

March 5, 2024

Senator Rick Girdler, Co-Chair
Representative Deanna Frazier Gordon, Co-Chair
Capital Projects and Bond Oversight Committee
Legislative Research Commission
Capitol Annex Building – Room 136
702 Capitol Avenue
Frankfort, Kentucky 40601

Subject: Sundry Research, Scientific and Medical Equipment

Dear Senator Girdler, Representative Frazier Gordon and Honorable Members of the Capital Projects and Bond Oversight Committee:

Pursuant to KRS §45.760(5), the University of Kentucky hereby reports the purchase of the following items of medical equipment in excess of \$200,000. All three items of equipment will be located at UK HealthCare Albert B. Chandler Hospital. Money specifically budgeted and appropriated by the General Assembly for another purpose or program was not used to acquire these items.

- A BK5000 ultrasound system has been purchased from BK Medical. The ultrasound system delivers high resolution images enabling increased efficiency and outcomes for neurosurgical, urological and surgical procedures. This equipment replaces a failed unit. The total cost of the medical equipment was \$248,168.50 and was purchased with restricted funds.
- A Philips laser system has been purchased from Philips Healthcare. The laser system supports a broad range of clinical applications by safely and reliably photoablating a wide variety of tissues allowing for individualized treatment of cardiovascular disease. This equipment replaces a unit at the end of useful life. The total cost of the medical equipment was \$219,512 and was purchased with restricted funds.
- A RS 3400 OWD blood irradiator has been purchased from Rad Source Technologies, Inc. The RS3400 uses x-rays to irradiate cellular blood components prior to transfusion to prevent associated complications. This equipment will replace a cesium blood irradiator as part of the Department of Energy's Cesium Irradiator Replacement Program whose goal is to eliminate blood irradiation devices that rely on cesium chloride by 2027. The total cost of the medical equipment was \$249,544 and was purchased with restricted funds.

Please advise if you have any questions or if you would like additional information.

Sincerely,



Angela Martin
Vice President for Financial Planning and Chief Budget Officer

cc: Elizabeth Baker
Teresa Centers



February 27, 2024

Capital Projects and Bond Oversight Committee
702 Capital Avenue, Room 34, Capitol Annex
Frankfort, KY 40601

RE: \$2,600,000 Ashland Independent School District Finance Corporation
School Building Revenue Bonds, Series of 2024

Please find enclosed a Bond Payee Disclosure Form and Plan of Financing related to the above-referenced series of Bonds. The Bonds will be used to finance improvements at Putnam Stadium.

We would like to go ahead and submit the plan to Bond Oversight so that we will be ready to proceed with the bond sale shortly. The Bonds will be funded with 100% Local Funds.

Please process this bond disclosure form for review by the Bond Oversight Committee at the next meeting. Should you have any questions or require any additional information, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read 'L Theinert', with a long horizontal flourish extending to the right.

Lincoln Theinert

Enclosures

147 East Third Street
Lexington, KY
40508

859/977-6600

fax: 859/381-1357

www.rsamuni.com

BOND PAYEE DISCLOSURE FORM

Par Amount:	\$2,600,000	
District	Ashland Independent School District	
Issue Name:	School Building Revenue Bonds, Series 2024	
Purpose:	Improvements at Putnam Stadium	
Projected Sale Date:	Q2 2024	
First Call Date:	8 Years at par	
Method of Sale:	Competitive Bids	
Place/time of sale:	Parity /SFCC, Frankfort, Ky. / TBD	
Bond Rating:	Moody's: "A1"	
Bond Counsel:	Steptoe and Johnson, Louisville, KY	
Fiscal Agent:	RSA Advisors LLC, Lexington, Kentucky	
Date received by SFCC:	/ /	<i>To be filled in by SFCC</i>
Date scheduled for Committee review:	/ /	<i>To be filled in by SFCC</i>

	SFCC Portion	Local Portion	Total
Estimated par amount of Bonds:	\$0	\$2,600,000	\$2,600,000
% Share of total Bonds:	0.00%	100.00%	100.00%
Estimated average annual debt service:	\$0	\$185,676	\$185,676
Estimated debt service reserve:	\$0	\$0	\$0

Estimated Cost of Issuance:

	SFCC	Local	Total
Fiscal Agent, Bond Counsel, etc	\$0	\$23,400	\$23,400
Special Tax Counsel	\$0	\$0	\$0
Number verifications	\$0	\$0	\$0
Bond Rating & Bank Fee	\$0	\$11,550	\$11,550
Underwriter's Discount	\$0	\$52,000	\$52,000
Credit Enhancement	\$0	\$0	\$0
Total Cost of Issuance:	\$0	\$86,950	\$86,950

Anticipated Interest Rates:

5 Years: 3.000% 10 Years: 3.200% 15 Years: 3.850%
 20 Years: 4.075%

Notes: No Tax Increase required



March 18, 2024

Capital Projects and Bond Oversight Committee
702 Capital Avenue, Room 34, Capitol Annex
Frankfort, KY 40601

RE: \$2,000,000 Casey County School District Finance Corporation
School Building Revenue Bonds, Series of 2024

Please find enclosed a Bond Payee Disclosure Form and Plan of Financing related to the above-referenced series of Bonds. The Bonds will be used to finance High School Athletic Improvements.

We would like to go ahead and submit the plan to Bond Oversight so that we will be ready to proceed with the bond sale shortly. The Bonds will be funded with 100% Local Funds.

Please process this bond disclosure form for review by the Bond Oversight Committee at the next meeting. Should you have any questions or require any additional information, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read 'L Theinert', with a long horizontal flourish extending to the right.

Lincoln Theinert

Enclosures

147 East Third Street
Lexington, KY
40508

859/977-6600

fax: 859/381-1357

www.rsamuni.com

BOND PAYEE DISCLOSURE FORM

Par Amount:	\$2,000,000	
District	Casey County School District	
Issue Name:	School Building Revenue Bonds, Series 2024	
Purpose:	High School Athletic Improvements	
Projected Sale Date:	Q2 2024	
First Call Date:	8 Years at par	
Method of Sale:	Competitive Bids	
Place/time of sale:	Parity /SFCC, Frankfort, Ky. / TBD	
Bond Rating:	Moody's: "A1"	
Bond Counsel:	Steptoe and Johnson, Louisville, KY	
Fiscal Agent:	RSA Advisors LLC, Lexington, Kentucky	
Date received by SFCC:	/ /	<i>To be filled in by SFCC</i>
Date scheduled for Committee review:	/ /	<i>To be filled in by SFCC</i>

	SFCC Portion	Local Portion	Total
Estimated par amount of Bonds:	\$0	\$2,000,000	\$2,000,000
% Share of total Bonds:	0.00%	100.00%	100.00%
Estimated average annual debt service:	\$0	\$152,588	\$152,588
Estimated debt service reserve:	\$0	\$0	\$0

Estimated Cost of Issuance:

	SFCC	Local	Total
Fiscal Agent, Bond Counsel, etc	\$0	\$21,000	\$21,000
Special Tax Counsel	\$0	\$0	\$0
Number verifications	\$0	\$0	\$0
Bond Rating & Bank Fee	\$0	\$11,550	\$11,550
Underwriter's Discount	\$0	\$40,000	\$40,000
Credit Enhancement	\$0	\$0	\$0
Total Cost of Issuance:	\$0	\$72,550	\$72,550

Anticipated Interest Rates: 5 Years: 3.000% 10 Years: 3.080% 15 Years: 3.600%
 20 Years: 3.900%

Notes: No Tax Increase required



February 28, 2024

Ms. Katherine Halloran
700 Capital Avenue
Frankfort, Kentucky 40601

Re: Reporting of Bond Issuance Costs to the Capital Projects and Bond Oversight
Committee ("Bond Oversight Committee")

Dear Ms. Halloran:

Enclosed please find a Bond Payee Disclosure form for the following bond issue:

\$5,860,000 (est.)
Davie County
School District Finance Corporation
School Building Revenue Bonds,
Series 2024

Please be advised that the enclosed costs are estimated. Actual costs will not be known until the bonds are sold. Please be advised that no tax increases are necessary to support this financing.

We hereby request that the above bond issue be considered by the Bond Oversight Committee at its next meeting.

If you need any additional information, please call me at 502.588.1829.

Sincerely,

/s/ Grant Needham

Grant Needham
Baird Public Finance

BOND PAYEE DISCLOSURE FORM

Par Amount:	\$5,860,000
Issue Name:	Daviess County School District Finance Corporation School Building Revenue Bonds, Series 2024
Purpose:	Financings related to the funding of various District-wide energy savings projects, a cafeteria expansion, roof repairs, and asphalt tracks
Projected Sale Date of Bonds:	March / April 2024
First Call Date:	TBD
Method of Sale:	Competitive
Place/Time of Sale:	TBD
Bond Rating:	Expected "A1" – Moody's
Bond Counsel:	Rubin & Hays
Fiscal Agent:	Baird

Date Received by SFCC:

/ /
/ /

To be filled in by SFCC

Date Scheduled for Committee Review:

/ /

To be filled in by SFCC

	SFCC Portion	Local Portion	Total
Estimated par amount of Bonds:	-	\$5,860,000	\$5,860,000
% Share of total Bonds:	-	100%	100%
Estimated average annual debt service:	-	424,747	424,747
Estimated debt service reserve:	-	-	-
Estimated Costs of Issuance ⁽¹⁾:			
Fiscal Agent, Bond Counsel, Advertisements, Printing, etc.	-	36,440	36,440
Special Tax Counsel	-	-	-
Number Verifications	-	-	-
Bond Rating	-	20,000	20,000
Underwriter's Discount	-	117,200	117,200
Paying Agent/Escrow Agent Bank	-	4,000	4,000
Total Cost of Issuance:	-	\$177,640	\$177,640

Anticipated Interest Rates:

1 Years: 3.51%	5 Years: 3.09%
10 Years: 3.35%	20 Years: 4.25%

(1) Actual costs will not be known until the bonds are sold.



March 19, 2024

Capital Projects and Bond Oversight Committee
702 Capital Avenue, Room 34, Capitol Annex
Frankfort, KY 40601

RE: \$3,100,000 Pineville Independent School District Finance Corporation
School Building Revenue Bonds, Series of 2024

Please find enclosed a Bond Payee Disclosure Form and Plan of Financing related to the above-referenced series of Bonds. The Bonds will be used to finance High School Improvements.

We would like to go ahead and submit the plan to Bond Oversight so that we will be ready to proceed with the bond sale shortly. The Bonds will be funded with 100% Local Funds.

Please process this bond disclosure form for review by the Bond Oversight Committee at the next meeting. Should you have any questions or require any additional information, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read 'L Theinert', with a long horizontal flourish extending to the right.

Lincoln Theinert

147 East Third Street
Lexington, KY
40508

859/977-6600

fax: 859/381-1357

www.rsamuni.com

Enclosures

BOND PAYEE DISCLOSURE FORM

Par Amount:	\$3,100,000	
District	Pineville Independent School District	
Issue Name:	School Building Revenue Bonds, Series 2024	
Purpose:	High School Improvements	
Projected Sale Date:	Q2 2024	
First Call Date:	8 Years at par	
Method of Sale:	Competitive Bids	
Place/time of sale:	Parity/SFCC, Frankfort, Ky. / TBD	
Bond Rating:	Moody's: "A1"	
Bond Counsel:	Steptoe and Johnson, Louisville, KY	
Fiscal Agent:	RSA Advisors LLC, Lexington, Kentucky	
Date received by SFCC:	/ /	<i>To be filled in by SFCC</i>
Date scheduled for Committee review:	/ /	<i>To be filled in by SFCC</i>

	SFCC Portion	Local Portion	Total
Estimated par amount of Bonds:	\$0	\$3,100,000	\$3,100,000
% Share of total Bonds:	0.00%	100.00%	100.00%
Estimated average annual debt service:	\$0	\$243,759	\$243,759
Estimated debt service reserve:	\$0	\$0	\$0

Estimated Cost of Issuance:

Fiscal Agent, Bond Counsel, etc	\$0	\$25,400	\$25,400
Special Tax Counsel	\$0	\$0	\$0
Number verifications	\$0	\$0	\$0
Bond Rating & Bank Fee	\$0	\$17,350	\$17,350
Underwriter's Discount	\$0	\$62,000	\$62,000
Credit Enhancement	\$0	\$0	\$0
Total Cost of Issuance:	\$0	\$104,750	\$104,750

Anticipated Interest Rates:

5 Years: 3.250% 10 Years: 3.450% 15 Years: 4.050%
20 Years: 4.250%



March 18, 2024

Ms. Katherine Halloran
700 Capital Ave
Frankfort, Kentucky 40601

Re: Reporting of Bond Issuance Costs to the Capital Projects and Bond Oversight
Committee ("Bond Oversight Committee")

Dear Ms. Halloran:

Enclosed please find a Bond Payee Disclosure form for the following bond issue:

\$5,250,000 (est.)
Scott County
School District Finance Corporation
School Building Revenue Bonds,
Series of 2024

Please be advised that the enclosed costs are estimated. Actual costs will not be known until the bonds are sold. Please be advised that no tax increases are necessary to support this financing.

We hereby request that the above bond issue be considered by the Bond Oversight Committee at its next meeting.

If you need any additional information, please call me at 502.588.1829.

Sincerely,

/s/ Grant Needham

Grant Needham
Baird Public Finance

BOND PAYEE DISCLOSURE FORM

Par Amount:	\$5,250,000
Issue Name:	Scott County School District Finance Corporation School Building Revenue Bonds, Series of 2024
Purpose:	Renovation and conversion of the old Scott County High School into the Scott County Middle School
Projected Sale Date of Bonds:	Spring 2024
First Call Date:	TBD
Method of Sale:	Competitive
Place/Time of Sale:	TBD
Bond Rating:	Expected "Aa3 Und/A1 Enh" – Moody's
Bond Counsel:	Steptoe and Johnson
Fiscal Agent:	Baird
Architect/Engineer	Clotfelter-Samokar Architects

Date Received by SFCC:

/	/	/
/	/	/

To be filled in by SFCC

Date Scheduled for Committee Review:

/	/	/
/	/	/

To be filled in by SFCC

	SFCC Portion	Local Portion	Total
Estimated par amount of Bonds:	-	\$5,250,000	\$5,250,000
% Share of total Bonds:	-	100.0%	100.0%
Estimated average annual debt service:	-	\$374,064	\$374,064
Estimated debt service reserve:	-	-	-
Estimated Costs of Issuance ⁽¹⁾:			
Fiscal Agent, Bond Counsel, Advertisements, Printing, etc.	-	\$34,000	\$34,000
Special Tax Counsel	-	-	-
Number Verifications	-	-	-
Bond Rating	-	16,000	16,000
Underwriter's Discount	-	105,000	105,000
Paying Agent/Escrow Agent Bank	-	4,000	4,000
Total Cost of Issuance:	-	\$159,000	\$159,000

Anticipated Interest Rates:

5 Years: 2.90%	10 Years: 3.15%
15 Years: 3.78%	20 Years: 4.09%

(1) Actual costs will not be known until the bonds are sold.



Administration and Finance / CFO
Lucas Administrative Center 836
Nunn Drive
Highland Heights, Kentucky 41099
(859) 572-5208
nku.edu

February 28, 2024

Senator Rick Girdler, Co-Chair
Representative Deanna Frazier Gordon, Co-Chair
Capital Projects and Bond Oversight Committee
Room 136, Capitol Annex
702 Capitol Avenue
Frankfort, Kentucky 40601

Re: Northern Kentucky University – RFP for Construction Manager as General Contractor Services
Expand Herrmann Science Center

Dear Senator Girdler and Representative Frazier Gordon and Members of the Capital Projects and Bond Oversight Committee:

Pursuant to KRS 45A.180(2), this letter is written to report to the members of the Capital Projects and Bond Oversight Committee of Northern Kentucky University's intent to use the Construction Manager as General Contractor project delivery method for construction of Northern Kentucky University's Herrmann Science Center Expansion project. A copy of the RFP is included with this letter.

We would be happy to provide additional information regarding this process.

Sincerely,

A handwritten signature in blue ink that reads 'Barry Kienzle'.

Barry Kienzle
Interim Vice President, Administration & Finance



Construction Manager as General Contractor Services

for

Northern Kentucky University

Science Center Expansion

November 14, 2023

NKU-13-2024



NOTICE:

1. It is the intention of this Request for Proposal (RFP) to enter into competitive negotiation as authorized by KRS 45A.085 and 200 KAR 5:307 for Construction Manager/General Contractor Services.
2. Proposals for competitive negotiation shall not be subject to public inspection until negotiations between the purchasing agency and all Offerors have been concluded and a contract awarded to the responsible Offeror submitting the proposal determined in writing to be the most advantageous to the University, price and the evaluation factors set forth in the advertisement and solicitations for proposals considered.
3. An award of contract for Construction Management/General Contractor Services may be made upon the basis of the initial written proposals received without written or oral discussions. Contracts resulting from this RFP must be governed by and in accordance with the laws of the Commonwealth of Kentucky. The contents of the successful proposal shall become part of any contract awarded.
4. The University reserves the right to request proposal amendments or modifications after the proposal receiving date.
5. Any agreement or collusion among Offerors or prospective Offerors which restrain, tends to restrain, or is reasonably calculated to restrain competition by agreement to bid at a fixed price, or to refrain from bidding, or otherwise, is prohibited.
6. Any person who violates any provisions of KRS 45A.325 shall be guilty of a felony and shall be punished by a fine 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 which violates any of the provisions of KRS 45A.325 shall be, upon conviction, fined not less than ten thousand dollars nor more than twenty thousand dollars.
7. The Request for Proposals for Construction Management/General Contractor Services shall be conducted in a two-step process as outlined herein.

SIGNATURE REQUIRED: A proposal will not be considered valid unless the Offeror signs and prints or types the required information in the space provided below. Offers signed by an agent are to be accompanied by evidence of his authority unless such evidence has been previously furnished to the issuing office.

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- 10.1 Lump Sum Proposal for Pre-Construction Services
- 10.2 Lump Sum Proposal for Construction Services
- 10.3 Authentication of bid and Statements of Non-Collusion and Non-Conflict of Interest Form

ATTACHMENTS

- Attachment "A" – Link to download background information about project: https://omniarchitects-my.sharepoint.com/:f:/p/jody/EjBN7VyxzFpJsXrIJ2sy1BwBZY7qF1JJPJZv3_z3w2wEeA?e=kMzXZk
- Attachment "B" – GENERAL CONDITIONS – CM/GC
- Attachment "C" –CONTRACT AGREEMENT BETWEEN THE OWNER AND CONSTRUCTION MANAGER/ GENERAL CONTRACTOR

1.0 DEFINITIONS

The term "**addenda**" means written or graphic instructions issued by the 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**" or "**Respondent**" means the entity or Construction Manager/General Contractor submitting proposal.

The terms "**Owner**", "**University**" and "**NKU**" means Northern Kentucky University.

The term "**Construction Manager**" or "**Construction Manager/General Contractor (CM/GC)**" 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 for a lump sum Services Fee. The CM/GC will be responsible for establishing a contracted guaranteed maximum price by soliciting Bid Package Proposals from Trade Contractor. The CM/GC shall execute and hold all construction Trade Contracts and Purchase Orders for the Project. The CM/GC will be responsible for and manage the various Trade Contractors similar to that of a general contractor during the construction period. The CM/GC will also provide consultation and collaboration regarding the construction during and after design of the Project.

The term "**Consultant**" or **Architect/Engineer (A/E)** 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.

The term "**Design Team**" is a composite of representatives of the Owner and Consultant. The roles of each member of the Design Team, individually or collectively, are defined and outlined elsewhere in this RFP, in the Agreement between Owner and Architect/ Engineer, in the Agreement between Owner and Construction Manager/General Contractor and/or in the General Conditions and Special Conditions (see EXHIBIT).

The term "**Purchasing Agency**" means Northern Kentucky University.

The term "**Purchasing Official**" or "**Purchasing Officer**" means the contracting representative appointed by NKU's Office of Procurement Services.

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).

2.0 GENERAL OVERVIEW

2.1 Intent and Scope

Northern Kentucky University is seeking the services of an experienced and highly qualified Construction Management/General Contractor firm to provide construction management and general contractor services on the proposed project.

The Construction Manager/General Contractor (CM/GC) selected will become a responsible, cooperative and contributing member of the Owner's professional team for the design review and construction of the project. The Construction Manager/General Contractor (CM/GC) 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.

It is possible that the construction of the building will be implemented in multiple bid packs staged to take advantage of fast-tracking and/or phasing of construction. The decision to fast-track or phase construction will be a joint decision by the A/E, the CM/GC and the Owner. This project currently has an approved **total project budget of \$79,900,000.00 and a current estimated Construction Budget of \$57,285,000 plus CM/GC fee**. This amount is broken down as: **\$43,211,784 for new construction, \$12,323,216 for renovation of the existing building, and \$1,750,000 in alternates**. For the purposes of calculating the CM lump sum fee, assume that construction will have a **duration of 30 months**.

The Owner intends to contract with the CM/GC for design phase services (Pre-Construction Services) and the construction phase services (Construction Services). This work will consist of the performance of specific work requirements outlined in this Request for Proposals at each design sub-phase including constructability reviews, reconciliation of bid package pricing, construction schedules, etc. The specific work requirements to be performed will be on the basis of the indicated documents prepared by the Architect/Engineer. The Owner reserves the right to make a determination to proceed with the Construction or not, as the best interests of the University dictate. The Construction Manager/General Contractor shall perform the required Pre-Construction Services and shall prepare various cost estimates, constructability reviews, and each of the Bid Packages, established in the process outlined in this Request for Proposals.

The Construction Manager/General Contractor will develop and issue the multiple Bid Packages. The issuance of each bid package(s) will be scheduled as determined by the A/E, CM/GC and the Owner. The Construction Packages may include but is not necessarily be limited to: Site grading, Site Concrete, Structural Steel, Structural Concrete, Wood and Plastics, Thermal and Moisture Protection, Metal Panel Cladding, Doors and Hardware, Architectural Finishes, Specialties, Special Equipment, Equipment, General Construction, Mechanical (HVAC and Plumbing), Electrical Power and Data, Security, and other packaged scopes of work deemed necessary for the completion of the project.

Parts of the construction work may be performed by the Construction Manager/General Contractor or its affiliates as permitted by KRS 45A.183.

1. Pre-Construction Services includes but are not limited to:

- a. Cost Estimating
 - b. Sequencing/Scheduling/Phasing Work
 - c. Coordination with Design Teams/Owner/Agency Groups
 - d. Constructability Review
 - e. BIM Review for Coordination
 - f. Coordination with Design Team
 - g. Develop Bid Packages
 - h. Bidding
 - i. Review Subcontractor Qualifications Criteria
 - j. Subcontracting with Trade Contractors
2. Construction includes but is not limited to:
- a. Phasing/Sequencing/Coordination and Management of Trades
 - b. Site Logistics
 - c. Scheduling
 - d. BIM Coordination for Trade Work Installation
 - e. Request for Information
 - f. Proposal Request Response
 - g. Construction Cost Tracking
 - h. Coordination of Utilities
 - i. Coordination of HBC/Electrical/Mechanical Inspections
 - j. Coordination with Asbestos Abatement Contractors (by owner)
 - k. Coordination with Commissioning Authority (by Owner)
 - l. Coordination with Testing & Balancing (by Owner)
 - m. LEED Coordination
 - n. Job Progress Meetings
 - o. Owner/Agency Coordination
 - p. Quality Assurance
 - q. Maintenance of As-Built Documents
 - r. Closeout Documents/Warranties
 - s. Owner Training/Operation & Maintenance Manuals
 - t. Site Restoration & Cleanup
 - u. Warranty tracking and coordination for trades

2.2 Project Description

Northern Kentucky University is seeking Construction Manager/General Contractor (CM/GC) services to expand and renovate the Dorothy Westerman Herrmann Science Center in Highland Heights, Kentucky. The total scope for the project, including design, construction, and all “soft” costs, is \$80,436,165 for the construction of a building addition with limited renovations to the existing building, and construction of site amenities and improvements. Note the project scope may increase by \$15,980,000 if the university’s inflation-related request to increase the project scope is approved by the 2024 General Assembly. The building will be fully occupied throughout the renovation period.

The design team is led by Omni Architects and design development is underway. The design team for this project includes FLAD Architects (National Design Consultant), HERA (Lab Designers), Kleingers (Site/Civil), Brown + Kubican Structural Engineers, CMTA Engineers

(Mechanical/ Electrical/ Plumbing) and a Commissioning Agent (to be selected by NKU separately).

This project will be an approximate 79,925 GSF addition to the 175,131 GSF Herrmann Science Center. NKU's Science Center opened in 2002 and cost \$38M. Subsequently, in the 2005-2007 timeframe, the planetarium – which had been a shell space at building completion – was fitted-out, and a greenhouse was added to the roof of the building.

Three academic departments are located in the Science Center: Biological Sciences (BIO); Physics, Geology & Engineering Technology (PGET); and, Chemistry & Biochemistry (CHE). Engineering Technology program spaces are currently located across campus in the Business Academic Center and are planned to relocate to Herrmann Science as part of this project.

The Herrmann Science Center features a laboratory wing and a classroom wing joined by a central atrium space; the lab wing has lab infrastructure the classroom/dry lab wing does not. Faculty offices are stacked on four floors in the middle of the lab wing. The building is interdisciplinary by design, with Physics and field Biology labs on the first floor; Geology, Biology and research spaces on the second floor; Biology and research labs on the 3rd floor; and, Astronomy and Chemistry labs on the fourth floor. Much of the building's HVAC equipment is located on the 5th floor. The atrium houses a coffee shop and is a popular student study area. The building is characterized by light-filled space, well-organized and equipped labs, and many opportunities for student engagement and study. The building has been extremely well received by faculty and students and in all measures has been successful in building STEM enrollment and success. From day one, the building has been a catalyst for STEM engagement.

The existing Science Center is connected to NKU's central Power Plant via an underground tunnel, and chilled water and steam are piped to the building from the Power Plant. The new addition will be geothermal.

Please see link for various supporting documents, including drawings of the Science Center, the design team's schematic design submission, current base drawings, etc.:

https://omniarchitects-my.sharepoint.com/:f/p/jody/EjBN7VyxzFpJsXrIJ2sy1BwBZY7qF1JJPJZv3_z3w2wEeA?e=kMzXZk

There are several priorities for design of the building addition:

1. To activate interdisciplinary teaching, learning and research.
2. A flexible design to facilitate curricular innovation and change.
3. To relocate Engineering Technology (EGT) from the Business Academic Center to the Science Center.
4. To add research lab space. NKU has a critical shortage of faculty research space, and undergraduate research opportunities continue to be a priority.
5. To relocate the Kentucky Center for Mathematics (KCM) and CINSAM (Center for Integrated Natural Science and Mathematics) from Landrum Academic Center to the Science Center. Their space needs are primarily office and storage related.
6. To perform select renovations in the existing building:
 - a. As needed to connect the addition to the building, i.e. circulation patterns, lab prep, student engagement space, etc.
 - b. To modernize equipment or systems as needed for energy or operational efficiency, TBD.
 - c. To update/relocate the Anatomy & Physiology lab suite and the small reptile holding/testing areas.

The CM/GC duties include but are not limited to: cost estimation and analysis, design constructability reviews, value engineering, preparation/bidding of bid packages, LEED management/coordination to achieve LEED Silver Certification, contracting with various trade contractors, scheduling, providing general requirements for construction as well as acting as a Construction Manager/General Contractor during construction.

The CM/GC shall provide critical path scheduling for work of all trades to accomplish Substantial and Final Completion dates. This schedule shall also include IT connectivity, commissioning, functional testing and Testing, Adjusting and Balancing (TAB) requirements by providing adequate time to perform the necessary work of those tasks within the Substantial Completion timeframe. The CM/GC must have the experience, capability and staffing to be able to complete the project and meet the timeframe required by NKU. The CM/GC must also have the experience and capability to expedite design review and construction for these same needs. Given current market conditions of materials and delivery lead times, the CM/GC will need to be aware of current market conditions and be able to respond appropriately for the project budget and construction timeframe.

NOTICE: The University has elected to utilize Construction Manager/General Contractor method of construction delivery as an Alternative Delivery Method, in lieu of the conventional Design-Bid-Build method. All Applicable Laws, Statutes, and Administrative Regulations shall be applicable.

2.3 Initial Planning Documents

The design development phase of the project is underway. Schematic Design documents outline all planning efforts to date:

https://omniarchitects-my.sharepoint.com/:f:/p/jody/EjBN7VyxzFpJsXrJ2sy1BwBZY7qF1JJPJZv3_z3w2wEeA?e=kMzXZk

2.4 Schedule / Phasing

The following schedule is preliminary, based on the Agreement between the Owner and Architect/Engineer. Once the Construction Management/General Contractor Firm is determined by this Request for Proposals and the Agreement between Owner and Construction Manager/General Contractor is executed, the schedule may be modified by mutual consent of all parties:

Phase	Timeline
Programming	November 14, 2022 – January 20, 2023
Phase A: Schematic Phase	April 10, 2023 – July 10, 2023
Phase B: Design Development	September 18, 2023 – January 15, 2024
Release Site and Foundation Bid Packages	TBD
Phase C: Construction Documents	January 15, 2024 – July 15, 2024
Bidding and Contracting	July 15, 2024 – September 15, 2024
Substantial Completion	Target: March 15, 2027
Final Completion	April 15, 2027

Sustainability

In accordance with the Kentucky High-Performance Building Standards, this project is required to achieve a minimum LEED Silver certification. The Construction Manager/General Contractor will play an integral role in achieving sustainability goals by participating in sustainability discussions during the design phase and ensuring that points related to construction are adhered to by all parties. This project will seek to provide enhanced commissioning.

2.5 Consultant (Architect/Engineer) Team

The Design Team consists of the following entities:

Discipline	Firm
Design Consultant of Record	Omni Architects
National Design Consultant, Landscape Arch.	Flad Architects
Lab Designer	HERA
Site Survey	Endris
Geotechnical Exploration	TBD by NKU
Civil Engineer	Kleingers
Structural Engineer	Brown+Kubican Engineers
Mechanical, Electrical & Plumbing	CMTA Engineers
Commissioning Agent	TBD by NKU

2.6 Project Scope/Budget

This project currently has a funded total scope of **\$80,436,165**, including all soft costs, contingencies and construction with a **current Construction Budget of \$57,285,000**.

2.7 Desired Construction Manager/General Contractor Areas of Experience and Expertise

The successful Construction Manager/General Contractor firm will have direct experience in the construction of facilities similar to the facility intended by this Project. This experience will preferably be with facilities of the same or similar scope as outlined in the project description in this RFP.

