

Agreement Between: **Owner and Construction Manager**

Contract Type: **Construction Manager is also the Constructor and Payment is
Cost of Work plus a fee with no Guaranteed Max Price**

Document No.

OCM131

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AGREEMENT made as of the _____ day of _____
in the year _____
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name and address)

Sample Company
PO Box 217
Clayton, NC 27528

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and the Construction Manager:
(Name and address)

test company
,

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The Project is:

(Name, address and brief description)
SAMPLE PROJECT

The Architect is:

(Name and address)

The Contractor and the Subcontractor agree as follows.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 RELATIONSHIP OF PARTIES

The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Architect in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager and other persons or entities employed by the Owner for the Project.

§ 1.2 GENERAL CONDITIONS

For the Construction Phase, the General Conditions of the Contract shall be the Document GCC201 , General Conditions of the Contract for Construction, which is incorporated herein by reference and which shall apply except as specifically stated in this Agreement. For the Preconstruction Phase, including Preconstruction Phase activities that proceed concurrently with the Construction Phase, GCC201 shall not apply except as specifically provided in this Agreement. If any portion of GCC201 is inconsistent with or is modified in this Agreement, the Agreement shall govern. Modifications to GCC201 in this Agreement shall not apply to Subcontractors except as provided in Section 2.5 of this Agreement. The term "Contractor" as used in GCC201 shall mean the Construction Manager.

§ 1.3 CONTRACT SUM, CONTRACT TIME AND CHANGES IN THE WORK

The Contract Sum is the total Cost of the Work as described in Article 6, plus the Construction Manager's Fee as set forth in Article 5. The Contract Time is the duration from the date of commencement of the Construction Phase until the date of Substantial Completion. Changes in the Work shall be governed by Section 5.2 of this Agreement and not by Article 7 of GCC201. If, however, the Contract Time has been established in accordance with Section 2.2.4.5 of this Agreement, adjustments to the Contract Time shall be made in accordance with Article 7 of Document GCC201.

ARTICLE 2 CONSTRUCTION MANAGER SERVICES

The Construction Manager shall perform the services described in this Article. The services to be provided under Sections 2.1 and 2.2 constitute the Preconstruction Phase services. If the Owner and Construction Manager agree, after consultation with the Architect, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

§ 2.1 PRECONSTRUCTION PHASE

§ 2.1.1 PRELIMINARY EVALUATION

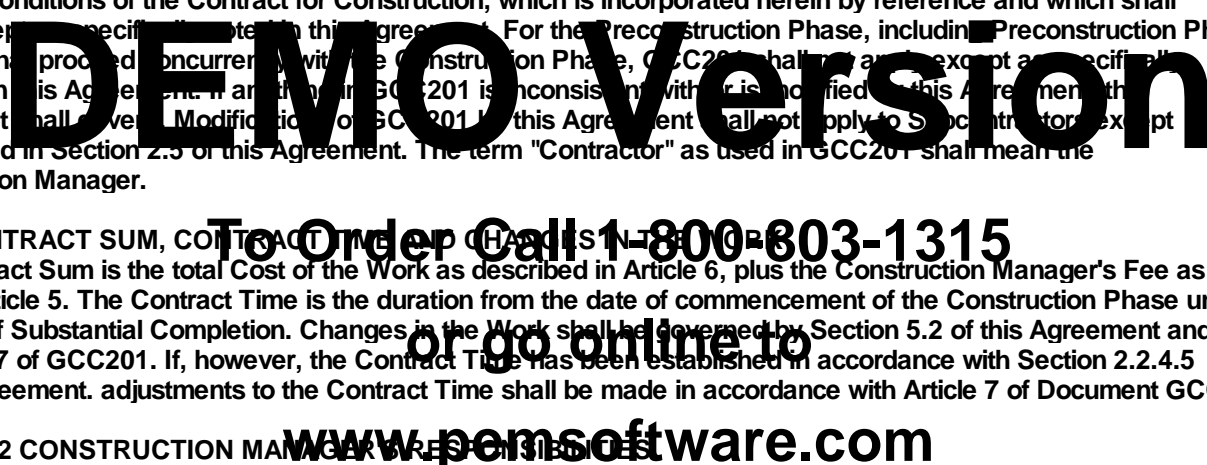
The Construction Manager shall provide a preliminary evaluation of the Owner's program, Project budget and schedule requirements each in terms of the other.

