

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 « »
(In words, indicate day, month and year.)

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

« Capital Region Development Authority (“CRDA”) »
« 100 Columbus Boulevard, Suite 500, Harford, CT 06103-2819 »

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

« »
« »

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

« Dillon Stadium Renovation & Improvements »
« 21 Van Dyke, Hartford, CT 06106 »

The Architect:
(Name, legal status and address)

« JCJ Architecture, PC »
« 120 Huyshope Ave, Suite 400, Hartford CT 06106 »

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

« Robert Saint »
« Director, Construction Services »
« CRDA »
« PH (860) 493-2917 »
« Email rsaint@crdact.net »
« »

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

« »
« »
« »
« »
« »
« »

The Architect’s Designated Representative:

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User Notes:

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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(Name, address and other information)

« Bruce Kellogg»
« Principal/ Project Director »
«120 Huyshope Ave, Suite 400, Hartford CT 06106 »
«PH (860) 240-9316 »
«Email bk Kellogg@jci.com »
« »

The Owner and Construction Manager agree as follows.



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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 Task Authorization Guaranteed Maximum Price proposals, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Task Authorization Guaranteed Maximum Price Amendment and revisions prepared by the Architect 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 (or "CM") accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise a degree of skill and care consistent with the Construction Manager's Standard of Care, as hereinafter defined 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 to oversee the performance of the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, 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.

§ 1.2.1 Owner - The owner of Dillon Stadium is the City of Hartford. The project is funded by the State of Connecticut. Funds will be administered by the Capital Region Development Authority (CRDA), 100 Columbus Boulevard, Suite 500, Harford, CT 06103-2819, Phone:(860) 527-0100. CRDA will hold the CM contract and oversee construction with the assistance of HSG. Where "Owner" appears in the RFP and Contract Documents, it shall refer to CRDA.

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase(s), the general conditions of

the contract shall be as set forth in A201–2007, which document is incorporated herein by reference. The term “Contractor” as used in A201–2007 shall mean the Construction Manager. Where reference is made in this Agreement to a provision of AIA Document A201–2007 or any other AIA document or provision, the reference refers to that document or provision as amended by the Owner and, if applicable, any other party to such document, or as amended and supplemented by other provisions of the Contract Documents.

§ 1.4 Construction Manager's Standard of Care

§ 1.4.1 The Construction Manager shall be responsible for the performance of the Work as an independent contractor and in a good and workmanlike manner (i) consistent with the Contract Documents; (ii) consistent with the instructions, guidance and direction of the Owner and Architect; (iii) consistent with the prevailing applicable professional or industry standards; (iv) consistent with sound practices; (v) as expeditiously as is consistent with the foregoing (the standards of this Section 1.4 shall be referred to herein as the "Construction Manager's Standard of Care").

§ 1.4.2 The Construction Manager shall exercise Construction Manager's Standard of Care in performing its obligations under the Contract Documents. All references in the Contract Documents to the knowledge, inference, reliance, awareness, determination, belief, observation, recognition or discovery of the Construction Manager or reference to any similar term shall include the knowledge, inference, reliance, awareness, determination, belief, observation, recognition or similar term, as the case may be, that the Construction Manager should have obtained upon the exercise of the Construction Manager's Standard of Care.

§ 1.5 Applicable Law

§ 1.5.1 The Construction Manager shall be responsible for the performance of the Work in compliance with all applicable laws, rules, regulations, ordinances, codes, orders and permits of all federal, state and local government bodies, agencies, authorities and courts having jurisdiction (collectively, "Applicable Law"). Except as otherwise provided in this Agreement, the Construction Manager shall be responsible to obtain and post all necessary permits at the site. Notwithstanding the foregoing or anything else set forth in this Agreement, Construction Manager shall not be liable for errors and omissions in design by the Architect.

§ 1.5.2 The Construction Manager shall secure the building permit as well as for such other permits, fees, licenses, certifications and inspections that are required under Applicable Law as of the date hereof and are customarily secured after execution of the Contract. The cost of the building permit will be a reimbursable expense. The Construction Manager shall provide the Owner and Architect with reproductions of all permits, licenses, permissions, certifications and receipts for payments and, upon final completion, shall deliver all originals of such documents to the Owner with copies to the Architect

§ 1.6 Expedited Project

§ 1.6.1 The Owner and the CM anticipate that the Project may be composed of the following Tasks (which may be combined into fewer tasks or be increased to include additional scope tasks) and Phases identified as follows:

§ 1.6.1.1 Tasks:

Task 1: Phase 1 – Preconstruction Services as set forth in Schedule C Section 2.1 attached hereto.