The successful Construction Manager/General Contractor firm will have direct experience with providing Constructability Reviews, Scheduling, Value Engineering, Project Site Staging Management, Cost Estimating, and Materials Evaluation during the Project design process. The successful Construction Management/General Contractor Firm will have the professional expertise to provide Construction Process Services, Construction Scheduling and Control, Project Site Staging Control, Trade Contractor Contracting and Management.

It is anticipated that certain Trade Packages will be released for early construction. The successful Construction Manager/General Contractor firm will have direct experience in coordinating early trade package work in relation to the entire project Work that may be performed concurrently, in sequence or at a short-term future date.

“Direct experience” refers to project construction management and/or general contractor experience on similar projects, by the persons who the Construction Manager/General Contractor indicates will be directly involved in this project. It is incumbent upon the Construction Manager/General Contractor to provide clear information about the credentials and personal experience of its key team members; experience by a firm is meaningless if the specific team member was not personally involved in a particular project in a meaningful way. This information should be presented so that it is clearly understood by the selection committee members.

2.8 Offeror Communication and Restrictions on Communications between Owner, Consultant, and Selection Committee Members

To ensure that RFP documentation and subsequent information (modifications, clarifications, addendum, etc.) is directed to the appropriate person within the Offeror’s firm, each Offeror who intends to participate in this RFP should immediately provide the following information to the Purchasing Officer. The University is not responsible for any confusion that may occur with the directing of this information to an inappropriate person within the Offeror’s firm by the failure of the Offeror to indicate who this information is to be directed to.

- Name of primary contact
- Mailing address of primary contact
- Telephone number of primary contact
- E-mail address of primary contact
- A second Offeror contact person can be identified; please provide the same information as provided for primary contact.

This information shall be transmitted via e-mail to:

Eli Baird, Procurement Services
Lucas Administrative Center, Room 617
Northern Kentucky University
Phone: (859) 572-6448
Email: bairde1@nku.edu

All communication with Owner, Design Team and/or Selection Committee regarding this RFP and related project information shall be directed **ONLY** to the Purchasing Officer listed above.

From the issue date of this RFP until a Construction Manager/General Contractor is selected and a contract award is made, Offerors are not allowed to communicate about the subject of this RFP with any person other than the Purchasing Officer, including but not necessarily limited to, other NKU staff, Consultants, technical advisers to the Selection Committee or any member of the Selection Committee.

NOTICE: During Part 1 and Part 2 of this Request for Proposals all potential respondents and all Short-Listed respondent firms are strictly prohibited from any direct communication related to this project with anyone involved in this project except for the Procurement Officer listed above.

If violation of the provisions of this paragraph 2.8 occurs, the Owner reserves the right to reject the proposal of the Offeror during either Part 1 or Part 2 of this Request for Proposals process.

3.0 PROPOSAL PROCESS AND REQUIREMENTS

3.0.1 Responses to RFP will be received in two Parts

The Request for Proposals under this solicitation has two distinct parts.

- Part 1 is the process for submission of written Technical Qualifications and a “Fee Proposal” (the sum of the Pre-Construction fee and Construction Services fee) and will result in the Short-Listing of up to three respondents receiving the most points.
- Part 2 is the process for oral presentations, resulting in the selection of the successful Construction Management/General Contractor Firm from the Short-Listed firms identified in Part 1. The Request for Proposals process is not completed until the Part 1 and Part 2 processes are completed in their entirety. No information received by the University is subject to Open Records until both Parts of this RFP are completed and an Agreement is executed between the Owner and the successful CM/GC Offeror.

3.0.2 Key Event Dates **Part 1**

- Release of RFP November 14, 2023
- Pre-Proposal Conference November 28, 2023 2:00 PM
- Deadline for Written Questions December 5, 2023 2:00 PM
- *Final Date for issuance of Addenda December 7, 2023
- **Part 1 RFP Proposals Due:** December 14, 2023, 2:00 PM

Part 1 Evaluation

- Proposals Evaluation by Selection Committee January 3-5, 2024
- Notification of Part 2 Finalists (Short Listed Firms) January 5, 2024

****Part 2 Key Events**

- Part 2 Offeror Presentations/Interviews January 16, 2024
- Anticipated award of Contract for Construction Manager/
General Contractor January 23, 2024

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

** The Part 2 Key Events are projected dates and are subject to change when in the best interests of the University.

3.1 Proposal Process: Request for Proposals for Construction Manager/General Contractor Services (Pre-Construction and Construction) Part 1

This RFP contains a link to various documents related to this project and the project is described in Section 2.2. The schematic design estimate can be found here:

https://omniarchitects-my.sharepoint.com/:f/p/jody/EjBN7VyxzFpJsXrJ2sy1BwBZY7qF1JJPJZv3_z3w2wEeA?e=kMzXZk

All respondents to this Request for Proposals, by their response during Part 1 of the RFP process, indicate that they have reviewed and are familiar with the requirements of this project as defined by this RFP, including the EXHIBIT documents attached hereto.

The submission of information required by Part 1 of the Request for Proposals is outlined in other sections of this Request and should be included in their entirety to permit the Selection Committee, charged with the Short Listing of respondent firms to this Request, to make a fully informed decision. Failure to provide all the required information may be a disadvantage to the Offeror and in some cases where a significant amount of the required information is not provided, may render the offer as non-responsive to this Request for Proposals.

3.1.1 Pre-Proposal Conference Prior to Part 1 of this RFP

A Pre-Proposal Conference for Part 1 will be held to allow prospective Construction Manager/General Contractor firms an opportunity to ask questions and clarify the expectations and requirements of the Agency and the Owner. This conference provides Offerors an opportunity for oral questions as well as the opportunity to tour the existing Science Center facility.

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

- Attendance at the Pre-Proposal Conference is optional. It is **HIGHLY RECOMMENDED** that a CM/GC firm considering becoming an Offeror for this RFP attend this Conference.
- At this conference, the project intent, project schedule and scope of desired Construction Manager/General Contractor services will be discussed.
- The Owner will prepare written responses to all salient questions and submit them to all Offerors after the conference. All verbal questions should be submitted in writing after the Pre-Proposal Conference. The questions and answers will be issued by Addendum, become part of the RFP and may become part of the contract with the successful

Construction Manager/General Contractor firms. Oral answers given at the conference are not binding.

The Pre-Proposal Conference will be conducted in-person on November 28, 2023 at 2:00 PM, Eastern Time, in Herrmann Science Center Room 207 on the NKU campus.

3.1.2 Preparation of Offers – Part 1

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.

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.

3.1.3 Written Questions- Part 1

All questions should be submitted in writing to Eli Baird, NKU Procurement Services, no later than the date indicated in paragraph 3.1 for submission of written questions during Part 1 of the RFP process. Please address e-mail to bairde1@nku.edu

3.1.4 Addenda to RFP - Part 1

Any addenda or instructions issued by the Purchasing Officer prior to the time for receiving proposals for Part 1 of this Request for Proposals Process 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.

3.1.5 Proposal Submission and Deadline – Part 1

Refer to schedule in 3.0.2 for deadlines. Proposals received after the closing date and time will not be considered.

In accordance with the Kentucky Revised Statute 45A.085 and 200 KAR 5:365, there will be no public opening.

The respondent shall submit, via US Postal Service, courier or other delivery service:

- a) six bound copies;
- b) one unbound original of its proposal; and,
- c) one USB drive containing the proposal in electronic format in a sealed package **by 2:00 PM (noon) EST on December 14, 2023.** Failure to provide the required number of and type of

proposal copies will result in the submittal being considered non-responsive and disqualified from the selection process. Submittals shall be addressed to:

Eli Baird, Procurement Services
Lucas Administrative Center, Room 617
Northern Kentucky University

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

RFP NKU-13-2024
CM/GC Services
Science Center Expansion

3.2 Proposal Process: Request for Proposals for Construction Manager/General Contractor Services - Part 2

During Part 2 of this Request for Proposal Process, the Short-Listed firms are prohibited from communications with anyone other than those indicated as contact persons by this Request during the RFP process.

All Short-Listed firms which respond to this Request for Proposals, by their response during Part 2 of the RFP process, indicate that they have reviewed and are familiar with the requirements of this project as defined by this RFP, including the Attachment documents attached hereto and any addendum issued during Part 1.

The presentation of information required by Part 2 of the Request for Proposals is outlined in other sections of this Request and must be covered during oral presentations in their entirety to constitute a responsible response to the Request and to receive a favorable scoring by the Selection Committee charged with the Selection of the Construction Manager/General Contractor for this project from the Short Listed firms of this Request for Proposal Process. Failure to cover all the required information during the oral presentation will result in a low scoring from the Selection Committee during Part 2.

3.2.1 Preparation of Offers – Part 2

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 for Part 2 during the Oral Presentations before the Selection Committee.

The Offeror shall provide a copy of all elements of its presentation in hard copy format (1) as well as in electronic format (PDF, on USB flash drive) to the purchasing officer for use by the Committee during deliberations and scoring. Hard copy handouts at the interview are at the Offeror's discretion. Refer to section 4.1.

3.2.2 Written Questions - Part 2

There is no formal opportunity for questions during Part 2 of the Proposal Process. However, if there is need to communicate with the University during Part 2 of the Proposal Process (except for during Oral Presentations before the Selection Committee) the shortlisted firms shall address

questions in e-mail form to Eli Baird at bairde1@nku.edu. Any response from the University to any shortlisted firm will also be made to all shortlisted firms concurrently in e-mail form.

3.2.3 Instructions by the Purchasing Officer (Addenda to RFP) - Part 2

Any instructions, clarifications or explanations (Addenda) issued by the Purchasing Officer prior to twenty-four (24) hours before the time for the start of receiving Oral Presentations for Part 2 of this Request for Proposals Process shall become a part of this RFP. No instruction, clarifications or explanations will be issued by the Purchasing Officer during the last twenty-four (24) hours before the time for the start of receiving Oral Presentations for Part 2 of this RFP without extending and amending the date/time for Oral Presentation. Such issuances (addenda) will be issued in e-mail form from the Purchasing Officer and shall be acknowledged by the respondent by return receipt e-mail to the Purchasing Officer. No instructions or changes shall be binding unless documented by a proper and duly issued e-mail communication (addenda) and return receipt.

3.2.4 Offeror Oral Presentations – Part 2

All Part 2 finalists (Shortlisted Firms) shall be required to make an Oral Presentation to, and participate in interviews with, the Selection Committee. The interviews are tentatively scheduled to be held on the date indicated in paragraph 3.0.2 above. Actual interview times for the Part 2 finalists will be scheduled at a later time.

3.2.5 Proposed Deviations from the Request for Proposal – Part 2

The stated requirements appearing elsewhere in this RFP shall become a part of the terms and conditions of any resulting contract. Any deviations from the RFP are discouraged and must not be in conflict with the basic nature of this RFP. Any deviation shall be specifically defined and if accepted shall become a part of the contract. **Note: Offerors shall not submit their standard terms and conditions as exceptions to the RFP Terms and Conditions.**

3.3 Offeror Response and Proprietary Information

The Request for Proposals specifies the format, required information, and general content of proposals submitted in response to this RFP. The University will not disclose any portions of the proposals prior to contract award to anyone except University Procurement Office 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 three (3) 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.

3.4 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 Owner will provide no reimbursement for such costs.

3.5 Disposition of Proposals

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

3.6 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.

3.7 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 Owner 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.

3.8 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 Owner, the Owner will not accept revisions, or alterations to proposals after the proposal due date.

4.0 PROPOSAL FORMAT AND CONTENT

Part 1 - Proposal Information and Criteria

The following list specifies the items to be addressed in the “**Technical Qualifications Proposal**” portion of your Part 1 response to this Request for Proposals. Please read it carefully and address completely and in the order listed to facilitate the Selection Committee’s review of your proposal. Proposals shall be organized into the sections identified below, with tabs. The content of each section is detailed in the following pages.

4.0.1 Fee Proposal (see below, to be submitted under separate cover in a marked, sealed envelope, marked on the outside with the name of your firm)

THE FOLLOWING LIST CORRESPONDS TO THE TABS IN Offeror's RFP RESPONSE, PLEASE REFER TO THE DESCRIPTION FOR EACH SECTION WHICH FOLLOWS:

- 4.0.2 Transmittal Letter, Executive Summary and Proposal Overview
- 4.0.3 Qualifications – Offeror Firm/Entity
- 4.0.4 Qualifications - Project Construction Management Team, Project Manager(s) and Construction Superintendent(s)
- 4.0.5 Methodology/CM Services Plan
- 4.0.6 Pre-construction and Construction Services Defined
- 4.0.7 Other Additional Information
- 4.0.8 Required, Signed Legal Documents and Forms
 - 1. Collusion/Non-Conflict of Interest Form
 - 2. Vendor Report of Prior Violations
 - 3. Sworn Statement Regarding Campaign Finance Laws
 - 4. Affidavit Regarding Workers Compensation and Unemployment Insurance

4.1.1 PART 1, “Fee Proposal” (To be submitted under separate sealed cover)

The following list specifies the items to be addressed in the “Fee Proposal” portion of your Part 1 response to this Request for Proposals.

- a) **Construction Manager/General Contractor Pre-Construction Fee:** to provide the services defined in this Request for Proposals that are to occur during the Design phases for entire project scope contained within this solicitation and the Bidding for the work that is currently funded. Additional preconstruction services fee will be negotiated when/if future funding is received and additional scopes will be bid.
- b) **Construction Manager/General Contractor Construction Service Fee:** a lump sum fee to provide the services defined in this Request for Proposals that are to occur during construction of this project during the number of months indicated for the Construction Time Period as defined by this RFP.

Refer to Section 10 of RFP for Fee Proposal Form.

Note: The percentage mark-up will be applied to the trade contractor's awarded contract and not to subsequent change orders

4.1.2 PART 1, Transmittal Letter, Executive Summary and Proposal Overview

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 Owner 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 attending required or optional meetings during Part 1 of this RFP process.

Note: Do not submit your standard Terms and Conditions as exceptions to the RFP Terms and Conditions.

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

4.1.3 PART 1, Criteria 1 – Qualifications of Offeror Firm/Entity

The purpose of the Offeror Firm Qualifications section is to determine 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) Provide an organizational chart of 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.
- b) Please provide a brief narrative describing the history of your firm. Identify the number of employees in your firm, and the ownership.
- c) Please provide an executive summary profile of your firm indicating:
 - a. The total annual volume of work.
 - b. An overview of the firm's staffing resources, projects underway and ability to take on additional work.
 - c. The approximate percentage of educational-related work versus other project types.
 - d. The approximate percentage of science lab-related work versus other project types.
 - e. A breakdown of your firm's volume relative to CM/GC, CM at Risk, CM Agency, Lump-sum negotiated, Lump-sum hard bid, design-build, etc.
 - f. Provide any other information necessary to describe your core business parameters.
- d) Has your firm had a contract terminated for default in the last five years? If so, describe such incidents.
- e) Provide five (5) references including name, company, title, email address and phone number(s).

4.1.4 PART 1, Criteria 2 – Qualifications of Project Construction Management Team, Project Manager(s) and Project Superintendent(s)

The purpose of the Project Construction Management Team Qualifications section is to determine

the ability of the Offeror to respond to this Request for Proposals. Offerors must describe and offer evidence of their project team's ability to meet each of these qualifications. 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 an organization chart for entire project team; resumes of key team members, including project manager(s), project superintendent(s), and cost estimator(s); and, brief description of role and responsibilities.
- b) Provide a summary profile of the demographic nature of your company. Information shall be provided as to the number of diverse individuals the vendor employs. See NKU Instructions to Bidders Document for more information about NKU's EEO requirements.
<https://inside.nku.edu/content/dam/Procurement/docs/policies/Instruction%20to%20Bidders.pdf>
- c) Describe at least 5 projects of similar scale and approximate complexity to which project members of the offeror's team have been involved, identifying their level of involvement. In all cases, projects shall have been completed on or after July 1, 2012.
 1. Provide project name, location, a brief description of the work, and completion date.
 2. Describe your firm's responsibility or role in the project.
 3. Provide SF associated with your work in the building and final construction (not total budget) budget.
 4. Indicate whether a LEED rating system was utilized and LEED Rating achieved.
 5. Provide a contact person, email address and telephone number for each project.
 6. Provide no more than 2 pages per project.
- d) The CM/GC must commit that staff identified in your proposal will actually perform the assigned work and be committed for the duration of the design and construction. Describe the level of commitment and the ability your firm has regarding this assurance and the stability of the proposed team.

4.1.5 PART 1, Criteria 3 – Methodology/CM Services Plan

- a) The CM/GC 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/GC's knowledge of projects of similar scale and complexity and the CM/GC's knowledge of the requirements, demands, and constraints of this project.

4.1.6 Part 1, Criteria 4 - Pre-construction and Construction Services Defined

- a) Describe the process, level of involvement, and value-added resulting from the engagement of your firm with the design and bidding process.
- b) Describe the process your firm will undertake to accomplish a comprehensive constructability and interdisciplinary coordination review of the final construction documents for Bid packages. Confirm this process will identify constructability problems and document related conflicts which will be corrected and incorporated into bidding documents to reduce RFI's and minimize change orders.
 - i. Provide examples of the final products of such reviews and describe how their results can be productively incorporated into the construction documents.
- c) 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 for this project.
- d) Explain how your firm/team approaches scheduling and schedule maintenance to ensure a successful on-time completion.
- e) Describe your firm's ability to perform the specific project requirements in order to achieve the project's LEED certification.

4.1.7 PART 1, Criteria 5 – Other Additional Information

Please provide any additional information that the CM/GC feels should be considered when evaluating your proposal.

4.1.8 PART 1, Required, Signed Legal Documents and Forms

1. Signed Authentication of Bid and Statements of Non-Collusion and Non- Conflict of Interest Form, included in RFP. 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. 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.

4.2.0 PART 2, Presentation Information and Criteria – INTERVIEW PHASE

Technical Qualifications to be presented in the Oral Presentations

The Oral Presentation/ Interview session for each Short-Listed Construction Management/General Contractor Firm shall be limited to a total of sixty (60) minutes, with forty-five minutes (45) minutes provided for the Oral Presentation from the Firm and fifteen (15) minutes for questions from the Selection Committee and answers from the Firm.

Please note that firms selected for interviews are advised to bring those individuals to the interview who will be the team members assigned to our project; we want to meet the people with whom we will be working.

The following list specifies the "Technical Qualifications" items to be addressed in the "Oral Presentations" portion of your Part 2 response to this Request for Proposals. Please review

carefully, address completely and in the order listed to facilitate the University's understanding of your team's capabilities. Utilize the sections identified below. The content of each section is detailed in the following pages.

Short listed firms shall provide at the beginning of the Interview:

1. Offeror shall provide eight 11" x 17" "placemats" at the interview, one for each member of the committee and any observers. The placemat shall identify the key members of the Offeror's team and shall include photographs.

Short listed firms shall provide at the conclusion of the Interview:

1. One bound copy, and one electronic copy (DVD or thumb drive media) of all written and graphic information presented during the Oral Presentation (including PowerPoint slides, handouts, graphic and written charts and other media) shall be provided at the conclusion of the Presentation to the Procurement Officer for use by the Selection Committee during its deliberations. These materials may be inserted into the Agreement between Owner and Construction Manager/General Contractor as applicable.

4.2.1 PART 2, Minimum Information Required in Oral Presentations

At a minimum, the information required during the Oral Presentation includes, but is not necessarily limited to, the following:

- Transmittal Letter
- Executive Summary and Proposal Overview
- Construction Manager's Personnel Chart*
- Project Specific Methodology / CM Construction Management Plan
- Project Construction Schedule in "Critical Path Method" (CPM) format*
- Method for selection of Trade Contractors and award of trade package contracts under separate agreements with the CM/GC*
- CM/GC's methods of controlling costs and schedule during construction.

The items indicated above with () shall be made part of the Agreement between the Owner and the Construction Manager/General Contractor once the successful Construction Manager/General Contractor is selected.

4.2.2 PART 2, 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 drawings, specifications, list of allowances, addenda and other documents that were EXHIBITS in Part 1 and/or Addendums in Part 1 or Part 2 of this RFP issued by the Owner 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 candidate 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.

4.2.3 PART 2, Criteria 1- Executive Summary and Presentation Overview

The Executive Summary and Presentation Overview shall condense and highlight the Technical Qualifications Oral Presentation to provide the Selection Committee with a broad understanding of the CM/GC's proposal.

4.2.4 PART 2, Criteria 2 – CM/GC's Assigned Personnel Chart

The purpose of the Construction Manager/ General Contractor's Personnel Chart is to determine the Qualifications and Experience of the specific personnel that the Construction Manager/General Contractor intends to employ on this project. The personnel listed should be identified as participants in the Design Process or the Construction Process, or both. Offerors must describe and offer evidence of their ability to provide the personnel necessary to meet the CM/GC requirements of this project. **The Personnel Chart provided during Part 2 of this Request for Proposals will be made part of the Agreement between Owner and Construction Manager and the personnel are not to be changed without written approval of the Owner.**

- a) Please provide an organization chart, resumes of key team members, and brief description of roles and responsibilities.

4.2.5 PART 2, Criteria 3 – Project Specific Methodology / CM/GC's Construction Management Plan

- a) The CM/GC should provide documentation of their understanding of the Project requirements and the Construction Management/General Contractor Services necessary to accomplish the project.
- b) Include a complete description of the planned approach and methodology to accomplish the work of the Project as described. The plan must be in sufficient detail to convey to the evaluation team the CM/GC's knowledge of the requirements, demands, and constraints of this specific project.
- c) Describe your firm's ability and plan to perform the specific project requirements in order to achieve the project's LEED certification levels.
- d) Describe your firm's plan for use of BIM to provide clash-detection between the work of various Trade Contractors.

4.2.6 PART 2, Criteria 4 - Project Construction Schedule/Quality Control Assurance Plan

The purpose of the CM/GC's Project Construction Schedule is to determine the ability of the Offeror to meet the project schedule as defined in the documents made part of this Request for Proposals. This schedule should use the dates indicated tentatively for the start of Construction. This schedule shall be in Critical Path Method format and shall indicate that the Work of this Project can be accomplished on or before the Date indicated in the documents made part of this

Request for Proposals as the tentative Date for Substantial Completion. This schedule will be made part of the Agreement between the Owner and Construction Manager and shall not be changed except by either Pre-Construction Change Order or Construction Change Order.

- a) Explain how your firm/team approaches scheduling and schedule maintenance to ensure a successful on-time completion by each Trade Contractor and the overall project. Explain your firm/team plan for schedule recovery should the project for unforeseen and uncontrollable reasons falls behind schedule.
- b) The development of the schedule should be based on professional best practices; orderly sequencing of work; management of supply chain challenges; operations adjacent to, and in an occupied building; and, safety for all workers, students and faculty/staff.
- c) Describe your firm's plan to assure quality and minimize RFI's and change orders.

4.2.7 PART 2, Criteria 5 – Trade Contractors Selection/Award Methodology

The purpose of the Trade Contractors Selection/Award Methodology is to determine the CM/GC's procedures and processes to ensure the quality of Trade Contractors the Offeror intends to contract with on this project, while being compliant with the various requirements of KRS 45A to the extent required by this Statute for Alternative Delivery Methods.

This Methodology plan should indicate how the Construction Manager will be contracting with prime Trade Contractors and any significant sub-trade Contractors that the Offeror expects will be required to accomplish the work of this project. This plan should prove to the evaluation committee that the Offeror has the intent to contract with Trade Contractor Companies of the size and quality necessary for this project. This plan should indicate and demonstrate that the CM/GC has a good working knowledge of the Statutory Requirements of Public Bidding. This methodology will be made part of the Agreement between the Owner and Construction Manager and shall not be changed except by due reason and written acceptance by the Owner.

4.2.8 PART 2, Criteria 6 – Other Additional Information

Please provide any additional information that the CM/GC feels should be considered when evaluating your proposal during Part 2 of the RFP Process.

5.0 EVALUATION CRITERIA AND PROCESS

5.1 Selection Committee

A Selection Committee will evaluate the proposals and make a recommendation for award of a Contract for Construction Manager/General Contractor. Members of the A/E's Design Team selected to perform design services may be requested to provide technical assistance at the option of the Selection Committee. Persons providing technical assistance to the Selection Committee do not complete individual scoring of the firms.

5.1.1 Multi-Part Process

The University will use a multi-part evaluation process as outlined below and as defined elsewhere in this Request for Proposals.

5.2 Part 1 of Evaluation

Evaluation of Technical Qualifications – Part 1. The Part 1 evaluation will be based upon the information provided in the Qualifications proposal, the Fee Proposal, additional information requested by the Owner for Clarification, and information obtained from references and independent sources, if requested.

- 5.2.1 Fee Proposal Evaluation – Part 1. The Purchasing Officer’s evaluation of the Fee Proposals during Part 1 will include a scoring of the Pre-Construction Services Fee and the Construction Services Fee Proposals. The Purchasing Officer will score each Offeror’s Fee Proposal using the following formula:

TOTAL SERVICES FEE = Pre-Construction Services Fee + Construction Services Fee.

$$\frac{\text{Lowest TOTAL SERVICES FEE by all Offerors}}{\text{TOTAL SERVICES FEE by this Offeror}} \times 200 = \text{FEE SCORE}$$

By the use of this calculation, the CM/GC firm with the highest FEE SCORE will receive a FEE SCORE of 200 points. All other firms will receive a FEE SCORE proportionally lower.

- 5.2.2 **Cumulative Scoring – Part 1.** The consensus scoring of the Selection Committee for Qualifications Proposal plus the Purchasing Officer FEE SCORE shall be the total score for each Construction Manager/General Contractor proposal. The Construction Manager/General Contractor proposals receiving one of the three highest total rankings for Part 1 will advance to Part 2 of the RFP Process. In the event of a tie between two or more proposals for third place ranking in Part 1, all CM/GC proposals receiving the third highest ranking will advance to Part 2 of the RFP Process. At its discretion, the Selection Committee can decide to advance more than three firms, but the additional firm(s) selected shall follow the ranking of Part 1 scoring as outlined herein.

5.3 Part 2 of the Evaluation

The Part 2 evaluation will be based upon the information provided in the Technical Qualifications Oral Presentation, additional information requested by the Owner for Clarification, and documented information obtained from references and independent sources.

- 5.3.1 Evaluation of Technical Qualifications as Presented – Part 2. The Selection Committee evaluation of Technical Qualifications Oral Presentation Part 2 will include consideration of responses to the list of criteria in Sections 4.2, including the subparagraphs of Section 4.2. Offerors must specifically address all criteria in their response. The evaluation of responsive presentations 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 Selection

Committee will score each respondent based on this criteria with a maximum score to be awarded by the Committee not exceeding 200 points per Offeror.

- 5.3.2 Fee Proposal Scoring Carry Forward – Part 2. The Purchasing Officer evaluation of the “Pre-Construction Services Fee” (Submitted in Part 1) and the “Construction Services Fee” (Submitted in Part 1) resulted in a FEE SCORE during Part 1 and is carried forward to Part 2 unchanged. Selection Committee members shall have no knowledge of the Part 1 Fee Proposal Scoring prior to completing scoring for Part 2 as outlined in 5.3.1.
- 5.3.3 **Cumulative Scoring – Part 2.** The Part 2 Selection Committee Score of the Technical Qualifications Oral Presentation is added to the FEE SCORE carried forward from Part 1 and the resultant sum of the two scores makes up the TOTAL SCORE for each CM/GC for Part 2.
- 5.3.4 Determination of Successful offeror – Part 2. The Construction Manager/General Contractor entity receiving the highest total score for Part 2 will be offered a Contract for the Work of this Project in the Contract Amount of the Pre-Construction Services Fee.

5.4 Evaluation Process Scoring

5.4.1 Part 1 Evaluation Process Scoring

The Selection Committee shall review proposals and reach a consensus score for each proposal based on the Evaluation Criteria contained in this document. The score as determined by the Selection Committee will be calculated using the scoring system as outlined below, with a total of 200 available points.

Part 1 Tabs	Part 1 Scoring Category	Max Points
4.0.2	Executive Summary and Proposal Overview	10
4.0.3	Qualifications of Firm/Entity	25
4.0.4	Qualifications of Project CM Team/ Assigned Personnel	40
4.0.5	Methodology/CM Services Plan	40
4.0.6	Pre-construction and Construction Services Defined	40
4.0.7	Other Additional Information	15
n/a	Responsiveness to RFP	20
	TOTAL POSSIBLE POINTS	200

Upon calculation of the Part 1 scoring of the Fee Proposals using the formula indicated in paragraph 5.2.2, the Purchasing Officer adds the FEE SCORE to the consensus Qualifications Proposal Score from the Selection Committee and determines the three top-ranked firms which are to be Short-Listed. It is the intent to short-list up to three firms. Should more than one firm be tied for the third-place ranking, all firms tied for the third ranking and the other two higher-ranked firms will advance to the Part 2 RFP Process. At its discretion, the Selection Committee can decide to advance more than three firms, but the additional firm(s) selected shall follow the ranking of Part 1 scoring as outlined herein.

Only the FEE SCORE from Part 1 will carry forward into Part 2 of the evaluation process.

5.4.2 Part 2 Evaluation Process Scoring

The Technical Qualifications Oral Presentations/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 Part 1 Fee Proposal component. The selection committee will score each firm. All scores for each firm will be added together and calculated into a Selection Committee Score as indicated below.

The scoring categories, and the maximum points to be awarded for each category, of the Evaluation Criteria for Part 2 Selection Committee Scoring are set forth below and on the Individual Evaluation Summary sheets inserted at the end of this RFP with a total of 200 available points:

Part 2 RFP Reference	Part 2 Scoring Category	Max Points
4.2.3	Executive Summary and Overview	10
4.2.4	CM/GC's Assigned Personnel Chart	30
4.2.5	Project Specific Methodology/CM Plan	40
4.2.6	Schedule/Quality Control Assurance Plan	40
4.2.7	Trade Contractors Selection/Award Methodology	30
n/a	Oral Presentation/Interview	25
n/a	Demonstration of Services Requested and Required	25
	TOTAL POSSIBLE POINTS	200

Upon completion of the Part 2 scoring of the Technical Qualifications Proposal and Oral Presentation/ Interviews, the score from each Selection Committee Member is tallied and the following formula is used to arrive at the Qualifications Presentation Score for each Offeror by the Selection Committee:

- The FEE SCORE calculated by the Purchasing Officer using the formula outlined in Part 1 is carried forward to Part 2. The maximum points available for Offeror's FEE SCORE is 200. The Offeror proposing the lowest Fee shall receive the maximum score of 200 points. The other Offeror's scores are also calculated using the formula indicated in Part 1.
- The proposals from the three Offerors are evaluated using the process indicated in 5.2.2. and subsequent paragraphs.

