

# DRAFT AIA® Document A133™ – 2009

## **Standard Form of Agreement Between Owner and Construction Manager as Constructor** where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

**AGREEMENT** made as of the [ ] day of [ ] in the year Two Thousand Fifteen  
(In words, indicate day, month and year.)

**BETWEEN** the Owner:  
(Name, legal status and address)

Mr. Sean Fitzgerald, Town Manager  
Town of Plaistow, NH  
Plaistow Town Hall  
145 Main Street  
Plaistow, New Hampshire 03865

and the Construction Manager:  
(Name, legal status and address)

Eckman Construction Company, Inc.  
84 Palomino Lane  
Bedford, New Hampshire 03110-6449

for the following Project:  
(Name and address or location)

Addition and Renovation of the Plaistow Public Safety Complex  
27 Elm Street  
Plaistow, New Hampshire 03865

The Owner's Project Manager (the "OPM"):  
(Name, legal status and address)

Trident Building, LLC  
155 N Broadway, 2nd Floor  
PO Box 68  
Salem, New Hampshire 03079-0068

The Architect:  
(Name, legal status and address)

Dore & Whittier Architects Inc.  
260 Merrimack Street, Building #7  
Newburyport, Massachusetts 01950

The Owner's Designated Representative:  
(Name, address and other information)

Mr. Sean Fitzgerald, Town Manager  
Town of Plaistow, NH  
Plaistow Town Hall  
145 Main Street  
Plaistow, New Hampshire 03865

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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The Construction Manager's Designated Representative:  
(Name, address and other information)

Mr. John Deloia, VP/Project Executive  
Eckman Construction Company, Inc.  
84 Palomino Lane  
Bedford, New Hampshire 03110-6449

The Owner's Project Manager's Designated Representative:  
(Name, address and other information)

Mr. Gino J. Baroni, Client Executive, or in his absence  
Mr. David Mermelstein, Senior Project Manager  
155 N Broadway, 2nd Floor  
PO Box 68  
Salem, New Hampshire 03079-0068

The Architect's Designated Representative:  
(Name, address and other information)

Mr. Alan Brown, Project Architect  
Dore & Whittier Architects Inc.  
212 Battery Street  
Burlington, Vermont 05410

The Owner and Construction Manager agree as follows.

This Agreement is contingent upon:

- (i) Approval of a warrant article funding the project by voters at the March 2016 Town Meeting, in accordance with the rules and regulations of the Town of Plaistow, New Hampshire;
- (ii) Successful issuance of a bond to cover the full cost of the project in conformance with the approved warrant article; and
- (iii) The Owner's decision in its sole discretion to proceed with the project.

Failure of any of these contingencies shall render this Agreement null and void.

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## EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect or other Owner acceptable consultant and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

#### § 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's best skill, efforts and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and shall perform the Work in an expeditious and economical manner consistent with the Owner's best interests. -The Owner agrees to furnish or review, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

#### § 1.3 General Conditions

For the Preconstruction Phase, or in the event that the Preconstruction and Construction phases proceed concurrently, AIA Document A201™-2007, General Conditions of the Contract for Construction, as amended, which document is attached hereto; made a part hereof; is referenced herein as "Exhibit A - A201-2007"; and shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in Exhibit A - A201-2007 as amended, which document is attached hereto and made a part hereof. The term "Contractor" as used in Exhibit A - A201-2007 as amended shall mean the Construction Manager.

#### § 1.4 CONSTRUCTION MANAGER'S PROJECT TEAM

The Construction Manager's Project Team and Organization Chart shall include the individuals listed in "Exhibit B - Construction Manager's Project Team and Organization Chart" (which is attached hereto and made a part hereof) and such other assistants and technician and administrative personnel as required to carry out the Work effectively, subject to the Owner's acceptance. No change in the composition of the Project Team, including, without limitation, reassignment and/or removal of any Project Team member, shall be made without the Owner's prior written acknowledgement except in the following instances: (i) the death or disability of an individual, (ii) the Construction Manager terminates the employment of an applicable Project Team member, or (iii) the individual leaves employment of the Construction Manager. The Owner may require the removal or reassignment of any member of the Project Team, or assistant, technical or administrative personnel for cause, upon notice to the Construction Manager. The Construction Manager shall reassign or remove same within ten (10) business days from the notice to do so from the Owner.

#### § 1.5 LICENSES

The Construction Manager warrants that it is a business entity legally authorized to conduct business in the location of the Project, which is experienced and skilled in the construction of projects of the type described in the Contract Documents, has the necessary skills and expertise for proper performance of the Work described in the Contract Documents, and shall engage experienced and properly licensed personnel in connection with the Project, consistent with good construction practice and consistent with all laws, statutes, regulations, ordinances, codes, building codes, orders, decrees, approvals, certificates and requirements of governmental and quasi-governmental authorities relating or applicable to the Project including without limitation, all facets of the Work and all areas of the Project site or which concern or relate to safety of persons or property (collectively referred to herein as "Applicable Laws," "Applicable Law," "Laws" or "laws").

#### § 1.6 STANDARD OF CARE

In performing its duties hereunder, Construction Manager shall exercise the degree of care and skill which may be reasonably expected of first class construction managers performing work and services for projects of kind and scope comparable to the Work in the Greater Boston, Massachusetts area (the "Standard of Care"). The Construction Manager represents, warrants and covenants that it is experienced and skilled in construction of projects of the type and with the magnitude and complexity described in the Contract Documents; familiar with the special problems and requirements of construction and phasing of the type required for the Project and in the location of the Site; has the necessary skills and expertise for proper performance of the Work described in the Contract Documents; and, consistent with the requirements of all Applicable Laws, and good construction practice, will engage experienced and properly licensed personnel in connection with the Project and furnish a complete and fully operable Project as indicated by and reasonably inferable from the Contract Documents.

#### ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the services described in this Article. The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

This Agreement is intended to operate on a strict, written notice-to-proceed basis. The Owner shall have the right to direct the Construction Manager to proceed onto the Preconstruction Phase and/or the Construction Phase.

At any time during the Pre-Bond Vote Phase or the Preconstruction Phase or at either's end, the Owner shall have the right to terminate the Agreement effective immediately without owing to the Construction Manager or any other person or entity any further contractual obligation, responsibility, liability, payment, fee, cost, expense, profit, overhead, damage, loss or any other like item and, in such instance, the Owner shall not be obligated to issue a Notice to Proceed for the Construction Phase or be further obligated in any other way by these Contract Documents. The Construction Manager shall not commence work, perform services or incur any expense for either the Preconstruction Phase or the Construction Phase unless and until the Owner has issued a written Notice to Proceed for said phase. To the extent the Construction Manager properly performed services during the Preconstruction Phase and/or properly incurred reasonable and necessary expenses directly pursuant to an Owner issued Notice to Proceed and pursuant to and as allowed by the terms of this Agreement, then, in the event of a termination of this Agreement either during or at the end

of the Preconstruction Phase, the Owner shall compensate the Construction Manager pursuant and subject to the terms and conditions of this Agreement for services performed properly and for any proper, reasonable and necessary reimbursable expense incurred by the Construction Manager to the date of such termination, provided, however, that the compensation for such services shall not exceed the compensation set forth in Section 4.1.1 herein and shall be based on actual, reasonable, and verifiable data provided to the Owner by the Construction Manager requesting payment of same. It is acknowledged and agreed to by the Construction Manager that all documents, drawings, specifications, reports, maps, submissions and data bases and any other work product produced by the Construction Manager for this Project shall be delivered to the Owner in a format acceptable to the Owner and become the property of the Owner for its use as it deems appropriate upon payment. This provision is material to the Agreement between the Owner and the Construction Manager and shall be, in all respects, superior to any contrary or inconsistent term or provision in this Agreement, any of the other Contract Documents and Section 1.2.7 of Exhibit A – A201-2007 as defined herein.

## **§ 2.1 Pre-Bond Vote Phase and Preconstruction Phase**

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

**§ 2.1.1.1** More specifically, during the Pre-Bond Vote Phase the Construction Manager shall provide estimates, VE efforts, phasing, and schedule iterations for review by the Town and Project Team. The Construction Budget and Schedule acceptable to the Town shall be provided in time for inclusion in the Town's Warrant Article for the Project.

## **§ 2.1.2 Consultation**

The Construction Manager shall schedule, conduct meetings, and record and distribute written minutes of the meetings with the Architect, OPM, and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. To insure an informed dialogue and reduce the need for secondary communications, the Construction Manager shall insure the attendance of staff with the applicable professional expertise needed to address each agenda item at each meeting. The Construction Manager shall advise the Owner, OPM, and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner, OPM, and Architect on constructability; continuity of ongoing operations, phasing; site logistics; safety; availability of materials and labor; and actions designed to minimize adverse effects of labor or material shortages; 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, life-cycle data, and possible cost reductions.

**§ 2.1.3** Within fourteen (14) days of the execution of this Agreement, the Construction Manager shall prepare and periodically update a preliminary Project schedule, on a precedence based, Critical Path Method ("CPM") format and consistent with the requirements as hereinafter defined or as requested by the Owner or OPM, for the Architect's and OPM's review and the Owner's written acceptance. The Construction Manager shall obtain the Architect's written approval for the portion of the preliminary Project schedule relating to the performance of the Architect's services. The Construction Manager's preliminary Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and clearly identify items that could affect the Project's timely completion. The updated preliminary Project schedule shall include, but not be limited to, the following: proposed activity sequences and durations; phasing sequences and durations; milestone dates for receipt and review of pertinent information; submission of the Guaranteed Maximum Price proposals (both Initial and Final submissions); components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; phasing and occupancy requirements of the Owner showing specific portions of the Project having such phasing and occupancy requirements; proposed dates of interim substantial completion dates and of final Substantial Completion; and proposed date of final completion (which shall include full completion of the punch list and proper submission of all documents documentation required of the Construction Manager to the Owner). If preliminary Project schedule updates indicate that previously accepted Project schedules may not be met, the Construction Manager shall promptly make appropriate recommendations to the Owner, OPM, and Architect for recovery of the dates required by the Owner. Notwithstanding anything in the Contract Documents to the contrary, the receipt of an unencumbered Certificate of Occupancy shall be a condition precedent to the determination of the final Substantial Completion date.

## § 2.1.4 Phased Construction

The Construction Manager acknowledges that this Project will be undertaken during active use of the facilities by students, staff, administration, and associated events and as such will require careful planning and scheduling of controlled phasing of the Project with associated interim substantial completion dates prior to the Project's final Substantial Completion. The Construction Manager shall provide detailed recommendations by presenting phasing and logistics plans and schedules regarding the foregoing and to facilitate efforts with regard to accelerated or fast-track scheduling, procurement, or phased construction so as to provide a safe environment for students, staff, administration and associated events. The Construction Manager shall take into consideration cost reductions, cost information, constructability, availability of labor and materials, provisions for temporary facilities and procurement and construction scheduling issues.

## § 2.1.5 Preliminary Cost Estimates

**§ 2.1.5.1** Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's and OPM's review and Owner's written acceptance. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations and suitability of those alternative materials and systems regarding cost, schedule and phasing impacts.

