

*The William Paterson University of New Jersey  
Wayne, New Jersey*

*Office of the Vice President for Administration and Finance*

*Professional Construction Management Agreement  
With  
Company:*



**CONSTRUCTION MANAGER  
Project:**

**WPU Project #**

**Date:**

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**AGREEMENT  
FOR  
CONSTRUCTION MANAGEMENT SERVICES**

THIS AGREEMENT is entered into and dated **this day of** between WILLIAM PATERSON UNIVERSITY OF NEW JERSEY, hereinafter referred to as "The University") and (hereinafter referred to as "CM").

WITNESSES THAT:

NOW, THEREFORE, in consideration of the foregoing premises, and of the mutual covenants and promises herein contained, the parties agree as follows:

**1.0           INTRODUCTION**

**1.1           PROJECT**

Project shall mean The University's designation for the overall design and construction of a **Project Title** of which the services performed by CM are a part.

**1.2           CONTRACTING OFFICER**

The duly authorized representative refers to the public official charged with administering the design, engineering and construction projects on behalf of the University. He/she has the legal authority to administer contracts and represents the University in all relationships with contractors, Architects/Engineers and the Construction Manager. The University's Contracting Officer is the Vice President for Administration and Finance.

**1.3           PROJECT MANAGER**

The University and CM shall each appoint a project manager who shall be responsible to manage and supervise the Project on behalf of The University and CM, respectively. The Contracting Officer appoints The University's Project Manager, (UPM) who shall establish and communicate to CM all The University's procedures and policies which shall apply to the CM Services. CM's Project Manager, (CMPM), shall be CM's authorized representative for all purposes under this Agreement in accordance with the provisions of ARTICLE 2.0. The UPM is the Associate Vice President of Administration or designee.

#### **1.4 CONTRACTOR(S)**

Contractor(s) shall be any person, corporation or entity of any tier, other than a Consultant, performing any aspect of the construction work for the Project.

#### **1.5 CONTRACTOR WORK**

The term Construction Work shall include all work performed by contractors under contracts issued by The University for the Project, materials and equipment provided by contractors and suppliers, and shall also include any work performed by suppliers or suppliers of such materials and equipment.

#### **1.6 CM SERVICES**

The Construction Management Services to be furnished by the CM under this Agreement shall include the services as described in **Article 2.0** are referred to throughout this Agreement as the "CM Services." The CM Services as defined herein shall not include any portion of Contractor Work or services, which shall be the subject of *any* agreements or purchase orders between The University and contractors executed before or after the date of execution of this Agreement. CM Services includes labor, monitoring, technical advice, estimates, work direction, support, and services provided by CM, its employees, agents and Consultants.

#### **1.7 THE OWNER**

The University (Owner) is the entity identified as such in this Agreement means The William Paterson University of New Jersey or its Contracting Officer.

#### **1.8 UPM**

The University's Project Manager, identified as such in this Agreement, is the Associate Vice President of Administration or designee.

#### **1.9 CM**

CM is the entity identified as such in this Agreement and means Construction Manager, and-its employees, agents, representatives, Consultants.

Construction Manager :

## **1.10         Architect/Engineer (A/E)**

The A/E is the individual, corporation, or entity lawfully licensed to practice architecture/engineering, identified as such, and means A/E or its authorized representative.

**Project Architect :**

## **1.11         CM AGREEMENT**

The CM agreement means this Agreement and the following schedules, attachments and reference documents:

### **1.11.1       AGREEMENT SCHEDULES**

The following schedules are attached hereto and specifically made part hereof:

1.11.1.1       SCHEDULE "A" - Monthly Staffing Plan and Rates

1.11.1.2       SCHEDULE "B" - Reimbursable Expenses

### **1.11.2       AGREEMENT ATTACHMENTS**

The following attachments are attached hereto and specifically made part hereof:

1.11.2.1       ATTACHMENT "A" - General Conditions of Construction Management Agreement

1.11.2.2       ATTACHMENT "B" - RFP for **Project Title**

1.11.2.3       EXHIBIT A - Affirmative Action (Part of General Conditions)

### **1.11.3       REFERENCE DOCUMENTS**

The following documents are referenced hereto and specifically made part hereof:

1. All reference documents posted to the William Paterson University Capital Planning Website during the bidding period

1.11.3.1 ???

## **2.0            CONSTRUCTION MANAGER RESPONSIBILITIES**

### **2.1            GENERAL**

2.1.1            The CM will act as the University's authorized agent and representative during the performance of the CM services as described in this CM AGREEMENT and will report to the UPM.

2.1.2            The CM is responsible to provide CM services, as described in the RFP dated 1/7/13 for all work relating to this Project.

2.1.3            CM recognizes and accepts the relationship of trust and confidence established between CM and The University by this Agreement and agrees that CM shall at all times, in good faith, use its reasonable efforts to advance The University's interests and agrees to perform the CM services in accordance with this agreement. CM shall employ an adequate number of qualified, careful, efficient and skilled employees; and use skill, prudence, judgment, and competent supervision in order that the execution of the CM Services may be economical, expeditious and consistent with the interests of The University. CM shall perform, supervise and direct the CM Services, using its reasonable skill and attention. CM shall be solely responsible to The University for coordinating all portions of the CM Services under this Agreement.

