



Washington University in St. Louis

STANDARD FORM OF CONSTRUCTION MANAGEMENT AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER

(Where the basis of payment is Cost of the Work with a guaranteed maximum price)

THIS AGREEMENT is made effective as of this ___ day of _____ in the year of 2020.

BETWEEN Owner:

THE WASHINGTON UNIVERSITY
On behalf of the School of Medicine
Washington University School of Medicine
660 South Euclid Avenue
Campus Box 8034
St. Louis, Missouri 63110

And Construction Manager

Architect is:

,

For the following Project:

Project Number:

Project Title:

Commitment ID:

The Pre-Construction Cost is \$0.00

The Guaranteed Maximum Price (the "GMP") is \$0.00

Total Contract Sum is

Project Description:

Owner and Construction Manager agree as set forth below:

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 Construction Manager's best skill and attention and to cooperate with the Architect in furthering the interests of Owner. Construction Manager shall furnish construction administration and management services and use Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interest of Owner. Owner shall endeavor to promote harmony and cooperation among Owner, Architect, Construction Manager and other persons or entities employed by Owner for the Project.

1.2. General Conditions

The General Conditions of the Contract shall be The Washington University in St. Louis General Conditions of Contract (along with all attachments, exhibits and appendices thereto) in use at the time of the execution of this Agreement, (hereinafter referred to as the "WU General Conditions") and incorporated herein by this reference. Capitalized terms not otherwise defined in this Agreement shall have the meanings assigned to them in the WU General Conditions except that for purposes of this Agreement, the term "Contractor" as used in the WU General Conditions shall mean "Construction Manager."

ARTICLE 2. CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

2.1. Preconstruction Phase

2.1.1. Preliminary Evaluation

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

2.1.2. Consultation

As requested by Owner, Construction Manager shall meet with Owner and Architect and /or Owner's Consultants to discuss and review the budget, schedule and design. Construction Manager shall consult with Owner and Architect regarding Site use and improvements, sustainability, and the selection of materials, building systems and equipment. Construction Manager shall provide recommendations on construction feasibility; work force diversity; 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 possible LEED certification, estimates of alternative designs or materials, preliminary budgets and possible economies.

2.1.2.1. The Construction Manager shall review the Plans and Specifications developed by the Architect and prepare construction cost estimates at specific intervals as agreed by the Construction Manager and Owner. The Construction Manager shall mark up Drawings and Specifications and return these to the Architect after the review.

2.1.2.2. The Construction Manager shall review the building systems, materials and equipment for general appropriateness, utilize value engineering as appropriate, and provide information, to the extent specifically known by the Construction Manager, on relative cost and expected life cycles of intended materials and equipment.

- 2.1.2.3. The Construction Manager shall make recommendations to the Owner with respect to the use of the selection of materials, Project systems and equipment and other aspects of the physical construction of the Project; and make recommendations or comparisons on various construction methods, the availability of materials and labor, time requirements for procuring long -lead items, installation and construction, including compatibility of systems, scale of materials and assemblies for efficient installation, costs and construction time associated with alternative designs or materials, the budget and constructability. The review of proposed building systems, materials and equipment for appropriateness as contemplated by this Section will be accomplished by Construction Manager from the perspective of a construction manager for the Project. In no event shall Construction Manager be deemed to be performing, or be required to perform, any design or engineering in connection with the Project.
- 2.1.2.4. The Construction Manager shall make recommendations to the Owner regarding investigations, surveys, tests, analyses and reports (“Recommended Investigations”) that are necessary to document existing conditions for the proper execution of the Work. Owner, in its sole discretion, shall hire a party to perform the Recommended Investigations, but if directed by Owner, Construction Manager shall retain such party and to the extent that Construction Manager’s original scope of work and GMP do not include the hiring of such party, Construction Manager, with Owner’s approval, may increase the GMP by the amount of cost of such party performing the Recommended Investigations .
- 2.1.2.5. The Construction Manager shall assist the Owner in obtaining the necessary approvals for the Project, and shall obtain all necessary permits and licenses for the construction of the Project.
- 2.1.2.6. The Construction Manager shall assist the Owner and Architect, when requested, by providing information for the preparation and submission of applications or other documents necessary for the issuance of any variances or approvals required in connection with the design or construction of the Project from any local, state or federal governmental authorities having jurisdiction over the Project.
- 2.1.2.7. The Construction Manager shall review the Drawings and Specifications for the Project and shall notify the Owner and the Architect if the Construction Manager believes the responsibilities of the Construction Manager are not properly identified or assigned, or if the Drawings and Specifications contain any areas of conflict and/or overlap in the Work to be performed by the Construction Manager and/or the various subcontractors on the Project. Construction Manager is not, however, qualified to perform and is therefore not required to perform an architectural, engineering or other design review or to perform or provide any architectural, engineering or other professional services satisfying the standards of a design professional. Nothing within the Contract Documents shall be construed as requiring Construction Manager to furnish, provide or perform architectural services, professional engineering services, land surveying services or any other services of the type which would require Construction Manager to obtain and maintain a professional registration in the state where the work is performed. In ascertaining whether the scope of work set forth in the Construction Documents is suitable for the purposes of bidding and construction as provided in Section 2.1.2.1 of the Agreement, Construction Manager will make that determination in its role as construction manager and will not perform a design review of the type performed by an architect, professional engineer or other licensed design professional.

