



University of Kentucky
Capital Project Management

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October 22, 2018

Capital Projects and Bond Oversight Committee
Legislative Research Commission
Capitol Annex, Room 034
702 Capitol Avenue
Frankfort, KY 40601

Re: RFP # UK 1896-19
CPMD Project # 2507.0

To Whom It May Concern:

This letter is to inform you that we intend to utilize the "Public-Private Partnership (P3)" project delivery method for the project to *Improve Campus Parking and Transportation (PS#5)*. Enclosed is a copy of the Request for Proposals.

Once executed, we will forward a copy of the contract to the Government Contracts Review Committee.

We are happy to provide additional information or answer any questions you may have regarding this Request for Proposals.

Sincerely,

Robert Williams
Capital Construction Associate Director, Capital Project Management

Enclosures

cc: Mike Mudd
Business Office
File

see blue.



UNIVERSITY
OF KENTUCKY

Purchasing Division

Request for Proposal

UK-1896-19

Proposal Due Date - 11/20/18

Improve Campus Parking and Transportation (PS#5)

Mixed-Use Parking Garage Developer

Public-Private Partnership(P3)



UNIVERSITY OF KENTUCKY

Purchasing Division

REQUEST FOR PROPOSAL (RFP)

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

PROPOSAL NO.:	<u>UK-1896-19</u>	RETURN ORIGINAL COPY OF PROPOSAL TO: UNIVERSITY OF KENTUCKY PURCHASING DIVISION 411 S LIMESTONE ROOM 322 PETERSON SERVICE BLDG. LEXINGTON, KY 40506-0005
Issue Date and Title:	10/08/2018 Improve Campus Parking and Transportation (PS5); Mixed-Use Parking Garage Developer, P3	
Purchasing Officer:	Mike Mudd	
Phone/ EMail:	859-257-5409 / <u>MikeMudd2@uky.edu</u>	

IMPORTANT: PROPOSALS MUST BE RECEIVED BY: 11/20/2018 @ 3 P.M. LEXINGTON, KY TIME.

NOTICE OF REQUIREMENTS

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

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

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

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

SWORN STATEMENT OF COMPLIANCE WITH CAMPAIGN FINANCE LAWS

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

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

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

CERTIFICATION OF NON-SEGREGATED FACILITIES

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

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

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

Table of Contents

1.0 DEFINITIONS	7
2.0 GENERAL OVERVIEW	8
2.1 Intent and Scope	8
2.2 University Information	9
2.3 Project Background Information.....	11
2.4 The Winslow Street Project Site	12
2.5 Financing.....	13
3.0 PROPOSAL REQUIREMENTS.....	14
3.1 Key Event Dates.....	14
3.2 Offeror Communication	14
3.3 Pre-Proposal Conference	14
3.4 Offeror Presentations	15
3.5 Preparation of Offers	15
3.6 Proposed Deviations from the RFP	15
3.7 Proposal Submission and Deadline	16
3.8 Modification or Withdrawal of Offer.....	16
3.9 Acceptance or Rejection and Award of Proposal	16
3.10 Rejection	17
3.11 Addenda.....	17
3.12 Disclosure of Offeror's Response	17
3.13 Restrictions on Communications with University Staff	17
3.14 Cost of Preparing Proposal.....	18
3.15 Disposition of Proposals	18
3.16 Alternate Proposals	18
3.17 Questions	18
3.18 Section Titles in the RFP	18
3.19 No Contingent Fees.....	18
3.20 Proposal Addenda and Rules for Withdrawal.....	18
4.0 PROPOSAL FORMAT AND CONTENT	19
4.1 Proposal Information and Criteria	19

4.2	Signed Authentication of Proposal and Statements of Non-Collusion and Non-Conflict of Interest Form	19
4.3	Transmittal Letter	19
4.4	Executive Summary and Proposal Overview	20
4.5	Criteria 1 - Offeror Qualifications	20
4.6	Criteria 2 – Development Experience	20
4.7	Criteria 3 – Financial Capability to Execute the Project.....	21
4.8	Criteria 4 – Project Financing	21
4.9	Criteria 5 – Description of Proposed Project	21
4.10	Criteria 6 – Mixed-Use Management Experience.....	22
4.11	Criteria 7 – Offeror’s Maintenance and Operating Plan and Schedule	22
4.12	Criteria 8 – Financial Proposal.....	22
4.13	Criteria 9 - Additional Resources Required.....	22
4.14	Criteria 10 - References	23
4.15	Criteria 11 – Construction Logistics and Impacts	23
4.16	Criteria 12 – Other Additional Information.....	23
5.0	EVALUATION CRITERIA PROCESS.....	24
6.0	TERMS AND CONDITIONS.....	25
6.1	Contract Term	25
6.2	Effective Date	25
6.3	Competitive Negotiation	25
6.4	Bonding	25
6.5	Appearance Before Committee	25
6.6	Additions, Deletions or Contract Changes	25
6.7	Contractor Cooperation in Related Efforts	26
6.8	Entire Agreement	26
6.9	Governing Law	26
6.10	Kentucky’s Personal Information Security and Breach Investigation Procedures and Practices Act	26
6.11	Termination for Convenience.....	27
6.12	Termination for Non-Performance	27
6.13	Funding Out	28
6.14	Prime Contractor Responsibility.....	28

6.15 Assignment and Subcontracting	28
6.16 Permits, Licenses, Taxes.....	28
6.17 Attorneys' Fees	28
6.18 Royalties, Patents, Copyrights and Trademarks	29
6.19 Indemnification	29
6.20 Insurance	29
6.21 Method of Award	30
6.22 Reciprocal Preference	30
6.23 Reports and Auditing	30
6.24 Confidentiality.....	31
6.25 Conflict of Interest	31
6.26 Extending Contract.....	31
6.27 Personal Service Contract Policies – Not Used	31
6.28 Copyright Ownership and Title to Designs and Copy.....	31
6.29 University Brand Standards	32
6.30 Printing Statutes – Not Used	32
7.0 Scope of Services – POST AWARD	33
7.1 Developer Services Defined	33
7.2 Detailed Services Defined	33
7.3 Construction Phase Services.....	35
7.4 Post Construction Phase Services.....	36
7.5 Compliance with State Laws.....	36
7.6 General and Special Conditions	36
8.0 FINANCIAL OFFER	46
8.1 Key Financial Components.....	46
8.2 Parking Spaces and Use	46
8.3 Alternate Pricing	46

Appendices:

- Appendix A - UK Transportation Master Plan
- Appendix B – Commercial Corridors Report
- Appendix C – UK Master Plan
- Appendix D – Winslow Street and Jersey Street Property Site Overview
- Appendix E - Phase 1 Kennedy Environmental Site Assessment

Appendix F - Phase 1 Fazolis Environmental Site Assessment
Appendix G – Phase 2 Shields Core Space Kennedys and Fazolis
Appendix H - Phase 2 Shields Core Space Borings Locations
Appendix I – Prohibited Commercial Uses
Appendix J – As Built Drawings (to be issued as an Addendum)

1.0 DEFINITIONS

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

The "Architect of Record" means the prime architectural firm, to include subconsultants providing architectural and/or engineering services for this development.

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

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

The term "Developer" means the entity selected to carry out the Project.

The "Agreement" is the agreement that defines the terms between the parties.

The terms "Offer" or "Proposal" mean the Offeror's response to this RFP.

The term "Offeror" means the entity or group submitting the Proposal.

The term "Project" means the Winslow Street Mixed-Use and Parking Project.

The term "Project Site" means the ground on which the Project is located.

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

The term "Purchasing Official" means the University of Kentucky's appointed contracting representative.

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

The term "Solicitation" means RFP.

The term "University" or "Owner" means University of Kentucky.

2.0 GENERAL OVERVIEW

2.1 Intent and Scope

This Request for Proposal (RFP) for a mixed-use parking development contemplates the selection of a Developer to construct a mixed-use development consisting of street front ground floor retail, restaurant, and/or office space ("Mixed-Uses") with supported parking above on the site known as the Winslow Street site. The new structure will tie into the existing Parking Structure #5 at all levels with the possible exception of the basement. It is anticipated that approximately 900 - 1,000 parking spaces can be added using three bays of structure. The addition must match or complement the existing structure in architectural, structural, mechanical, electrical, and plumbing design. The design shall conform to the "Official UK Standards" unless prior written consent is given by the UK Project Manager. Design Standard are available at:

<http://www.uky.edu/cpmd/official-design-standards>

In addition, As-Built drawings for the existing structure will be issued via an Addendum. The Developer will need to support their proposed design with an independent traffic study showing capacity for ingress and egress via existing, or if needed, additional or relocated entrances and exits. The University will provide traffic counts via addendum no later than 10/19/2018 that should be used for the traffic and ingress/egress analysis. The University intends to enter into an Agreement, based upon fair market value, with the selected Developer for an agreed upon term. Upon conclusion of the term of this Agreement, the University will retain full control and operation of all aspects of the Winslow Street property. Financing, Design and Construction is the responsibility of the Developer.

The components of the Project are as follows:

- The parties will negotiate and execute a long-term Agreement for the Winslow Street site.
- The Developer will construct the mixed-use parking development at the Winslow Street site, and may provide the maintenance, operations, and custodial functions of the Mixed-Uses component of the Project
- The Project shall maximize the number of net new parking spaces (exact number of parking spaces to be determined) for exclusive use by the University. The University may operate and maintain the parking portion of the development.

Qualified firms shall demonstrate knowledge, experience, organization and financial ability to implement a complex, progressive, innovative project in a timely manner that serves the best interest of the University.

The University intends to select a Developer who demonstrates the best value for the design, development and management of a mixed-use parking development that will benefit the University and its students, faculty and staff. A proven track record in developing and managing mixed-use projects and/or structured parking in a fiscally responsible manner, including established relationships with tenant(s), is paramount. Moreover, Developer must work with the University dining partner and/or bookstore partner if any proposed Mixed-Uses tenant(s) would be in competition with those University contracts. Additionally, Developer must abide by any exclusivity granted by the University's existing contracts with Coke, PNC, UK Federal Credit Union, and

Kroger. The University will select a Developer as described in this RFP, including Offeror presentations, if necessary (described in Section 3.4.).

The evaluation criteria (described in Section 4.0) will consider the capabilities of the Offerors and will include experience, resources, financial capability, and project financing.

The University anticipates additional parking needs in the near future. The University reserves the right to negotiate with the selected Developer for additional parking projects; however, the continued use of the Developer is on a case by case basis and the University is under no obligation to do so.

For additional information please refer to the following Appendices:

Appendix A - UK Transportation Master Plan
Appendix B – Commercial Corridors Report
Appendix C – UK Master Plan
Appendix D – Winslow Street and Jersey Street Property Site Overview
Appendix E - Phase 1 Kennedy Environmental Site Assessment
Appendix F - Phase 1 Fazolis Environmental Site Assessment
Appendix G – Phase 2 Shields Core Space Kennedys and Fazolis
Appendix H - Phase 2 Shields Core Space Borings Locations
Appendix I – Prohibited Commercial Uses
Appendix J – As Built Drawings (to be issued as an Addendum)

2.2 University Information

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

Founded in 1865 as a land-grant institution adjacent to downtown Lexington, UK is nestled in the scenic heart of the beautiful Bluegrass Region of Kentucky. From its early beginnings, with only 190 students and 10 professors, UK's campus now covers more than 918 acres and is home to more than 30,000 students and approximately 20,000 full-time and part-time employees, including more than 2,300 full-time faculty. UK is one of a small number of universities in the United States that has programs in agriculture, engineering, a full complement of health colleges including medicine and pharmacy, law and fine arts on a single campus, leading to groundbreaking discoveries and unique interdisciplinary collaboration. The state's flagship university consists of 17 academic and professional colleges where students can choose from more than 200 majors and degree programs at the undergraduate and graduate levels. The colleges are Agriculture, Food and Environment; Arts and Sciences; Business and Economics; Communication and Information; Dentistry; Design; Education; Engineering; Fine Arts; Health Sciences; Law; Lewis Honor's College, Medicine; Nursing; Pharmacy; Public Health; and Social Work; and the Graduate School. These colleges are supported by a modern research library system.

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

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

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

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

Established in 1957, the medical center at UK is one of the nation's finest academic medical centers and includes the University's clinical enterprise, UK HealthCare. The 724-bed UK Albert B. Chandler Hospital and Kentucky Children's Hospital, along with 221 beds at UK Good Samaritan Hospital, are supported by a growing faculty and staff providing the most advanced subspecialty care for the most critically injured and ill patients throughout the Commonwealth and beyond. Over the last several years, the number of patients served by the medical enterprise has increased from roughly 19,000 discharges to more than 40,000 discharges in 2017.

UK Chandler Hospital includes the only Level 1 Trauma Center for both adult and pediatric patients in Central and Eastern Kentucky. In addition, UK HealthCare recently opened one of the country's largest robotic hybrid operating rooms and the first of its kind in the region. While our new patient care pavilion is the leading healthcare facility for advanced medical procedures in the region, our talented physicians consult with and travel to our network of affiliate hospitals so Kentucky citizens

can receive the best health care available close to their home and never need to leave the Bluegrass for complex subspecialty care.

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

2.3 Project Background Information

Transformation

The vision for the University is for it to become a thriving, residential research campus -- one poised to serve those students, scholars and staff today; one that is ready to serve the needs of the state and world tomorrow. To do this -- to create the best possible environment for the University community's success -- the institution has invested, and largely self-financed, almost \$2.3 billion in a campus transformation, with new residence halls and classrooms, research facilities, dining facilities and athletic venues. The vision is for the University to take its place among the best public universities in America, all of it designed to help our students, faculty and staff reach their potential together. We are transforming our campus so that we can continue to transform lives.

<http://www.uky.edu/sotu/campus-transformation>

Community Connection / Commercial Corridors

Placing a value on the quality of life for our students, faculty, and staff, the University of Kentucky recognizes the importance of and opportunity presented by supporting vibrant, welcoming, and sustainable developments in commercial districts surrounding campus. In particular, the South Limestone Street and Euclid Avenue/Avenue of Champions corridors provide critical links between the University, Downtown Lexington, and surrounding urban neighborhoods.

In 2014, the University chose to partner with the Lexington-Fayette Urban County Government (LFUCG) and the Downtown Lexington Partnership (DLP) in the development of a commercial corridor study to identify market and data-driven opportunities to fully realize the economic potential of these corridors. This plan provides a clear vision for what these corridors can be - in terms of land use and private development character, and the look, feel and function of the public realm - all with an eye toward creating vibrant, walkable urban streets that reinforce and enhance the image of Lexington and the University of Kentucky as desirable places to live, work and learn. In particular, for the University to differentiate itself in the increasingly competitive market of higher learning among top-tier residential universities, it is necessary for the University and the city to act as community partners.

<http://www.lexingtonky.gov/Modules/ShowDocument.aspx?documentid=29941>

North Campus

North campus is currently home to approximately 2,492 undergraduate and graduate students. North campus is composed of five residence halls (Blazer, Boyd, Holmes, Jewell, and Wildcat Coal Lodge) and Roselle Hall that is currently occupied by graduate and professional students.

The residence halls on north campus are close to many classrooms, including the White Hall classroom building where many freshmen attend classes. North campus housing is also conveniently located near Memorial Coliseum, the Bill Gatton Student Center, Rupp Arena, the Singletary Center for the Arts and downtown Lexington. North campus students also enjoy a selection of eclectic restaurants and shops on South Limestone.

In August 2018, the University celebrated the opening of the new Bill Gatton Student Center (GSC), a 378,000 sq ft facility – located on North Campus and serving the entire campus community. The GSC includes a 750 seat residential dining venue, five retail dining units, a new Barnes & Noble University Bookstore & Cafe, three ballrooms, a cinema, theater, Alumni Gym for campus recreation, Cats Den, student organization spaces, and world class meeting and congregation spaces.

Jersey Street Housing and Retail

In February 2018, the University and Core Spaces executed a land swap that, in part, transferred ownership of an approximately 53,000 SF site known as the Jersey Street parking lot to Core Spaces for development. Core Spaces is currently building a mixed-use student housing and ground floor retail development, scheduled to be open by Fall 2019.

<https://www.kentucky.com/news/local/counties/fayette-county/article172909496.html>

<https://www.wkyt.com/content/news/Target-to-open-small-format-store-near-University-of-Kentucky-campus-480122953.html>

As part of the land swap agreement with deeds dated February 1, 2018, between the University and Core Spaces, the University agreed that the Winslow project site would not be utilized for any residential purposes for a period of fifty (50) years and would not be utilized for a CVS, Walgreens, or Walmart for a period of ten (10) years.

2.4 The Winslow Street Project Site

The Winslow Street site is located on north campus on the corners of Winslow/Limestone and Winslow/Upper and is approximately 61,370 SF. The University's Environmental Management Department (EMD) did conduct a Phase I Environmental Site Assessment (UK-1896-19 Appendix E and F) and Hazardous Materials investigation (UK-1896-19 Appendix H) in July 2017 on behalf of Core Spaces. A Phase II site investigation was completed by an environmental consultant, Shield Environmental (UK-1896-19 Appendix G) hired by Core Spaces and EMD is aware of the noted impacts to soil and groundwater quality and the recommendations for future management provided by the consultant to Core Spaces in their Limited Phase II Site Investigation Report. A copy of the Site Assessment studies are available at <http://www.uky.edu/Purchasing/bidlist.htm> - UK-1896-19 Appendix E, F, G, H.

As noted in the Limited Phase II Site Investigation Report, (UK-1896-19 Appendix G), the Potential Offerors must perform the following:

- Once the demolition of all building structures is complete, further soil and groundwater characterization around SB-TAW-5 must be conducted to define the vertical and horizontal extent of impacts. A report must be prepared for the University and for submittal to the Kentucky Division of Waste Management that summarizes the findings and offers options for subsequent management of the impacts. KDWM approval of the management option will be required before construction activities can commence.
- If any subsurface manipulation of soil in the areas of SB-7 and/or SB/TAW-5 is required during demolition/construction activities, then the excavated soil should be handled according to the guidelines set forth in a construction Soil Management Plan (required as part of the bid submittal), which would include but not be limited to the removal and disposal of impacted soil at an appropriate landfill facility approved by the University. Soil confirmation sampling during the excavation activities would dictate the volume of soil required to be removed/disposed. It will be necessary that a qualified environmental consultant be retained for the oversight of such activities.
- If any subsurface activities come in contact with groundwater in the area of TAW-5, then the groundwater should be handled according to the guidelines set forth in a construction Groundwater Management Plan (required as part of the bid submittal), which would include but not be limited to the removal and disposal of the impacted water at an appropriate recycling facility approved by the University. Permanent groundwater monitoring wells should be installed during/after construction activities to monitor any potential plume migrations on- or off-site. It will be necessary that a qualified environmental consultant be retained for the oversight of such activities.

2.5 Financing

The University is seeking responses from Offerors that provide cost effective financing options and structures.

Therefore, Offerors responding to this Solicitation should anticipate that, during the Planning Stage, the University will engage the selected Developer in a comprehensive evaluation of transaction structures, business terms, and capital sources. The University is seeking Offerors with demonstrated ability and experience in financing mixed-use developments on publicly-owned property.

For the purposes of responding to this RFP, and subject to the on-going discussions described above, Offerors should assume that Agreements for the development of the site will include the general provisions as set forth in this RFP and Appendices.

3.0 PROPOSAL REQUIREMENTS

3.1 Key Event Dates

Release of RFP	10/08/2018
Pre-Proposal Conference	10/18/2018
Deadline for Written Questions	3 p.m. Eastern Time on 11/02/2018
Addendum	11/13/2018
RFP Proposals Due	3 p.m. Eastern Time on 11/20/2018
Evaluation of Proposals	11/26/2018
Offeror Presentations	12/12/2018
Contract Award (estimated)	12/30/2018

3.2 Offeror Communication

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

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

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

Mike Mudd
Purchasing Division
University of Kentucky
322 Peterson Service Building
Lexington, KY 40506-0005
Phone: (859) 257-5409
E-mail: MikeMudd2@uky.edu

All communication with the University regarding this RFP shall only be directed to the purchasing officer listed above.

3.3 Pre-Proposal Conference

A Pre-Proposal Conference will be held in Lexington, Kentucky on 10/18/2018 at 10:00 a.m. in (to be issued via an Addendum), to allow prospective contractors an opportunity to ask questions and

clarify the University's expectations. This conference provides Offerors an opportunity for oral questions. For directions please visit the following web site:

<http://ukcc.uky.edu/cgi-bin/dynamo?maps.391+campus+0005>

The following items should be noted in reference to the Pre-Proposal Conference:

Attendance at the Pre-Proposal Conference is voluntary; however, multiple tours of the Project site will not be given. Interested Offerors should plan to attend the scheduled Pre-Proposal Conference in order to tour the site.

Those Offerors planning to attend the Pre-Proposal Conference shall email Mike Mudd at mikemudd2@uky.edu by 10/15/2018 indicating their interest in attending and the number in their party.

Offerors are encouraged to submit written questions after the conference by the date listed in Section 3.1.

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

3.4 Offeror Presentations

Finalists shall be required to make a presentation to the evaluation committee. The interviews are tentatively scheduled to be held on 12/12/2018. Actual interview times will be scheduled later. In addition, an agenda for the finalists will be issued prior to the interviews.

3.5 Preparation of Offers

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

The offeror will furnish all information required by this solicitation.

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

An electronic version of the RFP, in .PDF format only, is available through the University of Kentucky Purchasing Division web site: www.uky.edu/purchasing/bidlist.htm

3.6 Proposed Deviations from the RFP

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

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

3.7 Proposal Submission and Deadline

Offeror must provide the following materials prior to 3 p.m. (Lexington, KY time) on the date specified in Section 3.1 and addressed to the purchasing officer listed in Section 3.2:

- **Technical Proposal:** One (1) copy on an electronic storage device (CD or USB) (1 copy per storage device) each clearly marked with the proposal number and name, firm name and what is included (Technical Proposal) and six (6) printed copies in a single package, separate from the Financial Proposal.
- **Financial Proposal:** One (1) copy on an electronic storage device (CD or USB) (1 copy per storage device) each clearly marked with the proposal number and name, firm name and what is included (Financial Proposal) and six (6) printed copies in a single package, separate from the Technical Proposal.

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

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

Proposals shall be enclosed in sealed envelopes to the above referenced address and shall show on the face of the envelope: the closing time and date specified, the solicitation number and the name and address of the offeror. The technical proposal shall be submitted in a sealed envelope and the financial proposal shall be submitted in a sealed envelope under separate cover. Both sealed envelopes shall have identical information on the cover, with the addition that one will state "Technical Information," and the other, "Financial Proposal."

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

3.8 Modification or Withdrawal of Offer

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

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

3.9 Acceptance or Rejection and Award of Proposal

The University reserves the right to accept or reject any or all proposals (or parts of proposals), to waive any informalities or technicalities, to clarify any ambiguities in proposals and (unless

otherwise specified) to accept any item in the proposal. In case of error in extension or prices or other errors in calculation, the unit price shall govern. Further, the University reserves the right to make a single award, split awards, multiple awards or no award, whichever is in the best interest of the University.

3.10 Rejection

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

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

3.11 Addenda

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

3.12 Disclosure of Offeror's Response

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

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

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

3.13 Restrictions on Communications with University Staff

From the issue date of this RFP until a contractor is selected and a contract award is made, offerors are not allowed to communicate about the subject of the RFP with any University administrator, faculty, staff or members of the board of trustees except: the purchasing office representative, any University purchasing official representing the University administration, others authorized in writing

by the purchasing office and University representatives during offeror presentations. If violation of this provision occurs, the University reserves the right to reject the offeror's proposal.

3.14 Cost of Preparing Proposal

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

3.15 Disposition of Proposals

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

3.16 Alternate Proposals

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

3.17 Questions

All questions should be submitted by either fax or e-mail to the purchasing officer listed in Section 3.2 no later than the date listed in Section 3.1. Email to: mikemudd2@uky.edu and sbowlin@uky.edu

3.18 Section Titles in the RFP

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

3.19 No Contingent Fees

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

3.20 Proposal Addenda and Rules for Withdrawal

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

4.0 PROPOSAL FORMAT AND CONTENT

4.1 Proposal Information and Criteria

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

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

- Signed Authentication of Proposal and Statement of Non-Collusion and Non-Conflict of Interest Form
- Transmittal Letter
- Executive Summary and Proposal Overview
- Criteria 1 - Offeror Information
- Criteria 2 – Development Experience
- Criteria 3 – Financial Capability to Execute the Project
- Criteria 4 – Project Financing
- Criteria 5 – Description of Proposed Project
- Criteria 6 – Mixed-Use, Retail, Restaurant, and/or Office Management Experience
- Criteria 7 – Offeror's Maintenance Plan and Schedule
- Criteria 8 – Financial Proposal
- Criteria 9 – Additional Resources Required
- Criteria 10 – References
- Criteria 11 – Construction Logistics and Impact
- Criteria 12 – Other Additional Information

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

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

4.3 Transmittal Letter

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

- A statement referencing all addenda and written questions, the answers and any clarifications to this RFP issued by the University and received by the offeror (If no addenda have been received, a statement to that effect should be included.).

- A statement that the offeror's proposal shall remain valid for six (6) months after the closing date of the receipt of the proposals.
- A statement that the offeror will accept financial responsibility for all travel expenses incurred for oral presentations (if required) and candidate interviews.
- A statement that summarizes any deviations or exceptions to the RFP requirements and includes a detailed justification for the deviation or exception.
- A statement that identifies the confidential information as described in Section 6.23.

4.4 Executive Summary and Proposal Overview

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

4.5 Criteria 1 - Offeror Qualifications

Offerors must describe and offer evidence of their ability to meet each of the qualifications listed below.

- a) Team and Firm Organization: Identify the Offeror's entity; its legal status; employer identification number; address; full names of the officers, their addresses, credit references, and brief biographical summaries. If the entity is a joint venture or partnership, provide the above information for each partner.
- b) Key Personnel: Provide a description of the proposed staffing plan including the names and titles of all key staff assigned to the Project, their roles and responsibilities and their resumes.
- c) Legal Claims: Disclose any recent or currently outstanding legal claims against the Offeror or any key personnel, including the source of such claims, their amount, and status.
- d) Provide a list of proposed primary subcontractors (e.g. Architect and General Contractor) and experience of their firms with projects similar in size and scope to the Project. Identify whether any of the subcontractors are small businesses as determined by the U.S. Small Business Administration.

4.6 Criteria 2 – Development Experience

- a) The Offeror must provide evidence of having successfully undertaken other projects of this type and/or magnitude. Describe the background and experience of the entity and its principals in undertaking Mixed-Uses and/or parking projects of this type and magnitude, including brief descriptions of similar projects completed and/or under construction. Provide a statement regarding the duration of the Offeror's financial and operational involvement with each such project following completion (or an affiliate's involvement if the Offeror is not the entity working with such project following completion). This

description should additionally include the cost history of the projects in meeting construction budgets, operating budgets, debt coverage and delivery dates and where they differed from the pre-construction project pro forma.

- b) The Offeror should identify and describe awards it has received for Mixed-Uses and/or parking projects completed in the last five (5) years. It should show evidence of achieving high quality and affordability within the varying markets it has entered. Additionally, it should note the length of time key leadership and employees who have been with the company and working on this project. Provide project financing examples, drawn whenever possible from the project experience described above.
- c) The Offeror should provide a brief statement outlining the experience of the firm, or each of the firms on the Development Team, in working with public institutes of higher education and appropriate local and state government offices.

4.7 Criteria 3 – Financial Capability to Execute the Project

Provide evidence of the Offeror entity's financial condition including company and, if relevant, personal financial statements; a statement detailing the different methods of financing the Offeror is capable of delivering including, but not limited to, private debt and other financing options. Provide financial and banking references and telephone numbers of contacts for such references, together with written authorization permitting the University to confirm financial information with such references. The University may request a review of such submissions by a Certified Public Accountant or its external auditors.

4.8 Criteria 4 – Project Financing

- a) Proposed Financing Structure -- Provide a detailed narrative description of the proposed financing structure, showing that the Project is 100% privately financed. Specify all assumptions about use of taxable and/or tax-exempt debt, and/or equity; cost of capital; expectation of Offeror's return on investment; and interim and permanent financing options available. Provide a detailed description of the organizational structure necessary to implement the proposed financing structure.
- b) Alternative Financing Structure(s) - Provide a detailed narrative description of any alternative proposed financing structure(s), showing that the Project is 100% privately financed. Specify all assumptions about use of taxable and/or tax-exempt debt, and/or equity; cost of capital; expectation of Offeror's return on investment; and interim and permanent financing options available. Provide a detailed description of the organizational structure necessary to implement each alternative proposed financing structure.

4.9 Criteria 5 – Description of Proposed Project

Provide a narrative description of the proposed development. Furnish conceptual layout including proposed traffic flow, pedestrian and vehicular entrance and exit points. Provide square footage of proposed development uses including ground floor Mixed-Uses. Identify the type and nature of proposed Mixed-Uses operation(s). Provide a configuration of Mixed-Uses space(s). Provide an estimate of the number of net new parking spaces associated with the Project. Provide depictions of height and exterior design finishes and level of quality assumed in Developer's cost model.

Discuss how the Offeror plans to address and mitigate any impact of the project on the existing traffic network, including if and how the Offeror would work with relevant city and state entities to ensure integrity of the traffic network and flow.

4.10 Criteria 6 – Mixed-Use Management Experience

The University will evaluate various options, as proposed by Offerors responding to the RFP, for maintenance, operations, and custodial functions of the Mixed-Uses component(s) of the Project. The University anticipates that management, operations, and custodial responsibilities for the Mixed-Uses component of the proposed Project may be the sole responsibility of the Developer. However, the University anticipates that management, operations, and custodial responsibilities for all of the the parking in the proposed Project may be the sole responsibility of the University.

Provide a statement of previous management arrangements used by the Offeror and the success of each particularly as it relates to on-campus or publicly-owned facilities. Discuss the various options available regarding Mixed-Uses operations and maintenance. Provide a statement of the Offeror's preferred management arrangement. Provide a statement of evidence of the Offeror's property management experiences and the ability to maintain high standards of maintenance. If intending to contract with a management firm, describe prior joint projects with that firm and include the length of service. All personnel associated with or involved in the management of the project must undergo and pass background checks.

4.11 Criteria 7 – Offeror's Maintenance and Operating Plan and Schedule

For the Project, the Offeror shall submit a maintenance plan and the source of funding to assure the Mixed-Uses component of the new asset(s) built are kept in modern, safe and useful condition. The Offeror shall submit building systems replacement schedules for the types of systems it plans to install in the new facilities. The Offeror shall submit a plan to assure the facilities are properly staffed, maintained, upgraded and all safety conditions are met.

The Offeror shall detail how these costs are included in the financial pro forma and any other methods of accounting or alternate sources of funds to adequately maintain the Mixed-Uses component of the building(s) constructed as part of the Project.

The Offeror shall submit a proposed operating plan for each component of the proposed multi-use Project, including all Mixed-Uses, and if applicable, other spaces in the Project.

4.12 Criteria 8 – Financial Proposal

The University will evaluate Offeror's complete financial offer based on information provided to the University using the format contained in Section 8.0.

All financial information must be submitted in a sealed envelope under separate cover.

4.13 Criteria 9 - Additional Resources Required

Respond to the following questions and/or requests for information, referencing as appropriate your preceding responses:

- a) Describe how you have handled projects that have involved:
- Major on and off-site infrastructure;
 - Sustainable design and implementation.
- b) Include a statement acknowledging the Major Agreement Terms as set forth in Section 7.6, General Conditions and Terms, of this RFP, and those stated within the body of this RFP. Identify any such terms or issues you believe would make it difficult to consummate an Agreement to develop the Winslow site, and why they would create a difficulty.
- c) The University has met with several members of the adjoining neighborhood who have expressed interest in a number of areas including building height, exterior lighting, sound, as well as pedestrian experience including shade, trees, and traffic impact. Please address your vision in these areas and explain how you plan to address neighborhood concerns.

4.14 Criteria 10 - References

The Offeror shall supply names addresses, and telephone numbers of three (3) business references, preferably public sector clients for whom similar work has been accomplished and briefly describe the type of service provided. Include information on which components were implemented and the duration of the engagement. The Offeror must grant permission to the University to contact the references.