**§ 2.1.5.2** As the Architect 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 Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design. Notwithstanding, when the Design Development Documents have been prepared by the Architect and accepted in writing by the Owner, the Construction Manager shall prepare an Initial Guaranteed Maximum Price (the "IGMP") which shall include a detailed estimate as well as CPM schedule, both in a format and with supporting data acceptable to the Owner, for review by the Architect and OPM, and the written acceptance by the Owner. During the preparation of the Construction Documents, the Construction Manager shall provide updates and refine this estimate and CPM schedule at appropriate intervals agreed to in writing by the Owner, Architect and Construction Manager until such time as the Owner and Construction Manager agree on a Final Guaranteed Maximum Price for the Work. Such estimates and CPM schedules shall be provided for the Architect's review and the Owner's written acceptance. The Construction Manager shall inform the Owner, OPM, and the Architect when estimates of the Cost of the Work or CPM milestone dates exceed the latest accepted Project budget and CPM schedule and make written recommendations for corrective action to achieve the Owner's accepted Project budget and CPM schedule.

**§ 2.1.5.3** The Owner may, but shall not be required to, arrange for periodic estimates of construction cost to be performed by other consultants or staff of Owner for its benefit. The Construction Manager shall work in good faith and in cooperation and coordination with the Architect, and any other consultants or staff of Owner involved in preparing estimates of construction cost, in order to reconcile any differences between cost estimates prepared by the Construction Manager and such parties, to clarify assumptions upon which cost estimates are based, and otherwise to address any concerns or questions with respect to such cost estimates raised by the Architect, Owner or such other consultants or staff. If in any case the agreed-upon, reconciled estimate of construction cost exceeds the construction budget established by Owner, the Construction Manager shall advise and cooperate with Owner and the Architect in identifying, specifying and recommending changes in, or additional specification of materials, equipment, component systems and types of construction, or other adjustments in the scope or quality of the Project (collectively, "Cost Reduction Alternatives"), including contingencies or alternative bid items, so as to facilitate revision of the design of the Project to reduce the construction cost so as to comply with the construction budget. Implementation of any Cost Reduction Alternative shall at all times be subject to the written pre-acceptance of Owner, and Owner shall have the right, in its sole discretion, to choose which of the Cost Reduction Alternatives developed by the parties shall be implemented.

**§ 2.1.5.6** The process and responsibilities of the Construction Manager described in this Section 2.1.5 shall also apply to any separate cost limits within the construction budget or milestone dates in the CPM schedule that have been established by Owner for certain phases, components or elements of the Work.

### § 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project and shall furnish on a timely basis to the Owner, OPM, and Architect for their information a list of possible subcontractors, including suppliers, who are to furnish materials or equipment fabricated to a special design, from which proposals will be requested for each principal portion of the Work. The Architect or the Owner will promptly reply in writing to the Construction Manager if the Architect, OPM or Owner knows of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner, OPM or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier. The failure of the Owner or the Architect to object to a subcontractor or supplier shall not be construed or deemed as an approval of a subcontractor or supplier.

§ 2.1.7 With the Construction Manager's submission of the IGMP, and updated with the Construction Manager's submission of the FGMP proposal, the Construction Manager shall prepare, for the Architect's and OPM's review, and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction, long lead time items, to meet the Project schedule. The Construction Manager shall expedite and coordinate the procurement of materials or equipment that must be ordered well in advance of construction, but only with the specific written pre-consent of the Owner. If the Owner agrees to procure any items prior to the establishment of the IGMP or Final Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions reasonably acceptable to the Construction Manager. Upon the execution of Amendment No. 1 ("Amendment No. 1 – Exhibit D" or "Exhibit D" as described below) to this Agreement by duly authorized representatives of the Owner and the Construction Manager, all contracts entered into by the Owner and selected for assignment by the Owner for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead-time items and shall abide by all Owner requirements concerning purchasing schedules and storage of such long-lead-time items of materials or equipment as stated herein.

### § 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Final Guaranteed Maximum Price as set forth in Amendment No. 1 – Exhibit D as described below. The Construction Manager, having qualified construction professionals on staff, shall be fully aware of the applicable building codes, statutes, regulations, and ordinances at all levels of government and shall immediately upon discovery advise the Owner in writing of any variance, deviation or violation from those requirements if the Construction Manager recognizes that portions of the drawings or specifications or Work are at variance therewith..

### § 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders and other requirements of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

### § 2.1.10 Design Review

During the Preconstruction Phase, the Construction Manager shall review, on a continuous basis, development of the Drawings, Specifications and other design documents produced by the Architect. The design reviews shall be performed with a group of designers and engineers, who are either employees of the Construction Manager or independent consultants under contract with the Construction Manager. Review of the documents is to discover inconsistencies, errors and omissions between and within design disciplines. The Construction Manager shall consult with Owner and the Architect regarding the selection of materials, building systems and equipment, and shall recommend alternative solutions whenever design details affect construction feasibility, schedules, cost or quality (without, however, assuming the Architect's responsibility for design) and shall provide other value engineering services to Owner. Without limitation, the Construction Manager shall review the design documents for clarity, consistency, constructability, maintainability/operability and coordination among the trades, coordination between the specifications and drawings, sequencing and/or phasing of installation and construction, including recommendations designed to minimize adverse effects of labor or material shortages, as well as compliance with all Applicable Laws. The Construction Manager reviews shall be performed by Construction Manager Project Team members as accepted by Owner. The reviews shall be provided in writing with detailed notations on the drawings and specifications and coordinated with a detailed spreadsheet of the notations and recommended solutions in order to track the issues to final resolution. The

Construction Manager shall attend meetings with the Architect, OPM, and Owner in order to discuss and resolve any and all issues.

### § 2.1.11 Permits and Approvals

The Construction Manager shall assist Owner and the Architect in identifying all governmental permits, user fees, approvals, licenses and inspections of any kind which must be obtained and be met in connection with the construction, use and occupancy of the Project (“Permits and Approvals”). The Construction Manager shall be responsible for obtaining all Permits, user fees and Approvals; shall keep the Owner informed as to the progress of a same and shall cooperate with any of the Owner’s agents or consultants with regard to the identification and securing of Permits and Approvals. The Construction Manager shall perform the Work in accordance with all conditions, mitigation measures and other requirements of all Permits and Approvals. The Construction Manager shall obtain and pay for all permits, with the exception of the Building Permit fee which may be paid by the Owner at its sole direction by notice to the Construction Manager, inspections and certificates of occupancy for the Project. All applications, requests, appeals, filings and other documents, materials and information prepared by the Construction Manager to be submitted to governmental authorities in connection with the Permits and Approvals shall be subject to the written pre-approval of Owner, and shall be delivered to Owner sufficiently in advance of the time of their proposed filing or submission so as to permit a reasonable period for the review and comment of Owner and its consultants. If requested by Owner at any time, any such documents or materials to be used in connection with the Permits and Approvals may be prepared by Owner or other persons designated by Owner, and Owner or other persons designated by Owner may appear on behalf of Owner at any hearing, presentation or conference. In addition, the Construction Manager shall promptly complete and provide such other documentation as may be required by Owner, other agencies of the State of New Hampshire or such other parties as Owner may indicate. The Construction Manager shall comply with and promptly give notices required by all Applicable Laws. If the Construction Manager knows or observes that portions of the Contract Documents are at variance therewith, the Construction Manager shall immediately notify the Architect and Owner in writing of the specific non-compliance sufficient to enable the Owner and/or Architect to take corrective action, and necessary changes shall be accomplished by appropriate Modification. If the Construction Manager performs Work knowing it to be contrary to Applicable Laws or otherwise fails to give such ~~prompt~~ written notice, then the Construction Manager shall assume appropriate responsibility for such Work and shall bear all costs attributable to correction. To the fullest extent permitted by law, the Construction Manager shall indemnify the Owner from and against, and shall pay for, all claims, damages, losses, costs and attorney’s fees resulting or arising from the Construction Manager’s failure to adhere to the terms of this paragraph.

### § 2.2 Guaranteed Maximum Price Proposal and Contract Time

**§ 2.2.1** At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Final Guaranteed Maximum Price proposal for the Owner’s review and written acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager’s estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager’s Fee and which shall set forth in the information requested in the proposed Amendment No. 1 which is attached hereto and made a part hereof as Amendment No. 1 – Exhibit D.

**§ 2.2.2** To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. The Construction Manager shall specify which part of the drawings and specifications are not complete so as to require inference in the preparation of the Guaranteed Maximum Price. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order pursuant to the terms and conditions of this Agreement and Exhibit A – A201-2007.

**§ 2.2.3** The Construction Manager shall include with each of the Guaranteed Maximum Price proposals a written statement of its basis, which shall include the following:

#### Initial Guaranteed Maximum Price Proposal:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;

- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee; and
- .4 The then current preliminary Project schedule including the anticipated date of Substantial Completion upon which the proposed Initial Guaranteed Maximum Price is based.

Final Guaranteed Maximum Price proposal

- .1 A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, including without limitation the Supplementary Conditions (if any), which were used in preparation of the Final Guaranteed Maximum Price proposal;
- .2 A list of allowances and a detailed statement of their basis;
- .3 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Final Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications;
- .4 The proposed Final Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the Fee that comprise the Final Guaranteed Maximum Price;
- .5 The CPM Project Schedule based on Early Start and Total Float, and including Date(s) of Substantial Completion upon which the proposed Final Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the date of final Substantial Completion is based;
- .6 A long lead time items schedule;
- .7 A purchasing schedule as described herein;
- .8 A schedule of alternate prices;
- .9 A schedule of unit prices;
- .10 A statement of Additional Services, if applicable;
- .11 A statement setting forth all items and the cost of same which Construction Manager claims are excluded from the Final Guaranteed Maximum Price, if any;
- .12 A form Subcontract the Construction Manager intends to use;
- .13 Forms for Subcontractors' Partial and Final Release and Lien Waiver;
- .14 Forms for Construction Manager's Partial and Final Release and Lien Waiver;
- .15 Construction Manager's statement of acknowledgement that it has been furnished all of the information which it has requested from the Owner as referenced in Section 3.1 of the Agreement;
- .16 Construction Manager's Project Team and Organization Chart (as submitted with the response to the RFQ/P, if applicable);
- .17 Construction Manager's Personnel and Hourly Billable Rates for the duration of the Project (as submitted with the response to the RFQ/P, if applicable); and
- .18 The time period in which the Owner must accept the Final Guaranteed Maximum Price proposal (provided however that said time period shall not be less than thirty (30) days from with the Final Guaranteed Maximum Price proposal is submitted, which duration shall be included in the Project schedule and which time period if taken in full by the Owner shall not impact the critical path or the Substantial Completion date of the Project schedule.

**§ 2.2.4** The estimated Cost of the Work shall include the Construction Manager's contingency, a sum established by the Construction Manager and accepted by the Owner for the Construction Manager's reasonable and documented use to cover costs arising under Section 2.2.2 and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order (the "Contingency"). The Construction Manager agrees that any buyout savings shall be placed in the Construction Manager's Contingency value as they occur. Construction Manager shall provide Owner and OPM with prior written and detailed notice of all anticipated charges against the Contingency and shall provide Owner, OPM, and Architect with all other information relating to the Contingency or charges against it at the request of the Owner or the Architect. Construction Manager also shall provide Owner, OPM, and Architect with complete details, all relevant supporting documentation and a written breakdown of all charges against the Contingency as known or incurred and at least on a monthly basis. The Owner reserves the right to receive this information on a bi-weekly or weekly basis, and if requested by the Owner to provide such documentation and breakdown on such a basis, the Construction Manager shall comply.