2.1.4            CM shall employ a competent Project Manager (CMPM) and necessary assistants who shall be in attendance at the Project site during the progress of the work. CMPM shall represent CM and all communications given to the CMPM shall be as binding as if given to CM. All communications between The University and CM related to changes to the CM Services or any circumstance or circumstances affecting or which could reasonably be expected to have the potential to affect the progress of the Contractor Work or related to actual or potential disputes with contractors or between the parties hereto shall be in writing to the UPM.

2.1.5            CM shall maintain a competent Project Manager and Project staff, satisfactory to The University, assigned to the services at all times. The CMPM shall be CM's authorized agent and representative for all purposes under this Agreement. CM shall replace promptly any Project Manager or Project staff member unsatisfactory to The University and shall not replace any Project Manager or key personnel during the duration of the CM Services without The University's concurrence, which shall not be unreasonably withheld. Prior to commencing CM Services, CM shall furnish to The University the name (or names) of CM's supervisory personnel.

2.1.6            The CM shall be responsible for satisfying all of the listed obligations regardless of when they occur during the project. The CM will provide project administration as described in **ARTICLE 2.2**, under the direction of the UPM. In addition, the CM will provide suggestions for The University decisions regarding Contractor selection, change order control, progress payments and final acceptance.

2.1.7            Not Used

2.1.8 The CM shall report directly to the UPM. The CM shall provide its services under the supervision of the UPM.

2.1.9 The CM shall promptly notify The University of any changes to the scope of services, which increase or decrease the CM's services, or both. No such change in scope shall be performed by the CM, absent prior written approval by The University. Notice of request for additional compensation shall be given to The University within 30 working days of the event giving rise to such a request with accompanying justification for the change and a detailed breakdown of the basis for the cost.

2.1.10 The CM shall assign at least one (1) Project Manager who shall attend all meetings as required under the CM AGREEMENT. The CM shall otherwise provide sufficient executive, monitoring personnel in the field and home office to carry out the requirements of the Agreement in an expeditious and economical manner consistent with the interest of The University.

2.1.11 If requested, the CM shall assist The University in selecting retaining and coordinating the professional services including but not limited to surveying, environmental, commissioning, geotechnical testing laboratories, and other special consultants.

2.1.12 CM represents and warrants that it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the CM Services; that it is experienced in and competent to perform the CM Services contemplated by this Agreement, and that it is qualified to do the CM Services herein and is authorized to do business in the State of New Jersey; that CM holds all licenses, permits and other special licenses, as required by law, to perform all aspects of the CM Services included in this Agreement or employs or works under the general supervision of the holder of such licenses, permits or special licenses. Such representations shall be deemed to be continuing.

2.1.13 CM shall promptly advise The University of any delays in the progress of the Contractor Work and of the circumstances giving rise to *any* delays and shall offer suggestions to resolve or remove as expeditiously as possible and in the best interests of The University the cause or causes of any such delays.

2.2.14 CM shall, at its own cost, correct defective CM Services as set forth in **ARTICLE 4.0** of the General Conditions.

2.1.15 CM is obligated to perform CM Services on the Project Site in accordance with recognized safety standards and any site specific safety standards.

2.1.16 In the performance of this Agreement, the CM's status as an independent contractor shall not be modified or diminished by reason of any instructions issued by The University or The University's representatives to CM or any of CM's employees, agents, representatives and Consultants.

2.1.17 The Construction Manager shall not be responsible for the time of completion or costs of the Project given that the Owner has obtained the services of the Architect (which term shall be understood to also include all design professionals utilized in the Project) and Trade Contractors, to whom it has respectively delegated full, specific project design and construction and hazardous materials abatement and safety responsibilities, as well as having obtained the services of others such as testing and inspection agencies and attorneys, and as such the services of the Construction Manager intended to afford the Owner assistance in administering the services of others, and are not to include responsibility, in any way, for the Work of others or to discover deficiencies in the Work of others. In the event the Architect fails to perform its Work and/or any Trade Contractors fail to maintain a safe jobsite and/or properly perform their Work, for example, the Owner will not look to the Construction Manager for the Owner's losses due to the failure of the Architect, the Construction Contractors and/or others to perform their respective obligations. Nothing in the preceding paragraph shall exempt the Construction Manager from responsibility for negligence or breach of contract for the services the Construction Manager is obligated to be performed under this Agreement, and to the extent he is engaged in separate agreements with contractors who perform services on the project that is the subject of this Agreement.

## **2.2 PROJECT ADMINISTRATION**

2.2.1 Perform a thorough review of all contract documents in order to develop a full understanding of the work scope. Make suggestions regarding any conflicts that have not yet been fully defined that may represent significant budget or schedule impacts. Provide a written report with recommendations to the Architectural, Engineering, and other consultants.

2.2.2 Continually monitor work with proposed budget, schedule, and quality requirements as presented in the contract documents.

2.2.3 Assure that all administrative control procedures, reporting, scheduling and tracking activities will interface, coordinate with, and feed information to and from systems used by The University.

2.2.4 Schedule and conduct progress meetings at which contractors (when required), UPM, A/E and General Contractor can discuss jointly such matters as procedures, progress, challenges and scheduling.

2.2.5 Provide meeting minutes for all project meetings within three (3) business days following each meeting.

2.2.6 With the UPM, establish procedures for coordination among The University, A/E and contractors with respect to all aspects of the Contractor Work and implement such procedures.