4.15 Criteria 11 – Construction Logistics and Impacts

Please provide your detailed approach to site logistics and strategies to lessen the impact to existing garage, roads, and walks. Please provide a site logistics plan detailing crane location, ingress and egress to the site, material staging, plus any impact to existing Parking Structure #5 parking and flow.

4.16 Criteria 12 – Other Additional Information

Please provide any additional information that the Offeror feels should be considered when evaluating their Proposal.

The Offeror may present any creative approaches that might be appropriate. The Offeror may also provide supporting documentation that would be pertinent to this RFP.

5.0 EVALUATION CRITERIA PROCESS

A committee of University officials appointed by the Chief Procurement Officer will evaluate proposals and make a recommendation to the Chief Procurement Officer. The evaluation will be based upon the information provided in the proposal, additional information requested by the University for clarification, information obtained from references and independent sources and oral presentations (if requested).

The evaluation of responsive proposals shall then be completed by an evaluation team, which will determine the ranking of proposals. Proposals will be evaluated strictly in accordance with the requirements set forth in this solicitation, including any addenda that are issued. The University will award the contract to the responsible offeror whose proposal is determined to be the most advantageous to the University, taking into consideration the evaluation factors set forth in this RFP.

The evaluation of proposals will include consideration of responses to the list of criteria in Section 4.0. Offerors must specifically address all criteria in their response. Any deviations or exceptions to the specifications or requirements must be described and justified in a transmittal letter. Failure to list such exceptions or deviations in the transmittal letter may be considered sufficient reason to reject the proposal.

The relative importance of the criteria is defined below:

Primary Criteria

- Offeror Information
- Development Experience
- Financial Capability to Execute the Project
- Project Financing
- Description of Proposed Project
- Mixed-Use, Retail, and Office Management Experience
- Offeror's Maintenance Plan and Schedule
- Financial Proposal
- Additional Resources Required
- Reference
- Construction Logistics and Impact

Secondary Criteria

- Other Additional Services

The University will evaluate proposals as submitted and may not notify offerors of deficiencies in their responses.

Proposals must contain responses to each of the criteria, listed in Section 4 even if the offeror's response cannot satisfy those criteria. A proposal may be rejected if it is conditional or incomplete in the judgment of the University.

6.0 TERMS AND CONDITIONS

6.1 Contract Term

Please refer to Section 7.6, General and Special Conditions, of the RFP for additional Contract Terms.

6.2 Effective Date

The effective date of the contract shall be the date upon which the parties execute it and all appropriate approvals, including that of the Commonwealth of Kentucky Government Contracts Review Committee, have been received.

6.3 Competitive Negotiation

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

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

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

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

6.4 Bonding

A 100% Performance Bond and 100% Payment Bond shall be furnished by the successful bidder. All bonding and insurance requirements are contained in the Instruction to Bidders, General Conditions and Special Conditions.

6.5 Appearance Before Committee

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

6.6 Additions, Deletions or Contract Changes

The University reserves the right to add, delete, or change related items or services to the contract established from this RFP. No modification or change of any provision in the resulting contract shall be made unless such modification is mutually agreed to in writing by the contractor and the Director

of Purchasing and incorporated as a written modification to the contract. Memoranda of understanding and correspondence shall not be interpreted as a modification to the contract.

6.7 Contractor Cooperation in Related Efforts

The University reserves the right to undertake or award other contracts for additional or related work to other entities. The contractor shall fully cooperate with such other contractors and University employees and carefully fit its work to such additional work. The contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by University employees. This clause shall be included in the contracts of all contractors with whom this contractor will be required to cooperate. The University shall equitably enforce this clause to all contractors to prevent the imposition of unreasonable burdens on any contractor.

6.8 Entire Agreement

The RFP shall be incorporated into any resulting contract. The resulting contract, including the RFP and those portions of the offeror's response accepted by the University, shall be the entire agreement between the parties.

6.9 Governing Law

The contractor shall conform to and observe all laws, ordinances, rules and regulations of the United States of America, Commonwealth of Kentucky and all other local governments, public authorities, boards or offices relating to the property or the improvements upon same (or the use thereof) and will not permit the same to be used for any illegal or immoral purposes, business or occupation. The resulting contract shall be governed by Kentucky law and any claim relating to this contract shall only be brought in the Franklin Circuit Court in accordance with KRS 45A.245.

6.10 Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act

To the extent Company receives Personal Information as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, 61.932 and 61.933 (the "Act"), Company shall secure and protect the Personal Information by, without limitation: (i) complying with all requirements applicable to non-affiliated third parties set forth in the Act; (ii) utilizing security and breach investigation procedures that are appropriate to the nature of the Personal Information disclosed, at least as stringent as University's and reasonably designed to protect the Personal Information from unauthorized access, use, modification, disclosure, manipulation, or destruction; (iii) notifying University of a security breach relating to Personal Information in the possession of Company or its agents or subcontractors within seventy-two (72) hours of discovery of an actual or suspected breach unless the exception set forth in KRS 61.932(2)(b)2 applies and Company abides by the requirements set forth in that exception; (iv) cooperating with University in complying with the response, mitigation, correction, investigation, and notification requirements of the Act, (v) paying all costs of notification, investigation and mitigation in the event of a security breach of Personal Information suffered by Company; and (vi) at University's discretion and direction, handling all administrative functions associated with notification, investigation and mitigation.

6.11 Termination for Convenience

The University of Kentucky, Purchasing Division, reserves the right to terminate the resulting contract without cause with a thirty (30) day written notice. Upon receipt by the contractor of a "notice of termination," the contractor shall discontinue all services with respect to the applicable contract. The cost of any agreed upon services provided by the contractor will be calculated at the agreed upon rate prior to a "notice of termination" and a fixed fee contract will be pro-rated (as appropriate).

6.12 Termination for Non-Performance

Default

The University may terminate the resulting contract for non-performance, as determined by the University, for such causes as:

- Failing to provide satisfactory quality of service, including, failure to maintain adequate personnel, whether arising from labor disputes, or otherwise any substantial change in ownership or proprietorship of the Contractor, which in the opinion of the University is not in its best interest, or failure to comply with the terms of this contract;
 - A. Failing to keep or perform, within the time period set forth herein, or violation of, any of the covenants, conditions, provisions or agreements herein contained;
 - B. Adjudicating as a voluntarily bankrupt, making a transfer in fraud of its creditors, filing a petition under any section from time to time, or under any similar law or statute of the United States or any state thereof, or if an order for relief shall be entered against the Contractor in any proceeding filed by or against contractor thereunder. In the event of any such involuntary bankruptcy proceeding being instituted against the Contractor, the fact of such an involuntary petition being filed shall not be considered an event of default until sixty (60) days after filing of said petition in order that Contractor might during that sixty (60) day period have the opportunity to seek dismissal of the involuntary petition or otherwise cure said potential default; or
 - C. Making a general assignment for the benefit of its creditors, or taking the benefit of any insolvency act, or if a permanent receiver or trustee in bankruptcy shall be appointed for the Contractor.

Demand for Assurances

In the event the University has reason to believe Contractor will be unable to perform under the Contract, it may make a demand for reasonable assurances that Contractor will be able to timely perform all obligations under the Contract. If Contractor is unable to provide such adequate assurances, then such failure shall be an event of default and grounds for termination of the Contract.

Notification

The University will provide ten (10) calendar days written notice of default. Unless arrangements are made to correct the non-performance issues to the University's satisfaction within ten (10) calendar days, the University may terminate the contract by giving forty-five (45) days notice, by registered or certified mail, of its intent to cancel this contract.

6.13 Funding Out

The University may terminate this contract if funds are not appropriated or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. The University shall provide the contractor thirty (30) calendar days' written notice of termination under this provision.

6.14 Prime Contractor Responsibility

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

6.15 Assignment and Subcontracting

The Contractor(s) may not assign or delegate its rights and obligations under any contract in whole or in part without the prior written consent of the University. Any attempted assignment or subcontracting shall be void.

6.16 Permits, Licenses, Taxes

The contractor shall procure all necessary permits and licenses and abide by all applicable laws, regulations and ordinances of all federal, state and local governments in which work under this contract is performed.

The contractor must furnish certification of authority to conduct business in the Commonwealth of Kentucky as a condition of contract award. Such registration is obtained from the Secretary of State, who will also provide the certification thereof. However, the contractor need not be registered as a prerequisite for responding to the RFP.

The contractor shall pay any sales, use, personal property and other tax arising out of this contract and the transaction contemplated hereby. Any other taxes levied upon this contract, the transaction or the equipment or services delivered pursuant hereto shall be the responsibility of the contractor.

The contractor will be required to accept liability for payment of all payroll taxes or deductions required by local and federal law including (but not limited to) old age pension, social security or annuities.

6.17 Attorneys' Fees

In the event that either party deems it necessary to take legal action to enforce any provision of the contract and in the event that the University prevails, the contractor agrees to pay all expenses of such action including attorneys' fees and costs at all stages of litigation.

6.18 **Royalties, Patents, Copyrights and Trademarks**

The Contractor shall pay all applicable royalties and license fees. If a particular process, products or device is specified in the contract documents and it is known to be subject to patent rights or copyrights, the existence of such rights shall be disclosed in the contract documents and the Contractor is responsible for payment of all associated royalties. To the fullest extent permitted by law the Contractor shall indemnify, hold the University harmless, and defend all suits, claims, losses, damages or liability resulting from any infringement of patent, copyright, and trademark rights resulting from the incorporation in the Work or device specified in the Contract Documents.

Unless provided otherwise in the contract, the Contractor shall not use the University's name nor any of its trademarks or copyrights, although it may state that it has a Contract with the University.

6.19 **Indemnification**

The contractor shall indemnify, hold and save harmless the University, its affiliates and subsidiaries and their officers, agents and employees from losses, claims, suits, actions, expenses, damages, costs (including court costs and attorneys' fees of the University's attorneys), all liability of any nature or kind arising out of or relating to the Contractor's response to this RFP or its performance or failure to perform under the contract awarded from this RFP. This clause shall survive termination for as long as necessary to protect the University.

6.20 **Insurance**

The successful Contractor shall procure and maintain, at its expense, the following minimum insurance coverages insuring all services, work activities and contractual obligations undertaken in this contract. These insurance policies must be with insurers acceptable to the University.

COVERAGES

Workers' Compensation

Commercial Excess General Liability or, Umbrella Liability Insurance, including operations/ completed operations, products, and contractual liability (including defense and investigation costs) including this contract. May include a Contractor Controlled Insurance Program (CCIP or Wrap-Up)

Business Automobile Liability, covering owned, leased, or non-owned autos

Professional Liability/Errors & Omissions

Construction utilizing Rigging, Cranes or Helicopter operations will require

LIMITS

Statutory Requirements (Kentucky)

\$10,000,000 each occurrence combined single limits for bodily injury and property damage.

\$2,000,000 each occurrence (BI & PD combined)

\$1,000,000 each occurrence

If the work involved requires the use of helicopters, a separate aviation liability policy with limits of liability of \$30,000,000

additional coverage limits naming the University as additional insured

will be required. If cranes and rigging are involved, a separate inland marine policy with liability limits of \$15,000,000 will be required.

There may be additional insurance requirements negotiated for inclusion in the Lease.

This policy shall have a minimum of \$5,000,000 limits for bodily injury and property damage for each occurrence in excess of the applicable limits in the primary policies.

The successful contractor agrees to furnish Certificates of Insurance for the above described coverages and limits to the University of Kentucky, Purchasing Division. The University, its trustees and employees must be added as additional insured on the Commercial General Liability policy with regard to the scope of this solicitation. Any deductibles or self-insured retention in the above-described policies must be paid and are the sole responsibility of the contractor. Coverage is to be primary and non-contributory with other coverage (if any) purchased by the University. All of these required policies must include a Waiver of Subrogation (except Workers' Compensation) in favor of the University, its trustees and employees.

6.21 Method of Award

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

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

6.22 Reciprocal Preference

In accordance with KRS 45A.494, a resident offeror of the Commonwealth of Kentucky shall be given a preference against a nonresident offeror. In evaluating proposals, the University will apply a reciprocal preference against an offeror submitting a proposal from a state that grants residency preference equal to the preference given by the state of the nonresident offeror. Residency and non-residency shall be defined in accordance with KRS 45A.494(2) and 45A.494(3), respectively. Any offeror claiming Kentucky residency status shall submit with its proposal a notarized affidavit affirming that it meets the criteria as set forth in the above reference statute.

6.23 Reports and Auditing

The University, or its duly authorized representatives, shall have access to any books, documents, papers, records or other evidence which are directly pertinent to this contract for the purpose of financial audit or program review.

6.24 Confidentiality

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

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

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

6.25 Conflict of Interest

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

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

6.26 Extending Contract

The offeror's response to this RFP must state whether or not the offeror will permit the use of this contract by other Universities, state agencies, public and private institutions in the Commonwealth of Kentucky. An answer to this issue must be submitted within the response.

6.27 Personal Service Contract Policies – Not Used

6.28 Copyright Ownership and Title to Designs and Copy

The contractor and University intend this RFP to result in a contract for services, and both consider the products and results of the services to be rendered by the contractor hereunder to be a work

made for hire. The contractor acknowledges and agrees that the work and all rights therein, including (without limitation) copyright, belongs to and shall be the sole and exclusive property of the University. For any work that is not considered a work made for hire under applicable law, title and copyright ownership shall be assigned to the University.

Title to all dies, type, cuts, artwork, negatives, positives, color separations, progressive proofs, plates, copy and any other requirement not stated herein required for completion of the finished product for use in connection with any University job shall be the property of and owned by the University. Such items shall be returned to the appropriate department upon completion and/or delivery of work unless otherwise authorized by the University. In the event that time of return is not specified, the contractor shall return all such items to the appropriate University department within one week of delivery.

6.29 University Brand Standards

The contractor must adhere to all University of Kentucky Brand Standards. University Brand Standards are maintained by the University Public Relations Office (UKPR) and can be viewed at <http://www.uky.edu/pmarketing/brand-standards>. Non-adherence to the standards can have a penalty up to and including contract cancellation. Only the UKPR Director or designee can approve exceptions to the University standards.

Graphics standards for the UK HealthCare areas are governed by UK HealthCare Clinical Enterprise Graphic Standards, found at: <https://ourbrand.ukhealthcare.org>.

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

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

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

6.30 Printing Statutes – Not Used

7.0 Scope of Services – POST AWARD

7.1 Developer Services Defined

The Developer will provide the following services:

- Design Phase Services
- Construction, including Acceptance
- Post Construction, including Warranty

The Developer will review with the University any proposed program changes from what is represented by the RFP to ascertain the requirements of the Project. Review and confirm the understanding of these requirements and other design parameters with the University.

Review with the University site use and improvements; selection of materials, building systems and equipment; and construction methods.

Preliminary Project Schedule:

The Developers proposed schedule will be part of the evaluation in Phase 2. The University requires full occupancy of the garage on or before August 1, 2020.

7.2 Detailed Services Defined

The Developer, in consultation with the University, will recommend the design document deliverables and dates for review based on the agreed project schedule consistent with bid packages necessary to complete the construction within the specified time.

Submit one digital copy in PDF format of the Phase final drawings, technical specifications to the University for review. All submittal documents should be clearly marked as "CONSTRUCTION DOCUMENTS REVIEW SUBMITTAL". The University shall review these documents and notify the Developer in writing of any modifications, corrections or any other conditions required for final approval. Upon receipt of the Developers written response to the University's review comments, the University Project Manager will notify the Developer in writing of approval of the documents with authorization to proceed to the next phase.

Submit a narrative introduction summarizing the project and provide calculations used to evaluate storm water collection and conveyance capacity in an Executive Summary, for either Redevelopment or New Construction, form to be provided by UK CPMD Project Manager. Regardless of project area, at the submission of Design Development Documents, the University requires, a digital copy in PDF format of the SWPPP erosion control plan and any geotechnical drawings and reports. For projects disturbing one (1) acre or more provide verification of compliance with all post construction storm water quality standards, complying with the University's Official Design Standards, including State DOW requirements, and LFUCG's current edition "Storm water Manual".

Provide Adobe PDF's of the floor plans with the proposed room numbering system, complying with the University's Official Design Standards for Room Numbering, section 003150S04 Renumbering

Rooms, for review and approval by the University. The approved room numbers then become the basis for the room finish schedule, equipment schedule, etc. If during design or construction there are changes to the floor plans which impact the approved room numbering, then the approval of the room numbering will be void, and a new submission for room numbering approval is required before proceeding to the next phase.

As appropriate and prior to construction submit copies of the Design Documents to all known governmental agencies having jurisdiction (AHJ) for review and approval. The Developer is responsible for any fees/permit costs and for securing final approvals from the AHJ.

The Developer shall submit complete close-out and submittal logs in WPMS, including description of all deliverables to be submitted prior to substantial completion. Complete logs shall be created and submitted through UK's EComm system during design phase.

The Architect of Record shall furnish observation of workmanship and materials; check Contractor's periodic Applications for Payment, certifying to the Developer the proper amount of payments due the Contractors; prepare supplementary drawings as needed to more fully explain the Contract documents; and prepare orders for changes in the work when such changes are approved by the Developer and the University. All such observations and other services shall be in accordance with the professional standards appropriate for the type of project provided for by this agreement, as well as in accordance with the statements of quality included in the response to the solicitation for the project, and shall comply with the specific requirements enumerated below, but not be limited by them.

The Architect of Record shall receive Contractor's submittals such as shop drawings, product data and samples and shall review and approve or take other appropriate action upon them, for conformance with the drawing specifications and design concept of the Project and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay.

After receipt of all product material samples for the Project from the Contractors, the Architect of Record shall prepare a finishes sample board for review and approval by the University. This board shall include samples of all materials and colors, including furniture finishes and fabrics, proposed by the Consultant for use in the Project.

As required by Statute, during the progress of construction of the Project, the Architect of Record shall make periodic visits of the Project at intervals appropriate to the stage of construction, to become familiar with the progress and quality of the Work completed and to determine if the Work is being performed in a manner indicating that the Work when completed will be in accordance with the Contract Documents. During normal progress of construction, the Architect of Record, and the consultants employed by him, shall make such site visits no less frequently than once a month, and more often when necessary. The Architect of Record shall have the authority, and shall reject any work which does not conform to the Contract Documents, and may require additional evaluation or testing of the Work in accordance with the provisions of the Contract Documents.

The Architect of Record shall promptly correct any errors, omissions, deficiencies or conflicts in the Architect of Records work product.

Upon completion of construction, the Developer shall make changes to the original drawings, incorporating all ASI's; Change Orders; RFI's; Shop Drawings, as well as the Contractor As-Built where modifications to the project were made during the progress of the Work, so as to provide accurate "RECORD DRAWINGS" of the Project. The Developer shall certify that the Architect of Record has reviewed the Record Drawings and verifies and certifies the accuracy of the Record Drawings. The Developer shall then submit (1) physical copy and (1) digital copy of the Record Drawings to the University with such certification. The cover sheet and title block of each drawing should have "RECORD DRAWINGS" clearly and boldly visible.

The architectural work, drawings, specifications and other documents or things prepared by the Developer and its team shall become and be the sole property of the University. The Developer shall be permitted to retain copies thereof for its records.

7.3 Construction Phase Services

The Developer shall:

1. Enter into direct contracts with all General Contractors, Construction Managers, Trade Contractors and Suppliers as the Developer so determines is in the best interest of the project.
2. Assume the responsibility for the overall administration of construction contracts.
3. Provide full-time staff throughout construction for the purpose of monitoring, managing, inspecting, scheduling, and coordinating the timely progress, performance, quality and contract compliance of the trade contractors and suppliers.
4. Schedule and conduct meetings, as necessary, and prepare and distribute meeting minutes.
5. Develop and maintain a detailed master construction schedule.
6. Request pricing, review and negotiate costs, and make recommendations on all changes to the contracts and/or purchase orders requested by the University.
7. Coordinate construction interfaces, methods, techniques, and sequences.
8. Institute and administer requirements and procedures for the review and approvals of all materials.
9. Prepare and administer all cost control procedures, including monthly pay requests, change order logs, etc... Prepare Budget Cost Summary Reports as required but no less frequently than monthly.
10. Coordinate all requirements of project commissioning and close-out procedures including but not limited to: inspections, Owner's orientation and familiarization, training of Owner's

personnel, and collection of all close-out documents.

11. Represent the owner, moderate, seek solutions, make recommendations or take other appropriate actions in matters relating in disputes between contractors, work stoppages, labor disputes, or other disruptions that may occur during the construction of this project.

7.4 Post Construction Phase Services

The Developer shall:

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

7.5 Compliance with State Laws

Any contract resulting from this solicitation shall be governed under, and the rights and obligations of the parties hereto, shall be determined in accordance with the laws of the Commonwealth of Kentucky. The firm selected shall provide equal job opportunity and prohibit discrimination based on race, creed, color, sex, age, religion or national origin as required by Kentucky Revised Statutes 45:550 through 45:640. All contractors and subcontractors are required to comply with Federal Executive Order 11246 entitled "Equal Employment Opportunity" as amended by the Department of Labor regulations (41CFR, Part 60). The successful firm will be required to provide certificates of insurance showing proof of general, vehicle liability and Worker's Compensation insurance and a 100% Performance and Payment Bond for the full amount of the fee negotiated during Phase II of the selection process, adjusted to equal the total contract sum as described above.

7.6 General and Special Conditions

ARTICLE 01 FIELD CONDITIONS

1.1 The Developer will secure all data at the site such as grades, convenience of receiving and sorting material, location of public services, and other information which will have a bearing on proposals or on the execution of the Work and shall address these issues in the preparation of their response.

ARTICLE 02 – Intentionally not used

ARTICLE 03 PHASE 1 ENVIRONMENTAL REPORT

3.1 The Phase I Environmental Site Assessment and hazardous materials investigation report and a draft of a Phase II soils investigation are included within these documents for information purposes only. The Owner will not be responsible for interpretations or conclusions drawn from this report by the Developer. This data is made available solely for the convenience of the Developer.

ARTICLE 04 TIME FOR COMPLETION

4.1 The time for Substantial Completion of Work shall be as agreed and specified in the Contract. Final Completion shall be thirty (30) days thereafter.

ARTICLE 05 LIQUIDATED DAMAGES

5.1 Should the Developer fail to achieve Substantial Completion of the Work under this Contract on or before the date stipulated for Substantial Completion (or such later date as may result from extensions in the Contract Time granted by the Owner), the Developer agrees that the Owner is entitled to, and shall pay the Owner as liquidated damages the sum of (To be negotiated) for each consecutive calendar day that Substantial Completion has not been met.

5.2 Should the Developer fail to achieve Final Completion of the Work under this Contract on or before the date stipulated for Final Completion (or such later date as may result from extensions in the Contract Time granted by the Owner), the Developer agrees that the Owner is entitled to, and shall pay the Owner as liquidated damages the sum of (TBD) for each consecutive calendar day until Final Completion is reached.

ARTICLE 06 PLANS, DRAWINGS, AND SPECIFICATIONS

6.1 All drawings, specifications and copies thereof, prepared by the Design Builder, are the property of the University of Kentucky. They are not to be used on other Work.

ARTICLE 07 PROGRESS MEETINGS

7.1 In addition to specific coordination and pre-installation meetings for each element of Work, and other regular Project meetings held for other purposes, progress meetings will be held as outlined at the Preconstruction Meeting. Each entity then involved in planning, coordination or performance of Work shall be properly represented at each progress meeting. The following areas will be covered at each progress meeting: current status of work in place, Developer's review of upcoming work (1 month look ahead), schedule status, upcoming outages, new outage requests, shop drawings due from contractors, shop drawings being reviewed, outstanding RFI's, outstanding proposed change orders, change orders, new business, As-Built updated, close-out documents status, defective work in place issues, review "pencil copy" of payment application, safety issues and new business or other issues not covered above. With regard to schedule status, discuss whether each element of current work is ahead of schedule, on time, or behind schedule in relation with updated progress schedule; determine how behind-schedule Work will be expedited, and secure commitments from entities involved in doing so; discuss whether schedule revisions are required to ensure that current Work and subsequent Work will be completed within Contract Time; and review everything of significance which could affect the progress of the Work.

7.2 Developer shall prepare and submit at each progress meeting an updated schedule indicating Work completed to date and any needed revisions.

7.3 With the express purpose of expediting construction and providing the opportunity for cooperation of affected parties, progress meetings will be held and attended by representatives of:

- (1) The Owner's Project Manager
- (2) The Developer.
- (3) Design and construction teams.
- (4) Others requested to attend (as deemed necessary).

7.4 A location near the site will be designated where such progress meetings will be held. Participants will be notified of the dates and times of the meetings by the Developer.

ARTICLE 08 WALK-THROUGH

8.1 After the contract is issued but before Work by the Contractor is started, a walk-through of the area is required to document the condition of the space, surfaces, or equipment. It is the responsibility of the Developer to schedule the walk-through with the Owner's Project Manager, the Contractor, and other interested parties.

8.2 During the walk-through, Developer shall identify all damaged surfaces or other defective items that exist prior to construction.

8.3 Written documentation of the walk-through is to be provided by the Developer with copies distributed to all parties. Color photographs are to be provided and labeled by Developer and one (1) copy of such photographs are to be given to the Owner. (Digital photos in a .jpg format are acceptable if submitted on digital media storage) All parties attending the walk-through agree on the list of damages.

ARTICLE 9 FIELD OFFICE

9.1 If needed the Developer shall make his own provision for field office for his own personnel and for incidental use by their Sub-contractors. Quantity and location are subject to approval by the Owner's Project Manager.

ARTICLE 10 TELEPHONE SERVICE

10.1 Developer shall arrange through UKIT Communications and Network Systems for installation of on-site phone, internet and other communications services. Telephone service during the length of construction shall be paid for by the Developer. (Cell phone/Nextel service in lieu of UKIT Communications and Network Systems phone service may be utilized at Developers option.)

ARTICLE 11 CONSTRUCTION FENCE

11.1 Construction fencing has been erected around job site and must be maintained by the Developer where there is a possibility of injury to employees, students or the public. Special precautions must be taken to protect the visually impaired, disabled, children and others using University facilities and public walks and roads. During active excavation/trenching operations, fencing shall be erected to prevent unauthorized entry into the site. All fencing shall comply with the current requirements of the International Building Code except where the following requirements are more stringent. Developer to remove and dispose of fencing at the completion of the project.

11.1.1 All job site perimeter fencing within 5 feet of a walkway, street, plot line, or public right-of-way shall be 8 feet in height. Perimeter fencing that blocks sidewalks must include signs directing pedestrians to a safe walkway or crosswalk. Signage may be attached to the fence, but may also be required to inform pedestrians of sidewalk closures and detours prior to arriving at the closed area. Developer shall provide electrical pedestrian and general lighting along the top rail of the perimeter of the construction site fence to provide a minimum illumination level of 1.5 foot candles. Pedestrian and perimeter fence lighting shall be installed in conduit, raceway, and/or pathway system properly supported to the perimeter fence. Open or flexible cabling will not be acceptable.

11.1.2 All fencing shall be of a woven material such as chain link or a solid type fence. Fencing shall include gates required for construction operations. Gates shall be lockable with both the Developers lock, and a lock provided by the Owner. Lock by Owner shall be keyed for the University Best GA key core. All locks to be "daisy-chained" to provide access to the Owner.

11.1.3 The Developer shall be responsible for removing and replacing any fence sections and/or posts necessary for access to the site on a daily basis. The Developer shall police such conditions to assure the fence and posts are reset in a timely manner and are specifically in place at the close of the working day.

11.1.4 If the Developer fails to comply with these requirements, the Owner may proceed to have the work done and the Developer shall be charged for the cost of the Work done by unilateral deductive change order.

11.1.5 Plastic construction fencing is not acceptable as a perimeter protection fence.

ARTICLE 12 PROJECT SIGN

12.1 No signs, except those attached to vehicles or equipment, may be displayed without permission from the Owner's Project Manager. No political signs will be permitted.

ARTICLE 13 PARKING

13.1 The University of Kentucky will make available for purchase by the Developer up to four (4) parking permits. The category of parking permit and location of parking is determined by the Director, Transportation Services, or a designee. Parking permits may be purchased by the Developer to be used by the Contractor and/or the Contractor's subcontractors and employees during the construction period. The cost of each permit is based on the pro-rata annual cost and may be purchased from Transportation Services, 721 Press Avenue, after the Contract is executed.

Necessary documents required to purchase the passes will be available at the Pre-Construction Conference.

13.2 The Director, Transportation Services, or a designee will determine if parking is available for employees of the Contractor and subcontractors on Campus. The Contractor will be given thirty (30) days' notice should conditions change that will affect parking at the designated parking area and it is necessary to relocate parking or terminate parking privileges. If parking is available, permits may be purchased from Transportation Services, 721 Press Avenue, at the appropriate monthly cost.

ARTICLE 14 SANITARY FACILITIES

14.1 At the beginning of the Project, before any Work is started, the Developer shall furnish, install and maintain ample sanitary facilities for the workforce. Permanent toilets in the existing building shall not be used during construction of the Project. Drinking water shall be provided from an approved safe source, piped or transported as to be kept clean and fresh and served from single service containers or satisfactory types of sanitary drinking stands or fountains. All such facilities and services shall be furnished in strict accordance with existing governing health regulations.

ARTICLE 15 RULES OF MEASUREMENT

15.1 The Developer shall pay for and coordinate all associated Work by utility companies including relocation of utility poles, installation of new street lights, relocation of overhead or underground lines, and any other Work called for the execution of the project.

ARTICLE 16 ALLOWANCES

16.1 As stated in the General Conditions to the Contract, the Developer shall have included in the Contract Amount all costs necessary to complete the Work. Costs based on "allowances" shall be permitted only for objectively quantifiable items and only with the prior written approval of the Owner.

16.2 All materials and equipment are to be brought into the project site from the approved staging location and are not to be brought through the existing buildings or loading docks. Any and **all** exceptions shall be approved by, and closely coordinated with, the Owner's Project Manager in advance of scheduling or performing the work.

16.2.1 The Developer shall coordinate any road and sidewalk closings, utility disruptions, etc. which will affect the use of the existing building(s) with the Owner's Project Manager prior to commencing that Work.

16.3 The adjacent buildings and public areas will remain in use and the Owner shall have access to the existing building(s) throughout the duration of the Project. The Developer shall coordinate construction activity to assure the safety of those who must cross the Project site and shall provide and maintain the necessary barriers and accommodations for a completely safe route of

accessibility. The Developer is to insure that all exits provide for free and unobstructed egress. If exits must be blocked, prior arrangements must be made with the Owner's Project Manager.

16.4 The Developer shall cooperate with the Owner to minimize inconvenience to, or interference with normal use of existing buildings and grounds by staff, students, other Contractors, or the public. Developer shall conduct operations to prevent damage to adjacent building structures and other facilities and in such a manner to protect the safety of building's occupants.

16.5 Special effort shall be made by the Developer to prevent any employee from entering existing buildings for reasons except construction business. In particular, use of toilets, drinking fountains, vending machines, etc. is strictly prohibited.

ARTICLE 17 CRANE & MATERIAL HOIST OPERATIONS

17.1 Developer shall provide appropriate barriers around crane and material hoist to protect pedestrian-and vehicular traffic around operating area. When crane is operating or moving, flag men provided by Developer shall be utilized to prevent pedestrian and vehicular traffic from crossing the pathway of crane lift. Developer's flag men shall coordinate these activities with the appropriate Owner's Project Manager.

17.2 Cranes and material hoists shall be safely secured and inaccessible during non-operating hours and must comply with all applicable FAA requirements.

17.3 Any damage to trees, shrubs or plant material at the placement of crane or material hoist shall be repaired by tree surgery or replaced as directed by the Owner.

ARTICLE 18 CLEANING AND TRASH REMOVAL

18.1 The Developer shall keep clean the entire area of new construction and shall keep streets used as access to and from the site free of mud and debris. This shall include regular lawn care including trimming weeds and grass within the site area and maintenance within the project site during all phases of the project design and construction.

18.2 All exit ways, walks, drives, grass areas, and landscaping must be kept free from debris, materials, tools and vehicles at all times.

18.3 Upon completion of the Work, Developer shall thoroughly clean and re-sod grass areas damaged to match existing areas.

18.4 The Developer shall be responsible for removal from the site of all liquid waste or other waste (i.e. hazardous, toxic, etc.) that requires special handling on a daily basis.