**§ 2.2.5** The Construction Manager shall meet with the Owner, OPM, and Architect to review the Guaranteed Maximum Price proposals and the written statement of their basis. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both. The failure of the Owner or Architect to give notice of any such inconsistencies, inaccuracies or incompleteness shall in no way relieve the Construction Manager of any responsibility or liability, nor shall such failure be construed or deemed to act as an approval or waiver in connection with any such inconsistency, inaccuracy or incomplete item.

**§ 2.2.6** Unless the Owner accepts the Final Guaranteed Maximum Price proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the Final Guaranteed Maximum Price proposal shall not become enforceable, effective or binding. If the Owner notifies the Construction Manager that the Owner has accepted the Final Guaranteed Maximum Price proposal in writing before the date specified in the Final Guaranteed Maximum Price proposal, the Final Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Final Guaranteed Maximum Price, the Owner and Construction Manager shall execute Amendment No. 1 – Exhibit D, a copy of which the Owner shall provide to the Architect. Amendment No. 1 – Exhibit D shall set forth the agreed upon Final Guaranteed Maximum Price with the information and assumptions upon which it is based.

**§ 2.2.7** The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the Owner's acceptance of the Construction Manager's Final Guaranteed Maximum Price proposal and issuance of a Notice to Proceed for the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs. If the Construction Manager incurs any such cost, expense or other financial liability without the Owner's specific written pre-approval, then the Construction Manager shall be solely responsible for same and have no right to claim any reimbursement from Owner.

**§ 2.2.8** The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in Amendment No. 1 – Exhibit D. The Owner shall direct the Architect to promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Amendment No. 1 – Exhibit D and the revised Drawings and Specifications.

**§ 2.2.9** The Construction Manager shall include in the Cost of the Work only those sales, consumer, use and similar taxes, if any, for the Work that are legally enacted, whether or not yet effective, at the time the Final Guaranteed Maximum Price is established and incorporated into Amendment No. 1 – Exhibit D when it is executed.

**§ 2.2.10** Upon acceptance by the Owner of the Final Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in Amendment No. 1 – Exhibit D. The accepted Final Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

**§ 2.2.11** The Construction Manager freely, fully, and without reservations of any rights except for payments then properly due and owing the Construction Manager, that if the Owner does not accept the Construction Manager's IGMP proposal or FGMP proposal, the Owner may elect to solicit bids or proposals from the construction of the Project from other contractors, using any solicitation method or methods chosen by the Owner, or, if the Owner determines that it is in the best interest to do so, the Owner may enter into negotiations for a contract with one or more of those that submitted a reasons to the RFQ/P for this Project. If the Owner does not accept the Construction Manager's IGMP proposal, or FGMP proposal within the time limit for acceptance specified in the FGMP proposal, as it may be extended by agreement of the parties, then this Contract shall terminate upon the completion of the Construction Manager's performance of any Work then in progress, if any, or upon written notice from the Owner.

## **§ 2.3 Construction Phase**

### **§ 2.3.1 General**

**§ 2.3.1.1** For purposes of Section 8.1.2 of Exhibit A - A201–2007 as amended, the date of commencement of the Work shall mean the date of commencement of the Construction Phase pursuant to the Owner's issuance of a written Notice to Proceed to the Construction Manager.

**§ 2.3.1.2** The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Final Guaranteed Maximum Price proposal and the Owner's issuance of a Notice to Proceed or the execution of Amendment No. 1 – Exhibit D by the Owner, whichever occurs earlier.

### **§ 2.3.2 Administration**

**§ 2.3.2.1** Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts substantially identical to a form subcontract submitted by the Construction Manager for review and pre-accepted in writing by the Owner. If Construction Manager requests written consent from the Owner to enter into subcontract(s) for general labor, Construction Manager shall provide, to the Owner, a line item schedule of values not to exceed an agreed upon amount for the work requested. No work, except for work performed under the General Conditions category, shall be performed by the Construction Manager's Forces without the specific prior written consent of the Owner and, then, only upon those terms and conditions of the Owner after full written disclosure by the Construction Manager of any and all information requested by the Owner. In requesting consent from the Owner as to whether Construction Manager may perform work with the Construction Manager's Forces (which shall be a pre-condition to any such Construction Manager work and payment to Construction Manager for same), the Construction Manager shall provide the Owner, OPM, and the Architect with at least three (3) separate bids by independent and disinterested third party subcontractors for the work with all bid tabulations and detailed scope descriptions for each in addition to any and all other detail and information required by the Owner, OPM or Architect. With regard to obtaining bids, the Construction Manager shall obtain at least three (3) qualified, bona-fide bids for each Subcontractor trade and from vendors, suppliers of materials or equipment and, after analyzing such bids, shall deliver all bid tabulations and detailed scope descriptions for each bid along with the Construction Manager's recommendation and all other detail and information as required by the Owner, OPM or Architect, for their review. The Owner will then determine, with the advice of the Construction Manager, OPM, and the Architect, which bids will be accepted, provided, however, that the Owner will have the right to object to the Construction Manager's recommendation. The Owner may designate specific persons or entities from which the Construction Manager shall obtain bids. The Owner may not prohibit the Construction Manager from obtaining bids from other qualified bidders. Subject to the foregoing, the Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

**§ 2.3.2.2** Subject to Section 2.3.2.1, if the Final Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Final Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

**§ 2.3.2.3** Subcontracts or other agreements with Subcontractors or Suppliers furnishing materials or equipment fabricated to a special design shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior written consent of the Owner. If the Subcontract is awarded on a cost plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below. The Construction Manager shall make all payments properly due and owing to Subcontractors and Suppliers not later than the date which is five (5) business days after payment by the Owner to the Construction Manager with respect to labor, materials or equipment furnished by the applicable Subcontractors or Suppliers.

**§ 2.3.2.4** Subject to Section 2.3.2.1, if the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

**§ 2.3.2.5** The Construction Manager shall schedule and conduct regular meetings at which the Owner, OPM, Architect, Construction Manager and, at the request of the Owner, appropriate Subcontractors or Suppliers can discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction

Manager shall prepare and promptly distribute minutes to the Owner, OPM, and Architect for review and amendment, if any.

**§ 2.3.2.6** Within fourteen (14) days of the Owner's acceptance of the Final Guaranteed Maximum Price proposal or prior to the execution of Amendment No. 1 – Exhibit D, whichever occurs earlier, the Construction Manager shall prepare, for the Architect's and OPM's review, and the Owner's acceptance, a Critical Path Method Schedule (precedence based on Early Start and Total Float) which shall be in accordance with Section 3.10 of Exhibit A - A201–2007, but notwithstanding said Section 3.10 shall also include, without limitation, (a) Owner's occupancy requirements, (b) all backup data listing Early Start and Total Float values for each activity, (c) predecessor and successor logic data, (d) subject to the approval of the Architect and review of the Owner, information and detail relating to the performance of the Architect's services, if any, (e) cost loaded activities if required by the Owner, (f) incorporation of sufficient duration to account for weather conditions in the locale of the Project, and (g) any other data, detail and information required by the Owner (said schedule to be referred to herein alternatively as "CPM Schedule," "Project Schedule," or "Schedule"). The requirements provided herein shall be in addition to and not in limitation of the Construction Manager's obligation to prepare and maintain any other schedules as provided in the Contract Documents or as required by the Owner. The Construction Manager shall coordinate and integrate the CPM Schedule with the services and activities of the Owner, OPM, Architect and the Construction Manager.

The Construction Manager shall regularly update the CPM Schedule as necessary, but not less than once per month, to keep the Owner, OPM, and Architect fully informed and to address all key project issues. At a minimum, the Construction Manager shall regularly review the CPM Schedule to address activity sequences and durations, milestone dates for receipt and approval of pertinent information, preparation and processing of shop drawings and samples, delivery of materials or equipment including any long-lead-time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion and final completion. If such a review of the CPM Schedule indicate that any previously approved schedules, including the preliminary Project Schedule or any previously approved CPM Schedule, may not be met, then the Construction Manager shall immediately inform the Owner in writing and make appropriate written detailed recommendations to the Owner, OPM, and Architect to remedy the matter. Notwithstanding anything in the Contract Documents to the contrary, the receipt of a Certificate of Occupancy shall be a condition precedent to the determination of the Substantial Completion date.

**§ 2.3.2.7** The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner, OPM, and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and copy to the Owner, OPM, and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner. Without limiting the foregoing, Construction Manager hereby agrees to provide the following reports to Owner, OPM, and Architect:

- .1 Weekly Written Reports:
  - (a) The Construction Manager shall provide weekly written reports which shall contain full, complete and accurate minutes of all meetings between the Construction Manager, Architect and/or Owner.
- .2 Monthly Written Reports on the 5<sup>th</sup> day of each month for the previous month, or on such other day established by Owner, the Construction Manager shall submit to Owner, OPM, and Architect, in form and substance acceptable to Owner, Monthly Progress Reports which shall include, without limitation, the following documents and information, and any other information or documents required by the Owner:
  - (a) General Conditions/Requirements report (including, but not limited to, costs incurred the current month, costs incurred to date, amounts remaining to Project completion, and projected costs to Project completion). If projected cost to Project completion values exceed amounts remaining to Project completion, the Construction Manager shall provide a detailed proposal on how it will complete the Project within the General Conditions/Requirements value established at FGMP or as modified by previous Change Order to comply with the Standard of Care requirements of this Agreement.

Notwithstanding anything to the contrary in the Contract Documents, the General Conditions/Requirements value established at FGMP or as modified by previous Change Order shall not be exceeded by the Construction Manager, shall not be paid for by the Owner, and shall not be billed as part of the Cost of the Work.

- (b) Project critical issues, risks and opportunities including without limitation, the following:
  - (i) Progress report by division of work or area;
  - (ii) Quality control/quality assurance report;
  - (iii) Safety and loss control report.
- (c) Project buyout variance report (including without limitation procurement status reports).
- (d) Construction Contingency report (detailed as to each item charged, the precedent cause for each charge, the total charged to date, and the total balance remaining).
- (e) Winter Conditions report (including, but not limited to, costs incurred this month, costs incurred to date, and projected costs to Project completion).
- (f) Project cost summary and update, including, without limitation, the following:
  - (i) Cost summary;
  - (ii) Cash flow update and projections;
  - (iii) List of outstanding claims, change orders and change directives;
  - (iv) List of potential subcontractor claims, changes and outstanding change proposal requests and Construction Manager change requests, including the precedent cause for each request;
  - (v) Written explanations for specific variances in Project budget and allowances.
- (g) Summary Project schedule report, updated to include, without limitation, a Summary Schedule (progress bar chart) from the CPM Schedule (precedence based) and written explanations for specific variances in the Project's Schedule.
- (h) Such other reports, logs or documents as Owner may reasonably require in its discretion for the management of the Project by the Construction Manager including without limitation:
  - (i) B&W photography.

- .3 Executive Summary Progress Report. On the 5th day of each month for the previous month, or such other day established by Owner, the Construction Manager shall submit to Owner, OPM, and Architect an Executive Summary Progress Report in form and content satisfactory to Owner based upon, but not be limited to, a summary of the important information from the submittals listed in subparagraph 2.3.2.7.2 above and a discussion of the important issues facing the Project as of the date of the Report's submittal.

All written reports shall be in a form and manner pre-approved by Owner in its discretion and shall be distributed by Construction Manager as follows: One (1) set of reports to Architect, one (1) set of reports to OPM, and three (3) sets of reports to Owner.