§ 2.1.2 CONSULTATION

The Construction Manager with the Architect shall jointly schedule and attend regular meetings with the Owner and Architect. The Construction Manager shall consult with the Owner and Architect regarding site use and improvements and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economics.

§ 2.1.3 PRELIMINARY PROJECT SCHEDULE

When Project requirements described in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Architect's review and the Owner's approval. The Construction Manager shall obtain the Architect's approval of the portion of the preliminary Project schedule relating to the performance of the Architect's services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Architect and Construction Manager. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of the Control Estimate, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring



long-lead-time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority and estimated date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

§ 2.1.4 PHASED CONSTRUCTION

The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

§ 2.1.5 PRELIMINARY COST ESTIMATES

§ 2.1.5.1 When the Owner has sufficiently identified the Project requirements and the Architect has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimate techniques.

§ 2.1.5.2 When Schematic Design Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

§ 2.1.5.3 When Design Development Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Architect and approval by the Owner. During the preparation of the Construction Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

§ 2.1.5.4 If any estimate submitted to the Owner or Architect is not approved, estimates for the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

§ 2.1.6 SUBCONTRACTORS AND SUPPLIERS

The Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier.

§ 2.1.7 LONG-LEAD-TIME ITEMS

The Construction Manager shall recommend to the Owner and Architect a schedule for procurement of long-lead-time items that will constitute part of the Work as required to meet the Project schedule. If such long-lead-time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's approval of the Control Estimate, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead-time items.

§ 2.1.8 EXTENT OF RESPONSIBILITY

The Construction Manager agrees to exercise reasonable skill and judgment in the preparation of schedules and estimates, but does not warrant or guarantee any schedules or estimates or time items within such estimates, even though approved by the Owner, including the Control Estimate and the estimated date of Substantial Completion, except as otherwise provided under Section 2.2.4.5. The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants. It is not the Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations.

However, if the Construction Manager recognizes that portions of the Drawings and Specifications are at variance, the Construction Manager shall promptly notify the Architect and Owner in writing.

§ 2.1.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

§ 2.2 CONTROL ESTIMATE AND CONTRACT TIME

§ 2.2.1 In accordance with the preliminary Project schedule established in Section 2.1.3, the Construction Manager shall prepare and submit to the Owner in writing a Control Estimate using current information to update the most recently prepared Preliminary Estimate. The Control Estimate shall be the sum of the then-estimated Cost of the Work and the Construction Manager's Fee, and is the estimate against which actual costs will be measured.

§ 2.2.2 The Construction Manager shall develop and implement a detailed system of cost control that will provide the Owner with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimate for uncompleted tasks and proposed changes. This information shall be reported to the Owner in writing at mutually agreeable intervals.

§ 2.2.3 As the Drawings and Specifications may not be finished at the time the Control Estimate is prepared, the Construction Manager shall provide in the Control Estimate for further development of the Drawings and Specifications by the Architect that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment.

§ 2.2.4 The Control Estimate shall include:

- .1 A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract.
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Control Estimate to supplement the information contained in the Drawings and Specifications.
- .3 A statement of the estimated Cost of the Work organized by trade categories or systems, and the Construction Manager's fee.
- .4 A statement of the actual or estimated date of commencement of the Construction Phase and the estimated date of Substantial Completion, with a schedule of the construction documents issuance dates upon which the estimated date of Substantial Completion is based.
- .5 A statement as to whether or not the duration from the stated date of commencement of the Construction Phase to the estimated date of Substantial Completion shall become the Contract Time and be subject to the provisions of Article 8 of Document GCC201.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Control Estimate. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Control Estimate. When the Control Estimate is acceptable to the Owner, the Owner shall approve it in writing.

§ 2.2.6 Upon the Owner's approval of the Control Estimate, the Contract Documents shall consist of (1) this Agreement, (2) GCC201 and other documents referred to in this Agreement, (3) the documents enumerated in Section 2.2.4 with the adjustments described in Section 2.2.5 and (4) Modifications issued subsequent to the Owner's approval of the Control Estimate. If anything in the other Contract Documents is inconsistent with this Agreement, this Agreement shall govern.

§ 2.2.7 The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications on which the Control Estimate is based. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Architect and Construction Manager. The Construction Manager shall promptly notify the Architect and Owner if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

§ 2.3 CONSTRUCTION PHASE

§ 2.3.1 GENERAL

§ 2.3.1.1 The Construction Phase shall commence on the earlier of:

- .1** the Owner's approval of the Control Estimate and issuance of a Notice to Proceed; or
- .2** the Owner's first authorization to the Construction Manager to award a subcontract, or to undertake a portion of the Work with the Construction Manager's own forces, or to issue a purchase order for materials or equipment required for the Work.