18.5 Dumpsters will be provided and maintained by the Developer.

18.6 During Work at the Project site, the Developer shall clean and protect Work in progress and adjoining Work on a continuing basis. Developer shall apply suitable protective covering on newly

installed Work where needed to prevent damage or deterioration until the time of Substantial Completion. Developer shall clean and perform maintenance on newly installed Work as frequently as necessary through remainder of construction period.

18.7 The Developer shall be responsible for daily cleaning of spillage's and debris resulting from his and his Sub-contractor's operations, (includes removal of dust and debris from wall cavities), and for providing closed, tight fitting (dustproof if required), waste receptacles to transport construction debris from the work area to the dumpster. Broom clean all floors no less than once a week.

18.8 Failure to comply with the above requirements shall be cause for stopping work until the condition is corrected.

ARTICLE 19 BLASTING

19.1 There shall be no blasting under any conditions on University of Kentucky property unless prior approval is given by the Owner's Project Manager. Additional consulting, insurance, surveys, etc. may be required if blasting is a consideration.

ARTICLE 20 CUTTING AND PATCHING - NEW AND EXISTING WORK

20.1 Existing Construction - Refer to Architectural, Mechanical, and Electrical drawings for cutting and patching. All new Work shall be connected to the existing construction in a neat and workmanlike manner, presenting a minimum of contrast between old and new Work. Do all patching of the existing construction as may be required for the new construction to be done. Necessary patching, closing of existing openings, repairing and touching up shall be included as required for a proper, neat and workmanlike finished appearance. Any existing item that is to remain and is damaged during construction shall be replaced at the Developers expense.

ARTICLE 21 UKIT COMMUNICATIONS AND NETWORK SYSTEMS

21.1 The communications wiring is to be provided, installed and terminated by the Developer using a certified and approved communications contractor. All work shall be done in compliance with the latest UKIT Communications and Network Systems Standards, and closely coordinated with UKIT-Communications and Network Systems.

ARTICLE 22 EMERGENCY VEHICLE ACCESS

22.1 Emergency Vehicle Access must be maintained at all times during construction. The Developer shall coordinate with the local Fire and Emergency Medical Services department(s) that would respond to an emergency during the initial startup of construction to ensure a complete understanding of their requirements.

ARTICLE 23 SMOKE DETECTORS / FIRE ALARM SYSTEMS- EXISTING AND/OR NEW FACILITIES

23.1 Developer shall protect all smoke detectors in Work areas to prevent false alarms. The Developer will be responsible for any false alarm caused by dust created in their Work areas or dust traveling to areas beyond the Work past inadequate protection barriers. If there is a need for an existing or newly installed fire alarm system or parts of that system to be serviced, turned off, or disconnected, prior approval must be obtained from the Owner's Project Manager and notification given to the Campus Dispatch Office. The Developer must follow the procedure outlined for Utility Outages and any documented costs charged by the responding fire department due to a false alarm shall be paid by the Developer. As soon as all Work is completed, notification must be given to the Owner's Project Manager and to the Campus Dispatch Office prior to reactivation of the system.

23.1.1 When the function of any fire alarm, detection or suppression system is impaired, a temporary system shall be provided. Developer shall provide daily reports indicating the Superintendent has walked through the project at the end of each work period, to satisfy himself there are no present conditions that may result in an accidental fire. Portable fire extinguishers shall be on site during this time. The Developer is responsible for inspecting and testing any temporary systems on a monthly basis.

ARTICLE 24 TOBACCO PRODUCTS PROHIBITED

24.1 For areas located within Fayette County, Kentucky, the use of all tobacco products is prohibited on all property that is owned, operated, leased, occupied, or controlled by the University. "Property" for purposes of this paragraph includes buildings and structures, grounds, parking structures, enclosed bridges and walkways, sidewalks, parking lots, and vehicles, as well as personal vehicles in these areas. To view the Lexington campus boundaries: <http://www.uky.edu/TobaccoFree/files/map.pdf>.

24.2 Design Builder employees violating this prohibition will be subject to dismissal from the Project.

24.3 For the full Administrative Regulation see University AR 6:5. <http://www.uky.edu/Regs/files/ar/ar6-5.pdf>

ARTICLE 25 HOT WORK PERMITS

25.1 All work involving open flames or producing heat and/or sparks in occupied buildings on the University of Kentucky campus will require the Developer to obtain approval to perform "Hot Work" on site. This includes, but is not limited to: Brazing, Cutting, Grinding, Soldering, Thawing Pipe, Torch Applied Roofing, and Cadwelding. A copy of the Hot Work Permit and the Hot Work Permit Procedure will be passed out at the Preconstruction Conference for the Developers use.

ARTICLE 26 KEY ACCESS

26.1 All keys must be returned to the University's Project Manager upon completion of project work as one of the requirements for Final Payment. Failure to return the keys may require re-keying of all doors in the work area up to and including the entire building if master keys are issued.

The cost of re-keying of the door(s) accessed by the key(s) will be subtracted from the remaining contract dollars including contract retainage.

26.2 All lost or stolen keys must be reported immediately to the University's Project Manager.

ARTICLE 27 AUDIT

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

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

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

27.3 The Developer shall require all payees (examples of payees include Trade Contractors, Sub-contractors, vendors, and/or material suppliers) to comply with the provisions of this Article by including the requirements hereof in a written contract agreement between the Developer and payees. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-subcontractors, material suppliers, etc. The Developer will cooperate fully and will cause all related parties and all of the Developer's Trade Contractors and/or subcontractors (including those entering into lump sum subcontracts) to cooperate fully in

furnishing or in making available to Owner from time to time whenever requested, in an expeditious manner, any and all such information, materials and data.

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

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

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

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

8.0 FINANCIAL OFFER

8.1 Key Financial Components

For each proposed and alternative financing structure described in Section 4.8 Criteria 4 – Project Financing, the Offeror shall provide key financial components in the following format:

Key Financial Component	Proposed Structure	Alternative Structure #1	Alternative Structure #2
Net New Parking Spaces Constructed			
Cost of Parking Construction			
SF of Mixed-Use Constructed			
Cost of Mixed Use Construction			
Cost of Capital			
Cost of Developer’s Fee/Return on Investment			
Estimated Land Lease (if applicable)			
Estimated O&M (if applicable)			
Estimated Other Expenses*			
Estimated Total Project Expense			
Estimated Revenue from Mixed Use Space**			
Estimate of Other Project Revenue***			
Proposed Term of Agreement			

* Provide a narrative description of any expenses included in this line item.

** Provide the rental rate per square foot assumption being used, as well as all assumptions about retail occupancy rates over the term of the Agreement

***Provide a narrative description of any revenues included in this line item.

Provide a description of any and all other assumptions used to develop Offeror’s financial proposal.

8.2 Parking Spaces and Use

The University anticipates that the new Mixed-Uses located on the ground floor of the Project may require access to parking spaces. Offeror will indicate the total number of net new parking spaces (total number of constructed parking spaces, less the number of eliminated spaces). Include a breakdown of the number of spaces made available to the Mixed-Uses tenants of the building(s) and those made exclusively available to the University, and the terms of such availability.

8.3 Alternate Pricing

In addition to the above financial Offer, the Offeror may submit alternative financial proposals, however the information requested above must be supplied and will be used for proposal evaluation purposes.



Division of Administration and Finance
Lucas Administrative Center 812
Nunn Drive
Highland Heights, Kentucky 41099
859.572.5125
adminfinance.nku.edu

November 2, 2018

Senator Stan Humphries, Co-Chair
Representative Larry Brown, Co-Chair
Capital Projects and Bond Oversight Committee
Room 34, Capitol Annex
702 Capitol Avenue
Frankfort, Kentucky 40601

Re: Northern Kentucky University – Construction Management Services
Construct/Acquire New Residence Hall

Dear Senator Humphries and Representative Brown:

This letter is written to advise the members of the Capital Projects and Bond Oversight Committee of Northern Kentucky University's intent to use the Construction Management (CM) at Risk project delivery method for construction of a new residence hall at Northern Kentucky University. The CM-at-Risk process has been successfully used by the university on several previous projects.

Our experience has shown that the qualifications-based selection of the CM-at-Risk eliminates the typical adversarial relationship between the contractor and owner associated with the design-bid-build and multi-prime delivery methods, resulting in a more successful project. The Construction Manager is available during project design to provide critical expertise valuable to the design process, including constructability reviews, project phasing and sequencing, market based cost estimating and realistic schedule development. Other than the construction management activity, the work is competitively bid to trade and specialty subcontractors, guaranteeing the traditional competitive nature of public construction while achieving the lowest reasonable price.

The RFP for Construction Management Services stipulates that the construction manager will establish a guaranteed maximum price at or near completion of design. This process mitigates design issues and effectively manages costs, resulting in delivery of a project within budget and on schedule. Mr. Mark P. Jones, NKU's Interim Director University Architect, Design and Construction Management, will be available to answer questions or address concerns you may have.

Sincerely,

A handwritten signature in cursive script that reads 'Michael Hales'.

Michael Hales
Chief Financial Officer

cc: Ms. Janice Tomes
Ms. Katharine Halloran
Mr. Syed Zaidi
Mr. Shaun McKiernan

**Request for Proposals
To Provide Professional Construction Manager Services**

**Northern Kentucky University
Construct New Residence Hall**

RFP # NKU-71-18



**Issue Date: September 28, 2018
Due Date: October 18, 2018**

Proposal NO: NKU-71-18
Issue Date: September 28, 2018
Title: Construction Manager Services
Purchasing Officer: Blaine Gilmore
Phone: 859.572.6449

RETURN ORIGINAL COPY OF PROPOSAL TO:

**Northern Kentucky University
Procurement Services
1 Nunn Drive
617 Lucas Administrative Center
Highland Heights, KY 41099**

IMPORTANT: BIDS MUST BE RECEIVED BY: 10/18/2018 BEFORE 2:00 P.M. HIGHLAND HEIGHTS, KY time.

NOTICE OF REQUIREMENTS

1. The University's General Terms and Conditions and Instructions to Bidders, viewable at <http://procurement.nku.edu/policies/terms-and-conditions.html>, apply to this Request for Proposal.
2. Contracts resulting from this RFP must be governed by and in accordance with the laws of the Commonwealth of Kentucky.
3. Any agreement or collusion among Offerors or prospective Offerors, which restrains, tends to restrain, or is reasonably calculated to restrain competition by agreement to bid at a fixed price or to refrain from offering, or otherwise, is prohibited.
4. Any person who violates any provisions of KRS 45A.325 shall be guilty of a felony and shall be punished by a fine of not less than five thousand dollars nor more than ten thousand dollars, or be imprisoned not less than one year nor more than five years, or both such fine and imprisonment. Any firm, corporation, or association who violates any of the provisions of KRS 45A.325 shall, upon conviction, may be fined not less than ten thousand dollars or more than twenty thousand dollars.

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

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

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

SWORN STATEMENT OF COMPLIANCE WITH FINANCE LAWS

In accordance with KRS45A.110 (2), the undersigned hereby swears under penalty of perjury that he/she has not knowingly violated any provision of the campaign finance laws of the Commonwealth of Kentucky and that the award of a contract to a bidder will not violate any provision of the campaign finance laws of the Commonwealth of Kentucky.

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

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

CERTIFICATION OF NON-SEGREGATED FACILITIES

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

RECIPROCAL PREFERENCE

- (1) Prior to a contract being awarded to the lowest responsible and responsive bidder on a contract by a public agency, a resident bidder of the Commonwealth shall be given a preference against a nonresident bidder registered in any state that gives or requires a preference to bidders from that state. The preference shall be equal to the preference given or required by the state of the nonresident bidder.
- (2) A resident bidder is an individual, partnership, association, corporation, or other business entity that, on the date the contract is first advertised or announced as available for bidding:
 - (a) Is authorized to transact business in the Commonwealth; and
 - (b) Has for one (1) year prior to and through the date of the advertisement, filed Kentucky corporate income taxes, made payments to the Kentucky unemployment insurance fund established in KRS 341.490, and maintained a Kentucky workers' compensation policy in effect.
- (3) A nonresident bidder is an individual, partnership, association, corporation, or other business entity that does not meet the requirements of subsection (2) of this section.
- (4) If a procurement determination results in a tie between a resident bidder and a nonresident bidder, preference shall be given to the resident bidder.
- (5) This section shall apply to all contracts funded or controlled in whole or in part by a public agency.
- (6) The Finance and Administration Cabinet shall maintain a list of states that give to or require a preference for their own resident bidders, including details of the preference given to such bidders, to be used by public agencies in determining resident bidder preferences. The cabinet shall also promulgate administrative regulations in accordance with KRS Chapter 13A establishing the procedure by which the preferences required by this section shall be given.
- (7) The preference for resident bidders shall not be given if the preference conflicts with federal law.
- (8) Any public agency soliciting or advertising for bids for contracts shall make KRS 45A.490 to 45A.494 part of the solicitation or advertisement for bids

DEFINITIONS

As used in KRS 45A.490 to 45A.494: (1) "Contract" means any agreement of a public agency, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item; and

(2) "Public agency" has the same meaning as in KRS 61.805.

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

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

New Residence Hall RFP Summary Sheet

Northern Kentucky University
Highland Heights, Kentucky
RFP NKU-71-18

Professional Services: Construction Manager

Project Name and Location: New Residence Hall
Northern Kentucky University
Highland Heights, Kentucky 41099

Project Budget: \$ 20.4 million (total scope including design, construction, and FFE)
\$ +/-15.8 million (direct construction inclusive of CM contingency)

Response Deadline (Proposals Due): October 18, 2018 (2 PM)
Interviews (Tentative): November 1, 2018

NOTE: Northern Kentucky University, as an Agency of the Commonwealth of Kentucky, is subject to Kentucky's Open Records Laws (KRS 61.870-61.884). As such, a bidder's entire offer and resulting contract cannot be deemed "confidential".

Proposals submitted in response to an RFP will remain confidential throughout the evaluation process, however, after negotiations are concluded and a contract has been entered into, all proposals become a matter of public record. Bidders may mark sections of their responses as confidential if the information provided would be considered financially sensitive or trade secrets. The university will make every effort to honor such requests, but may conduct discussions with the bidders concerning the release of said information.

DO NOT contact the committee members relative to this project. Contacting the selection committee members may result in disqualification of the proposer. All requests for information, questions or comments relative to this project should be directed to:

Ryan Straus
Bid Specialist
Northern Kentucky University
Lucas Administrative Center, 617
Highland Heights, KY 41099
FAX: 859.572.6995

Email: strausr2@nku.edu

DEFINITIONS

The term "addenda" means written or graphic instructions issued by Northern Kentucky University prior to the receipt of Proposals that modify or interpret the Request for Proposal documents by addition, deletions, clarification, or corrections.

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

The terms "offer" or "proposal" means the Offeror(s) response to this Request for Proposal.

The term "Offeror" means the entity or Construction Manager submitting proposal.

The term "Construction Manager" or "Construction Manager at Risk" (CM) means the person or entity who will or has entered into a contract with the Owner that assumes the risk for construction of the Project at a contracted guaranteed maximum price as the general contractor, and who will provide consultation and collaboration regarding the construction during and after design of the Project. The CM shall execute and hold all construction Trade Contracts and Purchase Orders for the Project.

The term "Purchasing Agency" or "Owner" means Northern Kentucky University, Nunn Drive, Highland Heights, Kentucky 41099

The term "Purchasing Official" or "Purchasing Officer" means the contracting representative appointed by the university.

The term "Responsible Offeror" means a person, company, or corporation who has the capability in all respects to perform fully the contract requirements and the integrity and reliability that will assure good faith performance.

The term "solicitation" means Request for Proposal (RFP).

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

Intent and Scope

Northern Kentucky University has elected to employ the "Construction Manager-at-Risk" or "Construction Manager – General Contractor" method of construction delivery in lieu of the conventional Design-Bid-Build method and therefore desires the services of an experienced and highly qualified construction management firm to provide "FULL SERVICE" construction management on the proposed project. The Construction Manager (CM) selected will become a responsible, cooperative and contributing member of the Owner's professional team for the design and construction of the project. The Construction Manager (CM) will provide assistance and advice and provide management services to the Owner and Consultants to assure the project is completed within the defined budget, program and schedule.

The Owner intends to initially contract with the CM for design phase services (Pre-Construction Services) only. The contract initially established for construction management services will be of a pure agency relationship through design, and then convert to a "Construction Manager at Risk" contract with a GMP to be established for each of the Construction Packages as design is completed on that Package.

No portion of the work may be performed by the Construction Manager or its affiliates except with Owner's prior written approval and in compliance with the provisions of KRS 45A.

Part I: Design Phase Services from CM

The University has issued a RFP for a “Consultant” to provide design and conventional architectural contract administration services for the project. The CM, in consultation with the university and the consultant, shall take the lead and develop the project schedule. The schedule thus developed shall be subject to review approval by the University and Consultant.

During the Design Phase, the CM shall:

- Provide all project scheduling. Within 15 calendar days of the program verification, the CM shall develop an understanding of all project activities, including design and other pre-construction requirements, and prepare a schedule for the total project design and development process (Project Master Schedule). The schedule shall be updated monthly at a minimum and at the conclusion of each design phase. The CM shall make recommendations to the Owner and Consultants regarding means of improving the anticipated schedule.
- Assist the Owner and the Consultant in determining the advantage and feasibility of issuing of early bid packages.
- Prepare independent detailed construction cost estimates and value engineering assessments at the end of each phase of design. The CM will cooperate with Consultant to reconcile any differences in the estimates produced by each, including reconciliation of the estimate produced by the CM based on the final construction documents (the GMP). With each estimate submission include a master list of missing information (design holes) and items requiring more detail and/or information to adequately price and later bid.
- Provide Cash Flow Forecasts illustrating the projected monthly payments to be made on behalf of the construction. Updated Cash Flow Forecasts shall be provided concurrent with each required Construction Cost Estimate and monthly during the construction.
- Provide value engineering of project/building materials, products, systems and layouts and make recommendations regarding cost reductions and value/quality enhancements to the Consultant and Owner throughout the course of the design. Value engineering recommendations shall consider Life-Cycle-Cost as well as initial investment comparison.
- Participate in Design and Construction Document progress review sessions and provide recommendations with respect to constructability, contractibility, value engineering, scheduling and document development, as well as eliminating areas of conflict, omission or overlapping of construction work. Review 3D BIM models developed by the consultants to ensure proper coordination of work and to identify potential conflicts.
- Make recommendations to the Owner and the Consultant regarding the division of Work in the Drawings and Specifications to facilitate the bidding and award of Trade Contracts.
- Develop work category descriptions and provide written scopes of work for each Bid Package to the prospective work category bidders to ensure all items and work necessary to provide a complete finished project are included in the responsibility of and/or shall be provided by one of the bidding Trade Contractors. The CM shall ensure that Bid Packages/Contracts are fully coordinated such that all of the Work required by the Contract Documents is properly and clearly assigned to a Bid Package/Contract without omission, conflict or duplication.
- Work with the University and the consultants during the design process to fully define and coordinate building infrastructure necessary to support FF&E items.
- Review all Bid Documents to ensure: (a) that all phases of the work, including provisions of the General Conditions, are assigned to appropriate Contractors; (b) that provisions are made for temporary facilities and utilities necessary for the performance of the Work and for project site facilities necessary for the CM, Owner, and Consultants to perform their duties in the management, inspection, and supervision of the work; (c) that responsibility for project safety programs is properly and completely assigned; (d) compliance with all applicable laws and regulations, including environmental and safety requirements applicable to the work; and (e) compliance with owner's guidelines as published from time to time.
- Provide Special Conditions for approval by the Consultant and the Owner and for inclusion in bidding and contract documents for each Bid Package.
- Develop a safety program to be included in the Bid Documents.

- Assist the Owner and the Consultant in preparing a list of additive or deductive work (Bid Alternates), as required, to ensure that the basic program scope is met within budget constraints.
- Make recommendations for early/advance purchase, and expedite/assist in the procurement, of long-lead items to ensure their delivery by the required dates in the Project Master Schedule.
- Review all Design Documents prepared by the Consultant for accuracy, completeness, clarity, construction feasibility, constructability and consistency.
- Solicit responsible Trade Contractor and Supplier interest in bidding on the Project.
- Ensure compliance with requirements as defined by the owner and consultant necessary to achieve a LEED Silver certification for the building.

Part IB: Bid Phase Services from CM

During the Bidding Phase of each Bid Package, the CM, in addition to the services listed above, shall:

- In conjunction with the Consultant, (a) prepare Bid Packages; (b) establish bid schedules; (c) assist in the provision of information to the prospective Bidders; and (d) assist in conducting pre-bid meetings.
- Assist the Owner to ensure that all bidding activities result in bids from responsible and responsive qualified contractors for the lowest possible costs representing the best value to the Owner.
NOTE: Bids will be solicited by the Owner in accordance with the Commonwealth of Kentucky Model Procurement Code (KRS 045A). The CM will participate in the post bid evaluation and verification of the qualifications of the firms submitting apparent low bids for each of the bid packages for the project and recommend to the Owner which of the proposals represents the best value to the Owner.
- Prepare and deliver to the Owner, with a copy to the Consultant(s), a Guaranteed Maximum Price ("GMP") proposal in accordance with the requirements of the Contract between Owner and Construction Manager.
- When the identity of the successful bidding firms is established, the CM shall enter into a contract with each firm using contract terms, conditions and contract language acceptable to the Owner. Such contracts will be supported by a performance bond and a payment bond naming the CM and the Owner as obligee.

Part II: Construction Phase Services from CM

During the Construction Phase of each Bid Package, the CM will:

- Assume full responsibility and liability as described in this agreement for the completion of the construction of the Project in full and complete compliance with the Contract Documents as defined and as described in Article 3.5b of the Contract between the Owner and the Construction Manager.
- Enter into direct contracts with all Trade Contractors and Suppliers.
- Assume the responsibility for the overall administration of and the performance and costs of construction contracts.
- Provide full-time staff throughout construction for the purpose of monitoring, managing, inspecting, scheduling, and coordinating the progress, performance, quality and contract compliance of the Trade Contractors and material suppliers, and including those items procured by direct purchase.
- Provide and maintain a fully equipped project office facility on site to perform all required construction management duties including facilities for necessary project meetings and for the Owner's representatives.
- Schedule and conduct meetings, as necessary, and prepare and distribute meeting minutes.
- Develop and maintain a detailed master construction schedule in critical path format.
- Request pricing, review and negotiate costs, and make recommendations on all necessary changes to the contracts and/or purchase orders.
- Coordinate construction tolerances, interfaces, methods, techniques and sequences to result in a functional final product in accord with the Construction Documents.
- Continue use of the 3D BIM models developed by the consultants during design phase to fully coordinate the work of subcontractors during construction. CM shall be solely responsible for

organizing, arranging, and developing this 3D BIM coordination among all the subcontractors during construction.

- Institute and administer requirements and procedures for the review and approvals of all submittals.
- Prepare and administer all cost control procedures, including monthly pay requests, change order logs, etc.
- The CM shall moderate, seek solutions, make recommendations or take other appropriate actions in matters relating in disputes between Trade Contractors or material suppliers.
- Develop and maintain systems for reporting and retrieval of project information.
- Coordinate all requirements of project commissioning and close-out procedures including inspections, Owner's orientation and familiarization, training of Owner's personnel, and collection of all close-out documents.
- All on-site training sessions shall be recorded by the CM and provided to the owner on an external hard drive.

Part III: Post Construction Phase Services from CM

During the Post Construction Phase of each Bid Package, the CM shall:

- Guarantee that labor, material, and equipment shall be free of defects for a period of one (1) year from the date shown on the Certificate of Substantial Completion unless special conditions or additional warranty periods are required by the Contract Documents.
- Warrant that the work performed under the contract between the CM and the Owner, when completed, will conform to the Contract Documents.

Project Description & Design Schedule

Northern Kentucky University is seeking a construction manager for a new 300 bed residence hall. This new facility will primarily house freshmen and sophomore students. The residence hall will most likely be of modified traditional style, with double bedrooms and community type, but private, shower/restrooms. A design that provides both community and privacy is the goal. The facility should include community space such as study rooms and lounges, a laundry facility, and a community kitchen as well as an apartment for the resident director.

NKU's current residential facilities are located in two areas, the Boothe Residential Village and the East Village. This new building will be located in the Boothe Residential Village, although an exact site has not been determined. The completion of Norse Boulevard, set to fully open in August 2018 and previously identified as the "Connector Road", and located along the west side of campus as well as the west side of Boothe Village, has dramatically changed the character of the Boothe Village. A site with frontage on Norse Boulevard would provide a unique opportunity to enhance this residential area. The design team's first task will be site evaluation and analysis.

NKU believes that new housing should be configured to encourage both planned and spontaneous interaction among students. A successful housing experience is one that builds life-long friendships among its residents, and the architecture and layout of the building should facilitate these goals. It will enhance the sense of community felt by students, increasing enrollment and retention.

NKU's Board of Regents have approved a five-year sequenced Housing Plan of renovation and new construction for NKU's housing program. Existing facilities to be renovated include Kentucky Hall, under renovation this year; Commonwealth Hall, scheduled to begin in January 2019; Woodcrest Apartments; and, Norse Hall. This new residence hall is the only new facility planned as part of this Housing Plan.

Currently, NKU has 2,004 residence hall beds, with 16 different room types in nine buildings. The oldest buildings, Kentucky and Commonwealth Halls, were constructed in 1982. NKU's most recent residence halls to come online were building conversions, Callahan Hall and Northern Terrace, both located in the East Village and completed in 2008 and 2014 respectively. The

dining facilities at both the Boothe Village and the East Residential Village (in Callahan Hall) have been fully modernized in the last five years.

NKU completed a student housing survey in fall 2017. The survey results can be found here: <https://www.dropbox.com/s/zn1ao5ndzrqy4fq/NKU%20HOUSING%20Survey%20Report%202017%20FINAL%20wATT.pdf?dl=0>

In summary, 2018 is an exciting time at NKU. The new Health Innovation / Founders Hall renovation project will be dedicated this fall. NKU's new president, Ashish Vaidya, assumes leadership of the University on July 1, 2018. This project and the phased housing renovations will invigorate NKU's housing program and are key elements in helping the University achieve its strategic objectives.

Schedule

The architect and construction manager will be charged with design and construction of this project with a goal of July 15, 2020 occupancy. Fast tracking of the early bid packages may be necessary. Work will commence upon selection/contract execution.

Key Event Dates:

Phase 1

Release of RFP	September 28, 2018
Pre-Proposal Conference	October 5, 2018
Deadline for Written Questions Phase 1	October 9, 2018 @ 12:00 PM
Final Date for issuance of Addenda	October 11, 2018
RFP Proposals Due Date*	October 18, 2018 @ 2:00 PM

Phase 2**

Notification of Phase II Finalists	Thursday	October 25, 2018
Presentations/Interviews by Phase II Finalists	Thursday	November 1, 2018
Finalists' Financial Proposals Due	Thursday	November 8, 2018
Issue Intent to Award	Thursday	November 15, 2018

* Decisions and clarifications will be incorporated into the proposal documents by an addendum.

** The Phase 2 Key Events are projected dates.

Offeror Communication

To ensure RFP documentation and any necessary subsequent information (modifications, clarifications, addendum, etc.) are directed to the appropriate persons within the Offeror's firm, each Offeror who intends to participate in this RFP process is required to immediately provide the following information to NKU Procurement Services:

- Name of primary contact
- Mailing address, email address, and telephone number for primary contact
- Firms may name additional contact persons (provide contact information)

This information shall be transmitted via e-mail to NKU Procurement Services.

Restrictions on Communications with University Staff

From the issue date of this RFP until a Construction Manager is selected and a contract award is made, Offerors are not to communicate about the subject of this RFP with any University administrator or faculty, staff, or members of the Board of Regents.

All communications regarding this RFP shall be directed NKU Procurement Services:

Ryan Straus
Northern Kentucky University
(859) 572-6605
Strausr2@nku.edu

Pre-Proposal Conference

A Pre-Proposal Conference will be held at Northern Kentucky University, Highland Heights, Kentucky on October 5, 2018 10:00am in the Student Union, room 108, to allow prospective Construction Managers an opportunity to ask questions and clarify the expectations and requirements of the university. Visitor parking is available in the nearby Kenton Garage.

The following items should be noted in reference to the Pre-Proposal Conference:

- Attendance at the Pre-Proposal Conference is optional, but all interested Offerors are strongly encouraged to attend.
- All questions shall be submitted in writing to NKU Procurement Services. The university will prepare written responses to all submitted questions and release as an addendum. All written questions and answers will be made part of the RFP and may become part of the contract with the successful CM. Verbal answers given at the conference and not memorialized in written form are not binding.

Offeror Presentations

All Phase II finalists shall be required to make a presentation to, and participate in interviews with, the Selection Committee. Actual interview times for the Phase II finalists will be confirmed at a later time.

Preparation of Offers

Offeror is expected to follow all specifications, terms, conditions, and instructions in this Request for Proposals. Offeror will furnish all information required by this solicitation. The Offeror will sign and return the proposal cover sheet and print or type her/his name, firm, address, telephone number and date. The person signing the offer must initial erasures or other changes. The signer shall further certify that the proposal is made without collusion with any other person, persons, company or parties submitting a proposal; that it is in all respects fair and in good faith without collusion or fraud, and that the signer is authorized to bind the principal Offeror.

Proposed Deviations from the Request for Proposal

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

Note: Offerors shall not submit their standard terms and conditions as exceptions to the RFP Terms and Conditions. Each exception to an Owner term and condition shall be individually addressed.

Addenda

Any addenda or instructions issued by the University prior to the time for receiving proposals shall become a part of this RFP. Such addenda shall be acknowledged in the proposal. No instructions or changes shall be binding unless documented by a proper and duly issued addendum. No addendum will be issued less than 7 days prior to proposal due date without providing an extension to the due date.

Offeror Response and Proprietary Information

The Request for Proposals specifies the format, required information, and general content of proposals to be submitted in response to this RFP. The university or the members of the appointed selection committee will not disclose any portions of the proposals prior to contract award to anyone outside the University's administrative staff, and the members of, and advisors to, the Committee evaluating the proposals. After a contract is awarded in whole or in part, the Owner shall have the right to duplicate, use, or disclose all Proposal data submitted by Offerors in response to this RFP as a matter of public record.

Any submitted proposal shall remain a valid proposal for 90 calendar days after the proposal due date.

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

Cost of Preparing Proposal

Costs for developing the proposals and any subsequent activities prior to contract award are solely the responsibility of the Offerors. The university will not provide reimbursement for such costs in any amount.

Disposition of Proposals

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

Questions

All questions should be submitted in writing to Ryan Straus, NKU Procurement Services.

Section Titles in the RFP

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

No Contingent Fees

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

Proposal Addenda and Rules for Withdrawal

Prior to the date specified for receipt of offers, a submitted proposal may be withdrawn by submitting a written request for its withdrawal to the Purchasing Officer, signed by the Offeror. Unless requested by the university, no revisions or alterations to proposals after the proposal due date will accepted or considered.

Proposal Information and Criteria

The following list specifies the items to be addressed in your proposal. Please read this section thoroughly. To facilitate the university's review of your proposal, prepare your submission carefully so that all items are included in the order listed.

Proposals should be prepared providing a description of the Offeror's capabilities to satisfy the requirements of the solicitation. The proposal shall be prepared double-sided on 8 ½" x 11" recycled paper, with all text clear of binding. Text type size shall be a minimum of 10 point font. The proposals must be indexed and all pages sequentially numbered throughout or by section. All text and exhibits should be succinct and relevant to the RFP requirements. Emphasis should be on completeness and clarity of content. Each copy of the proposal shall be bound in a single volume where practical. All documentation submitted with the proposal should be bound in the single volume except as otherwise specified.

Proposals shall be organized into the sections identified below. The content of each section is detailed in the following pages.

- Signed Authentication of Bid and Statement of Non-Collusion and Non-Conflict of Interest Form (pages 1 & 2)
- Transmittal Letter
- Executive Summary and Proposal Overview
- Qualifications – Firm/Entity
- Qualifications of Construction Management Team
 - Project Manager(s)
 - Construction Superintendent(s).
- Services Defined
 - Methodology
 - CM Services Plan
- Other Additional Information

Note: A Financial Proposal will be required from Phase II Finalists only.