The CM shall prepare and submit a Quality Assurance/Quality Control program to the Owner for its acceptance. Such program shall provide that the Construction Manager shall be responsible for insuring that adequate quality assurance and quality control programs are developed, implemented and enforced by the Construction Manager's staff and all Subcontractors, including an experienced quality manager, employed by the CM, whose sole responsibility shall be quality assurance and quality control and who shall be responsible for reviewing and coordinating the quality control activities of all Subcontractors and monitoring the implementation and enforcement thereof in connection with all aspects of the Work. The quality manager shall report the status of the Quality Assurance/Quality Control program for each trade, and any deficiencies, and a

recommended plan for corrective action to Owner, OPM, and the Architect on a monthly basis, or more frequently if any occurrence so requires.

**§ 2.3.2.8** The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes and shall develop cash-flow reports and forecast in such format as requested by the Owner. The Construction Manager shall identify variances between actual and estimated costs and promptly report the variances in writing to the Owner, OPM, and Architect, and shall provide this information in its monthly reports to the Owner, OPM, and Architect, in accordance with Section 2.3.2.7 above.

**§ 2.3.2.9** The Construction Manager shall be responsible to Owner for the compliance by each Subcontractor, Supplier or Vendor with the requirements of all of the applicable provisions of the Contract Documents and of all Applicable Laws, including all requirements for proper employment practices, to the same extent the Construction Manager would be responsible if the work to be performed by such Subcontractor, Supplier or Vendor were being performed by the Construction Manager's own forces.

**§ 2.3.2.10** During the progress of the Work, the Construction Manager shall provide Owner with a list of the names of firms, addresses and telephone numbers, and two (2) emergency contact persons and telephone number(s) of all Subcontractors, Suppliers and Vendors engaged in completion of the Work, and shall update such list in a timely manner whenever a change is made but no less than once per quarter.

#### **§ 2.4 Professional Services**

Section 3.12.10 of Exhibit A - A201-2007 as amended shall apply to both the Preconstruction and Construction Phases.

#### **§ 2.5 Hazardous Materials**

Section 10.3 of Exhibit A - A201-2007 as amended shall apply to both the Preconstruction and Construction Phases.

#### **§ 2.6 PUBLIC MEETINGS**

Construction Manager agrees to appear and, at the Owner's request, to represent Owner in hearings before governmental authorities, neighborhood groups and other interested parties at the request of Owner during both the Preconstruction Phase and the Construction Phase as part of the scope of the Work. The Owner will endeavor to provide the Construction Manager with at least forty-eight (48) hours advance notice.

### **ARTICLE 3 OWNER'S RESPONSIBILITIES**

#### **§ 3.1 Information and Services Required of the Owner**

**§ 3.1.1** The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program prepared by the Architect or other Owner's consultants which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

**§ 3.1.2** Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, or (2) a change in the Work materially changes (defined as in excess of 25%) the Contract Sum. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

**§ 3.1.3** The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. If such notice is provided, the Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

**§ 3.1.4 Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's possession and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. Except to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager shall be entitled to rely on the accuracy of information and services described in Sections 3.1.4.1 through 3.1.4.5 but shall exercise proper precautions consistent with the Standard of Care with regard to same and with regard relating to the safe performance of the Work.

**§ 3.1.4.1** The Owner will furnish, or will cause to be furnished, reports, surveys, drawings and tests concerning the conditions of the site which are required by law.

**§ 3.1.4.2** The Owner will furnish, or will cause to be furnished, surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees with diameters greater than eight (8) inches at four (4) feet above existing grade level; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

**§ 3.1.4.3** When such services are reasonable and requested in writing, the Owner may engage the services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

**§ 3.1.4.4** During the Construction Phase, the Owner shall furnish information or services reasonably required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information under the Owner's possession and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information.

**§ 3.1.4.5** Notwithstanding anything to the contrary in this Article 3 or the Contract Documents, the Construction Manager shall acknowledge in writing at the time of the execution of Amendment No. 1 – Exhibit D to this Agreement whether Construction Manager has been furnished with all of the information which is has requested from Owner of the kind described in the foregoing provisions of this Section 3.1.4 and which Construction Manager reasonably expects as of the date of Amendment No. 1 - Exhibit D to be required to complete the Work. Any materials or services described in this Article 3 which Construction Manager may thereafter request Owner to furnish, which Construction Manager knew or should have known after applying the Standard of Care necessary or appropriate to perform the Work in accordance with the Contract Documents, shall be furnished to Construction Manager, but neither the Contract Time nor the Final Guaranteed Maximum Price or any other fee or cost shall be increased in connection therewith or in connection with any changes in the Work that are required based upon information disclosed thereby.

## **§ 3.2 Owner's Designated Representative**

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of Exhibit A - A201-2007 as amended, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

**§ 3.2.1 Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that it deems, in its sole discretion of which the Owner know of which differ from those generally applicable to construction in the jurisdiction of the Project that may be reasonably necessary at any time for the Project to meet the Owner's needs and to protect its interests. The Construction Manager shall make itself aware of the conditions and limitations of any and all permits and approvals for the Project. The Construction Manager shall insure compliance with said conditions by any and all Subcontractors, representatives or agents. Failure of the

Construction Manager to adhere to or provide monitoring to insure adherence to such conditions and permits shall not constitute a reason for the Owner to provide additional legal services.

### § 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in the Owner and Architect Agreement, including any additional services requested in writing by the Construction Manager, including the detailed reasons that are necessary for the Preconstruction and Construction Phase services under this Agreement. Upon the written request of the Construction Manager, the Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement, from which compensation provisions or other Owner determined items may be deleted.

## ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

### § 4.1 Compensation

§ 4.1.1 For the Construction Manager's ~~Pre-Bond Phase services and~~ Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2a For the Construction Manager's Pre-Bond Phase services described in Sections 2.1 and 2.2:  
*(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

The Construction Manager's Fee for Pre-Bond Phase Services shall be a lump sum; fee in the amounts as follows:

The Construction Manager's Fee for Pre-Bond Phase Services shall be a lump sum fee in the amount of Four Thousand and 00/100 (\$4,000.00) Dollars billable in equal monthly installments beginning November 2015, and concluding February 2016.

The Construction Manager's Reimbursable Expenses for Pre-Bond Phase Services shall be a Not-to-Exceed amount of Two Hundred and 00/100 (\$200.00) Dollars, payable monthly upon receipt of properly submitted backup for each requested amount.

The Owner's budget for the Pre-Bond Phase Services is Four Thousand Two Hundred and 00/100 (\$4,200.00) Dollars. Notwithstanding anything else to the contrary in these Contract Documents, this amount may not be exceeded under any circumstances without the Owner's written approval prior to the Construction Manager undertaking work or services that would cause the budget for the agreed Work to be exceeded.

§ 4.1.2b If the Construction Manager is directed by a written Notice to Proceed from the Owner to perform Preconstruction Phase Services, then for the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:

*(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

The Construction Manager's Fee for Pre-Construction Services shall be a lump sum fee in the amounts as follows:

The Construction Manager's Fee for Pre-Construction Services shall be a lump sum fee in the amount of Ten Thousand and 00/100 (\$10,000.00) Dollars billable in equal monthly installments beginning April 2016 and concluding June 2016.

The Construction Manager's Reimbursable Expenses for Pre-Construction Phase Services shall be a Not-to-Exceed amount of Two Hundred and 00/100 (\$200.00) Dollars, payable monthly upon receipt of properly submitted backup for each requested amount.

The Owner's budget for the Preconstruction Phase Services is Ten Thousand Two Hundred and 00/100 (\$10,200.00) Dollars. Notwithstanding anything else to the contrary in these Contract Documents, this amount may not be exceeded under any circumstances without the Owner's written approval prior to the Construction Manager undertaking work or purchasing materials that would cause the budget for the agreed Work to be exceeded.

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within Four (4) months of the date of the written Notice to Proceed, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services may be equitably adjusted if the Construction Manager provides a written request and substantiation for same.

#### § 4.1.4 NOT USED

#### § 4.2 Payments

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

§ 4.2.2 Payments are due and payable thirty (30) days from the date the Construction Manager's properly submitted, accurate and complete Application for Payment is received by the Owner and Architect. Properly due and undisputed amounts unpaid after the date on which payment is due shall bear interest at one (1%) percent per annum. Construction Manager shall submit its Application for Payment on the 5<sup>th</sup> day of the 1<sup>st</sup> month following commencement. Payments due shall be less the total of payments previously made, and less amounts properly withheld under the Contract Documents. If Construction Manager's Fee under Section 4.1.1 hereof is a stipulated amount, the amount of Construction Manager's Fee to be included in Construction Manager's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Construction Manager's Fee.

If Owner determines that Construction Manager is not entitled to all or part of an amount, it will notify Construction Manager in writing at least seven (7) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Construction Manager must take to rectify Owner's concerns. Construction Manager and Owner shall attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, each party may pursue its rights under the Contract Documents. In addition to other rights afforded the Owner by the Contract Documents, the Owner may properly withhold payments on account of (1) damaged, defective or non-conforming work not remedied, (2) claims filed by third parties, (3) failure of Construction Manager to make payments properly due and owing to any third parties, (4) damage, injury or loss to the Owner or another contractor, (5) reasonable evidence that the Work will not be completed within the Contract Time, (6) repeated or persistent failure to carry out the Work in accordance with the Contract Documents, (7) failure to adequately staff and/or maintain that staff at or on the Project, and/or (8) any other breach of the Construction Manager's duties and obligations as set forth in the Contract Documents, and/or any other reason deemed necessary to protect the Owner.

#### ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's proper performance of the Contract. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)*

The Construction Manager's Fee (Overhead and Profit) for Construction Phase Services shall be a lump sum fee ("Base Fixed Fee") in the amount of Two and One-Half (2.50%) Percent of the cost of the Work and the fee shall be so stated at the time the Final Guaranteed Maximum Price is established. The Base Fixed Fee shall be payable in monthly installments. The Contractor's Fee, less ten percent (10%) retainage, shall be paid monthly and computed upon the Cost of the Work and shall be an amount that bears the same ratio to the Lump Sum Fee as the Cost of the Work completed bears to the estimate of the Cost of the Work upon its completion.

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

There shall be a fee holiday (no additional fee calculated) for the first \$XXXXXX.00 of changes in the Work. For changes in the Work in excess of the first \$XXXXX Thousand Dollars of changes in the Work, the Construction Manager's Base Fixed Fee shall be increased at the rate of Two and One-Half (2.50%) Percent of the actual cost of the Change Order work.

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases or decreases in the cost of its portion of the Work:

Notwithstanding the foregoing, if the magnitude of a deductive Change Order exceeds what was within the reasonable expectations of the parties, then the parties shall agree to negotiate an appropriate decrease in the Construction Manager's Base Fixed Fee.

**§ 5.1.4** Rental rates for Construction Manager-owned equipment shall not exceed the average of the standard rate paid as determined by utilizing quoted rates of at least two (2) established 3<sup>rd</sup> party rental firms at the location of the Project.