2.1.3. Preliminary Project Schedule

When the Owner has sufficiently identified the Project requirements, the Construction Manager shall consult with Owner to develop a preliminary Project Schedule. The Construction Manager shall meet and discuss the Schedule with Owner and Architect and 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 of receipt and approval of pertinent information, submittal of a GMP Proposal, 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 proposed 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 to meet the required Schedule.

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 estimating 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 specified by the Owner.
- 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 specified by the Owner.
- 2.1.5.4. If any estimate submitted to the Owner exceeds previously approved estimates of the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect to meet the budget, including modification or substitution of systems, materials or other value engineering considerations.

2.1.6. Self Performed Work

Construction Manager may request to perform any portion of the Work which it customarily performs with its own personnel. For any and all portions of the Work (other than general conditions work) that Construction Manager proposes to perform with its own personnel, or those of an affiliated person or entity, Construction Manager shall so notify Owner and Owner shall have the right to determine whether Construction Manager or such affiliate will be required to submit a bid for such portion of the Work. With respect to such portion of the Work, Construction Manager shall prepare and provide to Owner a list of qualified bidders in the manner provided in Section 2.1.7 and the bid packages relating to the Work that Construction Manager or its affiliates propose to perform. Unless waived by Owner, Owner shall distribute such bid packages and obtain a minimum of two (2) competitive bids from such qualified bidders. Construction Manager shall also submit a bid for the portion of the Work that it or its affiliate proposes to perform, which bid, along with those competitive bids obtained by Owner, will be submitted directly to Owner's Representative for opening, review, and consideration. No bids shall be received, opened, or accepted by Construction Manager for Work that it proposes to perform with its own personnel, or those of an affiliate. Based on Owner's determination relative to the bids, Construction Manager will either self perform such portion of the Work, or award a subcontract to the accepted bidder. Construction Manager's cost in performing such portion of the Work including all supervision, field office and associated support items needed with respect thereto, shall be included as Cost of the Work as defined in Article 6, subject to the overall limitation established in the GMP Amendment. Any fee for such self performed work shall be at such rates and /or in such amounts as are agreed to by the Owner and Construction Manager in the GMP Amendment.

2.1.7. Subcontractors and Suppliers

Owner shall provide Construction Manager with a list of subcontractors and suppliers who Owner has previously approved to work on the Project. The Construction Manager shall seek to develop additional subcontractor interest in the Project and shall work with the Owner and Architect to develop a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, and from whom proposals will be requested for each principal portion of the Work. The Owner or Architect will promptly reply in writing to the Construction Manager if the Owner or Architect knows 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.

- 2.1.7.1. The Construction Manager shall make recommendations to the Owner and the Architect regarding the division of Work to facilitate the bidding and awarding of Subcontracts and the orderly progress of Work, allowing for a construction sequence which will permit the Owner to occupy the Project for its intended purposes on or before any scheduled completion dates, taking into consideration such factors as time of performance, availability of labor, overlapping trade jurisdictions, and provisions for temporary facilities. Construction Manager shall make recommendations to the Owner and the Architect regarding the assignment of responsibilities for safety precautions and programs, temporary project facilities, equipment materials and services for the common use of subcontractors.
- 2.1.7.2. The Construction Manager shall review the 100% Construction Documents and provide review comments and corrections to the Architect and Owner. After such 100% Construction Document review and corrections recommended by the Construction Manager have been made by the Architect, the Construction Manager shall ensure that the corrected Construction Documents are issued during the bidding process; provided, however, that the Construction Manager's obligations under this Section are dependent upon the proper and timely performance of Architect and Owner acting in coordination with Construction Manager. The cost of the printing for the bidding will be borne by Construction Manager as an element of general conditions costs. The Construction Manager is responsible for maintaining the bidding schedule and ensuring that a minimum of three (3) bids are submitted relative to each bid package or procurement item.
- 2.1.7.3. Bid packages shall be substantially in the form of the bid package typically used by Construction Manager as approved by Owner, which approval shall not be unreasonably, withheld, conditioned or delayed. The Construction Manager shall solicit bids from qualified subcontractors and suppliers included on the list developed by Owner and Construction Manager. All bids shall be submitted for opening and review directly to Senior Contract Management Liaison, Washington University, Purchasing Services, 700 Rosedale, St. Louis, Missouri 63112. Owner and Construction Manager shall determine which bids shall be selected.
- 2.1.7.4. The Construction Manager shall provide assistance to bidders during the bidding period of this Project. Services shall include forwarding design related questions to the Architect and distributing responses to bidders, answering bidders construction -related questions, and distributing addenda prepared by the Architect.
- 2.1.7.5. The Construction Manager shall organize and participate in pre -bidding conferences as necessary to ensure success of the Project. Owner and Architect shall attend and participate in all such conferences as requested by Construction Manager.
- 2.1.7.6. For each bid package or procurement item, the Construction Manager shall conduct a Post -Bid Conference with the apparent low bidder and the next low bidder, if necessary, to ascertain if the bids received were complete, to review bonding capability, and to determine if any bidding discrepancies exist. Construction Manager may conduct such conferences by telephone.
- 2.1.7.7. The Construction Manager shall discuss options and make recommendations to the Owner after each Post-Bid Conference.
- 2.1.7.8. Using its standard subcontract form, the Construction Manager shall prepare and enter into contracts directly with subcontractors, material and equipment suppliers and service vendors for each bid package or procurement item. Each subcontract shall include a provision that binds the subcontractor or supplier to the same duties and obligations as the Construction Manager owes to Owner. The Construction Manager shall include any special terms and conditions covering specific project requirements, Site conditions, or invoicing procedures, as agreed by Owner and Construction Manager. No subcontracts shall be awarded on the basis of cost plus a fee without prior consent of the Owner.

