

**AGREEMENT
FOR
CONSTRUCTION MANAGEMENT SERVICES**

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UC Project Name:
UC Project Number:

Project Administrator: (Name of Project Administrator)
Address: University of Cincinnati
Division of the University Architect
PO Box 210181
Cincinnati, Ohio 45221-0181

("Construction Manager")
Construction Manager:
Contact:
Address:
Tax Identification Number:

This Agreement for Construction Management Services (this "Agreement"), made as of _____, 20____, by and between the University of Cincinnati (the "University") by the Division of the University Architect, whose contact person shall be the Project Administrator designated below or successor, and _____ (the "Construction Manager"), whose contact person and address are set forth below.

WHEREAS, the Board of Trustees, having charge of said University, desire to proceed with the project.

WHEREAS, the University is operating under Chapters 3345, 3361 and 153 of the Ohio Revised Code and it is the intention of the University, in the exercise of its powers as set forth in Sections 9.33 through 9.333, both inclusive, of the Ohio Revised Code to obtain construction management services on behalf of the University for the following project (the "Project") which is to be designed by the design professional named below (the "Associate"):

Project Name:

Project Number:

Project Administrator: (Name of Project Administrator)
Address: University of Cincinnati
Division of the University Architect
PO Box 210181
Cincinnati, Ohio 45221-0181

Construction Manager:

Contact:

Address:

Associate:

Contact:

Address:

WHEREAS, unless adjusted as provided herein, total compensation payable to the Construction Manager under this Agreement will not exceed \$_____; and

WHEREAS, the Construction Manager desires, and is capable, to provide construction management services for the Project [including, without limitation, services required to plan, schedule, coordinate, manage and administer the Project];

NOW, THEREFORE, in consideration of the mutual promises herein contained, the University and the Construction Manager agree as follows:

ARTICLE I. RESPONSIBILITIES OF CONSTRUCTION MANAGER

1.1 Construction Manager's Services

1.1.1 Scope of Services; Applicable Law. The Construction Manager shall provide construction management services for the Project in accordance with the terms of this Agreement. The Construction Manager shall provide such services in accordance with the applicable Sections of the Ohio Revised Code and any applicable State rules and regulations, any applicable federal and local statutes, ordinances, rules and regulations, the applicable Notice issued pursuant to Section 9.331 of the Ohio Revised Code (the "Notice") and the Construction Manager's Technical Proposal for the Project (the "Construction's Manager's Technical Proposal"), and the University's Design Guidelines and Standards Manual.

1.1.2 Construction Budget. The total amount available for the construction of the Project is _____ Dollars (\$_____) (the "Construction Budget"). The University shall provide written notice to the Construction Manager of any change in the Construction Budget. It is recognized that the Construction Manager and the University do not have control over the cost of labor, materials or equipment, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the Construction Budget or from any estimate of cost or evaluation prepared by or agreed to by the Construction Manager.

1.1.3 Timeliness; Standard of Care. The Construction Manager shall perform the Construction Manager's services in accordance with professional standards of skill, care and diligence in a timely manner in accordance with the Project Schedule and so that the Project shall be completed as expeditiously and economically as possible within the Construction Budget and in the best interests of the University.

1.1.4 Management Schedule. Within thirty (30) days after the execution hereof, the Construction Manager shall submit for approval by the University a Management Schedule for the performance of the Construction Manager's services which shall include allowances for reasonable periods of time required for the review and approval of items by the University and

for approvals of governmental authorities having jurisdiction over the Project. Unless the University notifies the Construction Manager of objections to the Management Schedule within thirty (30) days of receipt thereof, the University shall be deemed to have approved the Management Schedule. The Management Schedule, when approved by the University, shall not be exceeded by the Construction Manager without notice and adjustment of the Management Schedule approved by the University. The Construction Manager shall incorporate the Management Schedule into the Project Schedule, and, upon receipt of the Design Schedule from the Associate, the Construction Manager shall incorporate the Design Schedule into the Project Schedule with the cooperation of the Associate. Once the Management Schedule is incorporated into the Project Schedule, the Management Schedule shall not be exceeded unless the Project Schedule is exceeded through no fault of the Construction Manager or with the approval of the University after notice.

1.1.5 Personnel The identities of the principal persons, and the extent of their participation in, performing the Construction Manager's services as set forth in the Construction Manager's Technical Proposal shall not be altered without the written consent of the University.

1.1.6 Non-Discrimination. The Construction Manager represents that the Construction Manager is in compliance with all applicable equal employment opportunity requirements under law, if required by Section 153.59 of the Ohio Revised Code or any other applicable state or federal law.

1.1.7 Consultants. The Construction Manager may provide services through one or more consultants employed by the Construction Manager (the "Consultants"); provided, however, the Construction Manager shall remain responsible to the University for all duties and obligations of the Construction Manager under this Agreement. Unless waived or otherwise modified in writing by the University upon written request of the Construction Manager, no Consultant shall be retained upon terms inconsistent with this Agreement. The identity of any Consultant, and the extent of such Consultant's participation in, performing the Construction Manager's services as set forth in the Construction Manager's Technical Proposal shall not be altered without the consent of the University.

1.1.8 Drug-Free Workplace. The Construction Manager shall make a good faith effort to ensure that no employee of the Construction Manager will purchase, transfer, use or possess or be under the influence of alcohol or illegal drugs or abuse legally obtained drugs while on or about the Project. Except for the term "employee," terms in this Subparagraph are used as defined in Rule 123:1-76 of the Ohio Administrative Code.

1.1.9 Ethics. The Construction Manager represents that it is familiar with all applicable ethics law requirements, including without limitation Sections 102.04 and 3517.13 of the Ohio Revised Code, and certifies that it is in compliance with such requirements.

1.1.10 Ohio Services. Unless otherwise authorized by the University the Construction Manager's services shall be performed within the State.

1.1.11 Limitation of Authority. The Construction Manager shall not have any authority to bind the University for the payment of any costs or expenses without the express written approval of the University as applicable. The Construction Manager shall have authority to act on behalf of the University only to the extent provided herein or in the Standard Conditions of Contract for Construction, Construction Manager Project (the “Standard Conditions”). In the event of an emergency affecting the safety of persons, the Project or adjacent property, the Construction Manager, without special instruction or authorization, shall act reasonably to prevent or minimize any threatened damage, injury or loss. The Construction Manager’s authority to act on behalf of the University shall be modified only by an amendment in accordance with Subparagraph 9.5.2.

1.1.12 Approval or Disapproval of Construction Manager’s Services. The University shall have the right to reasonably disapprove, by written notice stating the reasons for the disapproval, any portion of the Construction Manager’s services for the Project. In the event that any of the Construction Manager’s services are disapproved by the University, the Construction Manager shall proceed, when requested by the University, with revisions to the services to attempt to satisfy the objections. The Construction Manager acknowledges that any review or approval by the University of any services performed by the Construction Manager pursuant to this Agreement shall not relieve the Construction Manager of the Construction Manager’s responsibility to properly and timely perform such services.

