

CONTRACT BETWEEN KCTCS AND CONSTRUCTION MANAGER/ GENERAL CONTRACTOR

This Agreement between Owner, Kentucky Community and Technical College System (KCTCS) and Construction Manager / General Contractor (CM/GC) is made as of this **** insert date**** by and between the Kentucky Community and Technical College System, hereinafter called the Owner, and ****** insert CM/GC Name and address******, hereinafter called the Construction Manager / General Contractor (CM/GC), which is authorized to do business in Kentucky.

WITNESSETH:

THAT, for and in consideration of the covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner and the Construction Manager/ General Contractor agree as follows:

ARTICLE 1 THE PROJECT

1.1 The Project is described in the documents enumerated in Attachment **A1** and as follows:

*******Insert project description*******

ARTICLE 2 THE CONTRACT DOCUMENTS

2.1 The Contract Documents consist of the Request for Proposal document; this Contract and all addenda to this Contract; the Construction Manager / General Contractor's response to the Request for Proposal for Construction Manager/ General Contractor services; the General Conditions to this Contract; the Special Conditions and Supplemental conditions (if any) to this Contract; the Construction Manager's bonds; the Construction Documents including all plans and specifications and Fee Schedule (**Exhibit B**) and associated qualifications and assumptions when executed, now existing or issued hereafter; any amendments or addenda executed by the Owner and the Construction Manager / General Contractor hereafter; approved change order (s) or field orders; and also the most current Kentucky Community and Technical College System, Office of Facilities Support Services (KCTCS FSS) Capital Project Procedures Manual (also known as Manual of Policies and Procedures: FSS).

2.2 The Contract Documents shall not be construed to create a contractual relationship of any kind between the Owner and any Trade Contractor or any person or entity other than the Construction Manager / General Contractor.

2.3 Documents not included or expressly contemplated in this Article 2 do not, and shall not, form any part of the Contract for Construction. Without limiting the generality of the foregoing, it is specifically agreed that shop drawings and other submittals from the Construction Manager / General Contractor or its Trade Contractors and suppliers do

not constitute a part of the Contract Documents.

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

ARTICLE 3 CONSTRUCTION MANAGER / GENERAL CONTRACTOR'S SERVICES

3.1 The Construction Manager / General Contractor's Services under this Agreement include General Project Services -- Pre-Construction and Construction Services. In performing these Services, the Construction Manager shall furnish or cause to be furnished (i) all labor, equipment, goods and materials now or hereafter required by this Contract for Construction (hereinafter defined) to successfully plan, construct and complete the Work; (ii) all construction management and supervisory services required by this Contract for Construction to successfully plan, construct and complete the Project.

3.1.1 The Construction Manager / General Contractor represents to the Owner that it (i) is experienced in providing construction management services for projects of similar size and complexity as this Project; (ii) is authorized and licensed to perform the type of labor and services for which it is being engaged; (iii) is qualified, willing and able to perform construction management services for the Project; and (iv) and as embodied in the plans and specifications, has the expertise and ability to provide construction management services which will meet the Owner's objectives and requirements and which will comply with the requirements of all governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project. The Construction Manager / General Contractor acknowledges that it has reviewed and familiarized itself with the Contract Documents, including the documents enumerated in Article 2, and agrees to be bound by the terms and conditions contained therein.

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

3.3 **General Project Services.** The Construction Manager / General Contractor agrees to:

3.3.1 Provide all services required to professionally complete the Work in an expeditious and economical manner consistent with this Contract and the best interests of

the Owner, and in compliance with all applicable law.

3.3.2 Endeavor to develop, implement and maintain, in consultation with the Owner, the Consultant(s), and the Trade Contractors, a spirit of cooperation, collegiality, and open communication among the parties so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and, upon completion, the Project is deemed a success by all parties.

3.3.3 All of Construction Manager / General Contractor's services shall be performed in accordance with schedule requirements.

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

3.4(a) Design Review Services

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

3.4(a)(2) The Consultant(s) is(are) required, in accordance with current project schedule requirements, to provide design drawings during the Schematic Design, Design Development and Construction Documents phases. The Construction Manager / General Contractor, not acting as an architect or engineer and without assuming any authorship responsibility for the design drawings, shall promptly and in accordance with current project schedule requirements:

- 1) familiarize itself with the approved program;
- 2) familiarize itself with the design drawings;
- 3) analyze and evaluate jobsite management, site logistics, staging, budget, phasing and schedule considerations;
- 4) analyze and evaluate the constructability of the Work illustrated by the design drawings at each phase of design with respect to construction methodology, schedule, budget and site logistics;
- 5) analyze and evaluate each of the design drawings in regard to the completeness of intended bid categories, conflicts or overlaps in the divisions of the Work, design details affecting construction including constructability, completeness and/or any conflicts, value engineering, identification of long-lead materials affecting the Construction Schedule, availability of labor and other factors affecting construction; and
- 6) identify conceptual decisions it will be necessary to make in order to prepare accurate estimates of probable cost with the fewest assumptions, qualifications and exclusions.