§ 2.3.1.2 For purposes of Section 8.1.2 of Document GCC201, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.3 Prior to the Owner's approval of the Construction Manager's Control Estimate and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

§ 2.3.2 ADMINISTRATION

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect. The Owner will then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Architect, which bids will be accepted. The Owner may designate specific persons or entities from whom the Construction Manager shall obtain bids. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Section 3.10 of GCC201 and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

§ 2.3.2.3 The Construction Manager shall schedule and conduct meetings at which the Owner, Architect, Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

§ 2.3.2.4 Promptly after the Owner's approval of the Control Estimate, the Construction Manager shall prepare a schedule in accordance with Section 3.10 of GCC201, including the Owner's occupancy requirements.

§ 2.3.2.5 The Construction Manager shall provide monthly written reports to the Owner and Architect on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Architect.

§ 2.4 PROFESSIONAL SERVICES

Section 3.12.10 of GCC201 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 HAZARDOUS MATERIALS

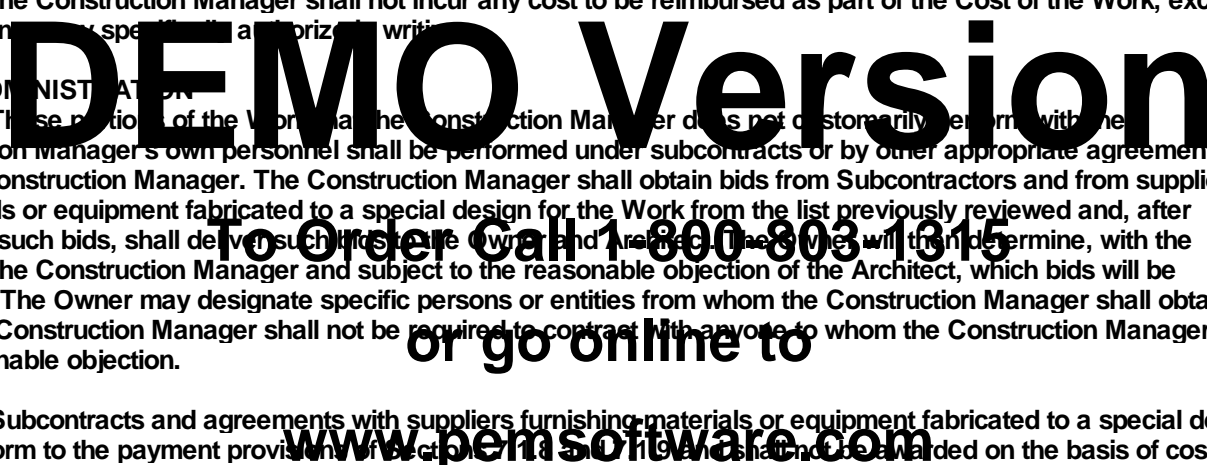
Section 10.3 of GCC201 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 INFORMATION AND SERVICES

§ 3.1.1 The Owner shall provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

§ 3.1.2 The Owner shall, at the written request of the Construction Manager prior to commencement of the Construction Phase and thereafter, furnish to the Construction Manager reasonable evidence that financial



arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager.

§ 3.1.3 The Owner shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Architect, which shall include contingencies for changes in the Work and other costs that are the responsibility of the Owner.

§ 3.1.4 STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS AND REPORTS

In the Preconstruction Phase, the Owner shall furnish the following with reasonable promptness and at the Owner's expense:

.1 Report surveys, findings and tests concerning the condition of the site which are required by law.

.2 Survey describing physical characteristics, legal limitations and utility locations of the site (the Project) and a written legal description of the site. The survey and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures, adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a project benchmark.

.3 The services of a geotechnical engineer when such services are requested by the Construction Manager. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsurface conditions, with reports and appropriate professional recommendations.

.4 Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials and other laboratory and environmental tests, inspections and reports which are required by law.