ARTICLE II. SCOPE OF CONSTRUCTION MANAGER’S BASIC SERVICES

2.1 General

2.1.1 The Construction Manager shall provide the Basic Services set forth in Paragraphs 2.2 through 2.7, both inclusive.

2.2 Predesign Phase (Program Validation)

2.2.1 Program of Requirements. The Construction Manager shall review and comment upon the Associate’s preliminary evaluation of the University’s Program of Requirements, schedule and budget requirements, including the Construction Budget, each in terms of the other and in terms of the Construction Manager’s Technical Proposal and the Associate’s Technical Proposal for the Project.

2.2.2 Approved Program of Requirements and Revisions. The Construction Manager shall assist the Associate to prepare, date and sign a revised Program of Requirements, and shall obtain the University’s approval thereof and signature thereon and deliver a copy of the signed, approved revised Program of Requirements to the University (the “Approved Program of Requirements”). If any changes or adjustments to the Approved Program of Requirements are desired at any time after the Approved Program of Requirements has been delivered to the University, the Construction Manager shall assist the Associate to prepare a written amendment to the Approved Program of Requirements describing the changes or adjustments, and shall obtain the University’s approval thereof and signature thereon and deliver the amendment to the

University for review and consent. The Approved Program of Requirements, as amended from time to time, shall determine the Scope of the Project.

2.3 Schematic Design Phase (Preliminary Drawings)

2.3.1 Review and Consultation. The Construction Manager shall review and comment upon the Associate's further evaluation or refinement of the Approved Program of Requirements and the schedule and budget requirements and participate in consultations with governmental authorities having jurisdiction to approve design or construction of the Project.

2.3.1.1 For renovation or remodeling, the Construction Manager shall review and comment upon the Associate's investigation of existing conditions and verification of the accuracy of information provided by the University about existing conditions.

2.3.2 Recommendations and Costs. The Construction Manager shall provide recommendations on constructability, logistics, availability of materials and labor, time requirements for construction and factors related to the cost of the Project including costs of alternative designs or materials, preliminary budgets and possible economies.

2.3.3 Preliminary Life Cycle Analysis. The Construction Manager shall review any alternative design concepts for a Preliminary Life Cycle Analysis prepared or to be prepared by the Associate and provide recommendations thereon about the matters listed in Subparagraph 2.3.2.

2.3.4 Schematic Design Documents. The Construction Manager shall receive and review copies of all Schematic Design Documents from the Associate, and provide to the University and the Associate comprehensive recommendations in accordance with Subparagraph 2.3.2.

2.3.5 Preliminary Cost and Schedule Estimates. Upon completion of the Schematic Design Phase for each phase of the Project or appropriate portion thereof, the Construction Manager shall, with the assistance of the Associate, prepare and submit a Statement of Probable Construction Cost based on current area volume and other unit costs and a Preliminary Project Schedule, which shall incorporate the Design Schedule, for approval of the University. The Construction Manager and the Associate shall review any difference between the Construction Budget and the Statement of Probable Construction Cost, identify reasons for any difference and recommend means to eliminate the difference, if necessary. The Construction Manager, the Associate and the University shall agree upon the means to eliminate any difference between the Construction Budget and the Statement of Probable Construction Cost, and the Construction Manager shall prepare a report describing the agreed upon means.

2.4 Design Development Phase (Basic Drawings)

2.4.1 Life Cycle Analysis. The Construction Manager shall review the Life Cycle Cost Analysis and provide recommendations thereon about the matters listed in Subparagraph 2.3.2.

2.4.2 Design Development Documents. The Construction Manager shall receive and review copies of all Design Development Documents from the Associate, and provide to the University and the Associate comprehensive recommendations listed in accordance with Subparagraph 2.3.2.

2.4.3 Cost Estimate and Project Schedule. Upon completion of the Design Development Phase for each phase of the Project or appropriate portion thereof, the Construction Manager, with the assistance of the Associate, shall prepare and submit a Detailed Estimate of Construction Cost and a Project Schedule indicating milestone completion dates for approval by the University. In establishing the Detailed Estimate of Construction Cost, the Construction Manager shall include reasonable contingencies for design, bidding and price escalation and determine in conjunction with the Associate and the University the materials, equipment, component systems and types of construction to be included in the Contract Documents. The Construction Manager and the Associate shall review any difference between the Construction Budget or the Statement of Probable Construction Cost and the Detailed Estimate of Construction Cost, identify reasons for any difference and recommend means to eliminate the difference, if necessary. The Construction Manager, the Associate and the University shall agree upon the means to eliminate any difference between the Construction Budget and the Detailed Estimate of Construction Cost, and the Construction Manager shall prepare a report describing the agreed upon means. The Construction Manager and the Associate shall review any differences between the Preliminary Project Schedule and the Project Schedule, identify reasons for the differences and recommend whether the differences should be eliminated and, if necessary, means to eliminate the differences. If the Construction Manager, the Associate and the University agree to eliminate any such differences, the Construction Manager shall prepare a report describing the agreed upon means. The Construction Manager, the Associate and the University shall make any necessary amendments to the Approved Program of Requirements in accordance with Subparagraph 2.2.2.

2.5 Construction Documents Phase (Construction Drawings and Specifications)

2.5.1 Drawings and Specifications. The Construction Manager shall prepare the Scope of Work (Construction Specification Institute Division 1) for inclusion by the Associate in the Drawings and Specifications with the approval of the University to facilitate the bidding and awarding of Contracts, taking into consideration factors including, but not limited to, time of performance, availability of labor, overlapping trade jurisdictions, logistical coordination, provision of training for start-up and maintenance, provision of operation and maintenance manuals and provisions for temporary facilities, and to eliminate areas of conflict and overlapping in the Work to be performed by the various Contractors. The Construction Manager shall receive all Drawings and Specifications from the Associate, review them and transmit them to the University for approval with recommendations thereon about the matters listed in Subparagraph 2.3.2 and possible Alternates.

2.5.2 Revisions to Cost Estimate and Project Schedule. The Construction Manager shall inform the Associate and the University of the need for any changes in Project requirements or in construction materials, systems or equipment as the Drawings and Specifications are developed and of the need for any adjustments in the Detailed Estimate of Construction Cost and the Project

Schedule. Upon approval of the University of any such changes or adjustments, the Construction Manager, with the assistance of the Associate, shall prepare a revised Detailed Estimate of Construction Cost or a revised Project Schedule, as applicable, incorporating such changes or adjustments.

2.5.3 Bidding Documents. The Construction Manager shall assist the University and the Associate in the preparation of documents necessary for bidding of Contracts by reviewing those documents and making recommendations about the division of Work and matters to be included in the Special Conditions.

2.5.4 Government Approvals. The Construction Manager shall cooperate with the Associate in submitting to the Division of Code Compliance of the Department of Commerce of the State (the "Division"), such sets of the Drawings and Specifications as the Division may require for approval, together with any necessary completed applications. The Construction Manager shall assist the Associate to secure any necessary National Pollution Discharge Elimination System Storm Water General Permit by submitting a notice of intent application form to the Ohio Environmental Protection Agency at least forty-five (45) days prior to the commencement of the Construction Phase, to prepare and certify a storm water pollution prevention plan to provide sediment and erosion controls at the Project and to prepare and process the required notice of termination prior to Contract Completion. In addition, the Construction Manager shall cooperate with the Associate with filing of documents required for the approval of governmental authorities having jurisdiction over the Project.

