

AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER  
PRE-CONSTRUCTION AND CONSTRUCTION SERVICES

AGREEMENT made by and between \_\_\_\_\_, hereinafter called the Owner, and SITESCOMMERCIAL, LLC 185 WIND CHIME COURT, SUITE 203 RALEIGH NORTH CAROLINA 27615, hereinafter called the Construction Manager.

Project Title: \_\_\_\_\_

The Project Design Professional is: \_\_\_\_\_

The Owner and Construction Manager agree as set forth below:

1. The Construction Manager shall provide services for the Project in accordance with the TERMS AND CONDITIONS OF THE AGREEMENT.

The Construction Manager accepts the relationship of trust and confidence established between the Construction manager and the Owner by this Agreement. The Construction Manager covenants with the Owner to furnish the Construction Manager's best skill and judgment and to cooperate with the Owner's Design Professional in furthering the interests of the Owner. The Construction Manager agrees to furnish efficient business administration and superintendence and to use the Construction Manager's best efforts at all times in the most expeditious and economical manner consistent with the interest of the Owner.

2. The Owner shall compensate the Construction Manager in accordance with the TERMS AND CONDITIONS OF THE AGREEMENT.
  - A. For BASIC SERVICES, as described in Article 2, Compensation shall be computed as follows:

For Pre-Construction and Construction Phase Services compensation shall be on the basis of a stipulated sum of \_\_\_\_\_  
No/100 Dollars (\$0000.00).
  - B. For ADDITIONAL SERVICES, described in Article 3, compensation shall be computed as agreed upon in writing at the time of the needed services.
3. The Construction Manager shall maintain, and require all of its professional consultants and subcontractors performing services in connection with the Agreement, to maintain insurance for the duration of the Project in such amount and types as required below and in Article 11 of this Agreement. The required minimum liability limits may be met through either the primary policy(ies), or a combination of primary and excess or umbrella policies.

A. Insurance coverage required:

1. Workers compensation in compliance with statutory requirements, and Employers Liability with limits of no less than \$500,000 Each Accident for bodily injury \$500,000 Each Employee for bodily injury by Disease/and \$1,000,000 Policy Limit for bodily injury by Disease. The Construction Manger shall waive subrogation rights against \_\_\_\_\_ for any claim paid or payable on this policy.
2. Commercial General Liability covering all work and operations under the Agreement with limits of no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
3. Automobile Liability of no less than \$1,000,000 each accident and annual aggregate, covering owned, leased, hired, non-owned, and employee non-owned vehicles.
4. Builder's Risk Insurance policy for the value of the Project, with a \$5,000 deductible.

B. The above liability insurance policies, with the exception of Professional and Workers Compensation coverage, shall name \_\_\_\_\_ as additional insured.

C. Neither the Owner, nor any additional insured required to be so named under this Agreement shall participate in any policy deductible or retention for claims. Any such deductible or retention shall be the sole responsibility of the Construction manager.

D. Certificate Holder address shall be as follows:

\_\_\_\_\_

TERMS AND CONDITIONS OF AGREEMENT  
BETWEEN OWNER AND CONSTRUCTION MANAGER

ARTICLE 1. WORKING RELATIONSHIPS

1.1 OWNER'S REPRESENTATIVE

1.1.1 The Owner shall designate a principal representative. Owner's Representative shall fulfill their respective duties as hereinafter described in Article 4.

1.1.2 All communications between the Owner and the Construction Manager shall be made through the Owner's Representative. The Owner's Representative or a designee shall be at all meetings as required with the Construction Manager and other personnel during the Project. The Owner's Representative shall render decisions in a timely manner pertaining to documents submitted by the Construction Manager in order to avoid unreasonable delay in the orderly and sequential progress of the Construction Manager's services.

1.2 CONSTRUCTION MANAGER'S REPRESENTATIVE

1.2.1 The Construction Manager shall designate one principal or representative approved in writing by the Owner to represent the firm in all communications and at all meetings with the Owner's Representative. All correspondence from the Owner to the Construction Manager shall be directed to this person. The Construction Manager's Representative shall not be changed without prior written consent of the Owner.