2.2.7 Develop a procurement strategy for the bid packages of the Project outside of the primary general contractor's scope. Establish the contracting plan and bid package definition necessary to identify and schedule documentation requirements for long-lead equipment purchases or concurrent design/construction activities to be performed by contractors other than the general contractor. Those packages will include but not be limited to demolition/abatement of the Coach House, Site Utility/Preparation, FF&E, and Audio Visual equipment/integration. ,.

2.2.8 With the UPM, A/E and any and all third party testing agencies under contract with The University review project documentation to verify that quality requirements are accurately defined, that design documentation specifies appropriate quality control testing methods, and that parameters for evaluating test results are clearly established.

2.2.9 Monitor the work of the contactors and his subcontractors and make suggestions regarding coordination of the work with the activities and responsibilities of The University and A/E to complete the Project in accordance with The University's objectives of cost, time and quality as specified in the contract documents.

2.2.10 Maintain a competent full-time staff at the Project site to monitor the Contract Work and progress as required in order to provide effective support to the UPM for the purpose of managing the Project. Staffing patterns may vary depending on the stage of the project.

2.2.11 With the UPM, establish on-site organization and lines of authority in order to carry out the overall plans for construction of the Project.

2.2.12 Advise and assist The University as to its and/or General Contractor's obtaining all required approvals for the project including but not limited to DCA plan review, building permits, Department of Environmental Protection (DEP) permits, soil and water permits from all the authorities having jurisdiction.

2.2.13 The University's Consultants: If required, assist UPM in selecting and retaining professional services of a surveyor, testing laboratories and special consultants, and coordinate these services with the UPM.

2.2.14 Review contractor's comprehensive safety program for the Project. Offer suggestions to the Owner as to how to require that the contractor be responsible to comply with and shall properly supervise subcontractors in their activities with regard to the safety of persons and property and for compliance with all federal, state and local statutes, rules, regulations and orders applicable to the conduct of the Contract Work.

The foregoing services shall not relieve the Contractor(s) of their responsibility for the safe performance of their work.

2.2.15 Document Interpretation: Submit all questions for interpretation of the

design documents prepared by the A/E to the *UPM*.

2.2.16 Shop Drawings and Samples: In collaboration with A/E and The University, establish and implement procedures for expediting the processing and approval of shop drawings and samples by the Architect/Engineer.

2.2.17 With the UPM, develop a comprehensive quality control program for the Project.

2.2.18 Maintain at the Project site, on a current basis: a Record copy of Contractor Work Schedule, Contractor Work Cost, all Procurement Documents, Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked to record all changes made during construction; Shop Drawings; Product Data; samples; submittals; purchased Materials and Equipment; applicable handbooks; maintenance and operating manuals and instructions; other related documents and revisions which arise out of this Agreement and Contractor Work. Maintain Records, in duplicate of principal building layout lines, elevations of the bottom of footing, floor levels and key site elevations certified by a qualified surveyor and professional engineer. Make all Records available to The University. At the completion of the Project, deliver all such Records to The University properly organized, filed and labeled.

2.2.19 Coordinate all technical reviews with the UPM.

2.2.20 Assist The University with public bidding of the project, including development of a list of interested bidders, bid opening, review of bids, and recommendation for award.

## **2.3 CONSTRUCTION SCHEDULE**

2.3.1 Review and monitor the overall master schedule as provided by the General Contractor incorporating The University's requirements, materials and equipment procurement and delivery, permitting and public agency approval as well as Contractor Work outside the General Contractor's scope of work.

2.3.2 Review and advise as to completeness and logic of a complete CPM schedule as provided by the General Contractor for the entire Project and make suggestions to the OPM as to changes and/or approval.

2.3.3 Provide regular monitoring of the schedule as construction progresses. Identify potential variances between scheduled and probable completion dates. Review schedule for Contractor Work not started or incomplete and suggest adjustments in the schedule to meet the probable completion date. Include The University's occupancy requirements showing portions of the Project having occupancy priority. Provide UPM with summary reports of each monitoring and document all changes in schedule.

2.3.4 Review and advise on the adequacy of the General Contractors' personnel and equipment and the availability of materials and equipment to meet the project schedule.

2.3.5 Monitor day-to-day work activities to insure maximum efficiency and advise UPM on a daily basis, via meeting and submission of daily reports, indicating manpower available, equipment on site, and specific work activities accomplished.

## **2.4 ON SITE FIELD OBSERVATION**

2.4.1 Record the progress of the Contract Work. Submit written weekly progress reports to the UPM including information on Project Safety, the General Contractor and each subcontractor's work, as well as the entire Project, showing percentages of completion and the number and amount of Change Orders. Keep a daily log containing a record of weather, contractors on the site, number of workers, Contractor Work accomplished, problems encountered, and other similar relevant data as the UPM may require. The log shall be available to the UPM at all times.

2.4.2 Review specific observable site and project conditions in-depth, for the specific purpose of logistical planning which shall include evaluation and planning for the movement of labor resources, materials and equipment on the project. site, establishing efficient construction operations, providing for the safety and continuity of on-going operations as performed by the contractors and provide related recommendations to the UPM.

2.4.3 Evaluate Contractor Work requirements and associated costs for work management and field supervision, temporary services and structures, phasing of work, on-site storage and staging areas, phasing plans and provide related recommendations to the UPM.

2.4.4 Inspection: Inspect the work of all contractors for defects and deficiencies in the Contractor Work and submit written reports to the UPM.

2.4.5 Punch list: Track punch list items as presented by the A/E to monitor timely completion and compliance with the contract documents by the contractors.