2.5.5 Additional Filings. Upon approval of the Division of the Drawings and Specifications, the Construction Manager shall receive from the Associate one (1) set of corrected copies of the Drawings and Specifications bearing approval stamps of the Division.

2.5.6 Special Items. The Construction Manager shall schedule any necessary meetings with the Associate and the University and provide recommendations and information to the Associate and the University for discussion at such meetings regarding the assignment of responsibilities for refuse removal and for safety precautions and programs; temporary Project facilities and utilities, weather protection, fire protection and scaffolding; and equipment, materials and services for common use of Contractors, if any. The Construction Manager shall also review the Contract Documents to verify that the requirements for and assignment of responsibilities are included in the Contract Documents.

2.5.7 Labor Recommendations. The Construction Manager shall provide to the Associate and the University an analysis of the types and quantities of labor required for the Project, review the availability of appropriate categories of labor required for all Contracts and shall make recommendations for actions designed to minimize adverse effects of labor shortages.

2.6 Bidding or Negotiation Phase (Bidding Assistance and Recommendation)

2.6.1 Obtaining Bids. The Construction Manager shall assist with the development of and make recommendations for bidding criteria, bidding schedules and bidding information and shall develop Bidders' interest in the Project.

2.6.2 Prebid Conferences. The Construction Manager, with the assistance of the Associate, shall conduct prebid conferences with prospective Bidders to familiarize Bidders with the Contract Documents, any special requirements of the Contract Documents and equal employment opportunity and prevailing wage requirements. The Construction Manager shall obtain responses from the Associate to all questions at prebid conferences and review Addenda prepared by the Associate to incorporate those responses. The Construction Manager shall prepare a record of the questions and answers discussed at the prebid conferences which shall be used by the Associate to prepare Addenda.

2.6.3 Bid Packages. The Construction Manager shall obtain all necessary prevailing wage determinations and shall include them in packages of the Contract Documents. The Construction Manager shall assemble the Contract Documents into appropriate packages and shall provide a sufficient quantity of Contract Documents to the University for distribution to prospective Bidders, the Associate, the University and other appropriate persons, including without limitation any applicable local or regional plan room organizations.

2.6.4 Bid Review. The Construction Manager, with the assistance of the Associate, shall review all bids received for responsiveness, participate in investigating the responsibility of Bidders and deliver a written recommendation of the Construction Manager and the Associate to the University about the award of, or rejection of, any bid or bids for each Contract for the Project in accordance with applicable law. The Construction Manager shall deliver a copy of such recommendation to the University. In making the recommendation, the Construction Manager and the Associate shall evaluate all applicable Alternates referenced in the Contract Documents.

2.6.5 Bid Substitutions. Unapproved substitutions contained in the bid of any Bidder shall not be considered by the Construction Manager in recommending the award of any Contract.

2.6.6 Pre-award Conferences. The Construction Manager, with the assistance of the Associate, shall gather documentation for contract execution from apparently successful Bidders which may occur at pre-award conferences with such Bidders. Upon the failure of a Bidder to provide such documentation in a timely manner, the Construction Manager shall assist the University in considering whether an extension of time for submitting such documentation is appropriate.

2.6.7 Subcontractor and Material Supplier Review. The Construction Manager, based upon review of the Contract Documents, any past experience and reasonable inquiry, shall participate in investigating any Subcontractor or Material Supplier proposed by any Contractor and recommend approval or disapproval in accordance with the Standard Conditions.

2.6.8 Over Budget Options. If the Construction Budget is exceeded by the total of the lowest responsive and responsible bids and any legally negotiated prices for the Project, the University shall, at its option (1) approve in writing an increase in the Construction Budget; (2) authorize rebidding or renegotiation for some or all parts of the Project within a reasonable time without an increase in the Construction Budget; (3) abandon the Project, in whole or in part, and terminate this Agreement in accordance with Subparagraph 8.1.2 or Subparagraph 8.1.4, as applicable; and/or (4) cooperate in the revision of the Scope of the Project as defined in Subparagraph 2.2.2 to reduce the actual cost of construction to the Construction Budget. If the University adopts option (1), no additional compensation will be granted to the Construction Manager. If the University adopts options (2), (3) and/or (4), the Construction Manager, with the assistance of the Associate, shall modify the Approved Program of Requirements, the Project Schedule and the Contract Documents and cooperate in any necessary bidding or negotiation without additional charge.

2.6.9 Further Revisions to Cost Estimate and Project Schedule. If necessary, the Construction Manager shall inform the Associate and the University of the need for any adjustments in the Detailed Estimate of Construction Cost and the Project Schedule. Upon approval of the University of any such adjustments, the Construction Manager, with the assistance of the Associate, shall prepare a revised Detailed Estimate of Construction Cost or a revised Project Schedule, as applicable, incorporating such adjustments, and deliver to the University.

2.6.10 The Associate shall incorporate all Addenda into the Contract Documents after the bids are opened and prior to the effective date of the Notice to Proceed for distribution and use in the performance of Work.

2.7 Construction Phase (Administration of Construction)

2.7.1 Duration; Extent, Access. The Construction Phase will commence with the award of a Contract for the Project to a Contractor and will terminate upon Final Acceptance of the Project by the University. The Construction Manager shall at all times have access to the Project whenever any Work is in preparation or in progress.

2.7.2 General Duties. The Construction Manager shall provide administration of the Project, scheduling of Work and coordination of the Contractors and any other persons on the site of the Project. The Construction Manager shall assist the prevailing wage coordinator for the University. Unless otherwise waived in writing by the University, the Construction Manager shall maintain a competent, full-time staff at the Project at all times that Work is in preparation or progress on the Project and shall establish and implement on-site organization and authority so that the Work on the Project may be accomplished timely and efficiently. The Construction Manager shall refer all questions for interpretation of the Contract Documents to the Associate and shall notify the Associate if the presence of the Associate on the Project site is necessary. The Construction Manager's duties shall not, and shall not be deemed to, require the Construction Manager to undertake any of the Contractor's Responsibilities as set forth in Subparagraph 2.7.17.

2.7.3 Investigation of Conditions for Renovation or Remodeling. For renovation and remodeling, the Construction Manager, with the assistance of the Associate, shall, as portions of the Project become accessible and as reasonably necessary, investigate existing conditions and assist in determining the accuracy of information contained in the Contract Documents about existing conditions.

2.7.4 Inspections. The Construction Manager shall inspect the Work of each Contractor for Defective Work. If, through inspection or otherwise, the Construction Manager shall become aware of any Defective Work on the Project, the Construction Manager shall report all Defective Work to the University and the Associate, together with recommendations for the correction thereof, The Construction Manager shall notify applicable Contractor(s) to correct such Defective Work in a manner approved by the Associate and endorsed by the University.