3.4(a)(3) The Construction Manager / General Contractor and the Consultant(s) shall jointly schedule and attend regular meetings and design phase review meetings with the Owner and evaluate the design drawings. The Consultant(s) shall prepare and distribute minutes of these meetings, and the Construction Manager / General Contractor shall verify the accuracy and completeness of the minutes.

3.4(a)(4) The Construction Manager / General Contractor shall, in accordance with schedule requirements, notify the Consultant(s) in writing and assist the Consultant(s) with the resolution, of all problems, conflicts, defects or deficiencies discovered by the Construction Manager / General Contractor identified during the review and evaluation of the design drawings.

3.4(a)(5) Upon receipt of the design drawings at the completion of each design Phase A (SD - Schematic Design), Phase B (DD - Design Development) and Phase C (CD - Construction Documents) and RTA (Ready to Advertise Documents or Bid Documents) the Construction Manager / General Contractor shall, in accordance with schedule requirements, prepare and submit an estimate of Total Project Construction Cost broken down by line item into major construction disciplines and systems.

3.4(a)(6) The Construction Manager / General Contractor and Consultant(s) shall reconcile, and make recommendations on, the differences between the CM/GC's estimate and the Consultant's estimate.

3.4(a)(7) The Construction Manager / General Contractor shall provide information detailing its review in preparation of its estimate of Total Project Construction Cost. In this regard, at the end of the Schematic Design phase, the Construction Manager / General Contractor shall provide the constructability review as a written document or letter to Owner summarizing such information reviewed and confirming that the concept selected can be constructed within the parameters identified in the CM/GC schematic estimate. At each subsequent design phase set forth in the design schedule, the Construction Manager / General Contractor shall provide such information in the form of a report containing a detailed description of Construction Manager / General Contractor's review. Such letter and reports shall be provided to Owner in accordance with the schedule set forth on **Exhibit A**.

3.4(b) Construction Documents Review Services

3.4(b)(1) The Consultant(s) is (are) required, in accordance with current project schedule requirements, to provide construction documents and other information for review.

3.4(b)(2) The Construction Manager / General Contractor shall, in accordance with current project schedule requirements; review applicable Construction Schedule(s); the estimate of Total Project Construction Cost; fees for permits and licenses, if any; modifications necessitated by local conditions; and other information necessary for a full understanding of the Project and the Construction Documents. The Construction Manager / General Contractor shall:

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

3.4(b)(3) The Construction Manager / General Contractor shall, in accordance with schedule requirements, assist the Consultant(s) with the resolution of all problems, conflicts, defects or deficiencies identified during the review and evaluation of the Construction Documents.

3.4(b)(4) Upon receipt of the design drawings at the end of each design phase, the Construction Manager / General Contractor shall, in accordance with schedule requirements and **Exhibit A**, prepare and submit an estimate of Total Project Construction Cost broken down by line item into major construction disciplines and systems. Prior to bidding each Bid Package the CM/GC shall provide breakout pricing for each Trade Package based on the most recent estimate of total project construction cost. The Conceptual and Schematic Design estimates shall be performed in Construction Specifications Institute (CSI) Uni-Format and the Design Development and Construction Document estimates shall be performed in CSI Master Format.

3.4(b)(5) The Consultant will also prepare an opinion of probable cost at the end of each design phase of each Bid Package and, in addition, at 50% completion of the Construction Documents for selected Bid Packages. The Construction Manager / General Contractor and Consultant(s) shall reconcile and make recommendations on the differences between the CM/GC's estimate and the Consultant's estimate. If these estimates by the Construction Manager / General Contractor and by the Consultant(s) differ materially, the Consultant and the CM/GC shall meet promptly to reconcile the

discrepancies between their estimates so as to permit submission to the Owner of a final estimate of Total Project Construction Cost on which both agree.

3.4(c) Planning and Scheduling Services

3.4(c)(1) The Construction Manager / General Contractor understands and acknowledges the Owner's intent that the Project will be complete by the Date of Substantial Completion. The Construction Manager / General Contractor shall timely prepare and submit the Construction Schedule for the Owner's review. The Construction Schedule shall complement, and shall not conflict with, the Design Schedule.

3.4(c)(2) The Construction Manager / General Contractor shall submit an initial Construction Schedule by the date set forth on **Exhibit A**; a final Construction Schedule with the Guaranteed Maximum Price proposal; and revised Construction Schedules in accordance with the **General Conditions**. Schedules shall include any phasing requirements of owner occupancy or moving as a part of the schedule allowing sufficient time for these events to occur in conjunction with owner requirements.

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

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

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

3.4(c)(5) The Construction Manager / General Contractor understands and acknowledges the Owner's intent that the Project will be completed within the budget set by Owner for the Project. The Construction Manager / General Contractor shall inform the Owner in writing if it believes that the Project may not be completed within Owner's budget, the reasons why it is not so and to offer suggestions concerning the proposed solutions, therefore.

