

AGREEMENT BETWEEN
OWNER AND CONSTRUCTION MANAGER

THIS AGREEMENT

made this day of , 2002, between the **University of Central Florida Board of Trustees, State of Florida**, (hereinafter called the "Owner") and **CM Name & Address**, Federal I.D. No. **00-000000**, (hereinafter called the "Construction Manager"), for services in connection with the following described Project: "**Building Program Name**, Facilities Planning Building Program, **Dated**" State Project No. BR-**000**.

The Architect/Engineer for the Project is **Architects Name & Address**.

The Owner and the Construction Manager agree as set forth below:

ARTICLE 1

The Construction Team and Extent of Agreement

1.1 The Construction Manager agrees to furnish its best skill and judgment and to cooperate with the Architect/Engineer in furthering the interests of the Owner. The Construction Manager agrees to furnish efficient business administration and superintendence to complete the Project in an expeditious and economical manner consistent with the interests of the Owner, and in accordance with the Contract Documents and the original baseline project schedule.

1.2 The Construction Team: The Construction Manager, the Owner, and the Architect/Engineer (the "Construction Team") will work as a team through construction completion. The Construction Manager shall provide leadership to the Construction Team on all matters relating to construction. The Architect/Engineer will provide leadership to the Construction Team on all matters relating to design.

1.3 Extent of Agreement: The Contract Documents consist of this Agreement, the Drawings and Specifications, the Conditions of the Contract, and all amendments issued subsequent to execution of this Agreement, and together with them, represents the entire agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, whether verbal or written. These documents form the Contract, and all are as fully a part of the Contract as if attached to this Agreement and incorporated herein. The Conditions of the Contract include the following documents which are incorporated herein: the edition of AIA Document A201, General Conditions of the Contract for Construction, as revised by the Owner, dated March 20, 2002; the Supplementary General Conditions for Construction Management Contracts, the document forms and Special Conditions contained in the University of Central Florida Project Manual. Where this Agreement is expressly in conflict with the Conditions of the Contract, this Agreement will prevail. Where this Agreement is silent, the Conditions of the Contract, and the requirements of the Drawings and Specifications will prevail. This Agreement may be amended only by written instrument signed by the Owner and the Construction Manager.

ARTICLE 2

Construction Manager's Basic Services

2.0 The Construction Manager's Basic Services under this Agreement include preconstruction phase services and construction phase services.

2.1 The Preconstruction Phase: The Construction Manager shall:

2.1.1 Provide preconstruction deliverables consisting of a letter at Conceptual Schematics, and **six (6) copies** of reports at Advanced Schematics and Design Development and **six (6) copies** of a report at 50% Construction Documents, together with a Guaranteed Maximum Price proposal. The letter at Conceptual Schematics will indicate the Construction Manager's confirmation that the concept selected can be constructed within the budget. The reports shall include a complete discussion and summary of the services provided in accordance with Subparagraphs 2.1.2 through 2.1.8 hereinbelow, including the **CPM** schedule and a detailed cost estimate. **Recommendations and cost estimates made throughout the preconstruction phase shall be based on the University of Central Florida Design and Construction Guidelines dated July, 2003.**

2.1.2 Review designs during their development. Advise on site use and improvements, selection of materials, building systems and equipment and methods of Project delivery. Provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction and factors related to cost including, but not limited to, costs of alternative designs or materials, preliminary budgets and possible economies.

2.1.3 Within thirty (30) days from the date of the Notice to Proceed, provide for the Architect/Engineer's and the Owner's review and acceptance, a complete construction schedule in the form of a Critical Path Method (CPM), prior to the commencement of any construction activity. This CPM schedule shall be known as the original baseline schedule. This CPM Project Schedule shall coordinate and integrate the Construction Manager's services, the Architect/Engineer's services and the Owner's responsibilities with anticipated construction schedules. The Construction Manager shall update the CPM schedule not less than monthly, and shall submit with each Application for Payment a copy of the current CPM construction schedule marked to show the percentage completed for each subdivision of the Work. Such updated CPM construction schedule must be delivered to the Owner prior to the Owner processing any pay applications.