2.7.5 Progress and Records. The Construction Manager shall record the progress of the Project and provide written reports to the University on a monthly basis unless otherwise agreed in writing. Such reports shall include, without limitation, information about variations between actual and budgeted or estimated costs and information on each Contractor's Work, as well as completion status on the entire Project, showing percentages of completion. The Construction Manager shall require each Contractor to submit a safety program. The Construction Manager shall review those safety programs for the purpose of coordinating them with each other. The Construction Manager's responsibilities to coordinate the safety programs shall not require the Construction Manager to control the acts of Contractors, Subcontractors or any other persons not employees of the Construction Manager. The Construction Manager shall keep a log containing a daily record of weather, number of workers on site for each Contractor, identification of equipment, work accomplished, problems encountered and other similar relevant data. The Construction Manager shall provide for the maintenance at the Project site, on a current basis, of records of all Contracts, Drawings, Specifications, Shop Drawings, Product Data, Samples, purchase orders, materials, equipment, maintenance and operating manuals and instructions, and other construction-related documents, including all revisions. The Construction Manager shall maintain records of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations to the extent certified by a qualified surveyor or professional engineer and any test results, make all such records available to the Associate, the Contractors, the University at all times and at the completion of the Project deliver all such records to the University.

2.7.6 Construction Schedule. The Construction Manager shall, with the cooperation of the Contractors, prepare the Construction Schedule in accordance with the Standard Conditions. The Construction Manager shall provide copies of the Construction Schedule and schedule of submittals to the Associate and the University, and incorporate the Construction Schedule and schedule of submittals into the Project Schedule so that the Project Schedule includes a Critical Path for the Project and provides for each scope of Work, including without limitation, phasing of construction, times for commencement and completion required of each Contractor, ordering and delivery of materials requiring long lead-time. The Construction Manager shall require each Contractor to provide records for any materials that require long lead-time and to certify to the

Construction Manager that such materials have been ordered for timely delivery to the Project. The Construction Manager shall, if requested by the University, provide a priority of occupancy in accordance with the Standard Conditions. The Construction Manager shall review the sufficiency of the Contractors' workforce and the number and types of equipment assigned and provided by each Contractor to the Project and shall make recommendations to the University about the adequacy of such workforce and equipment. The Construction Manager shall periodically inform the Associate and the University of the need to update the Project Schedule as required to show current conditions, including without limitation, to conform to the Construction Schedule, as updated from time to time. If such conditions indicate that milestone completion dates shown on the Project Schedule may not be met, the Construction Manager shall recommend corrective action to the Associate and the University and carry out the directions of the University so that the milestone completion dates may be met, unless the University agrees in writing to revise the milestone completion dates. Whenever the Project Schedule is revised or updated as provided in this Subparagraph, the Construction Manager, with the assistance of the Associate, shall prepare a revised Project Schedule, obtain the University's signature thereon, and distribute as required.

2.7.7 Meetings. The Construction Manager shall schedule, conduct and participate in preconstruction, progress, quality control and special meetings with the Associate, the University, appropriate Consultants, the Contractors and any other parties involved in the Project to discuss such matters as procedures, progress, problems and scheduling. The Construction Manager shall prepare and distribute minutes of all such meetings to the Associate, the University, the Contractors and any other parties involved. The Construction Manager shall initiate and coordinate partnering meetings with the Associate, the University, appropriate Consultants, the Contractors and other parties involved in the Project.

2.7.8 Tests; Inspections. The Construction Manager shall advise and consult with the University during the Construction Phase as to the need for any special testing, inspections or approval of Work on the Project.

2.7.9 Submittal Review. The Construction Manager shall receive, review for completeness and responsiveness the Contractors' submittals such as Shop Drawings, Product Data and Samples and shall deliver them to the Associate for review as provided in the Standard Conditions.

2.7.10 Bulletins; Change Orders. The Construction Manager shall recommend necessary or desirable changes in the Project to the University and the Associate, review any Bulletins prepared by the Associate prior to their issuance, review Contractor proposals and submit recommendations thereon to the University and the Associate, assist in negotiating Change Orders in accordance with the Standard Conditions for authorization and execution by the University and the Associate.

2.7.11 Project Costs. The Construction Manager shall maintain Project cost accounting records on Work performed by Contractors under unit costs, actual costs for labor and materials, or other appropriate basis and afford the University access to these records at all times.

2.7.12 Contractor Payments. Based upon the Construction Manager's review of the applicable Work and evaluations of the applicable Contractor's Applications for Payment, the Construction Manager shall review and recommend for approval, modification or rejection the amounts shown on such Applications as being due to the applicable Contractor in accordance with the Contract Documents. Each Application for Payment shall be signed by the Construction Manager and delivered to the Associate, the University, as applicable.

2.7.13 Partial Occupancy. The Construction Manager shall assist the University in determining dates of Partial Occupancy of the Work or portions thereof designated by the University and shall assist in obtaining any necessary temporary occupancy certificate or other certificate from any applicable government authority. The Construction Manager shall review any lists prepared by the Associate of incomplete or unsatisfactory Work and prepare schedules for the completion or correction of such Work.

2.7.14 Contract Closeout. Upon receipt of a Contractor's Punch List, the Construction Manager shall provide written notice to the University and the Associate that the Work is ready for Final Inspection, notify the Contractor of acceptance or rejection of the request for Final Inspection, conduct the Final Inspection with the assistance of the Associate, review an Associate's Punch List, if applicable, and prepare and process a Certificate of Contract Completion in accordance with the Standard Conditions. Upon Contract Completion, the Construction Manager shall receive, review for conformity with the requirements of the Contract Documents and transmit to the University any affidavits and turn over to the University any keys, manuals and the originals of any guarantees, warranties, releases, bonds and waivers. The Construction Manager shall transmit a copy of any guarantees, warranties, releases, bonds and waivers to the University. The Construction Manager shall assist the University with the check out of utilities and of operations systems and equipment for readiness and shall assist the University in the initial start-up and testing of such equipment and systems.

2.7.15 Contractor Claims. The Construction Manager shall review claims from Contractors for additional compensation and equitable adjustment of compensation, and shall deliver a written recommendation to the University about each claim and attend dispute resolution meetings convened by the University related to each claim.

2.7.16 Record Drawings. The Construction Manager shall review the As-Built Drawings provided by the Contractors and verify that the As-Built Drawings, to the best of the Construction Manager's knowledge based upon the Construction Manager's observations during the progress of the Project, detail the actual construction of the Project. The Construction Manager shall transmit the verified As-Built Drawings to the Associate for the preparation of Record Drawings.

2.7.17 Contractor Responsibilities. The Construction Manager shall not be responsible for and shall not have control or charge of construction means, methods, techniques, sequences, procedures or scheduling used by a Contractor to comply with the Contractor's obligations under its Contract for the Project or for safety precautions and programs in connection with the Work on the Project. The Construction Manager shall not be responsible for or have control or charge

over the acts or omissions of Contractors or Subcontractors or any of their agents or employees, or any other persons performing any Work on the Project.

ARTICLE III. ADDITIONAL SERVICES

3.1 General

3.1.1 The following services are not included in Basic Services and shall be provided only if identified in the Construction Manager's Technical Proposal and approved by the University or otherwise authorized in writing by the University. The following services shall be paid for as provided in this Agreement in addition to the compensation for Basic Services; provided, however, the Construction Manager shall not be compensated for any of the following services made necessary by the act or omission of the Construction Manager or any Consultant. Unless waived by the University in writing, authorization to provide Additional Services must be obtained prior to providing the Additional Services.