Task 2: Construction Contingency and General Conditions and General Requirements for Preconstruction Phase, Early Release Packages, Construction Phase and Post Construction Phase

Note: The Scope of Work for the Construction and Post Construction Phases is set forth in Schedule C, Sections 2.2 and 2.3.

Task 3: Phase 2.1 – Artificial Turf Design/Build Early Release Package.

Task 4: Phase 2.2 – Abatement and Demolition Early Release Packages.

Task 5: Phase 2.2 – Bleachers

Task 6: Phase 2.3 – Site & Civil

Task 7: Phase 2.4 – General Construction

Task 8: Phase 3 – Post Construction and Project Close-Out

Owner reserves the right to add or delete from the proposed Tasks. The CM may combine proposed Tasks with the

Owner's prior Approval.

§ 1.6 .1.2 Phases:

- .1 Preconstruction Phase Services – Preconstruction includes design, constructability, scheduling and logistics analysis, estimating and preparation of bid packages. Preconstruction Services will include the Scope of Work listed in Section 2.1 of the CRDA RFP, Instructions to Candidates attached hereto as Schedule C.
- .2 Construction Phase Services – Construction includes bidding and construction of early release package(s) and General Construction. Construction Services will include the Scope of Work listed in Section 2.2 of the CRDA RFP, Instructions to Candidates attached hereto as Schedule C. Phase 2 work will likely overlap with Phase 1.
- .3 Post Construction Phase Services – Post Construction will begin in 2019 and include final punch list and close-out of the Project. Post Construction Services will include the Scope of Work listed in Section 2.3 of the CRDA RFP, Instructions to Candidates attached hereto as Schedule C. Phase 3 will overlap with Phase 2.

§ 1.6.2 The Owner is desirous of expediting the prosecution and commencement of the design and construction of the Project prior to the completion of one hundred percent (100%) of the construction documents for the respective Tasks. Therefore, the Owner intends to designate and release to the CM specific Tasks, and the services of the Work to accomplish such tasks as described in an individual "Task Authorization" (or "TA"). The form of a TA is attached hereto as Schedule B. The form will be revised as needed to reflect the terms of each TA (with or without a GMP). The terms and conditions of this Agreement shall be considered a part of any and all Owner issued TA's and incorporated therein , as if more fully set forth in each TA.

§ 1.6.3 Upon the Owner's issuance of a TA to the CM the CM shall promptly commence construction of each TA as soon as possible and in compliance with the Contract Documents.

§ 1.6.4 The Contract Time for each Task shall be measured from the date of commencement, and shall be established in each TA subject to adjustments of the TA Contract Time as provided in the Contract Documents.

§ 1.6.5 Unless instructed by the Owner in writing, including, as applicable, "early release packages," CM shall not knowingly commence the Work before the Owner's issuance of a TA and the effective date of insurance to be provided by the CM as required by the Contract Documents.

§ 1.6.6 The CM shall achieve Substantial Completion of the Work of each TA not later than the Substantial Completion Date set forth in each TA. The Date of Substantial Completion and Final Completion for the Project as a whole shall be subject to the Substantial Completion Date of each TA and adjustment as provided for in the Contract Documents.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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 which designation shall be subject to the Owner's approval and may not be changed without the Owner's prior approval.

§ 2.1 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.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner 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

and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The 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 identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Task Authorization Recommendation to Award proposals; 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; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, 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 evaluate the 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 review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 Construction Manager shall prepare an estimate of the Cost of the Work based on 50% Construction Documents. This estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Bidding for Subcontractors and Suppliers

§ 2.1.6.1 Neither the Construction Manager, nor any subsidiary, parent, company, or other related party (as defined in Section 6.10.1 of this agreement) of the Construction Manager may perform any part of the Work with its own forces. The Owner may waive this restriction, in writing, at its sole and absolute discretion. Owner acknowledges that Construction Manager may self-perform labor required to perform Preconstruction Services, General Conditions and General Requirements Work and that Construction Manager may propose to self-perform other areas of the Work when it believes it is in the Owner's economic interest for Construction Manager to self-perform.

§ 2.1.6.2 The Construction Manager shall develop bidders' interest in the Project. The Construction Manager shall, with the assistance of the Architect, develop Task Bid Packages for the Work included in each Task and prepare a list of qualified bidders for each Task Bid Package. The bid list and Task Bid Packages must be approved by the Owner in writing. Unless otherwise agreed to by the Owner for a specific Task Bid Package, the Construction Manager shall advertise each Task Bid Package in publications with significant circulation in Connecticut.