The successful Offeror is determined by this process and is offered a Contract for the Project. Upon execution of the Agreement between Owner and Construction Manager/General Contractor, the CM/GC is authorized to commence with Pre-Construction Services.

6.0 Pre-Construction Services

During the Pre-Construction Phase, the CM/GC shall provide the Pre-Construction services indicated in Article 3 of the Agreement between Owner and Construction Manager/General Contractor.

7.0 Construction Phase Services

Refer to attached CM/GC Contract and CM/GC General Conditions for requirements.

8.0 Post Construction Phase Services

Refer to attached CM/GC Contract and CM/GC General Conditions for requirements.

9.0 Supplemental Conditions

9.1 Compliance with State Laws and NKU Operational Regulations

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 Trade Contractors and sub-Trade Contractors 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 Construction Manager/General Contractor 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 contract amount. (See section 9.2 for additional information concerning Bonding).

The successful CM/GC firm shall comply with all NKU policies and regulations, including parking fees and requirements. NKU is a no-smoking campus.

9.2 Bonding

Only Part 2 Offerors shall submit a bid guarantee of not less than five (5%) percent of the sum amount of their proposed Pre-Construction Services and their proposed Construction Services.

A 100% Performance Bond and 100% Payment Bond shall be furnished by the successful Construction Manager/General Contractor based upon the bid amounts received from the various Trade Contractors plus the fees to be charged by the Construction Manager/General Contractor. The direct cost for these Bonds shall be included in the Construction Services Fee proposed by the Offeror and established in the Agreement between the Owner and Construction Manager/General Contractor.

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 Bonds 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.

9.3 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.

9.4 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.

9.5 Acceptance or Rejection and Award of Proposal

The 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.

9.6 Construction Manager/General Contractor Cooperation in Related Efforts

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

9.7 Modification or Withdrawal of Offer

An offer and/or modification of offer received 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 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.

9.8 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.

9.9 Construction Manager/General Contractor Responsibility

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

9.10 Attorneys' Fees

Refer to CM/GC General Conditions

9.11 Patents, Copyrights and Trademark

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

9.12 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.

9.13 Preliminary Project Schedule

A Preliminary Project Schedule is contained in Request for Proposals. However, the University reserves the right to modify the Preliminary Project Schedule as necessary in the best interests of the University.

10.0 Fee Offer Summary Form

A portion of the proposal required in Part 1 of this Request for Proposals is a “Pre-Construction Services Fee Proposal”. Another portion of the proposal required in Part 1 of this Request for Proposals is a “Construction Services Fee Proposal”. The Entire Fee Offer is a summation of the two distinct Service Fee Proposals and shall contain the complete financial offer made to Northern Kentucky University.

SUBMIT THE FOLLOWING IN A SEALED ENVELOPE per Paragraphs 4.0.1 and 4.1.2

10.1 Lump Sum Proposal for Pre-Construction Services

The Construction Manager/General Contractor agrees to furnish all labor, materials, supplies and services required to complete the Pre-construction Work for the above referenced Project, for Northern Kentucky University, as described in the Request for Proposal, Specifications and Contract Documents and as modified by Addenda.

FOR THE LUMP SUM OF _____ DOLLARS
(USE WORDS)

(USE WORDS) CENTS (\$ _____)
(USE FIGURES)

10.2 Lump Sum Proposal for Construction Services

The Construction Manager/General Contractor agrees to furnish all labor, materials, supplies and services required to complete the Construction Work for the above referenced Project, for Northern Kentucky University, as described in the Request for Proposal, Specifications and Contract Documents and as modified by Addenda.

FOR THE LUMP SUM OF _____ DOLLARS
(USE WORDS)

(USE WORDS) CENTS (\$ _____)
(USE FIGURES)

Note: This lump sum fee for Construction Manager/General Contractor Construction Services shall be prorated on a monthly basis for the duration of the Construction Time Period anticipated by this RFP. Should the Construction Time Period be extended by Change Order during the Construction Period, the Construction Manager/General Contractor will be compensated for each additional month or fraction thereof if the Contract Time is extended, unless the cause for the extension is directly attributable to the actions or inactions of the Construction Manager/General Contractor.

Note: The bonds and insurance cost shall be included in the Construction Manager/General Contractor's Construction Services Fee.

Agent/Officer: _____

Signature: _____

Firm: _____

10.3 Authentication of Bid and Statements of Non-Collusion and Non-Conflict of Interest Form

Proposal NO: NKU-13-2024
Issue Date: 11/06/2023
Purchasing Officer: Eli Baird

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 THE DATE AND TIME LISTED IN SECTION 3.0.2

NOTICE OF REQUIREMENTS

1. Contracts resulting from this ITB must be governed by and in accordance with the laws of the Commonwealth of Kentucky.
2. 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.
3. 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 ITB;
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	FEDERAL EMPLOYER ID NO.:	WEB ADDRESS:

READ CAREFULLY - SIGN IN SPACE BELOW - FAILURE TO SIGN INVALIDATES BID or OFFER

AUTHORIZED SIGNATURE: _____

NAME (Please Print Legibly): _____

TITLE: _____ DATE: _____

State of _____)

County of _____)

The foregoing statement was sworn to me this _____ day of _____, 20____, by _____.

(Notary Public)

My Commission expires: _____

THIS DOCUMENT MUST BE NOTORIZED

ATTACHMENT "A"

Link to Project drawings and other Science Expansion Documents:

https://omniarchitects-my.sharepoint.com/:f/p/jody/EjBN7VyxzFpJsXrIJ2sy1BwBZY7qF1JJPJZv3_z3w2wEeA?e=kMzXZk

Northern Kentucky University

GENERAL CONDITIONS – CM/GC

These General Conditions apply to each section of the specifications and are binding upon the Construction Manager/ General Contractor (“CM/GC”), all Trade Contractors and all Subcontractors, under contract with the CM/GC as each are subject to the provisions contained herein:

These General Conditions are intended to define and establish certain rules and provisions of the Contract governing the operation so that the Work may be continued and be completed in an orderly, expeditious and workmanlike manner. These General Conditions, together with the specifications and Contract Documents, shall further establish the standards of material and workmanship for the Work.

Contents

- '1. Definitions of Terms
- '2. Intent and Interpretation
- '3. The Architect
- '4. Project and Construction Schedule
- '5. Shop Drawings; Submittals
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'35. Nondiscrimination in Employment

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Articles

'1. Definitions of Terms

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 Addenda--Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the Bidding Requirements or the Contract Documents. An Addenda supersedes related provisions of the Contract Documents which are clarified, corrected or changed by the addenda.

'1.2 NKU, University, Owner is the entity which utilizes the Work being contracted.

'1.3 Architect, Engineer, or Consultant ("A/E" or "AE") is the person or entity identified either architect, engineer, or consultant in the Contract Documents; on the drawings; or any replacement architect, engineer, or consultant identified by the Owner. The A/E is a separate contractor and is an agent of the Owner. The term includes any associates or consultants employed by the A/E to assist in providing the A/E services.

'1.4 Beneficial Occupancy: The condition concurrent to or different from the time of Substantial Completion (but always prior to Final Completion) of the Project at which time the Project, or portion thereof, is sufficiently complete, systems operational, and necessary approvals and certificates are received such that the Owner could occupy and utilize the space for its intended use, even though certain requirements for Substantial Completion have not been completed (i.e. Operations and Maintenance Manuals, Owner systems training, etc). Note that guarantees and warranties applicable to the work begin on the date of Substantial Completion of Project, whether or not the Owner assumes Beneficial Occupancy concurrently or at a different time, unless otherwise specified in the Supplemental General Conditions or by separate agreement.

'1.5 Certification of Payment is the Owner's Progress Payment Forms. All Payments made to the Construction Manager/ General Contractor under this contract shall be on standard AIA payment forms.

'1.6 Change Order means a written order to the Construction Manager/ General Contractor executed by the Owner and the Architect after execution of the Contract, directing a change in the Work and may include a change in the Contract Price or the Contract Completion Time, or any combination thereof. There shall be no authorized changes in the Work which affect either Contract Price or Contract Completion Time without a fully executed Change Order.

The Construction Manager/ General Contractor's Construction Services fee is not adjusted by Change Orders to the work. The sum of all overhead and profit charged by Trade Contractors and subcontractors shall not exceed ten percent (10%) of the amount of the cost of the work.

‘1.7 Contract is the legal relationship, duties and obligations between the Owner and Construction Manager/ General Contractor as evidenced by the Contract Documents for the Project.

‘1.8 Contract Completion Time is the number of calendar days between the Date of Commencement and the dates set for Substantial Completion and Final Completion of the Work, including any adjustments thereto, all as established in the Contract between Owner and Construction Manager/ General Contractor.

‘1.9 Contract Documents include the Invitation for Bids, the Instructions to Bidders, the Payment and Performance Bonds, the General Conditions, the Special or Supplemental Conditions, the drawings, specifications, solicitation addenda, the Construction Manager/ General Contractor’s response to the solicitation, any written clarification of the response, the award document containing the Agreement between Owner and Construction Manager/ General Contractor, and modifications issued after execution of the Contract. Modifications include (1) Change Orders issued as provided in Article 14, and (2) Field Orders or Architect Supplemental Instructions (ASI’s) for minor changes in the work issued by the Architect as provided in Article 14. Documents not included or expressly contemplated in this Paragraph, 1.7, do not, and shall not, form any part of the Contract between the Owner and the Construction Manager/ General Contractor.

‘1.10 Contract Sum means the sum stated in the Contract including any authorized adjustments thereto and is the total amount payable by the Owner to the Construction Manager/ General Contractor for the performance of the Work under the Contract Documents which is the sum amount of all Trade Contractor bids solicited by the Construction Manager/ General Contractor plus the CM/GC Pre-Construction Services Fee and Construction Services Fee.

‘1.11 Construction Manager/ General Contractor (CM/GC) means the person or entity with whom the Owner has executed the Contract for construction of this Project. The terms Construction Manager/ General Contractor and Contractor may also mean any Trade Contractor or Subcontractor working under contract with the Construction Manager/ General Contractor for this Project since they are bound by the same terms and conditions as the Contractor Manager/ General Contractor. However, the requirements of any Trade Contractor or subcontractor is through the Construction Manager/ General Contractor.

‘1.12 Damages for untimely performance means a calculated monetary amount to be paid to the Owner, based on real costs which the University incurs, due to the Construction Manager/ General Contractor’s failure to complete the Work within the allowable time identified in the Contract Documents. This term may also be referred to as “Liquidated Damages” where the actual cost of damages for untimely performance cannot be readily calculated and a definite sum is predetermined to be paid to the Owner. The amount of Liquidated Damages shall be defined in the Special Conditions of this Project.

‘1.13 Date of Commencement is the date specified in the Contract as the date upon which the Construction Manager/ General Contractor is authorized to begin work. The Contract Completion Time as set forth in paragraph 1.8 is determined using this Date of Commencement as the starting date.

‘1.14 Project Manager means the person or persons delegated authority to act on behalf of the Owner. Such person or persons is/are employed by the Owner, NKU’s Project Manager(s) will be designated at the Pre-Construction Meeting. NKU reserves the right to change its designated Project Manager(s) at any stage of the Work, for the sole purpose or benefit of the University.

‘1.15 Delay means an event that causes an increase in the duration of the Project, or that changes the sequence of the Work or individual Work activities, thereby preventing completion of the Project within the time period specified in the Contract Documents. An event that does not cause an increase in the duration of the Project or prevents the completion of the Project within the time period specified in the Contract Documents, such as an event that is not on the critical path of the project schedule is not a delay under this definition.

‘1.16 Direct Expenses is defined as “All items of expenses directly incurred by or attributable to a specific project, assignment or task” and “Direct costs consist of direct materials, direct labor, subcontract costs, and other miscellaneous direct costs such as bonding and equipment rentals, that are directly related to and can be specifically attributed to an individual contract.”

‘1.17 Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

‘1.18 Document Collaboration is the Owner’s web-based document collaboration system that shall be used by all project participants for the submission, transmittal, transfer, review, approval, processing of all documents related to this project. Where the General Conditions, the technical specifications, or the Contract for Construction indicates that a submission of documents is required, this submission shall be through the Owner’s Document Collaboration System. The A/E and CM/GC are required to utilize the Owner’s document collaboration system for the duration of the project.

‘1.19 Extra Work as used in Article 14 is defined as Work not part of the existing Contract Documents which is being added to the Contract by a fully executed Change Order.

‘1.20 A Field Order is a written order issued by the Architect which clarifies or interprets the Contract Documents or orders minor changes in the Work which does not require a change under Article 14. Field Orders are issued to the Construction Manager/ General Contractor with concurrent copies to the Owner. Field Orders are also called Architect’s Supplemental Instructions (“ASI”).

‘1.21 Final Completion is defined as the Work being acceptable under the Contract Documents and the Contract fully performed in accordance with the terms and conditions of the Contract Documents and the entire payment balance due the Construction Manager / General Contractor is due and payable.

‘1.21.1 Final Completion Date shall have the meaning as described to it in Article 19.

‘1.22 Notice of Intent to Award is a written letter issued to the Construction Manager/ General Contractor after acceptance of Proposals from Trade Contractors (s) which includes bid package bid price, unit prices, subcontractors and equipment and materials to inform them of such acceptance and request the required additional documentation to initiate the Contract. **This is NOT an authorization to proceed. The Authorization to Proceed is part of the execution of change orders to the Contract for each Trade Contractor Package.**

‘1.23 Owner means Northern Kentucky University.

‘1.24 The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by other Contractors, working under separate Contract with the Owner.

‘1.24.1 Proposal Request (“PR” or “PRA”) is a request for pricing from the Architect to the CM/GC for additional work beyond the scope of the contract. Refer to Request for Information.

‘1.25 Resident Observer means an individual who has a direct contract with the Architect to observe and report on activities at the work site. A Resident Observer employed by the Architect is not authorized to serve as the Owners Representative, unless so designated by the Owner in writing.

‘1.26 Retainage means money earned by a Construction Manager/ General Contractor for work accepted by the Owner but withheld to ensure proper performance by the Construction Manager/ General Contractor. Retainage is further defined in Article 18

‘1.26.1 Request for Information (“RFI”) is a written request from the CM/GC to the Architect for information regarding a clarification of the Construction Documents or a need for additional information beyond what is indicated within the Construction Documents. If the RFI proves to result in additional cost due to added work, the Architect shall prepare a Proposal Request. If the RFI results in no additional cost, the Architect shall respond in writing to the CM/GC with the clarification and no adjustment to cost will be prepared.

‘1.27 Shop Drawings means drawings, completion diagrams, schedules, and other data specially prepared for the Work by the Trade Contractor or any Subcontractor, lower tier subcontractors, manufacturer, supplier, or distributor to illustrate some portion of the Work. Unless other requirements are indicated in the Special Conditions for this project or unless otherwise permitted by the Architect in writing, all shop drawings required by the Contract Documents shall to be submitted to the Architect for review and acceptance within the time indicated below:

‘1.27.1 For this project the Construction Manager/ General Contractor shall submit, within the time after commencement of the work indicated elsewhere, a Schedule of Submittals. This shall include a date the submittal will be forwarded to the Architect and a date the review of the submittal is required by the Construction Manager/ General Contractor to maintain the Critical Path of the work. The Architect will by review of the schedule and discussion with the Construction Manager/ General Contractor reach an agreement as to the timing of submittal and review of all required submittals. The CM/GC submittal schedule is to allow a reasonable time for A/E review.

‘1.27.2 In circumstances where a specific shop drawing required by the Contract Documents and scheduled in the Schedule of Submittals cannot reasonably be submitted to the Architect for review and acceptance by the agreed date, the Construction Manager/ General Contractor shall notify the Architect in writing of the reason for delay and make a recommendation as to the revised date of submission, and if the Architect finds it reasonable to waive this submission time period requirement, the Architect may do so in writing.

‘1.27.3 In circumstances where a specific shop drawing required by the Contract Documents cannot be reasonably reviewed by the Architect **within the time prescribed elsewhere in the Contract Documents,** the Architect shall notify the Contractor in writing prior to the date required for the review of the reasons for the time needed for reviewing the Shop Drawing.

‘1.28 Subcontractor or Trade Contractor means the person or entity having a direct contract or in part of a direct contract with the Construction Manager/ General Contractor for the performance of a part of the Work.

‘1.29 Substantial Completion is the point at which, as certified in writing by the Architect and accepted by the Owner, the Project is at a level of completion in strict compliance with the Contract, and necessary approval by public authorities has been given, such that the Owner can enjoy beneficial use or occupancy and can use, operate and maintain (the Owner has received all required warranties and documentation) it in all respects, for its intended purpose. Partial use or occupancy of the Project shall not result in the Project being deemed substantially complete and such partial use or occupancy shall not be evidence of Substantial Completion.

‘1.29.1 Substantial Completion Date shall have the meaning as described to it in Article 19.

‘1.30 Warranty, General. The Contractor shall warrant all equipment, materials, products, and workmanship provided by the Contractor under these Contract Documents for a period of twelve (12) months after the Date of Final Completion. This period of time is called the One-Year Warranty Period and is further defined in Article 9.2.

‘1.31 The **Work** includes the construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor, supervision, materials, equipment, services, and things provided or to be provided by the Construction Manager/ General Contractor through Trade Contractors to fulfill the Construction Manager/ General Contractor’s obligations.

‘2. Intent and Interpretation

The Architect shall be the authority of the Contract Documents as to their intent or interpretation, except as defined below and/or as provided in paragraph 3.4.

‘2.1 Anything that may be required, implied or inferred by the documents which make up the Contract, or any one or more of them, shall be provided by the Construction Manager/ General Contractor for the Contract Sum;

‘2.2 Nothing contained in the Contract Documents shall create, nor be interpreted to create, privity or any other relationship whatsoever between the Owner and any person except the Construction Manager/ General Contractor;

‘2.3 When a word, term, or phrase is used in the Contract Documents, it shall be interpreted or construed first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage;

‘2.4 The words “include”, “includes”, or “including”, shall be deemed to be followed by the phrase, “without limitation”.

‘2.5 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of the resulting Contract shall not imply that any other, nonspecified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of the resulting Contract;

‘2.6 In the event of any conflict, discrepancy, or inconsistency in the drawings or specifications, the CM/GC shall notify the A/E immediately and prior to moving forward with the affected work and the following shall control:

‘2.6.1 As between figures given on plans and scaled measurements, the figures shall govern; When two or more figures given on the plans are in conflict, the Construction

Manager/ General Contractor shall inform the Architect of such conflict immediately and the Architect shall clarify the correct figure to be used. The Construction Manager/ General Contractor shall not proceed with any work related to the figures in conflict until the Architect has provided this clarification.

'2.6.2 As between large or enlarged scale drawings (ie. plans, elevations, sections or details) and small-scale drawings (ie. small scale plans, building elevations or building sections), the large or enlarged scale drawings shall govern including all graphics, notes, dimensions and descriptions;

'2.6.3 As between specifications and drawings, the requirements of the specifications shall govern;

'2.6.4 As between Special Conditions, specifications and drawings, the requirements of the Special Conditions shall govern.

'2.7 Meaning of Execution. Execution of the Contract Documents by the Construction Manager/ General Contractor is a representation that the Construction Manager/ General Contractor and the respective Trade Contractors have thoroughly examined the site of the Work, become familiar with the local conditions under which the Work is to be performed, and correlated personal observations with the requirements of the Contract Documents. Execution of the Contract Documents is a further representation that Construction Manager/ General Contractor has received, reviewed and carefully examined all of the Contract Documents, and has found them in all respects to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, the Construction Manager/ General Contractor is fully qualified to act as the Construction Manager/ General Contractor for the Project and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as the Construction Manager/ General Contractor for, and to construct the Project.

'2.8 Prior Agreements. The Contract Documents supersede any and all prior discussions, communications, representations, understandings, negotiations or agreements between the Owner and the Construction Manager/ General Contractor, and between the Owner and/or the CM/GC and any Trade Contractor.

'2.9 Construction Manager/ General Contractor's Performance. The Construction Manager/ General Contractor shall contract with Trade Contractors (except as explicated assigned to the CM/GC) to perform all of the Work required, implied or reasonably inferable from the Contract including, but not limited to, the following:

'2.9.1 Construction of the Project;

'2.9.2 The furnishing of any required surety bonds and insurance;

'2.9.3 The provision or furnishing, and prompt payment therefor, of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, or other utilities, required for construction and all necessary building permits and other permits required for the construction of the Project;

'2.9.4 The creation and submission to the Architect of detailed and comprehensive record drawings, depicting all as-built construction. Said as-built drawings shall be submitted to

the Owner by the Architect upon final completion of the Project and receipt of same by the Owner shall be a condition precedent to final payment to the Construction Manager/ General Contractor and to the Architect.

'2.10 Time. All limitations of time set forth in the Contract Documents are material and are of the essence of the Contract. The Construction Manager/ General Contractor shall execute the work in such a manner as consistent with the limitations of time set forth. The CM/GC shall make reasonable progress on the completion of the Work on a continual and consistent basis. Any failure of the CM/GC to execute the Work in a timely manner consistent with the limitations of time set forth in the Contract Documents may be deemed at a Material Breach of Contract.

'2.11 Intent of Contract Documents. The intent of the Contract Documents is to include all items necessary for the proper completion of the Work by the Construction Manager/ General Contractor. Labor or materials which are evidently necessary to produce the desired results, even though not specifically mentioned in the Contract Documents, shall be included in the Work. The Architect is the interpreter of the Contract Documents and where any clarification regarding interpretation of the Documents is required the Architect shall be notified in writing pursuant to paragraph 2.13 below.

'2.12 Contract Documents Complementary, etc. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. In case of conflicts between the various Contract Documents, the order of precedence shall be as follows: (1) Addenda, (2) Division 1 - General Requirements of the Specifications; (3) Special Conditions, (4) General Conditions, (5) Technical provisions of the Specifications; (6) Drawings.

'2.13 Questions to Architect. In the event a question arises regarding the meaning or intent of the drawings and specifications, the Construction Manager/ General Contractor shall report it at once to the Architect by the submission of a Request for Information through the Owner's Document Collaboration System. The Architect shall furnish, with reasonable promptness, as defined by the Contract between the Owner and the Architect, additional instructions, by means of drawings or otherwise, necessary for the proper execution of the work, consistent with the requirements of Article 3.

'2.14 Paragraph, titles, headings, and drawing numbers are for convenience only and form no operative part of the Contract. The Construction Manager/ General Contractor, and by the "flow down" provisions of these General Conditions, every Trade Contractor or subcontractor, shall provide all Work defined, identified, enumerated, specified or otherwise indicated to be provided by the Contract Documents.

'3. The Architect

Unless otherwise directed by the Owner in writing, the Architect shall perform those duties and discharge those responsibilities allocated to the Architect in the Contract Documents. The duties, obligations and responsibilities of the Architect shall include, but are not limited to, the following:

'3.1 Owner's Representative. The Architect will be the Owner's Agent during design and construction, through issuance of final payment, and during the Construction Manager/ General Contractor's one year warranty period. The Architect will advise and consult with the Owner. In the event the Owner should find it necessary or convenient to replace the Architect, the Owner shall retain a replacement architect and the role of the replacement architect shall be the same as the role of the Architect.

‘3.2 Communication Through Architect. Except as otherwise provided in the Contract Documents, the Owner’s instructions to the Construction Manager/ General Contractor shall be forwarded through the Architect, and any Trade Contractor’s communications with the Owner shall be through the Construction Manager/ General Contractor through the Architect. Should the CM/GC or Trade Contractor act on communications from any other entity, other than through the Architect, he is acting at his own risk and may be required to reverse the actions taken as his own expense.

‘3.2.1 All documents related to this project shall be submitted, transmitted, transferred, reviewed, approved or rejected, and/or otherwise processed using the Owner’s Document Collaboration System which is the Owner’s web-based document collaboration system that shall be used by all project participants. No submission, transmittal, transfer, review, approval or processing shall be deemed Official without the use of this system.

‘3.3 Review of Work. The Architect shall approve, or respond otherwise, in a timely manner, as defined by the Contract between the Owner and the Architect, as necessary concerning shop drawings or other submittals received from the Construction Manager/ General Contractor. Should the Architect have reasonable cause to be unable to approve or respond otherwise to submissions from the Construction Manager/ General Contractor, the Architect shall provide written explanation of the reasonable cause within the timely manner, as defined by the Contract between the Owner and the Architect.

‘3.3.1 The Architect shall be authorized to refuse to accept work which is defective or otherwise fails to comply with the requirements of the Contract. The Architect shall refuse the work in writing when he deems it necessary to refuse the work. If the Architect deems it appropriate, the Architect shall be authorized to call for extra inspection or testing of the work for compliance with requirements of the Contract.

‘3.3.1.1 The costs of the extra inspection or testing shall be paid by the Construction Manager/ General Contractor, unless the results of the extra inspection or testing find that the work was originally in conformance with the Contract requirements and that the extra inspection or testing was not necessary. A reduction in the Contract Amount shall be provided by Change Order to reimburse the Owner for the costs of the extra inspection or testing.

‘3.3.1.2 In cases where the Construction Manager/ General Contractor covers up work that is required by the Contract Documents to be inspected or tested prior to the inspection or testing, the cost of uncovering the work and performing the inspection or testing shall be at the Construction Manager/ General Contractor’s expense even if the work is found to have been originally in conformance with the Contract Documents. A reduction in the Contract Amount shall be provided by Change Order to reimburse the Owner for the costs of the extra inspection or testing.

‘3.3.2 The Architect shall review the Construction Manager/ General Contractor’s Payment Requests and shall approve in writing those amounts which, in the opinion of the Architect, are properly owing to the Construction Manager/ General Contractor as provided in the Contract. The Architect shall perform this review, approval and submission of his recommendation to the Owner, within ten (10) business days of receipt of the Payment Request from the Construction Manager/ General Contractor.

‘3.3.3 The Architect shall perform those inspections required by the Owner.

‘3.4 Interpretation of Contract Documents. The Architect shall be the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder by the Construction Manager/ General Contractor, subject to the provisions of Article 2.6, 26 and 38.

‘3.4.1 Claims, disputes, and other matters in question that arise relating to the execution or progress of the Work shall be referred initially to the Architect for decision, which he will render in writing within a reasonable time, as defined by the Contract between the Owner and the Architect.

‘3.4.2 Should the Construction Manager/ General Contractor find disagreement with the Architect as to the proper interpretation of the Contract Documents or other decision of the Architect, he may protest the Architect’s decision to the NKU Project Manager, the Sr. Director of Planning, Design & Construction and the Director of Procurement Services in writing. These individuals, individually or collectively, will then discuss and negotiate the Architect’s decision with the Architect to seek reasonable resolution of the matter. Following these discussions and negotiations, the Architect’s initial decision or revised decision shall be binding, except as provided below.

‘3.4.3 The Architect shall have authority to reject Work which does not conform to the Contract Documents. In the event of rejection, the Architect may recommend in writing withholding payment to the Construction Manager/ General Contractor for the rejected Work, and such recommendation shall give the Owner the authority to withhold payment for such Work.

‘3.5 Review of Shop Drawings, etc. The Architect shall review and approve or take other appropriate action upon Construction Manager/ General Contractor’s submittals (such as Shop Drawings, product data, and samples) for conformance with the design concept and the information given in the Contract Documents. Such action shall be taken with reasonable promptness, as defined by the Contract between the Owner and the Architect and as agreed in the Schedule of Submittals, so as to cause no delay. The Architect may determine concurrently with the Construction Manager/ General Contractor the timing and scheduling of the Architect’s Review, with the understanding that some submittals are more critical to the Critical Path of the Completion of the project than others.

‘3.5.1 The Architect’s approval of a specific item shall not indicate approval of an assembly of which the item is a component. The Architect’s approval of Shop Drawings or samples shall not relieve the Construction Manager/ General Contractor from his responsibility for any deviations from the requirements of the Contract Documents unless the Construction Manager/ General Contractor has in writing called the Architect’s attention to such deviation at the time of submission and the Architect has given written approval to the specific deviation, nor shall any approval by the Architect relieve the Construction Manager/ General Contractor from responsibility for errors or omissions in the Shop Drawings.

‘3.6 Preparation of Change Orders. The Architect, in consultation with the Owner, shall prepare Change Orders. The Architect shall also have authority to order minor changes in the Work as provided in Article 14.3.

‘3.7 Final Inspections, Certification. The Architect, in consultation with the Owner, shall conduct inspections to determine the dates of Substantial Completion and Final Completion. The Architect shall also 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/ General Contractor.

‘3.8 Payment Requests. The Architect shall review the Construction Manager/ General Contractor’s Payment Requests and shall approve in writing those amounts which, in the opinion, of the Architect, are properly owing to the Construction Manager/ General Contractor as provided in the Contract. The Architect will perform this review, approval and submission of his recommendation to the Owner, within ten (10) business days of receipt of the Payment Request from the Construction Manager/ General Contractor. The Architect’s approval of payment requests shall not relieve the Construction Manager/ General Contractor from his responsibility for any deviations from the requirements of the Contract Documents.

3.8.1 When there is reasonable justification that causes the Architect to be unable to perform this review, approval and submission of his recommendation to the Owner within the time prescribed in paragraph 3.8 above, the Architect will notify the Contractor in writing as to the justification and as to the time that will be required for this review, approval and submission of his recommendation to the Owner.

‘3.8.2 The Construction Manager/ General Contractor may submit no more than one (1) payment request each thirty (30) calendar day period, except where specifically agreed by the Owner that additional payment requests may be submitted within the thirty (30) calendar day period for reasons consistent with the Construction Manager/ General Contractor’s performance of the Contract.

‘3.9 The Architect, in consultation with the Owner, shall be authorized to require the Construction Manager/ General Contractor to make changes or deviations in the work which do not involve a change in the Contract Sum or in the Contract Completion Time for the Construction Manager/ General Contractor’s performance consistent with the intent of the Contract. The Architect shall make such changes or deviations in the work by written Field Order or ASI.

‘3.10 The duties, obligations and responsibilities of the Construction Manager/ General Contractor under the Contract shall in no manner whatsoever be changed, altered, discharged, released, or satisfied by any duty, obligation or responsibility of the Architect. The Construction Manager/ General Contractor is not a third-party beneficiary of any Contract by and between the Owner and the Architect. It is expressly acknowledged and agreed that the duties of Construction Manager/ General Contractor to the Owner are independent of, and are not diminished by, any duties of the Architect to the Owner.

‘3.11 The duties, obligations and responsibilities of both the Architect and the Construction Manager/ General Contractor, under their respective Contracts, shall in no manner whatsoever be changed, altered, discharged, released, or satisfied by any duty, obligation or responsibility of the NKU Project Manager. It is expressly acknowledged and agreed that the duties of Construction Manager/ General Contractor and/or Architect to the Owner are independent of, and are not diminished by, any duties of the NKU Project Manager to the Architect/Owner.