2.1.8. Long-Lead Time Items

The Construction Manager shall recommend to the Owner and Architect a schedule for procurement of long-lead time items, which will constitute part of the Work as required to meet the Project Schedule. If Owner elects at its sole discretion to procure such long-lead time items, then, upon the Owner's acceptance of the Construction Manager's GMP Proposal, all contracts entered into by Owner 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.

2.1.9. Extent of Responsibility

The Construction Manager does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. 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, in its review of the Drawings and Specifications and in making any recommendations concerning Site, foundations, systems, materials, construction feasibility for design errors, omissions or inconsistencies, if the Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, the Construction Manager shall promptly notify the Architect and Owner in writing.

2.1.10. Guaranteed Maximum Price Proposal

2.1.10.1. At such time as directed by Owner, the Construction Manager shall propose a Guaranteed Maximum Price, which shall be the sum of the estimated Cost of the Work, the general conditions and the Construction Manager's Fee (the "GMP Proposal").

2.1.10.2. As the Drawings and Specifications may not be finished at the time the GMP Proposal is prepared, the Construction Manager shall take into consideration, when developing its Guaranteed Maximum Price, possible changes during further development of the Drawings and Specifications by the Architect that are 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, all of which, if required, shall be incorporated by Change Order.

2.1.11. Basis of Guaranteed Maximum Price

The Construction Manager shall include with the GMP Proposal a written statement of its basis, which shall include:

2.1.11.1. The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the fee that comprise the Guaranteed Maximum Price.

2.1.11.2. A list of the Drawings and Specifications, including all addenda thereto and the General Conditions, which were used in preparation of the GMP Proposal.

2.1.11.3. A list of allowances and a statement of their basis.

2.1.11.4. A list of the clarifications and assumptions made by the Construction Manager in the preparation of the GMP Proposal to supplement the information contained in the Drawings and Specifications.

2.1.11.5. The Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.

2.1.12. The GMP Proposal shall be open for acceptance for a period of not less than ninety (90) days or such longer period as specified in the GMP Proposal.

2.1.13. The Construction Manager shall meet with the Owner and Architect to review the GMP Proposal and the written statement of its basis. In the event that the Owner or Architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the GMP Proposal, its basis or both.

2.1.14. Following Owner's review of the GMP Proposal, Owner, in its sole discretion, may (i) accept the proposal, (ii) reject the proposal and terminate this Agreement pursuant to Section 9.3, or (iii) reject the proposal and proceed to negotiate a revised Guaranteed Maximum Price.

2.1.14.1. If Owner accepts the GMP Proposal, the Guaranteed Maximum Price and its basis shall be set forth in a GMP Amendment (the "GMP Amendment"). The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents and the date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

2.1.14.2. If Owner rejects the proposal and elects to terminate the Agreement pursuant to Section 9.3, Owner shall pay Contractor for its Pre-Construction Services pursuant to Article 4.

2.1.14.3. If Owner rejects the proposal and elects to proceed with negotiating a revised Guaranteed Maximum Price, Contractor, with approval of Owner may proceed to perform the Work until such time that Owner accepts a proposal or terminates this Agreement.

2.1.15. Prior to the Owner's acceptance of the Construction Manager's GMP Proposal, 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.

2.1.16. Upon acceptance, 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 obtained in the GMP Amendment. 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.

2.2. Construction Phase

2.2.1. General

2.2.1.1. The date of commencement is the date from which the Contract Time is measured, and shall be the date of this Agreement, as first written above, unless a different date is stated below or in the GMP Amendment or provision is made for the date to be fixed in a notice issued by Owner.

DATE OF COMMENCEMENT: Monday, January 01, 0001

2.2.1.2. Construction Manager shall achieve Substantial Completion of the entire Work not later than

Liquidated Damages:

OWNER AND CONSTRUCTION MANAGER AGREE THAT TIMELY COMPLETION OF THE WORK IS OF THE ESSENCE IN THIS AGREEMENT.