§ 2.1.6.2.1 The Construction Manager shall comply with the following bidding procedures:

1. For Subcontractors that are estimated to equal or exceed \$500,000, the Construction Manager will conduct bidding subject to CGS 4b-91(a). Generally, this means posting on the State of Connecticut Contracting Portal, meeting the Department of Administrative Services prequalification classification applicable to each bid package in consultation with the Owner's Representative.
2. For Subcontracts estimated to be less than \$500,000, the Construction Manager will use its best efforts with the Owner's prior written approval to solicit three or more competitive bids from qualified responsible Subcontractors.
3. For Subcontracts estimated to be less than \$500,000 involving sole or limited sources or otherwise involving a limited pool of competitors or with the Owner's prior written approval, the Construction Manager may negotiate with one or more potential Subcontractor in the best interests of the Project.

4. All Subcontract awards are conditioned upon and subject to Owner review and approval.

§ 2.1.6.3 The Construction Manager shall provide a Task Bid Package Recommendation to Award (or "RTA") for each Task. The RTA shall summarize the bids received for each component of the Task Bid Package in a spreadsheet format, including all analysis and adjustments necessary to permit a meaningful comparison among bidders. The Construction Manager shall also provide in the RTA, as appropriate, comments concerning the subcontractors and suppliers under consideration, including financial strength, past performance, and current workload, and a recommendation as to subcontractor and supplier selection.

§ 2.1.6.4 Except as set forth in Section 2.1.6.2.1.3 and after the Owner's approval of an RTA and subsequent execution of a TA the Construction Manager shall award the Subcontracts to the responsible and qualified bidder offering the lowest price for the applicable part of the Work. The Construction Manager shall develop and utilize the criteria, which criteria must be included in the bid packages and approved by the Owner pursuant to Section 2.1.6.3, that the Construction Manager will use to determine whether a bidder is responsible and qualified. To the extent permitted under Applicable Law, the Construction Manager shall not be obligated hereunder to contract with an individual or entity with which the Construction Manager has a reasonable objection.

§ 2.1.6.5 The Construction Manager shall be solely responsible to assure that the bidding process is conducted in accordance with Applicable Law.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the TA, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the TA, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 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 TA Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with Applicable Law, as defined in Section 1.5.1 of this Agreement, including any 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 Without limiting the provisions of Section 2.1, the Construction Manager's responsibilities during the Preconstruction Phase includes the following:

- .1 Estimating: Immediately verify the validity of budget assumptions. Provide a full detailed estimate of the 50% CD Documents.
- .2 Scheduling: Develop a detailed schedule that is tracked through the pre-construction phase to capture all of the anticipated work activities. Continue to use the schedule through the construction phases to ensure on-schedule completion.
- .3 Value Engineering: Working with design professionals, develop value engineering at the appropriate milestones of design. Manage the VE log as appropriate.
- .4 Cost Trending: In addition to the milestone estimate track the budget as designs, Schemes and sketches are produced for review and approval. Maintain a cost trending log to document the significant scope changes as the Project progresses.

- .5 Constructability Review: Review the documents as they develop and advise on issues of constructability both from an initial installation and a long-term servicing perspective. Work with the Owner's management team to capture the comments of the Project managers. Ensure these comments are reflected in the documents as the documents are developed. Evaluate the various design disciplines to insure coordination between the disciplines. Constructability review will include review of high performance (or "green") design.
- .6 Site Logistics Plan: Develop a graphic site logistics plan showing lay-down areas and access in and out of the site.
- .7 Quality Plan: Develop a plan to describe how quality will be ensured in the execution of the design and communicated to the subcontractors.
- .8 Safety Plan: Develop a project specific safety plan.

§ 2.2 Guaranteed Maximum Price Proposal ("GMP")

(Paragraphs deleted)

§ 2.2.1 For each Task Bid Package, the CM shall submit an RTA that shall include a GMP Proposal for the Work of that Task in a format acceptable to the Owner. Unless the Parties mutually agree otherwise, the GMP for each Task shall be the sum of the CM's estimated Cost of the Work as defined in Section 6.1.1 and the Design-Builder's Fee as defined in Section 5.1.1. The GMP for each Task shall be subject to modification as provided in the Agreement. The CM does not guarantee any specific line item provided as part of the GMP, but agrees that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with this Agreement.