‘4. Project and Construction Schedules

The CM/GC shall prepare a design and construction schedule called the project schedule after review of the Design Phase documents and submit to the A/E for review and approval. The project schedule shall include target dates for design, bidding, bid award and construction. The construction portion of the schedule shall provide detailed information regarding trade work in coordination with the design information to date.

The CM/GC shall prepare a Bid Construction Schedule that is to be included with the bid documents for all Trade Contractors to bid. This Bid Construction Schedule shall be reviewed by the A/E with comments prior to Bidding providing reasonable time for review, comment and revision.

Once the CM/GC Change Order is executed to add Trade Contractor bids to the CM/GC Contract amount, the CM/GC shall update the Bid Construction Schedule to include Trade Contractor additional detailed information for any additional details necessary to facilitate the construction process to achieve the target dates of the Schedule and shall submit this Construction Schedule to the Architect for review and approval prior to the start of construction work on site. This updated Bid Construction Schedule shall be termed the Construction Schedule shall be updated monthly and furnished to the Architect with the monthly Payment Application. The updates to the schedule shall include the base or original Construction Schedule start / finish comparison to actual start / finish including float.

The schedule shall indicate the starting and completion dates of the various stages of the Work, shall not exceed time limits established by the Contract Documents for the various stages of Work, shall be updated monthly and furnished to the Owner and Architect, shall be related to the Work of any other contractors on the Project to the extent required by the circumstances, and shall provide for expeditious and practicable execution of the Work. Progress Payments to the Construction Manager/ General Contractor are contingent upon receipt of the updated monthly Construction Schedule and Submittal Schedule (Shop Drawings).

‘4.1 The Construction Schedule shall be accompanied by a proposed schedule of values as described in Article 18.1. The Construction Schedule, Schedule of Submittals and the Schedule of Values are to be submitted to the Architect, reviewed and accepted by the Architect and the Owner, prior to submittal of the first Progress Payment. No payment will be made to the Construction Manager/ General Contractor without an approved Schedule of Values and a Project Schedule.

‘4.1.1 The Construction Schedule shall provide detailed individual timelines for all trades and shall show the project being completed on the established Dates of Substantial Completion and Final Completion. To do this, the Construction Manager/ General Contractor shall include in the flow of work any existing “float” which may be identified during the layout of the project schedule.

‘4.1.2 The Construction Manager/ General Contractor acknowledges that all float (including Total Float, Free Float, and Sequestered Float) is a shared commodity available to the Project and is not for the exclusive benefit of any party; float is an expiring resource available to accommodate changes in the Work, however originated, or to mitigate the effect of events that may delay performance or completion of all or part of the Work.

‘4.2 The Construction Manager/ General Contractor shall promptly notify the Architect and Owner if the Construction Manager/ General Contractor is materially ahead of, or behind the updated construction schedule. Failure to so notify the Architect and Owner shall relieve the Owner from liability for damages caused by delay or impact. Strict compliance with the requirements of this article shall be a condition precedent to payment to the Construction Manager/ General Contractor, and failure by the Construction Manager/ General Contractor to strictly comply with said requirements shall constitute a material breach of the Contract.

‘4.2.1 The Construction Manager/ General Contractor shall report on the status of any “float”, including the addition of “float”, the use of “float”, and the anticipation of the use of “float” at each project Progress Meeting.

‘4.3 For this project the schedule shall be in critical path format (CPM). The schedules shall include all activities necessary for performance of the work showing logic (sequences, dependencies, etc.) duration of each activity with the critical path highlighted. The schedules shall include, but not be limited to, submittal processing, fabrication and delivery of materials, construction, testing clean-up, work and/or materials to be provided by the Owner, dates and durations for major utility outages requiring coordination with the Owner and the Owner’s operations, and significant milestones related to the completion of the Project.

‘4.3.1 The CPM format and any subsequent adjustment, modification or change in the schedule shall include an indication of the original Critical Path and the adjustment, modification, or change shall clearly delineate the adjustment, modification or change in the schedule and shall be accompanied by a written statement of the cause and reason for the adjustment, modification or change.

‘4.3.2 If the CPM format and subsequent adjustment, modification or change in the schedule does not include the information required by paragraph 4.3.1 above, the revised schedule shall be rejected, and payment of the Construction Manager / General Contractor’s General Conditions costs suspended until this provision is complied with satisfactorily.

‘5. Shop Drawings; Submittals

‘5.1 Schedule for Submittals. Prior to submission of the first application for payment and in sufficient time to allow the Architect reasonable time for review, the Construction Manager/ General Contractor shall submit to the Architect a schedule of submittals which shall be coordinated with the construction schedule. The Construction Manager/ General Contractor shall keep the schedule of submittals current and present an updated schedule of submittals at each project progress meeting. This schedule of submittals shall contain anticipated and actual dates of the submittal of shop drawings and shall be consistent with the requirements for scheduling submittals defined in Article 1.27 of these General Conditions.

‘5.2 Submittals of Shop Drawings, Samples, etc. The Construction Manager/ General Contractor shall review, approve, and submit Shop Drawings, samples, and product data in accordance with the approved schedule as herein detailed.

‘5.2.1 The Construction Manager/ General Contractor’s stamp of approval on any Shop Drawing or sample shall constitute a representation to Owner and Architect that the Construction Manager/ General Contractor has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data, or he assumes full responsibility for doing so, and that he has reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and the Contract Documents.

‘5.2.2 The Architect shall review and approve, with reasonable promptness as defined by the Contract between the Owner and Architect, the Shop Drawings, or return for corrections as required. The review and approval shall be for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents. The approval of a separate item will not indicate approval of the assembly in which the item functions. For shop drawings that are not on the critical path of the schedule of the project the Architect shall be allowed more time to review. Should the Construction Manager/ General Contractor require a review of a shop drawing ahead of the time indicated by the critical path of the schedule, the Construction Manager/ General

Contractor shall notify the Architect in writing that the item review is critical giving a date by which the review is necessary. The review time request must be reasonable and appropriate to the particular shop drawing.

‘5.2.3 The Construction Manager/ General Contractor shall make any corrections required by the Architect for compliance to the Contract and shall resubmit the Shop Drawing/s and resubmit new samples until approved. The Construction Manager/ General Contractor shall direct specific attention, in writing, or on resubmitted Shop Drawings, to revisions other than the corrections called for by the Architect on previous submissions.

‘5.2.4 Where a Shop Drawing or sample submission is required by the specifications, no related work shall be commenced until the submission has been approved by the Architect. A copy of each approved Shop Drawing and each approved sample shall be kept in good order by the Construction Manager/ General Contractor at the site and shall be available to the Architect, Owner and Resident Observer. Samples shall be submitted as groupings per specification section and/ or as requested by the Architect for coordination of material color selections.

‘5.2.5 The Architect’s approval of Shop Drawings or samples shall not relieve the Construction Manager/ General Contractor from his responsibility for any deviations from the requirements of the Contract Documents unless the Construction Manager/ General Contractor has in writing called the Architect’s attention to such deviation at the time of submission and the Architect has given written approval to the specific deviation, nor shall any approval by the Architect relieve the Construction Manager/ General Contractor from responsibility for errors or omissions in the Shop Drawings.

‘5.2.6 The Construction Manager/ General Contractor shall maintain a submittal log which shall include, at a minimum, the date of each submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. The Construction Manager/ General Contractor shall provide copies of this submittal log with the current status of submittals clearly indicated therein to the Architect and the Owner at each monthly progress meeting until such time as all submittals are complete and accepted.

‘6. Documents and Samples at the Site

Unless otherwise provided in the Contract Documents, the Construction Manager/ General Contractor shall furnish, free of charge, electronic downloads of the drawings and specifications to each Trade Contractor and Subcontractor as are reasonably necessary for the execution of the Work. Each Trade Contractor and Subcontractor shall have the ability to download the entire set of drawings and specifications at its option, however, every Trade Contractor and Subcontractor shall be responsible for the scope of their work indicated in any location throughout the drawings and specifications. The division and coordination of the work between the trades is the responsibility of the CM/GC.

‘6.1 The Construction Manager/ General Contractor shall maintain at the site one record copy of the drawings, specifications, addenda, Change Orders and other modifications, in good order and marked currently to record changes and selections made during construction. Unless otherwise directed, the Construction Manager/ General Contractor shall also keep approved Shop Drawings, product data, samples and similar required submittals on hand. These shall be available to the Architect, Owner, and Resident Observer as requested.

'6.1.1 When the Construction Manager/ General Contractor fails to maintain the record copies indicated in paragraph 6.1 above, payment of the Contractor's General Conditions costs may be suspended until this provision is complied with satisfactorily.

'6.2 Upon completion of the Work, the record documents described above shall be delivered to the Architect for submittal to the Owner along with the as-built drawings.

'7. Contract Documents Property of Owner

The Contract Documents, and each of them, as well as any other documents furnished by the Owner, shall remain the property of the Owner. The Construction Manager/ General Contractor shall have the right to keep one (1) copy of the Contract Documents upon completion of the Project; provided, however, that in no event shall the Construction Manager/ General Contractor use, or permit to be used, any portion or all of such Contract Documents on other projects without the Owner's prior written authorization.

'8. Supervision and Construction Procedures

'8.1 Supervision of the Work. The Construction Manager/ General Contractor shall supervise and direct the Work, using the Construction Manager/ General Contractor's best skill and attention so as to ensure expeditious, workmanlike performance in accordance with the requirements of the Contract Documents. The Construction Manager/ General Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, schedules and procedures. The CM/GC shall be responsible for the acts and omissions of persons it directly employs, and for the acts and omissions of the Trade Contractors, Subcontractors and others under Article 17. The CM/GC shall be responsible for coordinating all portions of the Work under the Contract unless the Contract Documents give other specific instructions concerning these matters.

'8.2 Obligation to Follow Contract Requirements. The Construction Manager/ General Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by the activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Construction Manager/ General Contractor.

'8.3 The Construction Manager/ General Contractor shall not perform Work without adequate plans and specifications, or, as appropriate, approved Shop Drawings, or other submittals. If the Construction Manager/ General Contractor performs Work knowing or believing it involves an error, inconsistency or omission without first providing written notice to the Architect and Owner, the Construction Manager/ General Contractor shall be responsible for such Work and pay the cost of correcting same.

'8.4 All Work shall strictly conform to the requirements of the Contract Documents. The Construction Manager/ General Contractor shall not commence or continue any portion of the Work where there is not a complete understanding of the requirements of the Contract Documents. When the Construction Manager/ General Contractor believes that he does not have a complete understanding of the requirements of the Contract Documents, he shall immediately notify the Architect of this fact and shall issue a Request for Information to obtain this complete understanding of the requirements.

'8.5 The Work shall be continually supervised, the Construction Manager/ General Contractor bearing full responsibility for any and all acts or omissions of those engaged in the Work on behalf of the Construction Manager/ General Contractor

'8.6 The Construction Manager/ General Contractor shall at all times enforce strict discipline and good order among his employees and Subcontractors and shall not employ on the Work any person not skilled in the Work assigned to him. Strict discipline shall include a prohibition of the use of drugs, alcohol or any other controlled substance; prohibition of firearms or other weapons; prohibition of unnecessary contact with building occupants; and other objectives of good discipline. Use of tobacco products on NKU's campus is prohibited..

'8.7 The Construction Manager/ General Contractor shall employ and maintain at the Project site only competent supervisory personnel and other staffing as indicated in the Agreement Between Owner and Construction Manager/ General Contractor.

'8.8 The Construction Manager/ General Contractor shall have a continuing duty to read, examine, review, compare and contrast each of the Contract Documents, Shop Drawings, and other submittals and shall give written notice to the Owner and the Architect of any potential conflict, ambiguity, error or omission which the Construction Manager/ General Contractor may find with respect to these documents and their adequacy and sufficiency for construction as required by the Contract before proceeding with the affected Work. The express or implied approval by the Owner or the Architect of any Shop Drawings or other submittals shall not relieve the Construction Manager/ General Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Construction Manager/ General Contractor's compliance with the resulting Contract.

'8.8.1 The Owner has relied upon the Architect to prepare documents for the Project, including the plans and specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction, and in issuing the Contract to the Construction Manager/ General Contractor, the Owner's established legal duties to the Construction Manager/ General Contractor notwithstanding, the Owner has relied upon the Architect's professional expertise in fulfilling its legal duty to the Owner in addition to the Construction Manager/ General Contractor's full and good faith compliance with its duties set forth above.

'8.9 Superintendent. The Construction Manager/ General Contractor shall employ a qualified, competent full-time superintendent and any necessary (and required) assistants. This superintendent shall be present on site at all times that Work of this contract is underway except with prior written consent of the Architect. It shall be the responsibility of the superintendent to coordinate the work of all the Subcontractors.

'8.9.1 The Owner reserves the right to accept the Superintendent and other staff selected by the Construction Manager/ General Contractor. This full-time Project Superintendent shall be qualified and experienced to supervise the work of this Contract. The Construction Manager/ General Contractor shall notify the Architect and Owner in writing for acceptance prior to any change in supervisory personnel. This change shall be for reasons outlined below.

'8.9.2 This Superintendent shall have full and complete authority to act on behalf of the Construction Manager/ General Contractor in all matters related to this project, except as defined in written form by the Construction Manager/ General Contractor and accepted in writing by the Owner. All instructions given to the superintendent shall be considered as given to the Construction Manager/ General Contractor.

'8.9.3 The Superintendent shall not be changed except under the following circumstances:

'8.9.3.1 where the superintendent proves to be unsatisfactory to the Construction Manager/ General Contractor or ceases to be in his employ, in which case the Construction Manager/ General Contractor shall give timely prior written notice to the Owner of the impending change in superintendent and a reasonable explanation for the change; or

'8.9.3.2 where the Owner has reasonable grounds for dissatisfaction with the performance of the superintendent and gives written notice to the Construction Manager/ General Contractor of these grounds. The Construction Manager/ General Contractor, upon receiving such written notice, shall replace the existing superintendent with a successor, to whom the Owner has no objection.

'8.9.4 Should the Construction Manager/ General Contractor not provide the superintendent and/or other required staffing to oversee all work being performed on this Contract, the Owner has the right to deduct by Change Order the amount of Construction Manager/ General Contractor's Construction Services Fee for the period in which proper Superintendence of the Work is not provided. This amount is determined by dividing the complete amount of General Conditions indicated in the approved Schedule of Values by the number of months of project duration according to the approved Project Schedule or by using the Staffing Matrix contained the Agreement Between Owner and Construction Manager/ General Contractor.

'9. Labor, Material

'9.1 Construction Manager/ General Contractor Provisions. Unless otherwise stipulated, the Construction Manager/ General Contractor shall provide and pay for all materials, supervision, labor, water, tools, equipment, light, power, temporary heat, hoist, supplies, appliances, transportation, and other facilities and things necessary for the execution and completion of the Work.

'9.1.1 In the event the Owner elects to make available the electric power or domestic water, at no cost, to the Construction Manager/ General Contractor for construction purposes, the election to do so will be spelled out in the Special Conditions for this project. Available electric power provided by the Owner, at his election, shall not be utilized as a means for temporary heat without specific approval from the Owner in writing.

'9.1.2 Additionally, the Owner reserves the right to cease to provide this available electric power and/or domestic water, at no cost to the Construction Manager/ General Contractor, should it be found that the electric power and/or domestic water is not reasonably used economically.

'9.2 Construction Manager/ General Contractor Warranty. The Construction Manager/ General Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will strictly conform with the requirements of the Contract Documents.

'9.2.1 The Construction Manager/ General Contractor shall warrant all equipment, materials, products, and workmanship provided by the Construction Manager/ General

Contractor or any Trade Contractor or Subcontractor under these Contract Documents not only during the Contract period but also for a period of twelve (12) months after the Date of Substantial Completion.

‘9.2.1.1 The One Year Warranty period for correction of Work shall also be extended with respect to portions of the Work first performed after the Date of Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work including but not limited to Substantial Completion punch list work.

‘9.2.2 Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Construction Manager/ General Contractor’s warranty excludes remedy for damage or defect caused by abuse by the Owner or building occupants, modifications not executed by the Construction Manager/ General Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage.

‘9.2.3 If, during the Contract Period or during the One Year Warranty period (a) any equipment, materials or products furnished and/or installed by the Construction Manager/ General Contractor are found to be defective in service by reason of the Construction Manager/ General Contractor’s (or Trade Contractor’s or Subcontractor’s) faulty process, structural and/or mechanical design or specification, or (b) any equipment, materials, or products furnished and/or installed by the Construction Manager/ General Contractor (or Trade Contractor or Subcontractor) are found to be defective by reason of defects in material or workmanship, the Construction Manager/ General Contractor shall, promptly after receipt of written notice from the Owner or Architect, repair or cause to be repaired such defective equipment, materials or products, or replace such defective equipment, materials, or products.

‘9.2.3.1 During the One Year Warranty Period for correction of the Work, if the Owner fails to notify the Construction Manager/ General Contractor and give the Construction Manager/ General Contractor the opportunity to make correction, the Owner waives the right to require correction by the Construction Manager/ General Contractor and to claim a breach of Warranty. However, this inaction during the Warranty Period by the Owner does not imply any limitation of the Construction Manager/ General Contractor’s liability as indicated in paragraph ‘9.2.7.

‘9.2.3.2 During the One Year Warranty Period for correction of the Work, if the Owner notifies the Construction Manager/ General Contractor and gives the Construction Manager/ General Contractor the opportunity to make correction, and the Construction Manager/ General Contractor fails to correct the Work with reasonable promptness, the Owner has the right to claim a breach of Warranty.

‘9.2.4 The Construction Manager/ General Contractor’s warranty shall not exclude remedy for damage or defect caused by abuse by the Construction Manager/ General Contractor, his Trade Contractor, his subcontractors, or others within his control during the construction period or during work related to Construction Manager/ General Contractor warranty.

‘9.2.4.1 Any portion of the Work required by the Contract Documents shall not be waived as a requirement for Completion of the Work, except by specific

written authorization from the University for reasons where, by no fault of the Construction Manager/ General Contractor, could not be completed within the time established for Completion of the Work.

'9.2.5 If during the Construction Manager/ General Contractor's warranty period, there is a question concerning the quality or kind of materials and equipment installed in this project, and requested by the Architect, the Construction Manager/ General Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

'9.2.6 In the event of multiple failures of major consequence in similar equipment, products, components or systems, prior to the expiration of the one-year warranty described above, the affected equipment, product, component or system shall be disassembled, inspected, and modified or replaced as necessary to prevent further occurrences. Owner has the right to determine when replacement is required due to recurring failure to perform for items listed in this article. All related components which may have been damaged or rendered non-serviceable as a consequence of the equipment, product, components or system failure shall be replaced.

'9.2.6.1 As used herein, multiple equipment, product, component or system failures shall be interpreted to mean two (2) or more successive failures of the same kind in the same item of equipment, product, component or system or failures of the same kind in two (2) or more items of equipment or product, or in a specific building system or component.

'9.2.6.2 Major equipment failures may include, but are not limited to, cracked or broken housings, piping, or vessels, excessive deflections, bent or broken shafts or structural members, broken or chipped gear teeth overheating, premature bearing failure, excessive wear, or excessive leakage around the seals.

'9.2.6.2.1 Equipment failures which are directly and clearly traceable to operator abuse, such as substitution of unauthorized replacement parts, use of incorrect lubricants or chemicals, flagrant over or under lubrication and using maintenance procedures not conforming with published maintenance instructions, shall be exempted from the scope of the one-year warranty.

'9.2.6.3 Major product, component or system failures may include, but are not limited to, failure of the item to perform as intended, excessive wear, discoloration due to defective finish application, leakage, or inadequacy of performance as specified.

'9.2.6.3.1 Product, component, or system failures which are directly and clearly traceable to building user or operator abuse, such as substitution of unauthorized replacement parts, use of incorrect lubricants or chemicals, flagrant over or under lubrication, using maintenance procedures not conforming with published maintenance instructions, and abuse or vandalism, shall be exempted from the scope of the one-year warranty.

'9.2.6.4 Should multiple equipment, product, component or system failures occur in a given item or type of equipment, product, component or system, all items of the same size and type shall be disassembled, inspected, modified or replaced, as necessary, and re-warranted for one year.

'9.2.6.5 A new twelve (12) month warranty against defective or deficient design, workmanship, and materials shall commence on the day that the item of equipment is reassembled and placed back into operation.

'9.2.7 No specific provision of this Article nor any provision in the Contract Documents, nor any special guarantee time limit implies any limitation of the Contractor's liability under the laws of the Commonwealth of Kentucky.

'9.3 Substitution - Materials and Equipment. Substitution of previously approved equipment and materials shall be considered only for the following reasons:

'9.3.1 unavailability of the material or equipment due to conditions beyond the control of the Construction Manager/ General Contractor

'9.3.2 inability of the supplier to meet Contract schedule; or

'9.3.3 technical and immaterial noncompliance to specifications.

Inclusion of a certain, make or type of materials or equipment by the Construction Manager/ General Contractor shall not obligate the Architect or Owner to accept such material or equipment if it does not meet the requirements of the plans and specifications.

Substitutions not properly approved and authorized by the Architect and Owner may be considered defective work. The Construction Manager/ General Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials and equipment. Substitutions during construction shall be submitted to the Architect in writing by the CM/GC for Architect review and approval or rejection.

'9.4 Recycled Content KRS 45A.520 mandates that every state agency require a minimum recycled content for those materials it purchases. In accordance with 200 KAR 5:330, all listed products are to be offered by the awarded Construction Manager/ General Contractor ONLY as a recycled product. Except as provided in KRS 45A.510, construction related materials requiring a minimum recycled content include Building Insulation, Aluminum products, concrete, cement and steel products. For a complete listing of those items requiring minimum recycled content please refer to 200 KAR 5:330.

'10. Surveys, Permits, Fees, Notices, and Tests

'10.1 Owner-Furnished Surveys. The Owner shall furnish whatever surveys are specifically required by the Contract Documents. Approvals, assessments, easements for permanent structures or permanent changes in existing facilities, and utility tap-on fees shall be secured and paid for by the Owner, unless otherwise provided in the Contract Documents.

'10.1.1 Prior to start of construction, the Owner will furnish all land and rights-of-way necessary for the carrying out and completion of the Work to be performed under this Contract, except as outlined in the Special Conditions should any conditions exist at the start of construction which does not make this possible at the start of construction.

'10.2 Permits. Building, sewer, and water permits and similar kinds of permits required by local ordinances shall be obtained by the Construction Manager/ General Contractor, but no fee shall be charged to or paid by the Construction Manager/ General Contractor as the University is exempt

from such charges levied by Local Government Jurisdictions. The Construction Manager/ General Contractor shall procure and pay for any necessary licenses to do business in the locale of the Work, including the Campbell County and Highland Heights occupational license fees.

'10.3 Notices. The Construction Manager/ General Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the performance of the Work.

'10.4 Required Regulatory Tests and Inspections. Regulatory agencies of the State and Federal governments having jurisdiction may require any Work to be inspected, tested or approved. The Construction Manager/ General Contractor shall assume full responsibility therefore, including related costs, unless otherwise noted, and shall furnish the Architect the required certifications of inspection, testing or approval.

'10.4.1 The CM/GC is responsible for all costs, submissions, scheduling and approvals during construction for any shop drawings, permits and inspections required by the Department for Housing, Buildings and Construction.

'10.5 Any delays by governmental agencies in obtaining Permits, Notices, Required Regulatory Tests and Inspections (10.2, 10.3, 10.4) and not the fault of one of the parties shall be shared by the Construction Manager/ General Contractor and Owner with appropriate time extensions only. Liquidated damages and Construction Manager/ General Contractor compensation for such delays or impact are not applicable and shall not be payable.

'10.6 Payment for Tests. Tests of materials, products and equipment in place, required by the Architect or the Owner, to prove quality standards shall be paid by the Construction Manager/ General Contractor. Should results of testing indicate that construction is not in compliance with Contract Documents, the Construction Manager/ General Contractor shall bear the cost of any additional tests of the materials, products or equipment.

'10.6.1 The Construction Manager/ General Contractor shall give the Architect timely notice of readiness of the Work for all inspections, tests or approvals. This timely notice of readiness shall be no less than 72 hours except by prior agreement between the Architect and the Construction Manager/ General Contractor.

'10.7 Local Building Permits and fees. NKU's construction projects are exempt from Building Permit requirements of Local Governments. The Construction Manager/ General Contractor is not obligated to obtain a local building permit or to pay a building permit fee. However, this exemption does not waive the requirement for fees to make connection to utilities owned by a local municipality, Local Health Department Fees, or other such requirements.

'11. Protection of Work, Property, Employees and Public

'11.1 As between Owner and Construction Manager/General Contractor, Construction Manager/General Contractor is responsible to the Owner for any and all the safety issues relating to the Work on the Project. Construction Manager/General Contractor shall administer and manage the safety program for the Work. This will include, but not necessarily be limited to, review of the safety programs of each of Construction Manager's/General Contractor's Subcontractors. Construction Manager/General Contractor shall monitor the establishment and execution of effective safety practices then known to the industry, as applicable to Work, and the compliance with all applicable regulatory and advisory agency construction safety standards.

'11.1.1 Safety Precautions and Programs. The Construction Manager/ General Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Project. The Construction Manager/ General Contractor shall be responsible for compliance with all State and Federal OSHA rules and regulations.

'11.1.2 The Construction Manager's/General Contractor's responsibility for review, monitoring and coordination of the Subcontractors' safety programs shall not extend to direct control over execution of the Subcontractors' safety programs; notwithstanding Construction Manager's/General Contractor's safety obligations to the Owner, it is agreed and understood that each individual Subcontractor shall remain controlling employer responsible for the safety programs and precautions applicable to its own work and the work activities of others in areas designated to be controlled by such Subcontractor.

'11.2 Safety of Persons and Property. The Construction Manager/ General Contractor 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. He shall make good 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. He shall adequately protect adjacent property as provided by law and the Contract Documents.

'11.2.1 The Construction Manager/ General Contractor shall take all necessary precautions for the safety of his employees and the employees of his Trade Contractors and Subcontractors on the Work site, 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.

'11.2.2 The Construction Manager/ General Contractor shall provide and maintain a Work environment and procedures which will safeguard the public and Owner personnel and agents, property, material, supplies and equipment exposed to Construction Manager/ General Contractor operations and activities; avoid interruptions of user agency operations; and avoid delays in Contract completion dates.

'11.2.3 For the purposes of protecting the safety of persons and property, the Construction Manager/ General Contractor shall provide appropriate safety barricades, signs and signal lights; Comply with any safety requirement published by any governmental authority with jurisdiction over the site, including Federal, State or local jurisdictions; and ensure that any additional measures which are reasonably necessary for these purposes are taken.

'11.2.4 The Construction Manager/ General Contractor shall designate a responsible member of his organization present on the Work site as safety officer whose duty shall be to enforce safety regulations. The name and position of the person so designated shall be reported to the Architect by the Construction Manager/ General Contractor at the beginning of the project. Should the Construction Manager/ General Contractor have reason to change the responsible member designated with this task, he shall immediately inform the Architect in writing.

'11.2.5 In an emergency affecting the safety of life, or of the Work, or of adjoining property, the Construction Manager/ General Contractor, without special instruction or authorization from the Architect or Owner, shall act at his discretion to prevent such threatened loss or injury. Immediately following the emergency, the Construction Manager/

General Contractor shall file a written report to the Architect and Owner detailing the incident and the actions taken to mitigate the condition.

'11.2.6 If the Architect or the Owner becomes aware of any noncompliance by the Construction Manager/ General Contractor with the safety conditions of this Contract or of any condition caused by the Construction Manager/ General Contractor, which poses a serious or imminent danger to the health or safety of the public or to State personnel, they will notify the Construction Manager/ General Contractor orally, with written confirmation, and direct immediate initiation of corrective action.

'11.2.6.1 This provision of providing notice to Construction Manager/ General Contractor for noncompliance with safety issues does not in any way relieve the Construction Manager/ General Contractor from his responsibilities, either in part or in full, to provide adequate precautions to insure the safety of persons and property.

'11.2.6.2 This Notice, when given to the Construction Manager/ General Contractor or his representative at the Work site, shall be deemed sufficient notice of noncompliance and that corrective action is required.

'11.2.6.3 After receiving the Notice, the Construction Manager/ General Contractor shall immediately take corrective action. If the Construction Manager/ General Contractor fails or refuses to promptly take corrective action, the Architect may issue an order stopping all or part of the Work until satisfactory corrective action has been taken.

'11.2.6.3.1 The Construction Manager/ General Contractor shall not be entitled to an equitable adjustment of the Contract price or an extension of the performance schedule by reason of the issuance of any stop Work order under this Article.

'11.3 Hazardous Materials. The Construction Manager/General Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Construction Manager/General Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Construction Manager/General Contractor, the Construction Manager/General Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

'11.3.1. Upon receipt of the Construction Manager/General Contractor's written notice, the Owner will obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Construction Manager/General Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless.

'11.3.1.1 Unless otherwise required by the Contract Documents, the Owner will furnish in writing to the Construction Manager/General Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are

to perform the task of removal or safe containment of such material or substance.

The Construction Manager/General Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Construction Manager/General Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner will propose another to whom the Construction Manager/General Contractor and the Architect have no reasonable objection. If upon review between CM/GC and Owner, the material to be removed is agreed to be a schedule and / or construction access issue, the Owner may request through the Architect, pricing from the CM/GC to provide the removal through the contract for construction in lieu of Owner providing that removal.

'11.3.1.2 When the material or substance has been rendered harmless,

Work in the affected area shall resume upon written agreement of the Owner and Construction Manager/General Contractor. By Change Order, the Contract Time shall be extended appropriately, and the Contract Sum shall be increased in the amount of the Construction Manager/General Contractor's reasonable additional costs of shut-down, delay and start-up. Any additional cost must be reviewed by the Architect for actual impact to overall schedule and critical path. If impact is not found to be warranted, then contract time and cost will not be increased.

'11.3.2 The Owner shall not be responsible under this paragraph 11.3 for materials or substances the Construction Manager/General Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Construction Manager/General Contractor's fault or negligence in the use and handling of such materials or substances.

'11.3.3 The Construction Manager/General Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Construction Manager/General Contractor brings to the site and negligently handles, or (2) where the Construction Manager/General Contractor fails to perform its obligations under paragraph 11.3 except to the extent that the cost and expense are due to the Owner's fault or negligence.

'11.3.4 If, without fault on the part of the Construction Manager/General Contractor, the Construction Manager/General Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Construction Manager/General Contractor for all cost and expense thereby incurred.