1.3 CONSTRUCTION MANAGER'S SERVICES

The Construction Manager's services consist of those services performed by the Construction Manager, Construction Manager's employees and Construction Manager's consultants and subcontractors as enumerated in Articles 2 and 3 of this Agreement.

1.3.1 The Construction Manager's services shall be provided in conjunction with the services of a Design Professional as described in the Agreement Between Owner and Design Professional.

1.3.2 The Construction Manager shall provide sufficient organization, personnel and management to carry out the requirements of this Agreement in an expeditious and economical manner consistent with the interests of the Owner.

1.3.3 The Construction Manager shall attend all meetings which may be necessary for the timely performance of all services.

1.3.4 The Construction Manager shall not enter into a contract with any professional consultant, subcontractor, or other third party for the rendering of any of the services provided under this Agreement without first obtaining the Owner's written approval.

## ARTICLE 2. SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES

### 2.1 DEFINITION

- 2.1.1. The Construction Manager's Basic Services consist of those described in Paragraphs 2.2 and 2.3.

### 2.2 PRE-CONSTRUCTION PHASE

2.2.1 The Construction Manager shall review the program furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner.

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

2.2.3 Based on early schematic designs and other design criteria prepared by the Design Professional, the Construction Manager shall prepare preliminary estimates of Construction Cost for program requirements using area, volume or similar conceptual estimating techniques. The Construction Manager shall provide cost evaluations of alternative materials and systems.

2.2.4 The Construction Manager shall expeditiously review design documents during their development and advise on proposed site use and improvements, selection of materials, building systems and equipment, and methods of Project delivery. The Construction Manager shall provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, and possible economies.

2.2.5 The Construction Manager shall prepare and periodically update a Project Schedule for the Design Professional's review and the Owner's acceptance. The Construction Manager shall obtain the Design Professional's approval for the portion of the preliminary project schedule relating to the performance of the Design Professional's services. In the Project Schedule, the Construction Manager shall coordinate and integrate the Construction Manager's services, the Design Professional's services and the Owner's responsibilities with anticipated construction schedules, highlighting critical and long-lead-time items.

2.2.6 As the Design Professional progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Design Professional, estimates of Construction Cost of increasing detail and refinement. The estimated cost of each work package shall be indicated with supporting detail. Such estimates shall be provided for the Design Professional's review and the Owner's approval. The Construction Manager shall advise the Owner and Design Professional if it appears that the Construction Cost may exceed the latest approved Project budget and make recommendations for corrective action.

2.2.7 The Construction Manager shall consult with the Owner and Design Professional regarding the Construction Documents and make recommendations whenever design details adversely affect constructibility, cost or schedules.

2.2.8 The Construction Manager shall advise on the division of the Project into individual Contracts for various categories of Work, including the method to be used for selecting Contractors and awarding Contracts. The Construction Manager shall review the Construction Documents and make recommendations as required to provide that (1) the Work of the Contractors is coordinated, (2) all requirements for the Project have been assigned to the appropriate Contract, and (3) proper coordination has been provided for phased construction.

2.2.9 The Construction Manager shall prepare a Project construction schedule providing for the components of the Work, including phasing of construction, times of commencement and completion required of each Contractor ordering and delivery of products requiring long lead time, and the occupancy requirements of the Owner.

2.2.10 The Construction Manager shall investigate and recommend a schedule for the Owner's purchase of materials and equipment requiring long lead time procurement, and coordinate the schedule with the early preparation of portions of the Contract Documents by the Design Professional.

2.2.11 The Construction Manager shall assist the Owner in selecting, retaining and coordinating the professional services of special consultants required for the Project.

2.2.12 Following the Owner's approval of the Construction Documents, the Construction Manager shall update and submit the latest estimate of Construction Cost and the Project construction schedule for the Design Professional's review and the owner's approval.

2.2.13 The Construction Manager shall develop and implement criteria acceptable to the Owner for qualification of Bidders. The Construction Manager shall establish bidding schedules and shall participate in pre-bid conferences to familiarize Bidders with the Bidding Documents and with any special systems, materials or methods. The Construction Manager shall assist the Design Professional with regard to questions from Bidders, and with the issuance of Addenda.