2.2.2. Administration

2.2.2.1. Promptly after the Owner's acceptance of the GMP Proposal, the Construction Manager shall prepare a schedule at such time when the Owner and Construction Manager agree it is appropriate in accordance with the WU General Conditions.

2.2.2.2. The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect at regular intervals.

2.2.2.3. The Construction Manager shall maintain at the Project Site one record copy of all Subcontracts, Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction. The Construction Manager shall also assist the Owner in arranging for the delivery, storage, protection and security of the Owner-purchased materials, systems and equipment that are part of the Project until such items are incorporated into the Project.

- 2.2.2.4. The Construction Manager shall review and coordinate the safety programs developed by each of the Subcontractors. The Construction Manager shall assure that all Subcontractors initiate, maintain and comply with all appropriate safety precautions and programs in connection with the Work, including, without limitation, Owner's Safety Guidelines for Contractors. Construction Manager shall monitor the individual safety programs of each Subcontractor on the Project Site. The Construction Manager and its Subcontractors shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to: (1) all employees performing any of the Work, and all other persons who may be affected thereby, (2) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Construction Manager or any of the Subcontractors performing Work on the Project, and (3) other property at the Site or reasonably proximate thereto. The Construction Manager and its Subcontractors shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss, and shall require all persons performing Work on the Project to comply with any policies and rules of the Construction Manager or Owner relating to access or behavior at the Project Site.
- 2.2.2.5. 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.
- 2.2.2.6. The Construction Manager shall provide monthly written reports to the Owner and Architect on the progress of the entire Work. Such reports shall identify variances between actual and scheduled completion dates for critical path activities and other significant activities and shall identify any applicable trends. 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 the Architect.

2.3. Professional Services

The Construction Manager shall not be required to provide professional services which constitute the practice of architecture or engineering, except to the extent such services (i.e., design build services) are specifically required by the Contract Documents for a portion of the Work or unless the Construction Manager has specifically agreed in writing to provide such services. In such event, the Construction Manager shall cause such services to be performed by appropriately licensed professionals. In all such circumstances, Construction Manager and such licensed professional shall cooperate with Architect in connection with any design work.

ARTICLE 3. OWNER'S RESPONSIBILITIES

- 3.1. Owner shall provide available information regarding the requirements for the Project including a program, which shall set forth Owner's design objectives, constraints and criteria, space requirements and relationships, flexibility and expandability, special equipment and systems and Site requirements. Additional information, if required by Construction Manager, will be developed jointly by Owner, Architect and Construction Manager after review of the initial program, which joint development of such information shall be included as part of Construction Manager's services under the Preconstruction Phase.
- 3.2. Owner shall, with the assistance of Construction Manager and Architect, establish and update a Construction Cost Budget for the Project.
- 3.3. Owner shall designate an Owner's Representative who shall render decisions in a timely manner pertaining to documents submitted by Construction Manager in order to avoid unreasonable delays in the orderly and sequential progress of the Work.
- 3.4. Owner shall furnish reasonably available information describing physical characteristics, legal limitations and utility locations for the Project Site.
- 3.5. Owner's Representative shall notify Construction Manager if Owner's Representative becomes aware of any defect in the Project or nonconformance with the Contract Documents.

- 3.6. The Owner shall retain an Architect to provide the Basic Services, all as described in the Washington University in St. Louis Standard Form of Agreement between Owner and Architect (the "Architect's Contract"). The Owner shall authorize and cause the Architect to provide those Additional Services described in the Architect's Contract and reasonably 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.

ARTICLE 4. COMPENSATION AND PAYMENT FOR PRECONSTRUCTION PHASE SERVICES

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

- 4.1. For the services described in Section 2.1, the Construction Manager's compensation shall be calculated as follows:
- \$0.00
- 4.2. Compensation for Preconstruction Phase services shall be equitably adjusted if the originally contemplated scope of services is significantly modified.
- 4.3. 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.
- 4.4. Payments shall be made monthly following presentation of the Construction Manager's invoice and, where applicable, shall be in proportion to services performed.

ARTICLE 5. COMPENSATION FOR CONSTRUCTION PHASE SERVICES

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

- 5.1. Compensation
- 5.1.1. For the Construction Manager's performance of the Work as described in Section 2.2, the Owner shall pay the Construction Manager in current funds the Contract Sum consisting of (i) the Cost of the Work as defined in Article 6 and (ii) the Construction Manager's Fee of % of the Cost of the Work as set forth in the GMP Amendment. In addition, Owner and Contractor agree to share any savings based on the difference between (a) Cost of the Work plus Construction Manager's fee and (b) the total GMP. Construction Manager shall be entitled to receive % of any savings provided, however, that in no event shall Construction Manager be entitled to receive any amount of savings in excess of which limit shall serve as a cap on the maximum savings total for Construction Manager. All other savings shall be retained by Owner.
- 5.2. Guaranteed Maximum Price
- 5.2.1. The sum of the Cost of the Work and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount provided in the GMP Amendment as subsequently executed between the parties, subject only to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Document as the Guaranteed Maximum Price. Any costs which would cause the Guaranteed Maximum Price to be exceeded shall be the sole responsibility of the Construction Manager without reimbursement by the Owner. Owner shall have no obligation to pay Construction Manager any amounts in excess of the Guaranteed Maximum Price.
- 5.3. Changes in the Work
- 5.3.1. Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the GMP Amendment may be determined by any of the methods listed in the Contract Documents.