3.1.2 Specialized Services. Providing any service not included in this Agreement or not ordinarily furnished in accordance with customary practice.

3.1.3 Partnering Facilitator. Serving as a partnering facilitator.

3.1.4 Grant Applications. Preparing applications and supporting documents for governmental grants, loans or advances.

3.1.5 Investigation of Conditions for New Construction. Providing services for new construction to investigate existing conditions or facilities or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by the University.

3.1.6 Replacement Work. Providing consultation concerning replacement of any Work on the Project damaged by fire, casualty or other cause not due to negligence of the Construction Manager or any Consultant and furnishing services as may be required in connection with the replacement of such Work.

3.1.7 Special Studies. Providing Planning Site Evaluations, Environmental Studies or Comparative Studies of alternative sites and preparing special surveys, studies and submissions required for approval of governmental authorities or others having jurisdiction over the Project.

3.1.8 Surveys. Providing Survey services including land surveys and right of way studies.

3.1.9 Contractor Default. Providing services made necessary by the default of a Contractor.

3.1.10 Site Availability. Providing services necessary for the University to obtain ownership or leasehold interests in the Project site, in order to permit the Contractor to perform the Work.

ARTICLE IV. RESPONSIBILITIES OF THE UNIVERSITY

4.1 Required Actions. The University shall review, approve or take such actions as are required of them by this Agreement, the Contract Documents and applicable law in a reasonable and timely manner.

4.2 Instructions to Contractors. All instructions of the University or the Associate to Contractors shall be through, or in consultation with, the Construction Manager, with notice to the Associate.

4.3 University's Requirements. The University shall provide full information regarding its requirements for the Project including without limitation the Program of Requirements, any agreements related to the Project, design and construction standards and work rules which shall set forth the University's use, design, time and financial objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability, time constraints imposed by fiscal and budgetary considerations, special equipment and systems and site requirements. The University shall provide a copy of the Associate's Agreement for Professional Design Services to the Construction Manager upon request.

4.4 Deleted

4.5 University's Representative. The University shall designate a Project Administrator, i.e. an individual authorized to act on the University's behalf with respect to the Project to the extent provided in the Contract Documents. If the University changes the Project Administrator, the University shall notify the Construction Manager immediately in writing.

4.6 Site Description. If reasonably requested by the Construction Manager as necessary for the Project, the University shall furnish a legal description and a certified land survey of the site, giving, as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and data pertaining to existing building, other improvements and trees; and full information concerning available service and utility lines both public and private, above and below grade, including size, inverts and depths. The Construction Manager shall be entitled to rely upon the accuracy and completeness of information provided by the University under this Paragraph.

4.7 Notice to Construction Manager. If the University observes or otherwise becomes aware of any Defective Work or other fault or defect in the Project, prompt notice thereof shall be given to the Construction Manager.

4.8 Legal Representation. The University shall not be responsible to provide, or pay for, any legal representation of the Construction Manager.

ARTICLE V. COMPENSATION

5.1 Direct Personnel Expense.

5.1.1 Definition. Direct Personnel Expense means the portion of direct salaries and wages of all personnel of the Construction Manager or any Consultants, as applicable, whether stationed at the Construction Manager's principal or branch offices or stationed at the Project field office, including professional, technical, management, administrative and clerical employees, and principals engaged on the Project related to their time devoted to the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto such as employment taxes and other statutory employee benefits, social security contributions, insurance, sick leave, holidays, vacations, pension and profit sharing pursuant to plans qualified under federal law, and similar benefits related to their time devoted to the Project. Direct Personnel Expense shall not include any bonus or similar plan or arrangement related to the Construction Manager's performance on, or profit from, the Project.

5.1.2 Records. Direct Personnel Expense for the Construction Manager's employees for such hours of their time as are devoted to performing Basic Services to the Project shall be determined in accordance with the Construction Manager's Technical Proposal. Such Direct Personnel Expense shall be evidenced by time records certified by the Construction Manager.

5.1.3 Limit. The Construction Manager shall use all reasonable means to minimize Direct Personnel Expense. In all events, total Direct Personnel Expense shall not exceed _____ Dollars (\$_____), without the written approval of the University and an amendment in accordance with Subparagraph 9.5.2.

5.2 Reimbursable Expenses

5.2.1 Definition. Reimbursable Expenses means actual expenditures incurred by the Construction Manager or its Consultants in the interest of the Project approved by the University for: (1) transportation and living when traveling in connection with the Project, if approved in advance by the University; (2) record storage, if approved in advance by the University; (3) the Project field office and the equipping and furnishing thereof, including without limitation utilities if not provided by the Contractors; and (4) postage, telephone, overnight courier service, photographs, copying expenses and expenses incurred in the event of an emergency. Reimbursable Expenses shall not include expenditures or expenses for commuting to or from the Project or for purchasing or renting of residences for personnel of the Construction Manager or any Consultants or for moving such personnel to residences. No other expenditures shall be Reimbursable Expenses unless so provided in an amendment in accordance with Subparagraph 9.5.2.

5.2.2 Limits on Transportation and Living Expenses. The cost for transportation and living expenses in connection with the Project shall be in accordance with OBM Administrative Travel Rule, OAC 126-1-02, as amended from time to time. Currently, OAC 126-1-02 provides the following limits:

- a. Travel.

Mileage for Personal Automobile
 Reimbursement..... \$0.28/mile
 Common Carrier at lowest available rate.
 Rentals at smallest vehicle suitable for
 intended purpose or number of persons.

b. Meals.

	<u>In State</u>	<u>Out of State</u>
Breakfast	\$ 6.00	\$10.00
Lunch	6.00	10.00
Dinner	13.00	20.00

(Alcohol not reimbursable, meal limits include
 gratuity, not to exceed 15%)

c. Lodging.

In State.....\$60.00/night + tax
 Out of State.....\$75.00/night + tax

5.2.3 Limits on Tangible Property. The determination of whether to purchase or rent tangible property as Reimbursable Expenses must be approved in advance by the University. The Construction Manager shall maintain a current inventory of all such property and any such property which has been purchased and has a useful life after Project Closeout shall be delivered to the University.

5.2.4 Limit. The Construction Manager shall use all reasonable means to minimize Reimbursable Expenses. In all events, total Reimbursable Expenses shall not exceed _____ Dollars (\$_____), without the written approval of the University and an amendment in accordance with Subparagraph 9.5.2. Reimbursable Expenses for the following items shall not exceed the respective amounts unless approved by the University:

<u>Item</u>	<u>Amount</u>
-------------	---------------

5.3 Basis of Compensation

5.3.1 Basic Fee. For Basic Services provided by the Construction Manager and all Consultants, the University shall pay the Construction Manager a Basic Fee in accordance with Paragraph 5.4 hereof in the amount of _____ Dollars (\$_____). A change in the Basic Fee may be made only by an amendment in accordance with Subparagraph 9.5.2.