'12. Inspection of Work/Discovering and Correcting Defective or Incomplete Work/Special Inspections

The Owner, the Architect, Special Inspector Agency and their representatives shall at all times have access to the Work whenever it is in preparation or progress and the Construction Manager/General Contractor shall provide proper facilities for such access and for inspection. This access shall include access to approved Construction Documents and Submittals. The Construction Manager/General Contractor shall be given timely notification in order to arrange for proper inspection of any Work performed outside of the normal working day or week.

'12.1 If the specifications, the Architect's instructions, laws, ordinances, or any public authority require any Work to be specially tested or approved, the Construction Manager/ General Contractor shall give the Architect timely notice of its readiness for inspection. Inspections by the Architect shall be made promptly, as defined by the Contract between the Owner and the Architect.

'12.2 In the event that the Construction Manager/ General Contractor covers, conceals or obscures its Work in violation of the Contract or in violation of a directive from the Owner or the Architect, such Work shall be uncovered and displayed for the Owner's or Architect's inspection upon request, and shall be reworked at no cost in time or money to the Owner.

'12.2.1 If any of the Work is covered, concealed or obscured in a manner not covered by the above paragraph, it shall, if directed by the Owner or the Architect be uncovered and displayed for the Owner's or Architect's inspection. If the uncovered Work conforms strictly with the Contract, the costs incurred by the Construction Manager/ General Contractor to uncover and subsequently, replace such Work shall be borne by the Owner. Otherwise, such costs shall be borne by the Construction Manager/ General Contractor.

'12.3 **The Construction Manager/ General Contractor shall, at no cost in time or money to the Owner**, correct Work rejected by the Owner or by the Architect as defective or failing to conform to the Contract. Additionally, the Construction Manager/ General Contractor shall reimburse the Owner for all testing, inspections and other expenses incurred as a result thereof.

'12.4 **The Owner may, but shall in no event be required to, choose to accept defective or nonconforming Work.** In such event, the Contract Price shall be reduced by the greater of (1) the reasonable costs of removing and correcting the defective or nonconforming Work, and (2) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Contract Sum, if any, is insufficient to compensate the Owner for the acceptance of defective or nonconforming Work, the Construction Manager/ General Contractor shall, upon written demand from the Owner, pay the Owner such remaining compensation for accepting defective or nonconforming Work.

'12.5 **When Special Inspections are required** by Section 1704 of the Kentucky Building Code for any portion of the work, the following provisions shall apply:

'12.5.1 Special Inspector Agency or Special Inspector: An independent agency/ registered professional Contracted by the Owner, required by the Kentucky Building Code Chapter 17, and responsible for conducting special inspections and testing defined as such in the technical specifications for this project.

'12.5.1.1 The costs of the initial special inspections and testing shall be borne by the Owner by separate contract with the Special Inspection Firm directly or through the Architect as a sub-consultant.

'12.5.1.2 The costs of re-inspections and/or re-testing, should discrepancies be found, shall be paid by the Owner, but is recoverable by the Owner from the Construction Manager/ General Contractor by a credit change order.

'12.5.1.3 The costs of re-scheduling inspections and/or testing, where the Construction Manager/ General Contractor through his lack of reasonable control of scheduling causes the Special Inspector to spend time in preparation for an inspection and/or test that did not occur as scheduled, shall be paid by the Owner,

but is recoverable by the Owner from the Construction Manager/ General Contractor by a credit change order.

'12.5.2 Contract Document Compliance: Special Inspection and testing as defined in the technical specifications is for the purpose of verifying compliance with requirements specified or indicated. This does not relieve the Construction Manager/ General Contractor of the responsibility for compliance with the Contract Document requirements.

'12.5.3 Notify the Special Inspector: The Construction Manager/ General Contractor shall be responsible for notifying the Special Inspector and/or Special Inspection Agency regarding individual inspections required by the Contract Documents and coordinating the schedule of inspections and testing with the Construction Manager/ General Contractor's approved construction schedule. Adequate notice shall be provided so that the Special Inspector has time to become familiar with the project.

'12.5.4 Discrepancies: The Construction Manager/ General Contractor shall be responsible to ensure that deficiencies are corrected and shall coordinate with the Special Inspector to ensure that the Special Inspector has observed the corrected deficiency prior to the work involved in the discrepancy being concealed or made inaccessible by subsequent work. Concealing or making inaccessible such deficiencies shall constitute another deficiency subject to removal to allow observation of the work involved in the initial discrepancy.

'12.5.5 Reporting Requirements: The Special Inspection Agency/ Special Inspector shall keep records of all inspections and testing, re-inspections and re-testing, and other related events. The Special Inspector shall furnish inspection and testing reports to the Owner, Construction Manager/ General Contractor, and Architect/Engineering concurrently and as construction progresses. Reports shall be submitted immediately following each site visit, inspection and when determinations of results of off-site testing are available.

'12.5.5.1 Reports shall include date of issue; project title and number; name/ address/ telephone number of testing agency; dates and locations of samples and tests or inspections; names of individuals making tests and inspections; description of the work being tested or inspected; test and inspection method; specification section related to work; complete test or inspection data; test and inspection results; interpretation of results; all non-conforming items/ discrepancies observed and corrective actions implemented by the Construction Manager/ General Contractor; re-testing and re-inspection performed; ambient conditions at time of sampling, testing or inspection; comments or professional opinion on whether tested or inspected work complies with the Contract Documents and name/ signature of inspector with registration number.

'12.5.6 Notification of non-conforming or discrepancy work; The Special Inspection Agency/ Special Inspector shall immediately bring non-conforming or discrepancy work to the attention of the Construction Manager/ General Contractor for correction.

'12.5.6.1 If non-conforming or discrepancy work is not corrected in a timely manner or are about to be incorporated into the work, the Special Inspector shall bring the non-conforming or discrepancy work to the immediate attention of the Authority Having Jurisdiction, Owner, Construction Manager/ General Contractor, and the Architect/Engineer, and that item shall be highlighted in the Special Inspector's written report.

'12.5.6.2 Discrepancy Notice: The Special Inspector shall write a separate "Discrepancy Notice" to be posted at the Project Site regarding the noted discrepancies and which shall contain, at a minimum, the following information about the non-conforming item: 1) Description and exact location; 2) Reference to applicable detail of the approved Construction Documents (Drawings and Specifications); 3) name and title of each individual notified and method of notification; and, 4) Resolution or corrective action taken or to be taken.

'13. Royalties and Patents

The Construction Manager/ General Contractor shall pay all royalties and license fees and shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof.

'13.1 Notwithstanding anything herein to the contrary, Construction Manager/General Contractor shall not be responsible for defense of a suit or claim for infringement of any patent rights or any resulting losses on account thereof when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect.

'14. Changes in the Work/Change Orders

'14.1 Change Orders. One or more changes to the Work within the general scope of the Contract may be ordered by Change Order. The Construction Manager/ General Contractor shall proceed with any such changes, (including additions, reductions, deletions, other revisions), and same shall be accomplished in strict accordance with the following:

'14.1.1 Change Order means a written order to the Construction Manager/ General Contractor executed by the Owner and the Architect after execution of the Contract, directing a change in the Work and may include a change in the Contract Price, or the Contract Completion Time, or any combination thereof. There shall be no authorized changes in the Work which affect either Contract Price or Contract Completion Time without a fully executed Change Order.

'14.1.1.1 In specific instances where the progress of the Work would be negatively affected by a delay in the Work while a fully executed Change Order is being processed, upon written approval by the Owner and with an agreed to Contract Amount/Contract Time adjustment, the Architect may issue a written authorization to proceed with the proposed change (with the change in Contract Amount/ Contract Time clearly indicated) prior to the issuance and execution of the formal Change Order. Following this written authorization to proceed with the proposed change, the Architect will prepare and process for execution the required Change Order.

'14.1.1.2 In these specific instances where a written authorization to proceed is provided prior to execution of the required Change Order, the action of the Construction Manager/ General Contractor to proceed with the authorized work shall be deemed as agreement to the change for the Amount and Time extension indicated in the written notice to proceed with the change.

'14.1.2 Any change in the Contract Sum or Contract Time resulting from a Change Order shall be determined by one of the following methods:

- (1) **by mutual agreement of a lump sum amount** and/or Time adjustment between the Owner and the Construction Manager/ General Contractor as evidenced by (a) the Change in the Contract Sum or Contract Time being set forth in the Change Order, (b) such change in the Contract Sum or Contract Time, together with any conditions or requirements relating thereto, being initialed by both parties and (c) the Construction Manager/ General Contractor's execution of the Change Order;
- (2) **by unit prices stated in the Contract Documents** or subsequently agreed upon by the Owner and the Construction Manager/ General Contractor; or
- (3) **If no mutual agreement occurs** between the Owner and the Construction Manager/ General Contractor, the Change in the Contract Sum, if any, shall be derived by determining the reasonable actual costs or savings achieved resulting from revisions in the Work. This determination shall be made by the Architect, who has the responsibility of interpretation of the Contract Documents.

'14.1.2(3).1 When a determination by the Architect is required for a Change Order due to no mutual agreement being reached between the Owner and the Contractor, the provisions of paragraph '14.1.3 and '14.1.4 shall apply. Additionally, the Contractor shall not refuse to perform the Work indicated by the Change Order and shall execute the Work in a timely manner, even if the Contractor intends to protest the determination as provided in paragraph '3.4

'14.1.3 Items (1) and (3) above shall include a component for all overhead, profit, indirect costs or other items not to exceed ten percent (10%) applied to the price to be paid to a Trade Contractor and Subcontractor, cumulatively. Any such costs or savings shall be documented in the format and with such content and detail as the Owner or the Architect requires. The Construction Manager/ General Contractor shall not receive a fee percentage increase on a Change Order. Refer to CM/GC Contract for any additional provisions related to Changes in the Contract.

'14.1.4 For all charges relating to any Change Order, whether determined under subparagraph 1, 2 or 3 above, the following provisions shall apply:

The Construction Manager/ General Contractor shall keep and present in such form as the Architect may direct, a correct account of all items in such form comprising the net cost of such Work, together with vouchers.

The determination of the Architect shall be final (except as provided in paragraph '3.4) upon all questions of the amount and cost of Changes in the Work, and it shall include in such cost, the cost to the Construction Manager/ General Contractor of all materials used, of all labor, common and skilled, or foremen, trucks and teams, and the fair rental of all machinery used and for the period of such use.

If said Work requires the use of machinery not already upon the work or to be otherwise used upon the Work, then the cost of transportation of such machinery

to and from the Work shall be added to the fair rental but said transportation shall not cover a distance exceeding one hundred (100) miles.

In all cases where Changes in the Work are covered by unit prices set forth in the Contract, the value of such Work shall be determined only upon the basis of such unit prices.

Pending final determination of value, payments on Changes in Work shall be made only upon the estimate of the Architect.

'14.1.5 If the Construction Manager/ General Contractor claims that any instructions by the Architect involve additional cost and/or time extension, he shall give the Architect written notice thereof within SEVEN (7) days after the receipt of such instructions and before proceeding to execute the change in Work.

'14.1.6 On all Change Orders, it shall be understood that the Construction Manager/ General Contractor certifies through signature that the following certification shall apply:

"I (the Construction Manager/ General Contractor) certify to the best of my knowledge and belief, the cost or pricing data submitted is accurate, complete and current as of the date of the proposed change and will remain in effect until the Work of the Change is completed."

'14.1.7 If the Architect and Construction Manager/ General Contractor cannot agree on the effect of an ordered change on the adjustment to the Contract Sum or Contract Time, this matter may also be referred to the Owner representative for determination.

'14.1.7.1 If the Owner representative and/or Construction Manager/ General Contractor do not agree with the Architect's determination regarding the valuation of a change, the related adjustment to the Contract Sum or to the Contract Completion Time, the matter shall be subject to the disputes procedure set out in Article 26.

'14.1.8 The execution of a Change Order by the Construction Manager/ General Contractor shall constitute conclusive evidence of the Construction Manager/ General Contractor's agreement to the ordered changes in the Work, the resulting Contract as thus amended, the Contract Sum and the Contract Time for performance by the Construction Manager/ General Contractor. The Construction Manager/ General Contractor, by executing the Change Order, waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order with the exception of concealed conditions unforeseeable by the CM/GC.

'14.1.9 The Construction Manager/ General Contractor shall notify and obtain the consent and approval of the Construction Manager/ General Contractor's Payment and Performance Bond sureties with reference to all Change Orders if such notice, consent or approval are required by the Owner, the Architect, the Construction Manager/ General Contractor's sureties or by law. The Construction Manager/ General Contractor's execution of the Change Order shall constitute the Construction Manager/ General Contractor's warranty to the Owner that the sureties have been notified of, and consent to, such Change Order and the sureties shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

'14.2 Cash Allowance: It is understood that the Construction Manager/ General Contractor has included in the Contract Price all allowances (see Article '30 for more information) so named in the Contract Documents and shall cause the Work so covered to be furnished and performed for such sums as may be acceptable to Architect and the Owner. The Construction Manager/ General Contractor agrees that:

'14.2.1 The allowances include the cost to Construction Manager/ General Contractor (less any applicable trade in counts) of materials and equipment required by the allowances to be delivered at the site, and all applicable taxes; and

'14.2.2 The Construction Manager/ General Contractor's cost for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances and no demand for additional payment on account of any of the foregoing will be valid; and

'14.2.3 Prior to final payment of the full amount of the allowance (on the schedule of values), an appropriate Change Order will be issued as recommended by Architect reflect actual amounts due the Construction Manager/ General Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

'14.3 Minor Changes. The Architect may authorize minor changes in the Work which do not involve additional cost or extension of the Contract Completion Time, and which are not inconsistent with the intent of the Contract Documents. Such changes shall be affected by a Field Order or ASI issued by the Architect to the Construction Manager/ General Contractor and Owner concurrently, which shall be binding on the Owner and Construction Manager/ General Contractor. The Construction Manager/ General Contractor shall carry out such orders promptly.

'14.3.1 However, if the Construction Manager/ General Contractor claims that a Field Order or ASI involves additional cost or a delay to completion of the Work, he shall give the Architect written notice within SEVEN (7) days receipt of the Field Order or ASI. Otherwise, he shall be deemed to have waived any right to claim an adjustment to the Contract Sum or to the Contract Completion Time.

'15 Project Records

All documents relating in any manner whatsoever to the Project, or any designated portion thereof, which are in the possession of the Construction Manager/ General Contractor, or any Subcontractor of the Construction Manager/ General Contractor, shall be made available to the Owner or the Architect for inspection and copying upon written request by the Owner. Furthermore, said documents shall be made available, upon request by the Owner, to any state, federal or other regulatory authority and any such authority may review, inspect and copy such records. Said records include, but are not limited to all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the Project, its design, and its construction. Said records expressly include those documents reflecting the cost of construction to the Construction Manager/ General Contractor. The Construction Manager/ General Contractor shall maintain and protect these documents for no less than ten (10) years after final completion of the Project, or for any longer period of time as may be required by law or good construction practice.

'16. Delays and Extensions of Time

It is agreed that time is of the essence for each and every portion of the resulting Contract and where under the Contract an additional time is allowed for the completion of any Work, the new time limit fixed by such extension shall be of the essence of the Contract. Provided, that the Construction Manager/ General Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the Work is due to:

- (1) any preference, priority, or allocation order duly issued by the government;
- (2) unforeseeable cause beyond the control and without the fault or negligence of the Construction Manager/ General Contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the Owner, acts of another Construction Manager/ General Contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather; or
- (3) any delays of Subcontractors or suppliers occasioned by any of the causes specified in subsections (1) and (2) of this Article.

16.1.1 Delay that is NOT caused by the Owner or Construction Manager/ General Contractor, that delays the critical path of the project schedule, may result in extension of Contract Time but not an increase in Contract Amount. Such delays include: Acts of God; Labor disputes/ Strikes; Freight embargos; Fire (when not attributable to act of Construction Manager/ General Contractor); Unusual delays in deliveries (when not attributable to act of Construction Manager/ General Contractor); Health epidemics that affect Construction Manager/ General Contractor forces; and, Other causes beyond the control of the Construction Manager/ General Contractor or Owner.

'16.1.1.1 The Construction Manager/ General Contractor shall, within seven (7) calendar days of the occurrence of the event that caused a delay not caused by the Owner or Construction Manager/ General Contractor, notify the Architect in writing. The Architect shall ascertain the facts and extent of the delay and notify the Construction Manager/ General Contractor within a reasonable time of its decision in the matter. Any change in the Contract Completion Time resulting from any such claim shall be incorporated in a Change Order. Such a claim shall not result in an increase in Contract Amount.

16.1.2 Delay due to adverse weather conditions: The Construction Manager/ General Contractor shall have incorporated into the Project Schedule at the time of execution of the Contract for Construction all anticipated delay caused by normally occurring adverse weather. Adverse weather is that which normally occurring according to the records of the National Oceanic Atmospheric Administration (NOAA).

16.1.2.1 When adverse weather exceeds that which is normally expected, as defined above, and the Construction Manager/ General Contractor is making a claim for delay due to adverse weather, the Construction Manager/ General Contractor shall submit to the Architect current and historical weather data from NOAA for the project site which documents and proves that the adverse weather was more than anticipated at the Project Progress Meeting immediately following the month in which the excessive adverse weather occurred.

16.1.2.2 When adverse weather is significantly less than that which is normally expected, as defined above, the Architect shall prepare for the Owner a claim for a reduction in Contract Time by providing current and historical weather data from NOAA for the project site which documents and proves that the adverse weather was less than anticipated at the Project Progress Meeting immediately following the month in which the adverse weather that occurred was significantly less than anticipated. The number of days in the claim shall be added to the project float and is made available to the Construction Manager/ General Contractor and/or Owner to mitigate other types of delay in the project completion. Generally, a reduction of time caused by less than anticipated adverse weather does not constitute reason for a decrease in Contract Amount.

16.1.2.3 When the Architect determines that adverse weather has delayed the project and that the claim of the Construction Manager/ General Contractor for delay due to adverse weather is justified, the Construction Manager/ General Contractor will provide an accounting of float held in the project (see Article 16.2.1.4.1) that may be applied to the weather delay. Should the amount of weather delay exceed the available amount of float held on the project, the Architect will issue a Change Order extending the Contract Time by the number of days in which the Construction Manager/ General Contractor was actually delayed due to adverse weather. An extension of time for delays caused by adverse weather does not constitute reason for an increase in CM/GC's Construction Services Fee or the Contract Amount.

'16.2.1 Delay that is caused by the Owner, that delays the critical path of the project schedule, may result in extension of Contract Time and may result in an increase in Contract Amount based on an adjustment due to the affected Trade Contractors.

'16.2.1.1 The Construction Manager/ General Contractor shall require a written notice within seven (7) calendar days of the occurrence of the event, from an affected Trade Contractor making a claim for a delay cause by Owner. The Construction Manager /General Contractor shall review the claim from the Trade Contractor and if it is found appropriate, notify the Architect in writing within fourteen (14) calendar days of the occurrence of the event. The Architect shall ascertain the facts and extent of the delay and notify the Construction Manager/ General Contractor within a reasonable time of its decision in the matter. Any change in the Contract Completion Time resulting from any such claim shall be incorporated in a Change Order.

'16.2.1.2 An extension of time shall not be construed as cause for extra compensation under the Contract, unless the Construction Manager/General Contractor clearly demonstrates that the critical path of the overall project is affected. Extensions of time relating to concealed conditions as defined in Article 26 shall be governed by the provisions of this article. If the CM/GC has a concurrent delay also affecting critical path that is created due to their or their trade contractor performance, the delays will need to be reviewed as to the effect on the overall schedule and if a resulting time extension is warranted.

'16.2.1.3 Should the Construction Manager/ General Contractor determine that an extension of time is cause for extra compensation to an affected Trade Contractor under the Contract, he shall make a recommendation of such claim in writing to the Architect within Fourteen (14) calendar days of the occurrence of the event. This claim shall be in sufficient detail to support the Construction Manager/General Contractor's recommendations concerning the Trade Contractor's claim. In instances where the final determination of the costs associated with such delay are not readily calculable, the Construction Manager/ General Contractor shall provide an ESTIMATED cost of the delay

per day of delay. If this estimated cost of delay per day is accepted by the Owner, the actual amount compensable by the delay will be based on this estimate.

16.2.1.3.1 A Construction Manager/ General Contractor's recommendation of a claim for extra compensation to a Trade Contractor under the Contract may include: Direct Job Office expenses, extended equipment-left-idle costs (rented or owned), increased labor and material costs (for extended delays), loss of efficiency (for extended delays), increased insurance premiums, excess storage costs, etc.

16.2.1.3.2 A Construction Manager/ General Contractor's recommendation of a claim for extra compensation to a Trade Contractor under the Contract shall not include: home office costs, indirect Job Office expenses, equipment not-left-idle costs (rented or owned), increased labor or material costs (for short delays), job site forces costs, loss of efficiency (for short delays), etc.

16.2.1.4 When a Trade Contractor experiences a delay caused by the Owner, the Construction Manager/ General Contractor and the Trade Contractor shall work to mitigate the delay to be best of his ability and to make a claim for the delay must prove that he mitigated the delay to the greatest extent possible.

16.2.1.4.1 Since the Owner, the Construction Manager/ General Contractor and the Trade Contractor share as a commodity, all float (including Total Float, Free Float and Sequestered Float) (See Article '4.1.2), this float is available to the Owner to mitigate the effect of events that may delay performance or completion of all or part of the Work that has been caused by the Owner.

16.2.1.5 When the Trade Contractor experiences a delay caused by the Owner, the delay must result in a delay to the critical path of the project schedule which is not readily recoverable by the Trade Contractor without actual damage. In making a claim for the delay the Construction Manager/ General Contractor shall require that the Trade Contractor prove that the delay was a delay to the critical path of the project schedule and that he was not readily able to recover without actual damage.

16.2.1.6 When a Trade Contractor experiences a delay caused by the Owner, the Trade Contractor may not be entitled to a claim for the delay if a concurrent delay is present that is caused by the actions or inaction of the Construction Manager/ General Contractor or Trade Contractor. When a concurrent Construction Manager/ General Contractor and/or Trade Contractor caused delay exists, all related delays shall be reviewed together and the Trade Contractor is only eligible to make a claim for a delay caused by the Owner that extends beyond the concurrent delay caused by the Trade Contractor.

16.2.1.7 When there is a delay caused by the Construction Manager/ General Contractor or Trade Contractor that is concurrent with a delay caused by the Owner, there may be an extension of Contract Time, if found warranted, but no compensation to the Trade Contractor will be made.

16.2.1.8 When the Construction Manager/ General Contractor and/or Trade Contractor is behind the accepted Project Schedule (related to the Critical Path), and there occurs a delay caused by the Owner (that would have affected the Critical Path had the Construction Manager/ General Contractor and/or Trade Contractor been on schedule), no time

extension or compensation will be due the Trade Contractor during the period of time that the project is behind schedule.

16.2.1.9 When the Construction Manager/ General Contractor and/or Trade Contractor fails to plan his work in a manner than permits him to ask questions of the Architect/Owner reasonable ahead of the time he requires to the answer to avoid a delay caused by the Owner, the delay will be a considered a concurrent delay and while an extension of time may be found as reasonable to grant the Trade Contractor, no compensation for the delay will be provided. This situation is considered a concurrent delay since the Construction Manager/ General Contractor and/or Trade Contractor participated in creation of the delay by his failure to plan the work adequately to avoid or reduce the delay.

'17 Subcontractors and Trade Contractors

'17.1 Construction Manager/ General Contractor Fully Responsible for Subcontractors and Trade Contractors. The Construction Manager/ General Contractor is fully responsible to the Owner for the acts and omissions of his Subcontractors and Trade Contractors and of persons and entities either directly or indirectly employed by them. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner and a Subcontractor or Trade Contractor.

'17.2 Flow-down Requirement. By contract, the Construction Manager/ General Contractor shall require each Subcontractor and Trade Contractor:

- (1) to be bound to the Construction Manager/ General Contractor by the terms of the Contract Documents insofar as they apply to the Work to be performed by the Subcontractor and Trade Contractor; and
- (2) to assume toward the Construction Manager/ General Contractor all the obligations which the Construction Manager/ General Contractor, by the Contract Documents, assumes toward the Owner.

'17.3 Contracts with SubContractors and Trade Contractors. The Construction Manager/ General Contractor shall contract with those Subcontractors and Trade Contractors listed in the Construction Manager/ General Contractors Bid Package Recommendations and deemed acceptable by the Owner in accordance with the procedure outlined in the Instruction to Bidders. All subcontracts and Trade Contracts shall afford the Construction Manager/ General Contractor rights against the Subcontractor and Trade Contractor which correspond to those rights afforded to the Owner against the Construction Manager/ General Contractor herein, including those rights of Contract termination as set forth herein.

'17.4 Substitution of SubContractors and Trade Contractors. The Construction Manager/ General Contractor shall not contract with any substitute Subcontractor or Trade Contractor or change a Subcontractor or Trade Contractor without providing timely written notice of the proposed substitution to the Architect, Owner and Purchasing Officer. The substitution shall not be made if the Architect, Owner, or Purchasing Officer object in writing to such change.

17.4.1 Release required of original Subcontractor and Trade Contractor. When the Construction Manager/ General Contractor finds it necessary to propose a substitute Subcontractor or Trade Contractor or change a Subcontractor or Trade Contractor he shall

provide to the Owner a written release from the Subcontractor or Trade Contractor being substituted or changed indicating that they are not able, or not willing to, provide the work in which they were originally contracted to provide. This written release shall be on the official letterhead of the Subcontractor or Trade Contractor.

17.4.1.1 This written release shall be on the official letterhead of the Subcontractor, when obtainable, stating that the Subcontractor is agreeable to being substituted on the project and that the Subcontractor waives all current and future claims resultant from the substitution.

17.4.1.2 When the Construction Manager/ General Contractor cannot obtain the release required of original Subcontractor or Trade Contractor he shall provide in written form a statement, on the letterhead of the Construction Manager/ General Contractor with proof that the CM/GC has attempted to obtain such a release, that the Trade Contractor or Subcontractor is non-responsive in not only providing the release but is also non-responsive in providing the work being subcontracted, and that the Construction Manager/ General Contractor fully accepts any future liability from the original Trade Contractor or Subcontractor making a claim related to being substituted.

17.4.1.3 Prior to the substitution being made, the Construction Manager/ General Contractor shall obtain written approval from the Owner indicating that the University has reviewed the documents provided as indicated above and has concluded that it is in the best interests of the University that such a substitution is accepted.

'18. Payment

The Owner shall make payments, less held retainage (defined in paragraph 18.5), to the Construction Manager/ General Contractor on the amount of the Work performed or materials furnished for the Work in accordance with the following procedures (note that The Owner shall not withhold retainage on the amount due the CM/GC for the Construction Manager/ General Contractor's Construction Services Fee and the General Conditions, bonds and insurance premiums which are part of this Construction Services Fee):

'18.1 Schedule of Values shall be submitted with a construction schedule within fifteen (15) days of the Date of Commencement, as provided in Article 4, the Construction Manager/General Contractor shall submit a Schedule of Values apportioning the Contract Sum among the different elements of the Project for purposes of periodic and final payment, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The CM/GC shall submit the payment application cover sheet and continuation sheets (Schedule of Values) on the Owner's Payment Application / Invoice form. The schedule of values shall be separated into each bid package and include breakouts for labor, materials, equipment per work item. The Construction Manager/ General Contractor shall not imbalance it's Schedule of Values, nor artificially inflate any element thereof. The violation of this provision by the Construction Manager/ General Contractor shall constitute a material breach of the Contract. Upon written approval by the Architect and the Owner, the Schedule of Values and construction schedule shall become the basis for the Construction Manager/ General Contractor's Payment Requests during construction.

'18.2 Application for Progress Payment. Not more often than once a month (except as provided in paragraph 3.8), the Construction Manager/ General Contractor shall submit to the Architect a signed application for payment (sometimes referred to as Payment Request), for the Work

completed as of the date of the application and accompanied by such data and schedules as the Architect may reasonably require.

'18.2.1 Therein, the Construction Manager/ General Contractor may request payment less held retainage, of that part of the Contract Sum allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Project.

'18.2.2 If payment is requested on the basis of materials and equipment not incorporated in the Project, but delivered and suitably stored at the Project site or at another location agreed to in writing by the Owner, the application for payments shall also be accompanied by such data, satisfactory to Owner, as will establish the Owner's title to the material and equipment and protect his interest therein, including written documentation of full insurance against loss or damage and the bonding of the storage sites. Storage sites must be bonded. The Owner shall be listed as the Certificate Holder with no additional insured. The insurance certificate shall list what the material is, dollar value of said material and the location where material is stored.

'18.2.3 Each subsequent application for payment shall be considered as an affidavit from the Construction Manager/ General Contractor with CM/GC signature, that all previous progress payments received on account of the Work have been applied to discharge in full all of the Construction Manager/ General Contractor's obligations reflected in prior applications for payment.

'18.2.4 Each Payment Request shall be signed by the Construction Manager/ General Contractor and shall constitute the Construction Manager/ General Contractor's representation that the quantity of Work has reached the level for which payment is requested, that the Work has been properly installed or performed in strict compliance with this Contract, and that the Construction Manager/ General Contractor knows of no reason why payment should not be made as requested.

'18.3 **Approval of Payments.** The Architect shall review the application for payment and shall review the work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the application for payment and is as required by this Contract.

'18.3.1 The Architect shall, within ten (10) business days after receipt of each application for payment, approve in writing the amount which, in the opinion of the Architect, is properly owing to the Construction Manager/ General Contractor.

'18.3.1.1 **When there is reasonable justification that causes the Architect to be unable to perform this review, approval and submission of his recommendation to the Owner within the time prescribed in paragraph 18.3.1 above,** the Architect will notify the Construction Manager/ General Contractor in writing as to the justification and as to the time that will be required for this review, approval and submission of his recommendation to the Owner.

'18.3.2 The Owner shall make payment to the Construction Manager/ General Contractor within twenty (20) business days following the Architect's written approval of each application for payment. A reasonable delay on the part of the Owner in making payment to the Construction Manager/ General Contractor for any given payment shall not be a breach of contract.

'18.3.2.1 When there is reasonable justification that causes the Owner to be unable to make payment within the time prescribed in paragraph 18.3.2 above, the Owner will notify the Construction Manager/ Contractor in writing as to the justification as to why this payment cannot be made.

'18.3.2.2 The Owner will not be required to make payment to the Construction Manager/ General Contractor within the time prescribed in paragraph 18.3.2 above, when the Owner has justification for the holding of this payment such as when the Owner's payment is conditional on submission of required documents from the Construction Manager/ General Contractor.