**§ 5.1.5** Unit prices, if any:

*(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price per Unit (\$0.00)
To be provided in Amendment No. 1		

**§ 5.2 Guaranteed Maximum Price**

**§ 5.2.1** The Construction Manager guarantees that the Contract Sum shall not exceed the Final Guaranteed Maximum Price set forth in Amendment No. 1 – Exhibit D, as it is amended from time to time for additions and deductions by changes in the Work as provided in the Contract Documents. To the extent the Cost of the Work exceeds the Final Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Final Guaranteed Maximum Price without reimbursement or additional compensation from the Owner. All references herein and in Exhibit A to the term “Contract Sum” shall refer to the “Final Guaranteed Maximum Price” or “FGMP”. Notwithstanding anything else to the contrary in the Construction Documents, Owner will not be responsible for any costs over the Final Guaranteed Maximum Price unless the Owner agrees to a change order adjusting the Final Guaranteed Maximum Price in writing prior to the Construction Manager undertaking the Work giving rise to the requested change.

*(Insert specific provisions if the Construction Manager is to participate in any savings.)*

All savings shall revert back to the Owner.

**§ 5.2.2** The Final Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

**§ 5.3 Changes in the Work**

**§ 5.3.1** The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of Exhibit A - A201–2007 as amended. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

**§ 5.3.2** Adjustments to the Final Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Final Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of Exhibit A - A201–2007 as amended.

**§ 5.3.3** In calculating adjustments to subcontracts (except those awarded with the Owner’s prior consent on the basis of cost plus a fee), the terms “cost” and “fee” as used in Section 7.3.3.3 of Exhibit A - A201–2007 as amended and the term “costs” and “a reasonable and justifiable amount” for overhead and profit as used in Section 7.3.7 of Exhibit A - A201–2007 as amended shall have the meanings assigned to them in Exhibit A - A201–2007 as amended and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts; it being understood that said terms shall be substantially similar to those stated herein. Prior consent of the Owner shall only be deemed binding when provided in writing by the Owner.

**§ 5.3.4** In calculating adjustments to the Final Guaranteed Maximum Price, the terms “cost” and “costs” as used in the above-referenced provisions of Exhibit A - A201–2007 as amended shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term “fee” shall mean the Construction Manager’s Fee as defined in Section 5.1 of this Agreement.

**§ 5.3.5** If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Final Guaranteed Maximum Price shall be adjusted accordingly.

**§ 5.3.6** Notwithstanding anything to the contrary in the Contract Documents, all proposed change orders or change order requests submitted by the Construction Manager shall clearly state in detail all specific charges for labor, materials and equipment, all overhead and profit breakdowns, any other charges proposed by Construction Manager, its Subcontractors or Vendors and any other data, detail, information in the form and manner as required by the Owner. Under no circumstances shall the Construction Manager, its Subcontractors or its Vendors charge for Project full-time staff or salaried staff with regard to any proposed change order, change order request or change order, including, without limitation, the contemplation, consideration, drafting, negotiation, preparation, response to and/or execution thereof. There shall be a maximum of seven (7%) percent for overhead and three percent (3%) for profit on changed work, and a maximum of a five (5%) percent markup (inclusive of overhead and profit) on overtime work for Subcontractors or Sub-subcontractors. In no circumstances shall the accumulated percentages for overhead and profit on the net cost of changed work (if any) exceed fifteen percent (15%) for all tiers of Subcontractors and Sub-subcontractors.

## **ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE**

### **§ 6.1 Costs to Be Reimbursed**

**§ 6.1.1** The term Cost of the Work shall mean costs necessarily and reasonably incurred by the Construction Manager in the proper and good faith performance of the Work. Such costs shall be at rates not higher than the standard then prevailing in the similar types of construction customarily paid at the place of the Project except with specific, prior consent of the Owner on a case by case basis and in its sole discretion. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

**§ 6.1.2** Where any cost is subject to the Owner's prior written approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Amendment No. 1 – Exhibit D.

**§ 6.2 Labor Costs** Attached hereto and made a part hereof as "Exhibit C" is a list of the salaried and unsalaried personnel of the Construction Manager currently approved to be charged to the Project with the billable hourly rates set forth by the named individual identified therein. Such rates are established for the duration of the Project. Only those Labor Costs set forth below shall be considered as Cost of the Work or a cost to be reimbursed.

**§ 6.2.1** Subject to the wages and rates for personnel stated on Exhibit C, wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior written approval, at off-site workshops, (but only for that portion of actual time directly related to and required by the Work as supported by data (e.g. actual time sheets) provided for each request for same by the Construction Manager to the Owner or other data requested by the Owner as it deems necessary at its discretion) provided, however, that:

- a. Overtime work shall be calculated on the basis of those rates as set forth in an exhibit to this Agreement (see Exhibit C attached hereto);
- b. Overtime or shift time shall be considered part of the Cost of Work only to the extent it is actually paid to and received by workers who are paid on an hourly basis;
- c. No overtime or shift time charges shall be allowed for salaried employees or personnel;
- d. Salaried employees shall not be charged at more than the weekly rate or forty (40) hours of an hourly rate agreed upon by Construction Manager and Owner;
- e. Bonuses shall not be considered as "wages" or shall they be included in the Cost of Work unless specifically pre-approved in writing by the Owner on a case by case basis and in its sole discretion;
- f. No overtime or shift time incurred by a consultant or any third party employee or contractor shall be included in the Cost of Work unless specifically pre-approved in writing by the Owner on a case by case basis and in its sole discretion.

**§ 6.2.2** Subject to the wages and rates of personnel stated on Exhibit C and the Owner’s prior written agreement, wages or salaries of the Construction Manager’s directly employed supervisory and administrative personnel when stationed at the site (but only for that portion of actual time directly related to and required by the Work as supported by data (e.g. actual time sheets) provided for each request for same by the Construction Manager to the Owner or other data requested by the Owner as it deems necessary at its discretion) provided, however, that:

- a. Overtime work shall be calculated on the basis of those rates as set forth in an exhibit to this Agreement (See, Exhibit C attached hereto);
- b. Overtime or shift time shall be considered part of the Cost of Work only to the extent it is actually paid to and received by Construction Manager’s employees who are paid on an hourly basis;
- c. No overtime or shift time charges shall be allowed for salaried employees;
- d. Construction Manager’s salaried employees shall not be charged at more than the weekly rate or forty (40) hours of an hourly rate agreed upon by Construction Manager and Owner;
- e. Bonuses shall not be considered as “wages” or be included in the Cost of Work unless specifically pre-approved in writing by the Owner after reviewing information requested by the Owner and then only upon a case by case basis and in its sole discretion;
- f. No overtime or shift time incurred by a consultant or any third party employee or contractor shall be included in the Cost of Work unless specifically pre-approved in writing by the Owner after reviewing information requested by the Owner and then only upon a case by case basis and in its sole discretion;
- g. Wages or salaries of supervisory and administrative personnel paid or received in connection with the contemplation, consideration, drafting, negotiation, preparation, response to and/or execution of a request for information, potential change order, change order request or change order shall not be included as a Cost of the Work and shall not be included as a cost on any resulting change order agreed to by the parties;
- h. Wages or salaries of supervisory and administrative personnel paid or received in connection with the contemplation, consideration, drafting, negotiation, and/or preparation of Construction Manager’s monthly invoices or attachments thereto who are not stationed at the site shall not be included as a Cost of the Work;
- i. No wages or salaries of supervisory or administrative personnel shall be paid for any work or time spent on items not directly related to or required by the Work.

**§ 6.2.2a** Subject to the wages and rates of personnel stated on Exhibit C and the Owner’s prior written agreement, wages or salaries of the Construction Manager’s directly employed supervisory and administrative personnel when stationed at the Construction Manager’s principal office (but only for that portion of actual time directly related to and required by the Work as supported by data (e.g. actual time sheets) provided for each request for same by the Construction Manager to the Owner or other data requested by the Owner as it deems necessary at its discretion) provided, however, that:

- a. Overtime work shall be calculated on the basis of those rates as set forth in an exhibit to this Agreement (See, Exhibit C attached hereto);
- b. Overtime or shift time shall be considered part of the Cost of Work only to the extent it is actually paid to and received by Construction Manager’s employees who are paid on an hourly basis;
- c. No overtime or shift time charges shall be allowed for salaried employees;
- d. Construction Manager’s salaried employees shall not be charged at more than the weekly rate or forty (40) hours of an hourly rate agreed upon by Construction Manager and Owner;
- e. Bonuses shall not be considered as “wages” or be included in the Cost of Work unless specifically pre-approved in writing by the Owner after reviewing information requested by the Owner and then only upon a case by case basis and in its sole discretion;
- f. No overtime or shift time incurred by a consultant or any third party employee or contractor shall be included in the Cost of Work unless specifically pre-approved in writing by the Owner after reviewing information requested by the Owner and then only upon a case by case basis and in its sole discretion;
- g. Wages or salaries of supervisory and administrative personnel paid or received in connection with the contemplation, consideration, drafting, negotiation, preparation, response to and/or execution of a request for information, potential change order, change order request or change

order shall not be included as a Cost of the Work and shall not be included as a cost on any resulting change order agreed to by the parties;

- h. Wages or salaries of supervisory and administrative personnel paid or received in connection with the contemplation, consideration, drafting, negotiation, and/or preparation of Construction Manager's monthly invoices or attachments thereto who are not stationed at the site shall not be included as a Cost of the Work;
- i. No wages or salaries of supervisory or administrative personnel shall be paid for any work or time spent on items not directly related to or required by the Work.

*(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

**§ 6.2.3** Subject to the wages and rates of personnel stated on Exhibit C and the Owner's prior written agreement, wages or salaries of the Construction Manager's directly employed supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, (but only for that portion of their time directly related to and required for the Work as supported by data (e.g. actual time sheets) provided for each request for same by the Construction Manager to the Owner or other data requested by the Owner as it deems necessary at its discretion), provided, however, that:

- a. Overtime work shall be calculated on the basis of those rates as set forth in an exhibit to this Agreement (see Exhibit C attached hereto);
- b. Overtime or shift time shall be considered part of the Cost of Work only to the extent it is actually paid to and received by Construction Manager's employees who are paid on an hourly basis;
- c. No overtime or shift time charges shall be allowed for salaried employees;
- d. Construction Manager's salaried employees shall not be charged at more than the weekly rate or forty (40) hours of an hourly rate agreed upon by Construction Manager and Owner;
- e. Bonuses shall not be considered as "wages" or be included in the Cost of Work unless specifically pre-approved in writing by the Owner after reviewing information requested by the Owner and then only upon a case by case basis and in its sole discretion;
- f. No overtime or shift time incurred by a consultant or any third party employee or contractor shall be included in the Cost of Work unless specifically pre-approved in writing by the Owner after reviewing information requested by the Owner and then only upon a case by case basis and in its sole discretion.
- g. Wages or salaries of supervisory and administrative personnel paid or received in connection with the contemplation, consideration, drafting, negotiation, preparation, response to and/or execution of a request for information, potential change order, change order request or change order shall not be included as a Cost of the Work and shall not be included as a cost on any resulting change order agreed to by the parties;
- h. Wages or salaries of supervisory and administrative personnel paid or received in connection with the contemplation, consideration, drafting, negotiation, and/or preparation of Construction Manager's monthly invoices or attachments thereto who are not stationed at the site shall not be included as a Cost of the Work;
- i. No wages or salaries of supervisory or administrative personnel shall be paid for any work or time spent on items not directly related to or required by the Work.

**§ 6.2.4** Costs paid by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are included in wages and salaries included in the Cost of the Work under and subject to the priority of Sections 6.2.1 through 6.2.3.

**§ 6.2.5 NOT USED**

### **§ 6.3 Subcontract Costs**

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts, provided, however, that at all times each of the terms and conditions of said subcontracts shall be substantially identical to a form subcontract pre-approved in writing by the Owner.

