</td>
<td>Bonds are required if Contract Sum is equal to or greater than $500,000</td>
</tr>
</tbody>
</table>

Failure of the Owner to demand such certificate or other evidence of full compliance with these insurance requirements or failure of the Owner to identify a deficiency from evidence provided will not be construed as a waiver of the Construction Manager’s obligation to maintain such insurance.

The acceptance of delivery by the Owner of any certificate of insurance evidencing the required coverages or limits does not constitute approval or agreement by the Owner that the insurance requirements have been met or that the insurance policies shown in the certificates of insurance are in compliance with the requirements.

All required coverages will be maintained without interruption during the entire term of this contract plus an additional three (3) years in products and completed operations coverage following final completion of the Project.

Section 8.1 The Construction Manager shall require all Subcontractors (including suppliers and the Construction Manager if it self-performs any portion of the Work) which are to provide labor and/or materials, the aggregate cost of which is expected to be equal to or in excess of Five Hundred Thousand Dollars ($500,000.00), to furnish bonds covering the Work in form and substance satisfactory to the Owner and by written agreement with a U.S. Department of Treasury listed, A.M. Best, "A" rated underwriter, identify both the Owner and the Construction Manager as obligees thereunder, and shall be obtained through the Construction Manager’s usual source, or such other source which, in the exercise of the Construction Manager’s informed business judgment, will provide security of like quality. The cost of such bonds shall be included in the Cost of the Work. The amount of each bond shall be equal to One Hundred percent (100%) of the amount of the Subcontractor’s contract or subcontract, or the value of the Construction Manager’s portion of the Work.

Section 8.2 The Construction Manager shall deliver the required bonds to the Owner at least three (3) days before the commencement of the Work at the Project site.

ARTICLE 9 DISPUTE RESOLUTION

Section 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager’s Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

Section 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:
ARTICLE 10  TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager for the Owner’s convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

1. Take the Cost of the Work incurred by the Construction Manager to the date of termination;
2. Add the Construction Manager’s Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
3. Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

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 Section 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. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.
If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price
Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 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, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed above.

§ 10.3 Suspension
The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term “profit” shall be understood to mean the Construction Manager’s Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS
§ 11.1 Terms
Unless otherwise noted, terms in this Agreement shall have the same meaning as those in A201–2007.

§ 11.2 Ownership and Use of Documents
Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law
Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases. The Contract shall be governed by Ohio law.

§ 11.4 Assignment
The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner’s rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, 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.

§ 11.5 Other provisions:

ARTICLE 12 SCOPE OF THE AGREEMENT
§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.
§ 12.2 The following documents comprise the Agreement:

.1 AIA Document A133—2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

.2 AIA Document A201—2007, General Conditions of the Contract for Construction

.3 AIA Document E201™—2007, Digital Data Protocol Exhibit, if completed, or the following:

.4 AIA Document E202™—2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

.5 Other documents: (List other documents, if any, forming part of the Agreement.)

§ 12.3 Project Record Documents
The Construction Manager shall maintain at the jobsite one copy of drawings, specifications, addenda, submittals, approved shop drawings, change orders, field orders, testing and inspection records, and any other modifications to the Contract Documents. The Construction Manager shall label all documents "Project Record Documents – THIS SET OF DRAWINGS SHALL BE USED ONLY FOR RECORDING ADDITIONS AND CHANGES", "KEEP CURRENT", and "UPON COMPLETION OF THIS PROJECT DELIVERY PROJECT RECORD DOCUMENTS DRAWINGS TO THE OWNER".

The Construction Manager shall, (1) keep Project Record Documents clean and dry and in good order; (2) file according to Specifications Sections; (3) keep current at all times; (4) shall be maintained in the site-office and not used in the field or on-site; and (5) legibly mark with red permanent pen field changes and referenced to permanent and accessible features of the site or building as applicable, for example:

1. Drawings
   a. Locations of underground work
   b. Locations of concealed utilities
   c. Field changes of dimension and detail
   d. Changes resulting from Change Order or field order
   e. Details on the original drawings

2. Specifications
   a. Manufacturer, model number of equipment actually installed
   b. Revised construction procedures

3. Shop Drawings
   a. Changes made after the Architect’s/Engineer’s approval

At Substantial Completion, Construction Manager shall deliver completed Project Record Documents marked with field changes to the Owner. At the completion of the project, the Construction Manager shall submit as-built prints to the Owner and each sheet shall be marked "RECORD DRAWING", with date, Construction Manager name, phone number, and printed name of the person preparing the as-built and deliver on full set of reproducible drawings.

§ 12.4 Other Conditions and Services
The following Additional Services shall be performed upon authorization in writing from the Owner, and shall be paid for as provided in this Agreement.

§ 12.4.1 Services related to investigations, appraisals or evaluations of existing conditions, facilities or equipment, or verification of the accuracy of existing drawings or other information by the Owner.
§ 12.4.2 Services related to the Owner-furnished furniture, furnishings and equipment which are not part of the Project.

§ 12.4.3 Services for tenant or rental spaces.

§ 12.4.4 Consultation on replacement of Work damaged by fire or other cause not attributable to the negligence of the Construction Manager or failure of the Construction Manager to fulfill a specific responsibility, and furnishing services in conjunction with the replacement of such Work.

§ 12.4.5 Preparing to serve, or serving as a witness in connection with any public hearing, arbitration proceeding or legal proceeding.

§ 12.4.6 Recruiting or training maintenance personnel.

§ 12.4.7 Inspection of, and services related to, the Project after the end of the Construction Phase.

§ 12.4.8 Providing any other services not otherwise included in this Agreement.

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

CHANGE SIGNATURE ACCORDINGLY

OWNER (Signature) CONSTRUCTION MANAGER (Signature)

Stephan M. Campbell, Vice President
Campus Planning and Facilities Management
(Printed name and title)

(Printed name and title)

And

By:
Office of the Treasury and Investments Services