'18.3.3 The amount of each such payment shall be the amount approved for payment by the Architect less such amounts, if any, otherwise owing by the Construction Manager/ General Contractor to the Owner or which the Owner shall have the right to withhold as authorized by this Contract. The Architect's approval of the Construction Manager/ General Contractor's application for payment shall not preclude the Owner from the exercise of any of its rights as set forth herein. The Construction Manager/ General Contractor warrants and represents that, upon payment of the application for payment, title to all Work included in such payment shall be vested in the Owner.

'18.4 Construction Manager/ General Contractor's Warranty of Title. The Construction Manager/ General Contractor warrants and guarantees that title to all Work, materials and equipment covered by any application for payment, whether incorporated in the project or not, will pass to Owner at the time of payment free and clear of all encumbrances.

'18.5 Held Retainage/ Retainage Reduction. Until fifty percent (50%) of the construction work has been completed in accordance with the contract, the Owner may withhold no more than ten percent (10%) retainage from the amount of any undisputed payment due, and retainage held after fifty-one percent (51%) of the construction project has been completed shall not be more than five percent (5%) of the total contract amount.

'18.5.1 Subsequently, **the Construction Manager/ General Contractor shall withhold no more than** ten percent (10%) retainage from the amount of any undisputed payment due to a subcontractor or Trade Contractor, and retainage held after fifty-one percent (51%) of the construction project has been completed shall not be more than five percent (5%) of the total amount contracted with a subcontractor or Trade Contractor.

'18.6 Completion, Acceptance and Final Payment. Upon certification by the Architect of Substantial Completion of the Work, the Construction Manager/ General Contractor shall continue to make normal pay requests as defined within this document.

'18.6.1 Within thirty (30) **calendar** days after substantial completion **or within twenty (20) calendar days after receipt of the Architect's recommendation for payment (whichever comes last),** the Owner shall release the retainage less an amount equal to two hundred percent (200%) of the Owner's reasonably estimated cost of the balance of any Construction Manager/ General Contractor's contractually obligated, yet uncompleted, work remaining plus the following:

'18.6.1.1 Should the Construction Manager/ General Contractor not fulfill the requirements for Substantial Completion by the date established by the Contract Documents for Substantial Completion, the Owner may withhold an

additional amount of retainage to cover the anticipated application of “Liquidated Damages” or “Damages for Untimely Performance”.

'18.6.2 Final payment shall be made by the Owner to the Construction Manager/ General Contractor when the Contract has been fully performed by the Construction Manager/ General Contractor in accordance with the Contract Documents and a final Certificate of Payment is submitted by the Architect to the Owner. Such final payment shall be made by the Owner not more than twenty (20) calendar days after the submittal by the Architect of the final Certificate of Payment, except:

'18.6.2.1 when the Owner is anticipating applying “Liquidated Damages” or “Damages for Untimely Performance”, the amount of this anticipated application of damages may be withheld from Final Payment until such damages are resolved between the Owner and the Construction Manager/ General Contractor.

'18.6.3 The Construction Manager/ General Contractor shall submit with the application for final payment an affidavit that all payrolls, bills for materials, supplies and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied, along with such supporting evidence of payment as the Architect requires. Final payment is conditioned on satisfactory compliance with this requirement.

'18.7 Waiver of Claims. The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:

'18.7.1 unsettled liens;

'18.7.2 faulty or defective Work appearing after Substantial Completion;

'18.7.3 failure of the Work to comply with the requirements of the Contract Documents; or

'18.7.4 terms of any special warranties required by the Contract Documents.

The acceptance of final payment by the Construction Manager/ General Contractor shall constitute a waiver of all claims except those previously made in writing and identified by the Construction Manager/ General Contractor as unsettled at the time of the final application for payment.

'18.8 Construction Manager/ General Contractor's Payment to Subcontractors and Trade Contractors. Within fourteen (14) calendar days of when payment is received from the Owner, the Construction Manager/ General Contractor shall pay all Subcontractors, Trade Contractors, materialmen, laborers and suppliers the amounts they are due for the Work covered by such payment.

'18.8.1 In the event the Owner becomes informed that the Construction Manager/ General Contractor has not paid a Subcontractor, Trade Contractor, material-man, laborer, or supplier as provided herein, the Owner shall have the right, but not the duty, to issue future checks and payment to the Construction Manager/ General Contractor of amounts otherwise due hereunder naming the Construction Manager/ General Contractor and any such Subcontractor, Trade Contractor, material-man, laborer, or supplier as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

'18.8.2 The Construction Manager/ General Contractor shall, by an appropriate agreement with each Subcontractor and Trade Contractor, require each Subcontractor to make payment to his subcontractors in similar manner.

'18.8.3 The Architect or Owner may, on request, furnish to any Subcontractor or Trade Contractor information regarding the percentage of completion of the amounts applied for by the Construction Manager/ General Contractor and the action thereon by the Architect.

'18.8.4 Neither the Owner nor the Architect shall have any obligation to make payment to any Subcontractor or Trade Contractor except as may otherwise be required by law.

'18.9 **Owner's Rights Relating to Payments.** Neither payment to the Construction Manager/ General Contractor, utilization of the project for any purpose by the Owner, nor any act or omission by the Owner shall be interpreted or construed as an acceptance of any Work of the Construction Manager/ General Contractor not strictly in compliance with this Contract.

'18.9.1 The Owner shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or all of the amount previously paid to the Construction Manager/ General Contractor due to:

'18.9.1.1 The quality of a portion, or all, of the Construction Manager/ General Contractor's Work not being in accordance with the requirements of this Contract;

'18.9.1.2 The quantity of the Construction Manager/ General Contractor's Work not being as represented in the Construction Manager/ General Contractor's Payment Request, or otherwise;

'18.9.1.3 The Construction Manager/ General Contractor's rate of progress being such that, in the Owner's opinion, substantial or final completion, or both, may be inexcusably delayed;

'18.9.1.4 Claims made, or likely to be made, against the Owner;

'18.9.1.5 Loss caused by the Construction Manager/ General Contractor;

'18.9.1.6 The Construction Manager/ General Contractor's failure or refusal to perform any of its obligations to the Owner under this Contract.

In the event that the Owner makes written demand upon the Construction Manager/ General Contractor for amounts previously paid by the Owner as contemplated in this Paragraph, the Construction Manager/ General Contractor must promptly comply with such demand.

'19. Completion

'19.1 **Commencement and Completion of Work.** The Construction Manager/ General Contractor shall begin the Work on the Date of Commencement as specified in the Contract issued by the Owner.

'19.1.1 The Construction Manager/ General Contractor is expected to mobilize on site and begin work no later than fifteen (15) calendar days after the Date of Commencement,

unless he has notified the Architect and Owner in writing of acceptable reasons why it is not in the best interest of the University and the Project that he will not mobilize by that date.

'19.1.2 Preconstruction Conference: Following the Date of Commencement, after Construction Manager/ General Contractor Mobilization and before any significant Work at the site is started, a conference attended by the Owner, the Architect, the Construction Manager/ General Contractor, all major Trade Contractors and subcontractors, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the initial project schedule, the significant provisions of the Contract Documents, procedures for handling Project Communications and submittals, processing Applications for Payment and maintaining required records.

'19.1.2.1 The Construction Manager/ General Contractor and the Architect shall coordinate the scheduling and attendance of required entities at the meeting.

'19.1.2.2 The Architect shall prepare the agenda for the meeting, conduct the meeting and issue minutes of the key discussions of the meeting.

'19.1.3 The Construction Manager/ General Contractor shall diligently and expeditiously continue the performance of the Contract continuously to and until Substantial Completion and Final Completion of the Project. All time limits stated in the Contract Documents are the essence of the Contract.

'19.1.4 The Construction Manager/ General Contractor shall accomplish the Work in accordance with the construction schedule (as provided in Article 4) so as to achieve Substantial Completion and Final Completion dates as defined in the Contract Documents.

'19.2 Substantial Completion of the Work. The Substantial Completion Date shall be that date certified by the Architect, in consultation with the Owner, in accordance with the following procedures.

'19.2.1 "Substantial Completion" or "Substantially Complete" means the point in time when:

'19.2.1.1 The progress of the Work, or designated portion of the Work, is fully complete and functional in accordance with the requirements of the Contract Documents such that only items listed in the Punchlist remain and the Work, or designated portion thereof, is ready to be occupied and/or utilized for its intended purpose;

'19.2.1.2 The applicable Governmental Authorities have issued a certificate of occupancy (or where Substantial Completion only applies to a designated portion of the Work, a temporary certificate of occupancy) and/or any other applicable approvals, licenses, certifications or other written evidence from the applicable Governmental Authority that said Work, or designated portion of the Work, has been completed to such authority's satisfaction and is ready to be occupied and/or used for its intended purpose.

'19.2.1.2.1 Where the project requires specialized Governmental Authorities to inspect and accept the construction (i.e. Office of Inspector General, Federal Agencies, etc.) a determination is to be made in the

'Special Conditions" of this Contract as to the timing of these inspections or acceptances and how they affect the Date of Substantial Completion, Date of Final Completion or an Extended Date for Compliance for that specific inspection or acceptance requirement.

'**19.2.1.3** The Architect has issued an Owner approved certificate of Substantial Completion for the Work, or designated portion of the Work, in accordance with the terms of the Contract Documents;

'**19.2.1.4 Operations and Maintenance Manuals**, have been reviewed and approved by the Architect.

'**19.2.1.4.1** The Construction Manager/ General Contractor shall submit Operations and Maintenance Manuals to the Consultant for approval, and subsequently forwarded to the Owner's Project Manager, by or before the time construction is 75% complete, as reflected by the Contractor's most recently submitted Application for Payment. Air test and balance reports may be submitted at a later date with the request for certification of substantial completion.

'**19.2.1.4.2** The Consultant shall review and approve or reject the Operations and Maintenance Manuals within fourteen (14) calendar days of receipt from the Construction Manager/ General Contractor.

'**19.2.1.5 Warranty Samples**, have been reviewed and approved by the Architect.

'**19.2.1.5.1** Note that the Construction Manager/ General Contractor shall submit samples of each required Warranty prior to the anticipated Date of Substantial Completion in order to allow the Architect reasonable time to review and approve or reject the submittal.

'**19.2.1.5.2** The Architect shall review and approve or reject the sample Warranties within fourteen (14) calendar days of receipt from the Construction Manager/ General Contractor. The Date of Substantial Completion shall not be earlier than the date of approval of the samples of Warranties by the Architect.

'**19.2.1.6 With respect to all of the Project's building systems, including, without limitation, all systems being Commissioned**, the Work, or designated portion of the Work, is fully commissioned, balanced, tested and operational in compliance with the Contract Documents and applicable Laws ("Systems Commissioning"): The Date of Substantial Completion shall not be earlier than the date in which Systems Commissioning is completed.

'**19.2.1.7 All required initial and follow-up orientation and training** has been accomplished in accordance with the requirements of the Contract Documents ("Systems Training"). The Date of Substantial Completion shall be no earlier than the date in which the final training session has been satisfactorily completed.

'**19.2.1.8 The Construction Manager/ General Contractor shall have advised the Owner of insurance requirements** including a list of all fixed and non-fixed

equipment provided under the Work including replacement values for each item of equipment.

'19.2.2 When the Construction Manager/ General Contractor determines that Substantial Completion has been achieved, the Construction Manager/ General Contractor shall notify the Owner and the Architect in writing. The notification shall be accompanied by a Construction Manager/ General Contractor prepared list of those items of Work still to be completed or corrected. The failure of the Construction Manager/ General Contractor to include any item or items on such list not completed or needing correction shall not alter the responsibility of the Construction Manager/ General Contractor to complete all Work in accordance with the Contract Documents.

'19.2.3 The Architect shall, within a reasonable time after receipt of notification from the Construction Manager/ General Contractor of Substantial Completion, make such inspection, with consultation of the Owner, to confirm that the Work has achieved Substantial Completion. If the Construction Manager/ General Contractor's notification is not accompanied by the list provided in paragraph '19.2.1, the Architect and Owner may elect to postpone this inspection until receipt of the list proscribed.

'19.2.4 Upon its confirmation that the Construction Manager/ General Contractor's work is substantially complete, the Architect shall prepare a Certificate of Substantial Completion which shall establish the Substantial Completion Date and the responsibilities between the Owner and Construction Manager/ General Contractor 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, within thirty (30) calendar days from the Substantial Completion Date. The Certificate of Substantial Completion shall be submitted to the Owner and Construction Manager/ General Contractor for their written acceptance of the responsibilities assigned to them in the certificate.

'19.2.4.1 Should the Architect confirm that the Work has achieved Substantial Completion on the date of his inspection, the Architect shall derive that the Construction Manager/ General Contractor was Substantially Complete on the date of receipt of the notification from the Construction Manager/ General Contractor indicated above.

'19.2.4.2 When the Owner accepts Substantial Completion and occupies a building, all operations, maintenance, utilities and insurance become the responsibility of the Owner, except those items specifically identified in the Certificate of Substantial Completion as remaining to be completed by the Construction Manager/ General Contractor.

'19.2.4.3 If, after making the inspection, the Architect fails to find that the Construction Manager/ General Contractor's Work has achieved Substantial Completion, he will notify the Construction Manager/ General Contractor in writing, giving the reasons therefore.

'19.2.4.4 If the Architect through its inspection fails to find that the Construction Manager/ General Contractor's Work has not achieved Substantial Completion and is required to repeat all, or any portion, of its inspection, the Construction Manager/ General Contractor shall bear the cost of such repeat inspections which cost may be deducted by the Owner from any payment then or thereafter due the Construction Manager/ General Contractor. This deduction by the Owner from any

payment for this reason will be by a credit to the Contract Amount by Change Order.

'19.3 Final Completion of the Work. The Architect, upon receipt of written notice from the Construction Manager/ General Contractor that the Work is finally complete and is ready for final inspection and acceptance, will promptly make such inspection and when he finds the Work completed and acceptable under the Contract Documents and the Contract fully performed, he will so notify the Construction Manager/ General Contractor in writing, and the Construction Manager/ General Contractor shall promptly issue a final Certificate of Payment to the Owner.

'19.3.1 "Final Completion or "Finally Complete" means the point in time when:

'19.3.1.1 The progress of the Work, is fully complete and functional in accordance with the requirements of the Contract Documents such that no items listed in the Punchlist remain uncorrected;

'19.3.1.2 The applicable Governmental Authorities have issued a final certificate of occupancy;

'19.3.1.3 The Architect has issued an Owner approved certificate of Final Completion for the Work, in accordance with the terms of the Contract Documents;

'19.3.1.4 Warranty Binder, have been reviewed and approved by the Architect.

'19.3.1.4.1 Note that the Construction Manager/ General Contractor shall submit a binder with original copies of all required Warranties prior to the anticipated Date of Final Completion in order to allow the Architect reasonable time to review and approve or reject the submittal.

'19.3.1.4.2 The Architect shall review and approve or reject the Warranties within a reasonable time after receipt from the Construction Manager/ General Contractor. The Date of Final Completion shall not be earlier than the date of receipt of the Warranty Binder by the Architect where the Warranty Binder is subsequently approved by the Architect.

'19.3.1.5 With respect to all of the Project's building systems, including, without limitation, all systems being Commissioned, the Work, is fully commissioned without "Corrective Actions" remaining to be completed in compliance with the Contract Documents and applicable Laws ("Systems Commissioning"); The Date of Final Completion shall not be earlier than the date in which Systems Commissioning is fully completed including all "Corrective Actions".

'19.3.1.6 The Construction Manager/ General Contractor has submitted a final Application for Payment including a Final Affidavit as required by the University.

'19.3.1.7 The Construction Manager/ General Contractor and the Architect have submitted to the Owner a report of the status of LEED Certification documentation when required by a project that is under LEED Certification. Included in these reports is a listing of documentation that will be required for the final LEED Certification during the one year warranty period.

'19.3.2 Should the Architect confirm that the Work has achieved Final Completion on the date of his inspection, the Architect shall derive that the Construction Manager/ General Contractor was Finally Complete on the date of receipt of the notification from the Construction Manager/ General Contractor indicated above.

'19.3.3 If the Architect is unable to issue its final Certificate of Payment and is required to repeat its final inspection of the Project, the Construction Manager/ General Contractor shall bear the cost of such repeat inspection(s), which costs may be deducted by the Owner from the Construction Manager/ General Contractor's final payment;

'19.4 Use of Substantially Complete Portions. The Owner may use or occupy a specified portion of the Work at any stage, provided that:

'19.4.1 such use or occupancy is consented to by insurers and

'19.4.2 it is authorized by public regulatory bodies having jurisdiction over the Work; and

'19.4.3 prior to such use or occupation, the affected portion of the Work is jointly inspected by the Owner, Construction Manager/ General Contractor and Architect to determine the precise stage of completion.

Such possession and use shall not be deemed an acceptance of any Work not completed in accordance with the Contract Documents. The Owner's use of substantially completed portions (with the Construction Manager/ General Contractor's agreement), while the Work of the Project is not actually Substantially Complete, shall not be deemed as a defining factor in determining that the Project has reached Substantial Completion.

'19.5 Liquidated Damages/ Damages from Untimely Performance

'19.5.1 The Construction Manager/ General Contractor shall pay the Owner an amount identified in the Contract Documents for each and every calendar day of unexcused delay in achieving Substantial Completion and Final Completion beyond the date set for each.

'19.5.1.1 Any sums due and payable hereunder by the Construction Manager/ General Contractor shall be payable, not as a penalty, but as liquidated damages representing delay damages sustained by the Owner, estimated at the time of executing this Contract.

'19.5.1.2 When the Owner is able to determine an actual sum of Damages from Untimely Performance, and that sum is less than the predetermined "Liquidated Damages", the Owner may, upon review of the particular circumstances of this specific Project, elect to apply the lesser amount of damages.

'19.5.2 When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Construction Manager/ General Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Construction Manager/ General Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Construction Manager/ General Contractor those funds withheld, but no longer applicable, as liquidated damages.

'20. Correction of Work

'20.1 Correction of Work Prior to Final Payment. The Construction Manager/ General Contractor shall promptly correct Work which is rejected by the Architect as failing to conform to the requirements of the Contract Documents. Such correction shall be required regardless of whether or not the nonconformities are observed before or after Substantial Completion, or whether or not the work has been fully fabricated, installed or completed.

'20.2 Correction of Work After Final Payment. Neither the Final Certificate of payment nor any provisions in the Contract Documents shall relieve the Construction Manager/ General Contractor of responsibility for failure to conform to the requirements of the Contract Documents.

'20.2.1 If within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Construction Manager/ General Contractor shall correct the Work promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Construction Manager/ General Contractor a written acceptance of such condition.

'20.2.1.1 This period of one year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation under this paragraph shall survive acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice promptly after discovery of the conditions.

'20.3 Responsibility for Related Costs. In addition to being responsible for correcting the Work and removing any nonconforming Work or materials which are not corrected from the jobsite, the Construction Manager/ General Contractor shall bear all other costs of bringing the affected Work into compliance with the Contract Documents. These include costs of any required additional testing and inspection services, Architect's services, and any resulting damages to property or to construction Work of other Construction Manager/ General Contractors or of the Owner.

'20.4 Correction by Owner. If the Construction Manager/ General Contractor fails to correct nonconforming Work within a reasonable time, the Owner may take steps to correct the Work itself. If, within a ten (10) business day period after receipt of written notice to correct the nonconformity, the Construction Manager/ General Contractor has not made serious efforts to correct the nonconformity, the Owner may without prejudice to any other remedies it may have, proceed to correct the non-conforming Work.

'20.4.1 In such cases a Change Order shall be issued by the Owner with the approval of the Architect reflecting an equitable deduction from the Contract Sum to cover the cost of correcting the Work, including compensation for the Architect's additional services and other related expenses and damages. The amount of the Change Order shall be deducted from payments then or thereafter due the Construction Manager/ General Contractor. If final payment has already been made, the Construction Manager/ General Contractor shall pay the difference within a reasonable time, which is generally defined as 30 calendar days from the date of written request for such reimbursement by the Owner.

'20.5 Ongoing Liability of Construction Manager/ General Contractor for Defective Work. The foregoing provisions establishing the specific obligation of the Construction Manager/ General

Contractor to perform corrective Work do not establish a period of limitations on other obligations of the Construction Manager/ General Contractor under the Contract Documents. Even after the Construction Manager/ General Contractor is no longer specifically obligated to perform corrective Work itself, it shall still be held liable for nonconforming Work and for other breaches of its obligations under the Contract Documents.

'20.6 Deduction for Uncorrected Work. If the Owner deems it not expedient to correct Work which is not in accordance with the requirements of the Contract Documents, an appropriate Change Order shall be issued by the Owner with the approval of the Architect reflecting an equitable deduction from the Contract Sum on account of the uncorrected Work. The amount of the Change Order shall be deducted from payments then or thereafter due the Construction Manager/ General Contractor. If final payment has already been made, the Construction Manager/ General Contractor shall be responsible for paying the difference to the Owner within a reasonable time, which is generally defined as 30 calendar days from the date of written request for such reimbursement by the Owner.

'21. Suspension of Work

'21.1 Suspension by the Owner. The Owner shall have the right at any time to direct the Construction Manager/ General Contractor to suspend its performance, or any portion thereof for a period of not more than thirty (30) calendar days. The notice of suspension shall be in writing and shall set forth the reason for the suspension. The written notice shall fix the approximate date on which Work is contemplated to be resumed. The Owner shall pay the Construction Manager/ General Contractor as full compensation for such suspension the Construction Manager/ General Contractor's Direct Job Expenses.

'21.1.1 Should the Construction Manager/ General Contractor believe that the Owner, by its actions, has suspended the Work, but has not received a written notice of suspension from the Owner, the Construction Manager/ General Contractor shall notify the Owner in writing that he believes a suspension of the Work has occurred and seek clarification from the Owner that such suspension of the Work is the Owner's intent by its actions. The Owner will promptly clarify for the Construction Manager/ General Contractor its intentions related to suspension of the Work.

'21.1.2 Without such written notice of suspension of the Work by the Owner, the Construction Manager/ General Contractor shall proceed with the Work as if it was not suspended and shall not be eligible for compensation as indicated in paragraph '21.1 above.

'21.2 Other Suspension. In the event the Owner should be prevented from proceeding with the work due to a bid protest, or enjoined by court order from proceeding with the Work or from authorizing its prosecution, either before or after the award, for a period up to ninety (90) calendar days, the delay shall not constitute cause for termination by the Construction Manager/ General Contractor and the Construction Manager/ General Contractor shall not be entitled to make or assert claim for damage by reason of said delay, but time for completion of Work shall be extended to such reasonable time as the Owner may determine will compensate for time lost by such delay. Such determination shall be set forth in a Change Order shall be final and binding upon both parties, and shall not require the signature of the Construction Manager/ General Contractor to be in effect.

The Owner shall pay the Construction Manager/ General Contractor as full compensation for such suspension the Construction Manager/ General Contractor's reasonable costs actually incurred and paid as follows:

'21.2.1 demobilization and remobilization, including such costs paid to subcontractors;

'21.2.2 preserving and protecting work in place;

'21.2.3 storage of materials or equipment purchased for the Project, including insurance thereon;

'21.2.4 performing in a later, or during a longer, time frame than contemplated by this Contract.

'21.3 Termination by the Construction Manager/ General Contractor due to Suspension of the Work by the Owner. If, through no act or fault of the Construction Manager/ General Contractor, the Work is suspended for a period of more than thirty (30) calendar days by the Owner, or more than ninety (90) calendar days under an Order of the Court or other public authority, then the Construction Manager/ General Contractor may, after ten (10) business days from delivery of a written notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for all Work executed and reasonable expenses sustained.

'21.3.1 If the Architect has failed to act on a request for payment, within thirty (30) calendar days of submission, or if the Owner has failed to make any payment, within forty five (45) calendar days of receipt of an approved application for payment, the Construction Manager/ General Contractor may, upon ten (10) business days written notice to the Owner and the Architect stop the Work until he has been paid all amounts then due, in which event and upon resumption of the Work, a Change Order shall be issued adjusting the Contract Price or extending the Contract Completion Time, or both, to compensate for the costs and delays attributable to the stoppage of the work, any such compensation being subject to the provisions, conditions and limitations contained in Article 26.

'22. Termination

'22.1 Termination of Contract for Convenience of Owner. The Owner, for any reason whatsoever, may terminate the Contract for its own convenience when it determines that such termination will be in the best interest of the University. The Owner shall give written notice of such termination to the Construction Manager/ General Contractor specifying when termination becomes effective. The Construction Manager/ General Contractor shall incur no further obligations in connection with the Work and the Construction Manager/ General Contractor shall stop Work when such termination becomes effective. The Construction Manager/ General Contractor shall also terminate outstanding orders and subcontracts. The Construction Manager/ General Contractor shall settle the liabilities and claims arising out of the termination of Subcontracts and orders. The Owner may direct the Construction Manager/ General Contractor to assign the Construction Manager/ General Contractor's right, title and interest under termination orders or subcontracts to the Owner or its designee. The Construction Manager/ General Contractor shall transfer title and deliver to the Owner such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Construction Manager/ General Contractor has. The University shall negotiate a fair and just settlement with the Construction Manager/ General Contractor in accordance with 200 KAR 5:312 Section 2. In such event, the following procedure shall be required:

'22.1.1 The Construction Manager/ General Contractor shall submit a termination claim to the Owner and the Architect specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the

Owner or the Architect. If the Construction Manager/ General Contractor fails to file a termination claim within one (1) year from the effective date of termination, the Owner shall pay the Construction Manager/ General Contractor, an amount derived in accordance with paragraph (3) below;

'22.1.2 The Owner and the Construction Manager/ General Contractor may agree to the compensation, if any, due to the Construction Manager/ General Contractor hereunder pursuant to 200 KAR 5:312 Section 2;

'22.1.3 Absent agreement to the amount due to the Construction Manager/ General Contractor, the Owner shall pay the Construction Manager/ General Contractor the following amounts:

'22.1.3.1 Contract prices for labor, materials, equipment and other services accepted under this Contract;

'22.1.3.2 Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work and in terminating the Construction Manager/ General Contractor's performance, plus a fair and reasonable allowance for direct jobsite overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it appears that the Construction Manager/ General Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

'22.1.3.3 Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to the initial Paragraph of 22.1. These costs shall not include amounts paid in accordance with other provisions hereof.

'22.1.3.4 The total sum to be paid the Construction Manager/ General Contractor under '22.1 shall not exceed the total Contract Sum, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

'22.2 Termination of Contract for Cause. If the Construction Manager/ General Contractor should be adjudged as bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency or, if the Construction Manager/ General Contractor does not perform the Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of the resulting Contract, then the Owner, in addition to any other rights it may have against the Construction Manager/ General Contractor or others, may terminate the performance of the Construction Manager/ General Contractor upon ten (10) days written notice by registered mail of declaration of default and assume possession of the Project site and of all materials and equipment at the site and may complete the Work.

'22.2.1 In such case, the Construction Manager/ General Contractor shall not be paid further until the Work is complete. After final completion has been achieved, if any portion of the Contract Sum, as it may be modified hereunder, remains after the cost to the Owner of completing the Work, including all costs and expenses of every nature incurred,

has been deducted by the Owner, such remainder shall belong to the Construction Manager/ General Contractor. Otherwise, the Construction Manager/ General Contractor shall pay and make whole the Owner for such cost. This obligation for payment shall survive the termination of the Contract. In the event the employment of the Construction Manager/ General Contractor is terminated by the Owner for cause pursuant to this Paragraph 22.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Paragraph 22.1 and the provisions of Paragraph 22.1 shall apply.

'23. Indemnification

The Construction Manager/ General Contractor shall indemnify and hold the Owner harmless from any and all claims, liability, damage, loss, cost and expense of every type whatsoever, regardless of whether such liability, claim, damage, loss, cost or expense is caused in part by the Owner, including, without limitation, attorneys' fees and expenses, in connection with the Construction Manager/ General Contractor's performance of this Contract, provided that such claims, liability, damage, loss, cost or expense is due to sickness, personal injury, disease or death, or to loss or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, to the extent caused by the Construction Manager/ General Contractor, or anyone for whose acts the Construction Manager/ General Contractor may be liable.

'24. Insurance

'24.1 The Construction Manager/ General Contractor shall furnish the Owner with certificates evidencing the required insurance coverage prior to commencing work. Construction Manager/ General Contractor shall keep up-to-date copies of such certificates on file with Owner until work is completed. Owner may require Construction Manager/ General Contractor to submit policy endorsements or complete policy copies of the required insurance.

'24.2 Construction Manager/ General Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Construction Manager/ General Contractor, its agents, representatives, employees or Trade Contractors and subContractors.

'24.3 *Minimum Scope of Insurance* Coverage shall be at least as broad as:

24.3.1 Insurance Services Office commercial general liability coverage ("occurrence" Form CG 0001, Ed. 10/93).

24.3.2 Insurance Services Office Form CA 0001 (Ed. 12/93) covering automobile liability, Code 1 "any auto."

24.3.3 Employer's Liability Insurance, Workers' compensation insurance according to KRS Chapter 342 and unemployment insurance according to KRS Chapter 341.

'24.4 *Minimum Limits of Insurance* Construction Manager/ General Contractor shall maintain limits no less than:

24.4.1 Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage with a \$3,000,000 annual aggregate. The deductible or Self-Insured Retention per occurrence shall not be more than \$10,000. General Liability shall include Pollution Liability coverage.

24.4.2 Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.

24.4.3 Workers' Compensation and Employers Liability: Workers' compensation with statutory benefits without limit, as required by the Kentucky Workers Compensation Act, and Employers Liability limits of \$1,000,000 per accident.

24.4.4 Construction Manager shall maintain Professional Liability (including Design Build Errors and Omissions) – When operations or activities under the contract involve any type of design work, professional liability coverage shall be maintained by Contractor covering wrongful acts, errors or omissions of Contractor. Limits of \$1,000,000 per each occurrence, incident and claim. Limits of \$2,000,000 aggregate.

24.4.5 Contractors' Pollution Liability – University requires this coverage whenever work at issue under this Contract involves potential pollution risk to the environment or losses caused by pollution conditions, including asbestos, that may arise from the operations of the Contractor described in the Contractor's scope of services. Policy shall cover the Contractor's completed operations. Completed Operations shall be kept in effect up to the statute of repose after project completion. Limits of \$1,000,000 per each occurrence, incident and claim. Limits of \$1,000,000 aggregate.

Coverage shall apply to sudden and gradual pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants, including asbestos. If the coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract.

This coverage can be obtained through the Contractor's commercial general liability policy by including the Limited Pollution Liability Extension ISO endorsement CG 24 15 or its equivalent.

'24.5 Other Insurance Provisions The policies are to contain, or be endorsed to contain, the following provisions:

'24.5.1 Commercial General Liability and Automobile Liability Coverages.