3.4(d) Bidding and Negotiation

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

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

project:

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

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

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

- 1) award the final bid amounts, having reviewed and clarified the scope of Work in detail with the apparent low responsible and responsive bidders to determine that their bids are complete and responsible and do not include duplicate scope items;
- 2) prepare and furnish to the Owner a revised bid tabulation which includes by Trade Contract and/or bid division, the applicable final CM/GC estimate comparison and the related final bid amount and the details of all scope clarifications for Owner's review;
- 3) identify to the Owner in writing the Trade Contractors to which the Construction Manager / General Contractor intends to award Trade Contractor Contracts to;

3.4(d)(4) No portion of the work may be performed by the Construction Manager / General Contractor or its affiliates except with Owner's prior written approval. Where the Construction Manager / General Contractor requires clarification of the Owner's approval, they shall notify the Owner's Representative immediately in writing.

3.4(e) Guaranteed Maximum Price Proposal Services

3.4(e)(1) Prior to performance of Construction Services for each Trade Bid Package, the Construction Manager / General Contractor shall prepare and deliver to the Owner, with a copy to the Consultant(s), a written summary of the Bids submitted and accepted from the various Trade Contractors. The Construction Manager / General Contractor shall, at a minimum, include in the GMP proposal:

- 1) recital of the specific Construction Documents, including drawings, specifications, and all addenda thereto, used in preparation of the GMP proposal;
- 2) the elements of the Guaranteed Maximum Price: Cost of the Work (the sum of all trade contracts comprising CSI format divisions), detailed by each subcontract, trade, or bid division;
- 3) CM/GC Construction Services Fee as indicated in **Exhibit B**, including any adjustments mutually agreed to by the Owner and the Construction Manager / General Contractor.
 - a. Bonds and Insurance shall be included in the Construction Manager / General Contractor's services fee.
- 4) A draft Schedule of Values (SOV) – using the form provided by **Exhibit C**;
- 5) an itemization and description of all assumptions, clarification, and inclusions to or exclusions from the GMP, schedule, and other components of the proposal and the final Construction Schedule.
- 6) The Owner shall set aside funding for Owner contingency of an amount at owner discretion. The Owner contingency can only be utilized with written consent of the Owner.

3.4(e)(2) The GMP proposal shall include payment for Work required by the Construction Documents, and if the GMP proposal is accepted by the Owner, the Construction Manager / General Contractor shall not cause any Trade Contractor to be entitled to an increase in the GMP if the Work required by the Construction Documents (i) is required by the Contract For Construction, (ii) is reasonably inferable from the incomplete documents, and the general industry standards for completion of the Work, (iii) is not an enlargement of the scope of Work or (iv) substantially conforms to the nature, type, kind or quality of Work depicted in the incomplete documents.} The GMP proposal shall include costs of all insurance and bonds as outlined in Article 35 of the General Conditions that are attributable to a specific Trade Contractor.

3.4(e)(3) If the GMP proposal is unacceptable to the Owner, the Owner shall promptly notify the Construction Manager / General Contractor in writing. Within fourteen (14) calendar days of such notification, the Owner, Consultant(s) and Construction Manager / General Contractor shall meet to discuss and resolve any differences, inconsistencies, or misunderstandings and to negotiate recommended adjustments to the Work and/or to the GMP.

3.4(e)(4) The Owner may, at its sole discretion and based upon its sole judgment, (i) indicate its acceptance of a GMP proposal; (ii) reject a GMP proposal; (iii) terminate the

Project; or (iv) proceed to construct the Project using a party or parties other than any Trade Contractor indicated or the Construction Manager / General Contractor.

3.4(e)(5) If the Owner rejects a GMP proposal, neither party shall have any further obligation, for said work.

3.4(e)(6) If the Owner accepts a GMP proposal, the parties shall complete and execute a Change Order assigning the Work of each Trade Contractor Package to the Construction Manager/ General Contractor, which shall include the associated qualifications and assumptions and the Owner shall modify the Construction Manager / General Contractor's contract establishing the construction dates.

The Construction Manager / General Contractor shall not expend any monies for construction prior to receipt of contract modification. Once the GMP is established by this process, it shall not change without a Change Order modification. There shall only be one GMP in place at any one time.

3.4(e)(7) Price Guarantees

Upon execution of the Change Order for Construction, and subject to the qualifications and assumptions the Construction Manager / General Contractor guarantees that the sum of the Cost of the Work and the CM/GC Construction Services Fee shall not exceed the GMP, except as adjusted by Change Order.

All costs or expenses that would cause this sum to exceed the GMP shall be borne by the Construction Manager / General Contractor unless adjusted by Owner approved Construction Change Order.

Upon execution of Construction Change Order, the Construction Manager / General Contractor certifies that any costs specifically included as unit costs in the GMP proposal are accurate, complete and current at the time of negotiations; and that any other factual unit costs that may be furnished to the Owner in the future to support any additional amounts that may be authorized will also be accurate and complete. Payments to the Construction Manager / General Contractor shall be reduced if the Owner determines such amounts were originally included due to materially inaccurate, incomplete, or non-current factual unit costs.

3.4(e) (8) Owner Contingency

(i.) Use of Owner contingency must be approved by the Owner in writing. Reference Change Order section in this Contract and in the CM/GC General Conditions.

Construction Services

3.5(a) The Construction Manager / General Contractor Shall:

- 1) award and enter into a subcontract between itself (Construction Manager / General Contractor) and each Trade Contractor or materials supplier and

- 2) provide a copy of each subcontract agreement to the Owner upon execution.