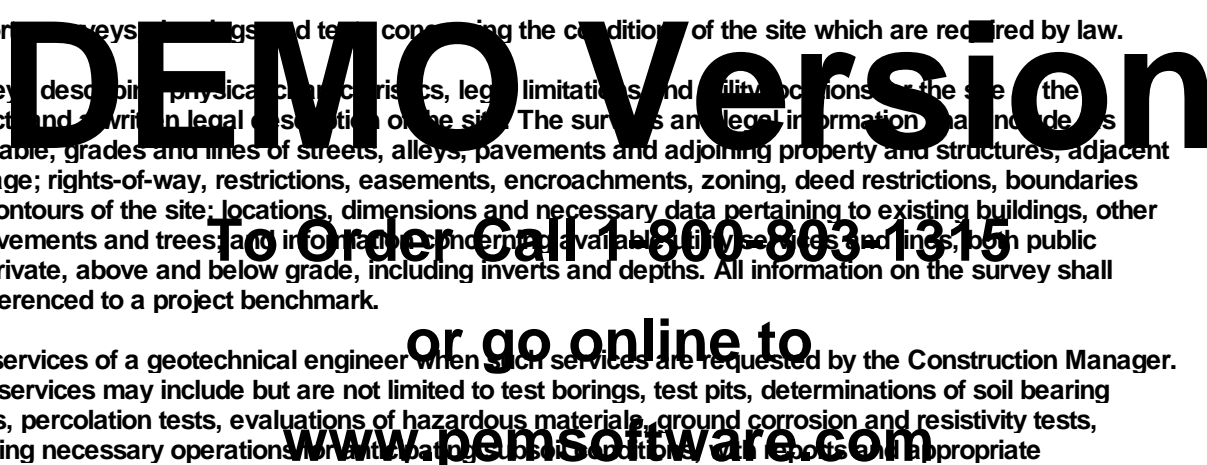
.5 The services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Construction Manager. Except to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests described in Sections 3.1.4.1 through 3.1.4.5, but shall exercise customary precautions relating to the safe performance of the Work.

§ 3.2 OWNER'S DESIGNATED REPRESENTATIVE

The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. This representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of Document GCC201, the Architect does not have such authority.

§ 3.3 ARCHITECT

The Owner shall retain an Architect to provide Basic Services, including normal structural, mechanical and electrical engineering services, other than cost estimating services, described in the edition of Document 151, Abbreviated Standard Form of Agreement Between Owner and Architect current as of the date of this Agreement. The Owner shall authorize and cause the Architect to provide those Additional Services described in Document 151 requested by the Construction Manager which must necessarily be provided by the Architect for the Preconstruction and Construction Phases of the Work. Such services shall be provided in accordance with time schedules agreed to by the Owner, Architect and Construction Manager. Upon request of the Construction Manager, the Owner shall



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furnish to the Construction Manager a copy of the Owner's Agreement with the Architect, from which compensation provisions may be deleted.

§ 3.4 LEGAL REQUIREMENTS

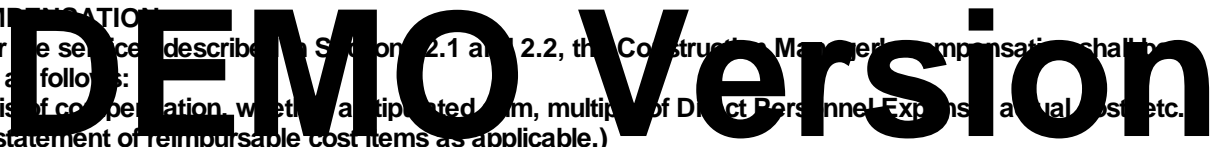
The Owner shall determine and advise the Architect and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal services as are necessary to provide the information and services required under Section 3.1.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

The Owner shall compensate and make payments to the Construction Manager for Preconstruction Phase services as follows:

§ 4.1 COMPENSATION

§ 4.1.1 For the services described in Sections 2.1 and 2.2, the Construction Manager's compensation shall be calculated as follows:
(State basis of compensation, whether a stipulated sum, multiple of Direct Personnel Expense, actual cost, etc. Include a statement of reimbursable cost items as applicable.)



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§ 4.1.2 Compensation for Preconstruction Phase Services shall be equitably adjusted if such services extend beyond () days from the date of this Agreement or if the originally contemplated scope of services is significantly modified.

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§ 4.1.3 If compensation is based on a multiple of Direct Personnel Expense, Direct Personnel Expense is defined as the direct salaries of the Construction Manager's personnel engaged in 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, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

§ 4.2 PAYMENTS

§ 4.2.1 Payments shall be made monthly following presentation of the Construction Manager's invoice and, where applicable, shall be in proportion to services performed.