The monthly submission shall also state the estimated total number of days ahead of or behind the required Substantial Completion date. The failure by the Construction Manager to provide and maintain its current CPM construction schedule shall constitute a default in this Contract. Such failure to maintain the current CPM schedule shall be determined by the Architect/Engineer. Should the Construction Manager fail to meet the CPM construction schedule, documentation acceptable to the Owner and Architect/Engineer shall be submitted to show the proposed remedies for accelerating or adjustments to the CPM construction schedule to achieve the required Substantial Completion date. Failure of the Construction Manager to carry out such remedies or adjustments as determined by the Architect/Engineer shall constitute a default in this Contract. Failure to comply with this Subparagraph shall be sufficient grounds to withhold payment to the Construction Manager until an updated CPM construction schedule is submitted to and reviewed by the Owner and Architect/Engineer and approved as acceptable.

2.1.4 Prepare for the Owner's approval a detailed estimate of Construction Cost, as defined in Article 8 herein, developed by using estimating techniques which anticipate the various elements of the Project, and based on design documents prepared by the Architect/Engineer. Update and refine this estimate periodically as the Architect/Engineer prepares Construction Documents. Advise the Owner and the Architect/Engineer if it appears that the Construction Cost may exceed the Project budget. Make recommendations for corrective action.

2.1.5 Coordinate Contract Documents by consulting with the Owner and the Architect/Engineer regarding Drawings and Specifications as they are being prepared, and recommending alternative solutions whenever design details affect construction feasibility, cost or schedules.

2.1.5.1 Advise on the separation of the Project into contracts for various categories of Work. If separate contracts are to be awarded by the Owner, review the Drawings and Specifications and make recommendations as required to provide that (1) the Work of the separate contractors is coordinated with that of the Trade Contractors, (2) all requirements for the Project have been assigned to the appropriate separate contract, (3) the likelihood of jurisdictional disputes has been minimized, and (4) proper coordination has been provided for phased construction.

2.1.5.2 Develop a CPM Project Construction Schedule providing for all major elements such as phasing of construction and times of commencement and completion required of each Trade Contractor. Provide the CPM Project Construction Schedule for each set of bidding documents. Develop a plan for the phasing of construction.

2.1.5.3 Establish a schedule for the purchase of materials and equipment requiring long lead time procurement, and coordinate the schedule with the early preparation of portions of the Contract Documents by the Architect/Engineer. Expedite and coordinate delivery of these purchases.

2.1.6 Provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. Develop bidding packages designed to minimize adverse effects of labor shortages.

2.1.6.1 Consider the Owner's Minority Business Enterprise objective, as set forth in the General Conditions, when developing bid packages.

2.1.7 Make recommendations for pre-qualification criteria for bidders and develop bidders' interest in the Project. Establish bidding schedules.

2.1.8 Schedule and conduct monthly meetings of the Construction Team, and prepare and distribute written minutes.

2.1.9 Based upon the 100% Construction Documents and Specifications produced by the Architect/Engineer, develop Guaranteed Maximum Price proposal(s), including CPM Project Construction Schedule, itemized by Trade Contract, for phases of Work as required by the Owner. If the documents as prepared by the Architect/Engineer are not adequate for the development of a Guaranteed Maximum Price, the Construction Manager shall notify the Owner in writing immediately, prior to developing the GMP. All assumptions made by the Construction Manager in the development of the GMP shall be specifically listed in the GMP proposals, and the GMP will not be adjusted due to assumptions made by the Construction Manager, but not included in the GMP proposal.

2.1.9.1 If the GMP proposal is accepted by the Owner, it will become an Amendment to this Agreement which will establish the GMP, Contract Time, and liquidated damages for that phase of the Work. Performance and Payment Bonds on the Owner's standard forms will be executed simultaneously with the GMP amendment.

2.1.9.2 If the GMP proposal is not accepted by the Owner, the Owner shall so notify the Construction Manager in writing. The Construction Manager shall then recommend adjustments to the Work through value engineering. The Construction Team will discuss and negotiate these recommendations for no more than 30 calendar days, unless an extension is granted in writing by the Owner. If an acceptable GMP is not developed, negotiations may be terminated, and the Owner may initiate negotiations with another firm.

2.2 Construction Phase. Unless otherwise authorized in writing by the Owner, all Work shall be performed under Trade Contracts held by the Construction Manager. The Construction Manager shall not bid on any of the Trade Contractor Work or perform such Work with its own forces without the prior written consent of the Owner, in accordance with State University System Standard Practice No. CM-N-08.01-01/99. The Construction Manager shall perform the following duties:

2.2.1 Administer the construction phase as provided herein and in the Conditions of the Contract, which include the following: the edition of AIA Document A201, General Conditions of the Contract for Construction, as revised by the Owner, dated March 20, 2002; the Supplementary General Conditions for Construction Management Contracts; the document forms and Special Conditions contained in the University of Central Florida Project Manual.