- 5.3.2. Adjustments to any subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.
- 5.3.3. In calculating adjustments to the Agreement, the terms 'cost' and 'costs' shall mean the Cost of Work as defined in Article 6 of this Agreement and the terms 'and a reasonable allowance for overhead and profit' shall mean the Construction Manager's Fee as referenced in Section 5.1.1 of this Agreement.

ARTICLE 6. COST OF THE WORK

6.1. Costs to be Reimbursed

- 6.1.1. Costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall not be at rates higher than those customarily paid at the place of the Project except with prior written consent of the Owner. The Cost of the Work shall include only those items marked with an "x" under the column labeled "Cost of the Work" in the Cost Matrix, as may be further described and/or clarified in this Article 6 along with the items related to obtaining minimum level LEED certification for the Project as provided for in Section 11.2.
 - 6.1.1.1. Costs of materials (to be incorporated in the completed construction) in excess of those actually installed, but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work in accordance with the Contract Documents.
 - 6.1.1.2. Rental charges shall be reasonable and customary and consistent with a list of rental charges previously reviewed and approved by Owner. Quantities of equipment rented shall be subject to the Owner's prior approval. Under no circumstances shall rental charges exceed 75% of the purchase cost of new machinery or equipment.
 - 6.1.1.3. Travel and subsistence expenses of the Construction Manager's full-time field personnel are permitted only when such individuals are traveling outside of Missouri or Illinois in discharge of duties connected with the Work. Such expenses shall only be reimbursable to the extent that they are incurred in accordance with Owner's Guidelines for Allowable Reimbursable Expenses, a copy of which is available for review at the Department of Facilities Planning and Management (at Danforth) and the offices of the Division of Design and Construction (at WUSM). A per diem and transportation allowance may be reimbursed with prior written approval of Owner.
 - 6.1.1.4. The cost for repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers constitutes a Cost of the Work 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.
- 6.1.2. General Conditions Costs. The cost for general conditions incurred as part of the Work on the Project shall include only those items marked with an "x" under the column labeled "Gen. Cond." in the Cost Matrix.

6.2. Discounts, Rebates and Refunds

- 6.2.1. Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if, before making the payment, the Construction Manager included them in an Application and received payment therefore from the Owner. 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.
- 6.2.2. Amounts which accrue to the Owner in accordance with the provisions of Section 6.2.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 7. CONSTRUCTION PHASE

7.1. Progress Payments

- 7.1.1. Upon approval by the Owner's Representative of Applications for Payments submitted by the Construction Manager, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager in accordance with the WU General Conditions.
- 7.1.2. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.
- 7.1.3. In addition to the items required in the WU General Conditions, the Construction Manager shall submit the following with each Application for Payment: payrolls, petty cash amounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to substantiate and verify any and all cash disbursements and other disbursements already made by the Construction Manager in connection with the Project.
- 7.1.4. Each application for Payment shall be based upon the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various divisions of the Work, except that the Construction Manager's Fee shall be shown as a single fixed and separate item. Construction Manager shall not reallocate any value from one division of work to another without expressly identifying such proposed change in allocation to Owner and obtaining Owner's prior written approval. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner and Architect may require. This schedule, unless objected to by the Owner or Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.
- 7.1.5. Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the newest Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.
- 7.1.6. Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
 - 7.1.6.1. Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.
 - 7.1.6.2. Add that portion of the Guaranteed Maximum Price 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.
 - 7.1.6.3. Add the Construction Manager's Fee, less retainage of ten percent (10%) as provided in the WU General Conditions. The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding subsections at the rate stated in Section 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in the GMP Amendment, shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Sections bears to a reasonable estimate of the probable Cost of the Work upon its completion.
 - 7.1.6.4. Subtract the aggregate of previous payments made by the Owner.
 - 7.1.6.5. Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.3 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation.
 - 7.1.6.6. Subtract amounts, if any, which the Owner's Representative has refused to approve by reason of Construction Manager's failure to comply with any of the provisions of this Agreement .
- 7.1.7. The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