### § 6.3.1 Subcontractor Markup

No Subcontractor will be allowed to add any overhead and profit for premium time work required to mitigate any delays caused by the applicable Subcontractor or its sub-subcontractor or its suppliers. Subcontractors will be allowed a maximum of seven (7%) percent for overhead and three percent (3%) for profit on changed work, and a maximum of an five (5%) percent markup (inclusive of overhead and profit) on overtime work. In no circumstances shall the accumulated percentages for overhead and profit on the net cost of changed work (if any) exceed fifteen percent (15%) for all tiers of Subcontractors and Sub-subcontractors.

### § 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated in the completed construction (or, with the Owner's specific written pre-approval and subject to the terms and conditions of the Contract Documents, costs, including transportation, of materials and equipment to be incorporated).

Notwithstanding the foregoing, and unless otherwise agreed to in writing signed by the parties, Owner shall not be obligated to pay for such costs until materials and equipment have been incorporated into the Work.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage, subject to the Owner's specific written pre-approval. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

### § 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs for items previously used by the Construction Manager shall be charged at fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior written approval and at rates established not to exceed the average of the standard rate paid as determined by utilizing quoted rates of at least two (2) established 3<sup>rd</sup> party rental firms at the location of the Project.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges subject to the requirement that such costs strictly pertain to the Project and the Work, telephone service at the site and reasonable petty cash expenses of the site office. Owner's written pre-approval of any single petty cash expenditure greater than Fifty Dollars and No Cents (\$50.00) shall be required.

§ 6.5.5 That portion of the reasonable auto expenses, established herewith as \$0.575/documented mile traveled, of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work as agreed to and stated in the General Requirements/General Conditions breakdown in Amendment No. 1 – Exhibit D, provided however that such expenses shall not include (i) any transportation to or from Construction Manager's offices and the Site; (ii) any transportation to or from Construction Manager's other projects and the Site; or (iii) any transportation to or from the residences of Construction Manager's personnel to the site.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the requirements of the Contract Documents, Section 9.3.2 of Exhibit A – A201-2007 as amended, and the Owner's prior written consent.

### § 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract and as stated in the General Requirements/General Conditions breakdown in Amendment

No. 1 – Exhibit D. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, and with the Owner’s prior written consent. Notwithstanding anything to the contrary contained herein, insurance billable rate shall not exceed \$X.xx/\$1000. If the adjusted Contract Sum exceeds \$XX,XXX,XXX.00, additional bond costs shall not exceed \$X.xx/\$1000. The rates will not be adjusted unless the Construction Manager can substantiate a need for adjustment and that adjustment is agreed to by the Owner and the Construction Manager by Change Order.

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

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

**§ 6.6.4** Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of Exhibit A - A201–2007 as amended or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

**§ 6.6.5** Royalties and license fees paid for the use of a particular design, process or product specifically required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such specific requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner’s prior written consent. The Owner shall have no obligation to reimburse the Construction Manager for such costs if the Construction Manager knows or has reason to believe that a particular design, process or product so required by the Contract Documents infringes upon copyrights or patent rights of another and fails to immediately provide written notification of its knowledge or reasonable belief to the Owner and Architect. The Owner also shall have no obligation to reimburse the Construction Manager for such costs if the Construction Manager fails to provide written notice of such a claim or suit to the Owner and Architect within five (5) business days of such a claim of suit being asserted or filed against the Construction Manager. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager’s Fee or subject to the Guaranteed Maximum Price.

**§ 6.6.6** Costs for electronic equipment and software, directly related to the Work with the Owner’s prior approval.

**§ 6.6.7** Deposits lost except to the extent caused by, arising from or resulting from the Construction Manager’s failure to fulfill a specific responsibility to the Owner set forth in this Agreement or the wrongful or tortious acts or the errors, negligence or omissions of the Construction Manager or its Subcontractors; of any of those working for, through or under the Construction Manager or its Subcontractors, including employees, agents, consultants sub-subcontractors, vendors, suppliers, material suppliers, laborers, consultants, agents, employees or representatives of any of the foregoing; of anyone directly or indirectly employed by Construction Manager, any of its Subcontractors or any of the foregoing; or of anyone for whose acts Construction Manager, any of its Subcontractors or any of the foregoing is legally responsible or liable, all of whom shall be collectively referred to in the Contract Documents as “Construction Manager’s Forces” (said term to include always at a minimum Construction Manager’s Subcontractors).

**§ 6.6.8** Necessary legal, mediation and arbitration costs, including reasonable attorneys’ fees, other than those arising from disputes between the Owner and Construction Manager or by the wrongful or tortious acts or the errors, negligence, or omissions of the Construction Manager or any of Construction Manager’s Forces, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work but only to the extent such costs were incurred with the Owner’s prior written consent, which shall not be unreasonably withheld.

**§ 6.6.9** NOT USED

### **§ 6.7 Other Costs and Emergencies**

**§ 6.7.1** Other reasonable and necessary costs incurred in the performance of the Work if, but only to the extent, approved in advance in writing by the Owner.

**§ 6.7.2** Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of Exhibit A - A201-2007 as amended, unless said damage, injury or loss was caused by, arose from or resulted from the wrongful or tortious actions or the errors, negligence or omissions of the Construction Manager or any of the Construction Manager's Forces. The costs described in this sub-paragraph which are to be included in the Cost of the Work shall only be included in the Cost of the Work to the extent that said costs are not recoverable by the Construction Manager from insurance or any other party referred to herein.

**§ 6.7.3** Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was (a) not caused by, arose from or resulted from the wrongful or tortious actions or the errors, negligence or omissions of the Construction Manager or any of the Construction Manager's Forces; or (b) not caused by the failure of the Construction Manager, the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, to fulfill a responsibility owed to the Owner as set forth in the Contract Documents or to supervise adequately the Work of the Construction Manager's Forces. The costs described in this sub-paragraph which are to be included in the Cost of the Work shall only be included in the Cost of the Work to the extent that said costs are not recoverable by the Construction Manager from insurance or any other party referred to herein.

**§ 6.7.4** The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work unless such costs are excluded by the provisions of said Sections, Section 6.8 or by Exhibit A - A201-2007 as amended.

### **§ 6.8 Costs Not To Be Reimbursed**

**§ 6.8.1** The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office (including, without limitation, in-house computer costs, and other costs of doing business, services, and related expenses to maintain such offices), except as specifically provided in Section 6.7;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 All costs, damage, injury or loss caused by, arising from or resulting from the wrongful or tortious actions or the errors, negligence or omissions of the Construction Manager or any of the Construction Manager's Forces including, but not limited to, costs for the correction of damaged, defective or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work or (b) the failure of the Construction Manager, the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, to fulfill a responsibility owed to the Owner as set forth in the Contract Documents, to supervise adequately the Work of the Construction Manager's Forces, or to perform in accordance with the Standard of Care;
- .5 Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal to the extent arising from any act, error, omission, or negligence or Construction Manager or of any of the Construction Manager's Forces;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, fees, damages, interest, fines, losses and expenses of any nature or type, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .8 Costs for services incurred during the Preconstruction Phase;
- .9 Any and all costs, fees, damages, interest, fines, losses and expenses of any nature or type caused by, resulting from or arising from the failure of Construction Manager or of any of the Construction Manager's Forces to procure and maintain insurance as required by the Contract Documents;
- .12 Project incentive bonuses, except as specifically approved in advance by a duly authorized representative of the Owner in writing;
- .13 Any and all costs, fees, damages, interest, fines, losses and expenses of any nature or type concerning or relating to the need to bond or secure liens or defend claims filed by any of the Construction Manager's Forces caused by, resulting from or arising from any default by Construction Manager in making any payment due to any of the Construction Manager's Forces,

- unless such default by Construction Manager is the direct result of default by Owner in making proper and timely progress payments to Construction Manager as specifically required by the Contract Documents;
- .14 Any and all costs, fees, damages, interest, fines, losses and expenses of any nature or type for which Construction Manager is compensated or reimbursed by insurance;
  - .15 Any and all costs, fees, damages, interest, fines, losses and expenses of any nature or type associated with any corrective or remedial work, except as set forth in Article 6.7;
  - .16 Deposits lost to the extent they arise from (a) the wrongful or tortious acts or the errors, negligence or omissions of the Construction Manager or any of the Construction Manager's Forces; or (b) the failure of the Construction Manager or any of the Construction Manager's Forces to fulfill a responsibility owed to the Owner as set forth in the Contract Documents or to supervise adequately the Work of any of the Construction Manager's Forces;
  - .17 Any legal fees, costs or expenses incurred by the Construction Manager which are not incurred at the written direction and with the written pre-approval of the Owner, including legal, mediation and arbitration costs which arise from or which are caused by (a) disputes between the Owner and Construction Manager; (b) failures of Construction Manager to obtain Owner's written permission to incur such legal, mediation or arbitration costs; (c) the wrongful or tortious acts or the errors, negligence or omissions of the Construction Manager or of any of the Construction Manager's Forces; or (d) the failure of the Construction Manager or of any of the Construction Manager's Forces to fulfill a responsibility owed to the Owner as set forth in the Contract Documents or to supervise adequately the Work;
  - .18 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property to the extent said damage, injury or loss was caused by, arose from or resulted from (a) the wrongful or tortious acts or the errors, negligence or omissions of the Construction Manager or of any of the Construction Manager's Forces; or (b) the failure of the Construction Manager or of any of the Construction Manager's Forces to fulfill a responsibility owed to the Owner as set forth in the Contract Documents or to supervise adequately the Work;
  - .19 Costs incurred in repairing or correcting damaged or nonconforming Work to the extent such damaged or nonconforming Work was (a) caused by, arose from or resulted from the wrongful or tortious acts or the errors, negligence or omissions of the Construction Manager or of any of the Construction Manager's Forces; or (b) the failure of the Construction Manager or of any of the Construction Manager's Forces to fulfill a responsibility owed to the Owner as set forth in the Contract Documents or to supervise adequately the Work; and
  - .20 Overhead and general costs and expenses of any kind except for those set forth in Article 6.

### § 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work and at all times accounting of any discounts, rebates, refunds and amounts shall be provided to the Owner in writing.

### § 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner in writing of the specific nature and complete details of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before

any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes in writing the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

### **§ 6.11 Accounting Records**

The Construction Manager shall keep full and detailed records and accounts and exercise such controls as may be necessary for proper management, financial and otherwise, under this Contract. The accounting and control and record keeping systems shall be satisfactory to the Owner and shall be maintained in accordance with generally accepted accounting principles, consistently applied. The Owner and the Owner's representatives and accountants shall at all times and upon reasonable notice, be afforded access to all documents relating to the Project in the possession, custody or control of the Construction Manager and its attorneys, representatives accountants and agents, including without limitation, all records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, minutes, accounting records, written policies and procedures, Subcontractor files (including proposals of successful and unsuccessful bidders, bid tabulations, etc.), original estimates, estimating work sheets, change order files (including documentation covering negotiated settlements), back charge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends, instructions, subcontracts, written reports, estimates, budgets, breakdowns, cost control information, subscriptions, recordings, computerized information, agreements, leases, contracts, commitments, arrangements, electronic mail, invoices, notes, daily diaries, photographs, videos, meeting minutes, communications, field reports, superintendent reports, all other Construction Manager and Construction Manager's Forces records which may have a bearing on matters of interest to the Owner in connection with the Construction Manager's and Construction Manager's Forces' work for the Project, all information, material and data of every kind and character such as any and all other agreements, sources of information that may in the Owner's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by construction contract documents or Construction Manager contract documents, records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with the Work and in the Project, and any and all other documents and data relating to this Agreement, the Work, or the Project including all data in electronic media or any other media (collectively referred to herein as the "Records") during this contract and for a period of six (6) years after final payment and the Owner shall have the right to audit same. The Construction Manager shall preserve the aforesaid Records for a period of six (6) years after final payment, or for such longer period as may be required by law.