3.5(b) Construction Supervision

3.5(b)(1) Commencing with the award of the first subcontract and terminating on the date of Final Completion, the Construction Manager / General Contractor shall provide the services described in subsections 3.5(b)(2) through 3.5(b)(7).

3.5(b)(2) The Construction Manager / General Contractor shall, as the Owner's construction representative during construction, advise and consult with the Owner and the Consultant(s), and provide administration of the Construction Documents.

3.5(b)(3) The Construction Manager / General Contractor shall supervise and direct the Work at the Site. The Construction Manager / General Contractor shall, at a minimum, staff the Project Site with personnel who shall:

- 1) supervise and coordinate the Construction Manager / General Contractor's personnel and act as its primary liaison with the Owner and the Consultant(s);
- 2) coordinate trade contractors and suppliers, and supervise Site construction management services;
- 3) be familiar with all trade divisions and trade contractors' scopes of Work, all applicable building codes, and the Construction Documents;
- 4) check and review shop drawings and materials delivered to the Site, regularly review the Work to determine its compliance with the Construction, regularly confer with the appropriate Owner's consultant(s) to assure acceptable levels of quality;
- 5) prepare and maintain Project records including a daily log, as built record drawings, process Project documents, and staff the Site field office;
- 6) schedule and conduct weekly safety and progress meetings with Trade Contractors to review such matters as job safety and procedures, construction progress, schedule, shop drawing status and other information as necessary and provide notification of, and minutes from, such meetings to Owner and Consultant(s);
- 7) schedule and conduct weekly (or less frequently at the sole discretion of the Owner) progress meetings with the Owner and Consultant(s) to review such matters as construction progress, schedule, shop drawing status and other information as necessary.
- 8) record the progress of the Project and to that end, submit written monthly progress reports to the Owner and Consultant(s) and College Representative(s) including information on the Trade Contractors' Work, percentage of completion of the Work, current estimating, contract buyouts, computerized updated monthly Critical Path Method scheduling and Project accounting reports, including projected time to completion and estimated cost to complete the Work, and monthly digital progress photographs on compact disc to be used to display the progress on Owner's website; project directory, logs for Requests for Information (RFI), Submittals and shop

drawings, Change Orders, cost change proposals, field directives, safety meetings, deficiencies, contract buyouts, weather conditions, and meeting minutes.

- 9) make provision for Project security to protect the Project site and materials stored off-site against theft, vandalism, fire and accidents as required by the General Conditions and applicable law.
- 10) Assist with the LEED certification process including ensuring the performance of all construction related tasks.

3.5(b)(4) The Construction Manager / General Contractor shall promptly reject any Work which does not conform to the Contract Documents, or which, in accord with standard knowledge and practices in the construction industry, does not comply with any applicable law, statute, building code, rule or regulation of any public authority or agency. The Construction Manager / General Contractor shall immediately notify the Consultant(s) and the Owner in writing when it has rejected any Work.

3.5(b)(5) The Construction Manager / General Contractor shall comply with and cause its Trade Contractors and suppliers to comply with the Project Construction Schedule and applicable sub-schedules. The Construction Manager / General Contractor shall obtain and review schedules from Trade Contractors and suppliers, coordinate these schedules with the Construction Schedule, and enforce compliance to insure timely completion of the Work. If at any time the Project is delayed, the Construction Manager / General Contractor shall immediately notify the Owner and the Consultant(s) of the probable cause(s) and make adjustments for corrective actions.

3.5(b)(6) The Consultant(s) will visit the Project Site at intervals appropriate to the stage of construction and with sufficient frequency to familiarize itself with the progress and quality of the Work and to inspect the Work. The Construction Manager / General Contractor or the Owner may request that the Consultant(s) visit the Site at additional times as the Owner deems necessary to attend meetings, inspect the Work, and render interpretations regarding the Work necessary for the proper execution of the Work. The Consultant(s)'s interpretations and decisions shall be final regarding the Final Construction Documents and the Work.

3.5(b)(7) The Construction Manager / General Contractor shall shall utilize Navisworks clash detection or other program acceptable to the design team in coordination with trade contractors and design team information throughout construction. The CM-GC shall receive a REVIT model from the design team as a base reference for the CM-GC to maintain, update and turn over as an updated REVIT model As-built with all clash detection resolutions included, utility changes, all changes to construction documents at Substantial Completion to the design team along with a PDF As-Built set that includes changes from the design team original documents. Approval of final payment to the CM/GC shall be contingent upon compliance with these provisions. The design Consultant will provide the owner with Record drawings that include all Design Team RFI responses, ASIs, Change Orders and incorporate all CM/GC As-Built information. The Design Team shall also provide the Owner with a REVIT model,

Autocad v. 2010 .dwg files with all information bound into individual sheet drawings, stamped /signed mylars and PDFs.

3.5(c) Construction Manager / General Contractor's On-Site Facilities

3.5(c)(1) The Construction Manager / General Contractor shall provide any necessary facilities at the Project Site as required and approved by the Owner. The Costs of these facilities are included in the Construction Manager/ General Contractor's Construction Services Fee.