Proposal Submission Deadline

The Offeror shall submit, via US Postal Service, courier or other delivery service, seven (7) bound one (1) unbound, and one (1) digital copy (USB, CD, etc.) original of its proposal in a sealed package addressed to:

Mr. Blaine Gilmore
Interim Director of Procurement Services
617 Lucas Administrative Center
Northern Kentucky University
Highland Heights, KY 41099

Bearing respondent's name and address, and clearly marked as follows:

**RFP NKU-71-18
Construction Management Services
New Residence Hall**

Note: Proposals received after the closing date and time will not be considered. In accordance with the Kentucky Revised Statute 45A.085, there will be no public opening.

Signed Authentication of Bid and Statements of Non-Collusion and Non- Conflict of Interest Form.

The Offeror will complete, sign, and return the proposal cover sheet (pages 1 & 2) and print or type her/his name, firm, address, telephone number and date. The person signing the offer must initial erasures or other changes. An offer signed by an agent is to be accompanied by evidence of his/her authority unless such evidence has been previously furnished to the Purchasing Agency. The signer shall further certify that the proposal is made without collusion with any other person, persons, company or parties submitting a proposal; that it is in all respects fair and in good faith without collusion or fraud, and that the signer is authorized to bind the principal Offeror.

Transmittal Letter

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

- a) A statement referencing all addenda to this RFP issued by the University and received by the Offeror. If no addenda have been received, a statement to that effect should be included.
- b) A statement that the Offeror's proposal shall remain valid for three (3) months after the closing date of the receipt of the proposals.
- c) A statement that the Offeror will accept financial responsibility for all travel expenses incurred for oral presentations (if required) and interviews.
- d) A statement that summarizes any deviations or exceptions to the RFP requirements and includes a detailed justification for the deviation or exception.

Note: Do not submit your standard Terms and Conditions as exceptions to the RFP Terms and Conditions. Each exception to a university specified term or condition shall be individually addressed.

Executive Summary and Proposal Overview

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

Criteria 1 – Offeror Qualifications

The purpose of the Offeror Qualifications section is to allow the evaluator to assess the ability of the Offeror to respond to this Request for Proposals. Offerors must describe and offer evidence of their ability to meet each of the qualifications listed below. If the Offeror is a joint venture of two or more firms, provide the information requested (1) for each member of the joint venture and (2) for the joint venture entity.

- a) Please provide a brief narrative describing the history of your firm. Identify the number of employees in your firm, and the ownership.
- b) Please provide an executive summary profile of your firm indicating:
 - the total annual volume of work; x
 - an overview of the firm's resources;
 - the approximate percentage of higher education related work versus other project types;
 - a breakdown of your firm's volume relative to CM @ Risk, CM Agency, Lump-sum negotiated, Lump-sum hard bid, design-build, etc.;
 - indicate whether your firm routinely self performs any trade work and if so the relative amount of self-performed work to the total volume;
 - indicate what resources, if any, your firm has regarding self-performed trade work; and,
 - provide any other information necessary to describe your core business parameters.
- c) Provide an organizational chart for your firm indicating the lines of authority for the senior personnel involved in performance of this contract and relationships of this staff to other programs or functions of the firm. This chart should show lines of authority to the next senior level of management beyond the project team level. Provide a staffing plan that indicates the level of assignment of personnel (Full time, one-quarter or less, one-third or one-half or more) and their duration on the project (i.e. pre-construction only, construction period, etc.). An assignment chart indicating staffing throughout the project would be an acceptable means of communicating this information.
- d) Has your firm had a contract terminated for default in the last five years? If so, describe such incident.

- e) Indicate any other experience that demonstrates the qualifications of your firm for the performance of this contract.

Criteria 2 – Project Team Qualifications

- a) Provide an organization chart, resumes and photographs of key team members, and a brief description of roles and responsibilities.
- b) Provide a matrix indicating at least 5 projects of similar scale (or larger) and complexity (or greater) that members of the team have been involved with and the level of their involvement.
- c) The CM must commit that staff identified in the proposal will actually perform the assigned work and be committed to the project for the duration of the design and construction or for the duration defined in 4.6(c) above. Describe the level of commitment and the ability of your firm to provide assurance regarding the stability of the proposed team.

Criteria 3 – Services Defined

- a) The CM should provide documentation of their understanding of the services requested in the RFP and contract documents.
- b) Your proposal must provide for the completion of all work necessary to accomplish the scope of work defined in this RFP. Include a complete description of the proposed approach and methodology to accomplish the work described. The plan must be in sufficient detail to convey to the evaluation team the CM's knowledge of projects of similar scale and complexity and the CM's knowledge of the requirements, demands, and constraints of this project.
- c) Explain how your firm/team approaches scheduling and schedule maintenance to ensure a successful on-time completion.
- d) Explain how your firm/team approaches budgeting and budget maintenance to assure a successful completion within budget.
- e) Provide a history of change orders grouped by reason as errors, omissions, owner generated as a percentage of total project cost for the five most recent projects or similar scope completed by your firm.
- f) Explain your firm/team's experience with, and use of, BIM as a tool to achieve successful schedule and budgetary goal conformance.
- g) Explain your firm/team's experience in design and construction of LEED or similarly certified buildings, whether certified or not certified.
- h) Describe your firm's Disadvantaged Business Enterprise program and strategy for achieving DBE participation as well as your strategy to promote local trade, contractor, and vendor participation this project.

Criteria 4 – Other Additional Information

- a) Please provide any additional information that the CM feels should be considered when evaluating your proposal.

RFP EVALUATION CRITERIA and PROCESS

Northern Kentucky University will use a multi-phase evaluation process as outlined below. A Selection Committee will evaluate the proposals and make a recommendation for award of a Contract for Construction Management Services to the University.

The final evaluation will be based upon the information provided in the proposal, the Financial Proposal, any additional information requested for clarification, information obtained from references, and oral presentations/interviews. The evaluation of proposals will include consideration of responses to the list of criteria in Sections 4.1 through 4.9. Offerors must specifically address all criteria in their response. Any deviations or exceptions to the specifications or requirements must be described and justified in the firm's transmittal letter. Failure to list such exceptions or deviations in the transmittal letter may be considered sufficient reason to reject the proposal. The evaluation of responsive proposals shall then be completed by the Selection Committee and will be evaluated strictly in accordance with the requirements set forth in this RFP, including any addenda that are issued.

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

Maximum Non Price Points/Score for Phase II	100 (50%)
Maximum Financial Proposal Point/Score	100 (50%)
Maximum Points available for Financial and Non Price Score	200 Points

The Construction Management proposals receiving one of the three highest total rankings for Phase I will advance to Phase II of the evaluation process. In the event of a tie between two or more proposals for third place ranking in Phase I, all CM proposals receiving the third highest ranking will advance to Phase II. The Construction Manager entity receiving the highest total score for Phase II will be offered a Contract for the work.

Phase 1 Evaluation Process and Scoring:

The Selection Committee shall review proposals and each committee member shall independently score each proposal based on the Evaluation Criteria contained in this document. The score as determined by each Selection Committee member will be calculated using the scoring form below.

The scoring categories, and their relative weights, of the Evaluation Criteria for Phase 1 are set forth below and on the Individual Evaluation Summary sheets inserted at the end of this RFP:

Scoring Category:	Value 1~10:	Wt.	Category Score:
1. CM Entity	_____	x 50 =	_____
2. Project Manager(s)	_____	x 30 =	_____
3. Superintendent(s)/Direction of the Work	_____	x 20 =	_____
4. CM Plan/Methodology for this Project	_____	x 15 =	_____
5. Project Schedule Plan	_____	x 15 =	_____
6. Budget/Cost Control Capabilities/Plan	_____	x 25 =	_____
7. Quality Control/Assurance Capabilities/Plan	_____	x 20 =	_____
8. Existing Workload vs. Capacity	_____	x 10 =	_____
9. Responsiveness to RFP / Demonstration Of Services Requested and Required	_____	x 15 =	_____
TOTAL SCORE:			_____

Upon completion of the scoring of the proposals, each voting member of the Selection Committee shall rank the top three scoring proposals. Each first place firm will receive three (3) points; each second place firm will receive two (2) points and each third place firm will receive one (1) point. The ranking points awarded to each proposal by all Committee members shall then be totaled to determine the top three ranked proposals. The top three ranking proposals, including all proposals tied for the third place ranking, will advance to Phase II evaluations.

Phase II Evaluation Process and Scoring

Each Offeror selected to participate in Phase II shall be required to participate in a presentation and interview before the Selection Committee and shall submit a Financial Proposal. Phase II finalists may also be required to submit additional information as requested by the University.

- A. Phase II Step 1 - Presentations and Interviews, and any additional information supplied by the finalists, shall be evaluated, scored and ranked by the Selection Committee members, who shall not have knowledge of the Financial Proposal component. Each voting member of the committee shall independently score the Phase II non-price offers and then record a ranking (1st, 2nd, 3rd, etc...) in the same manner as set forth for the Phase I evaluation above. The ranking points awarded to each proposal by all voting Committee members shall then be totaled to determine the top three ranked proposals.

The ranked proposals shall then be awarded Points/Score as set forth below. These scores/points will then be carried forward to Phase 2 Step 3 for the calculation of the Offeror's score.

<u>Rank</u>	<u>Points/Score</u>
1st	100 Points
2nd	75 Points
3rd	50 Points
4th or below	0 Points

The total maximum points available for the Non-Price committee composite score for Phase II, Step 1 will be 100 points.

- B. Phase II, Step 2** - The Financial Proposals are evaluated in Phase II Step 2. The maximum points available for Offeror's Financial Score will be 100. The Offeror proposing the lowest price shall receive the maximum score of 100 points. The Offerors shall have their score determined by applying the following formula:

$$\frac{\text{Lowest price}}{\text{Offeror's price}} \times 100 = \text{Offeror's Financial Score}$$

- C. Phase II Step 3** - The Offeror with the highest point total from Phase II, Step 1 plus Phase II, Step 2 shall be offered a contract unless the Financial Proposal is in excess of the authorized budget. If two or more of the Offerors achieve the same highest point total at the end of the final phase scoring, the purchasing officer shall request best and final Financial Proposals from each Offeror. The Offerors shall have their score determined by applying the following formula:

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

SUPPLEMENTAL CONDITIONS

The General Conditions for this RFP are attached as **Attachment A**

The Special Conditions for this RFP are attached as **Attachment B**

The Agreement between the Owner and Construction Manager is attached as **Attachment C**

Compliance With State Laws

Any contract resulting from this solicitation shall be governed under, and the rights and obligations of the parties hereto, shall be determined in accordance with the laws of the Commonwealth of Kentucky. The firm selected shall provide equal job opportunity and prohibit discrimination based on race, creed, color, sex, age, religion or national origin as required by Kentucky Revised Statutes 45:550 through 45:640. All contractors and subcontractors are required to comply with Federal Executive Order 11246 entitled "Equal Employment Opportunity" as amended by the Department of Labor regulations (41CFR, Part 60). The successful firm will be required to provide certificates of insurance showing proof of general, vehicle liability and Worker's Compensation insurance and a 100% Performance and Payment Bond for the full amount of the fee negotiated during Phase II of the selection process, adjusted to equal the total contract sum as described above. The CM fee should reflect bonding and insuring the project for the full stipulated amount of \$63 million; however the actual bonds will not be required until the trade/work categories are awarded. For example, if the CM fee is \$1 million, then the University requires a bond for \$1 million and as each trade/work category is awarded the bonds shall be increased to cover the awarded amount up to the stipulated amount.

Equal Employment Opportunity Contract Compliance

Kentucky's EEO Act, KRS 45.560A5.640 requires non-exempt parties to submit information about employment and hiring practices for any contract award which exceeds \$500,000. Bidders are required to

submit reports to the Contracting Agency in accordance with the requirements of the solicitation. The Contracting Agency will send copies of the reports to the Finance and Administration Cabinet, Office of EEO and Contract Compliance (EEO/CC) for review and approval. A list of REQUIRED EEO reports follows.

EEO I. Employer Information

EEO II. Report Affidavit of Intent to Comply

EEO III. Subcontractor Report Form

The employment provisions of the EEO Act may also be met, in part, by subcontracting to a minority-owned and/ or a female-owned company (as appropriate).

EEO/CC will review and evaluate your employment data and, if applicable, the minority-owned and/ or female-owned company documentation. Thereafter, EEO/CC will determine whether your workforce reflects the percentage of available minorities and females in the area from which your employees are drawn. No award will become effective until all forms are satisfactorily submitted and EEO/CC has certified compliance. Thereafter, EEO/ CC will recertify your company at one (1) year intervals. All required forms are available at

<http://finance.ky.gov/services/eprocurement/Pages/vendorservices.aspx>

Contracts between the Successful Bidder and Subcontractors that exceed \$500,000 shall include a provision which requires the Subcontractor(s) to comply with the EEO Act and its reporting requirements. The Successful Bidder is responsible for submitting the subcontractor's forms to EEO/CC. (Note: contracts below the second tier are exempt from EEO reporting.)

Personal Service Contract

This RFP is for consulting or other personal services. Kentucky law requires a Personal Services Contract to be signed by the vendor and filed with the Legislative Research Commission in Frankfort prior to any work beginning. [KRS 45A.690](#) defines a Personal Service Contract as “an agreement whereby an individual, firm, partnership, or corporation is to perform certain services requiring professional skill or professional judgment for a specified period of time at a price agreed upon.”

After Determination but prior to award, a Personal Services Contract will be sent to the winning offeror for signature. Please be sure to sign and return the **original** contract promptly to Northern Kentucky University. A Notice of Award will not be issued until the signed Personal Services Contract has been received by Procurement Services and filed with the Legislative Research Commission in Frankfort, KY.

REGARDING PERSONAL SERVICE CONTRACT INVOICING

House Bill 387 has now amended Kentucky Revised Statute 45A.695(10)(A) with the following language, “No payment shall be made on any personal service contract unless the individual, firm, partnership, or corporation awarded the personal service contract submits its invoice for payment on a form established by the committee”. The Personal Service Contract Invoice Form shall be used for this purpose and for you convenience we have added fields so that it can be filled in online and printed. This form can be located on NKU's Procurement Services website at:

http://procurement.nku.edu/departamental_forms/PSC_INVOICE_FORM.pdf

Bonding

Only Phase 2 Offerors shall submit a bid guarantee of not less than five (5%) percent of the amount of the base bid, based upon the Offeror's Total Price as set forth in Section 8.3.

All bonding and insurance requirements are contained in the RFP and/or General Conditions. All bonds shall name both the construction manager and the university as payee. At the time of contract award, CM firm shall provide proof of its ability to bond the project as outlined herein.

It is further agreed, that in the event this Proposal is accepted by the Owner and the undersigned shall fail to execute the Contract and furnish satisfactory Payment and Performance Bond as defined in the Agreement, the Owner may at his option, determine that the undersigned has abandoned the Contract and thereupon, the Proposal shall become null and void. CM firm shall provide 100% performance and 100% payment bonds in accordance with KRS 45A.190.

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

Insurance

If awarded, bidder / proposer must provide NKU with an insurance certificate listing NKU as a certificate holder and additionally insured.

**Northern Kentucky University
617 Lucas Administrative Center
1 Nunn Drive
Highland Heights, KY 41099**

The Contractor shall furnish the University the Certificates of Insurance and guarantee the maintenance of such coverage during the term of the contract. The Contractor shall provide an original policy endorsement of its CGL insurance naming Northern Kentucky University and the directors, officers, trustees, and employees of the University as additional insured on a primary and non-contributory basis as their interest appears. Additionally, the Contractor shall provide an original policy endorsement for Waiver of subrogation in favor of the Northern Kentucky University its directors, officers, trustees, and employees as additional insured.

Our basic insurance requirements are:

Workers' Compensation insurance with Kentucky's statutory limits and Employers' Liability insurance with at least \$100,000 limits of liability.

Comprehensive General Liability (CGL) Insurance the limits of liability shall not be less than \$500,000 each occurrence for bodily injury and \$250,000 property damage.

Comprehensive Automobile Liability Insurance: To cover all owned, hired, leased or non-owned vehicles used on the Project. Coverage shall be for all vehicles including off the road tractors, cranes and rigging equipment and include pollution liability from vehicle upset or overturn. Policy limits shall not be less than \$500,000 for bodily injury and \$100,000 for property damage.

Excess liability insurance in an umbrella form for excess coverages shall have a minimum of \$1,000,000 combined single limits for bodily injury and property damage for each.

Competitive Negotiation

It is the intent of the Request for Proposal (RFP) to enter into competitive negotiation as authorized by KRS 45A.085.

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

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

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

Appearance before Committee

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

Acceptance or Rejection and Award of Proposal

Northern Kentucky University reserves the right to accept or reject any or all proposals, or part of proposals, to waive any informalities, technicalities, clarify any ambiguities in proposals, and unless otherwise specified to accept any item in the proposal. In case of error in extension of prices or other errors in calculation, the unit price shall govern.

Construction Manager Cooperation in Related Efforts

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

Modification or Withdrawal of Offer

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

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

Rejection

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

- Failure of a proposal to conform to the essential requirements of the Request for Proposal.
- An offer imposing conditions that would significantly modify the terms and conditions of the solicitation or limit the Offeror's liability to the University on the contract awarded on the basis of such solicitation.
- Failure of the Offeror to sign the Owner's Request for Proposal, as part of the proposal. This includes the Authentication of Proposal and Statement of Non-collusion and Non-conflict of Interest statements.
- Proposals received after the closing date and time specified in the RFP.

Construction Manager Responsibility

Any contract that may result from the RFP shall specify that the Construction Manager is solely responsible for fulfillment of the contract with the university.

Attorneys' Fees

In the event that either party deems it necessary to take legal action to enforce any provision of the contract, and in the event and to the extent that the Owner prevails, the Construction Manager agrees to pay all expenses of such action, including attorneys' fees and costs at all stages of litigation.

Patents, Copyrights and Trademark

Except as specified by the Contract Documents, the Construction Manager shall protect Northern Kentucky University from any and all damages or liability arising from alleged infringements of patents, copyrights or trademarks.

Method of Award

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

Notwithstanding the above, this RFP does not commit the University to contract for any requirements detailed in this document. The University reserves the right to reject any or all offers and to waive formalities and minor irregularities in the proposal received.

Preliminary Project Schedule:

The proposed preliminary schedule for this project is included as Attachment E.

Financial Offer Summary Form

The Financial Offer is not required at this time. It will be requested from the firms that advance to Phase II of the RFP process

The Financial Proposal shall contain the complete financial offer made to the University.

See Attachment D for an example of the CM Contract.

Lump Sum Proposal for Pre-Construction Services

The Construction Manager agrees to furnish all labor, materials, supplies and services required to complete the pre-construction work for the above referenced Project as described in the Request for Proposal, Specifications and Contract Documents and as modified by Addenda.

FOR THE LUMP SUM OF _____
(USE WORDS)

_____ DOLLARS AND _____ CENTS.
(USE WORDS) (USE WORDS)

(\$ _____)
(USE FIGURES)

ATTACHMENT "A"
TABLE OF CONTENTS
GENERAL CONDITIONS OF THE CONTRACT
FOR CONSTRUCTION BY A CONSTRUCTION MANAGER AT RISK
Northern Kentucky University

ARTICLE	TITLE	PAGE
1	DEFINITIONS	3
2	CONSULTANT	4
3	CORRELATION AND INTENT OF CONTRACT DOCUMENTS	5
4	PRE-CONSTRUCTION CONFERENCE	6
5	SHOP DRAWINGS	7
6	LAYING OUT WORK	7
7	PLANS, SPECIFICATIONS AND RECORD DRAWINGS	8
8	TEMPORARY UTILITIES	8
9	MATERIALS, EQUIPMENT, APPLIANCES, AND EMPLOYEES	9
10	ROYALTIES AND PATENTS	10
11	SURVEYS, PERMITS, REGULATIONS AND STANDARD CODES	10
12	PROTECTION OF WORK, PROPERTY, AND PUBLIC	10
13	BLASTING	11
14	CONSTRUCTION AND SAFETY DEVICES	11
15	HAZARDOUS MATERIALS	12
16	INSPECTION OF WORK	13
17	SUPERINTENDENT - SUPERVISION	14
18	CHANGES IN THE WORK	15
19	RULES AND MEASUREMENTS FOR EXCAVATION	17
20	CONCEALED CONDITIONS	17
21	DELAYS AND EXTENSION OF TIME	19
22	CORRECTIONS OF WORK BEFORE FINAL PAYMENT	18
23	CORRECTION OF WORK AFTER FINAL PAYMENT	19
24	TERMINATION OF CONTRACT FOR CONVENIENCE OF OWNER	19
25	OWNERS RIGHT TO STOP WORK	20
26	TERMINATION OF CONTRACT FOR DEFAULT ACTION OF CONSTRUCTION MANAGER	20
27	SUSPENSION OF WORK	23
28	TIME OF COMPLETION	23
29	LIQUIDATED DAMAGES	24
30	PAYMENT TO THE CONSTRUCTION MANAGER	24
31	CONSTRUCTION MANAGER'S PAYMENT TO TRADE CONTRACTOR	27
32	PROGRESS & SCHEDULING	27
33	USE OF COMPLETED PORTIONS	28
34	INDEMNIFICATION	28
35	INSURANCE	28
36	PERFORMANCE AND PAYMENT BONDS	29
37	DAMAGED FACILITIES	29
38	DISPUTE RESOLUTION	29
39	CLAIMS FOR DAMAGE	31
40	LIENS	32
41	ASSIGNMENT	32
42	SEPARATE CONTRACTS	32
43	CONSTRUCTION MANAGER/TRADE CONTRACTOR RELATIONSHIP	33
44	CASH ALLOWANCE	33
45	PROJECT SITE LIMITS	33
46	CLEAN UP	33
47	POINTS OF REFERENCE	33

48	SUBSTITUTION - MATERIALS AND EQUIPMENT	34
49	TEST AND INSPECTION	34
50	WARRANTY	35
51	PREVAILING WAGE LAW REQUIREMENTS	36
52	APPRENTICES	36
53	GOVERNING LAW	36
54	NONDISCRIMINATION IN EMPLOYMENT	37
55	AFFIRMATIVE ACTION OR REPORTING REQUIREMENTS	37

**GENERAL CONDITIONS OF THE GUARANTEED MAXIMUM PRICE CONTRACT
FOR CONSTRUCTION BY A CONSTRUCTION MANAGER AT RISK
Northern Kentucky University**

These General Conditions are binding upon the Construction Manager and all Trade Contractors as each are subject to the provisions contained herein.

ARTICLE 1 - DEFINITIONS

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

1.1.0 BUSINESS DAY – The term “Business Day” means a Calendar Day (i.e. not a Saturday, Sunday or legal holiday).

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

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

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

1.1.4 CONSTRUCTION MANAGER or “CM” - The term "Construction Manager" (CM) means the person or entity employed by the Owner to provide professional and managerial services to the Project. The Construction Manager shall execute and hold all construction Trade Contracts and Purchase Orders for the Project.

1.1.5 CONTRACT - The "Contract" consists of all Contract Documents as defined in this Article 1 of the General Conditions.

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

1.1.7 CONTRACT TIME - The term "Contract Time," unless otherwise provided, means the period of time, including authorized adjustments, for the Substantial Completion of the Work. The time begins as directed in the Work Order and continues for the time specified in the Agreement.

1.1.8 CONTRACT DOCUMENTS - The "Contract Documents" include the Agreement of Contract between the Owner and the Construction Manager (the "Agreement"); the General Conditions; the Special Conditions; the Construction Manager's Form of Proposal; CM's Qualifications and Assumptions; the Construction Manager's Bonds; the Specifications, Drawings and Addenda for the construction of the Project which are to be used for bidding of the bid pack/trade contracts; and any Change Orders issued after execution of this Contract. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Owner and any Trade Contractor, or any person or entity other than the Construction Manager. Documents not included or expressly contemplated in this Article do not, and shall not, form any part of the Contract for Construction. Without limiting the generality of the foregoing, shop drawings and other submittals

from the Construction Manager or its Trade Contractors and suppliers do not constitute a part of the Contract Documents.

1.1.9 FIELD ORDER - The term "Field Order" means a written order issued by the Consultant which clarifies or interprets the Contract Documents, or orders minor changes in the Work and which does not require a Change Order.

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

1.1.11 OWNER - The term "Owner" means Northern Kentucky University.

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

1.1.13 PROJECT MANAGER - The term "Project Manager", when used alone, means the Owner's representative responsible for administration and management of the Project. The term "CM Project Manager" means the individual employed by the Construction Manager who is assigned to the Project to provide overall management during both the design and construction phases of the Project, and who has total responsibility for the successful completion of the Project

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

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

1.1.16 SUBSTANTIAL COMPLETION - The term "Substantial Completion" means the stage or progress of the Work whereby the Project or a designated portion thereof is sufficiently complete in accordance with the Contract Documents, including but not limited to, the provisions of Article 28 of these General Conditions, so that the Owner can occupy or utilize the Project or the designated portion for its intended use or purpose without interruptions. The Work will not be considered acceptable for Substantial Completion review until all Project systems included in the Work are operational as designed and scheduled, all designated or required governmental inspections and certifications have been made and posted, designated instruction of the Owner's personnel in the operation of systems has been completed, and all final finishes within the Contract Documents are in place. In general, the only remaining Work shall be minor in nature so that the Owner and/or the Owner's tenants could occupy the Project on that date and the completion of the Work by the Construction Manager would not materially interfere or hamper the Owner's or the Owner's tenants' normal business operations. As a further condition of Substantial Completion acceptance, the Construction Manager shall certify in writing that all remaining Work, the same be solely of a "punch list" nature, will be completed within sixty (60) consecutive Calendar Days following the date of Substantial Completion.

1.1.17 TRADE CONTRACTOR - The term "Trade Contractor" means the person, company, corporation, joint venture or other legal entity with whom the Construction Manager has executed a Contract for a portion of the Work.

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

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

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

ARTICLE 2 - CONSULTANT

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

2.2 The Consultant will regularly visit the site to become familiar with the progress of the Work, the quality of the Work being provided and to determine if the Work is proceeding in accordance with the Contract Documents. On the basis of these on-site inspections, the Consultant will keep the Owner informed of the progress of the Work, and will advise the Owner of defects and deficiencies in the Work by the Construction Manager and will certify to the Owner that the Work in place equals or exceeds the amount requested by the Construction Manager on all applications for progress payments.

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

2.4 Claims, disputes, and other matters in question that arise relating to the execution or the progress of the Work shall be referred in writing to the Consultant. The Consultant will provide a response within five (5) business days and a decision (subject to the provisions of Article 38 hereof) in writing within a reasonable time. The Consultant's decision shall be subject to Article 38 hereof.

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

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

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

2.8 The Consultant will prepare Change Orders for the Owner to direct changes in the Work. Minor changes in the Work, not involving modifications to the contract cost or completion times and that are consistent with the purpose of Work, may be directed by the Consultant through Field Orders.

2.9 The Consultant will conduct inspections to determine the dates of Substantial Completion and Final Completion and will receive and forward to the Owner for the Owner's review, written warranties and related documents required by the Contract and assembled by the Construction Manager.

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

ARTICLE 3- CORRELATION AND INTENT OF CONTRACT DOCUMENTS

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

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

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

3.4 The Contract Documents are complementary, and what is required by one shall be binding as if required by all. In case of conflicts between the various documents, the order of precedence will be as follows: (1) executed Exhibit D including their qualifications and assumptions; (2) Addenda, (3) CM Contract; (4) Special Conditions, (5) General Conditions, (6) Technical provisions of the Specifications and (7) Drawings.

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

ARTICLE 4 - PRE-CONSTRUCTION CONFERENCE

4.1 Following the execution of the Contract, a pre-construction conference will be held. Representatives of the University, Consultant, Construction Manager, and all major Trade Contractors shall be present to discuss the time for construction, methods and plan of operation, authority of the Consultant, and procedures for handling shop drawings, progress estimates and requests for payments, and other relevant issues. Establishing the time and location of this meeting

will be the responsibility of the Construction Manager in consultation with the Consultant, Owner and other interested parties.

ARTICLE 5 - SHOP DRAWINGS

5.1 The Construction Manager shall submit a shop drawing and product sample submittal schedule to the Consultant establishing dates for the submission of Shop Drawings and product samples within 14 days of sub/trade contract award/signature. The schedule shall have been coordinated with all Trade Contractors and material suppliers as well as the construction schedule and shall allow for adequate and reasonable time for review of the samples and submittals by the Consultant. The Construction Manager shall be responsible for compliance with the submittal schedule and shall insure that the Submittal Schedule is maintained in order to accurately reflect the status of processing all required submittals.

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

5.3 The Consultant will review submittals within 10 days of receipt and take appropriate action or return submittals to the Construction Manager for corrections as may be required. The Construction Manager shall make any corrections required by the Consultant for compliance with the Contract and shall return the required number of corrected copies of shop drawings and resubmit new samples until approved. The Construction Manager shall direct specific attention, in writing, or on resubmitted shop drawings, to revisions other than the corrections called for by the Consultant on previous submissions.

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

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

ARTICLE 6 - LAYING OUT WORK

6.1 The Construction Manager shall be responsible for all lines, levels and measurements of all Work executed under the Contract. The Construction Manager shall verify the figures before laying

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

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

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

ARTICLE 7 - PLANS, DRAWINGS, SPECIFICATIONS AND RECORD DRAWINGS

7.1 Unless otherwise provided in the Contract Documents, the Owner will furnish the Construction Manager free of charge one electronic or reproducible copy of the Drawings and Specifications for execution of the Work. The cost of document reproduction for issuance to Trade Contractors for bidding and for construction purposes shall be paid from the Owner's project funds. The Construction Manager shall keep one copy of all Contract Documents, including Drawings, Specifications and Shop Drawings on the site, in good order. A qualified representative of the Construction Manager shall record on these documents, from day to day as Work progresses, all changes and deviations from the Contract Documents. Prior to Substantial Completion, the Construction Manager shall complete and turn over to the Consultant the As-Built drawings. The As-Built drawings shall consist of a set of drawings which indicate all field changes that were made to adapt to field conditions, changes resulting from Change Orders and all concealed and buried installations of piping, conduit and utility services. All buried and concealed items, both inside and outside the facility, shall be accurately located on the As-Built drawings as to depth and in relationship to not less than two permanent features such as interior or exterior wall faces. The As-Built drawings shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in a contrasting color. For any changes or corrections in the Work which are made subsequent to the Substantial Completion Inspection, revisions shall be made to the As-Built drawings and submitted to the Consultant prior to final payment. Approval of the final payment request shall be contingent upon compliance with these provisions.

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

ARTICLE 8 - TEMPORARY UTILITIES

8.1 The Construction Manager shall provide all temporary conveniences including, but not limited to, wiring, lighting, power and electrical outlets, heat, water, and sanitary facilities required for construction. In the event the Owner elects to make available, at no cost to the Construction

Manager, the electric power required for construction activities, the electric power supplied shall **not** be utilized as a means to provide temporary heat or for welding.

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

ARTICLE 9 - MATERIALS, EQUIPMENT, APPLIANCES, AND EMPLOYEES

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

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

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

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

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

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

9.7 The Construction Manager shall at all times enforce strict discipline and good order among all employees and Trade Contractors. The conduct of all individuals performing Work or operations related to the Work is the responsibility of the Construction Manager. The consumption of alcohol or drugs on the job by any workers is strictly prohibited. Any individual apprehended under the influence

of alcohol or drugs on the premises at any time shall be subject to automatic removal from the Project by the Construction Manager, the Consultant or the Owner. Improper conduct of any kind will not be permitted and may result in the offending individual, Trade Contractor or Construction Manager being barred from the Owner's premises. The Construction Manager shall not permit the employment on the Project of any person unfit or not skilled in the Work assigned.

9.8 Smoking is prohibited within the confines of buildings at Northern Kentucky University. An outdoor smoking area will be designated at the Pre-Construction Conference. The Construction Manager's employees or Trade Contractors violating this prohibition will be subject to dismissal from the Project.

ARTICLE 10 - ROYALTIES AND PATENTS

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

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

11.1 The Owner will furnish only such surveys that are specifically required by the Contract Documents. Approvals, assessments, and easements for permanent structures or permanent changes in existing structures shall be secured and paid for by the Owner, unless otherwise specified. All required utility tap-on fees shall be secured and paid for by the Construction Manager. All construction permits, where required by local ordinances, shall be obtained by the Construction Manager, but no fee shall be charged to or paid by the Construction Manager as the Owner is exempt from such charges. A Contractor's license fee for doing business in the locale, if applicable, shall be paid for by the Construction Manager. Any costs or time delays caused by the permitting process shall not be the responsibility of the Construction Manager.