§ 4.2.2 Payments are due and payable () days from the date the Construction Manager's invoice is received by the Owner. Amounts unpaid after the date on which payment is due shall bear interest at the rate entered below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon.)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

The Owner shall compensate the Construction Manager for Construction Phase services as follows:

§ 5.1 COMPENSATION

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

(State a lump sum, percentage of actual Cost of the Work or other provision for determining the Construction Managers Fee, and explain how the Construction Manager Fee is to be adjusted for changes in the Work or other reasons.)

§ 5.2 CHANGES IN THE WORK

§ 5.2.1 The Owner may, without terminating the Contract, order changes to the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Architect may make minor changes in the Work as provided in Section 7.4 of Document C-20.

§ 5.2.2 Increased costs for the items set forth in Article 6 which result from changes in the Work shall become part of the Cost of the Work, and the Construction Manager's Fee shall be adjusted if provided in Section 5.1.

§ 5.2.3 If the Construction Manager receives any drawings, specifications, interpretations or instructions from the Owner or Architect which are inconsistent with the Contract Documents, or encounters unanticipated conditions, any of which will result in a significant change in the cost, scope, or estimated date of Substantial Completion in comparison with the Control Estimate, the Construction Manager shall promptly notify the Owner and Architect in writing and shall not proceed with the affected Work until further written instructions are received from the Owner and Architect.

§ 5.2.4 If no specific provision is made in Section 5.1.1 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such that, in the aggregate, application of the adjustment provisions of Section 5.1.1 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the basis of the Fee established for the original Work.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 COSTS TO BE REIMBURSED

§ 6.1.1 The term "Cost of the Work" shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 6.

§ 6.1.2 LABOR COSTS

- .1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's agreement, at off-site workshops.
- .2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's agreement.
(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal office or offices other than the site office shall be included in the Cost of the Work, such personnel shall be identified below)

- .3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.
- .4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and

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benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Sections 6.1.2.1 through 6.1.2.3.

§ 6.1.3 SUBCONTRACT COSTS

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.1.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

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

.2 Costs of materials described in the preceding Section 6.1.4.1 in excess of those actually installed but required to provide a normal allowance for waste and for spillage. Unused excess materials, if any, shall be handled over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager at prices realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.1.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

.1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.

.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, insurance, minor repairs and replacements, and dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

.3 Costs of removal of debris from the site.

.4 Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office.

.5 That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.1.6 MISCELLANEOUS COSTS

.1 That portion directly attributable to this Contract of premiums for insurance and bonds.
(If charges, for self-insurance are to be included, specify the basis of reimbursement.)

.2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.

.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

.4 Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Section 6.1.8.2.

.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs

of legal defenses, judgment and settlements shall not be included in the calculation of the Construction Manager's Fee and provided that such royalties, fees and costs are not excluded by the last sentence of Section 3.17.1 of GCC201 or other provisions of the Contract Documents.

- .6 Data processing costs related to the Work.
- .7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.
- .8 With the Owner's prior written permission, legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work.
- .9 Expenses incurred in accordance with Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.

§ 6.1.7 OTHER COSTS

- .1 Other costs incurred in the performance of the Work if and to the extent a prior advance written approval is obtained by the Owner.

§ 6.1.8 EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK

The Cost of the Work shall also include costs described in Section 6.1.1 which are incurred by the Construction Manager:

- .1 In taking action to prevent or rectify an injury or loss, or in the case of an emergency affecting the safety of persons and property as provided in Section 10.6 of Document 201.
- .2 In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the Owner set forth in this agreement of the Construction Manager or the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, or the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, Subcontractors or suppliers.

§ 6.1.9 The costs described in Sections 6.1.1 through 6.1.8 shall be included in the Cost of the Work, notwithstanding any provision of GCC201 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.2.