ARTICLE 4 COMPENSATION OF CONSTRUCTION MANAGER / GENERAL CONTRACTOR

4.1 Pre-Construction Services Fee

The Owner agrees to pay the Construction Manager / General Contractor, and the Construction Manager / General Contractor shall accept as complete payment for performance of Pre-Construction Services, the lump sum fee set forth on **Exhibits A and B**, payable pursuant to the schedule set forth thereon.

4.2 Compensation for Construction Services

The Owner shall pay, and the Construction Manager / General Contractor shall accept, as full and complete payment for the Construction Services, only the lump sum of the following elements – which shall not exceed the GMP – calculated in the order outlined in **Exhibit B**:

- 1) the aggregate net cost directly paid, or to be paid, by the Construction Manager / General Contractor to Trade Contractors pursuant to written subcontracts to perform the Work (the “Cost of the Work”), not to exceed the guaranteed maximum set forth on most current Schedule of Values;
- 2) the Construction Manager / General Contractor's Services Fee as set forth on most current **Exhibit B. CM/GC Fee** is to be included in the Schedule of Values as a separate line item.
- 3) Executed Change Orders

NOTE: The Construction Manager / General Contractor shall not be compensated a percentage markup for adjustments to the Guaranteed Maximum Price by Construction Change Order.

4.2.1 Construction Manager / General Contractor's Construction Services Fee

The Construction Manager / General Contractor's Services Fee includes the elements indicated and as defined below in 4.2.1(a), 4.2.1(b)(1) and 4.2.1(b)(2) and to the extent indicated to be included in Trade Contracts.

4.2.1 (a) Construction Manager / General Contractor's Staffing

4.2.1 (a)(1) Construction Manager / General Contractor staffing costs include and are limited to expenditures for the following items:

- 1) The cost of its supervisory, technical, administrative and clerical personnel engaged in supervision and management of the Work;
- 2) CM/GC staffing costs directly attributable to the Work with the exception of those specifically enumerated compensable as a General Conditions Cost or a Cost of the Work;
- 3) reasonable expenses of the Construction Manager / General Contractor's personnel incurred while traveling in discharge of duties directly connected with the Work;
- 4) any costs or expenses incurred by the Construction Manager/ General Contractor, not included in the General Conditions Cost, for provision of management services necessary to complete the Project in an expeditious and economical manner consistent with the Contract for Construction.
- 5) General Conditions Cost as outlined.

NOTE: In no event shall the Construction Manager / General Contractor's Fee include any costs and expenses except those described above.

4.2.1 (b) General Requirements Cost

4.2.1 (b)(1) General Requirements costs include the following items except for those costs subsequently assigned to one or more of the trade contracts:

- 1) costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Construction Manager/ General Contractor at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Construction Manager/ General Contractor.
- 2) Cost for items previously used by the Construction Manager/ General Contractor shall mean fair market value;
- 3) costs incurred to provide site safety and site security are to be included in Trade Contracts/General Requirements;
- 4) costs of removal of debris from the site; are to be included in Trade Contracts/General Requirements (including all separation and disposal of materials as may be required in the Contract Documents for material recycling);
- 5) costs of items/services for the benefit of the CM/GC including document reproduction, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, phone service at the site and reasonable petty cash expenses of the site office
- 6) bonds and Insurance for the Guaranteed Maximum Price (GMP) shall be

included in the Construction Manager/ General Contractor's Services Fee. See Articles 24 and 25 of the General Conditions;

- 7) all CM/GC data processing costs directly related to the Work;
- 8) the cost of obtaining and using phone and data/internet required for the Work;
- 9) the cost of crossing or protecting any public utility, if required, and as directed by the Owner are to be included in Trade Contracts/General Requirements.
- 10) all reasonable costs and expenditures necessary for the operation of the CM/GC Site office, such as stationary, supplies, furniture, fixtures, office equipment and field computer services;
- 11) the cost of secure off-site storage space or facilities and any insurance for materials storage; are to be included in Trade Contract/General Requirements.
- 12) rental charges for temporary facilities, and for machinery, equipment, and tools not customarily owned by construction workers; however, any rental charge shall not exceed the purchase price of such facilities, machinery, equipment or tools; are to be included in Trade Contract/General Requirements.
- 13) cost of surveys, measurements and layout work reasonably required for the execution of the Work or by the Construction Documents; are to be included in Trade Contract/General Requirements, and

4.2.1(b)(2) Legal costs incurred in connection with disputes solely between the Construction Manager / General Contractor and the Owner or incurred in connection with disputes solely between the Construction Manager / General Contractor and Trade Contractors are the responsibility of the Construction Manager / General Contractor, are not compensable and shall not be included in the Guaranteed Maximum Price.

4.3 Change Orders.

4.3(a) Amounts owed by the Owner to the Construction Manager / General Contractor for payment to a Trade Contractor shall be adjusted by duly authorized Construction Change Order. A proposal request shall be created by the Architect for the CM/GC to attain pricing from Trade Contractors. The CM/GC shall analyze the labor and material costs from the Trade Contractors and provide a recommendation to the Architect and Owner as to the cost, having analyzed labor, materials and quantities relative to the work proposed and to current market value or unit pricing where applicable.