2.4.6 Substantial completion: With the University's maintenance personnel, A/E and The University's commissioning agency monitor the checkout of utilities, operations systems and equipment for readiness and assist in their initial start-up and testing by the contractor.

2.4.7 Final Completion Review and advise the UPM and the A/E that the Project is ready for final inspection.

2.4.8 Coordinate all building code inspections by Sub Code Officials from Department of Community Affairs (DCA) with contractors.

## **2.5 BUDGET/COST CONTROL**

2.5.1 Prepare, maintain and update monthly a detailed cost analysis for the entire project utilizing the contractor's schedule of values, payment requisitions and The University project account recap in order to provide a full financial picture of the project.

2.5.2 Cost Control: Develop and monitor an effective system of Project cost control, approved in writing by the UPM prior to the start of Contractor Work. Revise and refine the initially approved Contractor Work Construction Budget, incorporate approved changes as they occur, and develop cash flow reports, forecasts and other reports as required by the UPM. Identify variances between actual and budgeted costs and advise the UPM whenever projected cost exceeds budgets or estimates.

2.5.3 Maintain cost accounting records on authorized Contractor Work performed under unit costs, actual costs for labor, materials and equipment, or other bases requiring accounting records. Afford The University access to these records and preserve them for a period of three (3) years after final payment.

2.5.4 Change Orders: Develop and implement The University approved system for the preparation, review and processing of Change Orders. Make suggestions as to necessary or desirable changes to The University after reviewing A/E comments, review requests for changes, submit recommendations to The University, negotiate Change Orders, and obtain The University's prior written approval to proceed.

2.5.5 Payments to contractors: Develop and implement The University approved procedure for the review, processing and payment of applications by contractors for progress and final payments.

## **3.0 THE UNIVERSITY'S RIGHTS AND RESPONSIBILITIES**

### **3.1 THE UNIVERSITY'S RIGHTS**

3.1.1 The University shall have the right to perform work related to the project and to award contracts in connection with the project that are not part of the CM's responsibilities under the CM Agreement. The CM shall notify The University in writing if any such independent action will in any way compromise the CM's ability to meet the responsibilities under the CM AGREEMENT.

3.1.2 The University shall have the right to accept or reject personnel proposed by the CM. The CM shall make a timely and prompt re submittal to provide other personnel required to replace any that are rejected by the UPM, both at the initial submittal or any subsequent rejection or substitution of personnel.

3.1.3 The University shall have the right to effect the removal of any of the CM's employees at any time during the duration of the CM AGREEMENT if that employees is

reasonably deemed not to be of the level of competence or ability require under the CM AGREEMENT, or said employee is for any reason found to be unsuitable for the work. In such case, the CM shall promptly submit the name and qualifications of a replacement.

3.1.4 The University may make changes in the CM Services within the general scope of the CM AGREEMENT. The University may also make changes to the scope of the project which may give rise to changes in the scope of CM Services.

3.1.5 The University will rely upon the organization, skill, cooperation and efficiency of the CM to provide all facets of monitoring, expediting, reporting and providing all necessary and required construction management services as described in the CM AGREEMENT.

3.1.6 Upon presentation by the CM of a request in writing, the UPM shall review any decision or determination of The University as to any claim, dispute or any other matter in question relating to the execution or progress of the CM's Services or the interpretation of the CM AGREEMENT. Consistent with the intent of the CM AGREEMENT, The University shall schedule a conference for the purpose of settling or resolving such claims, disputes or other matters. Where such a conference is conducted, the CM shall be afforded the opportunity to be heard on the matter in question. Following review of the CM's request, The University and the CM may settle or resolve the disputed matter, provided, however, that any settlement or resolution shall be *subject* to all requirements imposed by law, including, where applicable, the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.

## **3.2 THE UNIVERSITY RESPONSIBILITIES**

3.2.1 The University shall provide to the CM promptly so as to not delay the progress of the services, information regarding the requirements of the project, including a scope of work which shall set forth The University's objectives, constraints and criteria, including space requirements, special equipment, systems and site requirement, budget constraints and the required date of completion.

3.2.2 The University shall designate a project manager authorized to act on The University's behalf with respect to the project. The University's representative has only those duties which are required of The University. The responsibility for completion of this project pursuant to the contract documents remains that of the contractor(s). The Responsibility for performance of the CM's contractual obligations remains with the CM.

3.2.3 The University shall furnish the CM with one set of all related contract document as they become available. This includes one set of approved plans and specifications.

3.2.4 The services, information and reports required in the above paragraphs in this Article shall be furnished at The University's expense.

3.2.5 Not Used

3.2.6 The Owner will maintain all Builder's Risk insurance coverage to the fully completed value of the Project on a replacement cost basis with a waiver of subrogation in favor of the CM."

#### **4.0 TERM OF AGREEMENT**

4.1 Work to be performed by the CM shall start on June 11, 2013 and be completed by May 29, 2017.

The CM shall use its reasonable skill and professional judgment to cause the work to be performed in a prompt and expeditious manner.

#### **5.0 COST OF WORK**

##### **5.1 AGREEMENT LIMIT**

The University shall reimburse the CM only for authorized expenses detailed in Schedule B. All other expenses are to be included in the monthly staffing fee.

This contract and preconstruction and construction management services can be amended or modified with the agreement of both parties.

Reimbursable expenses shall not exceed the amounts authorized by The University nor shall the CM make commitments of any type regarding the Cost of Work which separately or in the aggregate exceed the amount authorized by the Agreement. All commitments or spending by CM in excess of the agreement limit are undertaken at CM's own risk, and shall not be reimbursed by The University.