2.2.1.1 Terms used in the Conditions of the Contract shall have the following meanings:

- .1 "Contractor" means Construction Manager, and the terms will be used interchangeably;
- .2 "Subcontractor" means Trade Contractor, and the terms will be used interchangeably; and,
- .3 "Contract Sum" means Guaranteed Maximum Price, and the terms will be used interchangeably.

2.2.2 Commence the Work within 10 days after receipt of the executed Guaranteed Maximum Price Amendment and Notice to Proceed from the Owner. The date on which the time of construction starts is the date of the Notice to Proceed. The Notice to Proceed shall be issued within [REDACTED] days of the execution of the Guaranteed Maximum Price Amendment. In the event the Notice to Proceed is not issued within [REDACTED] days of the execution of the Guaranteed Maximum Price Amendment, then this Agreement shall be deemed null and void and both parties shall be released of all contractual responsibilities and obligations.

2.2.2.1 Within [REDACTED] days of the date of the Notice to Proceed, the Architect/Engineer shall submit 100% Construction Documents to the state fire marshall's office and the Construction Manager. The Construction Manager shall proceed with construction based on these drawings. Upon receipt of the fire marshall approved drawings, any changes required by the fire marshal that are deemed by the Architect/Engineer to be a change in the scope of the Work will become a change order to the Construction Manager. The Architect/Engineer shall have sole discretion in determining whether the changes by the fire marshall constitute a change in the scope of the Work, and shall have sole discretion in determining the value of such changes in the scope of the Work for the change order.

2.2.3 Develop procedures which are acceptable to the Owner for the prequalification of Trade Contractors. Develop Trade Contractor interest in the Project and publicly advertise and conduct pre-bid conferences with interested bidders to review the documents. Take competitive bids on the Work of the various Trade Contractors; or, if authorized by the Owner in writing in accordance with Standard Practice CM-N-08-01-01/99, negotiate for the performance of that Work. The Construction Manager may require bidders to submit bid bonds or other bid security acceptable to the Construction Manager as a prerequisite to bidding on the Work. Analyze and evaluate the results of the various bids and their relationship to budgeted and estimated amounts, and prepare for review with the Owner and Architect/Engineer a written bid tabulation analysis and such other support data as necessary to properly compare the various bids and their responsiveness to the desired scope of Work. Specifically, the Construction Manager shall review the scope of Work in detail with apparent low responsive bidders to determine that their bids are complete but do not include duplicate scope items. Maintain records of all pre-award interviews with apparent low bidders. Prepare and submit written recommendations to the Owner and Architect/Engineer for award of Trade Contracts by the Construction Manager identifying the Minority Business Enterprises to be utilized. Promptly award and execute Trade Contracts with approved Trade Contractors. Provide copies of fully executed Trade Contracts, insurance certificates and, if required, bonds to the Owner.

2.2.4 Manage, schedule and coordinate the Work, including the Work of the Trade Contractors, and coordinate the Work with the activities and responsibilities of the Owner, Architect/Engineer and Construction Manager in order to complete the Project in accordance with the Owner's objectives of cost, time and quality. Develop and maintain a program, acceptable to the Owner and Architect/Engineer, to assure quality control of the construction. Provide to the Owner and Architect/Engineer a written report describing such quality control program. Supervise the Work of all Trade Contractors, providing instructions to each when its Work does not conform to the requirements of the plans and specifications and continue to manage each subcontractor to ensure that corrections are made in a timely manner so as to not affect the progress of the Work. The Architect/Engineer shall be the final arbiter in any disputes or disagreements between the Construction Manager and the Architect/Engineer concerning acceptability of the Work and conformance with the requirements of the plans and specifications.

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

2.2.5.1 Establish on-site organization and lines of authority in order to carry out the overall plans of the Construction Team. Identify an on-site staff member to represent the Construction Manager, on a daily basis, with authority to negotiate change orders and contract modifications on behalf of the Construction Manager. Make available such executive personnel as necessary to execute change orders or other contract modifications on behalf of the Construction Manager so as not to delay the progress of the Work.

2.2.6 Establish procedures for coordination among the Owner, Architect/Engineer, Trade Contractors and Construction Manager with respect to all aspects of the Work. Implement such procedures, incorporate them into a project resource manual, and distribute manuals to the Construction Team.

2.2.6.1 Require of the various Trade Contractors such Coordination Drawings as may be necessary to properly coordinate the Work among the Trade Contractors.

2.2.6.2 In coordination with the Architect/Engineer, establish and implement procedures for tracking and expediting the processing of shop drawings and samples, as required by the Conditions of the Contract.