4.3(a)(1) Increase In Cost of Work. If the Cost of the Work is increased by Change Order, the Owner shall pay the Construction Manager / General Contractor the net cost directly paid by the Construction Manager / General Contractor to Trade Contractors or suppliers for the performance of the Work. Refer to Article 14 in the General Conditions - CM/GC. The Construction Manager / General Contractor shall not receive a percentage mark upon the amount of the executed Change Order. If the Owner determines that the Change Order substantially increases the Scope of Work (SOW) for the project, the Owner may at its sole discretion, permit an increase to the CM/GC fee as determined by the Owner. The Trade Contractor's Overhead & Profit shall not exceed 10% of the actual cost of the Change Order work.

4.3(a)(2) Decrease in Cost of Work. If the Cost of the Work is decreased by Change Order, payment due from the Owner to the Construction Manager / General Contractor shall be reduced by the amount the Construction Manager / General Contractor is no longer obligated to pay Trade Contractors and/or suppliers for performance of the Work. The Construction Manager / General Contractor shall not refund a percentage markup on the amount of the executed Change Order. The Trade Contractor's overhead and profit refunded as part of the executed Change Order shall be 10% of the actual cost of the work. If an entire Scope of Work is removed equal to the total specified line-item amount in the Schedule of Values, then the Trade Contractor 10% Overhead & Profit shall be considered as being included in the line-item amount.

4.3(a)(3) Change Order - Time & Material. For Change Orders approved by an Owner to be performed by the Construction Manager / General Contractor on a time-and-materials basis pursuant to the General Conditions, the Owner shall pay the Construction Manager / General Contractor the actual incurred cost and expenses paid to those Trade Contractors and suppliers performing the Work. The Trade Contractor's overhead and profit shall not exceed 10% of the actual cost of the work. The CM/GC shall track all costs for time and materials including number of workers, workers hours and work performed.

4.3(b) Funding Sources and Change Types. The following are general/typical categorizations of the types of change conditions and the means of funding within the GMP. The status of the project, the relative status of each funding source, and the current and projected risk born by each party shall be considered in deciding which funding source will be used to fund particular proposed changes.

4.3(c) For expediency during construction, if the Owner provides written approval of a proposal request through the Owner's Document Collaboration System, that written approval shall stand as authorization to proceed with the work until the change order can be fully executed. Owner written approval on a proposal request shall follow with an executed change order prepared by the Architect to modify the contract.

4.3(d) With each Payment Application from the Construction Manager / General Contractor, a complete accounting of Change Orders up to the date of the Payment Application shall be provided to the Owner in a CM/GC Change Order Log accompanied by a CM/GC Proposal Request tracking log.

4.4 Applications for payment shall be made in accordance with Article 18 of the General Conditions to the Contract and as stated herein. The Payment Application Schedule of Values shall explicitly break out change orders in each trade package, so they are clearly separated by trade at the end of each Bid Package/Trade Division. Each change order number with definition/ name shall be included in the Schedule of Values as

a line item per Bid Package. Every pay application shall include a full accounting and updated Schedule of Values broken into Bid Package divisions.

4.5. Prior to submitting the first application for payment, the Construction Manager / General Contractor shall prepare and present to the Owner and the Consultant(s) for approval a draft Schedule of Values for payment in the form set forth in **Exhibit C**.

4.6. Upon receipt of the Construction Manager / General Contractor's invoice, properly prepared the Owner shall pay the Construction Manager / General Contractor the amount approved by Consultant(s), less retainage, unless there is a dispute about the amount of compensation due to the Construction Manager / General Contractor.

It is understood and agreed that the Owner will not withhold retainage on the amount due the CM/GC for the Construction Manager/ General Contractor's Construction Services Fee and the General Conditions, bonds and insurance premiums which are part of this Construction Services Fee. The CM/GC shall clearly separate their fee on the Schedule of Values.

ARTICLE 5. LIQUIDATED DAMAGES FOR DELAY

5.1 In as much as failure to Substantially Complete the Work within the time fixed by the Contract will result in injury to the Owner, and as damages arising from such failure cannot be calculated with any degree of certainty, it is agreed that if the Work is not Substantially Completed within the time provided by the Contract or within such further time, if any, as shall be allowed for time extensions in accordance with the provisions of the Contract, the Construction Manager / General Contractor shall pay to the Owner as liquidated damages for such delay, and not as a penalty, the amount set forth in the Contract for each calendar day elapsing between the date fixed for Substantial Completion and the date such Substantial Completion is fully accomplished. Liquidated damages shall also be incurred for each calendar day elapsing between the date fixed for Final Completion and the date such Final Completion is fully accomplished. The parties agree that said liquidated damages are reasonable given existing circumstances, including, without limitation, the range of harm that is foreseeable and the anticipation that proof of damages would be costly and impractical. CM/GC may also assess liquidated damages to Trade Contractors in addition to Owner liquidated damages.

5.2 The Owner's right to receive liquidated damages shall in no manner affect the Owner's right to terminate the Agreement. The Owner's exercise of the right to terminate shall not release the Construction Manager / General Contractor from the obligation to pay said liquidated damages incurred to date. It is further agreed that the Owner may deduct from the balance remaining for payment to the Construction Manager / General Contractor, the liquidated damages stipulated herein, or such portion thereof as the remaining balance will cover.