- 7.1.8. 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.
- 7.1.9. In taking action on the Construction Manager's Applications for Payment, the Owner's Representative 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 Owner's Representative has made a detailed examination, audit, or arithmetic verification of the documentation submitted in accordance with Section 7.1.3 or other supporting data; that the Owner's Representative has made exhaustive or continuous on -site inspections or that the Owner's Representative has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Agreement. Such examinations, audits and verification, 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. In addition to the requirements in Section 32 of the WU General Conditions, final payment shall be made by the Owner to the Construction Manager when (1) the Agreement has been fully performed by the Construction Manager; (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 approval of the Construction Manager's Application for Final Payment has been issued by the Owner's Representative or Architect.
- 7.2.2. The amount of the final payment shall be calculated as follows:
 - 7.2.2.1. Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee; but not more than the Guaranteed Maximum Price.
 - 7.2.2.2. Subtract amounts, if any, for which the Owner's Representative refuses to approve by reason of Construction Manager's failure to comply with any of the provisions of this Agreement .
 - 7.2.2.3. Subtract the aggregate of previous payments made by the Owner.
- 7.2.3. The Owner's accountants will review and report in writing on the Construction Manager's final accounting within forty-five (45) days after delivery of the final accounting to the Owner's Representative by the Construction Manager. Based upon such Cost of the Work as substantiated by the Owner's accountants' report, and provided the other conditions of Section 7.2.1 have been met, the Owner's Representative will, within seven (7) days after receipt of the written report of the Owner's accountants, either issue or cause to be issued to Construction Manager approval of Construction Manager's final Application for Payment, or notify the Construction Manager in writing of the Owner's reasons for withholding approval as provided in Article 33 of the WU General Conditions. 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 .
- 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 10. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the final Certificate for Payment.

ARTICLE 8. INSURANCE AND BONDS

8.1. Insurance Required of the Construction Manager

Construction Manager shall comply with all insurance requirements set forth in the WU General Conditions.

8.2. Performance Bond and Payment Bond

- 8.2.1. The Construction Manager furnish bonds covering faithful performance of the Agreement 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.

ARTICLE 9. TERMINATION AND SUSPENSION

- 9.1. Termination by Owner for Cause. Owner may terminate this Agreement, upon seven (7) days' written notice to Construction Manager, under any of the following circumstances: (a) Construction Manager fails or neglects to perform its work or services in accordance with the terms of the Contract Documents and fails to commence, continue and make reasonable progress, as determined by Owner, towards the correction of such nonperformance or breach within such seven (7) days after the date of Owner's notice of intent to terminate, or (b) Construction Manager files or consents to the filing of a petition or complaint commencing a bankruptcy or other insolvency proceeding filed against it, or fails to have a petition or complaint in bankruptcy or other insolvency proceeding filed against it by a third -party dismissed within forty-five (45) days after it is filed, or makes a general assignment for the benefit of its creditors.
- 9.2. Owner's Remedies Upon Termination for Cause. In the event of termination of this Agreement pursuant to Section 9.1 above, Construction Manager shall be responsible to Owner for all costs, expenses and damages incurred by Owner as a result of Construction Manager's failure to perform the Work in accordance with the Contract Documents as required by the provisions herein, including any costs, expenses and damages associated with completing the Work through a replacement contractor ("Completion Costs"). Construction Manager shall be entitled to no further payments until such time that the Work is finished and Owner has determined the Completion Costs that it has incurred. If the sum of the Completion Costs plus the amounts previously paid to Construction Manager exceeds the GMP, the Construction Manager shall pay to Owner the amount in excess of the GMP. If the sum of the Completion Costs plus the amounts previously paid to Construction Manager is less than the GMP, Owner shall pay to Construction Manager any unpaid balance of the amounts due to Construction Manager for Work properly performed by Construction Manager and accepted by Owner, but only to the extent that such payment does not cause the sum of the Completion Cost plus the payments to Construction Manager to exceed the GMP. This obligation for payment shall survive termination of the Agreement.
- 9.3. Termination by Owner for Convenience. In addition to the reasons set forth in the Section 9.1 above, Owner may terminate this Agreement without cause (at any time) upon seven (7) days' written notice to Construction Manager. In the event Owner so terminates this Agreement, Construction Manager shall be entitled to payment for the Work actually and properly performed by Construction Manager as of the date of the written notice of termination, measured by the percentage of completion achieved by Construction Manager in connection with each applicable work category as set forth in the Schedule of Values. Further, in the event Owner so terminates this Agreement, Owner agrees to pay for services, materials and supplies ordered by Construction Manager prior to the date of written notice of termination, for use in connection with the Project, and necessary for the reasonable discharge of Construction Manager's responsibilities under this Agreement, or, if applicable, cancellation charges for such services, materials and supplies, to the extent such services, materials and supplies cannot be discontinued by Construction Manager without cost or penalty upon notice of termination and for the reasonable value (based on purchase or rental as applicable) of any equipment retained by Owner and the reasonable costs of cleanup, removal of debris and removal of equipment, trailers and machinery used at the Site of the Project incurred as a result of the termination. Any termination of this Agreement by Owner for cause that is later determined to be unjustified shall be treated as a termination for convenience.
- 9.4. Suspension by Owner. Owner may order Construction Manager to suspend, delay or interrupt the Work, in whole or in part, for any reason and for such period of time as Owner may determine. Upon resumption of the Work, an adjustment shall be made for any reasonable increases in the cost of performance of the Work substantiated by Construction Manager to Owner, including profit on the increased cost of performance resulting from the suspension, delay or interruption ordered by Owner. However, no adjustment shall be made to the extent: (1) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which Construction Manager is responsible; or (2) that an equitable adjustment is made or denied under another provision of the Contract Documents (except as to costs and expenses paid by Construction Manager to its Subcontractors and materialmen).
- 9.5. Suspension by Construction Manager. Construction Manager may suspend the performance of the Work under this Agreement if Owner fails to make payment to Construction Manager of any amounts that are not in dispute, within thirty (30) days after such undisputed payment is due, for Work performed by Construction Manager and accepted by Owner pursuant to the Contract Documents. In such event, Construction Manager may, upon seven (7) days written notice to Owner, suspend the performance of the Work under this Agreement. Unless such payment is thereafter received by Construction Manager within such seven (7) days, the suspension shall take effect without further notice to Owner. In the event of a suspension of Work pursuant to this Section 9.5, Construction Manager shall have no liability to Owner for delay or damage caused to Owner because of suspension of the Work, and upon resuming performance, shall be entitled to a Change Order addressing increases in the cost of performance of the Work including profit on the increased cost of performance resulting from such suspension.