5.3.2 Additional Fees. The University shall pay the Construction Manager the respective Additional Fees for the following Additional Services:

<u>Additional Service</u>	<u>Additional Fee</u>
---------------------------	-----------------------

For other Additional Services provided by the Construction Manager and any Consultants in accordance with Article III, the University shall pay the Construction Manager Additional Fees in an amount negotiated to the mutual reasonable satisfaction of the University and the Construction Manager. Except for the Additional Services and Additional Fees listed above, Additional Services and any Additional Fees may be approved only by an amendment in accordance with Subparagraph 9.5.2.

5.3.3 Extent of Basic Fee. The Construction Manager's Basic Fee includes all compensation for Basic Services, including without limitation, compensation for all personnel of the Construction Manager and any Consultants other than those listed in Paragraph 5.1, operating expenses of the Construction Manager's principal office and branch offices, any part of the Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Project, overhead or expenses of any kind, except Reimbursable Expenses, any costs incurred due to the negligence of the Construction Manager, the Construction Manager's general advertising, federal, state or local income, sales or other taxes, state franchise taxes and qualification fees, and membership in trade, business or professional organizations.

5.3.4 Total Compensation. The total compensation of the Construction Manager and all Consultants shall consist of the Basic Fee, any Additional Fees, Direct Personnel Expense and Reimbursable Expenses.

5.4 Method and Terms of Payment

5.4.1 Basic Fee. Payment of the Basic Fee shall be made monthly in proportion to services performed in each Phase in accordance with the following percentages of the Basic Fee:

Predesign Phase	5%
Schematic Design Phase	5%
Design Development Phase	10%
Construction Documents Phase	10%
Bidding or Negotiation Phase	10%
Construction Phase	55%
Project Closeout	5%

Any balance of the final 5% of the Basic Fee shall be paid upon Project Closeout as follows: one-half after review of all Punch-Lists by the Construction Manager and one-half after completion of all Punch-List items to the reasonable satisfaction of the University and delivery of Project Record Submittals to the Associate. The University may waive the withholding of any final balance or part thereof, if Construction Manager has performed to the reasonable satisfaction of the University. The Basic Fee, including without limitation the final 5% thereof, shall be subject to all setoffs in favor of the University for claims against the Construction Manager. Payments for Basic Services shall be based upon a properly completed Construction Manager's application for payment and shall be made within the applicable time limits provided by Section 126.30 of the Ohio Revised Code.

5.4.2 Additional Fees, Direct Personnel Expense, Reimbursable Expenses. Payments of Additional Fees for Additional Services in accordance with Article III and Subparagraph 5.3.2, for Direct Personnel Expense as set forth in Paragraph 5.1 and for Reimbursable Expenses as set forth in Paragraph 5.2 shall be made monthly based upon services performed or expenses incurred, as applicable, and as shown by a properly completed Construction application for payment.

5.4.3 Payments by Construction Manager. Within ten (10) business days of receipt of payment made pursuant to this Agreement, the Construction Manager shall pay all portions thereof due to Consultants and to persons who provided items the expenses of which are Reimbursable Expenses.

5.4.4 Compensation for Extension of Project Time. If the Construction Manager notifies the University not less than thirty (30) days prior to the time for completion of the Project set by the Project Schedule approved pursuant to Subparagraph 2.4.3, that such time for completion is reasonably expected to be exceeded by more than thirty (30) days through no fault of the Construction Manager, the compensation, if any, for Basic Services to be rendered and Reimbursable Expenses to be incurred during such extended period shall be negotiated to the mutual reasonable satisfaction of the University and the Construction Manager. If, as a result of such negotiation, the University agree that the Construction Manager shall be paid additional compensation, an amendment to that effect shall be executed in accordance with Subparagraph 9.5.2 before the Construction Manager renders any services made necessary by such extension of the time of completion, unless otherwise agreed in writing by the University.

5.4.5 Compensation for Change of Scope of Project. The Scope of the Project is defined by the Approved Program of Requirements as provided in Subparagraph 2.2.2. If the University materially changes the Scope of the Project after the Schematic Design Phase at any time after the execution of this Agreement through no fault of the Construction Manager, any necessary adjustment in the compensation of the Construction Manager shall be negotiated to the mutual reasonable satisfaction of the University and the Construction Manager. If, as the result of such negotiation, the University agrees that the Construction Manager shall be paid additional compensation, an amendment to that effect shall be executed in accordance with Subparagraph 9.5.2 before the Construction Manager renders any services made necessary by such change in the Scope of the Project, unless otherwise agreed in writing by the University.

ARTICLE VI. INSURANCE, INDEMNIFICATION AND FINANCIAL ASSURANCE

6.1 Insurance

6.1.1 Casualty Insurance. Except when a modification is requested in writing by the Construction Manager and approved in writing by the University, the Construction Manager shall carry and maintain at the Construction Manager's cost, with companies authorized to do business in Ohio, all necessary liability insurance (which shall include as a minimum the requirements set forth below) during the term of this Agreement:

- a. Workers' Compensation and employer's liability insurance to the full extent as required by applicable law;
- b. Commercial general liability coverage for bodily injury and property damage, including limited contractual liability coverage, in not less than the following amounts:
 - i. General Aggregate Limit:
\$2,000,000 each occurrence;
 - ii. Each Occurrence Limit:
\$1,000,000 each occurrence; and
- c. Commercial automobile liability coverage, including non-owned and hired, in an amount not less than \$1,000,000.

6.1.2 Certificates. The Construction Manager shall provide the University with certificates of insurance evidencing the required coverages and amounts, including without limitation any certificates of renewal of insurance. The certificates of insurance shall contain a provision that the policy or policies will not be canceled without thirty (30) days' prior written notice to the University.

6.2 Indemnification

6.2.1 Indemnification by Construction Manager Generally. To the fullest extent permitted by law, the Construction Manager shall and does agree to indemnify and hold harmless the University and its members, officers, employees and representatives from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including attorney's fees and other costs of defense), of any nature, kind or description, which (a) arise out of, are caused by or result from performance of the Construction Manager's services hereunder and (b) are attributable to bodily injury, personal injury, sickness, disease or death of any person, or to damage to or destruction of property, including the loss of use and consequential damages resulting therefrom, but (c) only to the extent they are caused by any negligent acts, errors or omissions of the Construction Manager, anyone directly or indirectly employed by the Construction Manager or anyone for whose acts the Construction Manager is legally liable. This

Subparagraph is intended to be, and shall be construed as consistent with, and not in conflict with, Section 2305.31 of the Ohio Revised Code.

6.2.2 Intellectual Property Indemnification. To the fullest extent permitted by law, the Construction Manager shall and does agree to indemnify and hold harmless the University and its members, officers, employees and representatives from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including attorney's fees and other costs of defense), of any nature, kind or description, which result from any claimed infringement of any copyright, patent or other intangible property right caused by the Construction Manager, anyone directly or indirectly employed by the Construction Manager or anyone for whose acts the Construction Manager is legally liable. The Construction Manager shall not be required to indemnify and hold harmless such persons for such matters when the claimed infringement occurs in materials provided by the University.