2.2.7 Schedule and conduct weekly progress meetings with Trade Contractors to review such matters as job procedures, construction progress, schedule, shop drawing status and other information as necessary. Provide prior notice to Owner and Architect/Engineer of all such meetings, and prepare and distribute minutes. Attend monthly Team meetings scheduled by the Architect/Engineer.

2.2.8 Review the CPM project schedule with the various Trade Contractors and review, or expand, the level of detail to incorporate specific Trade Contractor input consistent with the overall completion requirements. Regularly monitor and update the CPM Project Schedule and various sub-networks as construction progresses. Identify potential variances

between scheduled and probable completion dates. Review schedule for Work not started, or incomplete, and make adjustments in the schedule to meet the scheduled completion date. Provide summary reports of each monitoring and document all changes in schedule. Regular schedule updates and reporting shall be included as part of the monthly project report outlined in Subparagraph 2.2.16 herein. Display the current Project Schedule in the on-site office; review at progress meetings.

2.2.9 Determine the adequacy of the Trade Contractors' personnel and equipment, and the availability of materials and supplies to meet the schedule. In consultation with the Owner and the Architect/Engineer, take necessary corrective actions when requirements of a Trade Contract or a Trade Contract Schedule are not being met.

2.2.10 Whenever Owner-Furnished Contractor-Installed (OFICI) materials or equipment are shipped to the Project site, the Construction Manager shall notify the Owner and shall be responsible for their acceptance, proper storage, and incorporation into the Work provided the scope of the Owner-Furnished Contractor-Installed (OFICI) work is included within the Guaranteed Maximum Price.

2.2.11 Develop and maintain an effective system of Project cost control which is satisfactory to the Owner. Revise and refine the initially approved Project Construction budget, incorporate approved changes as they occur, and develop cash flow reports and forecasts as needed. Identify variances between actual and budgeted or estimated costs and advise Owner and Architect/Engineer in writing whenever projected costs exceed budgets or estimates. Cost Control reports shall be included as part of the monthly project report outlined in Subparagraph 2.2.16 herein.

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

2.2.13 Develop and implement a system for the preparation, review and processing of change orders. Without assuming any of the Architect/Engineer's responsibilities for design, recommend necessary or desirable changes to the Owner and the Architect/Engineer, review requests for changes and submit recommendations to the Owner and Architect/Engineer.

2.2.13.1 When requested by the Owner or Architect/Engineer, promptly prepare and submit estimates of probable cost for changes proposed in the Work including similar estimates from the Trade Contractors. If directed by the Owner, promptly secure formal written Change Order Proposals from such Trade Contractors.

2.2.14 Be responsible for initiating, maintaining and supervising effective safety programs and require similar programs of the Trade Contractors and Sub-subcontractors. The OSHA guidelines shall serve as the basis for the construction safety program. If the Owner implements an Owner Provided Insurance Program as provided for in Article 11, the Construction Manager shall cooperate with the safety representatives of the Owner's Insurance Administrator and/or the Owner's insurance carrier(s) in the course of construction site inspections and in all other matters related to job safety and accident prevention.

2.2.14.1 Promptly notify the Owner and, where applicable, the Owner's Insurance Administrator, in writing, upon receiving notice of filing of any charge of non-compliance from OSHA, or upon receiving notification that a federal or state inspector shall visit or is visiting the Project site.

2.2.14.2 At progress meetings with Trade Contractors, conduct a review of job safety and accident prevention, and prepare minutes of such meetings that will be available to the Owner's Representative on request. The minutes of job safety and accident prevention portion of such progress meetings shall be made available to the Owner's Insurance Administrator, where applicable, upon request.

2.2.14.3 Designate a full-time staff member as the project safety director who shall oversee job safety and accident prevention for the Construction Manager, Trade Contractors and Sub-subcontractors involved in the Work, in addition to any other responsibilities assigned to such staff member.

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

2.2.16 Record the progress of the Project. Submit written monthly progress reports to the Owner and the Architect/Engineer including information on the Trade Contractors' Work, the percentage of completion, current estimating, computerized updated monthly Critical Path Method scheduling and project accounting reports, including Estimated Time to Completion and Estimated Cost to Complete. Keep a written daily log available to the Owner and the Architect/Engineer. Report and record such additional information related to construction as may be requested by the Owner.