- 9.6. Termination by Construction Manager. Construction Manager may terminate this Agreement if (a) Owner fails to make payment to Construction Manager of any amounts that are not in dispute within thirty (30) days after suspension pursuant to Section 9.5; (b) Owner suspends the Work for more than one hundred eighty (180) consecutive days; or (c) Owner breaches any other material obligation of Owner herein and fails to correct such breach within thirty (30) days of notice or if such breach cannot be corrected in such thirty (30) day period, Owner fails to commence, continue and make reasonable progress towards the correction within thirty (30) days after such notice. In such event, Construction Manager may, upon seven (7) days' written notice to Owner, terminate this Agreement, unless, as applicable, such payment is thereafter received by Construction Manager, the suspension is lifted, the breach is corrected, or Owner has commenced correction and is making reasonable progress towards correcting, which termination shall take effect without further notice to Owner.
- 9.7. Construction Manager Remedies Upon Termination. Upon termination of this Agreement pursuant to Section 9.6 above, Owner shall pay Construction Manager for all Work performed by Construction Manager up to and including the date of termination and accepted by Owner pursuant to the Contract Documents, which amount shall be measured by the percentage of completion achieved by Construction Manager in connection with each applicable work category as set forth in the Schedule of Values. Further, in the event of such termination, Construction Manager shall be paid for services, materials and supplies ordered prior to the date of termination by Construction Manager, for use in connection with the Project and necessary for the reasonable discharge of Construction Manager's responsibilities under this Agreement or, if applicable, cancellation charges for such services, materials and supplies, to the extent such services, materials and supplies cannot be discontinued by Construction Manager without cost or penalty upon notice of termination. Notwithstanding the foregoing, Construction Manager shall have the duty to mitigate all such damages resulting from such termination. Construction Manager shall be entitled to no other costs, damages or expenses in connection with the termination of this Agreement except as provided by law.
- 9.8. Sole Remedy. Construction Manager's sole and exclusive rights in the event of termination or suspension shall be those set forth in this Article, and Construction Manager shall be entitled to no additional compensation and shall have no additional or other rights of any kind, type or nature arising out of or under this Agreement by virtue of such termination or suspension.
- 9.9. Drawings. Upon termination of this Agreement for any reason, Construction Manager shall within seven (7) days after the date of the notice of termination, deliver to Owner, at no additional charge, a complete set of all original Drawings, Specifications, operations and maintenance manuals, Coordination Drawings, Submittals, shop drawings, and CAD files prepared for the Project by or through Construction Manager prior to the date of termination. Upon delivery of such documents, Construction Manager, for itself and on behalf of its Subcontractors, assigns to Owner any intellectual property rights that Construction Manager or its Subcontractors may have in such original Drawings and Owner shall have the right to use such documents and the ideas and designs contained therein for the completion of the Project and for information and reference in connection with Owner's use and occupancy of the Project without compensation to Construction Manager (except as otherwise provided herein) provided such termination has occurred in accordance with this Article 9.

ARTICLE 10. MISCELLANEOUS PROVISIONS

- 10.1. **Dispute Resolution**
- 10.1.1 The parties will attempt in good faith to promptly resolve any controversy or claim arising out of or relating to this Agreement by negotiation between senior executives of the Parties who have authority to settle the controversy.
- 10.1.2 If the controversy or claim has not been resolved within thirty (30) days of the meeting of the senior executives, the Parties shall endeavor to settle the dispute by mediation under the Construction Mediation Rules of the American Arbitration Association.
- 10.1.3 If the matter has not been resolved pursuant to the aforesaid mediation procedure within sixty (60) days of the commencement of such procedure, or any extension thereto, either Party may pursue litigation in any court of competent jurisdiction. Venue for any litigation shall be proper only in the jurisdiction where the Project is located. Nothing contained in subparagraph 10.1.1 or 10.1.2 shall extend any applicable statute of limitations period.
- 10.2. **Other Provisions**
- Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in the WU General Conditions.
- 10.3. **Ownership and Use of Documents**

The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Construction Manager, are for use solely with respect to this Project. They are not to be used by the Construction Manager, Subcontractors, Sub-subcontractors or suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of the Owner and Architect. The Construction Manager, Subcontractors, Sub-subcontractors and suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents.