2.2.14 The Construction Manager shall assist the Owner in receiving bids, prepare bid analyses and make recommendations to the Owner for the award of Contracts.

2.2.15 The Construction Manager shall prepare Construction Contracts, Subcontracts and material purchase orders necessary for the Project.

## 2.3 CONSTRUCTION PHASE

2.3.1 The Construction Phase will commence with the award of the initial Construction Contract or purchase order and, together with the Construction Manager's obligation to provide approved Basic Services under this Agreement, will end at the conclusion of the one (1) year warranty period following the date of Substantial Completion.

2.3.2 The Construction Manager shall provide on-site supervision, all typical General Conditions requirements, administrative, management and related services to coordinate scheduled activities and responsibilities of the Contractors with each other and with those of the Construction Manager, the Owner and the Design Professional to endeavor to manage the Project in accordance with the latest approved estimate of Construction Cost, the Project Schedule and the Contract Documents.

2.3.3 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress and scheduling. The Construction Manager shall prepare and promptly distribute minutes to the Owner, Design Professional and Contractors.

2.3.4 The Construction Manager shall update the Project construction schedule incorporating the activities of the Contractors on the Project. The Construction Manager shall reissue the Project schedule as required to show current conditions. If an update indicates that the previously approved Project construction schedule may not be met, the Construction Manager shall recommend corrective action to the Owner.

2.3.5 The Construction Manager shall endeavor to obtain satisfactory performance from each of the Contractors. The Construction Manager shall recommend courses of action to the Owner when requirements of a Contract are not being fulfilled.

2.3.6 The Construction Manager shall provide regular monitoring of the approved estimate of Construction Cost, showing actual costs for activities in progress and estimates for uncompleted tasks. The Construction Manager shall identify variances between actual and budgeted or estimated costs, and advise the Owner and the Design Professional whenever projected costs exceed budgets or estimates.

2.3.7 The Construction Manager shall develop and implement procedures for the review, approval, processing and payment of applications by Contractors for progress payments in accordance with the Owner's payment application procedures. The Construction Manager shall review payment applications to determine whether the amount requested reflects the progress of the Contractor's work and will make any necessary adjustments prior to submitting the Progress Payment Report to the Owner. The Report shall state the total contract price, payments to date, current payment requested, retainage and actual amounts owed for the current period. The Certificate of Payment shall be signed by the Construction Manager and delivered to the Owner for approval and payment.

2.3.8 The Construction Manager shall review the safety programs developed by each of the Contractors for purposes of coordinating the safety programs with those of the other Contractors. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

2.3.9 The Construction Manager shall determine in general that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents, endeavoring to guard the Owner against defects and deficiencies in the Work. As appropriate, the Construction Manager shall have authority to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. The Construction Manager, in consultation with the Owner and Design Professional, may reject Work which does not conform to the requirements of the Contract Documents.

2.3.10 The Construction Manager shall schedule and coordinate the sequence of construction in accordance with the Contract Documents and the latest approved Project construction schedule.

2.3.11 With respect to each Contractor's own Work, the Construction Manager shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work of each of the Contractors, since these are solely the Contractors responsibility under the Contract for Construction. The Construction Manager shall not be responsible for a Contractor's failure to carry out the Work in accordance with the respective Contract Documents but the Construction Manager will endeavor to determine in general that the Contractor carries out its work in accordance with the terms and conditions of its contract. The Construction

Manager shall not have control over or charge of acts or omissions of the Contractors, Subcontractors, or their agents or employees, or any other persons performing portions of the Work not directly employed by the Construction Manager.

2.3.12 The Construction Manager shall transmit to the Design Professional requests for interpretations of the meaning and intent of the Drawings and Specifications, and assist in the resolution of questions that may arise.

2.3.13 The Construction Manager shall review requests for changes, assist in negotiating Contractors' proposals, submit recommendations to the Design Professional and Owner, and, if they are accepted, prepare Change Orders and Construction Change Directives which incorporate the Design Professional's modifications to the Documents.

2.3.14 The Construction Manager shall assist the Owner and Design Professional in the review, evaluation and documentation of Claims.