The Construction Manager shall provide monthly reports titled Executive Summaries, which shall describe the progress of the project as it relates to the original baseline schedule submitted by the Construction Manager for the project. The Executive Summary shall identify any potential or existing problems which could possibly impact or delay the original completion schedule. The initial Executive Summary shall be provided to the designated University official as set forth herein in the Contract within thirty (30) days of the Notice to Proceed. Thereafter, the Construction Manager shall provide the original monthly Executive Summary to the Vice-President of Administration and Finance, University of Central Florida, Post Office Box 160020, Orlando, Florida 32816-0020, and shall provide a copy of the monthly Executive Summary to the Director of Facilities Planning, University of Central Florida, Post Office Box 163020, Orlando, Florida 32816-3020. Failure of Construction Manager to provide a monthly Executive Summary in a timely manner will be considered a material breach of this Contract.

2.2.17 The Construction Manager shall be responsible for the removal, encapsulation, transportation and disposal of any hazardous material, including, without limitation, any asbestos or asbestos-related products as may be required in connection with the Work. Any hazardous materials, as described by federal guidelines, brought by the Construction Manager or the Trade Contractors shall remain their responsibility for proper disposal. Any hazardous material not specifically shown on the documents shall be considered a concealed condition and may be the responsibility of the Construction Manager in a Change Order increasing the Guaranteed Maximum Price for any additional costs incurred.

2.2.17.1 Any asbestos abatement Work required in connection with the Work shall only be performed by an asbestos contractor which has been prequalified by the Owner.

ARTICLE 3

Additional Services

3.1 Upon the mutual agreement of the Owner and the Construction Manager, and upon written authorization from the Owner, the Construction Manager shall provide additional services which are beyond the scope of the Basic Services described in Article 2 herein. The Construction Manager shall be compensated for such additional services through a fee to be negotiated by the Owner and the Construction Manager at the time of the additional service request, and agreed upon in writing prior to the Construction Manager commencing any additional services.

ARTICLE 4

Owner's Responsibilities

4.1 The Owner shall designate a representative to act in its behalf. This representative, or his/her designee will monitor the progress of the Work, serve as liaison with the Construction Manager and the Architect/Engineer, receive and process communications and paperwork, and represent the Owner in the day-to-day construction of the Project. The Construction Manager will be notified in writing of the representative and of his/her designee or any changes thereto.

4.2 The Owner may retain a threshold inspector, if required by Chapter 553, Florida Statutes.

4.3 The Owner shall review and approve or take other appropriate action on the Construction Manager's preconstruction deliverables **within seven (7) calendar** days of receipt.

4.4 During the construction phase, communications shall be made as described in Subparagraph 4.2.4 of the General Conditions.

ARTICLE 5

Schedule

5.1 Preconstruction Phase

5.1.1 The Construction Manager shall submit the Schematic Design Report within **fourteen (14) calendar days**, Design Development Report within **fourteen (14) calendar days**, 50% Construction Document Report, and Guaranteed Maximum Price Proposal within **Thirty (30) calendar days** after the design documents have been made available to the Construction Manager.

5.2 The number of days for performance of the Work under the construction phase of this Agreement shall be established in the Guaranteed Maximum Price Amendment to this Agreement.

5.3 In the event the Owner desires to accelerate the schedule for any portion of the Work, the Owner shall notify the Construction Manager in writing. Within **seven (7) days**, the Construction Manager shall provide the Owner with a proposed revision to the Guaranteed Maximum Price for the acceleration, in the form of a potential change order which reflects the increased time and costs associated with the acceleration, and which shall become a Change Order upon written acceptance by the Owner. The Owner may then direct the Construction Manager to increase its staff and require its Trade Contractors to increase their manpower, or to work such overtime hours as may be necessary to accomplish the required acceleration in accordance with the approved Change Order. In such event the Owner shall reimburse the Construction Manager for the costs of such acceleration subject to the approved adjustment to the Guaranteed Maximum Price. In no event shall the Construction Manager be entitled to compensation in excess of the adjusted Guaranteed Maximum Price. The Construction Manager shall require accurate daily records of all costs of the required acceleration and shall secure the Owner's written approval of such records.

5.4 The Owner shall have the right to occupy, or use, any portion of the Work ahead of the completion date scheduled for such portion. If use or occupancy ahead of schedule affects the Cost of the Project or the schedule for the Work, the use or occupancy will be treated as a Change to the Work in accordance with Article 9, herein.

ARTICLE 6

Guaranteed Maximum Price

6.1 The "Guaranteed Maximum Price" (GMP) includes Cost of the Work required by the Contract Documents as defined in Article 8 herein, and the Construction Manager's fee as defined in Paragraph 7.2 herein, which also includes the Basic Services set forth in Article 2 herein. The GMP will be established based on design documents prepared by the Architect/Engineer. The GMP is subject to modification for changes in the Work as provided in Article 9, herein.