'24.5.1.1 Owner, its officers and employees are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Construction Manager/ General Contractor; general supervision of the work by Owner; products and completed operations of the Construction Manager/ General Contractor; premises owned, occupied or used by the Construction Manager/ General Contractor, or automobiles owned, leased, hired or borrowed by the Construction Manager/ General Contractor. The coverage shall contain no special limitations on the scope of protection afforded to Owner, its officers or employees.

'24.5.1.2 The Construction Manager/ General Contractor's insurance coverage shall be primary insurance as respects Owner, its officers and employees. Any insurance of self-insurance maintained by Owner shall be excess of the Construction Manager/ General Contractor's insurance and shall not contribute to it.

'24.5.1.3 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Owner, its officers or employees.

'24.5.1.4 The Construction Manager/ General Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.

'24.5.2 All Coverages. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to Owner.

'24.6 Acceptability of Insurers Insurance is to be placed with insurers with an A.M. Best's rating of no less than A VII, authorized to write insurance in the Commonwealth of Kentucky.

'24.7 Verification of Coverage The Construction Manager/ General Contractor shall furnish the Owner with certificates evidencing the required insurance coverage prior to commencing work. Construction Manager/ General Contractor shall keep up-to-date copies of such certificates on file with Owner until work is completed. Owner may require Construction Manager/ General Contractor to submit policy endorsements or complete policy copies of the required insurance.

'24.8 Subcontractors and Trade Contractors Construction Manager/ General Contractor shall include all subcontractors and trade contractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

'24.9 The Construction Manager/ General Contractor shall provide all Risks Insurance in an amount of not less than one hundred percent (100%) of the insurable value of all the work. The coverage, is to be written on CP 00 20 06 95 or equivalent acceptable to the University. All coinsurance clauses in the Risks Insurance policy will be waived. All rights of subrogation against the Owner will be waived by the insurer. Such insurance shall be for the benefit of the Construction Manager/ General Contractor, Owner and any Subcontractor engaged on this project, as the Owner shall find their respective interest may appear. The Risks Insurance must be dated and in force on the date indicated in the Contract to begin work.

'24.10 The insurance coverage required by the contract documents shall be in compliance with the laws of the Commonwealth of Kentucky and shall be placed with a licensed resident or non-resident agent who represents insurance companies authorized to do business in Kentucky.

'24.11 The Certificate of Insurance or Certificates of Insurance will have the following endorsements as an attachment to the Certificate or Certificates.

'24.11.1 Northern Kentucky University will be named as an additional insured.

'24.11.2 The policy is primary coverage and any insurance or self-insurance maintained by Northern Kentucky University shall be excess.

'24.11.3 Any failure of the named insured to comply with the reporting provisions of the policy shall not affect coverage provided to Northern Kentucky University, its officers or employees.

'24.11.4 All Coverages. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to Owner. Such notice shall be sent directly to University Director of Procurement Services, 5320 Campus Drive., AC 617, Highland Heights, KY 41099. If any insurance company refuses to provide the required notice, the Contractor or its insurance broker shall notify the University of any cancellation, suspension, or non-renewal of any insurance within seven (7) days of receipt of insurers' notification to that effect.

'24.12 The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Construction Manager/General Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards unless the fire or other hazard was a direct result of the CM/GC or their Trade Contractor actions.

'24.12.1 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of paragraph 24.12.2 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

'24.12.2 The Owner and Construction Manager/General Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 3, if any, and any of their subcontractors, subsubcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this paragraph 24.12 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance.

'24.12.3 The Owner or Construction Manager/General Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 29, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

'24.12.4 If after occurrence of an insured loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged

property shall be performed by the Construction Manager/General Contractor after receipt of a Change Order in accordance with the terms of the Contract Documents.

'25. Performance and Payment Bonds

The Construction Manager/ General Contractor shall furnish separate performance and payment bonds to the Owner. The Construction Manager/ General Contractor shall furnish a performance bond satisfactory to the Owner in an amount equal to one hundred percent (100%) of the Contract Sum as security for the faithful performance of the Contract. The Construction Manager/ General Contractor shall also furnish a payment bond satisfactory to the Owner in an amount equal to one hundred percent (100%) of the Contract Sum for the protection of all persons performing labor or furnishing materials, equipment or supplies for the Construction Manager/ General Contractor or his Subcontractor 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.

'25.1 Each bond furnished by the Construction Manager/ General Contractor shall incorporate by reference the terms of the Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Sum is adjusted by Change Order executed by the Construction Manager/ General Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount.

'25.2 The performance and payment bonds shall be executed by a surety company authorized to do business in this Commonwealth, and the contract instrument of bonds must be countersigned by a duly appointed and licensed resident agent.

'25.3 If the project includes Federal (Davis Bacon) Wage Rates and/ or any other Prevailing Wage Rate, the Construction Manager/ General Contractor's bond(s) shall include a provision as will guarantee the faithful performance and payment of the hourly wage as set forth in the schedule incorporated in the Contract.

'26. Claims by the Construction Manager/ General Contractor/ Concealed Conditions/ Disputes

'26.1 Claims by the Construction Manager/ General Contractor against the Owner are subject to the following:

'26.1.1 All Construction Manager/ General Contractor claims against the Owner shall be initiated by a written claim submitted to the Owner and the Architect. Such claim shall be filed with the Owner and the Architect no later than seven (7) calendar days after the event, or the first appearance of the circumstances, causing the claim, and same shall set forth in detail all known facts and circumstances supporting the claim;

'26.1.2 The Construction Manager/ General Contractor and the Owner shall continue their performance regardless of the existence of any claims submitted by the Construction Manager/ General Contractor.

'26.1.3 In the event the Construction Manager/ General Contractor discovers previously concealed and unknown site conditions which differ materially from those indicated in the Contract Documents, or unknown site conditions which are materially at variance from those typically and ordinarily encountered in the general geographical

location of the Project, the Contract Sum shall be modified, either upward or downward, upon the written claim made by either party within seven (7) calendar days after the first appearance to such party of the circumstances.

'26.1.3.1 As a condition precedent to the Owner having any liability to the Construction Manager/ General Contractor due to concealed and unknown conditions, the Construction Manager/ General Contractor must give the Owner and the Architect written notice of, and an opportunity to observe, such condition prior to disturbing it.

'26.1.3.2 The failure by the Construction Manager/ General Contractor to give the written notice and make the claim as provided by this paragraph shall constitute a waiver by the Construction Manager/ General Contractor of any rights arising out of or relating to such concealed and unknown condition;

'26.1.4 In the event the Construction Manager/ General Contractor seeks to make a claim for an increase in the Contract Sum, as a condition precedent to any liability of the Owner therefor, the Construction Manager/ General Contractor shall strictly comply with the requirements of the first paragraph of this Article and such claim shall be made by the Construction Manager/ General Contractor before proceeding to execute any additional or changed Work. Failure of the condition precedent to occur shall constitute a waiver by the Construction Manager/ General Contractor of any claim for additional compensation;

'26.1.5 In connection with any claim by the Construction Manager/ General Contractor against the Owner for compensation in excess of the Contract Sum, any liability of the Owner for the Construction Manager/ General Contractor's cost shall be strictly limited to direct cost incurred by the Construction Manager/ General Contractor and shall in no event include indirect cost or consequential damages of the Construction Manager/ General Contractor. The Construction Manager/ General Contractor shall provide a detailed breakdown of the direct cost incurred by the Construction Manager/ General Contractor. The inclusion of the Construction Manager/ General Contractor's Construction Services Fee to this direct cost shall constitute the Owner's reimbursement to the Construction Manager/ General Contractor for all indirect cost and consequential damages.

'26.1.6 The Owner shall not be liable to the Construction Manager/ General Contractor for claims of third-parties including subcontractors, unless and until liability of the Construction Manager/ General Contractor has been established therefor in a court of competent jurisdiction;

'26.2 In the event the Construction Manager/ General Contractor should be delayed in performing any task which at the time of the delay is then critical, or which during the delay becomes critical, as the sole result of any act or omission by the Owner or someone acting in the Owner's behalf, or by Owner-authorized Change Orders, unusually bad weather not reasonably anticipatable, fire or other Acts of God, the date for achieving Substantial Completion, or, as applicable, final completion, shall be appropriately adjusted by the Owner upon the written claim of the Construction Manager/ General Contractor to the Owner and the Architect.

'26.2.1 An extension of time shall not mean that the Construction Manager/ General Contractor is entitled to additional compensation unless specifically agreed to by Owner at time of executed cost change with adequate proof by the CM/GC that the cost change adversely affected the Critical Path of the schedule.

'26.2.2 A task is critical within the meaning of this paragraph if, and only if, said task is on the critical path of the Project schedule so that a delay in performing such task will delay the ultimate completion of the Project.

'26.2.3 Any claim for an extension of time by the Construction Manager/ General Contractor shall strictly comply with the requirements of the first paragraph of this Article above. If the Construction Manager/ General Contractor fails to make such claim as required in this paragraph, any claim for an extension of time shall be waived.

'26.3 All claims under this Contract shall be made in accordance with KRS 45A.225 to 45A.290. The provisions of these statutes do not toll the running of the Statute of Limitations set forth in KRS 45A.260. Any suit pursuant to KRS 45A.245 shall be commenced within one (1) year of the Substantial Completion Date specified in the Contract. If the Construction Manager/ General Contractor does not commence suit within one (1) year of the date specified in the Contract, the Construction Manager/ General Contractor shall be foreclosed from proceeding in court pursuant to KRS 45A.245.

'26.3.1 The Owner and Construction Manager/ General Contractor agree that any suit, action or proceeding with respect to this Contract may only be brought in or entered by the courts of the Commonwealth of Kentucky situated in Frankfort, Franklin County, Kentucky, or the United States District Court for the Eastern District of Kentucky, Frankfort Division, and the parties hereby submit to the non-exclusive jurisdiction of such courts for the purpose of any such suit, action, proceeding or judgment and waive any other preferential jurisdiction by reason of domicile or location. The parties hereby agree that any such legal action shall be tried by the court sitting without a jury. The parties hereby irrevocably waive any objection that they may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or related to this Contract brought in the courts of the Commonwealth of Kentucky situated in Frankfort, Franklin County, Kentucky, or the United States District Court for the Eastern District of Kentucky, Frankfort Division, and also hereby irrevocably waive any claim that any such suit, action or proceeding brought in any one of the above-described courts has been brought in an inconvenient forum.

'27 Liens

The filing and perfection of liens for labor, materials, supplies and rental equipment supplied on the work are governed by KRS 376.195 to 376.260.

'27.1 The lien shall attach only to any unpaid balance or retainage due the Construction Manager/ General Contractor for the improvement from the time a copy of statement of lien, attested by the County Clerk, is delivered to the Owner, pursuant to the provisions of KRS 376.240

'27.2 Statements of lien shall be filed with the Franklin County Clerk and action to enforce the same must be instituted in the Franklin Circuit Court, Frankfort, Kentucky, pursuant to KRS 376.250(2).

'28 Assignments

Neither party to the Contract shall assign the Contract, or any portion thereof without the written consent of the other, nor shall the Construction Manager/ General Contractor assign any monies due or to become due to him hereunder without notification to the Owner. Notification of

Assignments, shall be given on State forms and in accordance with the procedures and regulations of the Finance and Administration Cabinet.

'29 Separate Contracts

'29.1 Owner's Right to Perform Construction and to Award Separate Contracts. The Owner reserves the right to let other contracts in connection with the Project or to perform Work with its own forces. The Construction Manager/ General Contractor 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 his Work with theirs.

'29.1.1 If any part of the Construction Manager/ General Contractor's Work depends for proper execution or results upon the Work of any other contractor, the Construction Manager/ General Contractor shall promptly report to the Architect any observed defects in such Work that render it unsuitable for proper execution or connection. His failure to inspect and report shall constitute an acceptance of the other contractor's Work as fit and proper for the reception of his Work, except as to defects which may develop in the other contractor's Work after the execution of his Work.

'29.1.2 If any part of another contractor's work depends on the Construction Manager/ General Contractor's Work for proper execution, the Construction Manager/ General Contractor shall promptly perform that Work as required to allow the other contractor's work to progress as originally intended by the Owner's separate contract with that Contractor.

'29.1.3 Whenever Work being done by the Owner's forces or by other Contractors work under separate agreement with the Owner is contiguous to Work covered by this Contract, the respective rights of the various interests involved shall be established by the Architect to secure the completion of the various portions of the Work in general harmony.

'29.2 Mutual Responsibility of Contractors. Should the Construction Manager/ General Contractor cause damage to any separate contractor on the Work, the Construction Manager/ General Contractor agrees, upon due notice, to settle with such contractor if he will so settle. If such separate contractor sues the Owner on account of any damage alleged to have been so sustained, the Owner shall notify the CM/GC who shall defend such proceedings at the CM/GC's expense and if any judgment against the Owner arises therefrom, the CM/GC shall pay or satisfy it and pay all costs incurred by the Owner.

'30 Cash Allowances

The Construction Manager/ General Contractor shall have included in the Contract Sum all allowances stated in the Contract Documents and shall cause the Work so designated to be done as the Owner may direct. If the actual price for purchasing the "allowed material" is more or less than the "cash allowance," the Contract Sum shall be adjusted accordingly. The adjustment in Contract Sum shall be made on the basis of the purchase price without additional charges for overhead, profit, insurance or any other incidental expenses. The cost of installation of the "allowed materials" shall be included in the applicable sections of the Contract specifications covering this Work. (see paragraph 14.2 for more information.)

'31. Miscellaneous Provisions Regarding Construction Manager/ General Contractor's Work

'31.1 Project Site Limits. The Construction Manager/ General Contractor shall confine his

apparatus, the storage of materials, and the operations of his workmen to Project site limits indicated by the Contract Documents.

'31.2 Points of Reference. The Construction Manager/ General Contractor shall carefully preserve bench marks, reference points and stakes, and in case of willful or careless destruction, he shall be charged with the resulting expense of replacement and shall be responsible for any mistake that may be caused by their unnecessary loss or disturbance.

'31.3 Cutting and Patching. The Construction Manager/ General Contractor shall be responsible for cutting, fitting or patching required to complete the Project or make its parts fit together in a proper manner. The Construction Manager/ General Contractor shall not endanger or adversely affect other parts of the Project, including work by the Owner or other contractors as provided in Article 29, by cutting, patching, or excavation. The Construction Manager/ General Contractor shall not cut or otherwise alter construction by the Owner or a separate contractor without written consent of the Owner or such separate contractor. Such consent shall not be unreasonably withheld.

'31.4 Cleanup. The Construction Manager/ General Contractor shall at all times keep the Project premises and surrounding area free from the accumulation of waste materials or rubbish caused by his operations in connection with the Project. Upon completion of the Work, and prior to final inspection and acceptance, the Construction Manager/ General Contractor shall remove all remaining waste materials, rubbish, Construction Manager/ General Contractor's construction equipment, tools, machinery, and surplus materials and leave the Project (including but not limited to glass, hardware, fixtures, masonry, tile and marble) in a clean and usable condition satisfactory to the Architect. Floors shall be cleaned and waxed in accordance with the requirements of the Contract specifications. The CM/GC shall control dust and keep all work areas clean throughout the project.

If the Construction Manager/ General Contractor 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/ General Contractor by Change Order.

'31.5 Guarantees, Warranties and "As-Built" Drawings.

'31.5.1 Prior to final payment for the Work, the Construction Manager/ General Contractor shall assemble and present to the Architect all guarantees and warranties required by the Contract Documents.

'31.5.2 All warranties for materials, equipment and installations constructed by this project shall commence on the Date of Substantial Completion and continue for the period of time indicated for the specific material, equipment or installation.

'31.5.3 Additionally the Construction Manager/ General Contractor shall provide "Record" Drawings prior to final payment.

'32 Other Miscellaneous Provisions

'32.1 Governing Law. The Contract shall be governed by the laws of the Commonwealth of Kentucky. None of the terms may conflict with the requirements of the Kentucky Model Procurement Code and related regulations.

'32.2 Statutory Limitation Periods. Statutes of Limitations are governed by KRS 45A.260.

'32.3 Written Notice. Written notice shall be deemed to have been given if delivered in person to the individual or to a member of the organization or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last known business address known to the notifying party.

'33 Prevailing Wage Law Requirements

The KRS Prevailing Wage requirement was repealed in 2017 and Article '33 and does not apply to NKU construction contracts unless enacted otherwise. If Federal Wages are indicated as applicable, then the CM/GC shall follow all Federal Guidelines for the application of those wage rates.

'34. Apprentices

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 Council which is recognized by the Bureau of Apprenticeship and Training, U. S. Department of Labor.

'35. Nondiscrimination in Employment

During the performance of the Contract, the Construction Manager/ General Contractor agrees as follows:

'35.1 The Construction Manager/ General Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, or disability in employment.

'35.2 The Construction Manager/ General Contractor will take affirmative action in regard to employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, so as to ensure that applicants are employed and that employees during employment are treated without regard to their race, color, religion, sex, age, or national origin; however, when layoffs occur, employees shall be laid off according to seniority with the youngest employees being laid off first. When employees are recalled, this shall be done in the reverse way the employees were laid off;

'35.3 The Construction Manager/ General Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Construction Manager/ General Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, or national origin;

'35.4 The Construction Manager/ General Contractor will post notices in conspicuous places, available to employees and applicants for employment, setting forth the provisions of the nondiscrimination clauses required by this section;

'35.5 The Construction Manager/ General Contractor shall send to each labor union or representatives of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representatives of the Construction Manager/ General Contractor's commitments under this section.

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

'36 Affirmative Action; Reporting Requirements

'36.1 The Construction Manager/ General Contractor and Subcontractors are exempt from any affirmative action or reporting requirements, under the Kentucky Equal Employment Act of 1978, KRS 45.560 to 45.640 hereinafter referred to as The Act, if any of the following conditions are applicable:

- (1) the Contract or subcontract awarded is in the amount of five hundred thousand dollars (\$500,000) or less, and the amount of the contract is not a subterfuge to avoid compliance with the provisions of The Act; or
- (2) the Construction Manager/ General Contractor or Subcontractor utilizes the services of fewer than eight (8) employees during the course of the Contract ; or
- (3) the Construction Manager/ General Contractor or subcontractor employs only family members or relatives; or
- (4) the Construction Manager/ General Contractor or Subcontractor employs only persons having a direct Ownership interest in the business and such interest in not a subterfuge to avoid compliance with the provisions of The Act.

'36.2 The Construction Manager/ General Contractor or Subcontractor not otherwise exempted shall for the duration of the Contract, hire minorities from within the drawing area to satisfy the agreed upon goals and timetables set out in addenda to the Contract. Should the union with which the Construction Manager/ General Contractor has collective bargaining agreements be unwilling to provide sufficient minorities to satisfy the goals and timetables, the Contractor shall hire minorities from other sources within the drawing area to satisfy the goals and timetables in the addenda to the Contract.

'36.3 The equal employment provisions of The Act may be met in part by the Construction Manager/ General Contractor subcontracting to a minority contractor or subcontractor. A minority contractor or subcontractor shall be defined by the addenda to this Contract, or if none, by the Act.

'36.4 The Construction Manager/ General Contractor 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 his 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.

'36.5 If the Construction Manager/ General Contractor is found to have committed an unlawful practice against a provision of The Act during the course of performing under this Contract, (if covered by 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/ General Contractor ineligible to bid on further contracts until such time as the Construction Manager/ General Contractor complies in full with the requirements of The Act.

'36.6 The Construction Manager/ General Contractor shall not 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.

'37 Access to Records

'37.1 The Construction Manager/ General Contractor, as defined in KRS 45A.030(7), agrees that Northern Kentucky University 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.

'37.2 Furthermore, any books, documents, papers, records, or other evidence provided to Northern Kentucky University 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 NKU Office of Legal Affairs as meeting the provisions of KRS 61.878(1)(c) prior to the execution of the contract.

'38 Order of Precedence

'38.1 Order of Precedence in case of any inconsistency, conflict, or ambiguity reference FAP 22005-00. The University's acceptance of the bidder's offer in response to the Solicitation, indicated by the issuance of a contract award, shall create a binding agreement between the parties consisting of the documents listed below. In the event of a conflict between the provisions contained in the contract, the order of precedence shall be in the same listing order as below. 1. Solicitation including any addenda; 2. Specifications; Page 57 3. Special Conditions; 4. General Conditions; 5. Technical provisions of the specifications; 6. Drawings/plans; and 7. Bid Response to the Solicitation

END OF GENERAL CONDITIONS – CM/GC

**CONTRACT BETWEEN OWNER AND
CONSTRUCTION MANAGER/ GENERAL CONTRACTOR**

This Agreement between Owner, Northern Kentucky University, and Construction Manager / General Contractor is made as of this the <<INSERT DATE OF AGREEMENT Month Day, Year>> by and between The Northern Kentucky University, hereinafter called the Owner, and <<INSERT NAME OF CM/GC COMPANY AND ADDRESS>> Construction Company, hereinafter called the Construction Manager / General Contractor (CM/GC), 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/ General Contractor agree as follows:

ARTICLE 1 THE PROJECT

1.1 The Project is described in the documents enumerated in Attachment **A1, A2 and A3**.

ARTICLE 2 THE CONTRACT DOCUMENTS

2.1 The Contract Documents consist of the Request for Proposal document; this Contract and all addenda to this Contract; the Construction Manager / General Contractor's response to the Request for Proposal for Construction Manager/ General Contractor 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 Fee Schedule (**Exhibit B**) and associated qualifications and assumptions when executed, now existing or issued hereafter; any amendments or addenda executed by the Owner and the Construction Manager / General Contractor hereafter; and, approved change order (s) or field orders.

2.2 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 / General Contractor.

2.3 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 / General Contractor or its Trade Contractors and suppliers do not constitute a part of the Contract Documents.

2.4 Capitalized terms used but not defined in this Agreement shall have the meaning described thereto in the General Conditions.

ARTICLE 3 CONSTRUCTION MANAGER / GENERAL CONTRACTOR'S SERVICES

3.1 The Construction Manager / General Contractor'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.

3.1.1 The Construction Manager / General Contractor'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 / General Contractor 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 / General Contractor shall commence performance of Pre-Construction Services, for a lump sum fee, as indicated in **Exhibits A and B**. Upon execution of trade package Change Orders and issuance of a Notice To Proceed by the Owner, the Construction Manager / General Contractor shall commence performance of Construction Services, for a lump sum fee, as indicated in **Exhibit B**. The parties acknowledge that (i) the Owner may determine not to proceed with Construction Services and (ii) payment of the Construction Manager / General Contractor for Pre-Construction Services shall be separate from payment, if any, for Construction Services.

3.3 General Project Services. The Construction Manager / General Contractor 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 law.

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 / General Contractor's services shall be performed in accordance with schedule requirements.

3.4 Pre-Construction Services. The Construction Manager / General Contractor shall provide the following Pre-Construction Services:

3.4(a) Design Review Services

3.4(a)(1) The Construction Manager / General Contractor shall actively and jointly participate with the Owner and the Consultant(s) in formation of the final Project design without assuming design responsibility with the exception of delegated design that is CM/GC responsibility. The anticipated Project design schedule is set forth in the RFP document.

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 / General Contractor, 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:

- 1) familiarize itself with the approved program;
- 2) familiarize itself with the design drawings;
- 3) analyze and evaluate jobsite management, site logistics, staging, budget, phasing and schedule considerations;
- 4) 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;

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- 5) 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 including constructability, completeness and/or any conflicts, value engineering, identification of long-lead materials affecting the Construction Schedule, availability of labor and other factors affecting construction; and
- 6) 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 / General Contractor 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 / General Contractor shall verify the accuracy and completeness of the minutes.

3.4(a)(4) The Construction Manager / General Contractor 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 / General Contractor 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 A (SD - Schematic Design), Phase B (DD - Design Development) and Phase C (CD Construction Documents) and RTA (Ready to Advertise Documents or Bid Documents) the Construction Manager / General Contractor 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 / General Contractor and Consultant(s) shall reconcile, and make recommendations on, the differences between the CM/GC's estimate and the Consultant's estimate.

3.4(a)(7) The Construction Manager / General Contractor 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 / General Contractor shall provide the constructability review as a written document or letter to Owner summarizing such information reviewed and confirming that the concept selected can be constructed within the parameters identified in the CM/GC schematic estimate. At each subsequent design phase set forth in the design schedule, the Construction Manager / General Contractor shall provide such information in the form of a report containing a

detailed description of Construction Manager / General Contractor's review. Such letter and reports shall be provided to Owner in accordance with the schedule set forth on **Exhibit A**.

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 / General Contractor shall, in accordance with current project schedule requirements; review applicable Construction Schedule(s); the estimate of Total Project Construction Cost; fees for permits and licenses, if any; modifications necessitated by local conditions; and other information necessary for a full understanding of the Project and the Construction Documents. The Construction Manager / General Contractor shall:

- 1) review the Construction Documents for clarity and constructability;
- 2) where observed, call to the attention of the Consultants any identified conflicts, omissions or duplications and any unusual design details that, in the opinion of the CM/GC, will adversely affect construction cost and schedules;
- 3) identify factors with the potential to impact the Construction Schedule including but not limited to materials with long lead time, the unavailability of required labor, and other factors and make suggestions for acceptable alternatives;
- 4) evaluate and make suggestions to optimize site utilization during construction;
- 5) recommend proposed modifications or alternatives to the Construction Documents based on its evaluation and review;
- 6) 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;
- 7) 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/GC detects such during in depth review of drawings and specifications ;
- 8) apply established value engineering principles and practices to reduce the cost of the Project, where appropriate or necessary, to satisfy budgetary requirements; and,
- 9) provide written reports to the Owner and the Consultant's documenting each of the items indicated above, including, but not necessarily limited to, the CM/GC's findings, analysis, and recommendations.

3.4(b)(3) The Construction Manager / General Contractor 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, the Construction Manager / General Contractor shall, in accordance with schedule requirements and **Exhibit A**, 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/GC 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 Construction Specifications Institute (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 / General Contractor and Consultant(s) shall reconcile and make recommendations on the differences between the CM/GC's estimate and the Consultant's estimate. If these estimates by the Construction Manager / General Contractor and by the Consultant(s) differ materially, the Consultant and the CM/GC 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 / General Contractor understands and acknowledges the Owner's intent that the Project will be complete by the Date of Substantial Completion. The Construction Manager / General Contractor 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 / General Contractor shall submit an initial Construction Schedule by the date set forth on **Exhibit A**; a final Construction Schedule with the Guaranteed Maximum Price proposal; and revised Construction Schedules in accordance with the **General Conditions**. Schedules shall include any phasing requirements of owner occupancy or moving as a part of the schedule allowing sufficient time for these events to occur in conjunction with owner requirements.

3.4(c)(3) The Construction Manager / General Contractor shall establish and submit for Owner review within sixty (60) calendar days of the Owner's execution of this Agreement:

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- 1) Project cost control procedures;
- 2) Project reporting procedures;
- 3) Quality Management Program; and
- 4) Safety program (to be included in Trade Bid Packages)

3.4(c)(4) The Construction Manager / General Contractor shall develop a comprehensive jobsite management and logistics plan for the Owner's review. This plan shall be submitted thirty (30) calendar days from the completion of the Phase B: Design Development phase.

3.4(c)(5) The Construction Manager / General Contractor understands and acknowledges the Owner's intent that the Project will be completed within the budget set by Owner for the Project. The Construction Manager / General Contractor shall inform the Owner 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) Bidding and Negotiation

3.4(d)(1) With the Consultant(s) assistance, the Construction Manager / General Contractor shall prepare and assemble document packets for use in bidding the Trade Contracts, subject to the Owner's approval for legal compliance.

The following is a synopsis of the Bidding Procedures that shall be followed on this project:

- 1) The CM/GC develops the trade bid packages, including the ready to advertise or bid documents and sends them to NKU for approval;
- 2) The Bid documents will indicate that the bids will be submitted to and received by the Construction Manager / General Contractor;
- 3) A pre-bid meeting and a public bid opening are both scheduled and the information is included in the bid documents;
- 4) NKU staff will attend the public bid opening;
- 5) Copies of all bids are made and given to the CM/GC and NKU;
- 6) The CM/GC holds scope review meetings with the apparent successful bidders;
- 7) The trade contractor sends all required forms, including EEO forms to the Construction Manager / General Contractor and then the Construction Manager / General Contractor compiles and transmits to NKU a notice of its intent to award a Trade Contractor Contract for Construction;
- 8) Once all required documents are received, the CM/GC reports to the Owner the summary of all Trade Contractor Contracts to be awarded;
- 9) A change order is then initiated and the CM/GC's contract is modified to reflect the increase of price for the project that was bid.

3.4(d)(2) The Construction Manager / General Contractor, in cooperation with the Owner, shall conduct public bid openings and shall prepare a summary of the bid tabulation supported by a copy of all bids.

3.4(d)(3) The Construction Manager / General Contractor shall, for each subcontract, trade or bid division:

- 1) award 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 responsible and do not include duplicate scope items;
- 2) prepare and furnish to the Owner a revised bid tabulation which includes by Trade Contract and/or bid division, the applicable final CM/GC estimate comparison and the related final bid amount and the details of all scope clarifications for Owner's review;
- 3) identify to the Owner in writing the Trade Contractors to which the Construction Manager / General Contractor intends to award Trade Contractor Contracts to;

3.4(d)(4) The construction manager / general contractor may self-perform work as follows.

- 1) The construction manager-general contractor shall only be eligible to competitively bid on part or parts of a project that the construction manager / general contractor or its parent, affiliate, or subsidiary performs in its ordinary course of business.
- 2) The construction manager-general contractor shall publicly declare in its advertisement for bids or addenda thereto which parts of the project it plans to competitively bid. The scope of work for those parts of the project shall be reviewed and approved by the contracting body. The advertisement for bids or addenda thereto shall be issued at least two (2) weeks prior to the bid date.
- 3) The construction manager-general contractor shall submit a sealed bid for the parts of the project it seeks to self-perform no later than thirty (30) minutes prior to the date and time established for other entities to submit sealed bids for the same project parts. The construction manager-general contractor shall publicly open and read all bid amounts aloud. All bidders shall be granted access to view the bid amounts submitted. All bids for portions of the project the construction manager-general contractor submitted a bid to self-perform shall be submitted to the contracting body for recordkeeping purposes.
- 4) The staffing, equipment, and materials that a construction manager-general contractor uses for the management part of the project shall be separate from any staffing, equipment, and materials required for the self-performance part of the project.
- 5) The construction manager-general contractor shall not be eligible to utilize any of the construction contingency it may be carrying on the project for any part of the project it competitively bids to self-perform unless approved to do so by the contracting body.

6) Electrical, mechanical, fire suppression, or plumbing work shall not be self-performed.