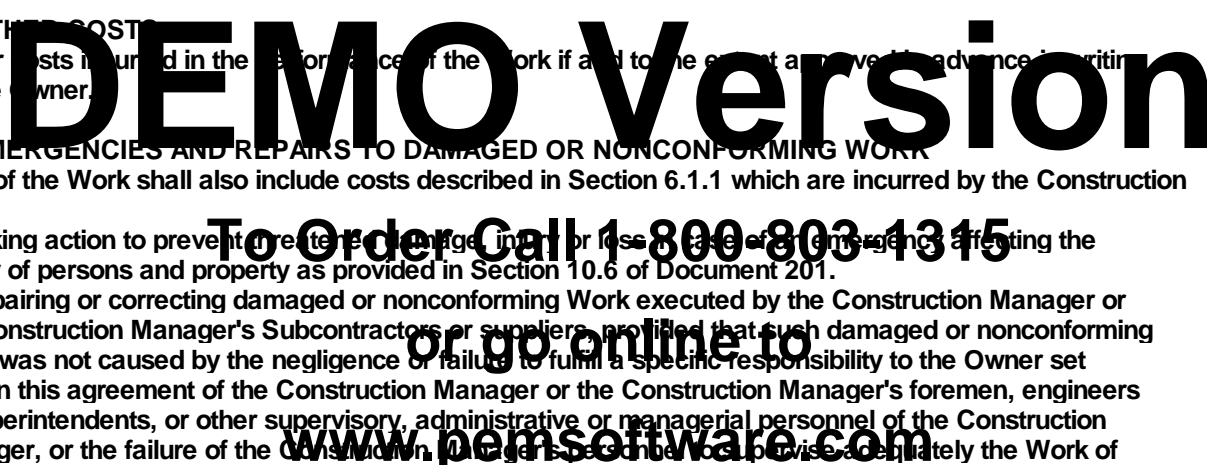
§ 6.2 COSTS NOT TO BE REIMBURSED

§ 6.2.1 The Cost of the Work shall not include:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Sections 6.1.2.1 through 6.1.2.3.
- .2 Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Section 6.1.
- .3 Overhead and general expenses, except as may be expressly included in Section 6.1.
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.
- .5 Rental costs of machinery and equipment, except as specifically provided in Section 6.1.5.2.
- .6 Except as provided in Section 6.1.8.2, costs due to the negligence of the Construction Manager or to the failure of the Construction Manager to fulfill a specific responsibility to the Owner set forth in this Agreement.
- .7 Costs incurred in the performance of Preconstruction Phase Services.
- .8 Except as provided in Section 6.1.7.1, any cost not specifically and expressly described in Section 6.1.

§ 6.3 DISCOUNTS, REBATES AND REFUNDS

§ 6.3.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment therefor from the Owner or (2) the Owner has deposited funds with the Construction Manager with which



to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured.

§ 6.31 Amounts which accrue to the Owner in accordance with the provisions of Section 6.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.4 ACCOUNTING RECORDS

§ 6.4.1 The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Construction Manager shall preserve these for a period of three years after final payment, or such longer period as may be required by law.

ARTICLE 7 CONSTRUCTION PAYMENT

§ 7.1 PROGRESS PAYMENTS

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

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

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§ 7.1.3 Provided an Application for Payment is received by the Architect not later than the _____ day of a month, the Owner shall make payment to the Construction Manager not later than the _____ day of the _____ month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than () days after the Architect receives the Application for Payment.

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Applications for Payment shall show the Cost of the Work actually incurred by the Construction Manager through the end of the period covered by the Application for Payment and for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment.

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

- .1 Take the Cost of the Work as described in Section 7.1.5.
- .2 Add the Construction Manager's Fee, less retainage of _____ percent (_____ %).
The Construction Manager's Fee shall be computed upon the Cost of the Work described in the preceding Section 7.1.6.1 at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the preceding Section bears to a reasonable estimate of the probable Cost of the Work upon its completion.
- .3 Subtract the aggregate of previous payments made by the Owner.



- .4 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 or to substantiate prior Applications for Payment or resulting from errors subsequently discovered by the Owner's accountants in such documentation.
- .5 Subtract amounts, if any, for which the Architect has withheld or withdrawn a Certificate for Payment as provided in the Contract Documents.

§ 7.1.7 Additional retainage, if any, shall be as follows:

§ 7.1.8 Except with the Owner's prior approval, payments to subcontractors included in the Construction Manager's Applications for Payment shall not exceed an amount for each Subcontractor calculated as follows:

- .1 Take that portion of the Subcontract Sum properly allocable to completed Work, determined by multiplying the percentage completion of each portion of the Subcontractor's Work by the share of the total Subcontract Sum allocated to that portion in the Subcontractor's schedule of values, less retainage of _____ percent (_____ %). Pending final determination of amounts to be paid to the Subcontractor for changes in the Work, amounts not in dispute may be included as provided in Section 7.3.8 of Document 201 even though the Subcontract Sum has not yet been adjusted by Change Order.
- .2 Add that portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing, less retainage of _____ percent (_____ %).
- .3 Subtract the aggregate of previous payments made by the Construction Manager to the Subcontractor.
- .4 Subtract amounts, if any, for which the Architect has withheld or withdrawn a Certificate for Payment by the Owner to the Construction Manager for reasons that are the fault of the Subcontractor.
- .5 Add, upon Substantial Completion of the entire Work of the Construction Manager, a sum sufficient to increase the total payments to the Subcontractor to _____ percent (_____ %) of the Subcontract Sum, less amounts, if any, for incomplete Work and unsettled claims; and, if final completion of the entire Work is thereafter materially delayed through no fault of the Subcontractor, add any additional amounts payable on account of Work of the Subcontractor in accordance with Section 9.10.3 of Document 201.
(If it is intended, prior to Substantial Completion of the entire Work of the Construction Manager, to reduce or limit the retainage from Subcontractors resulting from the percentages inserted in Sections 7.1.8.1 and 7.1.8.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

The Subcontract Sum is the total amount stipulated in the subcontract to be paid by the Construction Manager to the Subcontractor for the Subcontractor's performance of the subcontract.

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

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

examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

§ 7.2 FINAL PAYMENT

§ 7.2.1 Final payment shall be made by the Owner to the Construction Manager when (1) the Contract has been fully performed by the Construction Manager, except for the Construction Manager's responsibility to correct nonconforming Work, as provided in Section 12.2.2 of GCC201, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner's accountants; and (3) a final Certificate for Payment has then been issued by the Architect. Such final payment shall be made by the Owner not more than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

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

- .1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee.
- .2 Subtract amounts, if any, for which the Architect withholds, in writing, a final Certificate for Payment as provided in Section 9.5.1 of GCC201 or other provisions of the Contract Documents.
- .3 Subtract the aggregate of previous payments made by the Owner.

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

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§ 7.2.3 The Owner's accountants will review and report in writing to the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of GCC201. The time periods stated in this Section 7.2 supersede those stated in Section 9.4.1 of Document GCC201.

§ 7.2.4 If the Owner's accountants report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 9 without a further decision of the Architect. Unless agreed to otherwise, a demand for mediation or arbitration of the disputed amount shall be made by the Construction Manager within 60 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to make such demand within this 60-day period shall result in the substantiated amount reported by the Owner's accountants becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.5 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1 and not excluded by Section 6.2 (1) to correct nonconforming Work or (2) arising from the resolution of disputes, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment.

ARTICLE 8 INSURANCE AND BONDS

§ 8.1 INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER

During both phases of the Project, the Construction Manager shall purchase and maintain insurance as set forth in Section 11.1 of Document 201. Such insurance shall be written for not less than the following limits, or greater if required by law:

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§ 8.1.1 Workers' Compensation and Employers' Liability meeting statutory limits mandated by state and federal laws. If (1) limits in excess of those required by statute are to be provided, or (2) the employer is not statutorily bound to obtain such insurance coverage or (3) additional coverages are required, additional coverages and limits for such insurance shall be as follows:

§ 8.1.2 Commercial General Liability, including coverage for Premises--Operations, Independent Contractors' Protective, Products-Completed Operations, Contractual Liability, Personal Injury, and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards):

\$ Each Occurrence
\$ General Aggregate
\$ Personal and Advertising Injury
\$ Products-Completed Operations Aggregate

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.1 The policy shall be endorsed to have the General Aggregate apply to this Project only.

.2 Products and Completed Operations coverage shall be maintained for a minimum period of at least () year(s) after either 90 days following Substantial Completion or final payment, whichever is earlier.

.3 The Contractual Liability insurance shall include coverage sufficient to meet the obligations in Document 201 under Section 3.18.

§ 8.1.3 Automobile Liability (owned, non-owned and hired vehicles) for bodily injury and property damage:

\$ Each Accident

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§ 8.1.4 Other coverage:

(If Umbrella Excess Liability coverage is required over the primary insurance or retention, insert the coverage limits. Commercial General Liability and Automobile Liability limits may be attained by individual policies or by a combination of primary policies and Umbrella and/or Excess Liability policies. If Project Management Protective Liability Insurance is to be provided, state the limits here.)

§ 8.2 INSURANCE REQUIRED OF THE OWNER

During both phases of the Project, the Owner shall purchase and maintain liability and property insurance, including waivers of subrogation, as set forth in Sections 11.2 and 11.4 of A20ITM-I 997. Such insurance shall be written for not less than the following limits, or greater if required by law:

§ 8.2.1 Property Insurance:

\$ Deductible Per Occurrence
\$ Aggregate Deductible

§ 8.2.2 Boiler and Machinery insurance with a limit of:

(If not a blanket policy, list the objects to be insured.)