6.2 The GMP will only include those taxes in the Cost of the Work which are legally enacted at the time the GMP is established.

6.3 All cost savings for the not-to-exceed value of the GMP shall be returned to the Owner as part of the net aggregate savings established when final accounting is submitted upon Final Completion of the Work, or at such earlier time as agreed to by the Owner and the Construction Manager. "Cost savings" are the net difference obtained by deducting from the Adjusted GMP, the documented Construction Manager's Fee, the expended portions of the Construction Manager's contingency and the actual expenditures representing the Cost of the Work as defined in Article 8, herein. Liquidated damages, if any, are different from, and are not a part of, this calculation. Upon completion of the bidding period, the Construction Manager's contingency will be adjusted so that it does not exceed the contingency percentage agreed upon in the original GMP proposal. Those savings resulting from favorable bids will be available for the Owner's use, immediately following the bidding period. Changes to the GMP funded by these savings are not eligible for additional Construction Manager overhead and profit as described in Subparagraph 7.2.5 herein.

6.4 By execution of this Agreement, the Construction Manager certifies that all factual unit costs supporting the fees specified in this Agreement are accurate, complete and current at the time of negotiations; and that any other factual unit costs that may be furnished the Owner in the future to support any additional fees that may be authorized will also be accurate and complete. The fees specified in this Agreement and any additional fees that may be authorized in the future

shall be adjusted to exclude any significant sums of which the Owner determines the fee was increased due to inaccurate, incomplete, or non-current factual unit costs.

6.5 Adjustments to the GMP will be made as described in the Conditions of the Contract.

ARTICLE 7

Payments to Construction Manager

7.1 In consideration of the performance of the Agreement, the Owner agrees to pay the Construction Manager, as compensation for its services as set forth below:

7.1.1 For preconstruction services, the **lump sum amount of \$** to be paid at the satisfactory completion of the following phases :

Conceptual Design	\$
Advanced Schematics	
Design Development	
50% Const. Docs./Acceptance of GMP	
 TOTAL	 \$

7.1.1.1 Upon the date of the Notice to Proceed, the Construction Manager shall begin providing the indemnification described in Paragraph 3.18 of the General Conditions of the Contract. The Construction Manager acknowledges that ten dollars (\$10.00) has been included in the fee proposal for preconstruction services for the purpose of providing indemnification, and is a part of the fee established for the first phase of preconstruction services.

7.1.2 Upon acceptance of the GMP, the amount established in the GMP Amendment to this Agreement, which includes the Construction Manager's fee as described in Paragraph 7.2 and the Cost of the Work as described in Article 8, is to be paid monthly as described in the Conditions of the Contract.

7.1.2.1 As required by Section 287.0585, F.S., within seven working days from receipt of payment from the Owner, the Construction Manager shall pay each Trade Contractor out of the amount paid to the Construction Manager on account of such Trade Contractor's Work, the amount to which said Trade Contractor is entitled reflecting the percentage actually retained, if any, from payments to the Construction Manager on account of said Trade Contractor's Work. The Construction Manager shall, by appropriate agreement with each Trade Contractor, require each Trade Contractor to make payments to its subcontractors in a similar manner.

7.1.3 Pay requests for preconstruction services and for construction shall be documented in accordance with State University System Standard Practice No. CM-N-08.01-01/99.

7.1.4 As provided by Section 215.422, Florida Statutes, if a warrant in payment of an invoice is not mailed by the Owner within 40 days after receipt of the invoice and receipt, inspection and approval of the services, the Owner shall pay to the Construction Manager, in addition to the amount of the invoice, interest at a rate of one percent per month or portion thereof on the unpaid balance from the expiration of such 40-day period until such time as the warrant is mailed to the Construction Manager. These provisions apply only to undisputed amounts for which payment has been authorized. Invoices or pay requests returned to the Construction Manager due to preparation errors will result in a payment delay. Payment requirements do not start until a properly completed or pay request is provided to the Owner. A Vendor Ombudsman has been established within the Department of Banking and Finance. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (904) 488-2924 or by calling the State Comptroller's Hotline, (800) 848-3792.

7.2 Included in the Construction Manager's Fee are the following:

7.2.1 The cost of its home or branch office employees or consultants not at the Project site, including the cost of all pension contributions, hospitalization, bonus, vacations, medical insurance assessments or taxes for such items as unemployment compensation and social security, payroll insurance, and taxes attributable to wages and salaries and other company overhead expenses for said home office employees.