7) To execute its self-performance bid, a construction manager-general contractor may use: (a) Materials or supplies from a supplier or subcontractor; or (b) Tools or equipment leased from a subcontractor

3.4(e) Guaranteed Maximum Price Proposal Services

3.4(e)(1) Prior to performance of Construction Services for each Trade Bid Package, the Construction Manager / General Contractor shall prepare and deliver to the Owner, with a copy to the Consultant(s), a written summary of the Bids submitted and accepted from the various Trade Contractors. The Construction Manager / General Contractor shall, at a minimum, include in the GMP proposal:

- 1) recital of the specific Construction Documents, including drawings, specifications, and all addenda thereto, used in preparation of the GMP proposal;
- 2) the elements of the Guaranteed Maximum Price: Cost of the Work (the sum of all trade contracts comprising CSI format divisions), detailed by each subcontract, trade, or bid division;
- 3) CM/GC Construction Services Fee as indicated in **Exhibit B**, including any adjustments mutually agreed to by the Owner and the Construction Manager / General Contractor.
 - a. Bonds and Insurance shall be included in the Construction Manager / General Contractor's services fee.
- 4) A draft Schedule of Values (SOV) – using the form provided by **Exhibit C**;
- 5) 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.
- 6) The Owner shall set aside funding for Owner contingency of an amount at owner discretion. The Owner contingency can only be utilized with written consent of the Owner.

3.4(e)(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 / General Contractor shall not cause any Trade Contractor to be entitled to an 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, and the general industry standards for completion of the Work, (iii) is not an enlargement of the scope of Work or (iv) substantially conforms to the nature, type, kind or quality of Work depicted in the incomplete documents.}The GMP proposal shall include costs of all

insurance and bonds as outlined in Article 35 of the General Conditions that are attributable to a specific Trade Contractor.

3.4(e)(3) If the GMP proposal is unacceptable to the Owner, the Owner shall promptly notify the Construction Manager / General Contractor in writing. Within fourteen (14) calendar days of such notification, the Owner, Consultant(s) and Construction Manager / General Contractor 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(e)(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 any Trade Contractor indicated or the Construction Manager / General Contractor.

3.4(e)(5) If the Owner rejects a GMP proposal, neither party shall have any further obligation, for said work.

3.4(e)(6) If the Owner accepts a GMP proposal, the parties shall complete and execute a Change Order assigning the Work of each Trade Contractor Package to the Construction Manager/ General Contractor, which shall include the associated qualifications and assumptions and the Owner shall modify the Construction Manager / General Contractor's contract establishing the construction dates.

The Construction Manager / General Contractor shall not expend any monies for construction prior to receipt of contract modification. Once the GMP is established by this process, it shall not change without a Change Order modification. There shall only be one GMP in place at any one time.

3.4(e)(7) Price Guarantees

Upon execution of the Change Order for Construction, and subject to the qualifications and assumptions the Construction Manager / General Contractor guarantees that the sum of the Cost of the Work and the CM/GC Construction Services Fee shall not exceed the GMP, except as adjusted by Change Order.

All costs or expenses that would cause this sum to exceed the GMP shall be borne by the Construction Manager / General Contractor unless adjusted by Owner approved Construction Change Order.

Upon execution of Construction Change Order, the Construction Manager / General Contractor 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 / General Contractor shall be reduced if the Owner determines such amounts were originally included due to materially inaccurate, incomplete, or noncurrent factual unit costs.

3.4(e) (8) Owner Contingency

(i.) Use of Owner contingency must be approved by the Owner in writing. Reference Change Order section in this Contract and in the CM/GC General Conditions.

Construction Services

3.5(a) The Construction Manager / General Contractor Shall:

1) award and enter into a subcontract between itself (Construction Manager / General Contractor) and each Trade Contractor or materials supplier and 2) provide a copy of each subcontract agreement to the Owner upon execution.

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 / General Contractor shall provide the services described in subsections 3.5(b)(2) through 3.5(b)(7).

3.5(b)(2) The Construction Manager / General Contractor 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 / General Contractor shall supervise and direct the Work at the Site. The Construction Manager / General Contractor shall, at a minimum, staff the Project Site with personnel who shall:

- 1) supervise and coordinate the Construction Manager / General Contractor's personnel and act as its primary liaison with the Owner and the Consultant(s);
- 2) coordinate trade contractors and suppliers, and supervise Site construction management services;
- 3) be familiar with all trade divisions and trade contractors' scopes of Work, all applicable building codes, and the Construction Documents;
- 4) 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;

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- 5) prepare and maintain Project records including a daily log, as built record drawings, process Project documents, and staff the Site field office;
- 6) 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);
- 7) 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.
- 8) 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.
- 9) make provision for Project security to protect the Project site and materials stored offsite against theft, vandalism, fire and accidents as required by the General Conditions and applicable law.
- 10) Assist with the LEED certification process including ensuring the performance of all construction related tasks.

3.5(b)(4) The Construction Manager / General Contractor 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 / General Contractor shall immediately notify the Consultant(s) and the Owner in writing when it has rejected any Work.

3.5(b)(5) The Construction Manager / General Contractor shall comply with and cause its Trade Contractors and suppliers to comply with the Project Construction Schedule and applicable sub-schedules. The Construction Manager / General Contractor 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 / General Contractor

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 / General Contractor 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 / General Contractor shall utilize Navisworks clash detection or other program acceptable to the design team in coordination with trade contractors and design team information throughout construction. The CM-GC shall receive a REVIT model from the design team as a base reference for the CM-GC to maintain, update and turn over as an updated REVIT model As-built with all clash detection resolutions included, utility changes, all changes to construction documents at Substantial Completion to the design team along with a PDF As-Built set that includes changes from the design team original documents. Approval of final payment to the CM/GC shall be contingent upon compliance with these provisions. The design Consultant will provide the owner with Record drawings that include all Design Team RFI responses, ASIs, Change Orders and incorporate all CM/GC As-Built information. The Design Team shall also provide the Owner with a REVIT model, Autocad v. 2010 .dwg files with all information bound into individual sheet drawings, stamped /signed mylars and PDFs.

3.5(c) Construction Manager / General Contractor's On-Site Facilities

3.5(c)(1) The Construction Manager / General Contractor shall provide any necessary facilities at the Project Site as required and approved by the Owner. The Costs of these facilities are included in the Construction Manager/ General Contractor's Construction Services Fee.

ARTICLE 4 COMPENSATION OF CONSTRUCTION MANAGER / GENERAL CONTRACTOR

4.1 Pre-Construction Services Fee

The Owner agrees to pay the Construction Manager / General Contractor, and the Construction Manager / General Contractor shall accept as complete payment for performance of Pre-Construction Services, the lump sum fee set forth on **Exhibits A and B**, payable pursuant to the schedule set forth thereon.

4.2 Compensation for Construction Services

The Owner shall pay, and the Construction Manager / General Contractor shall accept, as full and complete payment for the Construction Services, only the lump sum of the following elements – which shall not exceed the GMP – calculated in the order outlined in **Exhibit B**:

- 1) the aggregate net cost directly paid, or to be paid, by the Construction Manager / General Contractor 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 Schedule of Values;
- 2) the Construction Manager / General Contractor’s Services Fee as set forth on most current **Exhibit B. CM/GC Fee** is to be included in the Schedule of Values as a separate line item.
- 3) Executed Change Orders

NOTE: The Construction Manager / General Contractor shall not be compensated a percentage markup for adjustments to the Guaranteed Maximum Price by Construction Change Order.

4.2.1 Construction Manager / General Contractor’s Construction Services Fee

The Construction Manager / General Contractor’s Services Fee includes the elements indicated and as defined below in 4.2.1(a), 4.2.1(b)(1) and 4.2.1(b)(2) and to the extent indicated to be included in Trade Contracts.

4.2.1 (a) Construction Manager / General Contractor’s Staffing

4.2.1 (a)(1) Construction Manager / General Contractor staffing costs include and are limited to expenditures for the following items:

- 1) The cost of its supervisory, technical, administrative and clerical personnel engaged in supervision and management of the Work;
- 2) CM/GC 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;

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- 3) reasonable expenses of the Construction Manager / General Contractor's personnel incurred while traveling in discharge of duties directly connected with the Work;
- 4) any costs or expenses incurred by the Construction Manager/ General Contractor, 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.
- 5) General Conditions Cost as outlined.

NOTE: In no event shall the Construction Manager / General Contractor's Fee include any costs and expenses except those described above.

4.2.1 (b) General Requirements Cost

4.2.1 (b)(1) General Requirements costs include the following items except for those costs subsequently assigned to one or more of the trade contracts:

- 1) 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/ General Contractor 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/ General Contractor.
- 2) cost for items previously used by the Construction Manager/ General Contractor shall mean fair market value;
- 3) costs incurred to provide site safety and site security are to be included in Trade Contracts/General Requirements;
- 4) costs of removal of debris from the site; are to be included in Trade Contracts/General Requirements (including all separation and disposal of materials as may be required in the Contract Documents for material recycling);
- 5) costs of items/services for the benefit of the CM/GC including document reproduction, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, phone service at the site and reasonable petty cash expenses of the site office;
- 6) bonds and Insurance for the Guaranteed Maximum Price (GMP) shall be included in the Construction Manager/ General Contractor's Services Fee. See Articles 24 and 25 of the General Conditions;
- 7) all CM/GC data processing costs directly related to the Work;
- 8) the cost of obtaining and using phone and data/internet required for the Work;
- 9) the cost of crossing or protecting any public utility, if required, and as directed by the Owner are to be included in Trade Contracts/General Requirements;

- 10) all reasonable costs and expenditures necessary for the operation of the CM/GC Site office, such as stationary, supplies, furniture, fixtures, office equipment and field computer services;
- 11) the cost of secure off-site storage space or facilities and any insurance for materials storage, are to be included in Trade Contract/General Requirements;
- 12) 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/General Requirements;
- 13) 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/General Requirements; and,
- 14) the cost of parking on the NKU campus; all vehicles parked outside the project site limits are required to have a valid NKU parking pass.

4.2.1(b)(2) Legal costs incurred in connection with disputes solely between the Construction Manager / General Contractor and the Owner or incurred in connection with disputes solely between the Construction Manager / General Contractor and Trade Contractors are the responsibility of the Construction Manager / General Contractor, are not compensable and shall not be included in the Guaranteed Maximum Price.

4.3 Change Orders.

4.3(a) Amounts owed by the Owner to the Construction Manager / General Contractor for payment to a Trade Contractor shall be adjusted by duly authorized Construction Change Order. A proposal request shall be created by the Architect for the CM/GC to attain pricing from Trade Contractors. The CM/GC shall analyze the labor and material costs from the Trade Contractors and provide a recommendation to the Architect and Owner as to the cost, having analyzed labor, materials and quantities relative to the work proposed and to current market value or unit pricing where applicable.

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 / General Contractor the net cost directly paid by the Construction Manager / General Contractor to Trade Contractors or suppliers for the performance of the Work. Refer to Article 14 in the General Conditions - CM/GC. The Construction Manager / General Contractor shall not receive a percentage mark upon the amount of the executed Change Order. If the Owner determines that the Change Order substantially increases the Scope of Work (SOW) for the project, the Owner may at its sole discretion, permit an increase to the CM/GC fee as determined by the Owner. The Trade Contractor's Overhead & Profit shall not exceed 10% of the actual cost of the Change Order work.

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 / General Contractor shall be reduced by the amount the Construction Manager / General Contractor is no longer obligated to pay Trade Contractors and/or suppliers for performance of the Work. The Construction Manager / General Contractor shall not refund a percentage markup on the amount of the executed Change Order. The Trade Contractor's overhead and profit refunded as part of the executed Change Order shall be 10% of the actual cost of the work. If an entire Scope of Work is removed equal to the total specified line-item amount in the Schedule of Values, then the Trade Contractor 10% Overhead & Profit shall be considered as being included in the line item amount.

4.3(a)(3) Change Order - Time & Material. For Change Orders approved by an Owner to be performed by the Construction Manager / General Contractor on a time and-materials basis pursuant to the General Conditions, the Owner shall pay the Construction Manager / General Contractor the actual incurred cost and expenses paid to those Trade Contractors and suppliers performing the Work. The Trade Contractor's overhead and profit shall not exceed 10% of the actual cost of the work. The CM/GC shall track all costs for time and materials including number of workers, workers hours and work performed.

4.3(b) 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.

4.3(c) For expediency during construction, if the Owner provides written approval of a proposal request through the Owner's change order approval process, that written approval shall stand as authorization to proceed with the work until the change order can be fully executed. Owner written approval on a proposal request shall follow with an executed change order prepared by the Architect to modify the contract.

4.3(d) With each Payment Application from the Construction Manager / General Contractor, a complete accounting of Change Orders up to the date of the Payment Application shall be provided to the Owner in a CM/GC Change Order Log accompanied by a CM/GC Proposal Request tracking log.

4.4 Applications for payment shall be made in accordance with Article 18 of the General Conditions to the Contract and as stated herein. The Payment Application Schedule of Values shall explicitly break out change orders in each trade package, so

they are clearly separated by trade at the end of each Bid Package/Trade Division. Each change order number with definition/ name shall be included in the Schedule of Values as a line item per Bid Package. Every pay application shall include a full accounting and updated Schedule of Values broken into Bid Package divisions.

4.5 Prior to submitting the first application for payment, the Construction Manager / General Contractor 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 C**.

4.6 Upon receipt of the Construction Manager / General Contractor's invoice, properly prepared the Owner shall pay the Construction Manager / General Contractor the amount approved by Consultant(s), less retainage, unless there is a dispute about the amount of compensation due to the Construction Manager / General Contractor.

It is understood and agreed that the Owner will not withhold retainage on the amount due the CM/GC for the Construction Manager/ General Contractor's Construction Services Fee and the General Conditions, bonds and insurance premiums which are part of this Construction Services Fee. The CM/GC shall clearly separate their fee on the Schedule of Values.

ARTICLE 5. LIQUIDATED DAMAGES FOR DELAY

5.1 In as much as failure to Substantially Complete the Work within the time fixed by the Contract 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 by the Contract or within such further time, if any, as shall be allowed for time extensions in accordance with the provisions of the Contract, the Construction Manager / General Contractor shall pay to the Owner as liquidated damages for such delay, and not as a penalty, the amount set forth in the Contract for each calendar day elapsing between the date fixed for Substantial Completion and the date such Substantial Completion is fully accomplished. Liquidated damages shall also be incurred for each calendar day elapsing between the date fixed for Final Completion and the date such Final 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. CM/GC may also assess liquidated damages to Trade Contractors in addition to Owner liquidated damages.

5.2 The 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 / General Contractor 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 / General Contractor, the liquidated damages stipulated herein, or such portion thereof as the remaining balance will cover.

5.3 It is understood at the time of this Agreement, that the amount of Owner Liquidated Damages will be determined prior to bidding and included by the Architect in the Special Conditions of the Ready to Advertise Bid Documents. The CM/GC shall be responsible for Owner Liquidated Damages as outlined in the Special Conditions.

5.4 The Construction Manager/General Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

5.4.1 damages incurred by the Owner, if applicable for rental expenses, for loss of use, loss of income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

5.4.2 damages incurred by the Construction Manager/General Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

5.4.3 This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 22 of the General Conditions. Nothing contained in this Article shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

ARTICLE 6. PERSONNEL, TRADE CONTRACTOR AND SUPPLIER CHARTS

6.1 The Construction Manager / General Contractor has provided **in their response to the solicitation ("RFP")**, the Construction Manager / General Contractor's personnel chart which lists by name, job category and responsibility, the Construction Manager / General Contractor's primary employees who will work on the Project as listed in Construction Manager / General Contractor's Professional Qualifications Supplement submitted to Owner during the Construction Manager / General Contractor selection process. The Construction Manager / General Contractor 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 / General Contractor shall prepare and provide to Owner the Construction Manager / General Contractor'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 / General Contractor to provide goods or services with respect to the Project. The Construction Manager / General Contractor 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 / General Contractor shall provide the insurance and payment and performance bonds as required in Article 23, 24 & 25 of the General Conditions.

ARTICLE 8 MISCELLANEOUS PROVISIONS

8.1 The Owner and Construction Manager / General Contractor 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, the Owner nor the Construction Manager / General Contractor, 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 Northern Kentucky University, without regard to its choice of law provisions, and venue shall lie in the Circuit Court in Franklin County, Kentucky.

Notwithstanding anything in the Contract Documents to the contrary, in the event there is any change in any applicable law, rule or regulation that takes effect after the execution of

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REV 11.1.2024

this Contract and such change increases the Construction Manager's/General Contractor's time or cost of performance hereunder, Construction Manager/General Contractor shall be entitled to an equitable adjustment to its time and/or compensation hereunder.

8.3 The Construction Manager / General Contractor 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 / General Contractor) 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 / General Contractor) any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

8.4 All capitalized terms used herein but not defined herein shall have the meaning ascribed thereto in the General Conditions.

8.5 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 Northern Kentucky University to procure construction-related services. Competition ensures that prices are competitive and a broad vendor base is available.

8.6 Intentionally Omitted

8.7 All exhibits referenced herein are attached hereto and incorporated herein by reference.

8.8 The Construction Manager / General Contractor shall participate in and cooperate with commissioning, validation, and other quality assurance and quality control processes, at no additional cost to the Owner.

8.9 Audits

8.9(a) The Construction Manager / General Contractor's Trade Contractors', subsubcontractors' 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

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Manager / General Contractor's employees, field and agency labor, Trade Contractors, and vendors. All records to date of request are to be made available to Owner via digital PDF format within 30 days of Audit Request.

8.9(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:

- 1) Compliance with contract requirements for deliverables;
- 2) Compliance with approved plans and specifications;
- 3) Compliance with Owner's business ethics expectations;
- 4) Compliance with contract provisions regarding the pricing of change orders;
- 5) Accuracy of contractor representations regarding the pricing of invoices; and
- 6) Accuracy of contractor representations related to claims submitted by the contractor or any of his payees.

8.9(c) The Construction Manager / General Contractor 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 / General Contractor 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 / General Contractor will cooperate fully and will cause all Related Parties and all of the Construction Manager / General Contractor'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.

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8.9(d) Owner's authorized representative or designee shall have reasonable access to the Construction Manager / General Contractor'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 workspace in order to conduct audits in compliance with this article.

8. **9(e)** If an audit inspection or examination, in accordance with this article, discloses overpricing or overcharges (of any nature) by the Construction Manager / General Contractor to the Owner the overcharges shall be reimbursed to the owner by the Construction Manager / General Contractor. 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 / General Contractor.

8.9 (f) The Construction Manager / General Contractor or contractor, as defined in KRS 45A.030(10) 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.)

8.9 Any modifications to this Agreement are set forth on **Exhibit D**.

Construction Manager/General Contractor Services

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IN WITNESS WHEREOF this Agreement is executed in two (2) counterparts, each one of which shall be deemed an original and adequate proof of this Agreement, on the date and year first herein before written.

WITNESS: Construction Manager/ General Contractor:

BY:

Title:

NORTHERN KENTUCKY UNIVERSITY

Approved for Legality and Form

Vice President Legal Affairs, General Counsel

APPROVED:

Jeremy Alltop, Vice President for Administration & Finance and Chief Financial Officer

Exhibit A
Authorization for Pre-Construction Services

3.4(a)(2) Schedule for Pre-Construction Services

- 1) **Design Development Phase B Cost Estimate and Report:** Ten (10) calendar days after delivery of Design Development Documents from Consultant(s)

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- 2) **100% Construction Documents Phase C Cost Estimate and Report:** Ten (10) calendar days after delivery of Construction Documents from Consultant(s)

3.4(b) Initial Construction Schedule Deadline

With Design Development submittal or if Contracting at a later Phase, then with the current Design Phase.

3.4(c)(1) GMP Proposal Submittal Deadline

Within 15 working days after receipt of bids.

4.1 Pre-Construction Services Fee

For pre-construction services, the lump sum amount of <<INSERT WRITTEN DOLLARS AND CENTS>> (\$000,000.00), to be paid at the satisfactory completion of the following phases:

Phase Description	CM/GC Fee
(Phase P) Pre-Design / Programming	\$ 0
(Phase A) Schematic Design	\$ 0
(Phase B) Design Development	<<Insert \$ Dollar Amount >>
(Phase C) Construction Documents	<<Insert \$ Dollar Amount >>
Total:	<<Insert \$ Dollar Amount >>

4.2 The Construction Manager / General Contractor’s Construction Services Fee shall be a lump sum and is to be paid proportionate upon completion of work.

Exhibit B

Authorization for Construction

Pursuant to the Agreement between the Northern Kentucky University (“Owner”) and <<INSERT NAME OF CM/GC>> Construction Company (“Construction Manager /

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Northern Kentucky University
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General Contractor”), for <<INSERT PROJECT NAME>> [add following if phased scope of work] the Scope of Work under this authorization for Construction to include name document or Bid Package, the Owner and the Construction Manager / General Contractor hereby execute this Exhibit B and further agree as set forth below.

Construction Manager / General Contractor shall issue trade contracts for the Work within ten (10) calendar days after the execution of the Contract or Construction Change Order, along with the Exhibit B, signed by the Owner.

The date of Substantial Completion for the work shall be as set forth in the Special Conditions and Final Completion shall be as set forth in the Special Conditions. Completion dates for future bid packages will be negotiated. Refer to General Conditions Article 19.

Liquidated Damages shall be as set forth in the Special Conditions.

3.4(d). The Construction Manager / General Contractor’s Guaranteed Maximum Price (“GMP”) proposal dated _____ attached hereto and incorporated herein, is accepted by the Owner.

	Item	Amount
	Original Contract Amount: Construction Manager / General Contractor’s Preconstruction Service Fee (Lump Sum)	<<Insert \$ Dollar Amount >>
	CM/GC Construction Service Fee (Lump Sum)	<<Insert \$ Dollar Amount >>
	Trade Contractor Bid Packages Cost of the Work to be added via Change Order to Original Contract Amount.	
	Revised Contract Guaranteed Maximum Price Sum to be executed via Change Order.	

Note: The bonds and insurance cost shall be included in the Construction Manager / General Contractor’s Construction Services Fee. See Articles 23, 24 and 25 of the General Conditions.

Construction Manager/General Contractor Services

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Exhibit C

Schedule of Values

Owner's Invoice and Schedule of Values Form To
be issued with first Pay Application.

Exhibit D

Modifications, if any

February 26, 2024

The Honorable Rick Girdler, Co-Chair
The Honorable Deanna Frazier Gordon, Co-Chair
Capital Projects and Bond Oversight Committee
Legislative Research Commission
Frankfort, Kentucky 40601

Dear Senator Girdler, Representative Gordon, and Members of the Capital Projects and Bond Oversight Committee:

Enclosed, please find five reports, filed under the mandate of KRS 45A.860(3), certifying that the applicable procedural provisions of KRS 45A.840 to 45A.879 were met in the following procurements:

- Kentucky State Property and Buildings Commission (SPBC) Selection Committee for Managing Underwriter, Financial Advisor, and Bond Counsel for FY 2024
- Local Co-Manager (for State Bond-Issuing Agencies) Selection Committee for Managing Underwriters for FY 2024
- Kentucky Public Transportation Infrastructure Authority (KPTIA) Selection Committee for Managing Underwriter and Bond Counsel for FY 2024
- Kentucky Infrastructure Authority (KIA) Selection Committee for Managing Underwriter and Bond Counsel for FY 2024
- Kentucky Higher Education Student Loan Corporation (KHESLC) Selection Committee for Managing Underwriter and Financial Advisor for FY 2024

Should you have any questions about these reports, please contact either Executive Director Alexander Magera or myself for clarification.

Sincerely,

Audra Hall
Digitally signed by Audra Hall
Date: 2024.02.27 12:13:46 -05'00'

Audra Hall, CFE
Auditor of Public Accounts

Enclosures

c: Alexander Magera, Auditor of Public Accounts
Ryan Barrow, Office of Financial Management
Katherine Halloran, LRC, Committee Staff Administrator

Certification Report
Filed Pursuant to KRS 45A.860(3)

To: Capital Projects and Bond Oversight Committee

C: Office of Financial Management, Finance and Administration Cabinet

From: Audra Hall, CFE, APA Selection Committee Member

Agency: Kentucky State Property and Buildings Commission (SPBC)

Project Title: Kentucky State Property and Buildings Commission (SPBC) Selection Committee for Managing Underwriter, Bond Counsel, and Financial Advisor for FY 2024

Awarded To: Managing Underwriter: BofA Securities, Inc.
Bond Counsel: Kutak Rock, LLP
Financial Advisor: Hilltop Securities, Inc.

I, the undersigned representative of the Auditor of Public Accounts, duly appointed pursuant to KRS 45A.843 as a merit employee and nonvoting member of the Selection Committee referenced above, do hereby certify, to the best of my knowledge and based upon (a) the two meetings of the Selection Committee which the previous APA appointee, Marla Liddy, attended, (b) Office of Financial Management documents made available to me, and (c) certifications executed pursuant to KRS 45A.860, the applicable procedural provisions of KRS 45A.840 to 45A.879 were met in all material respects regarding the above-referenced procurement.

The majority of documents supporting the certification made in this report are maintained in the files of the Office of Financial Management.

Audra Hall

Digitally signed by Audra Hall
Date: 2024.02.27 12:14:26 -05'00'

Merit Employee, Auditor of Public Accounts
Selection Committee Member

Date

Certification Report
Filed Pursuant to KRS 45A.860(3)

To: Capital Projects and Bond Oversight Committee

C: Office of Financial Management, Finance and Administration Cabinet

From: Audra Hall, CFE, APA Selection Committee Member

Project Title: Local Co-Manager (for State Bond-Issuing Agencies) Selection Committee for Managing Underwriters for FY 2024

Awarded To: Managing Underwriters:

1. Baird
2. PNC
3. Raymond James
4. FHN Financial Capital Markets
5. Huntington
6. Stifel

I, the undersigned representative of the Auditor of Public Accounts, duly appointed pursuant to KRS 45A.843 as a merit employee and nonvoting member of the Selection Committee referenced above, do hereby certify, to the best of my knowledge and based upon (a) the two meetings of the Selection Committee which the previous APA appointee Marla Liddy attended, (b) Office of Financial Management documents made available to me, and (c) certifications executed pursuant to KRS 45A.860, the applicable procedural provisions of KRS 45A.840 to 45A.879 were met in all material respects regarding the above-referenced procurement.

The majority of documents supporting the certification made in this report are maintained in the files of the Office of Financial Management.

Audra Hall  Digitally signed by Audra Hall
Date: 2024.02.27 12:14:53 -05'00'

Merit Employee, Auditor of Public Accounts
Selection Committee Member

Date

Certification Report
Filed Pursuant to KRS 45A.860(3)

To: Capital Projects and Bond Oversight Committee

C: Office of Financial Management, Finance and Administration Cabinet

From: Audra Hall, CFE, APA Selection Committee Member

Agency: Kentucky Public Transportation Infrastructure Authority (KPTIA)

Project Title: Kentucky Public Transportation Infrastructure Authority (KPTIA) Selection Committee for Managing Underwriter and Bond Counsel for FY 2024

Awarded To: Managing Underwriter: BofA Securities, Inc.
Bond Counsel: Dinsmore and Shohl, LLP

I, the undersigned representative of the Auditor of Public Accounts, duly appointed pursuant to KRS 45A.843 as a merit employee and nonvoting member of the Selection Committee referenced above, do hereby certify, to the best of my knowledge and based upon (a) the two meetings of the Selection Committee which the previous APA appointee, Marla Liddy, attended, (b) Office of Financial Management documents made available to me, and (c) certifications executed pursuant to KRS 45A.860, the applicable procedural provisions of KRS 45A.840 to 45A.879 were met in all material respects regarding the above-referenced procurement.

The majority of documents supporting the certification made in this report are maintained in the files of the Office of Financial Management.

Audra Hall Digitally signed by Audra Hall
Date: 2024.02.27 12:15:12 -05'00'

Merit Employee, Auditor of Public Accounts
Selection Committee Member

Date

Certification Report
Filed Pursuant to KRS 45A.860(3)

To: Capital Projects and Bond Oversight Committee

C: Office of Financial Management, Finance and Administration Cabinet

From: Audra Hall, CFE, APA Selection Committee Member

Agency: Kentucky Infrastructure Authority (KIA)

Project Title: Kentucky Infrastructure Authority (KIA) Selection Committee for Managing Underwriter and Bond Counsel for FY 2024

Awarded To: Managing Underwriter: BofA Securities, Inc.
Bond Counsel: Dinsmore and Shohl, LLP

I, the undersigned representative of the Auditor of Public Accounts, duly appointed pursuant to KRS 45A.843 as a merit employee and nonvoting member of the Selection Committee referenced above, do hereby certify, to the best of my knowledge and based upon (a) the two meetings of the Selection Committee which the previous APA appointee, Marla Liddy, attended, (b) Office of Financial Management documents made available to me, and (c) certifications executed pursuant to KRS 45A.860, the applicable procedural provisions of KRS 45A.840 to 45A.879 were met in all material respects regarding the above-referenced procurement.

The majority of documents supporting the certification made in this report are maintained in the files of the Office of Financial Management.

Audra Hall  Digitally signed by Audra Hall
Date: 2024.02.27 12:15:30 -05'00'

Merit Employee, Auditor of Public Accounts
Selection Committee Member

Date

Certification Report
Filed Pursuant to KRS 45A.860(3)

To: Capital Projects and Bond Oversight Committee

C: Office of Financial Management, Finance and Administration Cabinet

From: Audra Hall, CFE, APA Selection Committee Member

Agency: Kentucky Higher Education Student Loan Corporation (KHESLC)

Project Title: Kentucky Higher Education Student Loan Corporation (KHESLC) Selection Committee for Managing Underwriter and Financial Advisor for FY 2024

Awarded To: Managing Underwriter: BofA Securities, Inc.
Financial Advisor: S L Capital Strategies LLC

I, the undersigned representative of the Auditor of Public Accounts, duly appointed pursuant to KRS 45A.843 as a merit employee and nonvoting member of the Selection Committee referenced above, do hereby certify, to the best of my knowledge and based upon (a) the two meetings of the Selection Committee which the previous APA appointee, Marla Liddy, attended, (b) Office of Financial Management documents made available to me, and (c) certifications executed pursuant to KRS 45A.860, the applicable procedural provisions of KRS 45A.840 to 45A.879 were met in all material respects regarding the above-referenced procurement.

The majority of documents supporting the certification made in this report are maintained in the files of the Office of Financial Management.

Audra Hall

Digitally signed by Audra Hall
Date: 2024.02.27 12:15:50 -05'00'

Merit Employee, Auditor of Public Accounts
Selection Committee Member

Date