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

11.3 Reference to standards, codes, specifications, and regulations refer to the latest edition of printing in effect at the date of issue shown in the Contract Documents unless another date is implied by the suffix number of the standard. The Construction Manager shall furnish a final occupancy permit from the proper agency or agencies as required.

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

ARTICLE 12 - PROTECTION OF WORK, PROPERTY, AND PUBLIC

12.1 The Construction Manager shall continuously maintain adequate protection of all Work from damage and shall protect the Owner's property from injury or loss arising in connection with this

Contract. Except as otherwise covered by Builder's Risk insurance, the Construction Manager shall pay for any such damage, injury, or loss, except such as may be directly due to errors in the Contract Documents or caused by agents or employees of the Owner. The Construction Manager shall adequately protect adjacent property as provided by law and the Contract Documents.

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

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

12.4 The Construction Manager and Trade Contractors are responsible for the security of their own materials, tools, equipment and the Project site.

12.5 The Construction Manager shall provide to the Owner's Project Manager a key to Construction Manager's field office or job trailer and any gates or other access points to the project site.

ARTICLE 13 - BLASTING

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

ARTICLE 14 - CONSTRUCTION AND SAFETY DEVICES

14.1 The Construction Manager shall provide safety controls for protection of the life and health of employees and visitors. The Construction Manager will utilize precautionary methods for the prevention of damage to property, materials, supplies, and equipment, and for avoidance of work interruptions in the performance of this Contract. In order to provide such safety control, the Construction Manager shall comply with all pertinent provisions of the Kentucky Fire Prevention Code, Kentucky Building Code, Kentucky Labor Cabinet's Division of Occupational Safety and Health Program Construction Standards (29 CFR 1926 as adopted by 803 KAR 2:400 through 2:425) and Federal Occupational Safety and Health (Construction) Standards that are in effect at the time the Contract is entered into and during the period in which the Contract is to be performed.

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

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

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

14.5 The Construction Manager or any Trade Contractor shall immediately contact the Owner should they be selected for an inspection by the Kentucky Occupational Safety and Health Compliance Division.

14.6 Compliance with the provisions of the foregoing sections by Trade Contractors shall be the responsibility of the Construction Manager.

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

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

ARTICLE 15 - HAZARDOUS MATERIALS

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

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

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

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

15.2 The Owner, the Construction Manager, and Trade Contractors will be under the requirements of the OSHA Hazard Communication Standard (29) CFR 1910.1200. The Construction Manager and Trade Contractors must provide their own written Hazard Communication Program. The Hazard Communication Standard must include: (1) A list of the hazardous chemicals to which the Construction Manager's employees may be exposed; (2) Statement of the measures that Construction Manager's employees and Trade Contractors may take to lessen the possibility of exposure to the hazardous materials; (3) The location of and access to the MSDS's related to the hazardous chemicals located in the Work area; (4) Procedures that the Construction Manager's employees and Trade Contractors are to follow if they are exposed to hazardous chemicals above the Permissible Exposure Limit (PEL). Material Safety Data Sheets (MSDS) may be reviewed upon request by the Construction Manager or any Trade Contractor as they pertain to the Work areas of the Project. Photocopies of the MSDS's may be made by Construction Manager at its expense.

15.3 The Construction Manager and Trade Contractors shall provide the Owner with a list of any hazardous materials that will be used on the job site that may be exposed to the Owner's employees. The Construction Manager and Trade Contractors shall provide the Owner with copies of Material Data Sheets for materials to be used.

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

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

ARTICLE 16 - INSPECTION OF WORK

16.1 Inspections, tests, measurements or other acts of the Consultant are for the sole purpose of assisting the Consultant in determining if the Work, materials, rate of progress, and quantities comply

with the Contract Documents. These acts or functions shall not relieve the Construction Manager from performing the Work in full compliance with the Contract Documents, nor relieve the Construction Manager from any of the responsibility for the Work assigned to it by the Contract Documents. No inspection by the Consultant shall constitute or imply acceptance. Approval of material is general and shall not constitute waiver of the Owner's right to demand full compliance with Contract Documents.

16.2 All Work completed and all materials incorporated for the Project are subject to inspection by the Owner, the Consultant or their representatives to determine conformance with the Contract Documents. The Owner, Consultant and their representatives shall at all times have access to the Work whenever it is in preparation or progress. The Construction Manager shall provide, at no additional cost to the Owner, any facilities necessary for sufficient and safe access to the Work to complete any inspections required. The Consultant shall be given timely notification in order to arrange for the proper inspections to be performed on any Work outside of the normal working day or week. If the Consultant provides the Construction Manager with a list of construction milestones that require inspection, the Construction Manager shall provide the Consultant with at least five (5) Business Days' written notice prior to the commencement of Work with respect to such milestone in order to permit the Consultant time to coordinate an inspection of the commencement of the applicable Work.

16.3 If the Specifications, the Consultant's instructions, laws, ordinances, or any public authority require any Work to be specially inspected, tested or approved, the Construction Manager shall give the Consultant timely notice of the readiness of the Work for inspection. The Consultant shall promptly make all required inspections. If any portion of the Work should be covered contrary to the request of the Consultant, or to the requirements specifically expressed in the Contract Documents, the Work must be uncovered for inspection and observation and shall be uncovered and replaced. The Construction Manager shall bear the cost at no increase to the GMP.

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

ARTICLE 17 - SUPERINTENDENT - SUPERVISION

17.1 The Construction Manager shall completely and thoroughly direct and superintend the Work in accordance with the highest standard of care for the Construction Manager's profession so as to ensure expeditious, workmanlike performance in accordance with requirements of the Contract Documents. Except as otherwise dictated by specific requirements of the Contract Documents, the Construction Manager shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures. The Construction Manager shall be responsible for the acts and omissions of all Trade Contractors and persons directly or indirectly employed by the Construction Manager in the completion of the Work. The Construction Manager shall be responsible for coordinating and scheduling all portions of the Work unless the Contract Documents give other specific instructions. The Construction Manager shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by the activities of the Consultant in the administration of the Contract, nor by tests, inspections or approvals required or performed by persons other than the Construction Manager.

17.2 The Construction Manager shall require competent supervision on the Project site at all times during the process of the Work. The superintendent shall have authority to act on the Construction Manager's behalf with regard to all aspects of performance of this Contract. The superintendent shall have such assistants with individual specialized competencies as may be necessary to fully

understand and oversee all aspects of the Work. The Construction Manager shall also provide administrative, supervisory and coordinating personnel required to fully perform the Work and for interfacing the Work with other work of the Project. The superintendent and all assistants shall be physically fit for their work and capable of going to all locations where Work is being performed. A communication given to the superintendent shall be binding on the Construction Manager. Immediately after the award of Contract, the Construction Manager shall submit to the Consultant a list of Construction Manager's employees and consultants, including names, positions held, addresses, telephone numbers and emergency contact numbers.

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

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

ARTICLE 18 - CHANGES IN THE WORK

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

18.2 The cost or credit to the Owner resulting from a change in Work shall be determined as described in Article 4 of the Contract between the Owner and the Construction Manager.

18.2.1 Change orders funded within the Guaranteed Maximum Price already include the Construction Managers overhead and profit. Change orders that increase or decrease the Guaranteed Maximum Price shall include overhead and profit for the Construction Manager at the rate negotiated in the Guaranteed Maximum Price amendment. Overhead and profit for Trade Contractors and any forces under the Construction Manager shall not exceed an aggregate of fifteen percent (15%).

18.2.2 If a change in the work results in a credit to the Owner, the credit shall be the net cost of the change plus the CM Services Fee as indicated in Exhibit D or as mutually agreed to by the owner and the Construction Manager, and the Trade Contractor's overhead and profit.

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

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

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

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

18.3.4 All lump sum proposals shall include a detailed cost breakdown satisfactory to the Consultant and to the Owner for each component of Work indicating both labor and material costs; CM Services Fee, bonds and insurance. In addition, there may be added by the Trade Contractor an amount agreed upon, but not to exceed an aggregate of fifteen percent (15%) of the actual cost, for overhead and profit. This cost breakdown shall be submitted to the Consultant promptly and with a goal of seven (7) Calendar Days or less after receipt of the proposal request.

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

18.5 In all cases where Change Orders are covered by unit prices set forth in the Contract Documents, the value of such changes shall be determined only upon the basis of such unit prices and no additional amount is to be added for extended overhead and profit.

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

18.7 The Construction Manager shall not include or allow to be included in the cost of change in the Work any cost, or any portion of the time of the Construction Manager or the superintendent, or any allowance for the use of capital, insurance or bond premium or any actual or anticipated profit, or job or office overhead not previously mentioned. These items are considered as being covered under the added amount for general overhead unless mutually agreed to by the owner and Construction Manager.

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

18.9 Funding sources and change types. The following are general/typical categorizations of the types of change conditions and the means of funding within the Guaranteed Maximum Price. The status of the Project, the relative status of each funding source, and the current and projected risk born by each party shall be considered in deciding which funding source will be used to fund particular proposed changes. Changes funded by Construction Manager's Contingency (CMC) are not eligible for additional Construction Manager Services Fee or overhead fees, unless mutually agreed to by the owner and Construction Manager.

18.9.1 Construction Manager's Contingency

- Reasonable schedule recovery;
- Means, methods, and materials reasonably inferred from the construction documents;
- Trade Contractor non-performance or default;
- Other costs incurred by the Construction Manager that are not allocable as "cost of work" items; and
- Any costs or expenses incurred by the Construction Manager, not included in the general conditions cost, for provision of management services necessary to complete the project in an expeditious and economical manner consistent with the contract for construction and the best interests of owner.

18.10 The Consultant may authorize minor changes in the Work which do not involve additional cost or extension of the Contract Time, and which are not inconsistent with the intent of the Contract Documents. Such changes shall be made by a Field Order issued by the Consultant, and shall be binding on the Owner and the Construction Manager. The Construction Manager shall carry out such orders promptly. If the Construction Manager should claim that a Field Order involves additional cost or delay to the completion of the Work, the Construction Manager shall give the Consultant written notice thereof within fourteen (14) Calendar Days after receipt of the written Field Order. If this notification does not occur, the Construction Manager shall be deemed to have waived any right to claim or adjustment to the contract sum or to the contract completion time.

18.10.1 If the Construction Manager claims that any instructions by the Consultant involve additional cost or time extension, the Construction Manager shall give the Consultant written notice thereof within fourteen (14) Calendar Days after the receipt of such instructions and before proceeding to execute the change in Work. The written notice shall state the date, circumstances, whether a time extension will be requested, and the source of the order that the Construction Manager regards as a Change Order. Unless the Construction Manager acts in accordance with this procedure, any oral order shall not be treated as a change and the Construction Manager hereby waives any claim for an increase of the Contract amount or extension of the contract time.

18.11 Requests for extension of time related to changes in the Work shall be submitted in accordance with the requirements of Article 21.8, 21.8.1, 21.9, 21.10, and 21.10.1.

ARTICLE 19 – (Deleted)

ARTICLE 20 - CONCEALED CONDITIONS

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

20.2 If any charted or uncharted utility service is interrupted for any reason, the Construction Manager shall work continuously to restore service. Should the Construction Manager fail to proceed with appropriate repairs in an expedient manner, the Owner reserves the right to have the work/repairs completed.

20.2.1 If any charted utility service, or any uncharted utility service the existence of which could have been discovered by careful examination and investigation of the site of the Work by the Construction Manager, is interrupted for any reason, the entire cost to restore service to the satisfaction of the Owner shall be paid by the Construction Manager utilizing funds from the GMP.

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

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

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

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

20.4 The Consultant shall promptly investigate the conditions discovered. If the Consultant finds that conditions, which are materially different from those ordinarily encountered and generally recognized as inherent in the Work provided for in this Contract, were not known by the Construction Manager, and could not have discovered by careful examination and investigation of the site of the Work, have caused or would cause a material increase or decrease in the Construction Manager's cost of construction or the time required for performance of any part of the Work under this contract, the Consultant will recommend and the Owner will make an equitable adjustment in the Contract Amount or the time allotted for performance in the Contract Documents. Failure by the Construction Manager to provide written notice to the Owner of such claims for additional compensation or time for performance within fourteen (14) Calendar Days of discovery of such conditions shall constitute a waiver by the Construction Manager of the right to make such claims. The Owner will not pay claims made for lost opportunities, claims made for lost production or production inefficiencies or claims made that are formula based.

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

ARTICLE 21 - DELAYS AND EXTENSION OF TIME

21.1 Not used.

21.2 The Construction Manager will, subject to the provisions of Articles 21.8, 21.8.1 and 21.9 below, be granted an extension of time and/or relief from liquidated damages when the delay in completion of the Work is due to:

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

21.2.2 Causes beyond the reasonable control of the Construction Manager, including, but not limited to, acts of God, or of the public enemy, acts of the Owner, acts of another contractor in the performance of a contract with the Owner, floods, epidemics, quarantine restrictions, strikes, and freight embargoes. For such delays which stop all work on the Project for thirty (30) Calendar Days or more, the Construction Manager shall be authorized to remove its people from the site and return when the normal progress of the work may continue.

21.3 Claims for extensions of time and/or relief from liquidated damages, except for weather related claims, must be made in writing not later than fourteen (14) Calendar Days after the beginning of the delay. Claims for extension of time due to unusual inclement weather shall be made in writing not later than the tenth day of the month following the month in which the delay occurred. Claims for extension of time or relief from liquidated damages shall be stated in numbers of whole or half Calendar Days. The actual dates on which the delay(s) occurred must be stated. In case of weather related claims for extension of time, time extensions shall be granted only because such unusual inclement weather prevented the execution of items of Work on the critical path.

21.4 Except as otherwise provided in the Contract Documents, extensions of the date of substantial completion may be granted for abnormal inclement weather. Unusual inclement weather as used herein means unusually severe weather which is beyond the normal weather recorded and expected for the locality and/or the season or seasons of the year. Normal weather for the location of the Project shall be determined by records maintained by the United States Environmental Data Service. For the purpose of this Contract, "Unusual Inclement Weather" will be interpreted as those days in excess of the average number of days on which rainfall is 0.10 inch or more or those days in excess of the average number of days on which the maximum temperature is 32 degrees F or below. Time extensions for weather related claims shall be considered for approval only when it is demonstrated that such unusual inclement weather prevented the execution of items of Work on the critical path, as required by Articles 21.8, 21.8.1, and 21.9 below.

21.5 Any claim for extension of time for strikes or lockouts shall be supported by a written statement of facts concerning the strike, including, but not limited to, the dates, the craft concerned, the reason for the strike, efforts to resolve the dispute, and efforts to minimize the impact of the strike on progress.

21.6 Any claim for extension of time for delays in transportation or for failures of suppliers shall be supported by a written statement of facts demonstrating that the delays are beyond the Construction Manager's control, including, but not limited to, the Construction Manager's efforts to overcome such delays.

21.7 The time extensions for changes in the Work will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The Change Order granting the time extension may provide the Contract Completion Date may be extended only for those specific elements so delayed and that the remaining Work will not be altered or may further provide for an equitable readjustment of liquidated damages pursuant to the new Contract completion dates.

21.8 The Contract time will only be adjusted for causes specified above. Extension of time will only be approved by the Consultant if the Construction Manager can provide such justification supported by CPM or other acceptable data that 1) such changes are, in fact, on the critical path and extend the contractually required date of Substantial Completion, and 2) that the Construction Manager has expended all reasonable effort to minimize its effect on the construction schedule. All costs incurred resulting from the effort to minimize the effect to the schedule shall be paid to the Construction

Manager through a change order to the GMP. No additional extension of time will be granted subsequently for claims having the basis in previously approved extensions of time.

21.8.1 In support of requests for extension of time, the Construction Manager shall submit to the Consultant and to the Owner a written impact analysis illustrating the influence of each change or delay on the current contract schedule completion date. Each such time impact analysis shall include a "fragnet" (a sequence of new and/or activity revisions that are proposed to be added to the existing CPM schedule) demonstrating how the Construction Manager proposes to incorporate the change order or delay into the detailed project CPM schedule.

21.9 Approved extensions of time shall be incorporated in a revised schedule at the time of approval. No subsequent requests for time extension will be considered unless the previous approved time extensions have been incorporated in the Project schedule on which the requests are based. All changes and/or additions to the schedule must meet the approval of the Owner.

21.10 In the event the Owner orders changes to the scope of work for the Project that are of a discretionary nature and which, in the aggregate and subject to the requirements of Article 21.8 and 21.8.1, can be demonstrated to extend the date of Substantial Completion of the Project by more than thirty (30) Calendar Days, the Construction Manager shall be entitled to reimbursement for job site costs associated with such delay in excess of thirty (30) Calendar Days.

ARTICLE 22 - CORRECTION OF WORK BEFORE FINAL PAYMENT

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

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

ARTICLE 23 - CORRECTION OF WORK AFTER FINAL PAYMENT

23.1 Neither the final certificate of payment nor any provisions in the Contract Documents shall relieve the Construction Manager of responsibility for materials and equipment incorporated into the Work that fail to meet specification requirements, or for use of faulty materials or poor quality workmanship. If within one year after the date of Substantial Completion of the Work or designated portion thereof, any of the Work is found to be defective or not in accordance with the requirements of the Contract Documents, the Construction Manager shall correct it promptly after receipt of written notice from the Owner to do so. The Construction Manager shall correct any defects due to these conditions and pay for any damage to other Work resulting from their use with funds from the GMP. Nothing contained in this clause shall be construed to establish a period of limitation with respect to

any obligation of the Construction Manager under the Contract including, but not limited to, Warranties. The obligation of the Construction Manager under this section shall be in addition to and not in limitation of any obligations imposed by special guarantees or warranty required by the Contract, given by the Construction Manager, or otherwise recognized or prescribed by law.

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

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

ARTICLE 24 - TERMINATION OF CONTRACT FOR CONVENIENCE OF OWNER

24.1 The Owner may terminate the Contract in accordance with the provisions of KRS 45A.280 and 200KAR 5:312.

ARTICLE 25- OWNER'S RIGHT TO STOP WORK

25.1 If the Construction Manager fails to correct defective Work as required, or persistently fails to carry out the Work in accordance with the Contract Documents, the Owner by written notice, may order the Construction Manager to stop the Work or any portion of the Work, until the cause for the order has been eliminated to the satisfaction of the Owner. The Construction Manager shall not be entitled to an adjustment in the Contract Time or Amount under this clause since such stoppages are considered to be the fault of the Construction Manager. The right of the Owner or Consultant to stop Work shall not give rise to a duty on the part of the Owner or Consultant to exercise this right for the benefit of the Construction Manager or others.

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

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

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

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

26.1.3 (c) If the Construction Manager repeatedly fails to supply sufficient qualified supervision of the work, or repeatedly fails to ensure that Trade Contractors supply adequate supervision, suitable materials or equipment, or adequate numbers of skilled workmen and supervision to the Work;

26.1.4 (d) If the Construction Manager repeatedly fails to make prompt payments to Trade Contractors or suppliers at any tier, or for labor, materials or equipment;

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

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

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

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

26.2 Once the Owner determines that sufficient cause exists to justify the action, the Owner may terminate the Contract without prejudice to any other right or remedy the Owner may have, after giving the Construction Manager and its Surety three (3) Calendar Days notice by issuing a written Declaration of Default. The Construction Manager shall not be considered in default if such act of default is cured within 7 days or if the deficiency cannot be cured within a reasonable amount of time, then the Construction Manager shall identify and start prosecution of a path to cure within 7 days.

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

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

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

26.3.3 The Construction Manager shall be liable for any damage to the Owner resulting from the termination or the Construction Manager's refusal or failure to complete the Work, and for all costs

necessary for repair and completion of the Project above the amount of the Contract. The Construction Manager shall be liable for all attorney's fees, costs and expenses incurred by the Owner to enforce the provisions of the Contract.

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

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

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

ARTICLE 27 - SUSPENSION OF WORK

27.1 The Owner or the Consultant may, at any time and without cause, order the Construction Manager in writing or cause the Construction Manager to suspend, delay or interrupt all or any part of the Work for such period of time as the Owner may determine to be appropriate for its convenience. Adjustment shall be made for any increase in the Contract amount and time necessarily caused by such suspension or delay, in accordance with Article 21.

ARTICLE 28 - TIME OF COMPLETION

28.1 The Contract Time is the specified number of consecutive Calendar Days following the stipulated commencement of the Work as stated in the Work Order within which the Construction Manager has to complete the Contract or specific Phase of the Work. The Construction Manager shall begin the Work on the date of commencement as specified in the Work Order. The end of the Contract Time shall be the date specified by the Consultant on the certificate of Substantial Completion. The time for completion set forth in the Contract is a binding part of the Contract upon which the Owner may rely in planning the use of the facilities to be constructed and for all other purposes.

28.2 Substantial Completion of a Phase of the Project shall mean when the stage of Work is reached that all Work related to that Phase is complete, accessible, operable and usable for its intended use by the Owner; all parts, systems and site Work is 100% complete and cleaned for the Owners full use without interruption. Only incidental corrective Work under punch lists and final cleaning (if required) for Owner's full use shall remain for Final Completion. The ability to occupy or utilize shall include regulatory authority approval unless regulatory approval is delayed due to actions of the Owner or the Consultant. When the Owner accepts and occupies a portion or Phase of the Project, the operation, maintenance, utilities, and insurance of that portion or Phase of the Project become the responsibility of the Owner.

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

28.3.1 When the Construction Manager considers the entire Work or a Phase of the Work ready for its intended use, the Construction Manager shall notify the Consultant in writing and request an inspection. The declaration and request shall be accompanied by a list prepared by the Construction

Manager of those items of Work still to be completed or corrected. The failure of the Construction Manager or Consultant to include any item or items, which are not completed or which need correction, on such list shall not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents.

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

28.3.3 If the Consultant considers the Work substantially complete, the Consultant shall prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion and the responsibilities between the Owner and Construction Manager for security, maintenance, heat, utilities and insurance, if not otherwise provided for in the Contract Documents, and a tentative list of items to be completed or corrected, and shall fix the time within which the Construction Manager shall complete the items listed therein. This time shall not exceed sixty (60) Calendar Days unless otherwise provided for in the Work Order. The Certificate of Substantial Completion shall be submitted to the Owner and Construction Manager for their written acceptance of the responsibilities assigned to them in the certificate. The Project shall not be deemed substantially complete until the certificate is issued. If, after making the inspection, the Consultant does not consider the Work substantially complete, it will notify the Construction Manager in writing, giving the reasons therefore.

28.4 The Consultant, upon receipt of written notice from the Construction Manager that the Work is complete and is ready for final inspection and acceptance, will promptly make such inspection and when the Consultant finds the Work completed and acceptable under the Contract Documents and the Contract fully performed, the Consultant will so notify the Construction Manager in writing and promptly certify a final Certificate for Payment to the Owner. If the Construction Manager does not complete the punch items within the time designated, the Owner retains the right to have these items corrected and the cost of corrections deducted from the GMP including all architectural, engineering and inspection costs and expenses incurred by the Consultant and the Owner, and to deduct such costs and expenses from the funds being held in retainage. The Owner shall not be required to release the retainage until such items have been completed.

ARTICLE 29 - LIQUIDATED DAMAGES

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

29.2 Should the Construction Manager fail to satisfactorily complete the Work under Contract on or before the date stipulated for Substantial Completion, the Construction Manager will be required to pay liquidated damages to the Owner for each consecutive Calendar Day that the Owner is deprived of full use of the area beyond the date specified unless otherwise stipulated elsewhere by Owner. After the date for Substantial Completion has been certified by the Consultant the Construction Manager shall cease to owe liquidated damages until the date established for Final Completion.

29.3 If Final Completion is not achieved by the date established for Final Completion, liquidated damages in the amount stipulated in the Agreement will become due and collectable. The Contract

will be considered complete and Final Completion shall be deemed to have occurred when all Work has been completed in compliance with the Contract Documents and the Certificate of Final Completion has been issued by the Consultant. No deduction or payment of liquidated damages will, in any degree, release the Construction Manager from further obligations and liabilities to complete the entire Contract. Permitting the Construction Manager to continue and finish the Work, or any part of it, after expiration of the Contract Time, shall in no way constitute a waiver on the part of the Owner of any liquidated damages due under the Contract.

ARTICLE 30 - PAYMENT TO THE CONSTRUCTION MANAGER

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

30.2 The Consultant shall, within ten (10) Business Days after receipt of each application for payment, certify approval of payment in writing to the Owner and present the application to the Owner, or return the application to the Construction Manager indicating in writing its reasons for refusing to approve payment. The Owner, provided no exception is taken to the application for payment submitted by the Consultant, will issue payment on or within fourteen (14) Business Days from the date received from the Consultant. A reasonable delay on the part of the Owner in making payment to the Construction Manager for any given payment shall not be grounds for breach of Contract. The Consultant may refuse to approve the whole or any part of any payment if it would be incorrect to make such presentation to the Owner.

30.3 Neither the final payment nor any part of the remaining retained percentage shall become due until the Construction Manager delivers to the Owner an affidavit that all payrolls, bills for materials, supplies and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied.

30.4 If payment is requested on the basis of materials and equipment not incorporated in the Work, but delivered and suitably stored at the site or at another location agreed to in writing, the Construction Manager must furnish the following:

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

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

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

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

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

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

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

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

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

30.9 Payments Withheld - The Owner may withhold any payment in whole or in part or back charge the Construction Manager to such extent as it may deem advisable to protect the Owner on account of:

- (a) Defective Work not remedied following written notice from the Owner or Architect;
- (b) Failure of the Construction Manager to make payment when due to subcontractors and/or suppliers for material or labor or to reimburse the University for Utilities or other services as provided for in the contract;
- (c) Uninsured third party claims filed for which Contractor is solely responsible pursuant to this agreement and provided that the amount of such claims exceeds the amount of any retention held by the owner or reasonable evidence indicating probable filing of such claims;
- (d) Reasonable evidence that the work cannot be completed for the unpaid balance of the Contract Sum where the extent of the overrun is an amount greater than the amount of any retention held by the Owner;
- (e) The Construction Manager's failure to perform any of its contractual obligations, default under Contract Documents, or failure to maintain the agreed upon time schedule; or
- (f) Failure to present pay requests in the prescribed form. When the Owner is satisfied that the Construction Manager has remedied any such deficiency, payment of the amount withheld will be paid.

30.10 Final Payment - When all Work is complete and acceptable and the Contract is fully performed, the Construction Manager will be directed to submit a final payment application for certification and the entire balance shall be due and payable upon a certification of completion by the Consultant that the Work is in accordance with the Contract Documents.

30.11 Retainage - The Owner will retain 10% of the Construction Manager's progress payments for each Phase of the Work, including amounts claimed for construction management fee but excluding Construction Manager's labor and reimbursables, until Final Completion and acceptance of all Work covered by this Contract and related to that Phase, as collateral security to insure successful completion of the Work. In no event shall any reduction to retainage be permitted prior to the issuance of the Consultant's Certificate of Substantial Completion. Subsequent to the issuance of such certificate and depending upon the cost involved for the completion and/or correction of punch list items the Consultant may recommend to the Owner, and if so approved by Owner, the amount of retainage might then be reduced and a sufficient sum retained by Owner to cover the uncompleted Work.

30.11.1 Upon issuance of the Certificate of Final Completion by the Consultant and submittal by the Construction Manager of all required documents and releases, all retained amounts shall be paid to the Construction Manager as part of the Final Payment.

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

30.11.2.1 Defective Work which has not been remedied or completed Work which has been damaged requiring correction or replacement;

30.11.2.2 If the Owner has been required to correct Defective Work or complete Work which the Construction Manager has failed or refused to correct or complete;

30.11.2.3 If the Construction Manager has failed to perform any of its obligations under the Contract;

30.11.2.4 If the Construction Manager has failed to make payment properly to Trade Contractors, suppliers, material suppliers, or laborers; or

30.11.2.5 Amounts to be withheld as liquidated damages for failure to complete the Project in the allotted contract time. When the Owner is satisfied that the Construction Manager has remedied any such deficiency, payments shall be made of the amount being withheld on the next scheduled application for payment.

ARTICLE 31 - CONSTRUCTION MANAGER'S PAYMENT TO TRADE CONTRACTOR

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

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

31.3 Neither the Owner nor the Consultant shall have any obligation to make payment to any Trade Contractor or material supplier except as may otherwise be required by law.

ARTICLE 32- PROGRESS & SCHEDULING

32.1 Prior to bidding of the Trade Contracts, the Construction Manager shall prepare and submit to the Owner and the Consultant a CPM type construction schedule for the Work in a format acceptable

to the Owner. The schedule shall graphically depict all activities necessary for performance of the work showing logic (sequences, dependencies, etc.) and duration of each activity with the critical path highlighted. The schedule shall include, but not be limited to, submittal processing, fabrication and delivery of materials, testing, clean-up, work and/or materials to be provided by the Owner, and significant milestones related to the completion of the Project.

32.1.2 The schedule shall coordinate Work in accordance with the Owner's approved Program schedule. Construction work shall be scheduled and executed such that operations of the University are given first priority. This applies particularly to outages and restriction of access. The Construction manager shall provide for this in its Guaranteed Maximum Price for each Phase.

32.1.3 The schedule shall not exceed time limits established for each Phase of the Project at the time the GMP is established for that Phase. Schedules which reflect a duration less than the Contract Time are for the convenience of the Construction Manager and shall not be the basis of any claim for delay or extension of time.

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

32.1.5 The Construction Manager shall also submit a payment schedule indicating the percentage of the Contract Amount and the anticipated monthly payments the Owner may make during the Project. The Owner may withhold approval of progress payments until the progress payment schedule and construction schedule have been submitted by the Construction Manager.

32.2 The Construction Manager shall prepare and keep current, for the Consultant's approval, a schedule of submittals which is coordinated with the Construction Manager's construction schedule and allows the Consultant reasonable time to review submittals.

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

ARTICLE 33 - USE OF COMPLETED PORTIONS

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

ARTICLE 34 - INDEMNIFICATION

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

34.2 The Construction Manager shall also indemnify and hold harmless the Owner and its agents and employees from any claims relating to the Project brought against the Owner by any Trade Contractor unless such claims are due to the gross negligence or willful misconduct of the Owner or Consultant.

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

ARTICLE 35 – INSURANCE

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

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

35.3 Workers' Compensation and Employers' Liability Insurance. The Construction Manager shall acquire and maintain Workers' Compensation insurance with Kentucky's statutory limits and Employers' Liability insurance with at least \$500,000/ \$500,000/\$500,000 for all employees who will be working at the Project site. In the event any Work is sublet, the Construction Manager shall require any Trade Contractor to provide proof of this insurance for the Trade Contractors' employees, unless such employees are covered by insurance provided by the Construction Manager.

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

35.4.1 Commercial General Liability Insurance. The Construction Manager shall acquire and maintain a Broad Form Comprehensive General Liability (CGL) Insurance Policy including premises - operations, products/completed operations, blanket contractual, broad form property damage, real property fire legal liability and personal injury liability coverage. The Insurance Policy must be on an "occurrence" form only, unless approved by the Owner. Contractual liability must be endorsed to include defense costs. Products and completed operations insurance must be carried for two years following completion of the Work. Policies which contain Absolute Pollution Exclusion endorsements are not acceptable. Coverage must include pollution from "hostile fires". Where required by the risks involved, Explosion, Collapse and Underground (XCU) coverages shall be added by endorsement. If the work involved requires the use of helicopters, a separate aviation liability policy with limits of liability of \$25,000,000 will be required. If cranes and rigging are involved, a separate inland marine policy with liability limits of \$25,000,000 will be required. Additional coverage protections will be added to the requirements of subsequent Bid Packages as appropriate.

35.4.1.1 The limits of liability shall not be less than \$5,000,000 each occurrence combined single limits for bodily injury and property damage. If split limits are used, they shall not be less than \$2,000,000 for each person and each occurrence and \$1,000,000 for property damage.

35.4.2 Comprehensive Automobile Liability Insurance. The Construction Manager shall show proof and guarantee the maintenance of insurance to cover all owned, hired, leased or non-owned vehicles used on the Project. Coverage shall be for all vehicles including off the road tractors, cranes and rigging equipment and include pollution liability from vehicle upset or overturn. Policy limits shall not be less than \$2,000,000 for combined single limits for bodily injury and property damage for each

occurrence. As an alternative, split limits of not less than \$1,000,000 for bodily injury and \$500,000 for property damage for each occurrence shall be maintained.