5.3 It is understood at the time of this Agreement, that the amount of Owner Liquidated Damages will be determined prior to bidding and included by the Architect in

the Special Conditions of the Ready to Advertise Bid Documents. The CM/GC shall be responsible for Owner Liquidated Damages as outlined in the Special Conditions.

5.4 The Construction Manager/General Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

5.4.1 damages incurred by the Owner, if applicable for rental expenses, for loss of use, loss of income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

5.4.2 damages incurred by the Construction Manager/General Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

5.4.3 This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 22 of the General Conditions. Nothing contained in this Article shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

ARTICLE 6. PERSONNEL, TRADE CONTRACTOR AND SUPPLIER CHARTS

6.1 The Construction Manager / General Contractor has provided **in their response to the solicitation ("RFP")**, the Construction Manager / General Contractor's personnel chart which lists by name, job category and responsibility, the Construction Manager / General Contractor's primary employees who will work on the Project as listed in Construction Manager / General Contractor's Professional Qualifications Supplement submitted to Owner during the Construction Manager / General Contractor selection process. The Construction Manager / General Contractor shall promptly request to the Owner, in writing, any proposed staffing replacement or addition, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s) or addition(s) for the Owner's written approval or rejection.

6.2 Prior to the award of initial trade contracts, the Construction Manager / General Contractor shall prepare and provide to Owner the Construction Manager / General Contractor's Trade Contractors and Suppliers Chart which lists by name and general Project responsibility each Trade Contractor and supplier who will be utilized by the Construction Manager / General Contractor to provide goods or services with respect to the Project. The Construction Manager / General Contractor shall not enter into any agreement with any Trade Contractor or supplier to which the Owner raises a reasonable, timely objection; and shall promptly inform the Owner in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). The Owner shall have the right, in its reasonable discretion, to reject any

proposed replacement. This Trade Contractors and Suppliers Chart shall be updated and re-submitted as remaining trade contracts are awarded.

ARTICLE 7 INSURANCE AND BONDS

7.1 The Construction Manager / General Contractor shall provide the insurance and payment and performance bonds as required in Article 23, 24 & 25 of the General Conditions.

ARTICLE 8 MISCELLANEOUS PROVISIONS

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

8.2 This Agreement shall be governed by, and construed under, the laws of the Commonwealth of Kentucky, without regard to its choice of law provisions, and venue shall lie in the Circuit Court in Franklin County, Kentucky.

Notwithstanding anything in the Contract Documents to the contrary, in the event there is any change in any applicable law, rule or regulation that takes effect after the execution of this Contract and such change increases the Construction Manager's/General Contractor's time or cost of performance hereunder, Construction Manager/General Contractor shall be entitled to an equitable adjustment to its time and/or compensation hereunder.

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

8.4 All capitalized terms used herein but not defined herein shall have the meaning ascribed thereto in the General Conditions.

8.5 Owner is an equal opportunity institution and, as such, encourages the use of Minority Business Enterprises ("MBEs") in the provision of construction related services. MBEs should have a fair and equal opportunity to compete for dollars spent by the Commonwealth of Kentucky to procure construction-related services. Competition ensures that prices are competitive and a broad vendor base is available.

8.6 Intentionally Omitted

8.7 All exhibits referenced herein are attached hereto and incorporated herein by reference.

8.8 The Construction Manager / General Contractor shall participate in and cooperate with commissioning, validation, and other quality assurance and quality control processes, at no additional cost to the Owner.

8.9 Audits

8.9(a) The Construction Manager / General Contractor's Trade Contractors', sub-subcontractors' and/or vendor's "records" shall upon reasonable notice be open to inspection and subject to audit and/or reproduction during normal business working hours as may be deemed necessary by the Owner at its sole discretion. Such audits may be performed by an Owner's representative, or an outside representative engaged by Owner. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of three years after final payment or longer if required by law. Owner's representatives may (without limitation) conduct verifications such as counting employees at the Construction Site, witnessing the distribution of payroll, verifying information and amounts through interviews and written confirmations with Construction Manager / General Contractor's employees, field and agency labor, Trade Contractors, and vendors. All records to date of request are to be made available to Owner via digital PDF format within 30 days of Audit Request.

8.9(b) "Records" as referred to in this contract shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back-charge logs and supporting documentation; invoices and related payment documentation; general ledger; records detailing cash and trade discounts earned, insurance rebates and dividends; and any other contractor records which may have a bearing on matters of interest to the Owner in connection with the contractor's dealings with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to adequately permit evaluation and verification of any or all of the following:

- 1) Compliance with contract requirements for deliverables;

- 2) Compliance with approved plans and specifications;
- 3) Compliance with Owner's business ethics expectations;
- 4) Compliance with contract provisions regarding the pricing of change orders;
- 5) Accuracy of contractor representations regarding the pricing of invoices; and
- 6) Accuracy of contractor representations related to claims submitted by the contractor or any of his payees.

8.9(c) The Construction Manager / General Contractor shall require all payees (examples of payees include Trade Contractors, vendors, and/or material suppliers) to comply with the provisions of this article by including the requirements hereof in a written contract agreement between the Construction Manager / General Contractor and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-Subcontractors, material suppliers, etc. The Construction Manager / General Contractor will cooperate fully and will cause all Related Parties and all of the Construction Manager / General Contractor's subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested, in an expeditious manner, any and all such information, materials and data.