5.2 Reimbursement shall be in accordance with Schedule "A" and Schedule "B" for Reimbursable Expenses.

5.3 The CM shall submit a payment schedule to the UPM for approval. Payment shall be made in accordance to ARTICLE 1.0 of the General Conditions.

5.4 Should the Project duration be extended and The University requests continuation of the CM services beyond the contract duration, then the CM agrees to furnish services in accordance with the terms of the Agreement for the additional period required for completion of the Project.

5.5 The University shall reimburse the CM for The University requested continuation of CM services beyond the specified agreement period based upon values identified in the approved payment schedule which correspond to the activities for which the extended services are being requested.

IN WITNESS WHEREOF, the parties to these present have executed this Agreement three (3) counterparts, each of which shall be deemed an original, on the year and day first above mentioned.

BY: \_\_\_\_\_  
(Authorized Representative,)

Print Name: \_\_\_\_\_

ATTEST: \_\_\_\_\_

**William Paterson University of New Jersey**

BY: \_\_\_\_\_

Vice President  
Administration & Finance  
William Paterson University of New Jersey  
Wayne, New Jersey 07470

ATTEST: \_\_\_\_\_

Associate Vice President  
Capital Planning, Design & Construction  
William Paterson University of New Jersey  
Wayne, New Jersey 07470

## **ATTACHEMENT A**

### **GENERAL CONDITIONS CONSTRUCTION MANAGEMENT AGREEMENT**

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## GENERAL CONDITIONS ARTICLE

### 1.0 PAYMENT

1.1 CM shall submit complete monthly invoices to The University's Project Manager for review and approval

1.2 The University reserves the right to initiate adjustment invoices for erroneously invoiced items and to use such adjustment invoices as credits against subsequent invoices. However, failure of The University to do so shall not prejudice any of The University's rights hereunder.

1.3 CM shall submit monthly invoices in the month following that in which the Work was rendered and/or costs were incurred. Original invoices shall be substantiated by time sheets, receiving reports, relevant invoices, and other pertinent data pertaining to actual job costs. The University's representative retains the option to sign time sheets.

In such circumstances, The University may call an immediate Project and payment review meeting between The University and CM. CM shall be required to keep a record reflecting actual costs of labor and Services used to perform the Work.

1.4 CM shall submit to The University the following documentation with each invoice:

(1) Summary sheet detailing payees, gross amount, and net amount, including all required back up.

(2) Original invoices approved for payment by CM, subject to approval of The University's Project Manager.

1.4.1 The University shall review summary sheet, and documentation, after approval of same, shall forward to The University's Accounts Payable Department for payment. Such The University approval shall be based solely on CM Services provided and shall not be unreasonably withheld. The University shall pay all undisputed portions when due and withhold only the disputed portion, if any. The University shall complete such review and forward payment to CM no later than thirty (30) calendar days after receipt by The University of the invoice from CM.

1.4.2 No retain-age shall be held on CM Services.

### 1.5 PAYMENTS WITHHELD

The University may withhold payment in whole or in part, to the extent reasonably necessary to protect itself, if in its opinion The University is unable to approve payment in the amount of the invoice and The University will notify CM of this decision. If CM and The University cannot agree on a revised amount, The University will promptly issue a payment for the amount The University is able to approve. The University may also decline to certify payment or, because of subsequently discovered evidence or subsequent observations, The University may obtain a credit from CM to such extent as may be necessary in The University's opinion to protect itself from loss because of:

1. Defective Work not remedied following written notice from the University and reasonable opportunity to cure.
2. Third party claims filed or reasonable evidence indicating probable filing of such claims, related to the Work;

3. Failure of CM to properly make payment for Equipment and Materials.
4. Failure to carry out the Work in accordance with this Agreement.

1.5.1 In the event The University withholds a portion of CM's monthly invoice, The University shall notify CM's Project Manager, of such withholding of a portion of CM's monthly invoice in writing within 7 days of receipt of CM's invoice. CM shall notify The University's Project Manager, in writing, within thirty (30) days after notification from The University, of any disputes regarding payments withheld. Notification from CM shall include a justification, including the required back up, for reimbursement of the withheld portion of CM's monthly invoice. Failure to contact The University within forty five (45) days will result in a waiver of CM's rights to receive payment for the withheld amount.

1.6 The University's payment of the final invoice shall not preclude The University from exercising its audit rights under the terms of ARTICLE 11.0 of this Agreement shall not be deemed a release of any potential claims against CM and shall not limit The University from pursuing any other remedy available to The University under this Agreement and applicable laws.

## ARTICLE 2.0 TAXES

2.1 The University is exempt from all New Jersey sales, use and local taxes under N.J.S.A. 54:32B-9A. As a non-profit institution, the CM is exempt from Federal Excise Tax. These taxes must not be included in CM'S quotations or invoices.

## ARTICLE 3.0 INSURANCE CONSTRUCTION MANAMAGENT INSURANCE REQUIREMENTS

The Construction Manager shall secure and maintain in force for the term of the Contract plus two years following the final acceptance of the work, insurance coverage provided herein. All insurance coverage is subject to the approval of the University and shall be issued by an insurance company authorized to do business in the State of New Jersey and which maintains an A.M. Best rating of A- (VII) or better. The Contractor shall provide the University with current Certificates of Insurance for all coverage and renewals thereof which must contain the provision that the insurance provided in the certificate shall not be canceled for any reason except after thirty (30) days written notice to the University. All insurance required herein shall contain a waiver of subrogation in favor of the University. All insurance required herein, except Workers' Compensation and Professional Liability, shall name \_\_\_\_\_ University, the State of New Jersey, the New Jersey Educational Facilities Authority as additional insureds.