§ 2.2.2 Basis of Guaranteed Maximum Price: The CM shall include with each task GMP Proposal a written statement of its basis, which shall include:

§ 2.2.2.1 A list of the Drawings and Specifications, including all Addenda which were used in preparation of the GMP Proposal;

§ 2.2.2.2 A list of allowances and a statement of their basis;

§ 2.2.2.3 a list of the assumptions and clarifications made by the CM in the preparation of the GMP Proposal to supplement the information contained in the drawings and specifications;

§ 2.2.2.4 The Date of Substantial Completion and the Date of Final Completion upon which the proposed TA Guaranteed Maximum Price is based; and the Schedule of Work upon which the Date of Substantial Completion and the Date of Final Completion is based;

§ 2.2.2.5 a schedule of applicable alternate prices;

§ 2.2.2.6 a schedule of applicable unit prices;

§ 2.2.2.7 a statement of additional services included, if any;

§ 2.2.2.8 the time limit for acceptance of the GMP proposal but in no event shall such time limit be less than ten (10) days;

§ 2.2.2.9 the CM's contingency as provided in subsection 2.2.3.

§ 2.2.3. CONSTRUCTION CONTINGENCY The Construction Contingency as set forth in the individual Task 2 TA and which may be amended with each additional TA, is a sum mutually agreed upon and monitored by the CM and the Owner to cover costs which are properly reimbursable as a Cost of the Work but are not the basis for a Change Order. The Construction Contingency shall not be used for changes in scope or for any item that would be the basis for an increase in the GMP. The Construction Contingency may be utilized for reimbursable costs including, but limited to, costs associated with matters related to: estimating errors; buyout differentials; unanticipated market conditions including reasonable escalation; coordinating omissions; overtime or premium time; acceleration or expediting; design or document omissions; minority business enterprise subcontractor or vendor ("MBE") defaults if such MBE is

not bondable; legal costs not related or due to a dispute with or a claim against the Owner. The CM shall obtain the Owner's written permission in advance of incurring costs that the CM proposes be charged to the Construction Contingency. The CM shall submit a written request to the Owner for reimbursement of such costs together with an explanation of the reason such costs are to be incurred. The Owner's approval with respect to such requests shall not be unreasonably withheld. Upon Substantial Completion of the Project, CM shall provide the Owner with an accounting of all charges against the CM's Contingency.

§ 2.2.4 REVIEW AND ADJUSTMENT TO GMP PROPOSAL: The CM shall meet with the Owner to review each Task GMP Proposal. If the Owner has any comments relative to the GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall give written notice of such comments or findings to the CM, who shall make appropriate adjustments to the GMP, its basis or both.

§ 2.2.4.1 ACCEPTANCE OF GMP PROPOSAL Upon written acceptance by the Owner of each Task GMP Proposal, the GMP and its basis shall be set forth in a TA.

§ 2.2.4.2 FAILURE TO ACCEPT THE GMP PROPOSAL: Unless the Owner accepts the GMP Proposal in writing on or before the date specified in the GMP Proposal for such acceptance and so notifies the CM, the GMP Proposal shall not be effective. If the Owner fails to accept the Task GMP Proposal, or rejects the Task GMP Proposal, the Owner shall have the right to:

§ 2.2.4.3 Suggest modifications to the GMP Proposal. If such modifications are accepted in writing by CM, the GMP Proposal shall be deemed accepted in accordance with subsection 4.4.3.5; or

§ 2.2.4.4 Direct, by signed TA, the CM to proceed on the basis of reimbursement (Cost of the Work plus a fee) as provided in Article 6 without a GMP, in which case all references in this Agreement to the GMP shall not be applicable.

§ 2.2.4.5 PRE-TA WORK Except as provided in Section 2.2.7, prior to the Owner's acceptance of each TA, the CM will not incur costs to be reimbursed as part of the Cost of the Work.

§ 2.2.4.6 GENERAL CONDITIONS ("GC") AND GENERAL REQUIREMENTS ("GR") A lump sum amount for the GC costs and GR costs portion of the Cost of the Work ("the General Conditions Lump Sum Amount"), shall be separately identified and itemized as separate line items on a schedule to be included in TA's 1 and 2. The Construction Manager shall be entitled to an increase in the General Conditions Lump Sum Amount only as follows: (i) in the case of excusable delay as defined in Section 8.3 of the A201 General Conditions and, subject to Owner's reasonable approval, Construction Manager shall be allowed reimbursement to the extent available from the Contingency or buyout savings for provable direct costs of acceleration or delay; (ii) in the case of compensable delay occurrences as allowed by Section 8.3 of the A201 General Conditions, the Construction Manager shall be allowed an increase in the both the General Conditions Lump Sum Amount and the Guaranteed Maximum Price for the provable direct costs of acceleration or delay, subject to the limitations set forth in Section 8.3 of the A201 General Conditions; or (iii) in the case of Change Orders or other project conditions caused by Owner or Architect that materially increase Construction Manager's staffing required to execute the Work