- 10.4. This Agreement represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements either written or oral. This Agreement may be amended or modified only by a written instrument executed by Owner and Construction Manager.
- 10.5. Construction Manager shall not assign or transfer any interest in this Agreement without the prior written consent of Owner. Owner may assign and/or transfer its interest in this Agreement at any time (a) without the consent of Construction Manager to any affiliate of Owner, and/or to any partnership or joint venture in which Owner or its affiliate shall be a general partner or a venturer, and (b) with the consent of Construction Manager, which consent shall not be unreasonably withheld or delayed, to any other person or entity; provided, however, that in the event of any assignment or transfer pursuant to (a) or (b) above, Owner shall be liable to Construction Manager for payments to be made hereunder. The term "affiliate" shall be deemed to refer to all entities in a direct or indirect parent, subsidiary or corporate relationship to Owner.
- 10.6. The paragraph titles, headings and captions contained in this Agreement are used for convenience and reference only and are not intended and shall not in any way enlarge, define, limit or extend the rights or obligations of the parties or affect the meaning or construction of this Agreement or any provision of the Contract Documents.
- 10.7. In case any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of all remaining provisions shall be not affected.
- 10.8. The duties and obligations imposed by this Agreement, and the rights and remedies available hereunder, shall be in addition to and not in limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.
- 10.9. This Agreement shall be governed by the laws of the State of Missouri.

ARTICLE 11. OTHER CONDITIONS AND SERVICES

- 11.1. Contract Documents. For purposes of this Agreement, the GMP Amendment shall be included in the definition of Contract Documents as that term is defined in Article 1 of the WU General Conditions.

- 11.2. LEED Certification

Construction Manager acknowledges that Owner may apply for LEED certification for the Project. Construction Manager shall have on staff a LEED Accredited Professional ("LEED AP") who has experience in constructing LEED certified projects and shall, as requested by Owner, administer the LEED certification process using its best efforts to cooperate with Architect and assist the Owner to achieve the desired LEED certification for the Project. The LEED AP must be an integral part of the construction management team for the Project. In lieu of a LEED AP on staff, Construction Manager may employ a LEED AP with a minimum experience in completing two (2) LEED certified projects to satisfy the requirements of this section. Notwithstanding the foregoing, the LEED certification process is administered by an independent third party, the Green Building Certification Institute, and the parties hereto acknowledge that the outcome of the LEED certification process is uncertain, is not controlled by Construction Manager, and is not guaranteed by Construction Manager.

Construction Manager represents that it is familiar with the requirements for LEED certification and with the Contract Documents. Construction Manager shall perform the Work in accordance with the LEED checklist to the extent that such checklist and criteria therein are consistent with the requirements of the Contract Documents, including but not limited to LEED criteria which relate to procurement of materials, on-site installation practices and construction waste management. To the extent that Construction Manager is aware of, or becomes aware of a conflict between the Contract Documents and the requirements for the applicable LEED certification, Construction Manager shall immediately advise Owner and Architect of the conflict. Construction Manager shall also collect from its material suppliers, subcontractors and other third parties performing Work on or for the Project, all documentation necessary to support the LEED certification level set by Owner for the Project. Except with respect to Construction Manager's affirmative obligation to report discrepancies between the LEED criteria and the Contract Documents as required above, Owner acknowledges that Construction Manager shall not be responsible for design elements in the Contract Documents that conflict with LEED criteria, except to the extent that Construction Manager also serves as design-builder with respect to any portion of the Project.

All costs incurred by Construction Manager in complying with the LEED checklist, including, without limitation, the cost of retaining a LEED consultant, shall be part of the Cost of the Work as that term is defined in Section 6.1 of this Agreement.

Except with respect to Construction Manager's express obligations regarding the LEED checklist and the LEED certification process set forth in this Section 11.1, Construction Manager makes no representation or warranty to Owner with respect to whether (a) the Contract Documents design a project which will result in LEED certification for the Project being granted, (b) any LEED certification will be obtained regardless of whether construction of the Project in compliance with the Contract Documents should entitle the Project to such certification, or (c) any of the Owner's anticipated benefits of the Project achieving any LEED certification will be obtained.

Application for and obtaining any LEED certification shall not be taken into account for the purpose of determining whether Substantial Completion of the Project (or any phase thereof) has been achieved. Application for and obtaining of any LEED certification shall be taken into account for the purpose of determining whether Final Completion of the Project has been achieved, although failure of the Project to receive the applicable level of LEED certification after all avenues for appeal of such decision have been exhausted shall not preclude the Project from being considered finally complete nor prevent release of retainage and Final Payment to Construction Manager in accordance with Article 32 of the WU General Conditions.