Without limitation of the foregoing, the Owner and its consultants, representatives and accountants shall at any time and from time to time, upon notice to the Construction Manager have the right to audit and be afforded access to the Work, the Project and all Records in the possession, custody or control of Construction Manager and its attorneys, accountants and agents. The Construction Manager shall facilitate any such audit by making necessary facilities available to Owner and its consultants, accountants or other representatives.

Subcontractors shall have the same obligations to maintain Records, provide copies thereof and permit audits by the Construction Manager as are applicable to the Construction Manager under the Contract Documents.

## **ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES**

### **§ 7.1 Progress Payments**

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

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

**§ 7.1.3** Payments are due and payable thirty (30) days from the date the Construction Manager's properly submitted, accurate and completed Application for Payment is received by the Owner including the Architect's certification of same thereon. If a properly submitted, accurate and complete Application for Payment is received by the Owner and

Architect after the fifth (5<sup>th</sup>) day of the month, payment shall be made by the Owner not later than thirty (30) days after the Owner and Architect receive the properly completed and submitted Application for Payment. Properly due and undisputed amounts unpaid after the date on which payment is due shall bear interest at One (1.0%) percent per annum. If Owner determines that Construction Manager is not entitled to all or part of an amount, it will notify Construction Manager in writing at least seven (7) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Construction Manager must take to rectify Owner's concerns. Construction Manager and Owner shall attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, each party may pursue its rights under the Contract Documents. In addition to other rights afforded the Owner by the Contract Documents, the Owner may at all times properly withhold payments on account of (1) damaged, defective or non-conforming work not remedied, (2) claims filed by third parties, (3) failure of Construction Manager to make payments properly due and owing to any third parties, (4) damage, injury or loss to the Owner or another contractor, (5) reasonable evidence that the Work will not be completed within the Contract Time, (6) repeated or persistent failure to carry out the Work in accordance with the Contract Documents, (7) failure to adequately staff and/or maintain that staff at or on the Project, (8) any other breach of the Construction Manager's duties and obligations as set forth in the Contract Documents and/or (9) any other reason deemed necessary to protect the Owner. Notwithstanding anything in the Contract Documents to the contrary and subject to Article 9.3.2 of Exhibit A, no payment shall be due for materials and equipment not yet incorporated into the Work. *(Federal, state or local laws may require payment within a certain period of time.)*

**§ 7.1.4** With each Application for Payment, the Construction Manager shall submit all information required by the Contract Documents, including, without limitation, payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, the Construction Manager's lien waiver in a form satisfactory to the Owner in its discretion and executed by Subcontractors who are requesting payment, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus all payrolls for the period covered by the present Application for Payment. Notwithstanding anything in the Contract Documents to the contrary, the Application for Payment shall constitute Construction Manager's representation and warranty that the Work has been performed in accordance with the Contract Documents, has progressed to the point indicated in the Application for Payment, and ~~once paid~~ that title to all Work, materials and equipment will pass to Owner free and clear of all claims, obligations, liens, encumbrances, and security interests upon the incorporation of the Work into the Project.

**§ 7.1.5** Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. All executed Change Orders shall be shown as distinct line items, in numerical order, at the bottom of each Application for Payment form or as directed by the Owner. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

**§ 7.1.6** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually and properly been completed, or (2) the percentage obtained by dividing (a) the verifiable expense (which shall mean those expenses which have been supported by properly submitted applications for payment, invoices, payrolls, lien waivers and other detail, data and information required by the Agreement and Exhibit A – A201-2007 as amended) that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by proper documentation from Subcontractors, Vendors and Suppliers for amounts being requested for each portion of the Work in the schedule of values or, at Owner's written consent, by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed

- Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 7.3.9 of Exhibit A - A201-2007 as amended;
- .2 Subject to Article 9.3.2 of Exhibit A – A201-2007 as amended, add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored and protected at the site for subsequent incorporation in the Work within ten (10) days of delivery, less ten (10%) percent, or if approved in advance by the Owner, suitably stored and protected off the site at a location agreed upon in writing by the parties, less retainage of ten (10%) percent;
  - .3 Add the General Conditions amount of a not to exceed amount of **XXXXXX and 00/100 (\$XX,XXX.XX) Dollars** with a detailed breakdown of items charged therein and all supporting documents, including but not limited to timesheets, invoices from material and service providers, etc. showing all the costs for which the Construction Manager is requesting payment, less retainage of percent ( █ %);
  - .4 Add the Construction Manager’s Fee, less retainage of Ten (10%) percent. The Construction Manager’s Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
  - .4.1 The intent of this provision is that retainage will be based on the Cost of the Work and materials plus Construction Manager’s Fee so that at the time of Substantial Completion the Owner will retain ten percent (10%) of the Guaranteed Maximum Price.
  - .5 Subtract retainage of **ten percent (10%)** from that portion of the Work that the Construction Manager self-performs as allowed by the Contract Documents;
  - .6 Subtract the aggregate of previous payments made by the Owner;
  - .7 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner, Owner’s representatives or the Owner’s auditors in such documentation; and
  - .8 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of Exhibit A - A201-2007 as amended.

Notwithstanding the foregoing or anything in the Contract Documents to the contrary, in no event shall any payment exceed the cost or expense actually and properly incurred by the Construction Manager as supported by properly submitted and verifiable applications for payment, invoices, payrolls, lien waivers and other detail, data and information required by the Agreement and Exhibit A – A201-2007 as amended.

**§ 7.1.8** Subject to the requirements of the Contract Documents, the Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors. Notwithstanding the foregoing, the percentage of retainage held on Subcontracts shall be not less than Ten (10%) percent, except with the Owner’s specific and prior written approval on a case by case basis and in its sole discretion, and the Construction Manager shall execute subcontracts in accordance with this Agreement.

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

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

**§ 7.1.11** Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Construction Manager all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to two (2x) times the reasonable value to correct, complete or install all

remaining, incorrect, non-conforming or incomplete items of Work as noted in the Certificate of Substantial Completion. Said value to be agreed to by the Owner and not less than market prices that Owner would be required to pay if it had to then hire separate contractors to perform said work.

## § 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of Exhibit A - A201-2007 as amended, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 conditions of Section 9.10 of Exhibit A - A201-2007 as amended have been met;
- .3 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment in a form satisfactory to the Owner and reviewed by the Architect and the Owner's representatives;
- .4 all lien waivers have been submitted in a form satisfactory to the Owner in its discretion and executed by all persons or entities requesting payment and reviewed by the Architect and the Owner's representatives; and
- .5 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than forty-five (45) days after the issuance of the Architect's final Certificate for Payment, subject to Section 7.2.2 below, or as follows:

§ 7.2.2 The Owner's representatives and/or the Owner's auditors will review and report in writing on the Construction Manager's final accounting within forty-five (45) days after delivery of the final accounting to the Owner and Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's representatives and/or the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors or at the written direction of the Owner, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the Exhibit A - A201-2007 as amended. The time periods stated in this Section supersede those stated in Section 9.4.1 of the Exhibit A - A201-2007 as amended.

§ 7.2.3 If the Owner's representatives and/or the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of Exhibit A - A201-2007 as amended. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 NOT USED

## ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of Exhibit A - A201-2007 as amended. (State bonding requirements, if any, and limits of liability for insurance required in Article 11 of Exhibit A - A201-2007.)

Type of Insurance or Bond

Limit of Liability or Bond Amount (\$0.00)

§ 8.1 It shall be the Construction Manager's responsibility to assure that all Subcontractors, Sub-Subcontractors, materialmen and suppliers of the Work on the Project obtain workers' compensation insurance in statutory amounts

or provide self-insurance allowed by statute or voluntary compensation coverage for sole proprietors not insured under workers' compensation coverage, all in accordance with New Hampshire law. The Construction Manager shall require that all Subcontractors and Sub-Subcontractors provide certificates of insurance complying with this section. Upon request, the Owner shall be permitted to examine certificates and actual insurance policies.

## ARTICLE 9 DISPUTE RESOLUTION

**§ 9.1** Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of Exhibit A - A201-2007 as amended. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply. All subcontracts shall contain dispute resolution provisions consistent with the terms and conditions set forth herein, and the Construction Manager shall reimburse the Owner for any and all costs, fees, damages, interest, fines, losses and expenses of any nature or type caused by, resulting from or arising from a breach of this obligation.

**§ 9.2** For any Claim the method of binding dispute resolution shall be as follows:  
*(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

- Arbitration pursuant to Section 15.4 of AIA Document A201-2007
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

### § 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of Exhibit A - A201-2007 as amended for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.  
*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

## ARTICLE 10 TERMINATION OR SUSPENSION

### § 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

**§ 10.1.1** Prior to the execution by both parties of Amendment No. 1 - Exhibit D, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of Exhibit A - A201-2007 as amended.

**§ 10.1.2** In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

**§ 10.1.3** If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of Amendment No. 1 - Exhibit D, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager in the proper and correct completion of the Work only, to the date of termination;
- .2 Subtract all amounts which would be incurred to correct incomplete, damaged, defective or non-conforming work not remedied;

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

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above. Construction Manager shall reimburse the Owner for any and all costs, fees, damages, interest, fines, losses and expenses of any nature or type caused by, resulting from or arising from a breach of this obligation.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager shall terminate the subcontract, purchase order or rental agreement and, subject to the Owner's rights to withhold any amount as set forth in the Contract Documents, the Owner will pay the Construction Manager the costs reasonably, properly and necessarily incurred by the Construction Manager because of such termination.

The Construction Manager freely, fully, and without reservations of any rights except for payments then properly due and owing the Construction Manager, that if the Owner does not accept the Construction Manager's IGMP proposal or FGMP proposal, the Owner may elect to solicit bids or proposals from the construction of the Project from other contractors, using any solicitation method or methods chosen by the Owner, or, if the Owner determines that it is in the best interest to do so, the Owner may enter into negotiations for a contract with one or more of those submitted a reasons to the RFQ/P for this Project. If the Owner does not accept the Construction Manager's IGMP proposal, or FGMP proposal within the time limit for acceptance specified in the FGMP proposal, as it may be extended by agreement of the parties, then this Contract shall terminate upon the completion of the Construction Manager's performance of any Work then in progress, if any, or upon written notice from the Owner.

### **§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price**

Following execution by both parties of Amendment No. 1 – Exhibit D and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of Exhibit A - A201–2007 as amended.

**§ 10.2.1** If the Owner terminates the Contract after execution of the Guaranteed Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of Exhibit A - A201–2007 as amended shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

**§ 10.2.2** If the Construction Manager terminates the Contract after execution by both parties of Amendment No. 1 – Exhibit D, the amount payable to the Construction Manager under Section 14.1.3 of Exhibit A - A201–2007 as amended shall not exceed the amount the Construction Manager would otherwise have been entitled to receive under Sections 10.1.2 and 10.1.3 above.