§ 2.2.5 Deleted

§ 2.2.6 The Construction Manager shall meet with the Owner and Architect to review the TA Guaranteed Maximum Price proposal incorporated in the RTA, and the Project Schedule (as defined in Section 2.2.12 of this Agreement) proposal for each Task. 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 TA Guaranteed Maximum Price proposal incorporated into the RTA, its basis, or both or to the Project Schedule. The risk of loss due to inconsistencies or inaccuracies in the Guaranteed Maximum Price and the Project Schedule and/or in the TA Guaranteed Maximum Price executed pursuant to Section 2.2.6, shall be the Construction Manager's, except to the extent due to the fault of the Owner or the Architect.

§ 2.2.7 If the Owner notifies the Construction Manager that the Owner has accepted a TA in writing before the date specified in the TA, the TA shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a TA, the Owner and Construction Manager shall execute the TA, a copy of which the Owner

shall provide to the Architect. The TA shall set forth the agreed upon Guaranteed Maximum Price for that Task with the information and assumptions upon which it is based.

§ 2.2.8 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of a TA, unless the Owner provides prior written authorization for such costs.

§ 2.2.9 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 a TA. The Owner shall 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 TA Guaranteed Maximum Price-Amendment and the revised Drawings and Specifications.

§ 2.2.10 The Owner is a tax exempt entity. The GMP does not include any state sales and use tax on materials and services incorporated into the Project.

§ 2.2.11 By executing a TA that includes a Guaranteed Maximum Price pursuant to Section 2.2.6 of this Agreement, the Construction Manager represents and warrants, which representation and warranty is hereby incorporated into such TA, that the Drawings and Specifications and other materials and information listed in the TA describe the scope, construction requirements and design intent of the Work in detail sufficient to enable the Construction Manager to establish firmly the Guaranteed Maximum Price included in the TA, subject to the agreed upon assumptions and clarifications. So long as the further drawings, clarifications, supplemental information, and other materials are consistent with the Contract Documents, the Construction Manager shall not be permitted to claim any adjustment in the Guaranteed Maximum Price included in the TA or the Construction Schedule in connection with the completion of drawings, clarifications, supplemental information and other materials issued by the Architect or the Owner (collectively, "Supplemental Materials") after the date of the TA, for items that are reasonably inferable from the Contract Documents except as otherwise provided in the Contract Documents.

§ 2.2.12 CONTRACT TIME

§ 2.2.12.1 At the same time the Construction Manager proposes a TA to the Owner, the Construction Manager shall prepare and provide for the approval of the Owner a schedule for completion of the Work of that Task (as approved by the Owner, the "Task Project Schedule". The Task Project Schedule shall: (1) provide a graphic representation of material activities and events that will occur during performance of the Work; (2) identify each phase of construction separately; (3) identify the dates applicable certifications, permits and approvals will be sought and the expected date of receipt of such certifications, permits and approvals; (4) indicate a proposed cash flow schedule for the Task; (5) identify key dates for Owner-provided information and materials; (6) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents; (7) fully coordinate with the work of other Tasks; and (8) specify the Substantial Completion Date for the purposes of this Section 2.2.13.

§ 2.2.12.2 TIME IS OF THE ESSENCE in the performance of the Work.

§ 2.2.12.3 The Project shall be deemed to have achieved Substantial Completion when all of the following have occurred:

- .1 The Architect has issued a Certificate of Substantial Completion; and
- .2 Code Authorities with jurisdiction have approved the Work of the Task
- .3 The CM shall provide the Owner with a completed and executed AIA Document G704-2000 for each TA and for the Project.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201-2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the first proposed TA or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.2 Administration

§ 2.3.2.1 See Section 2.1.6 of this Agreement for the Construction Manager's obligations regarding selecting, and contracting with subcontractors and/or suppliers for all elements of the Work. All such subcontracts or agreements shall be between the performing party and the Construction Manager in the Construction Manager's own name and not as an agent of the Owner. However, each subcontract, vendor contract, purchase order, letter of intent or any similar agreement entered into by the Construction Manager in connection with the Work shall be assignable to the Owner upon demand by the Owner, subject to the provisions of Section 5.4 of the General Conditions of the Contract. Each such agreement shall include language indicating that the Owner may, at the Owner's option, take assignment of the Construction Manager's rights under such agreement, subject to Section 5.4 of the General Conditions of the Contract.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established before the selection of Subcontractors and Suppliers pursuant to Section 2.1.6, and when, in such event 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 and the bid packet approved by the Owner pursuant to Section 2.1.6 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 TA Contract Time and the TA 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 shall conform to the applicable payment provisions of this Agreement, and shall be awarded on a lump sum basis and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus 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.