§ 8.3 PERFORMANCE BOND AND PAYMENT BOND

§ 8.3.1 The Construction Manager (insert "shall" or "shall not") furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Construction Manager's usual source and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to _____ percent(%) of the Contract Sum.

§ 8.3.2 The Construction Manager shall deliver the required bonds to the Owner at least three days before the commencement of any Work at the Project site.

ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 DISPUTE RESOLUTION

§ 9.1.1 During both the Preconstruction and Construction Phases, Claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in Sections 4.3 through 4.6 of Document 201 except that during the Preconstruction Phase, a decision by the Architect shall be a condition precedent to mediation or arbitration.

§ 9.2 OTHER PROVISIONS

§ 9.2.1 Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in the CAP201.

§ 9.2.2 EXTENT OF CONTRACT

This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

§ 9.2.3 OWNERSHIP AND USE OF DOCUMENTS

Article 1.6 of GCC201 shall apply to both the Preconstruction and Construction Phases.

§ 9.3.4 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

§ 9.3.5 ASSIGNMENT

The Owner and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2 of GCC201, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 TERMINATION PRIOR TO THE OWNER'S APPROVAL OF THE CONTROL ESTIMATE

§ 10.1.1 Prior to the Owner's approval of the Control Estimate, the Owner may terminate this Contract at any time without cause, and the Construction Manager may terminate this Contract for any of the reasons described in Section 14.1.1 of Document 201. The provisions of Article 14 of Document 201 do not otherwise apply to this Section 10.1.

§ 10.1.2 If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 prior to commencement of the Construction Phase, the Construction Manager shall be equitably compensated for Preconstruction Phase Services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Section 4.1.1.

§ 10.1.3 If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 after commencement of the Construction Phase and prior to the Owner's approval of the Control Estimate, the Construction Manager shall, in addition to the compensation provided in Section 10.1.2, be paid an amount calculated as follows:

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

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may elect for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

Subcontract, purchase orders and rental agreements entered into by the Construction Manager with the Owner's written approval prior to the Owner's approval of the Control Estimate shall contain provisions permitting assignment to the Owner as described above. If the Owner accepts such assignment, the Owner shall reimburse or indemnify the Construction Manager with respect to all costs arising under the subcontract, purchase order or rental agreement, except those which would otherwise be reimbursable or payable for the Work if the contract had not been terminated. If the Owner elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager shall terminate such subcontract, purchase order or rental agreement and the Owner shall pay the Construction Manager the costs necessarily incurred by the Construction Manager by reason of such termination.

§ 10.2 TERMINATION SUBSEQUENT TO THE OWNER'S APPROVAL OF THE CONTROL ESTIMATE

§ 10.2.1 Subsequent to the Owner's approval of the Control Estimate, the Contract may be terminated as provided in Sections 14.1.1, 14.1.2 and 14.2.1 of GCC201. The provisions of Article 14 of GCC201 do not otherwise apply to this Section 10.2.

§ 10.2.2 In the event of such termination by the Owner, the amount payable to the Construction Manager shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.2 and 10.1.3 of this Agreement, less any compensation that may be awarded to the Owner pursuant to Section 9.1.

§ 10.2.3 In the event of such termination by the Construction Manager, the amount payable to the Construction Manager shall be in accordance with Sections 10.1.2 and 10.1.3 of this Agreement, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, including a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.2.4 In addition to the Owner's right to terminate this Agreement for cause as provided in Section 14.2.1 of CAP201, the Owner may terminate this Agreement without cause; in such case, the Construction Manager shall be paid as provided in Section 10.2.3.

§ 10.3 NOTICE OF TERMINATION

§ 10.3.1 The party seeking termination shall give the other party seven days' written notice.

§ 10.4 SUSPENSION

The Work may be suspended by the Owner as provided in Article 14 of GCC201; in such case, the associated increase in costs shall become part of the Cost of Work, and the Construction Manager's Fee shall be adjusted in accordance with Section 5.1.

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Cost of Work plus a fee with no Guaranteed Max Price**

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ARTICLE 11 OTHER CONDITIONS AND SERVICES

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

OWNER

CONSTRUCTION MANAGER

(Signature)

(Signature)

ATTEST

ATTEST