2.3.15 The Construction Manager shall evaluate certificates of insurance from the Contractors.

2.3.16 The Construction Manager shall review all Shop Drawings, Product Data, Samples and other submittals from the Contractors, coordinate submittals with information contained in related documents and transmit to the Design Professional those which have been approved by the Construction Manager.

2.3.17 The Construction Manager shall provide a monthly progress report summarizing the activities of the previous month including information on each Contractor and each Contractor's Work, as well as the entire Project, showing percentages of completion. The submittal of this report shall coincide with the submittal of the Construction Manager's invoice for professional services as described in Article 12.

2.3.18 The Construction Manager shall arrange for the delivery, storage, protection and security of Owner-purchased materials, systems and equipment that are a part of the Project until such items are incorporated into the Project.

2.3.19 The Construction Manager shall coordinate the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work, or a designated portion thereof, the Construction Manager shall evaluate the completion of the work of the Contractors and make recommendations to the Design Professional when Work is ready for final inspection. The Construction Manager shall assist the Design Professional in conducting final inspections.

2.3.20 The Construction Manager shall secure and transmit warranties and similar submittals required by the Contract Documents for delivery to the Owner and deliver all keys, manuals, record drawings, and maintenance stocks to the Owner.

2.3.21 Duties, responsibilities and limitations of authority of the Construction Manager as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Construction Manager, Design Professional and Contractors. Consent shall not be unreasonably withheld.

2.3.22 During the one (1) year warranty period following the date of Substantial Completion, the Construction Manager shall work with the Owner's Representative to oversee, monitor, and coordinate the remedial work of the Contractors, including, but not limited to, making certain that the appropriate Contractors are notified of the extent and nature of the remedial work which needs to be done and that such work is done in a timely and satisfactory manner.

### ARTICLE 3. ADDITIONAL SERVICES

- 3.1 The services described in this Article 3 are not included in Basic Services and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services specified in Paragraph 2A of the Agreement Between Owner and Construction Manager.
- 3.1.1 Providing services required because of significant changes in the Project including, but not limited to, changes in size, quality, complexity or the Owner's schedule.
- 3.1.2 Providing consultation concerning significant replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.
- 3.1.3 Providing services made necessary by the termination or default of the Design Professional or a Contractor by major defects or deficiencies in the Work of a Contractor, or by failure of performance of the Owner, or a Contractor under a Contract for Construction.
- 3.1.4 Providing services in evaluating an extensive number of claims submitted by a Contractor or others in connection with the Work to the extent such claims are not caused by the Construction Manager's services.
- 3.1.5 Providing services in connection with a public hearing, arbitration proceeding or legal proceeding except where the Construction Manager is party thereto.
- 3.1.6 Providing services relative to future facilities, systems and equipment not covered in this Agreement.
- 3.1.7 Providing services related to Owner-furnished furniture, furnishings and equipment which are not a part of the Project.
- 3.1.8 Providing any other services not otherwise included in the Agreement.
- 3.1.9 The Construction Manager shall have the right under this Article to claim additional compensation for any services not specifically covered herein, provided that such Additional Services are identified as such and are authorized in writing by the Owner or his Representative prior to their performance.

### ARTICLE 4. OWNER'S RESPONSIBILITIES

- 4.1 The Owner shall provide full information regarding the requirements of the Project.
- 4.2 The Owner shall establish and update an overall budget for the Project based on consultation with the Construction Manager and Design Professional, which shall include the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.
- 4.3 The Owner shall retain a Design Professional whose services, duties and responsibilities are described in the Agreement between Owner and the Design Professional. The Construction Manager shall not be responsible for actions taken by the Design Professional.
- 4.4 The Owner shall furnish demolition and building permits, structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.
- 4.5 The Owner shall furnish such legal, accounting and insurance counseling services as may be necessary for the Project.