§ 2.3.2.4 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 meetings to 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 and Architect. The Construction Manager shall schedule and conduct progress meetings at the site on a weekly basis or other interval appropriate for the level of job site activity and in accordance with the Construction Manager's operations. Owner and Architect shall be notified of meeting dates and times and will be required to attend bi-weekly meetings at the Construction Manager's request.

§ 2.3.2.6 Upon the execution of a TA, the Construction Manager shall prepare and submit to the Owner and Architect, in addition to the Project Schedule, a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2007.

§ 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 and Architect, showing percentages of completion and other information required by the Owner. Such reports shall also compare actual progress with the progress required under the Construction Schedule and shall describe any material adjustments to the schedule or the progress forecast and the causes therefore and, where applicable, note corrective measures. The Construction Manager shall also keep, and make available to the Owner 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.

§ 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. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

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 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 a TA, 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, (2) a change in the Work materially changes the TA Contract Sums, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. 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. 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 control and relevant to the Construction Manager's performance of its responsibilities under the Agreement with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall except to the extent otherwise advised by the Owner in writing at the time the applicable information and/or services are furnished be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 If Applicable to the Project, the Owner shall furnish 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; 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 The Owner, when such services are required, shall furnish 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 required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services

under the Owner's control 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.

§ 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 A201-2007, 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 the Owner reasonably deems necessary at any time for the Project to meet the Owner's needs and interests.

§ 3.3 Architect

The Owner has retained an Architect to provide services, duties and responsibilities as described in AIA Document B133™-2014, Standard Form of Agreement Between Owner and Architect, as amended by the Owner and Architect. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, that the Owner reasonably deems is necessary for the Preconstruction and Construction Phase services of this Agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 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.)

« »

To be included in Task 1 TA.

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within To be identified in a Task Authorization « » (« ») months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid «thirty» («30») days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

Interest rate per annum shall be the legal rate as set forth in C.G.S. Sec. 37-1.

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, subject to the provisions of Section 11.7 of this Agreement, pay the Construction Manager the Contract Sum in current funds. 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.)

<< >>

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

<< >>

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

As described in Section 5.3.3

<< >>

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall be consistent with Section 6.5.2 << >>

§ 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)
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§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the TA Contract Sum(s) shall not exceed the Guaranteed Maximum Price set forth in the TA. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price included in a TA, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price included in a TA without reimbursement or additional compensation from the Owner.

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

<< >>

§ 5.2.2 The Guaranteed Maximum Price included in a TA 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.

§ 5.2.3 Should the final TA Contract Sum(s) be less than the GMP included in the TA, then any such savings shall accrue solely to the Owner.

§ 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 AIA Document A201-2007, General Conditions of the Contract for Construction. 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 Guaranteed Maximum Price included in a TA on account of changes in the Work subsequent to the execution of the TA Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 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 AIA Document A201-2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007 shall have the meanings assigned to them in AIA Document A201-2007 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.

§ 5.3.4 In calculating adjustments to the TA Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-2007 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 Guaranteed Maximum Price shall be adjusted accordingly.

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 incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7. Items included in the General Conditions Lump Sum Amount established as part of TA 2 for General Conditions and General Requirements shall be paid in twelve (12) equal monthly payments, as set forth in Section 1.6.1.1 for Task 1 and Task 2, as part of the Cost of the Work pursuant to Article 7 and not billed separately under this Section. To the extent relevant for extra work or change orders, attached as Schedule D is a listing of the Construction Manager’s fully burdened rates for trade labor and supervisory, administrative, and professional staff.

§ 6.1.2 Where any cost is subject to the Owner’s prior 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 Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs

§ 6.2.1 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 approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager’s supervisory and administrative personnel when stationed at the site with the Owner’s prior approval.

(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 Wages and salaries of the Construction Manager’s 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 required for the Work.

§ 6.2.4 Costs paid or incurred 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 based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner’s prior approval.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 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 or to be incorporated in the completed construction are to be included in Subcontract Costs described in Section 6.3.

§ 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. 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 conduct of the Construction Manager's responsibilities under the Contract Documents. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.1.1 The Construction Manager shall maintain an inventory of the items described in this Section 6.5.1 that are purchased in connection with the Work and charged as Costs of the Work. Following final completion of the Work and as a condition precedent to the final payment, the Construction Manager shall submit to the Owner a final accounting in which (i) all such items are listed; (ii) for each item, the amount charged as a Cost of the Work is indicated; and (iii) the final disposition for each such item is indicated.