8.9(d) Owner's authorized representative or designee shall have reasonable access to the Construction Manager / General Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with this article.

8.9(e) If an audit inspection or examination, in accordance with this article, discloses overpricing or overcharges (of any nature) by the Construction Manager / General Contractor to the Owner the overcharges shall be reimbursed to the owner by the Construction Manager / General Contractor. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within Ninety (90) Calendar Days from presentation of Owner's findings to Construction Manager / General Contractor.

8.9 (f) The Construction Manager / General Contractor or contractor, as defined in KRS 45A.030(10) agrees that the contracting agency, the Kentucky Community and Technical College, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Furthermore, any books, documents, papers, records, or other evidence provided to the contracting agency, the Kentucky Community and Technical College System, the Auditor of Public Accounts, or the Legislative Research Commission which are directly pertinent to the contract shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Kentucky Community and Technical College FSS Assistant Vice President as meeting the provisions of KRS 61.878(1)(c) prior to the execution of the contract. The Kentucky Community and

Technical College System shall not restrict the public release of any information that would otherwise be subject to public release if a state government agency were providing the service. (22 Ky.R. 1510; eff. 5-16-96; 30 Ky.R. 682; 1468; eff. 1-5-2004.)

8.9 Any modifications to this Agreement are set forth on **Exhibit D**.

Construction Manager/ General Contractor:

BY:

Title:

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

By: _____
(Chief Financial Officer, Kentucky Community and Technical College System)

Approved for Legality and Form

APPROVED:

Office of General Counsel, Kentucky Community and Technical College System

Exhibit A Authorization for Pre-Construction Services

3.4(a)(2) Schedule for Pre-Construction Services

- 1) **Schematics Phase A Cost Estimate and Report:** Ten (10) calendar days after delivery of Schematics from Consultant(s)
- 2) **Design Development Phase B Cost Estimate and Report:** Ten (10) calendar days after delivery of Design Development Documents from Consultant(s)
- 3) **100% Construction Documents Phase C Cost Estimate and Report:** Ten (10) calendar days after delivery of Construction Documents from Consultant(s)

3.4(b) Initial Construction Schedule Deadline

With Schematic Design submittal or if Contracting at a later Phase, then with the current Design Phase.

3.4(c)(1) GMP Proposal Submittal Deadline

within 15 working days after receipt of bids.

4.1 Pre-Construction Services Fee

For pre-construction services, the lump sum amount of ********* Dollars and No Cents (**\$00,000.00**), to be paid at the satisfactory completion of the following phases:

Phase Description	CM/GC Fee
(Phase P) Pre-Design / Programming	\$ 00,000.00
(Phase A) Schematic Design	\$ 0
(Phase B) Design Development	\$0
(Phase C) Construction Documents*	\$0
Total:	\$00,000.00

*Will be added by change order when bid packages are awarded.

4.2 The Construction Manager / General Contractor's Construction Services Fee shall be a lump sum and is to be paid proportionate upon completion of work.

Construction Services Fee

From Bidding to Final Completion and Warranty Period **\$**

4.3 The Construction Manager / General Contractor's Pre-Construction Services Fee and Construction Services fee is **\$** and is based upon the amount expected to be available for construction of **\$**.

Exhibit B

Authorization for Construction

Pursuant to the Agreement between the Kentucky Community and Technical College (“Owner”) and **** insert name and address of CM/GC**** (“Construction Manager / General Contractor”), for *** insert name of project****, *** insert college name and location****, Kentucky Community and Technical College System the Scope of Work under this authorization for Construction to include name document or Bid Package, the Owner and the Construction Manager / General Contractor hereby execute this Exhibit B and further agree as set forth below.

Construction Manager / General Contractor shall issue trade contracts for the Work within ten (10) calendar days after the execution of the Contract or Construction Change Order, along with the Exhibit B, signed by the Owner.

The date of Substantial Completion for the work shall be as set forth in the Special Conditions and Final Completion shall be as set forth in the Special Conditions. Completion dates for future bid packages will be negotiated. Refer to General Conditions Article 19.

Liquidated Damages shall be as set forth in the Special Conditions.

3.4(d). The Construction Manager / General Contractor’s Guaranteed Maximum Price (“GMP”) proposal dated ***insert date**** attached hereto and incorporated herein, is accepted by the Owner.

	Item	Amount
	Original Contract Amount: Construction Manager / General Contractor’s Preconstruction Service Fee (Lump Sum)	\$00,000.00
	CM/GC Construction Service Fee (Lump Sum)	\$000,000.00
	Trade Contractor Bid Packages Cost of the Work to be added via Change Order to Original Contract Amount.	
	Revised Contract Guaranteed Maximum Price Sum to be executed via Change Order.	

Note: The bonds and insurance cost shall be included in the Construction Manager / General Contractor’s Construction Services Fee. See Articles 23, 24 and 25 of the General Conditions.

Exhibit C

Schedule of Values

Owner's Invoice and Schedule of Values Form
To be issued with first Pay Application.

Exhibit D

Modifications, if any