Commercial General Liability insurance written on an occurrence form including independent contractor liability, products/completed operations liability, contractual liability, covering but not limited to the liability assumed under the indemnification provisions of this contract including products and completed operations. The policy shall not include any endorsement that restricts or reduces coverage as provided by the ISO CG0001 form without the approval of the University. The minimum limits of liability shall not be less than a combined single limit of one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate, two million dollars (\$2,000,000) product/completed operations aggregate. A "per project aggregate" endorsement shall be included, so that the general aggregate limit applies separately to the project that is the subject of this contract.

Comprehensive Automobile Liability covering owned, non-owned, and hired vehicles. The limits of liability shall not be less than a combined single limit of one million dollars (\$1,000,000) per occurrence.

Worker's Compensation Insurance applicable to the laws of the State of New Jersey and other State or

Federal jurisdiction required to protect the employees of the Contractor and any Subcontractor who will be engaged in the performance of this Contract. The certificate must so indicate that no proprietor, partner, executive officer or member is excluded. This insurance shall include Employers' Liability Protection with a limit of liability not less than one million dollars (\$1,000,000) bodily injury, each occurrence, one million dollars (\$1,000,000) disease, each employee, and one million dollars (\$1,000,000) disease, aggregate limit.

Excess Liability, umbrella insurance form, applying excess of primary to the commercial general liability, commercial automobile liability and employer's liability insurance shall be provided with minimum limits of five million dollars (\$5,000,000) per occurrence, five million dollars (\$5,000,000) general aggregate, and five million dollars (\$5,000,000) products/completed operations.

Professional liability with minimum limits of liability that shall not be less than a combined single limit of five million dollars (\$5,000,000) per occurrence, five million dollars (\$5,000,000) general aggregate. The professional liability insurance shall be maintained for a period of not less than two year following the actual completion and acceptance of the PROJECT by the CONTRACTING OFFICER.

The construction manager shall require all its consultants/subcontractors to comply with all of the insurance requirements described above. The construction manager shall be responsible for obtaining certificates of insurance for all coverage and renewals thereof for each consultant/subcontractor prior to the consultant/subcontractor's beginning work on the project. The construction manager shall provide copies of all consultant/subcontractor certificates of insurance to the University upon request.

#### ARTICLE 4.0 NOT USED

#### ARTICLE 5.0 INDEMNITY

Any agreement or arrangement signed or entered into on behalf of William Paterson The University of New Jersey and/or the State of New Jersey by a State Official or employee shall be subject to all of the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. and the availability of appropriations. The State of New Jersey does not carry Public Liability Insurance, but the liability of the State and the obligation of the State to be responsible for Tort Claims against its employees are covered under the terms and provisions of the New Jersey Tort Claims Act.

CM agrees to defend, indemnify and hold harmless the State of New Jersey, William Paterson The University of New Jersey and its employees from and against any and all loss or liability including claims, demands, suits, actions, recoveries, judgments, costs, damages, attorney's fees and expenses for personal injury (*including death*) or loss or damage to property, which shall arise from or result directly from the CM Services, supplied under this Contract, including loss or liability which may arise whenever only to the extent that such loss or liability arises directly out of or occurs by reason of the alleged negligent acts or omissions of any of the CM's Agents, Administrators or employees in connection with, or in any manner related to the performance of the Contract. The CM's liability under this Contract shall continue after the termination of the Contract with respect to any liability, loss, expense or damage resulting from acts occurring prior to its termination. This indemnification obligation is not limited by, but is in addition to the insurance obligation contained in this agreement.

Upon the conclusion of any such action, proceeding or lawsuit, should a final binding determination of responsibility be made which allocates responsibility to the UNIVERSITY, the Client or the

University's members, officers, employees, or representatives, the UNIVERSITY agrees that the obligation to indemnify and hold harmless shall not be applicable to the portion of any judgment for which the UNIVERSITY is responsible.

The State of New Jersey and William Paterson University of New Jersey assume no obligation to indemnify or save harmless the CM, its agents, servants, employees or subcontractors for any claim which may arise out of its performance of this Contract.

#### ARTICLE 6.0 TERMINATION

6.1 The University may terminate this Agreement upon five (5)-business days written notice to CM:

(a) at any time should conditions arise which, in the sole opinion of The University, make it desirable, advisable or necessary to (1) discontinue the Work or that portion of the CM Services assigned to CM, or (2) materially alter the scope or nature of the CM Services or that portion of the CM Services assigned to CM, or (3) suspend the Work or that portion of the CM Services assigned to CM for 180 or more calendar days or (4) complete the CM Services itself, or engage a different CM to complete the CM Services or (5) discontinue funding for the Project; or

(b) if, during the term of this Agreement, CM shall dissolve, transfer, sell, assign, mortgage, encumber, pledge, or otherwise dispose of (1) all or substantially all of its assets, or (2) any controlling interest in its business (whether in the form of stock or otherwise); or (3) if CM shall consolidate with or merge into another corporation, partnership or sole proprietorship or permit one or more other corporations, partnerships or sole proprietorships to consolidate or merge into it; or (4) if CM shall become the subject of any voluntary or involuntary bankruptcy proceeding, liquidation or assignment for the benefit of creditors.