7.2.2 The cost of its field employees identified in Subparagraph 2.2.5 herein, or their approved replacements, including the cost of all pension, contributions, hospitalization, bonuses, vacations, medical insurance, assessments or taxes for such items as unemployment compensation and social security, payroll insurance, and taxes attributable to wages and salaries for said field employees.

7.2.3 General operating expenses of the Construction Manager's principal and branch offices other than the field office.

7.2.4 Any part of the Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

7.2.5 Overhead and profit, or general expenses of any kind, except as may be expressly included in Article 8, herein, as Cost of the Work.

7.2.6 All travel and per diem costs of Construction Manager's employees and consultants. All travel costs will be paid in accordance with Section 112.061, F.S.

7.2.7 The cost of estimating services which may be required during the construction phase in locations other than the Project site.

7.2.8 Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, postage, office supplies, expressage, and similar items in connection with the Work.

7.2.9 Cost of equipment such as typewriters, cameras, radios, computers, pagers, copiers, facsimile equipment, dictating units, trailers, vehicles and furniture purchased or rented by the Construction Manager, including any other operating expenses of the field office.

7.2.10 All costs incurred during the guarantee period after construction.

7.3 Adjustments in the fee will be made as follows:

7.3.1 Adjustments due to Changes in the Work shall be made as described in the Conditions of the Contract.

7.4 Invoices for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.

ARTICLE 8

Cost of the Work

8.1 The term "Cost of the Work" shall mean costs including General Conditions costs, incurred in the Work as described and defined in Paragraph 8.2, below, and paid or incurred by the Construction Manager less any reimbursement for scrap value and cash or trade discounts, subject to Article 10, herein. The term "wages" used herein shall include the straight time and overtime pay and the cost of associated employee benefits. Employee benefits include, but are not limited to, unemployment compensation, social security, compensated absences, and other mandatory and customary contributions and fringe benefits insofar as such costs are based on wages, salaries, or other remuneration paid to employees of the Construction Manager. Employee benefits do not include Workers' Compensation insurance when such insurance is provided by the Owner in accordance with Article 11.

8.1.1 The Owner agrees to pay the Construction Manager for the Cost of the Work as defined in Article 8, herein, through the date established for final completion of the Work. Such payment shall be in addition to the Construction Manager's Fee as stipulated in Paragraph 7.2, herein.

8.2 Cost of the Work includes and is limited to actual expenditure for the following cost items:

8.2.1 Subject to prior written approval by the Owner, wages paid for labor in the direct employ of the Construction Manager other than those provided under Paragraph 7.2, herein, as a part of the Construction Manager's Fee in the performance of the Work under applicable collective bargaining agreements, or under a salary or wage schedule agreed

upon by the Owner and Construction Manager, and including such welfare or other benefits, if any, as may be payable with respect thereto.

8.2.2 The cost of all materials, supplies and equipment incorporated in the Work or stored on site, including cost of transportation and storage thereof shall be included in the Cost of the Work. At the Owner's sole discretion, the Owner may make payment for materials, supplies and/or equipment stored off-site and bonded.

8.2.3 Payments made by the Construction Manager to Trade Contractors for their Work performed pursuant to Trade Contracts with the Construction Manager, not exceeding the agreed upon amount set forth in the trade contract.

8.2.4 Cost of the premiums for all insurance or bonds including Trade Contractor bonds which the Construction Manager is required to procure by this Agreement, or other insurance or bonds subsequently deemed necessary by the Construction Manager, and agreed upon by the Owner. The cost of insurance for the Construction Manager, trade contractors, and sub-subcontractors at any tier in the Work shall be excluded for any insurance to be provided by the Owner in accordance with Article 11 herein.

8.2.5 Sales, use, gross receipt, or similar taxes related to the Work imposed by any governmental authority and for which the Construction Manager is liable.

8.2.6 Building and operating permit fees, inspection and filing fees, sewer and water fees.

8.2.7 Cost of removal and disposal of all debris including clean-up and trash removal.

8.2.8 Cost incurred due to an emergency affecting the safety of persons and/or property.

8.2.9 Cost to the Construction Manager of temporary electric power, lighting, water and heat required for the performance of the Work, or required to protect the Work from weather damage.

8.2.10 Cost to the Construction Manager of temporary safety-related protection including barricades and safety equipment, temporary roads and parking, dust control, pest control, installation and operation of temporary hoists, scaffolds, ladders and runways, and temporary project signs and costs of permits and fees pursuant to the Conditions of the Contract.