- 4.6 The Owner shall furnish the Construction Manager with a sufficient quantity of Construction Documents.
- 4.7 The services, information and reports required by Paragraphs 4.3 through 4.6, inclusive, shall be furnished at the Owner's expense.
- 4.8 The Owner reserves the right to perform construction and operations related to the Project with the Owner's own forces, and to award contracts in connection with the Project which are not part of the Construction Manager's responsibilities under this Agreement. The Construction Manager shall notify the Owner if any such independent action will interfere with the Construction Manager's ability to perform his responsibilities under this Agreement. When performing construction or operations related to the Project, the Owner agrees to be subject to the same obligations and to have the same rights as the Contractors to the extent permitted by law.
- 4.9 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Construction Manager's services and the progress of the Work.

## ARTICLE 5. CONSTRUCTION COST

### 5.1 DEFINITION

- 5.1.1 The Construction Cost shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Design Professional.
- 5.1.2 Construction Cost shall include the cost at current market rates of labor and materials furnished by or on behalf of the Owner and equipment designed, specified, selected or specially provided for by the Design Professional, plus a reasonable allowance for the Contractors' overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work during construction. Construction Cost shall also include the compensation of the Construction Manager.
- 5.1.3 Construction Cost does not include the compensation of the Design Professional and Design Professional's consultants, costs of the land, rights-of-way, financing or other costs which are the responsibility of the Owner as provided in Article 4.

### 5.2 RESPONSIBILITY FOR CONSTRUCTION COST

- 5.2.1 Evaluations of the Owner's Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Cost prepared by the Construction Manager represent the Construction Manager's best judgment as a person or entity familiar with the construction industry. It is recognized, however, that neither the Construction Manager nor the Owner has control over the cost of labor, materials or equipment, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the Project budget proposed, established or approved by the Owner, or from any cost estimate or evaluation prepared by the Construction Manager.

- 5.2.2 No fixed limit of Construction Cost shall be established as a condition of this Agreement by the furnishing, proposal or establishment of a Project budget.

#### ARTICLE 6. OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND DOCUMENTS

- 6.1 The Drawings, Specifications and other documents prepared by the Design Professional are instruments of service through which the Work to be executed by the Contractors is described and are the property of the Owner and/or the Design Professional, as determined by their Contract Agreement. The Construction Manager may retain one (1) record set.
- 6.2 All documents, including electronic data, required by the Agreement and prepared by the Construction Manager as instruments of service, are the property of the Owner whether the work for which they are made be executed or not.

#### ARTICLE 7. DISPUTES

- 7.1 Any dispute between the Construction Manager and the Owner regarding, but not limited to project budget, project scope, project layout, or types and quality of materials, shall be submitted in writing within 21 days after occurrence of the event giving rise to the claim to be resolved by the Design Professional. If not resolved by the Design Professional within 10 days, then the Construction Manager may submit in writing the issue(s) in dispute to binding arbitration.

#### ARTICLE 8. TERMINATION, SUSPENSION OR ABANDONMENT

- 8.1 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.
- 8.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Construction Manager's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Construction Manager's services.
- 8.3 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Construction Manager in the event that the Project is permanently abandoned. If the Project is abandoned by the Owner for more than 90 consecutive days, the Construction Manager may terminate this Agreement by giving written notice.
- 8.4 Failure of the Owner to make payments to the Construction Manager in accordance with this Agreement shall be considered substantial nonperformance and cause for termination.
- 8.5 Provided that the Construction Manager has met the material intent of the terms and conditions of this contract, and the Owner fails to make payment when due the Construction Manager for services, the Construction Manager may, upon seven days' written notice to the Owner, suspend performance of services under this agreement. Unless payment in full is received by the Construction Manager within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Construction Manager shall have no liability to the Owner for delay or damage caused to the Owner because of such suspension of services.

- 8.6 In the event of termination not the fault of the Construction Manager or its employees, professional consultants, subcontractors, or anyone for whom it is legally liable, the Construction Manager shall be compensated for services performed prior to termination.
- 8.7 Termination Expenses are those costs directly attributable to termination for which the Construction Manager is not otherwise compensated and for which the Construction Manager has submitted appropriate supporting documentation to the Owner. Termination Expenses do not include lost profits or consequential damages.