6.2 In the event that The University shall terminate this Agreement pursuant to ARTICLE 6.1, The University's sole and complete liability to CM shall be to pay CM for any The University-approved CM Services performed and expenses incurred up to the date of the termination in accordance with the terms of this Agreement, any expenses necessarily and reasonably incurred by CM in terminating CM's The University-approved obligations to third parties, and any shut-down costs approved in writing by The University.

6.3 If either party shall default in the performance of its obligations specified in this Agreement, the non-defaulting party may give written notice to the other party, specifying the nature of the default and, if such default is not remedied within thirty (30) calendar days of such notice, then the non-defaulting party shall have the right, at its sole option, either to immediately terminate this Agreement or suspend the performance of the same until such default is remedied. Termination under this ARTICLE 6.3 shall relieve and release the terminating party from any further liabilities and obligations hereunder except any liabilities or obligations, which accrued prior to the date of such termination.

6.4 In the event of termination by The University pursuant to this ARTICLE 6.0 under no circumstances shall CM be entitled to anticipated Profits or Overhead on CM Services not performed, materials and equipment or CM Services not provided, or to payment for non-The University-approved CM Services, materials and equipment, or shut-down costs.

#### ARTICLE 7.0 BUSINESS ETHICS

7.1 During the course of and while performing CM Services for The University in accordance with this Agreement, CM agrees to comply with The University's ethical business practices policy as follows: CM shall adhere to business practices which are in accordance with the letter and spirit of applicable laws and ethical principles, and CM agrees that all transactions in connection with The University's business will be

accurately reflected in its books and records and that no funds or other assets shall be paid directly or indirectly to government officials or persons acting on their behalf for the purpose of influencing government decisions or actions with respect to The University's business.

7.2 CM further agrees to comply with The University's conflict of interest policy as follows: to conduct its activities hereunder in its dealings with The University, contractors, and third parties so as to avoid loss or embarrassment to The University due to any real or apparent conflict of interest, and to require that all contractors comply with such policy in connection with the Work.

7.3 Violation of any the policies set forth in ARTICLE 7.1 and 7.2 on the part of CM, its employees, agents, representatives, contractors and Consultants shall result in the immediate termination of this Agreement.

#### ARTICLE 8.0 FORCE MAJEURE

8.1 Any delays or failure by either party in its performance hereunder shall be excused if, and to the extent, caused by causes such as, but not limited to decrees, or restraint of Government, Acts of God, strikes, labor "holidays" or coercive action of workmen, fire, flood, windstorm, explosion, riots, war, sabotage, freight embargoes, or any other causes beyond the reasonable control of the affected party, provided that the affected party has provided reasonable notice to the other party and makes reasonable efforts to overcome the force majeure event.

The parties shall convene and agree upon the necessary steps to be taken, such as, but not limited to, actions to mitigate the impact of the force majeure event to the extent reasonably possible.

#### ARTICLE 9.0 PUBLICITY

9.1 CM may not advertise or promote using the name or description of the University (including, but not limited to, disclosing the existence or contents of this Agreement), without in each instance the express written consent of The University which shall not be unreasonably withheld or delayed. Notwithstanding the above, CM may include a general description of the project in its promotional materials and written description of **Name of CM** project experience, utilizing publicly available project information, without securing the consent of the University.

#### ARTICLE 10.0 OWNERSHIP and USE of DOCUMENTS

All documents, data, and information generated by or on behalf of CM, shall belong to and be the property of the University and shall be delivered to the University promptly upon demand.

#### ARTICLE 11.0 AUDIT RIGHTS

11.1 CM shall prepare and maintain current such system of full and detailed accounts as may be necessary for proper financial planning and management under this Agreement, including but not limited to Records and books of accounts which substantiate or otherwise prove The University's receipt of, and CM's expenditure for all costs of the Work for which payment is or may be made by The University under this Agreement, and said system shall be satisfactory to The University.

CM's Records, which shall include, but are not limited to accounting records, written policies and procedures, original estimates, estimating files, correspondence, change order files (including

documentation covering negotiated settlements), insurance rebates and dividends, general ledger accounts, bank statements, canceled checks, wire transfer accounts, payroll records, pension records, actuary reports, and any other source documents and supporting evidence necessary to substantiate charges related to this Agreement (all the foregoing hereinafter referred to as "Records") shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by The University's authorized representative to the extent necessary to adequately permit evaluation and verification of any invoices, payments or claims submitted by CM or any of its payees pursuant to the execution of this Agreement. Such Records subject to examination shall also include, but are not limited to, those Records necessary to evaluate and verify direct and indirect costs (including Overhead allocations) as they may apply to costs associated with this Agreement. Field Records shall remain at the jobsite until The University shall notify CM in writing that they may be removed from the field office.

CM shall make available all Records as listed herein to enable The University to audit and verify multipliers all other reimbursable items excluding the make-up of any agreed upon multipliers and other fixed rates or unit prices.

11.2 The University shall be afforded access to the Records. CM shall preserve the Records for a period of three (3) years after the final payment, or for such longer period as may be required by law.

11.3 The University's authorized representative shall have access to CM's facilities, shall have access to all necessary Records, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this ARTICLE 11.0. The University's authorized representative shall give those to be audited reasonable advance notice of intended audits.