35.4.3 Excess or Umbrella Liability Insurance. The Construction Manager shall acquire and maintain a policy of excess liability insurance in an umbrella form for excess coverages over the required primary policies of broad form commercial general liability insurance, business automobile liability insurance and employers' liability insurance. This policy shall have a minimum of \$50,000,000 combined single limits for bodily injury and property damage for each occurrence in excess of the applicable limits in the primary policies. The excess liability policy shall not contain an absolute pollution exclusion and shall include coverages for pollution that may occur due to hostile fires and vehicle upset and overturn. The limits shall be increased as appropriate to cover any anticipated special exposures.

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

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

ARTICLE 36 - PERFORMANCE AND PAYMENT BONDS

36.1 The Construction Manager shall furnish a Performance Bond in the form provided in the Contract Documents in the full amount of the Contract Amount as security for the faithful performance of the Contract. The Construction Manager shall also furnish a Payment Bond in the form provided in the Contract Documents in the full amount of the Contract Amount for the protection of all persons performing labor or furnishing materials, equipment or supplies for the Construction Manager (Trade Contractors shall furnish payment bonds for their work) for the performance of the Work provided for in the Contract, including security for payment of all unemployment contributions which become due and payable under Kentucky Unemployment Insurance Law. The Performance and Payment Bonds shall be in form and content acceptable to the Owner. In addition to the construction Manager, Northern Kentucky University shall be named in all bonds.

36.2 Unless the Project is exempt from the prevailing wage requirements of KRS 337.505 through 337.550, the Construction Manager's bonds shall include a provision to guarantee the faithful performance and payment of the prevailing hourly wage as set forth in the schedule incorporated in the bid documents. The Construction Manager is responsible to acquire a Prevailing Wage determination prior to release of each bid package.

ARTICLE 37 - DAMAGED FACILITIES

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

37.2 Water damage caused by the Construction Manager or his trade contractors to the interior of any building, whether a new or existing building, shall be repaired by the Construction Manager at the Construction Manager's expense, and any materials damaged inside the building, including personal

property, shall be repaired or replaced at the full replacement cost by the Construction Manager at the Construction Manager's expense.

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

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

ARTICLE 38- DISPUTE RESOLUTION

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

38.2 The Consultant's decision shall be final and binding on the Construction Manager unless the Construction Manager submits to the Consultant and the Project Manager a written notice of appeal within fifteen (15) Calendar Days of the Consultant's decision. The Construction Manager must present within fifteen (15) Calendar Days of the notice to appeal a narrative claim in writing with complete supporting documentation. After receiving the written claim, the Project Manager will review the materials relating to the claim and may meet with the Consultant and/or the Construction Manager to discuss the merits of the claim. The Project Manager will render a decision within thirty (30) Calendar Days after receiving the written claim and supporting documentation. The decision of the Project Manager shall be final and binding pending further appeal as provided for in Article 39. Any failure of the Consultant or the Project Manager to make a decision within the time limit set forth shall not result in the automatic granting of the Construction Manager's claim.

38.3 If the Project Manager does not agree with the Consultant's decision on a claim by the Construction Manager, the Project Manager shall notify the Construction Manager and the Consultant and direct the Construction Manager to perform the Work about which the claim was made and the Construction Manager shall proceed with such Work in accordance with the Project Manager's instruction. If the Construction Manager disagrees with a decision of the Project Manager concerning a Construction Manager's claim, the Construction Manager shall proceed with the Work as provided in paragraph 39.1 as indicated by the Project Manager's decision.

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

ARTICLE 39 - CLAIMS FOR DAMAGE

39.1 Should either party to the Contract suffer damage due to breach of contract, such claim or controversy shall be made in writing to the other party within thirty (30) Calendar Days after the first occurrence of the event. The claim or controversy (together with supporting data) shall be presented in writing to Northern Kentucky University, Assistant Vice President for Facilities Management (AVP). The AVP is authorized, subject to any limitations or conditions imposed by regulations, to settle, comprise, pay, or otherwise adjust the claim or controversy with the Construction Manager. The AVP, or designee, shall promptly issue a decision in writing. A copy of the decision shall be mailed or

otherwise furnished to the Construction Manager. The decision rendered shall be final and conclusive unless the Construction Manager files suit pursuant to KRS 45A.245. If the AVP does not issue a written decision within one hundred and twenty (120) days after written request for a final decision, or within a longer period as may be established by the parties to the Contract in writing, then the Construction Manager may proceed as if an adverse decision had been received.

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

ARTICLE 40 - LIENS

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

40.2 Statements of lien shall be filed with the Campbell County Clerk and any action to enforce the same must be instituted in the Campbell Circuit Court, pursuant to KRS 376.250 (2).

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

ARTICLE 41 - ASSIGNMENT

41.1 Neither party to the Contract shall assign the Contract, or any portion thereof without the prior written consent of the other, which consent may be granted or withheld in the granting party's sole and absolute discretion. The Construction Manager shall not assign any amount or part of the Contract or any of the funds to be received under the Contract unless the Construction Manager has the prior written approval of the Owner (which approval may be granted or withheld in the Owner's sole and absolute discretion) and the Surety on the Construction Manager's bond has given written consent to any such assignment.

ARTICLE 42 - SEPARATE CONTRACTS

42.1 The Owner reserves the right to enter into other Contracts in connection with the Project or to perform any work with the Owner's forces in the normal sequence of the work as depicted in the then current construction schedule. Except for work performed by University personnel, such contracts shall be assignable to the Construction Manager and shall contain the same terms and conditions as the contracts between the Construction Manager and the Trade Contractors. The Construction Manager will be entitled to adjustment of the Construction Manager's overhead and profit for such assigned contracts as provided for in Article 4, Compensation of Construction Manager, of the

Contract between the Owner and the Construction Manager. The Construction Manager shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate its Work with theirs in such manner as the Consultant may direct.

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

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

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

ARTICLE 43 - CONSTRUCTION MANAGER/TRADE CONTRACTOR RELATIONSHIP

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

43.2 The Construction Manager agrees to bind every Trade Contractor by the terms and conditions of the Contract Documents as far as applicable to their portion of the Work. Upon request, the Construction Manager shall provide copies of any Trade Contracts, subcontracts and purchase orders to the Owner or Consultant.

43.3 The Construction Manager shall make no substitution or change in any Trade Contractor listed and accepted by the Consultant or Owner except as approved in writing by the Owner. The Construction Manager shall not employ any Trade Contractor or supplier against whom the Owner or the Consultant has made reasonable and timely objection.

43.4 Nothing contained in the Contract Documents shall create any contractual relationship between the Owner and any Trade Contractor or supplier. The Construction Manager is hereby notified that it is the Construction Manager's contractual obligation to settle disputes between Trade Contractors and/or suppliers. Neither the Owner nor the Consultant will settle disputes between the Construction Manager and the Trade Contractors or suppliers, or between Trade Contractors or suppliers.

ARTICLE 44 - CASH ALLOWANCE

44.1 The Construction Manager shall have included in the Contract Amount all costs necessary to complete the Work. Costs based on "allowances" shall **not** be permitted unless mutually agreed to by the owner and Construction Manager.

ARTICLE 45 - PROJECT SITE LIMITS

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

ARTICLE 46 - CLEAN UP

46.1 The Construction Manager shall at all times keep the premises free from accumulation of waste material or rubbish caused by the operations in connection with the Work. At the completion of the Work, and prior to final inspection and acceptance, the Construction Manager shall remove all remaining waste materials, rubbish, Construction Manager's construction equipment, tools, machinery, and surplus materials and shall leave the Work in a clean and usable condition, satisfactory to the Consultant and the Owner. If the Construction Manager fails to clean up as provided in the Contract Documents, the Owner may perform the cleaning tasks and charge the cost to the Construction Manager. The Construction Manager shall operate and maintain an active recycling program that is as extensive as possible.

ARTICLE 47 - POINTS OF REFERENCE

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

ARTICLE 48 - SUBSTITUTION - MATERIALS AND EQUIPMENT

48.1 Specific references in the Contract Documents to any article, device, equipment, product, material, fixture, patented process, form, method or type of construction, by name, make, trade name, or catalog number, with or without the words "or equal" shall be interpreted as establishing a minimum standard of quality, and shall not be construed as limiting competition.

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

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

48.2.2 Inability of the supplier to meet Contract Schedule.

48.2.3 Technical noncompliance to specifications.

48.3 Substitution of other equipment and materials named in the specifications will be allowed provided the proposed substitution will perform the functions called for by the general design, be similar and of equal quality to that specified and be suited to the same use and capable of performing

the same function of that specified. The Construction Manager has burden to prove equality of any substitution requested.

48.4 In substituting materials or equipment, the Construction Manager assumes responsibility for any changes in systems or modifications required in adjacent or related work to accommodate such substitutions, despite consultant approval, and all costs associated with the substitution shall be the responsibility of the Construction Manager. The Consultant shall be reimbursed by the Construction Manager for any architectural or engineering revisions required as the result of such substitutions.

48.5 Inclusion of a certain make or type of materials or equipment in the Construction Manager's bid proposal shall not obligate the Owner to accept such materials or equipment if they do not meet the requirements of the Contract Documents.

ARTICLE 49 - TESTS AND INSPECTIONS

49.1 Regulatory agencies of the government having jurisdiction may require any Work to be inspected, tested or approved. The Construction Manager shall assume full responsibility therefore, unless otherwise noted, and furnish the Consultant the required certificates of inspection, testing or approval. The costs of inspection services/fees for inspections required by the Contract Documents or regulatory agencies will NOT be the responsibility of the CM unless specifically added to the CM Contract by Change Order. "Special Inspections" as required by the Kentucky Building Code will be arranged and paid for by the Owner unless added by Change Order to the CM contract at a later date.

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

49.3 The technical specifications may indicate specific testing requirements to be performed by the Construction Manager. Testing shall be completed using a testing facility or laboratory approved by the Owner. The costs of inspection services/fees shall be the responsibility of the Owner unless added to the CM Contract by Change Order or included in a future Bid Package/Trade Contract.

ARTICLE 50 - WARRANTY

50.1 The Construction Manager warrants to the Owner and the Consultant that all materials and equipment furnished under this Contract shall be new and in accordance with the requirements of the Contract Documents, and that all Work shall be of good quality, free from faults and defects and in conformance with the Contract Documents. If required by the Consultant or the Owner, the Construction Manager shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Prior to the Substantial Completion inspection, the Construction Manager shall deliver to the Consultant all warranties and operating instructions required under the Contract or to which the Construction Manager is entitled from manufacturers, suppliers, and Trade Contractors. All warranties for products and materials incorporated into the Work shall begin on the date of Substantial Completion. The warranty provided in this Article 50 shall be in addition to and not a limitation of any other warranty or remedy required by law or by the Contract Documents, and such warranty shall be interpreted to require the Construction Manager to replace defective material and equipment and re-execute defective Work which is disclosed to the Construction Manager by or on behalf of the Owner within a period of one (1) year after Substantial Completion of the entire Work in addition to other warranty obligations beyond one year from Substantial Completion as provided for by law and/or in the Contract Documents..

50.2 Neither the final payment, any provision in the Contract Documents nor partial or entire use or occupancy of the premises by the Owner shall constitute an acceptance of Work not done in accordance with Contract Documents or relieve the Construction Manager or its Sureties of liability with respect to any warranties or responsibilities for faulty materials and workmanship. The

Construction Manager or its sureties shall remedy any defects in Work and any resulting damage to Work at its own expense. The Construction Manager shall be liable for correction of all damage resulting from defective Work. If the Construction Manager fails to remedy any defects or damage, the Owner may correct Work or repair damages and the cost and expense incurred in such event shall be paid by or be recoverable from the Construction Manager or the surety. The Owner will give notice of observed defects with reasonable promptness.

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

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

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

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

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

ARTICLE 51 - PREVAILING WAGE LAW REQUIREMENTS

51.1 In performing the Work, the Construction Manager and Trade Contractors are required to comply with the wage and hour requirements of KRS 337.505- 337.550, except where the contract meets exemption requirements of KRS 337.010.

51.2 On Projects not exempted under KRS 337.010, the Construction Manager and Trade Contractors shall pay all laborers, workers and mechanics performing Work under this Contract not less than the wages set fourth in the prevailing wage schedule, incorporated as part of the bid and Contract Documents, as determined by the Kentucky Department of Labor in accordance with provisions of KRS 337.505 through KRS 337.550.

51.3 On covered Projects, the Construction Manager shall post and keep posted in a conspicuous place or places at the site of the Work a copy or copies of the prevailing rates of wages and the working hours as prescribed in the Contract Documents. Any laborer, worker, or mechanic working in excess of eight (8) hours per day or forty (40) hours per week, except in cases of emergency caused by fire, flood, or damage to life or property, shall be paid not less than one and one-half (1 1/2) times the basic hourly rate of pay fixed by law for all overtime worked. The determination of when an emergency exists shall be made by the Consultant or Owner as provided by law. Overtime is to be computed at not less than one and one-half (1 1/2) times the indicated base rate for all hours worked in excess of eight (8) per day, or in excess of forty (40) hours per week. KRS 337.540 permits an employee and employer to agree in writing that the employee will be compensated at a straight time base rate for hours worked in excess of eight (8) hours in any one workday but not more than ten (10) hours worked in any one workday; if such written Agreement is prior to the over actual work or where provided for a collective bargaining agreement. The fringe benefit rate is to be paid for each hour worked at a straight time rate for all hours worked. This applies to all prevailing wage determinations issued by the Labor Cabinet. As a point of clarification, if no collective bargaining agreement exists, employers must have a signed agreement with each employee on the Project. These agreements must be maintained at the employer's office along with the payroll records.

51.4 The Construction Manager and all Trade Contractors shall keep full and accurate payroll records covering all disbursements of wages to their employees to whom they are required to pay not less than prevailing rate of wages. Records shall indicate the hours worked each day by each employee in each classification of Work and amount paid each employee for his work in each classification. Payroll records are to be maintained within the state for one year after completion of the Contract. These records are to be open for inspection and transcript by the Department of Labor at any reasonable time.

ARTICLE 52 - APPRENTICES

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

ARTICLE 53 - GOVERNING LAW

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

ARTICLE 54 - NONDISCRIMINATION IN EMPLOYMENT

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

54.1.1 The Construction Manager will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, or disability in employment. The Construction Manager will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, age, national origin, or disability in employment. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Construction Manager agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

54.1.2 The Construction Manager will, in all solicitations or advertisements for employees placed by or on behalf of the Construction Manager; state that all qualified applicants will receive consideration

for employment without regard to race, color, religion, sex, age, national origin or disability in employment.

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

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

ARTICLE 55 - AFFIRMATIVE ACTION; REPORTING REQUIREMENTS

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

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

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

55.1.3 The Construction Manager or Trade Contractor employs only family members or relatives;

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

55.2 The Construction Manager and any Trade Contractor, not otherwise exempted, shall:

55.2.1 For the length of the Contract, hire minorities from within the drawing area to satisfy the agreed upon goals and timetables. Should the union with which the Construction Manager or Trade Contractor have collective bargaining agreements be unwilling to provide sufficient minorities to satisfy the agreed upon goals and timetables, the Construction Manager and Trade Contractors shall hire minorities from other sources within the drawing area;

55.2.2 The equal employment provisions of The Act may be met in part by the Construction Manager contracting to a minority contractor or Trade Contractor. A minority contractor, Trade Contractor or subcontractor shall mean a business that is owned and controlled by one or more persons disadvantaged by racial or ethnic circumstances.

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

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

55.4 Any provisions of The Act notwithstanding, no Construction Manager shall be required to terminate an existing employee, upon proof that employee was employed prior to the date of the Contract, nor hire anyone who fails to demonstrate the minimum skills required to perform a particular job.

ATTACHMENT B
TABLE OF CONTENTS
FOR
SPECIAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION
BY A CONSTRUCTION MANAGER AT RISK

ARTICLE	TITLE	PAGE
1	GENERAL INFORMATION	2
2	FIELD CONDITIONS.....	2
3	OWNER'S PROJECT MANAGER.....	2
4	CONSULTANT	2
5	GEOTECHNICAL REPORT	2
6	TIME FOR COMPLETION.....	2
7	LIQUIDATED DAMAGES	3
8	SUBMITTALS AND SHOP DRAWINGS	3
9	PLANS, DRAWINGS, AND SPECIFICATIONS – NOT USED	7
10	PROGRESS MEETINGS.....	7
11	CRITICAL PATH METHOD (CPM) SCHEDULE.....	8
12	Not Used	9
13	OWNER'S CONSTRUCTION REPRESENTATIVES.....	9
14	FIELD OFFICE	9
15	TELEPHONE SERVICE	9
16	CONSTRUCTION FENCE	9
17	PROJECT SIGN.....	10
18	PARKING.....	10
19	SANITARY FACILITIES.....	10
20	ALLOWANCES AND RULES OF MEASUREMENT	10
21	SEQUENCE OF CONSTRUCTION	11
22	CRANE & MATERIAL HOIST OPERATIONS	11
23	UTILITIES	12
24	CLEANING AND TRASH REMOVAL	13
25	BLASTING	13
26	CUTTING AND PATCHING - NEW AND EXISTING WORK.....	14
27	UNRELATED PROJECTS.....	14
28	OWNER SUPPLIED MATERIALS (NOT USED)	14
29	REMOVED ITEMS (NOT USED)	14
30	INTERIOR ENCLOSURE AND DUST ENCAPSULATION	14
31	NKU COMMUNICATIONS	15
32	SMOKE DETECTORS / FIRE ALARM SYSTEMS - EXISTING AND/OR NEW FACILITIES	15
33	SURVEYS RECORDS, REPORTS.....	16
34	ALTERNATES (NOT USED).....	16
35	FIELD CONSTRUCTED MOCK UPS.....	16
36	PROJECT COORDINATION VIA COMPUTER	16

ARTICLE - 1 GENERAL INFORMATION

- 1.1 These Special Conditions are intended to modify, supplement, or delete from, applicable Articles of the General Conditions.
- 1.2 Where any Article of the General Conditions is supplemented by these Special Conditions, the Article shall remain in effect and the supplement shall be added thereto.
- 1.3 Where Special Conditions conflict with General Conditions, provisions of the Special Conditions take precedence.
- 1.4 Where these Contract Documents obligate the Construction manager to certain responsibilities or require the Construction Manager to perform certain actions, the Construction Manager may require these same responsibilities and/or actions of one or more trade contractors. However, assignment of such responsibilities or actions to one or more trade contractors shall not be construed to relieve the Construction manager of its obligation to the Commonwealth under this contract.

ARTICLE - 2 FIELD CONDITIONS

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

ARTICLE - 3 OWNER'S PROJECT MANAGER

- 3.1 The Owner's Project Manager during construction shall be the designated Northern Kentucky University Project Manager.

ARTICLE - 4 CONSULTANT

- 4.1 Wherever in these Contract Documents reference is made to the Consultant, it shall be understood to mean Moody Nolan Architects or and their duly authorized representatives. (See Article 2 of the General Conditions.)

ARTICLE - 5 GEOTECHNICAL REPORT

- 5.1 A preliminary geotechnical investigation has not been performed.

ARTICLE - 6 TIME FOR COMPLETION

- 6.1 The time for Substantial Completion (as further defined in Article 28 of the General Conditions) for each Bid Package shall be determined by the Construction Manager in cooperation with the Owner as part of the Guaranteed Maximum Price proposal for each Bid Package as design is completed.

ARTICLE - 7 LIQUIDATED DAMAGES

7.1 Should the Construction Manager fail to achieve Substantial Completion of the Work under this Contract on or before the date stipulated for Substantial Completion of the most recently executed/contracted Bid Package as stated in the GMP for that Bid Package (or such later date as may result from extensions in the Contract Time granted by the Owner), he agrees that the Owner is entitled to, and shall pay the Owner as liquidated damages the sum specified and defined in Exhibit D, Par. 5.1 of the Contract Between the Owner and the Construction Manager for that GMP. There shall be only a single time for Substantial Completion and a single Liquidated Damages amount subject thereto in effect at any point in time for the duration of this Contract.

7.2 Should the Construction Manager fail to achieve Final Completion of the Work under this Contract on or before the date stipulated for Final Completion of each Bid Package as stated in Article 6 above (or such later date as may result from extensions in the Contract Time granted by the Owner), he agrees that the Owner is entitled to, and shall pay the Owner as liquidated damages the sum specified and defined in Exhibit D, Par. 5.1 of the Contract Between the Owner and the Construction Manager for that GMP.

ARTICLE - 8 SUBMITTALS AND SHOP DRAWINGS

8.1 SUBMISSIONS - GENERAL

8.1.1 The Construction Manager shall submit each set of Shop Drawings, product data and samples with a separate transmittal form. .

8.1.2 All sample selections for color shall be submitted for approval at the same time. Color selections shall not be submitted individually.

8.1.3 Any deviation from the Contract Documents shall be noted on the transmittal form comment section.

8.1.4 All submittals are to be reviewed by the Construction Manager for compliance with the Contract Documents before submission for approval. All submittals are to be initiated by the Construction Manager. Submittals made directly to the Consultant by manufacturers or suppliers will not be accepted or reviewed.

8.1.5 Re-submittals shall conspicuously note all changes from earlier submissions. Special notation by the Construction Manager shall be made to any changes other than those in response to the Consultant's review.

8.1.6 Manufacturers shall, when requested by the Consultant, submit test reports prepared by reputable firms or laboratories certifying as to performance, operation, construction, wearability, etc., to support claims made by the manufacturer of the equipment or materials proposed for inclusion in the Work. Construction Manager shall also submit a list of three (3) installations where said equipment or materials have been in service for five (5) years.

8.2 SUBMISSIONS - REVIEW

8.2.1 Review of submittals is only for compliance with the design concept and the contract documents. **THE CONSULTANT SHALL NOT BE RESPONSIBLE FOR CHANGES FROM EARLIER SUBMISSIONS NOT SPECIFICALLY NOTED.**

8.2.2 The following shall be verified prior to making submittals: Field Measurements, Field Construction Criteria, Catalog numbers and similar data, Quantities and Capacities, and Compliance with requirements, including verification of all dimensions,

8.2.3 Review Stamp designations shall be as follows:

8.2.3.1 "A = Approved": Proceed with the Work, no corrections needed.

8.2.3.2 "AN = Approved As Noted": Proceed with the Work, noting the corrections/conditions of the approval.

8.2.3.3 "RR = Revise and Resubmit": Do not proceed with the Work, as the submittal does not comply with the Contract Documents. Revisions to the submittal are required for approval.

8.2.3.4 "SC = See Comments": Do not proceed with the Work. Comments have been made to the submittal which may require revisions or deviations from the contract documents.

8.2.3.5 "NA = Not Approved": Do not proceed with the Work, the submittal is rejected.

8.3 SUBMISSIONS - SPECIAL PROVISIONS

8.3.1 In making a submittal, the Construction Manager shall be deemed to be making the following representations:

8.3.1.1 The Construction Manager has reviewed the information contained in the submittal and has determined the information is complete and adequate to establish compliance with the requirements of the Contract Documents.

8.3.1.2 The Construction Manager understands and agrees that he shall bear full responsibility for usability of products furnished. The Construction Manager expressly warrants that products described in the attached submittal will be usable and that they conform to the Contract requirements unless specifically noted otherwise.

8.3.1.3 The Construction Manager warrants the contract conformance of furnished products notwithstanding actions of the Consultant, including review of the attached submittal and inspection of Work. The Construction Manager acknowledges that review and subsequent action by the Consultant with respect to the attached submittal shall not constitute a waiver or change of Contract requirements.

8.3.1.4 The Construction Manager acknowledges that the Owner will rely on the skill, judgment, and integrity of the Construction Manager as to conformance requirements and subsequent usability.

8.4 SHOP DRAWING AND PROCUREMENT SUBMITTAL LOG

8.4.1 The Construction Manager, shall submit to the Consultant a log fixing the dates for submission of Shop Drawings, special order material items, certifications, guarantees, and any other items required to be submitted to the Consultant for review, approval or acceptance. This log shall be on a form approved by the Owner's Project Manager.

8.4.2 Upon review and approval of the initial log schedule, the Construction Manager shall complete the remaining portion as Shop Drawings are submitted for approval. The log shall track all submittals to date. The updated log shall be reviewed and discussed at each progress meeting to determine items that may impact the construction schedule.

8.5 Shop Drawings

8.5.1 All submittals are to be accompanied by a Shop Drawing & Procurement Transmittal form. A separate transmittal form is to be prepared and attached to each set of submittals having different specification reference numbers. The same transmittal form is to accompany the Shop

Drawings from the Construction Manager to the Consultant and from the Consultant to the Construction Manager. One complete set of Shop Drawings will be submitted to the Owner at the time of their approval. Each individual Shop Drawing will be attached to a completed copy of the Shop Drawing & Procurement Transmittal.

8.5.2 At the completion of the Project, one complete reproducible set of approved shop drawings are to be submitted to the Consultant. Each set is to be placed in a legal size cardboard box with each copy of the approved Shop Drawing placed in a separate hanging file folder with a copy of the original approved Shop Drawing Transmittal Form.

8.5.3 Where Shop Drawings include fire alarm, communication systems schematics, sprinkler systems, etc., a Mylar of each drawing shall be submitted to the consultant as part of the "Record" set of drawings.

8.5.4 One copy of each approved Shop Drawing shall be maintained at the job site by the Construction Manager's Superintendent. One copy of each approved Shop Drawing shall also be maintained at the job site by the Resident Inspector, if a Resident Inspector is provided.

8.5.5 The minimum number of approved Shop Drawings required to be submitted is seven (7) (One at the time of approval, one for Facilities Management Division's information; one at the job site for the Construction Manager; and four (4) at the completion of the Project.) Additional sets needed by the Consultant(s), Construction Manager, Sub-contractors, Suppliers, etc. will be determined at the Pre-Construction meeting.

8.6 SUBMISSIONS - SAMPLES

8.6.1 Office samples shall be of sufficient size and quantity to clearly illustrate functional characteristics of the product with integrally related parts and attachment devices, and full range of color, texture, and pattern.

8.6.2 Products shall not be used until the sample has been submitted to and approved by the Consultant.

8.6.3 A minimum of two (2) samples are required to be submitted to the Consultant for review and approval and will be distributed as follows:

- a) One to be retained by the University;
- b) One to be returned to the Consultant;
- c) An additional sample or samples may be submitted, at the Construction Manager's option, for distribution to a third party.

8.6.4 Field samples (block, brick, etc.) of materials to be constructed at the site shall be submitted for review as required by the individual section of the Contract Documents.

8.7 SUBMISSIONS - OPERATION AND MAINTENANCE MANUALS

8.7.1 The Owner requires a minimum of four (3) bound copies and (1) electronic/PDF copy of the final installation, training, operation, maintenance and repair manuals to be turned over to the Owner's Project Manager and approved for content by the Consultant by or before the time construction is 90% complete. Failure to submit acceptable O&M manuals prior to reaching 90% completion will result in rejection of subsequent Applications for Payment until this submittal requirement is satisfied.

8.7.2 Manuals provided must be of sufficient detail to enable the Owner or others to install, calibrate, train, operate, maintain, service and repair every system, subsystem, and/or piece of equipment installed on or as part of this Contract. Each manual must contain:

8.7.2.1 Project Title, Project number, Location, dates of submittals, names, addresses and phone number for the Consultant, Construction Manager, and Trade Contractor's and/or Subcontractors;

8.7.2.2 An Equipment Index that includes vendors' names, addresses, and telephone numbers for all equipment purchased on the Project;

8.7.2.3 Emergency instructions with phone numbers and names of contact persons on warranty items;

8.7.2.4 Copies of each system's air balancing record and each system's hydronic balancing record;

8.7.2.5 Copy of valve tag list;

8.7.2.6 Copy of AS Built temperature control system drawings and components and sequence of operation;

8.7.2.7 Original copies of the following provided by the manufacturer:

- Installation manuals
- Training manuals
- Service manuals
- Parts lists
- Reviewed shop drawings
- Calibration manuals
- Operation manuals
- Repair manuals
- Wire lists

8.7.2.8 Any Computer, Micro controller, and/or Microprocessor equipped equipment installed shall be provided with source code copies of all software and firmware (prom, eprom, rom, other) supplied on this Contract; and

8.7.2.9 Copies of all inspection and guarantee certificates, manufacturers' warranties with the Commonwealth of Kentucky listed as the Owner for all equipment provided and/or installed.

8.7.2.10 All manuals shall be as follows: Bound in hard cover three(3) ring (D-type) binder, 1", 1.5" or 2" maximum, indexed and in CSI format, tabbed (4,5,8 or 16th cut), no more than 80% binder fill, white vinyl, presentation type with clear vinyl view cover on front, back and spine and with pockets on front and back. Maximum drawing size in binder shall be folded 11"x17" and shall be hole punched and reinforcements added. Do not put drawings in pockets. Top of all drawings shall be at top or spine side of the manual. Complete drawings must be viewed without opening rings. All PDF Copies are to be organized in like manner.

8.7.2.11 If the binder includes manuals from any one vendor covering several different model numbers, the model used on the Project must be highlighted.

8.7.2.12 Included in the front of the "Operation and Maintenance Manual" shall be a copy of the Interior and Exterior Finish plan and Schedule listing all finish materials, the manufacturer, the finish color, and the manufacturer's paint number.

8.7.2.13 Photograph album containing photos and negatives showing buried utilities and concealed items shall be included.

8.8 SUBMISSIONS - RECORD SET OF DRAWINGS

8.8.1 The Construction Manager, on one of their copies of the Contract Documents shall submit a Record Set of Drawings indicating all deviations of construction as originally specified in the Contract Documents. These Record Drawings will compile information from the Construction Manager as well as all Subcontractors. The Construction Manager shall provide a qualified representative to update the Record Set of Drawings as construction progresses.

8.8.2 The Construction Manager shall provide and utilize a camera to photograph the installation of buried utilities and concealed items. Construction Manager to provide standard 3 1/2" x 5" or 4" x 6" photographs which shall be submitted as part of the Operation and Maintenance Manuals submission. These photos should be mounted in a bound album with labeling as to subject of photo, date, and Project. Such album is to be kept at job site with the Record Set of Drawings until submittal of same.

8.8.3 Approval of the Final Payment request will be contingent upon compliance with these provisions. The Construction Manager's Record Set of Drawings shall be delivered to the Consultant at their completion so that the Consultant may make any changes on the original contract drawings.

ARTICLE - 9 PLANS, DRAWINGS, AND SPECIFICATIONS – NOT USED

ARTICLE - 10 PROGRESS MEETINGS

10.1 In addition to specific coordination and pre-installation meetings for each element of Work, and other regular Project meetings held for other purposes, progress meetings will be held at least monthly and as outlined at the Preconstruction Meeting. Each entity then involved in planning, coordination or performance of Work shall be properly represented at each progress meeting. The following areas will be covered at each progress meeting: review of each entity's present and future needs including interface requirements, time, sequences, deliveries, access, site utilization, temporary facilities and services, hours of Work, hazards and risks, house-keeping, change orders, and documentation of information for payment requests; discuss whether each element of current work is ahead of schedule, on time, or behind schedule in relation with updated progress schedule; determine how behind-schedule Work will be expedited, and secure commitments from entities involved in doing so; discuss whether schedule revisions are required to ensure that current Work and subsequent Work will be completed within Contract Time; and review everything of significance which could affect the progress of the Work.

10.2 The Construction Manager shall prepare and submit at each progress meeting an updated schedule indicating Work completed to date and any needed revisions.

10.3 With the express purpose of expediting construction and providing the opportunity for cooperation of affected parties, progress meetings will be held and attended by representatives of:

- (1) The Owner's Project Manager

- (2) The Consultant
- (3) The Construction Manager
- (4) Others on an as needed basis

10.4 A location near the site will be designated where such progress meetings will be held. Participants will be notified of the dates and times of the meetings by the Consultant.

ARTICLE - 11 CRITICAL PATH METHOD (CPM) SCHEDULE

11.1 Construction Manager shall prepare schedules as a critical path chart with separate divisions for each major portion of the Work or operation, identifying first Work day and final Work day. Schedule shall include divisions for Work to be accomplished remote from central construction site, e.g. utilities, from outside the construction site to the site for chill water, steam, electrical, communications, fire service. Sequence of listings shall follow the Table of Contents of the Specifications. Maximum sheet size shall be 30" x 42".

11.1.1 It is required that Work to be accomplished remote from the central construction site be scheduled so that disruption from construction will be minimized. Start dates and completion dates for that portion of the Work must be maintained and completed in the shortest reasonable time.