#### ARTICLE 9. MISCELLANEOUS PROVISIONS

- 9.1 This Agreement shall be governed by the law of the State of Ohio.
- 9.2 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion, or the date of issuance of the final Project Certificate for Payment for acts or failures to act occurring after Substantial Completion.
- 9.3 Waivers of Subrogation. The Owner and Construction Manager waive all rights against each other and against the Contractors, Design Professionals, consultants, agents and employees of any of them, for damages, but only to the extent covered by property insurance during construction. The Owner and Construction Manager each shall require similar waivers from their Contractors, Design Professionals, consultants, agents, and persons or entities awarded separate contracts administered under the Owner's own forces.
- 9.4 Unless otherwise provided in this Agreement, the Construction Manager and the Construction Manager's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

#### ARTICLE 10. INSURANCE AND INDEMNIFICATION

- 10.1 The Construction Manager shall purchase from and maintain in a company or companies lawfully authorized to do business in the state of Ohio such insurance as will protect the Construction Manager from claims set forth below which may arise out of or result from the Construction Manager's operations under this Agreement and for which the Construction Manager may be legally liable.
  - 10.1.1 claims under workers compensation, disability benefit and other similar employee benefit act which are applicable to the operations to be performed;
  - 10.1.2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Construction Manager's employees or of any person other than the Construction Manager's employees;
  - 10.1.3 claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Construction Manager, or (2) by another person;
  - 10.1.4 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

- 10.1.5 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle.
- 10.2 The insurance required by Subparagraph 10.1.1 shall be written for not less than limits of liability specified in Paragraph 3, or required by law, whichever coverage is greater.
- 10.3 The Construction Manager shall furnish certificates to the Owner showing insurance coverage. Certificates shall identify the name of the Project and shall provide the Owner with a minimum 30 days notice of cancellation.
- 10.4 The Construction Manager agrees to indemnify and hold harmless the Owner against all damages, liabilities or costs, including reasonable attorneys' fees and all costs associated with internal and external expenses for labor and materials in preparing for the defense, to the extent caused by the Construction Manager's negligent performance of services under this Agreement and that of its Professional Consultants or anyone for whom the Construction Manager is legally liable.
- 10.5 The Owner will require that any Contractor or Subcontractor performing work in connection with Contract Drawings and Project Manual produced under this Agreement to hold harmless, indemnify and defend the Owner and the Construction Manager, their consultants and each of their officers, agents, and employees from any and all liability claims, losses or damages, including attorney's fees, arising out of the Contractor's or Subcontractor's negligent acts, errors or omissions in the performance of the Work described in the Contract Documents, but not including liability that may be due to the negligent acts, errors and omissions of the Owner, the Construction manager, their consultants or their officers, agents and employees.

#### ARTICLE 11. PAYMENTS TO THE CONSTRUCTION MANAGER

- 11.1 For Basic Services, as defined in Article 2; and for Contractors' Progress Payments, as detailed in Section 2.3.7, payments shall be made monthly upon submittal of the Construction Manager's statement using an AIA standard invoice format.

#### ARTICLE 12. SUCCESSORS AND ASSIGNS

- 12.1 The Owner and the Construction Manager, respectively, bind themselves, their partners, successors, assign 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 the Agreement. Neither the owner nor the Construction Manager shall assign, sublet or transfer any interest in this Agreement without the prior written consent of the other.

#### ARTICLE 13. EXTENT OF AGREEMENT

- 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral.. This Agreement may be amended only by written instrument signed by both the Owner and the Construction Manager.

- 13.2 Nothing contained herein shall be deemed to create any contractual relationship between the Construction Manager and the Design Professional or any of the Contractors, Subcontractors or material suppliers on the Project; nor shall anything contained in the Agreement be deemed to give any third party any claim or right of action against the Owner or the Construction Manager which does not otherwise exist without regard to this Agreement.

This Agreement becomes effective the day and year signed by the owner below.

Construction Manager:

SitesCommercial, LLC

by: \_\_\_\_\_  
Charles Sites, Manager

Dated: \_\_\_\_\_

E-Mail: [chip@sitescommercial.com](mailto:chip@sitescommercial.com)

Owner:

\_\_\_\_\_

by: \_\_\_\_\_

Dated: \_\_\_\_\_