8.2.11 Cost of watchmen or similar security services.

8.2.12 Cost of surveys, measurements and layout work reasonably required for the execution of the Work or the requirements of the Agreement.

8.2.13 Cost of preparation of shop drawings, coordination plans, photographs, or as-built documents not included in Trade Contracts.

8.2.14 Cost of data processing services required in the performance of the construction phase services as outlined in Paragraph 2.2, herein.

8.2.15 All costs for reproduction of documents.

8.2.16 All costs directly incurred in the performance of the Work and not included in the Construction Manager's Fee as set forth in Paragraph 7.2, herein.

8.2.17 Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen which are employed or consumed in the performance of the Work.

8.2.18 Rental charges of all necessary machinery and equipment, including hand tools used in the performance of the Work, whether rented from the Construction Manager or others, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof.

8.2.19 Costs associated with setting up and demobilizing tool sheds, Project field offices, temporary fences, temporary roads, and temporary fire protection.

ARTICLE 9

Changes in the Work

9.1 The Owner, without invalidating this Agreement, may order changes in the Work consisting of additions, deletions, or other revisions. All changes in the Work shall be authorized as described in the Conditions of the Contract. Except in cases of emergency endangering life or property, the Construction Manager shall allow no Changes in the Work without the prior written approval of the Owner.

ARTICLE 10

Discounts

10.1 All quantity discounts shall accrue to the Owner. All trade discounts, rebates and refunds, and all returns from the sale of surplus materials and equipment shall be credited to the Owner.

ARTICLE 11

Insurance

11.1 The Construction Manager shall provide insurance as required by the Conditions of the Contract.

11.2 The Owner may elect to purchase insurance under an Owner Provided Insurance Program, in which case the Construction Manager will not be required to provide insurance, but will provide coordination with the Owner and the Owner's insurance broker, as required. The Owner will inform the Construction Manager of its intention regarding insurance in sufficient time before the execution of the Guaranteed Maximum Price amendment to allow the Construction Manager to arrange for insurance and include the costs in the GMP, if necessary.

11.3 For insurance coverage provided by the Owner in accordance with Paragraph 11.2 above, the Owner shall provide insurance in effect from the issuance of the Notice to Proceed with the Work until Final Completion of the Work, and the Construction Manager shall ensure that each Trade Contractor and Sub-subcontractor are insured under the Owner's insurance programs, in accordance with this Article.

ARTICLE 12

Miscellaneous Provisions

12.1 The Owner and Construction Manager respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Construction Manager shall assign this Agreement without the written consent of the other.

12.2 This Agreement shall be governed by the laws of the State of Florida.

12.3 The Construction Manager agrees that after completion of all Work under this Agreement and all Amendments thereto and prior to final payment, it will execute and deliver to the Owner an "Assignment of Anti-trust Claims" as shown in the Special Conditions of the Contract.

12.3.1 The Construction Manager also agrees that prior to final payment, it will cause each of its suppliers and Trade Contractors who have furnished services, goods, or materials in connection with the performance of this Contract, to execute and deliver to the Owner an "Assignment of Anti-trust Claims" in the same form as specified in Paragraph 12.3 above.

12.4 The Construction Manager warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the Construction Manager) to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm (other than a bona fide employee working solely for the Construction Manager) any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

12.5 As required by Section 287.058, Florida Statutes, this contract may be unilaterally canceled by the Owner for refusal of the Construction Manager to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119 and made or received by the Construction Manager in conjunction with the contract.

12.6 As provided by Section 287.0582, F.S., the State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature.

12.7 As required by Section 287.133, Florida Statutes, the Construction Manager warrants that it is not on the convicted vendor list for a public entity crime committed within the past 36 months. The Construction Manager further warrants that it will neither utilize the services of, nor contract with, any supplier, subcontractor, or consultant in excess of \$15,000.00 in connection with this Project for a period of 36 months from the date of their being placed on the convicted vendor list.

IN WITNESS WHEREOF, the parties have affixed their signatures, effective on the date first written above.

******* CONSTRUCTION MANAGER *******

Attest:

Construction Manager

(Name, Title and Corporate Seal)

By: _____

Title: _____

As Witnessed by:

Date: _____

******* OWNER *******

As Witnessed By:

University of Central Florida

By: _____

John C. Hitt, President

Date: _____

APPROVED AS TO FORM AND LEGALITY

By: _____

Scott Cole, General Counsel

Date: _____