§ 6.5.2 Fair market 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 approval.

§ 6.5.2.1 If the cumulative total of rental charges in connection with any single piece of machinery or equipment equals or exceeds one hundred percent (100%) of its fair market value as of the date such machinery or equipment was first put into service, the Owner shall be deemed to have purchased such machinery or equipment and, upon final completion of the Work, the Construction Manager shall deliver such machinery or equipment to the Owner together with appropriate documentation conveying free and clear title to the Owner.

§ 6.5.2.2 If the Construction Manager purchases equipment under a lease/purchase arrangement whereby rental payments were charged to the Owner as reimbursable costs, an appropriate credit will be given to the Owner for the fair market value of the equipment at the time it was last used on the Project.

§ 6.5.2.3 For equipment owned by the Construction Manager or a related party (as defined in Section 6.10.1 of this Agreement) of the Construction Manager, the Construction Manager shall, upon the Owner's request, maintain daily equipment usage time reports noting the hours and activity for which the equipment was used, standby time, idle time, etc. Such equipment usage reports will be used by the Construction Manager to determine whether hourly, daily, weekly or monthly rates shall apply; and the rates used for billing purposes will be those most economical to the Owner based on the circumstances of actual usage.

§ 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, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work are, included in the Construction Manager's Fee and shall not be reimbursable.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 6.5.7 Except in case of an emergency, the Construction Manager shall notify the Owner thirty (30) days prior to providing, with its own forces or property or the forces or property of a related party (as defined in Section 6.10.1 of this Agreement) of the Construction Manager, any of the items or services, as the case may be, described in Section 6.5.1, 6.5.2 and/or 6.5.3, and the Construction Manager shall not so provide the same without the prior written approval of the Owner. At the request of the Owner, the provision of such items shall be bid in a manner consistent with Section 2.1.6 of this Agreement.

§ 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. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. The cost of Construction Manager's liability insurances shall be charged as a Cost of the Work at the stipulated amount of _____ (0.____%) of the estimated Cost of the Work.

§ 6.6.2 Deleted.

§ 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 AIA Document A201–2007 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 required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such 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 consent. 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. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work are not included as a Cost of the Work and shall not be reimbursable.

§ 6.6.7 Deposits lost for causes unrelated to the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of its responsibilities under the Contract Documents and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and 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 AIA Document A201–2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers or anyone else for whose work the Construction Manager is responsible under the Contract, provided that such damaged or nonconforming Work was not caused by (i) negligence or omission of any such party or entity or (ii) the Construction Manger's failure to otherwise comply with the terms of the Contract Documents or to fulfill a specific responsibility of the Construction Manager and in any event, only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 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;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Notwithstanding anything to the contrary provided in Section 6.7.3, costs due to the negligent act or omission of the Construction Manager, its Subcontractor or Supplier, or anyone else conducting the Work, or due to the failure of the Construction Manager to comply with the terms of the Contract Documents and all costs arising from any Work which the Construction Manager knew did not comply with the Contract Documents or Applicable Law;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the TA Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.
- .9 Amounts required to be paid by the Construction Manager for federal, state, or local income or franchise taxes;
- .10 Labor, material, and equipment costs or any other costs incurred which are recoverable from Subcontractors or Suppliers or which is included in a contract with a Subcontractor or Supplier;
- .11 Losses resulting from lost, damaged or stolen tools and equipment (other than equipment to be incorporated into the Work to the extent covered by the Owner's property insurance);

§ 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. The Construction Manager shall promptly notify the Owner of potential cash discounts it is aware of to enable Owner to take advantage of same. The Construction Manager shall not obtain for its own benefit any discounts, rebates or refunds in connection with the Work prior to providing the Owner with seven (7) days prior written notice of the potential discount, rebate or refund and an opportunity to furnish funds necessary to obtain such discount, rebate or refund.

§ 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.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of this Agreement, 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 of the specific nature 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 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, 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

§ 6.11.1 The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of six years after final payment, or for such longer period as may be required by law.

§ 6.11.2 Records to be available for audit shall include but not be limited to accounting records, written policies and procedures; contact and subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating worksheets; correspondence invoices; 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; electronic or computer data and any other supporting evidence deemed necessary to substantiate charges. These records shall be open to inspection and subject to an audit and/or reproduction to the extent necessary to adequately permit evaluation and verification of the Cost of the Work, and any invoices, change orders, payments or claims submitted by the contractor or vendor to any of his payees pursuant to the execution of this Agreement.