6.3 Financial Assurance. Except when a modification is requested in writing by the Construction Manager and approved in writing by the University, the Construction Manager, as required by Section 9.333 of the Revised Code, shall provide to the University a letter of credit pursuant to Chapter 1305 of the Revised Code, a surety bond pursuant to Sections 153.54 to 153.57 of the Revised Code, a certified check or cashier's check in an amount equal to the value of this Agreement or other reasonable financial assurances of a nature and amount satisfactory to the University before performing any services hereunder.

ARTICLE VII. DISPUTE RESOLUTION PROVISIONS

7.1 Mediation. Instead of, or in addition to, the procedures set forth below, University and the Construction Manager may, by written agreement, submit any claims, requests, disputes or matters in question between or among them to mediation upon such terms as shall be mutually reasonably agreeable.

7.2 Notice and Filing of Requests. Any request by the Construction Manager for additional fees or expenses shall be made in writing to the University and filed prior to payment of the final 5% of the Basic Fee. Failure of the Construction Manager to timely make such a request shall constitute a waiver by the Construction Manager of any request for such fees and expenses.

7.3 Request Information. In every written request filed pursuant to Paragraph 7.2, the Construction Manager shall provide the nature and amount of the request; identification of persons, entities and events responsible for the request; activities on the Project Schedule affected by the request or new activities created by any delay and the relationship with existing activities; anticipated duration of any delay; and recommended action to avoid or minimize any future delay.

7.4 Meeting with Project Administrator. If the Construction Manager files a written request with the University pursuant to Paragraph 7.2, the Project Administrator shall, within thirty (30) days of receipt of the request, schedule a meeting in an effort to resolve the request

and render a decision on the request promptly thereafter or render a decision on the request without a meeting, unless a mutual agreement is made to extend such time limit. The meeting scheduled by the Project Administrator shall be attended by persons expressly and fully authorized to resolve the request on behalf of the Construction Manager.

7.5 Appeal to the University Architect. If the efforts of the Project Administrator do not lead to resolution of the request, the Construction Manager may appeal to the University by notice in writing. Within thirty (30) days of receipt of the notice, the University shall schedule a meeting and render a decision on the appeal promptly thereafter or render a decision on the appeal without a meeting, unless a mutual agreement is made to extend such time limit. The purpose of such a meeting shall be to settle the matters in dispute and shall be attended by persons expressly and fully authorized to resolve the matters on behalf of the Construction Manager. Chapter 119 of the Ohio Revised Code, shall not be applicable to any proceedings of the University Architect. The decision of the University Architect shall be the final and conclusive determination of the University.

7.6 Delegation. No provision of this Paragraph shall prevent the University Architect from delegating the duties or authorities of the University Architect to any other person selected at the discretion of the University Architect.

7.7 Performance. The Construction Manager shall proceed with the Construction Manager's performance of this Agreement during any dispute resolution process, unless otherwise agreed by the Construction Manager and the University in writing. The University shall continue to make payment, in accordance with this Agreement, of any amounts not in dispute pending final resolution of any dispute in accordance with this Paragraph.

ARTICLE VIII. TERMINATION AND REMEDIES

8.1 Termination of Agreement

8.1.1 Means of Termination. This Agreement may be terminated by either party upon seven (7) days written notice should the other party fail to perform in accordance with the terms of this Agreement; provided, however, the Construction Manager shall not terminate this Agreement for non-payment if the University initiates the payment process by preparing, executing and submitting a voucher for all reasonably undisputed amounts due to the Construction Manager within ten (10) days of receipt of the Construction Manager's written notice to terminate. This Agreement may be terminated by the University without cause upon fifteen (15) days written notice to the Construction Manager. This Agreement may be terminated at any time upon the mutual consent of the University and the Construction Manager.

8.1.2 Construction Manager's Remedies Upon Termination by University Without Cause or Termination by Construction Manager. In the event of a termination which is not due to the failure of the Construction Manager to perform in accordance with the terms of this Agreement, the Construction Manager shall be compensated for all Basic Services of a completed Phase

performed prior to the termination date in accordance with the percentages set forth in Subparagraph 5.4.1, together with Direct Personnel Expense and Reimbursable Expenses incurred prior to the termination date. In such event, for services rendered prior to the termination date in an uncompleted Phase and for Additional Services, the Construction Manager shall receive compensation based on the percentages of completion of that Phase or those Additional Services, as applicable, and as reasonably determined by the University, together with Direct Personnel Expense and Reimbursable Expenses incurred prior to the termination date.

8.1.3 Construction Manager's Remedies Upon Termination by University for Cause. In the event of a termination which is due to the failure of the Construction Manager to perform in accordance with the terms of this Agreement, the Construction Manager shall be compensated only for Basic Services performed and paid for prior to the termination date in accordance with the percentages set forth in Subparagraph 5.4.1, together with Additional Services completely performed prior to the termination date. In such event, the Construction Manager shall be reimbursed only for Direct Personnel Expense and Reimbursable Expenses incurred prior to the date of the notice of termination, unless the University consents in writing to the payment of Direct Personnel Expense and Reimbursable Expenses incurred after that date.

8.1.4 Construction Manager's Remedies Upon Termination by Mutual Consent. In the event of a termination upon the mutual consent of the University and the Construction Manager, any compensation for Basic Services or for Additional Services or payment of Direct Personnel Expense and Reimbursable Expenses shall be negotiated and set forth in an amendment to this Agreement in accordance with Subparagraph 9.5.2 prior to such termination.

8.1.5 Post-Termination Matters. If the University and the Construction Manager agree that any services are to be performed for the Project by the Construction Manager after any termination date, the amount of any compensation and the method and terms of payment of such compensation or any Direct Personnel Expense and Reimbursable Expenses related to such services shall be negotiated and set forth in an amendment to this Agreement in accordance with Subparagraph 9.5.2 prior to the commencement of such services. Such amendment and any relevant provisions of this Agreement shall survive termination of this Agreement.

8.2 Remedies

8.2.1 Cumulative Remedies. No remedy conferred upon the University by the terms of this Agreement is intended to be exclusive of any other remedy provided at law or in equity. Each and every remedy of the University shall be cumulative and shall be in addition to any other remedy given to the University hereunder or now or hereafter existing. Except as otherwise provided in this Agreement, no remedy conferred upon the Construction Manager by the terms of this Agreement is intended to be exclusive of any other remedy provided at law or in equity. Except as otherwise provided in this Agreement, each and every remedy of the Construction Manager shall be cumulative and shall be in addition to any other remedy given to the Construction Manager hereunder or now or hereafter existing.

8.2.2 Remedies Not Waived. No delay, omission or forbearance to exercise any right, power or remedy accruing to the University or the Construction Manager hereunder shall impair any such right, power or remedy or shall be construed to be a waiver of any breach hereof or default hereunder. Every such right, power or remedy may be exercised from time to time and as often as deemed expedient.