### **§ 10.3 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of Exhibit A - A201–2007 as amended. In such case, the then Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of Exhibit A - A201–2007 as amended, except that the term "cost" in that Section shall be understood to mean the Cost

of the Work and the term “profit” shall be understood to mean the Construction Manager’s Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

## **ARTICLE 11 MISCELLANEOUS PROVISIONS**

**§ 11.1** Terms in this Agreement shall have the same meaning as those in Exhibit A - A201–2007 as amended.

### **§ 11.2 Ownership and Use of Documents**

Section 1.5 of Exhibit A - A201–2007 as amended shall apply to both the Preconstruction and Construction Phases. Notwithstanding anything to the contrary contained therein, it is acknowledged and agreed to by the Construction Manager that all documents, drawings, specifications, reports, maps, submissions and data bases and any other work product produced by the Construction Manager for this Project shall be delivered to the Owner in a format acceptable to the Owner and become the property of the Owner for its use as it deems appropriate. This provision is material to the Agreement between the Owner and the Construction Manager and shall be, in all respects, superior to any contrary or inconsistent term or provision in this Agreement, any of the other Contract Documents and Section 1.2.7 of Exhibit A – A201-2007 as amended as defined herein.

### **§ 11.3 Governing Law**

Section 13.1 of Exhibit A - A201–2007 as amended shall apply to the Pre-Bond, the Preconstruction and the Construction Phases.

### **§ 11.4 Assignment**

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner’s rights and obligations under this Agreement. Except as provided in Section 13.2.2 of Exhibit A - A201–2007 as amended, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

### **§ 11.5 Other provisions:**

**§ 11.5.1** The Owner and the Construction Manager agree to act in good faith and in a reasonable manner in all dealings with each other in connection with the Work and the Project. The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to utilize its best skill, efforts and judgment in furthering the best interests of the Owner; to furnish efficient business administration and supervision; to make best efforts to furnish at all times an adequate supply of workers and materials; and to perform the Work in the best way and most expeditious and economical manner consistent with the interests of the Owner.

**§ 11.5.2** Nothing herein, including the execution of this Agreement, shall be construed as creating any personal liability on the part of any officer, director, employee, manager, member or agent of either party or Trident Building, LLC or Trident Project Advantage Group hereto.

**§ 11.5.3** Whenever provision is made in the Contract Documents for the approval, consent or agreement of the Owner, then in order to be enforceable, effective and binding such approval, consent or agreement shall be in writing in order to be effective and binding against the Owner and shall be executed by the Owner’s Designated Representative. Unless otherwise stated expressly in the Contract Documents, all such approvals, consents or agreements shall be made by the Owner in its sole discretion

**§ 11.5.4** Approval by the Owner of any construction means, methods, techniques, sequences, procedures, coordination of the Work or of any plans, studies, designs, specifications, reports or incidental work shall not in any way relieve the Construction Manager of any responsibility it may have under this Agreement. Similarly, the Owner’s approval of or payment to the Construction Manager shall not be construed to operate as a waiver or release of any rights the Owner may have under this Agreement or of any cause of action arising out of performance of this Agreement.

**§ 11.5.5** The duties and obligations imposed upon the parties under this Agreement, and the rights and remedies

available hereunder shall be in addition to, and not a limitation of, any duties imposed or available at law or in equity.

**§ 11.5.6** The Construction Manager shall immediately upon discovery provide ~~prompt~~ written notice to the Owner of any fault or defect in the Project or in the Work or any condition which creates a hazardous or unsafe condition. As soon as possible, the Construction Manager shall provide all relevant data, detail and information concerning said fault, defect or condition or any other information required by the Owner.

**§ 11.5.7** The Owner shall have the right but not the obligation to clean up or correct any situation at the Project Site which presents a hazard or unsafe condition or which affects the Owner's use of its facility, with simultaneous notice to the Construction Manager, and the Owner shall be reimbursed for the reasonable and actual cost of said clean up or correction.

**§ 11.5.8** Notwithstanding anything to the contrary contained the Contract Documents, and unless the parties agree otherwise in a writing executed by the parties, Construction Manager acknowledges and agrees that the Owner is not responsible for any theft, fire, casualty, loss, damage or injury to or any payment for any materials or supplies incident to the Work until delivered to the site and incorporated into the work, and Construction Manager further acknowledges and agrees that the Owner's property insurance does not include coverage for any said materials or supplies or tools, machinery, equipment, shed, scaffolding, construction offices or trailers or other property owned or rented by the Construction Manager or any of the Construction Manager's Forces, and Construction Manager shall insure all such items against theft, peril, fire, casualty, loss, damage or injury and shall bear all responsibility and risk of loss therefore. Construction Manager waives all rights against Owner for any and all theft, peril, fire, casualty, loss, damage or injury to the foregoing described items.

**§ 11.5.9** To the fullest extent provided by the law, the Owner shall not, under any circumstances, be liable for any damages, whether foreseeable, unforeseeable, consequential, punitive, or otherwise, suffered by the Construction Manager or any of the Construction Manager's Forces, including, but not limited to, any damages caused by, resulting from or arising from in any way any injury or damage suffered while on the specific Project Site or any portion thereof.

**§ 11.5.10** The Construction Manager shall at all times abide by all Applicable Laws then in effect as of the execution date of this Agreement, and shall immediately upon discovery notify the Owner in writing as to any anticipated or subsequent changes in said Applicable Laws that become known to the Construction Manager and that affect the Work.

**§ 11.5.11** 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 statute of limitations for acts or for failures to act shall commence no earlier than the date of the Final Payment. Notwithstanding the foregoing, said time limitations shall be subject to the discovery rule as set forth in New Hampshire statutory and common law.

**§ 11.5.12** Nothing in this Agreement shall be construed or deemed to create a contractual relationship between the Owner and a third party; a cause of action in favor of a third party against the Owner; or create any third party beneficiary rights of any kind.

**§ 11.5.13** All adjustments, amendments or modifications made to any document referred to in the Contract Documents and exhibits thereto shall be in writing and signed by a duly authorized representative of each party in order to become enforceable, effective and binding.

**§ 11.5.15** If any term or provision of this Agreement or the application thereof to any person, agency, firm, corporation or circumstance shall, to any extent, be invalid or unenforceable, the remainder of the Agreement, or the application of such terms or provisions to agencies, persons, firms, corporations, or circumstances other than those to which it is held invalid or unenforceable, shall not be effected thereby, and each term or provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

**§ 11.5.16** The Construction Manager is not entitled to rely on waivers, consents, approvals or instructions received directly from the Owner unless said waivers, consents, approvals or instructions are given by the Owner's Designated Representative. This paragraph in no way shall prevent the Construction Manager from relying on approvals or instructions customarily given by the Owner's Architect.

§ 11.5.17 The Construction Manager hereby agrees to execute any and all documents reasonably required by any construction or permanent lender, including the security assignment of, and reasonable amendments to, the Contract Documents, in whole or in part, and the Construction Manager shall be bound thereby, provided that the obligations and rights of the Construction Manager shall not be materially and adversely affected by any such documents.

§ 11.5.18 To the fullest extent permitted by law, Construction Manager shall not at any time, directly or indirectly, disclose or divulge to any third parties any Confidential Information (as hereinafter defined), except as may be:

- .1 required in connection with the performance of Construction Manager's Work or duties as set forth in the Contract Documents;
- .2 necessary to enforce the terms and provisions of the Contract Documents; or
- .3 compelled by operation of law (in which case the Construction Manager shall give written notice to the Owner as soon as Construction Manager learns it may be compelled by operation of law to disclose or divulge any such Confidential Information so that the Owner shall have ample opportunity to object).

As used herein, "Confidential Information" means all trade secrets and all other proprietary or non-public information of a business, financial, schedule, safety, marketing, technical or other nature pertaining to the Owner, the Project, or its affairs; all information acquired by the Construction Manager during its affiliation or contract with the Owner and all information of others that the Owner has agreed not to disclose; provided, that Confidential Information shall not include any information that has entered or enters the public domain through no fault of the Construction Manager.

Notwithstanding the foregoing and notwithstanding anything in the contract documents to the contrary, Construction Manager shall not at any time, directly or indirectly, disclose or divulge any information acquired by Construction Manager as a result of the Construction Manager's Work on the Project to any news media firm, individual, or other entity whose business is distribution of data to the public in any format, without first obtaining in each instance the Owner's specific prior written permission to do so, which permission the Owner may withhold in its sole discretion.

Construction Manager agrees to use its best efforts to ensure that all persons who have access to Confidential Information adhere to the terms and conditions of this section. Construction Manager shall require each of its Subcontractors to execute subcontracts containing a confidentiality provision substantially similar to the terms and provisions of this section. If the Construction Manager breaches the terms and provisions of this section, then such breach shall be considered a material breach of the Contract Documents. The provisions of this section shall survive the suspension, termination or expiration of any or all of the terms and provisions of the Contract Documents.

Construction Manager agrees that in the event of its breach or threatened breach of its obligations under this section, Owner shall be entitled to seek immediate equitable relief in Superior Court in order to restrain any continued or threatened breach, and Construction Manager shall be responsible for all costs, expenses, fees, including reasonable attorney's fees, arising from same.

§11.5.19 The Construction Manager shall not replace \_\_\_\_\_ as the Project Manager or \_\_\_\_\_ as the Project Superintendent without prior written consent of the Owner.

§11.5.20 The Construction Manager acknowledges the Owner is a school district that depends on appropriations for the cost of the project. The Owner's budget for the cost of the Work and the Construction Manager's Fee is \$ \_\_\_\_\_. Notwithstanding anything else to the contrary in this contract, this amount may not be exceeded under any circumstances without the Owner's written approval prior to the Construction Manager undertaking work or purchasing materials that would cause the budget for the agreed Work to be exceeded.

§11.5.21 Without limitation to any other provision in the contract documents, the Construction Manager shall use its best efforts to minimize any interference with the occupancy or beneficial use of (i) any areas and buildings adjacent to the site of the Work, and (ii) the building, in the event of partial occupancy. Without prior approval of the Owner, the Construction Manager shall not permit any workers to use any existing facilities at the project site, including, without limitation, laboratories, toilets, entrances, and parking areas other than those designated by the Owner.

§11.5.22 Notwithstanding anything else to the contrary in the Contract Documents, the Owner and Construction Manager acknowledge and agree that that the Owner's Project is conditioned upon voter approval at the Annual

Town Meeting in March 2016, failing which this Agreement shall terminate at the option of the Owner without further recourse to the Construction Manager whatsoever except for compensation for Pre-Bond Phase services contained in Article 4.1.2.

**ARTICLE 12 SCOPE OF THE AGREEMENT**

§ 12.1 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 Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 Modified AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 Exhibit A - A201–2007 as amended, General Conditions of the Contract for Construction as modified therein
- .3 Other documents:  
*(List other documents, if any, forming part of the Agreement.)*

Exhibit B – Construction Manager’s Key Personnel, Project Team and Organization Chart  
Exhibit C – Construction Manager’s Personnel and Hourly Billable Rates  
Exhibit D – Form of Amendment No. 1  
Other Exhibits as contemplated as part of Exhibit D

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

**TOWN OF PLAISTOW, NEW HAMPSHIRE**

**ECKMAN CONSTRUCTION COMPANY, INC.**

\_\_\_\_\_  
**OWNER (Signature)**

\_\_\_\_\_  
**CONSTRUCTION MANAGER (Signature)**

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Printed name and title)*