11.2 The Critical Path Schedule shall show the complete sequence of construction by activity, with dates for beginning and completion of each element of construction. Each item shall be identified by Specification section number. Sub-schedules shall be provided to define critical portions of the entire schedule. Schedules shall show accumulated percentage of completion of each item, and total percentage of Work completed, as of the first day of each month. A separate schedule of submittal dates for Shop Drawings, product data, and samples will be required. Such separate schedule shall show decision dates for selection of finishes and delivery dates for Owner furnished items, if any.

11.3 The Consultant will review the schedule only for compliance with the intent of the contract documents. Such review shall not relieve the Construction Manager of any responsibility for compliance with the provisions of the Contract nor shall such review or resultant review comments constitute an amendment or modification of the contract requirements. The Construction Manager shall be solely responsible for the means and methods to be employed to assure construction proceeds in accordance with the submitted schedule.

11.4 Schedules shall be revised to indicate progress of each activity to date of submittal and projected completion of each activity. Revised schedules shall include a narrative report that identifies and explains activities modified since the previous submittal, major changes in scope and other identifiable changes, problem areas, anticipated delays and impact on the schedule, and report corrective action taken, or proposed, and its effect.

11.5 Initial baseline Schedules shall be submitted within 15 days after the date established in Notice to Proceed. After review, required revised data shall be completed within 10 days. Updated Progress Schedules shall be submitted with each Application for Payment, but not less frequently than once each month. Submissions shall include one opaque reproduction and one electronic copy (computer disc or CD), along with a transmittal letter.

11.6 Copies of reviewed Schedules are to be provided to the job site file, trade contractors, subcontractors, suppliers, and other concerned entities, including separate contractors. Recipients are to be instructed to promptly report, in writing, problems anticipated by Projections shown in Schedules.

11.7 The processing of all progress payments is contingent upon the submission and approval of critical path schedules. Only payment for bonds will be approved for processing prior to acceptance of the baseline schedule(s).

11.8 The processing of all change orders requesting a time extension to the contract are contingent upon the submission and approval of a critical path schedule showing the change order does indeed impact the critical path. Time extensions for Change Orders that do not impact the critical path will not be considered.

11.9 All time extensions shall be negotiated and made full, equitable and final, and incorporated in a revised CPM schedule at the time of Change Order issuance. No reservation of rights shall be allowed.

11.10 Float available in the schedule at any time shall not be considered for the exclusive use of either party to the contract, but will be a resource available to the Construction Manager. (Free float is the length of time the start of an activity can be delayed without delaying the start of a successor activity. Total float is the length of time along a given network path that the actual start of an activity(s) can be delayed without delaying the project completion.) No time extensions will be granted unless a delay occurs which impacts the Project's critical path, consumes all available float or contingency time, and extends the work beyond the Contract completion date.

ARTICLE - 12 (Not Used)

ARTICLE - 13 OWNER'S CONSTRUCTION REPRESENTATIVE (Not Used)

ARTICLE - 14 FIELD OFFICE

14.1 Construction Manager shall make his own provision for field office for his own personnel and for incidental use by their Subcontractors. Quantity and location are subject to approval of the Consultant and the Owner's Project Manager.

ARTICLE - 15 TELEPHONE SERVICE

15.1 Construction Manager shall arrange through NKU IT Department for installation of on-site phone. Telephone service during the length of construction shall be paid for by the Construction Manager.

ARTICLE - 16 CONSTRUCTION FENCE

16.1 All fencing to comply with Section 3304.0 of the Kentucky Building Code except where the following requirements are more stringent:

16.1.1 All job site perimeter fencing within 5 feet of a walkway, street, lot line, or public way shall be 8 feet in height.

16.1.2 All job site perimeter fencing more than 5 feet from a walkway, street, lot line, or public way shall be a minimum of 6 feet in height.

16.1.3 All fencing shall be of a woven material such as chain link or a solid type fence. Fencing shall include gates required for construction operations. Gates shall be lockable with both the Construction Manager's lock, and a lock provided by the Owner.

16.1.4 It shall be the Construction Manager's responsibility to determine the proper quality of materials and methods of installation of the fencing, with the understanding that it must be maintained in good condition, good appearance, rigid, plumb, and safe throughout the construction period. The fence does not have to be new material.

16.1.5 The Construction Manager shall be responsible for removing and replacing any fence sections and/or posts necessary for access to the site on a daily basis. The Construction Manager shall police such conditions to assure the fence and posts are reset in a timely manner and are specifically in place at the close of the working day.

16.1.6 Construction Manager, Trade Contractors and Subcontractors not complying with the requirements of this Article 16 shall be given written notifications via the Consultant. If compliance is withheld, the Construction Manager may be charged for Work done on his behalf provided approval is gained from the Owner prior to issuance of the charge.

16.1.7 Plastic construction fence may be used as a visual warning barricade within the fenced construction site. This type of fencing is not acceptable as perimeter protection fence.

ARTICLE - 17 PROJECT SIGN

17.1 The Construction Manager shall furnish, install and maintain a Project sign during this Project. This sign shall be 4' x 8' x 3/4" exterior grade plywood mounted on 4" x 4" posts. Design shall be as provided by the Owner at a later date and shall include the name of the Owner, Project, Consultant, and Construction Manager.

17.2 No signs, except those attached to vehicles or equipment may be displayed without permission from the Owner's Project Manager. No political signs will be permitted.

ARTICLE - 18 PARKING

18.1 No on-campus parking in staff, student, visitor, garages, or open lots is available. The CM shall develop a parking plan as part of the required Pre-Construction Services element of this Contract. All on campus parking in the designated construction parking area will require each vehicle to purchase a parking permit according to the assigned costs from the NKU Parking services department.

ARTICLE - 19 SANITARY FACILITIES

19.1 At the beginning of the Construction phase of the Project, before any Construction Work is started, the Construction Manager shall furnish, install and maintain ample sanitary facilities for the workforce. Permanent toilets in the existing buildings shall not be used during construction of the Project. Drinking water shall be provided from an approved safe source, piped or transported as to be kept clean and fresh and served from single service containers or satisfactory types of sanitary drinking stands or fountains. All such facilities and services shall be furnished in strict accordance with existing governing health regulations.

ARTICLE - 20 ALLOWANCES AND RULES OF MEASUREMENT

20.1 Rules of Measurement shall be established by the Consultant in the field. Actual measurement square shall be taken in the field. These amounts shall become binding upon the Construction Manager and be adjusted as before mentioned.

20.2 The Construction Manager shall coordinate with the Consultant and/or the Owner's Project Manager all associated Work by utility companies including relocation of utility poles, installation of new street lights, relocation of overhead or underground lines, and any other Work called for on the Plans and in the Specifications. Utility outages that will impact other campus facilities shall be coordinated a minimum of 21 calendar days in advance. Outages shall be scheduled between the

hours of 10 PM and 7 AM on Weekdays and Saturday or between the hours of 8 PM Saturday and 7 Am Monday or on University observed holidays.

ARTICLE - 21 SEQUENCE OF CONSTRUCTION

21.1 The Construction Manager shall coordinate any road and sidewalk closings, utility disruptions, etc. which will affect the use of existing building(s) with the Owner's Project Manager a minimum of 14 calendar days prior to commencing that Work.

21.2 The adjacent buildings and public areas will remain in use and the Owner shall have access to the existing building(s) throughout the duration of the Project. The Construction Manager shall coordinate construction activity to assure the safety of those who must cross the Project site and shall provide and maintain the necessary barriers and accommodations for a completely safe route of accessibility. The Construction Manager is to insure that all exits provide for free and unobstructed egress. If exits must be blocked, then prior arrangements must be made with the Owner's Project Manager. The construction Manager shall provide directional signage for pedestrian and vehicular access as required throughout the project, for egress of all affected buildings and pathways.

21.3 The Construction Manager shall cooperate with the Owner in minimizing inconvenience to, or interference with normal use of existing buildings and grounds by staff, students, other Contractors, or the public. Construction Manager shall conduct operations to prevent damage to adjacent building structures and other facilities and in such a manner to protect the safety of building's occupants.

21.4 Special effort shall be made by the Construction Manager to prevent any employee from entering existing buildings for reasons except construction business. In particular, use of toilets, drinking fountains, vending machines, etc. is strictly prohibited.

ARTICLE - 22 CRANE & MATERIAL HOIST OPERATIONS

22.1 Construction Manager shall cause appropriate barriers to be provided around crane and material hoist to protect pedestrian-and vehicular traffic around operating areas as appropriate during construction of each Bid Package. When a crane is operating or moving flag men provided by Construction Manager shall be utilized to prevent pedestrian and vehicular traffic from crossing pathway of crane lift. Construction Manager's flag men shall coordinate these activities with the appropriate security personnel.

22.2 Crane and material hoist shall be safely secured and inaccessible during non-operating hours.

ARTICLE - 23 UTILITIES

The Owner will pay for the consumption costs of all public utilities utilized in the course of the construction of the Health Innovation Center and Founder's Hall Renovation, except for the costs of telephone and data/internet services. The CM, or designated subcontractors/Bid Packages if appropriate and designated, must meter all public utilities during the construction period and install permanent meters at the completion of construction. The University will read the meters monthly. Utility meters shall not reset to zero if power is interrupted.

23.2 UTILITY OUTAGES

23.2.1 Interruption of Utilities and Services: No utilities or services, including existing vehicular and pedestrian access, may be interrupted without full consent and prior scheduling with the University. Project Manager approval is required in writing for each disruption.

23.2.1.1 ENTIRE BUILDING OUTAGE

The NKU ~~University Architect or the~~ Project Manager is the Construction Manager's contact with the University for requesting Utility Outages. The NKU Project Manager will contact the proper departments and divisions within the University and receive approval from those units prior to allowing a planned outage to occur. The established standard within the University Departments and Divisions of an entire building or group of buildings shall be three (3) weeks written notice. The written notice shall include the type of utility to be interrupted, reason for outage, length of outage, what will be affected by the outage, and a statement of whether or not the materials are on hand to complete the Work. If a specific time is desired for the outage it should be included. The University Architect will insure that all parties affected are contacted and that a time which is least disruptive to all parties is selected. At the appointed outage time, Work shall begin and proceed continuously with all required manpower until Work is complete at no added cost to the University. The NKU Project Manager will then notify all affected departments or divisions.

23.2.1.2 SECTION OF A BUILDING OUTAGE

The NKU Project Manager is the Construction Manager's contact with the University for requesting utility outages. The NKU Project Manager will contact the proper departments and divisions within the University and receive approval from those units prior to allowing a planned outage to occur. The established standard within the University Departments and Divisions of a section of a building shall be a written request no less than one week prior to outage. The written request shall include the type of utility to be interrupted, when the outage is desired, reason for outage, length of outage, and what will be affected by the outage. If one weeks notice is insufficient or inappropriate as judged by the NKU Project Manager, then written notification may be required. The University Architect will insure that all parties affected are contacted and that a time which is least disruptive to all parties is selected. At the appointed outage time Work shall begin and proceed continuously with all required manpower until Work is complete at no added cost to the University. The University Architect will then notify all affected departments or divisions.

The Construction Manager shall be responsible for all switching, valving, etc. required to take the affected utility out of service, and shall be responsible for returning the utility to full normal service at the completion of the outage.

ARTICLE - 24 CLEANING AND TRASH REMOVAL

24.1 The Construction Manager shall keep clean the entire area of new construction and shall keep streets used as access to and from the site free of mud and debris.

24.2 All exit-ways, walks, drives, grass areas, and landscaping must be kept free from debris, materials, tools and vehicles at all times. Trim weeds and grass within the site area.

24.3 Upon completion of the Work, Construction Manager shall thoroughly clean and re-sod grass areas damaged to match existing areas. The Construction Manager shall be responsible for repair of all asphalt and concrete surfaces damaged in the course of the work.

24.4 The Construction Manager shall be responsible for removal from the site of all liquid waste or other waste (i.e. hazardous, toxic, etc.) that requires special handling on a daily basis.

24.5 Dumpsters and recycling containers shall be provided and maintained by the Construction Manager.

24.6 During handling and installation of Work at the Project site, the Construction Manager shall clean and protect Work in progress and adjoining Work on a basis of continuing maintenance. Construction Manager shall apply suitable protective covering on newly installed Work where needed to prevent damage or deterioration at time of Substantial Completion. Otherwise, Construction Manager shall clean and perform maintenance on newly installed Work as frequently as necessary through remainder of construction period.

24.7 The Construction Manager shall be responsible for daily cleaning of spillage's and debris resulting from his, the Trade Contractor's and the Subcontractor's operations, (includes removal of dust and debris from wall cavities) and for providing closed, tight fitting (dustproof if required), waste receptacles to transport construction debris from the work area to the dumpster. Broom clean all floors no less than once a week. The Construction Manager shall have streets adjacent to the project site swept bi-weekly or as required to prevent accumulation of debris. The Construction Manager shall empty such receptacles into the trash container when full or when directed to be emptied by the Consultant or Owner's Project Manager, but not less than weekly. The use of University waste and trash receptacles is strictly prohibited, except as otherwise provided by the project specifications.

24.8 Failure to comply with the above requirements shall be cause for stopping work until the condition is corrected.

ARTICLE - 25 BLASTING

25.1 Blasting will be allowed on this Project upon the specific request of the Construction Manager and ONLY with the written approval of the University. If blasting is permitted, the CM shall obtain and pay for the services of a special consultant acceptable to the Owner to develop a plan for the blasting, and additional insurance coverage on the part of the Contractor/ Subcontractor for damages from blasting shall be required. This additional insurance will be an endorsement adding X, C, and U to the Comprehensive General Liability Policy as required by the General Conditions Article 35. This endorsement is based on the specific buildings and furnishings in the area of the construction and for which an assessed value will be determined in advance of preparation of the GMP for any Bid Package for which blasting may be determined by the Owner to be permitted.

BUILDING	BUILDING VALUE	FURNISHING VALUE	TOTAL
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Total Value of Buildings and Equipment			
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The limits for X, C, and U endorsement for blasting must be a minimum of \$20,000,000.

25.2 The delivery route of blasting materials to the campus must be approved by the NKU Office of Fire and Accident Prevention, NKU Police Department, the Highland Heights Police Department prior to delivery of any blasting materials. During the Contract period the Contractor shall notify the NKU Police Department 48 hours prior to delivery, confirming the delivery route, the time and date of delivery, and the amount of explosives carried. The Contractor shall designate magazines used for storage of caps and explosives, plus the amount stored in each magazine. Contractor shall adhere to the American Table of Distance for storage of explosives, and limit overnight storage of 'Class-A' explosives to one day supply. It is strongly recommended, however, not to store explosives overnight.

ARTICLE - 26 CUTTING AND PATCHING - NEW AND EXISTING WORK

26.1 New Work - Cutting and patching shall be done by craftsmen skilled and experienced in the trade or craft that installed or furnished the original Work. Repairs shall be equal in quality and appearance to similar adjacent Work and shall not be obviously apparent as a patch or repair. Work that cannot be satisfactorily repaired shall be removed and replaced.

26.2 Existing Construction - Refer to Architectural, Mechanical, and Electrical drawings for cutting and patching. All new Work shall be connected to the existing construction in a neat and workmanlike manner, presenting a minimum of contrast between old and new Work. Do all patching of the existing construction as may be required for the new construction to be done. Necessary patching, closing of existing openings, repairing and touching up shall be included as required for a proper, neat and workmanlike finished appearance. Any existing item that is to remain and is damaged during construction shall be replaced at the Construction Manager's expense. Any demolition for convenience of construction manger, any contractor or subcontractor shall be fully restored at no expense to the Owner.

ARTICLE - 27 UNRELATED PROJECTS

27.1 Unrelated construction Projects may be under way in the vicinity of this Project or the site utility work during the course of the Work related to this Project. The Construction Manager for this Project must coordinate with any other contractors regarding overlapping areas. See Article 42 - Separate Contracts of the General Conditions.

ARTICLE - 28 OWNER SUPPLIED MATERIALS (NOT USED)

ARTICLE - 29 REMOVED ITEMS (NOT USED)

ARTICLE - 30 INTERIOR ENCLOSURE AND DUST ENCAPSULATION

30.1 Areas under construction shall be separated from occupied areas of new construction by suitable temporary enclosures furnished, erected and maintained by the Construction Manager. Temporary enclosures shall be dust and smoke tight and constructed of non-combustible materials to prohibit dirt and air borne dust from entering occupied spaces. Construction Manager to review with Consultant ways to provide ventilation for dust generated by demolition and fumes/vapors produced during installation of new materials.

30.2 Construction Manager is responsible for coordinating with the Owner's Project Manager any equipment to be turned off prior to erecting temporary enclosures.

30.3 Construction Manager shall protect all exhaust diffusers, equipment and electrical devices from the collection of dust. All areas shall be checked and cleaned prior to final acceptance of Work.

30.4 Dust and debris from Work operations shall be held to a minimum.

30.5 Construction Manager shall construct temporary dust partitions at locations and as detailed on drawings. Closures used for dust barricade shall be constructed of non-combustible materials, (metal studs and gypsum board or fire retardant plywood).

30.6 Construction Manager shall provide additional devices as materials and required to contain dust within Work area and protect personnel during course of Work.

30.7 Deleted.

30.8 Corridor doors, sealed with Plastic may serve as dust barriers.

30.9 The Construction Manager may assume walls which extend full height of floor shall be deemed appropriate to contain air borne dust. Cover any voids or penetrations.

30.10 Entry Passage to Work Area shall be utilized for entry and sealed off with zippered plastic opening, or other acceptable means which allows periodic entry and closure of barricade closure.

30.11 Install and maintain a "sticky mat" on the floor in locations where construction crews leave the construction area and prior to entering ANY completed and occupied space in the building.

30.12 Install and maintain a temporary floor covering in any and all elevators being utilized for this project.

ARTICLE - 31 NKU COMMUNICATIONS

31.1 The communications wiring is to be provided, installed and terminated by a certified and approved communications contractor. All work shall be done in compliance with the latest NKU IT Departments' Standards, and closely coordinated with NKU IT Department.

ARTICLE - 32 SMOKE DETECTORS / FIRE ALARM SYSTEMS – COMPLETED AND OCCUPIED FACILITIES

32.1 Construction Manager shall protect all smoke detectors in completed and occupied areas to prevent false alarms. The Construction Manager will be responsible for any false alarm caused by dust created in completed and occupied areas or dust traveling to areas beyond the Work, past inadequate protection barriers. If there is a need for an existing or newly installed fire alarm system or parts of that system to be serviced, turned off, or disconnected, prior approval must be obtained from the Owner's Project Manager and notification given to the University Police. The Construction Manager must follow the procedure outlined for Utility Outages and any documented charges charged by the responding fire department due to a false alarm shall be paid by the Construction Manager. As soon as all Work is completed notification must be given to the Owner's Project Manager and to the University Police prior to reactivation of the system. Prior to Final Payment to the Construction Manager, all protected smoke detectors will be uncovered and tested.

32.2 When any fire alarm, detection or suppression system for an occupied portion of the facility is impaired, a temporary system shall be provided. Construction Manager shall provide daily reports indicating the Superintendent has walked through the project at the end of each work period, to satisfy himself there are no present conditions that may result in an accidental fire.

Portable fire extinguishers shall be on site during this time. The Construction Manager is responsible for inspecting and testing any temporary systems on a monthly basis.

ARTICLE - 33 SURVEYS RECORDS, REPORTS

33.1 General: Working from lines and levels established by property survey, and as shown in relation to the Work, the Construction Manager will establish and maintain bench marks and other dependable markers to set lines and levels for Work at each area of construction and elsewhere on site as needed to properly locate each element of the entire Project. The Construction Manager shall calculate and measure from the bench marks and dependable markers required dimensions as shown (within recognized tolerances if not otherwise indicated), and shall not scale drawings to determine dimensions. Construction Manager shall advise trade contractors performing Work of marked lines and levels provided for their use in layout of Work.

ARTICLE - 34 ALTERNATES (NOT USED)

ARTICLE - 35 FIELD CONSTRUCTED MOCK-UPS

35.1 After sample selection but prior to ordering exterior finish materials, Construction Manager shall accumulate enough material samples to erect sample wall panels to further verify selection made for color and textural characteristics, and to represent completed Work for qualities of appearance, materials and construction; include sample masonry units (face and back-up wythes, plus accessories), window units, roofing finish, etc. to provide a complete representation of the exterior facade for approval by the Consultant; build mock-ups to comply with the following requirements:

35.1.1 Build mock-ups well in advance of the time the finish materials will need to be ordered for inclusion in the Work.

35.1.2 Locate mock-ups at location as reviewed and approved by the Architect and Owner's Project Manager. Mock-Up to be reviewed twice, one in direct sunlight and one in shade to confirm color characteristics of samples.

35.1.3 Mock-ups Size(s) for the following types shall be approximately 6' long by 4' high by full thickness, except where specified otherwise by the Consultant.

- Each type of exposed Work.

35.1.4 Protect mock-ups from the elements with weather resistant membrane.

35.1.5 Retain mock-ups during construction as a standard for judging completed Work. When directed, demolish mock-ups and remove from the site.

ARTICLE - 36 PROJECT COORDINATION VIA COMPUTER

36.1 The Construction Manager is required to have an active email account to facilitate coordination of the project during construction and warranty.

CONTRACT BETWEEN OWNER AND CONSTRUCTION MANAGER

This Agreement between Owner and Construction Manager is made as of this the ___th day of _____, 2018 by and between Northern Kentucky University, hereinafter called the Owner, and

_____,
Federal I.D. No. _____ hereinafter called the Construction Manager, which is authorized to do business in Kentucky.

WITNESSETH:

THAT, for and in consideration of the covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner and the Construction Manager agree as follows:

ARTICLE 1 THE PROJECT

1.1 The Project is described on Exhibit A.

ARTICLE 2 THE CONTRACT DOCUMENTS

2.1 The Contract Documents consist of this Contract and all addenda to this Contract; the Construction Manager's response to the Request for Proposal for construction management services; the General Conditions to this Contract; the Special Conditions and Supplemental conditions (if any) to this Contract; the Construction Manager's bonds; the Construction Documents including all plans and specifications and the GMP "exhibit D" and associated qualifications and assumptions when executed, now existing or issued hereafter; any amendments or addenda executed by the Owner and the Construction Manager hereafter; approved change order (s) or field orders; and the additional documents listed on Exhibit A, if any. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Owner and any Trade Contractor or any person or entity other than the Construction Manager.

2.2 Documents not included or expressly contemplated in this Article 2 do not, and shall not, form any part of the Contract for Construction. Without limiting the generality of the foregoing, it is specifically agreed that shop drawings and other submittals from the Construction Manager or its Trade Contractors and suppliers do not constitute a part of the Contract Documents.

2.3 Capitalized terms used but not defined in this Agreement shall have the meaning described thereto in the General Conditions.

ARTICLE 3 CONSTRUCTION MANAGER'S SERVICES

3.1 The Construction Manager's Services under this Agreement include General Project Services, Pre-Construction and Construction Services. In performing these Services, the Construction Manager shall furnish or cause to be furnished (i) all labor, equipment, goods and materials now or hereafter required by this Contract for Construction (hereinafter defined) to successfully plan, construct and complete the Work; (ii) all construction management and supervisory services required by this Contract for Construction to successfully plan, construct and

complete the Project. The Construction Manager's represents to the Owner that it (i) is experienced in providing construction management services for projects of similar size and complexity as this Project; (ii) is authorized and licensed to perform the type of labor and services for which it is being engaged; (iii) is qualified, willing and able to perform construction management services for the Project; and (iv) and as embodied in the plans and specifications, has the expertise and ability to provide construction management services which will meet the Owner's objectives and requirements and which will comply with the requirements of all governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project. The Construction Manager acknowledges that it has reviewed and familiarized itself with the Contract Documents, including the documents enumerated in Article 2, and agrees to be bound by the terms and conditions contained therein.

3.2 Upon execution of this Agreement and issuance of a Notice to Proceed by the Owner, the Construction Manager shall commence performance of Pre-Construction Services. Upon execution of **Exhibit D** and issuance of a Notice to Proceed by the Owner, the Construction Manager shall commence performance of Construction Services. The parties acknowledge that (i) the Owner may determine not to proceed with Construction Services, (ii) performance of Pre-Construction Services may overlap performance of Construction Services, (iii) categories of Work performed during Construction Services will be performed in separate phases, and (iv) payment of the Construction Manager for Pre-Construction Services shall be separate from payment, if any, for Construction Services.

3.3 General Project Services. The Construction Manager agrees to:

3.3.1 Provide all services required to professionally complete the Work in an expeditious and economical manner consistent with this Contract and the best interests of the Owner, and in compliance with all applicable laws.

3.3.2 Endeavor to develop, implement and maintain, in consultation with the Owner, the Consultant(s), and the Trade Contractors, a spirit of cooperation, collegiality, and open communication among the parties so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and, upon completion, the Project is deemed a success by all parties.

3.3.3 All of Construction Manager's services shall be performed in accordance with schedule requirements.

3.4 Pre-Construction Services. The Construction Manager shall provide the following Pre-Construction Services:

3.4(a) Design Review Services

3.4(a)(1) The Construction Manager shall actively and jointly participate with the Owner and the Consultant(s) in formation of the final Project design without assuming design responsibility. The Project design schedule is set forth on **Exhibit B**.

3.4(a)(2) The Consultant(s) is(are) required, in accordance with current project schedule requirements, to provide design drawings during the Schematic Design, Design Development and Construction Documents phases. The Construction Manager, not acting as an architect or engineer and without assuming any authorship responsibility for the design drawings, shall promptly and in accordance with current project schedule requirements:

- (i) familiarize itself with the approved program;
- (ii) familiarize itself with the design drawings;
- (iii) analyze and evaluate jobsite management, site logistics, budget and schedule

considerations;

- (iv) analyze and evaluate the constructability of the Work illustrated by the design drawings at each phase of design with respect to construction methodology, schedule, budget and site logistics;
- (v) analyze and evaluate each of the design drawings in regard to the completeness of intended bid categories, conflicts or overlaps in the divisions of the Work, design details affecting construction, value engineering, identification of long-lead materials affecting the Construction Schedule, availability of labor and other factors affecting construction; and
- (vi) identify conceptual decisions it will be necessary to make in order to prepare accurate estimates of probable cost with the fewest assumptions, qualifications and exclusions.

3.4(a)(3) The Construction Manager and the Consultant(s) shall jointly schedule and attend regular meetings and design phase review meetings with the Owner and evaluate the design drawings. The Consultant(s) shall prepare and distribute minutes of these meetings, and the Construction Manager shall verify the accuracy and completeness of the minutes.

3.4(a)(4) The Construction Manager shall, in accordance with schedule requirements, notify the Consultant(s) in writing and assist the Consultant(s) with the resolution, of all problems, conflicts, defects or deficiencies discovered by the construction manager identified during the review and evaluation of the design drawings.

3.4(a)(5) Upon receipt of the design drawings at the completion of each design phase (SD, DD and CD), the Construction Manager shall, in accordance with schedule requirements, prepare and submit an estimate of Total Project Construction Cost broken down by line item into major construction disciplines and systems.

3.4(a)(6) The Construction Manager and Consultant(s) shall reconcile, and make recommendations on, the differences between the CM's estimate and the Consultant's estimate.

3.4(a)(7) The Construction Manager shall provide information detailing its review in preparation of its estimate of Total Project Construction Cost. In this regard, at the end of the Schematic Design phase, the Construction Manager shall provide a letter to Owner summarizing such information reviewed and confirming that the concept selected can be constructed within the parameters identified in the CM schematic estimate. At each subsequent design phase set forth in the design schedule, the Construction Manager shall provide such information in the form of a report containing a detailed description of Construction Manager's review. Such letter and reports shall be provided to Owner in accordance with the schedule set forth on **Exhibit C**.

3.4(b) Construction Documents Review Services

3.4(b)(1) The Consultant(s) is (are) required, in accordance with current project schedule requirements, to provide construction documents and other information for review.

3.4(b)(2) The Construction Manager shall, in accordance with current project schedule requirements; review applicable Construction Schedule(s); the estimate of Total Project Construction Cost; fees for permits, inspections, and licenses; modifications necessitated by local conditions; and other information necessary for a full understanding of the Project and the Construction Documents. The Construction Manager shall:

- (i) review the Construction Documents for clarity and constructability;
- (ii) where observed, call to the attention of the Consultants any identified conflicts,

- omissions or duplications in the proposed divisions of the Work, lack of completeness of intended bid categories, and any unusual design details that, in the opinion of the CM, will adversely affect construction cost and schedules;
- (iii) apply established value engineering principles and practices to reduce the cost of the Project, if necessary, to satisfy budgetary requirements.
 - (iv) identify factors with the potential to impact the Construction Schedule such as materials with long lead time, the unavailability of required labor, and other factors and make suggestions for acceptable alternatives;
 - (v) evaluate and make suggestions to optimize Site utilization;
 - (vi) recommend proposed modifications or alternatives to the Construction Documents based on its evaluation and review;
 - (vii) notify the Owner and the Consultant(s) in writing of any detected variances between the Construction Documents and applicable laws, statutes, building codes, rules and regulations; and
 - (viii) notify the Owner and the Consultant(s) in writing of all problems, conflicts, defects or deficiencies in the Construction Documents to the extent that the CM detects such.

3.4(b)(3) The Construction Manager shall, in accordance with schedule requirements, assist the Consultant(s) with the resolution of all problems, conflicts, defects or deficiencies identified during the review and evaluation of the Construction Documents.

3.4(b)(4) Upon receipt of the design drawings at the end of each design phase, SD, DD and CD, the Construction Manager shall, in accordance with schedule requirements and **Exhibit C**, prepare and submit an estimate of Total Project Construction Cost broken down by line item into major construction disciplines and systems. Prior to bidding each Bid Package the CM shall provide breakout pricing for each Trade Package based on the most recent estimate of total project construction cost. The Conceptual and Schematic Design estimates shall be performed in CSI Uni-Format and the Design Development and Construction Document estimates shall be performed in CSI Master Format.

3.4(b)(5) The Consultant will also prepare an opinion of probable cost at the end of each design phase of each Bid Package and, in addition, at 50% completion of the Construction Documents for selected Bid Packages. The Construction Manager and Consultant(s) shall reconcile, and make recommendations on the differences between the Construction Manager's estimate and the Consultant's estimate. If these estimates by the Construction Manager and by the Consultant(s) differ materially, the Consultant and the CM shall meet promptly to reconcile the discrepancies between their estimates so as to permit submission to the Owner of a final estimate of Total Project Construction Cost on which both agree.

3.4(c) Planning and Scheduling Services

3.4(c)(1) The Construction Manager understands and acknowledges the Owner's intent that the Project will be complete by the Date of Substantial Completion. The Construction Manager shall timely prepare and submit the Construction Schedule for the Owner's review. The Construction Schedule shall complement, and shall not conflict with, the Design Schedule.

3.4(c)(2) The Construction Manager shall submit an initial Construction Schedule by the date set forth on **Exhibit C**; a final Construction Schedule with the Guaranteed Maximum Price proposal; and revised Construction Schedules in accordance with the **General Conditions**.

3.4(c)(3) The Construction Manager shall establish and submit for Owner review within thirty (30) calendar days of the Owner's execution of this Agreement:

- (i) Project cost control procedures;
- (ii) project reporting procedures;
- (iii) Quality Management Program; and
- (iv) Safety program.

3.4(c) (4) The Construction Manager shall develop a comprehensive jobsite management and logistics plan for the Owner's review. This plan shall be submitted, at the latest, at the end of the Design Development phase

3.4(c) (5) The Construction Manager understands and acknowledges the Owner's intent that the Project will be completed within the budget set by Owner for the Project. Accordingly, throughout the Pre-Construction Services phase, the Construction Manager shall keep Owner informed in writing if it believes that the Project may not be completed within Owner's budget, the reasons why it is not so and to offer suggestions concerning the proposed solutions therefore. .