ARTICLE IX. MISCELLANEOUS PROVISIONS

9.1 Ownership and Use of Documents

9.1.1 Property of University. Drawings, Specifications and other documents prepared by, or with the cooperation of, the Construction Manager or any Consultant pursuant to this Agreement are the property of the University whether or not the Project for which they are prepared is commenced or completed. The Construction Manager or Consultant, as applicable, may retain copies, including reproducible copies of such Drawings, Specifications and other documents for information and reference. Such Drawings, Specifications or other documents may be used by the University or others employed by the University for reference in any completion, correction, remodeling, renovation, reconstruction, alteration, modification of or addition to the Project, without compensation to the Construction Manager or Consultant. Unless the Project is a prototype, such Drawings, Specifications or other documents shall not be used by the University, or be given or sold by the University to be used by others, on other projects except by agreement in writing and with agreed upon appropriate compensation to the Construction Manager or Consultant, as applicable. If an event occurs for which the Construction Manager or Consultant may be liable, the University shall notify the Construction Manager or Consultant of such event as soon as practical after such event and shall provide access to the Project to the Construction Manager or Consultant and their representatives. This Subparagraph shall survive termination of this Agreement.

9.1.2 Construction Manager's Intellectual Property. All inventions, patents, design patents and computer programs acquired or developed by the Construction Manager in connection with or relation to the Project shall remain the property of the Construction Manager and shall be protected by the University from use by others except by agreement in writing with appropriate and agreed upon compensation to the Construction Manager.

9.2 Public Relations. Prior to completion of the Project, any public relations or publicity about the Project shall be solely within the control and with the consent of the University.

9.3 Records. The records of all of the Construction Manager's Direct Personnel Costs, Reimbursable Expenses and payments to Consultants pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to the University at all times and shall be maintained for seven (7) years after Final Acceptance of the Project by the University. All other records kept by the Construction Manager related to the Project shall be available to the University at all times and shall be maintained for six (6) years after Final Acceptance of the Project by the University.

9.4 Successors and Assigns. The University and the Construction Manager, each bind themselves, their successors, assigns and legal representatives, to the other party to this Agreement and to the successors, assigns and legal representatives of the other party with respect to all terms of this Agreement. The Construction Manager shall not assign, or transfer any right, title or interest in this Agreement without the prior written consent of the University.

9.5 Extent of Agreement

9.5.1 Entire Agreement. This Agreement and the Contract Documents represent the entire and integrated agreement between the University and the Construction Manager and supersede all prior negotiations, representations or agreements, either written or oral.

9.5.2 Amendments. This Agreement may be amended only by an amendment prepared by the University and signed by both the Construction Manager and the University.

9.5.3 Multiple Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

9.5.4 Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections hereof.

9.5.5 Precedence. If there are any inconsistencies between the provisions of the Contract Documents and the provisions of the Announcement, the Construction Manager's Technical Proposal or this Agreement, the provisions of the Contract Documents shall prevail. In addition, the Construction Manager should refer to the University's Design Guidelines and Standards Manual.

9.5.6 Conditions to Validity (when State Appropriated Funding is involved). None of the rights, duties and obligations contained in this Agreement shall be binding on any party until all legal requirements have been complied with, including without limitation that the Director of Budget and Management of the State first certifies that there is a balance in the appropriation not already obligated to pay existing obligations, as required by Section 126.07, Ohio Revised Code, all necessary funds are available from the applicable state agencies or instrumentalities and, when required, the expenditure of such funds is approved by the Controlling Board of the State of Ohio or other applicable approving body. In addition, if federal funds are to be used to pay fees and expenses under this Agreement, none of the rights, duties and obligations contained in this Agreement shall be binding on any party until the University notifies the Construction Manager in writing that such funds are available from the University's source.

9.6 Governing Law

9.6.1 Law of Ohio. This Agreement shall be governed by the law of the State of Ohio to the exclusion of the law of any other jurisdiction and the State of Ohio shall have jurisdiction over any action hereunder or related to the Project to the exclusion of any other forum.

9.6.2 Capitalized Terms. Capitalized terms in this Agreement shall have the same meaning as those in the Standard Conditions, unless otherwise defined herein or unless another meaning is indicated by the context.

9.7 Assignment of Antitrust Claims. Each party to this Agreement recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser of goods and services; in this instance the ultimate purchaser is the University. Therefore, the following assignment is made:

Intending to be legally bound, the Construction Manager, acting herein by and through the person signing this Agreement on its behalf as a duly authorized agent, hereby assigns, sells, conveys and transfers to the University any and all right, title and interest in and to any and all claims and causes of action which the Construction Manager may now have or hereafter acquire under the antitrust laws of the United States of America or the State, PROVIDED that the claims or causes of action relate to the particular goods, products, commodities, intangibles, or services purchased, procured, or acquired by, or rendered to, the University pursuant to this Agreement, and EXCEPT as to any claims or causes of action which result from antitrust violations commencing after the price is established under this Agreement and which are not passed on to the University by any means. In addition, the Construction Manager warrants and represents that it will require any and all of its Consultants and suppliers to assign any and all federal and State antitrust claims and causes of action to the University, subject to the proviso and exception stated above. The provisions of this Subparagraph shall become effective at the time the University executes its concurrence to this Agreement without further acknowledgment by any of the parties.

9.8 Notices

9.8.1 Addresses. All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be given if delivered in person to the individual or to a member of the company or organization for whom the notice is intended, or if delivered at or mailed by registered or certified mail, postage prepaid, to the appropriate following address:

If to the University:

University of Cincinnati
Division of the University Architect
PO Box 210181
Cincinnati, Ohio 45221-0181
Attention: (Project Administrator)

If to the Construction Manager: (Insert the Construction Managers Mailing Address) (Bold)

If to the Associate: (Insert the Associate's Mailing Address) (Bold)

9.8.3 Facsimiles and Electronic Mail. For convenience of communication only, notices, certificates, requests or other communications hereunder of fewer than ten (10) pages, except requests for payment, may be sent by facsimile transmission to the University at (513) 556-4885, or by electronic mail. Notices, certificates, requests or other communications sent by facsimile transmission shall not be deemed to be given unless a counterpart is received or mailed in accordance with Subparagraph 9.8.1. Requests for payment may be sent to the University by facsimile transmission or electronic mail only upon specific direction from the University.

9.8.4 Emergencies. In the event of an emergency involving the Project, including, without limitation, a fatality, serious injury, fire, collapse, flood, utility or power loss to occupied facilities, explosion, or environmental damage, the Construction Manager shall immediately notify the University by telephone.

9.8.5 Change of Address. The University or the Construction Manager may, by notice given hereunder, designate any further or different addresses, telephone numbers or facsimile numbers to which subsequent notices, certificates, requests or communications shall be sent.

9.9 Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if such invalid or unenforceable provision were not contained herein. Such invalidity or unenforceability shall not affect any

valid and enforceable application thereof, and each such provision, covenant, obligation or agreement, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

9.10 O.R.C. 9.24 Warranty. The Construction Manager warrants that it is not subject to an “unresolved” findings for recovery under O.R.C. 9.24. If the warranty is deemed to be false, the Agreement is void *ab initio* and the Construction Manager must immediately repay to the University any funds paid under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

Construction Manager

By: _____

Title: _____

UNIVERSITY OF CINCINNATI

By: _____

Name: _____

Title: _____

This Agreement is hereby approved on _____, 20__.