11.4 If an audit inspection or examination conducted in accordance with this ARTICLE 11.0 discloses overpricing or overcharges (of any nature) by CM to The University, any adjustments and/or payments to The University shall be made by CM within a reasonable amount of time not to exceed ninety (90) days from presentation of The University's findings to CM.

## ARTICLE 12.0 COMPLIANCE

12.1 CM shall comply with and give all notices required by laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of CM Services pertaining to construction means and methods as opposed to design. CM shall notify The University if it becomes aware of any non-compliance in connection with the Contractor Work and take all reasonably appropriate action necessary to advise the owner regarding the need for compliance by contractor(s) with such laws, ordinances, rules, applicable regulations, The University's safety requirements and other policies and procedures bearing on the Contractor Work.

12.2 CM at all times shall observe and comply with all applicable Federal and State and local laws, ordinances and regulations in any manner affecting the conduct of the CM Services and all such orders or decrees as exist at present and those which may be enacted later by bodies or tribunals having jurisdiction or authority over the CM Services.

12.3 CM must be authorized to conduct business in the State of New Jersey.

## ARTICLE 13.0 CONFIDENTIALITY

13.1 CM and its employees and agents shall treat as confidential, and shall not disclose to any third party, any information regarding The University's business practices gained from this agreement. CM shall inform all professionals assigned to perform Services for The University of their obligations to treat all information acquired at The University's facilities as confidential.

## ARTICLE 14.0 GOVERNING LAW

14.1 This Agreement hereunder shall be governed by and construed and interpreted in accordance with the laws of the State of New Jersey.

## ARTICLE 15.0 AFFIRMATIVE ACTION:

15.1 CM, and any consultants engaged by it, shall comply with N.J.S.A. 10:2-1 through 10:2-4 which prohibit discrimination in the employment on public contracts. The statute and the rules and regulations promulgated there under shall be considered to be part of this contract and binding upon the CM and its consultants. During the performance of this contract, the CM agrees that:

- a. CM shall not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The CM shall take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include, but not limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. The CM agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this non-discrimination clause.
- b. CM shall, in all solicitations or advertisements for employees, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation.
- c. CM shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of the CM's commitment under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

In addition, as required by N.J.S.A. 10:5-4.1, any unlawful discrimination against any person because of a physical handicap, or any unlawful employment practice against such a person is prohibited unless the nature and the extent of the handicap necessarily precludes the performance of the particular employment.

CM shall comply with Public Law P.L. 1975, Chapter 127, of the New Jersey Statutes, as set forth in the Manual for Affirmative Action Regulations.

Exhibit A is made a part of this Agreement.

## ARTICLE 16.0 SEVERABILITY

16.1 If any provision of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall continue in full force and effect

## ARTICLE 17.0 NON-WAIVER

17.1 Neither party's delay or failure in enforcing any right or remedy afforded hereunder or by law shall prejudice or operate to waive that right or remedy or any other right or remedy which it shall have available; nor shall any such failure or delay operate to waive either party's rights to any remedies due to a future breach of this Agreement, whether of a like or different character.

## ARTICLE 18.0 ENTIRE AGREEMENT, AMENDMENTS AND HEADINGS

18.1 This Agreement and constitute the entire agreement between the parties hereto and supersedes any previous agreements or understandings, whether oral or written. Any printed terms and conditions contained in purchase orders, invoices or other documents issued by the The University or CM shall be of no effect and shall be superseded by this Agreement.

18.2 No modification or waiver of the provisions of this Agreement shall be valid or binding on either party unless in writing and signed by both parties.

18.3 The headings assigned to the articles of this Agreement are for convenience only and shall not limit the scope and applicability of the articles.

## ARTICLE 19.0 ASSIGNMENT

19.1 This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns; however, no right or interest in this Agreement shall be assigned by either party without the prior written permission of the other party, and no delegation of any obligation owed, nor the performance of any obligation, by either party may be made without the prior written permission of the other party.

## ARTICLE 20.0 SURVIVAL OF CERTAIN PROVISIONS

20.1 The terms, provisions, representations, warranties and covenants contained in this Agreement that by their sense and context are intended to survive the performance thereof by either party or both parties hereunder shall so survive the completion of performance, expiration or termination of this Agreement.

## ARTICLE 21.0 REVIEW BY LEGAL COUNSEL

21.1 Each of the parties agrees that it has had the opportunity to have this Agreement reviewed by its legal counsel. Accordingly, the rule of construction that any ambiguity in this Agreement is to be construed against the drafting party shall not apply.

## ARTICLE 22.0 FURTHER ASSURANCES

22.1 Each party agrees to execute such further papers, agreements, documents, instruments and the like as may be necessary or desirable to effect the purpose of this Agreement and to carry out its provisions.



## **SCHEDULE A – Billing Rates**

## **SCHEDULE B - REIMBURSABLE EXPENSES**

Reimbursable expenses are expenses incurred by the CM in the interest of the Project and are billed at actual cost. These include:

- a. Overnight delivery and messenger services as authorized by the University;
- b. Fees paid to DEP, DCA or other governing authorities having jurisdiction over or in part of the Project for permit applications, inspections, certificates of Occupancy, etc.
- c. Public Notices, announcements and advertising as authorized by the University.
- d. Reproduction of plans and specifications as authorized by the University.

**WILLIAM PATERSON THE UNIVERSITY OF NEW JERSEY**

**EXHIBIT A**

**(Insert from Template)**