3.4(d) Guaranteed Maximum Price Proposal Services

3.4(d)(1) Prior to performance of Construction Services for each Bid Package, the Construction Manager shall prepare and deliver to the Owner, with a copy to the Consultant(s), a written Guaranteed Maximum Price ("GMP") proposal at the time set forth on **Exhibit C**. The Construction Manager shall, at a minimum, include in the GMP proposal:

- (i) a recital of the specific Construction Documents, including drawings, specifications, and all addenda thereto, used in preparation of the GMP proposal;
- (ii) the five (5) elements of the Guaranteed Maximum Price:
 - a. Cost of the Work (the sum of all estimated trade contracts comprising CSI divisions 1-17), detailed by each subcontract, trade, or bid division;
 - b. Construction Manager's Contingency (CMC) – see paragraph 3.4(d)(8);
 - c. Bonds and Insurance;
 - d. CM services fee including any adjustments mutually agreed to by the Owner and the Construction Manager.
- (iii) A draft Schedule of Value – using the form provided by **Exhibit E** – to illustrate the fiscal translation between the GMP and the likely structure of trade packages;
- (iv) an itemization and description of all assumptions, clarification, and inclusions to or exclusions from the GMP, schedule, and other components of the proposal; and the final Construction Schedule.

3.4(d)(2) The GMP proposal shall include payment for Work required by the Construction Documents, and if the GMP proposal is accepted by the Owner, the Construction Manager shall be entitled to no increase in the GMP if the Work required by the Construction Documents (i) is required by the Contract For Construction, (ii) is reasonably inferable from the incomplete documents, (iii) is consistent with the OWNER'S published Design Guidelines and the general industry standards for completion of the Work, (iv) is not an enlargement of the scope of Work or (v) substantially conforms to the nature, type, kind or quality of Work depicted in the incomplete documents.

3.4(d)(3) If the GMP proposal is unacceptable to the Owner, the Owner shall promptly notify the Construction Manager in writing. Within fourteen (14) calendar days of such notification, the Owner, Consultant(s) and Construction Manager shall meet to discuss and resolve any differences, inconsistencies, or misunderstandings and to negotiate recommended adjustments to the Work and/or to the GMP.

3.4(d)(4) The Owner may, at its sole discretion and based upon its sole judgment, (i) indicate its acceptance of a GMP proposal; (ii) reject a GMP proposal; (iii) terminate the Project; or (iv) proceed to construct the Project using a party or parties other than the Construction Manager.

3.4(d)(5) If the Owner rejects a GMP proposal, neither party shall have any further obligation pursuant to the Contract for Construction.

3.4(d)(6) If the Owner accepts a GMP proposal, the parties shall complete and execute **Exhibit D**, which shall include the associated qualifications and assumptions and the Owner shall issue a written Notice to Proceed to the Construction Manager establishing the date construction is to commence (the "Commencement Date"). The Construction Manager shall not expend any monies for construction prior to receipt of such Notice to Proceed without the written approval of the Owner. Exhibit D, including the qualifications and assumptions shall be updated to include the sum of any previously accepted GMP proposals at the beginning of each phase of the project. There shall only be One GMP in place at any one time.

3.4(d)(7) Price Guarantees

- (i) Upon execution of **Exhibit D**, and subject to the qualifications and assumptions the Construction Manager guarantees that the sum of the Cost of the Work, Construction Manager's Contingency, and the CM services Fee shall not exceed the GMP. All costs or expenses that would cause this sum to exceed the GMP shall be borne by the Construction Manager unless adjusted by Owner approved Change Order.
- (ii) Upon execution of **Exhibit D**, the Construction Manager certifies that any costs specifically included as unit costs in the GMP proposal are accurate, complete and current at the time of negotiations; and that any other factual unit costs that may be furnished to the Owner in the future to support any additional amounts that may be authorized will also be accurate and complete. Payments to the Construction Manager shall be reduced if the Owner determines such amounts were originally included due to materially inaccurate, incomplete, or non-current factual unit costs.
- (iii) Upon execution of **Exhibit D**, the Construction Manager guarantees that to the extent the accepted agreed GMP includes contingencies, use of contingency in excess of \$2,500 shall be approved in writing by the Owner prior to expenditure by the Construction Manager, which approval shall not be unreasonably withheld.

3.4(d)(8) Construction Manager's Contingency (CMC)

- (i.) The value of CMC included in the GMP shall be determined at each bid package as mutually agreed to by the Owner and the Construction Manager
- (ii.) If the actual Cost of the Work plus CMC exceeds the amount delineated in the GMP proposal, the difference shall be borne by the Construction Manager unless adjusted by Owner-approved Change Order.
- (iii.) All remaining (unspent and unbilled) CMC will be returned to the Owner at a time and in a manner mutually agreeable to the Owner and the Construction Manager and to be determined prior to the submittal of the CM's GMP for any portion of the Work.
- (iv.) The CMC may be reduced as work associated with various bid packages is completed

- (v.) Use of CMC in excess of \$2,500 must be agreed to, in writing, by the Owner prior to expenditure by the Construction Manager.

3.5 Construction Services

3.5(a) Bidding and Negotiation

3.5(a)(1) With the Consultant(s) assistance, the Construction Manager shall prepare and assemble document packets for use in bidding the Trade Contracts, subject to the Owner's approval for legal compliance.

3.5(a)(2) The Owner, in cooperation with the Construction Manager, shall develop Trade Contractor and supplier interest for each division of the Work and may elect to pre-qualify contractors for one or more of the trade contract bid packages. In the event the decision is made to pre-qualify, the CM shall pre-qualify proposed Trade Contractors using a pre-qualification form approved by the Owner and Consultant(s), which shall comply with the provisions of the Kentucky Model Procurement Code. Advertisement and award of contracts shall also conform to and be in compliance with the provisions of the Kentucky Model Procurement Code (KRS 45A.115).

3.5(a)(3) The Owner shall competitively bid each trade category only by invitation to Trade Contractors pre-qualified as described in Paragraph 3.5(a) (2) above. Proposals that may be received from Trade Contractors not so pre-qualified shall be evaluated as provided for by the Kentucky Model Procurement Code (KRS 45A.115).

3.5(a)(4) The Owner, in cooperation with the Construction Manager, shall conduct public bid and shall prepare a summary of the bid tabulation supported by a copy of all bids.

3.5(a)(5) The Construction Manager shall, for each subcontract, trade or bid division:

- (i) determine the final bid amounts, having reviewed and clarified the scope of Work in detail with the apparent low responsible and responsive bidders to determine that their bids are complete and represent the Best Value to the Owner but do not include duplicate scope items;
- (ii) prepare and furnish to the Owner a revised bid tabulation which includes by Trade Contract and/or bid division, the applicable final GMP estimate and the related final bid amount and the details of all scope clarifications for Owner's review and approval;
- (iii) if requested by Owner, provide a list of all potential Direct Purchase Materials for the Owner's consideration;
- (iv) identify to the Owner in writing the Trade Contractors to which the Construction Manager recommends award of subcontracts;
- (v) award and enter into a subcontract between itself and each Trade Contractor , using a contract form acceptable to the Owner and the Construction Manager, which it has recommended pursuant to Paragraph 3.5(a)(~~7~~ 6)(iii) unless otherwise notified by the Owner within five (5) business days after receipt by the Owner of the materials set forth in (ii) and (iii) above; and
- (vi) provide a copy of each subcontract agreement to the Owner upon execution.

3.5(a)(6) No portion of the work may be performed by the Construction Manager or its affiliates except with Owner's prior written approval and in compliance with the provisions of KRS 45A.

3.5(b) Construction Supervision

3.5(b)(1) Commencing with the award of the first subcontract and terminating on the date of Final Completion, the Construction Manager shall provide the services described in subsections 3.5(b)(2) through 3.5(b)(7).

3.5(b)(2) The Construction Manager shall, as the Owner's construction representative during construction, advise and consult with the Owner and the Consultant(s), and provide administration of the Construction Documents.

3.5(b)(3) The Construction Manager shall supervise and direct the Work at the Site. The Construction Manager shall, at a minimum, staff the Project Site with personnel who shall:

- (i) supervise and coordinate the Construction Manager's personnel and act as its primary liaison with the Owner and the Consultant(s);
- (ii) coordinate trade contractors and suppliers, and supervise Site construction management services. The Construction Manager shall continue the application of 3D BIM models developed by the consultants during design to fully coordinate the work of all subcontractors during construction. CM shall be solely responsible for organizing, arranging, and developing this 3D BIM coordination among all the subs during construction;
- (iii) be familiar with all trade divisions and trade contractors' scopes of Work, all applicable building codes, and the Construction Documents;
- (iv) check and review shop drawings and materials delivered to the Site, regularly review the Work to determine its compliance with the Construction, regularly confer with the appropriate Owner's consultant(s) to assure acceptable levels of quality;
- (v) prepare and maintain Project records including a daily log, process Project documents, and staff the Site field office;
- (vi) schedule and conduct weekly safety and progress meetings with Trade Contractors to review such matters as job safety and procedures, construction progress, schedule, shop drawing status and other information as necessary and provide notification of, and minutes from, such meetings to Owner and Consultant(s);
- (vii) schedule and conduct weekly (or less frequently at the sole discretion of the Owner) progress meetings with the Owner and Consultant(s) to review such matters as construction progress, schedule, shop drawing status and other information as necessary;
- (viii) record the progress of the Project and to that end, submit written monthly progress reports to the Owner and Consultant(s) and User Group Representative(s) including information on the Trade Contractors' Work, percentage of completion of the Work, current estimating, contract buyouts, computerized updated monthly Critical Path Method scheduling and Project accounting reports, including projected time to completion and estimated cost to complete the Work, and monthly digital progress photographs on compact disc to be used to display the progress on Owner's website; project directory, logs for Requests for Information (RFI), Submittals and shop drawings, Change Orders, cost change proposals, field directives, safety meetings, deficiencies, contract buyouts, weather conditions, and meeting minutes; and
- (ix) make provision for Project security to protect the Project site and materials stored off-site against theft, vandalism, fire and accidents as required by the General Conditions and applicable law.

3.5(b)(4) The Construction Manager shall promptly reject any Work which does not conform to the Contract Documents, or which, in accord with standard knowledge and practices in the construction industry, does not comply with any applicable law, statute, building code, rule or regulation of any public authority or agency. The Construction Manager shall immediately notify the Consultant(s) and the Owner in writing when it has rejected any work.

3.5(b)(5) The Construction Manager shall comply with and cause its Trade Contractors and suppliers to comply with the Project Construction Schedule and applicable sub-schedules. The Construction Manager shall obtain and review schedules from Trade Contractors and suppliers, coordinate these schedules with the Construction Schedule, and enforce compliance to insure timely completion of the Work. If at any time the Project is delayed, the Construction Manager shall immediately notify the Owner and the Consultant(s) of the probable cause(s) and make adjustments for corrective actions.

3.5(b)(6) The Consultant(s) will visit the Project Site at intervals appropriate to the stage of construction and with sufficient frequency to familiarize itself with the progress and quality of the Work and to inspect the Work. The Construction Manager or the Owner may request that the Consultant(s) visit the Site at additional times as the Owner deems necessary to attend meetings, inspect the Work, and render interpretations regarding the Work necessary for the proper execution of the Work. The Consultant(s)'s interpretations and decisions shall be final regarding the Final Construction Documents and the Work.

3.5(b)(7) The Construction Manager shall prepare the as-built record drawings and provide reasonable assistance to the Consultant(s) in the preparation of the final as-built documents.

3.5(c) Construction Manager's On-Site Facilities

3.5(c)(1) The Construction Manager shall provide any necessary facilities at the Project Site as required and approved by the Owner.

ARTICLE 4 COMPENSATION OF CONSTRUCTION MANAGER

4.1 Pre-Construction Services Fee

The Owner agrees to pay the Construction Manager, and the Construction Manager shall accept as complete payment for performance of Pre-Construction Services, the fee set forth on **Exhibit C**, payable pursuant to the schedule set forth thereon.

4.2 Compensation for Construction Services

The Owner shall pay, and the Construction Manager shall accept, as full and complete payment for the Construction Services, only the sum of the following elements – which shall not exceed the GMP – calculated in the order outlined in **Exhibit D**:

- (i) the aggregate net cost directly paid, or to be paid, by the Construction Manager to Trade Contractors pursuant to written subcontracts to perform the Work (the "Cost of the Work"), not to exceed the guaranteed maximum set forth on most current **Exhibit D**;
- (ii) the Construction Manager's Services Fee as set forth on most current Exhibit D;
- (iii) Authorized Expenditures from the Construction Manager's Contingency;
- (iv) Adjustments to the Guaranteed Maximum Price by Change Order.

4.2.1 Construction Manager's Services Fee

The Construction Manager's Services Fee includes the elements indicated and as defined below in 4.2.1(a), 4.2.1(b) and 4.2.1(c) and not indicated to be included in Trade Contracts.

4.2.1(a) Construction Manager's Staffing

4.2.1 (a)(1) Construction Manager staffing costs include and are limited to expenditures for the following items:

- (i) The cost of its supervisory, technical, administrative and clerical personnel engaged in supervision and management of the Work;
- (ii) CM staffing costs directly attributable to the Work with the exception of those specifically enumerated compensable as a General Conditions Cost or a Cost of the Work;
- (iii) reasonable expenses of the Construction Manager's personnel incurred while traveling in discharge of duties directly connected with the Work. Personal travel to residences elsewhere shall not be considered as travel directly associated with the work;
- (iv) any costs or expenses incurred by the Construction Manager, not included in the General Conditions Cost, for provision of management services necessary to complete the Project in an expeditious and economical manner consistent with the Contract for Construction.
- (v) in no event shall the Construction Manager's Fee include any costs and expenses except those described above.

4.2.1(b) General Conditions Cost

4.2.1(b)(1) General Conditions costs include the following items except for those costs subsequently assigned to one or more of the trade contracts:

- (i) costs, including transportation and 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; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall be provided at fair market value;
- (ii) costs incurred to provide site safety are to be included in Trade Contracts/GRs;
- (iii) costs of removal of debris from the site; are to be included in Trade Contracts/GRs
- (iv) costs of items/services for the benefit of the CM including document reproduction, 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;
- (v) that portion of insurance and bond premiums that can be directly attributed to the Construction Manager's Services Fee. Premiums shall be net of trade discounts, volume discounts, dividends and other adjustments – note that insurance costs shall be calculated based on the total construction cost and that the percentage-based derivation of Construction Manager's Contingency (CMC) does not include the cost of bonds & insurance. Bond costs shall represent the work preformed by the CM;
- (vi) all CM data processing costs directly related to the Work;
- (vii) the cost of obtaining and using telephone and data/internet required for the Work;

- (viii) the cost of crossing or protecting any public utility, if required, and as directed by the Owner are to be included in Trade Contracts/GRs.
- (ix) all reasonable costs and expenditures necessary for the operation of the CM Site office, such as stationary, supplies, furniture, fixtures, office equipment and field computer services;
- (x) the cost of secure off-site storage space or facilities; are to be included in Trade Contract/GRs.
- (xi) rental charges for temporary facilities, and for machinery, equipment, and tools not customarily owned by construction workers; however any rental charge shall not exceed the purchase price of such facilities, machinery, equipment or tools; are to be included in Trade Contract/GRs.
- (xii) cost of surveys, measurements and layout work reasonably required for the execution of the Work or by the Construction Documents; are to be included in Trade Contract/GRs, and

4.2.1(b)(2) Legal costs incurred in connection with disputes solely between the Construction manager and the Owner or incurred in connection with disputes solely between the Construction Manager and Trade Contractors are the responsibility of the Construction Manager, are not compensable and shall not be included in the Guaranteed Maximum Price.

4.3 Compensation for Change Orders.

4.3(a) Amounts owed by the Owner to the Construction Manager shall be adjusted by duly authorized Change Order.

4.3(a)(1) Increase In Cost of Work. If the Cost of the Work is increased by Change Order, the Owner shall pay the Construction Manager the net cost directly paid by the Construction Manager to Trade Contractors or suppliers for the performance of the Work and the Construction Manager shall receive Construction Manager's Services Fee on such amount, as a percentage as set forth in Exhibit C, or as mutually agreed to by the CM and the Owner, and an amount for any increased bond and insurance costs associated therewith.

4.3(a) (2) Decrease in Cost of Work. If the Cost of the Work is decreased by Change Order, payment due from the Owner to the Construction Manager shall be reduced by the amount the Construction manager is no longer obligated to pay Trade Contractors and/or suppliers for performance of the Work and the Owner shall receive a refund of the Construction Manager's Services Fee as Mutually Agreed to by the Owner and the CM.

4.3(a)(3) Change Order - Time & Material. For Change Orders approved by a Owner to be performed by the Construction Manager on a time-and-materials basis pursuant to the General Conditions, the Owner shall pay the Construction Manager the actual incurred cost and expenses paid to those Trade Contractors and suppliers performing the Work, plus an increase in Construction Manager's Services Fee set forth on Exhibit C and an amount for any increased bond and insurance costs associated therewith.

4.4 Funding Sources and Change Types. The following are general/typical categorizations of the types of change conditions and the means of funding within the GMP. The status of the project, the relative status of each funding source, and the current and projected risk born by each party shall be considered in deciding which funding source will be used to fund particular proposed changes. Changes funded by Construction Manager's Contingency (CMC) are not eligible for additional Construction Manager Construction Manager's Services Fee. Changes due to errors or omissions by the Construction Manager or its sub-contractors or damages thereby caused to other work are not eligible for reimbursement.

4.4(a) CM Contingency

- (i) reasonable schedule recovery;
- (ii) means, methods, and materials reasonably inferred from the construction documents;
- (iii) Trade Contractor non-performance or default;
- (iv) other costs incurred by the Construction Manager that are not allocable as "cost of work" items or included in the General Conditions or Construction Manager's Staffing; and
- (v) any costs or expenses incurred by the Construction Manager, not included in the General Conditions Cost, for provision of management services necessary to complete the Project in an expeditious and economical manner consistent with the Contract for Construction and the best interests of Owner.

4.4(b) Scope Gaps The Construction Manager shall be responsible for the cost scope gaps or work omitted from bid packages that was clearly included in the design but was omitted from bid packages during the preparation of bid package scopes. The only exception to this responsibility would be if the omission is directly related to last minute changed to the design documents or changes to the documents after the bid package scope is prepared. The cost of these scope gaps shall not be charged to the CM contingency.

4.5 Applications for payment shall be made in accordance with Article 30 of the General Conditions to the Contract.

4.6. Prior to submitting the first application for payment, the Construction Manager shall prepare and present to the Owner and the Consultant(s) for approval a draft Schedule of Values for payment in the form set forth in **Exhibit E**.

4.7 Upon receipt of the Construction Manager's invoice, properly prepared the Owner shall pay the Construction Manager the amount approved by Consultant(s), less retainage, unless there is a dispute about the amount of compensation due to the Construction Manager.

ARTICLE 5 LIQUIDATED DAMAGES FOR DELAY

5.1 Inasmuch as failure to Substantially Complete the Work within the time fixed on the final Exhibit D executed after completion of all design phases and associated bidding will result in injury to the Owner, and as damages arising from such failure cannot be calculated with any degree of certainty, it is agreed that if the Work is not Substantially Completed within the time provided in Article 3.4(c) above, or within such further time, if any, as shall be allowed for time extensions in accordance with the provisions of the Contract for Construction, the Construction Manager shall pay to the Owner as liquidated damages for such delay, and not as a penalty, the amount set forth in **Exhibit D** for each calendar day elapsing between the date fixed for Substantial Completion and the date such Substantial Completion is fully accomplished. The parties agree that said liquidated damages are reasonable given existing circumstances, including, without limitation, the range of harm that is foreseeable and the anticipation that proof of damages would be costly and impractical.

5.2 The liquidated damages shall be payable in addition to any excess expenses or costs payable by the Construction Manager to the Owner under the provisions of the General Conditions, and shall preclude the recovery of damages by the Owner under other provisions of the Contract, including claims related to Construction Manager's delays in Substantial Completion. Owner's right to receive liquidated damages shall in no manner affect the Owner's right to terminate the Agreement. The Owner's exercise of the right to terminate shall not release the Construction manager from the obligation to pay said liquidated damages incurred to date. It is further agreed that the Owner may deduct from the balance remaining for payment to the Construction manager, the liquidated damages stipulated herein, or such portion thereof as the remaining balance will cover.

ARTICLE 6 PERSONNEL, TRADE CONTRACTOR AND SUPPLIER CHARTS

6.1 The Construction Manager has provided as **Exhibit E**, the Construction Manager's personnel chart which lists by name, job category, responsibility and hourly rate, the Construction Manager's primary employees who will work on the Project as listed in Construction Manager's Professional Qualifications Supplement submitted to Owner during the Construction Manager selection process. The Construction Manager shall promptly request to the Owner, in writing, any proposed staffing replacement or addition, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s) or addition(s) for the Owner's written approval or rejection.

6.2 Prior to the award of initial trade contracts, the Construction Manager shall prepare and provide to Owner the Construction Manager's Trade Contractors and Suppliers Chart which lists by name and general Project responsibility each Trade Contractor and supplier who will be utilized by the Construction Manager to provide goods or services with respect to the Project. The Construction Manager shall not enter into any agreement with any Trade Contractor or supplier to which the Owner raises a reasonable, timely objection; and shall promptly inform the Owner in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). The Owner shall have the right, in its reasonable discretion, to reject any proposed replacement. This Trade Contractors and Suppliers Chart shall be updated and re-submitted as remaining trade contracts are awarded.

ARTICLE 7 INSURANCE AND BONDS

7.1 The Construction Manager shall provide the insurance and payment and performance bonds as required in the General Conditions.

ARTICLE 8 MISCELLANEOUS PROVISIONS

8.1 The Owner and Construction Manager respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Construction Manager shall assign this Agreement without the prior written consent of the other.

8.2 This Agreement shall be governed by, and construed under, the laws of the Commonwealth of Kentucky, without regard to its choice of law provisions, and venue shall lie in the Circuit Court in Campbell County, Kentucky.

8.3 The Construction Manager represents and warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the Construction Manager) to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation individual or firm (other than a bona fide employee

working solely for the Construction Manager) any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

8.4 deleted

8.5 All capitalized terms used herein but not defined herein shall have the meaning ascribed thereto in the General Conditions.

8.6 Owner is an equal opportunity institution and, as such, encourages the use of Minority Business Enterprises (“MBEs”) in the provision of construction related services. MBEs should have a fair and equal opportunity to compete for dollars spent by the Commonwealth of Kentucky to procure construction-related services. Competition ensures that prices are competitive and a broad vendor base is available.

8.7 Notwithstanding anything to the contrary contained in this Agreement, Owner may elect to implement a direct purchase program whereby it may purchase materials and equipment included in any Trade Contractor’s bid for a portion of the Work directly from the supplier of such materials or equipment in order to achieve sales tax savings. Such materials and equipment are referred to herein as “Direct Purchase Materials”. If Owner elects to implement a direct purchase program it shall so notify Construction Manager, in writing, and the terms of this paragraph shall govern such program. At the time Construction Manager provides Owner with the bid tabulation analysis as required by this Agreement (which bids shall include the cost of all potential Direct Purchase Materials and sales taxes applicable thereto), Construction Manager shall submit to Owner a list, subdivided as to applicable Trade Contractors, of materials and equipment appropriate for consideration by Owner as Direct Purchase Materials. If Owner elects to purchase any Direct Purchase Materials, it shall so notify Construction Manager and Construction Manager shall thereafter promptly furnish to Owner, at least fourteen (14) days prior to the date such Direct Purchase Materials must be ordered, a purchase order reflecting the approved Direct Purchase Materials, together with acceptable evidence that Construction Manager competitively bid for the portion of the Work which includes the Direct Purchase Materials as required by this Agreement. Acceptable evidence means, at a minimum, that Construction Manager performed all advertising required by this Agreement, utilized the pre-qualification criteria approved by Owner and obtained at least three (3) sealed written quotes from various bidders for the applicable portions of the Work or, if not, provides a written explanation as to why this was not done. In addition, the Construction Manager shall reduce the applicable Trade Contractor’s contract amount by the cost of the Direct Purchase Materials and sales tax related thereto. Upon Owner’s receipt of the purchase order and supporting materials, Owner will review the same and, if approved, issue a purchase order directly to the supplier of the applicable Direct Purchase Material, with delivery F.O.B. Project site. Upon delivery of the Direct Purchase Materials to the Project site, Construction Manager shall ensure that the Direct Purchase Materials are as requested in Owner’s purchase order and if so, Owner will take title to the Direct Purchase Materials and Construction Manager shall forward the approved invoices and associated back-up documentation to Owner. Owner will process these invoices and issue payment directly to the applicable supplier. Construction Manager shall obtain builder’s risk insurance on the Direct Purchase Materials naming Owner as the insured or an additional insured, provided Owner shall reimburse Construction Manager for the cost of such insurance as provided by this Agreement. Except to the extent modified by this section, Construction Manager shall be responsible for satisfying all of its other obligations with respect to the Direct Purchase Materials pursuant to this Agreement, as if the Direct Purchase Materials had been purchased by it. Additional charge to Owner for services provided pursuant to this paragraph shall be mutually agreeable to the Owner and Construction Manager, and authorized by Change Order.

8.8 All exhibits referenced herein are attached hereto and incorporated herein by reference.

8.9 The Construction Manager shall participate in and cooperate with commissioning, validation, and other quality assurance and quality control processes, at no additional cost to the Owner.

8.10 Audits

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

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

- (i) Compliance with contract requirements for deliverables;
- (ii) Compliance with approved plans and specifications;
- (iii) Compliance with Owner's business ethics expectations;
- (iv) Compliance with contract provisions regarding the pricing of change orders;
- (v) Accuracy of contractor representations regarding the pricing of invoices; and
- (vi) Accuracy of contractor representations related to claims submitted by the contractor or any of his payees.

8.10(c) The Construction Manager shall require all payees (examples of payees include Trade Contractors, vendors, and/or material suppliers) to comply with the provisions of this article by including the requirements hereof in a written contract agreement between the Construction Manager and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-Subcontractors, material suppliers, etc. The Construction Manager will cooperate fully and will cause all Related Parties and all of the Construction Manager's subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time

whenever requested, in an expeditious manner, any and all such information, materials and data.

8.10(d) Owner's authorized representative or designee shall have reasonable access to the Construction Manager's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract and shall be provided adequate and appropriate work space in order to conduct audits in compliance with this article.

8.10(e) If an audit inspection or examination, in accordance with this article, discloses overpricing or overcharges (of any nature) by the Construction Manager to the Owner the overcharges shall be reimbursed to the owner by the construction manager. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within Ninety (90) Calendar Days from presentation of Owner's findings to Construction Manager.

8.10(f) The contractor, as defined in KRS 45A.030 (9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Furthermore, any books, documents, papers, records, or other evidence provided to the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission which are directly pertinent to the contract shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1)(c) prior to the execution of the contract. The Secretary of the Finance and Administration Cabinet shall not restrict the public release of any information that would otherwise be subject to public release if a state government agency were providing the service. (22 Ky.R. 1510; eff. 5-16-96; 30 Ky.R. 682; 1468; eff. 1-5-2004.)

8.12 Any modifications to this Agreement are set forth on **Exhibit G**.

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EXHIBIT A

Project & Construction Documents`

1.1 Description of Project.

Project No: NKU-71-18
Project Name: Construct New Residence Hall
Location/Address: Northern Kentucky University
Highland Heights, KY
Program: Approved Facilities Program, dated:

2.1 Additional Documents.

1. GMP Proposal dated:

Exhibit B

Project Design Schedule for CM Pre-Construction Services

3.4(a)(1). Project Design Schedule:

PHASE	Duration *
(PD) Pre-Design Phase	
PD Budget & Program Evaluation	
(SD) Schematic Design	
SD Construction Cost Estimate Report	
Life Cycle Analysis and Report	
(DD) Design Development Phase	
DD Construction Cost Estimate Report	
(25% CD) 25% Construction Documents (for fee approval)	
CD Construction Cost Estimate Report	
(75% CD) 75% Construction Documents (for fee approval)	
Early Trade Contract bid packages (Site Utilities/Foundation)	
Early Trade Contract bid packages ()	
Early Trade Contract bid packages ()	
(100% CD) 100% Construction Documents	
Bid Document Set	

* Duration: in calendar days.

EXHIBIT C

Authorization for Pre-Construction Services

3.4(a)(2) Schedule for Schematics Phase Letter and Subsequent Design Phase Reports

- (i). Schematics Phase Letter:
_____ (__) calendar days after delivery of Schematics from Consultant(s)
- (ii). Schematics Phase Report:
_____ (__) calendar days after delivery of Schematics Phase from Consultant(s)
- (iii). Design Development Phase Report:
_____ (__) calendar days after delivery of Design Development Documents from Consultant(s)
- (iv). 100% Construction Documents Phase Letter:
_____ (__) calendar days after delivery of Construction Documents from Consultant(s)

3.4(b) Initial Construction Schedule Deadline

With Schematic Design submittal or

3.4(c)(1) GMP Proposal Submittal Deadline

Within 15 working days after receipt of bids.

3.4(d) Construction Manager's Contingency (CMC) for the project shall be no greater, as a percentage of the estimated or guaranteed maximum Cost of the Work, than the following at each design phase. CMC allocated for individual bid packages shall be determined by the Construction Manager and approved by the Owner. CMC shall be reduced upon completion of bidding as described in **Exhibit D**.

- ten percent (10%) at Programming and Schematic Design
- seven percent (7%) at Design Development
- five percent (5%) at the time the final GMP proposal is submitted (may be adjusted down based upon dollar value of work previously completed.)

4.1 Pre-Construction Services Fee

For pre-construction services, the lump sum amount of _____
dollars (\$ _____), to be paid at the satisfactory completion of the following phases:

PHASE	FEE
(P) Programming	N/A
(SD) Schematic Design	\$ _____
(DD) Design Development	\$ _____
(GMP CD) 100% construction Documents / Acceptance of GMP	\$ _____
Total:	\$ _____

4.2 The Construction Manager's Construction Services Fee shall be established as the following maximum percentage of the guaranteed maximum Cost of the Work plus Construction Manager's Contingency (CMC) as set forth in **Exhibit D**: _____ (_____%), and shall apply in the same manner as described above to all additive change orders or as mutually agreed to by the Owner and the Construction Manager.

EXHIBIT D See Attached.

EXHIBIT E Schedule of Values -- To be issued with first Pay Application.

EXHIBIT F Construction Manager's Personnel Chart.

EXHIBIT G CHANGES

Exhibit D

Authorization for Construction

Pursuant to the Agreement between Northern Kentucky University (“Owner”) and _____ (“Construction Manager”) for the construction of the Northern Kentucky University, Construct New Residence Hall, the Scope of Work under this authorization for Construction to include Bid Package # __, Titled _____, the Owner and the Construction Manager hereby execute this Exhibit D and further agree as set forth below.

Construction Manager shall commence the work within ten (10) calendar days after the date indicated on the Notice to Proceed along with the Exhibit D issued by Owner. The date of Substantial Completion shall be: May 15, 2020.

The date of Final Completion shall be sixty (60) days after the date of Substantial Completion.

Interim completion dates may be established by the Construction Manager and the Owner for completion (and liquidated damages if any) for individual bid packages to support the substantial and final completion dates of the building. Application of the Liquidated Damages for which the Construction Manager is responsible as defined in Para 5.1 shall be based upon a May 15, 2020 substantial completion date.

Ref: Contract Paragraph	Item	Amount
3.4(d)(7)	a. Cost of the Work	\$0
	b. Adjusted Cost of the Work form Previous GMP (line c from previous Exhibit D)	\$0
	c. Adjusted Cost of the Work (sum of lines a + b)	\$0
3.4(d)(8)	d. CM Contingency (CMC) (line c * __%) <i>CM Contingency percentage will periodically decrease as the project progresses towards substantial completion.</i>	\$0
	e. Subtotal (sum of lines c + d)	\$0
3.4(d)(7) & 4.2.1	f. Construction Manager’s Service Fees/Overhead & Profit (e x __%) <i>This single percentage shall include <u>ALL</u> markups, General Conditions CM Service Fees, CM Staffing Cost, Insurance, Sub-guard, Bonds, etc.</i>	\$0
3.4(d)	g. Guaranteed Maximum Price (sum of e + f)	\$ _____

5.1 Liquidated Damages for Delay Amount

- 5.1.1 The Construction Manager and the Construction Manager's Surety shall be liable for and shall pay the Owner the fixed amount of \$37,500 (\$125/Bed/Day) as Liquidated Damages for each Calendar day of unexcused delay until the Work is substantially complete.
- 5.1.2 Ninety Calendar days after the date Substantial Completion is achieved, the Construction Manager's Surety shall be liable for and shall pay the Owner the fixed amount of \$10,000 as liquidated Damages for each calendar day of unexcused delay until the Work achieves Final Completion.