§ 6.11.3 The audits described in Section 6.11.11 may require inspection and copying from time to time and at reasonable times and places of any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent's reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that have any bearing on or pertain to any records subject to audit. This material shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations). Access shall be afforded to all of the Construction Manager's records, and the auditor shall be allowed to interview any of the Construction Manager's employees. The Construction Manager shall provide access to the Construction Manager's facilities and provide all necessary records for the purpose of an audit, and shall provide adequate work space to conduct audits in compliance with this article.

§ 6.11.4 If any audit reveals an overcharge, the Construction Manager shall pay the Owner upon demand an amount equal to such overcharge as reimbursement for said overcharge. Nothing in this Section 6.11.4 shall limit the remedies of the Owner by law or in equity.

§ 6.11.5 The Construction Manager shall deliver to the Owner such items as are requested by the Owner to support costs billed to the Project and shall provide any further assistance requested by the Owner during an audit of the Project.

§ 6.11.6 The Construction Manager shall comply, and shall cause subcontractors and suppliers of every tier that perform work on a cost plus or time and materials basis, to comply, with all accounting procedures and record retention policies reasonably requested by the Owner.

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, subject to the provisions of Section 11.7 of this Agreement and Section 9.4.3 of the General Conditions, 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:

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§ 7.1.3 Provided that a "pencil" Application for Payment is received by the 25th day of a month and an Application for Payment is received by the Architect not later than the « first » day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the « last » day of the « same » month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than « thirty » (« 30 ») days after the Architect receives the Application for Payment.
(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 time cards, petty cash accounts, receipted invoices or invoices with check vouchers attached, 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 payrolls for the period covered by the present Application for Payment. With the second of each such Application and thereafter, the Construction Manager and each Subcontractor and suppliers shall submit effective lien waivers for all portions of the Work included in previous Applications paid by the Owner.

§ 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 TA 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. 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 been completed, or (2) the percentage obtained by dividing (a) the expense 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 TA 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 TA Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the TA Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values (not including General Conditions and Construction Manager's Fee) less retainage of ten (10%) percent. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the TA Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing less retainage of ten (10%) percent;
- .3 Add the Construction Manager's Fee, less retainage of « ten » percent (« 10 » % of the Construction Manager's Fee). 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 Subtract retainage of « ten » percent (« 10 » %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;

- .6 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's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

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

§ 7.1.10 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's auditors acting in the sole interest of the Owner.

§ 7.1.11 Notwithstanding anything to the contrary contained in the Contract Documents, issuance of a Certificate for Payment by the Architect is a recommendation only; payment to the Construction Manager of amounts certified in a Certificate for Payment is subject to the Owner's approval.

§ 7.1.12 Upon Substantial Completion, an amount equal to 200% of the cost reasonably estimated by the Architect to be necessary to complete "punch list" items and achieve Final Completion of the Work, shall be subtracted from the payment made pursuant to Section 9.8.5 of the General Conditions. If the Construction Manager fails to complete the items on the "punch list," the Owner may use such retainage to complete such items, and the Construction Manager shall forfeit all rights to such retainage amounts as the Owner so uses.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the TA Contract Sum(s), shall be made by the Owner to the Construction Manager no later than sixty (60) days after:

- .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 AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 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 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

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§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as 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, 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 AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If 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 A201-2007. 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 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the TA Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

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 AIA Document A201-2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

(Table deleted)

§ 8.1 Insurance

§ 8.1.1 The insurance required of the Construction Manager under Section 11.1.1 of AIA Document A201-2007 shall be written for not less than the amounts in this Section 8.1, or greater if required by law. The insurance required under this Section 8.1 shall comply in all ways with the requirements of insurance required pursuant to Section 11.1 of AIA Document A201-2007.

- .1 Workers' Compensation (waiver of subrogation required):
 - a. State
 - b. Voluntary Compensation (by any exempt entities): Same as State Workers' Compensation C.
Employers Liability:
 - \$ 500,000.00 Each Accident
 - \$ 500,000.00 Disease, Policy Limit
 - \$ 500,000.00 Disease, Each Employee
- .2 Commercial General Liability (including Premises-Operations; Independent Contractors' Protective; Products and Completed Operations; Broad Form Property Damage):
 - a. Bodily Injury: \$ 1,000,000.00 Each Occurrence
 - b. Property Damage:
 - Included Each Occurrence
 - Included Aggregate
 - c. Products and Completed Operations shall be maintained for five (5) years after final payment
 - d. Property Damage Liability Insurance shall provide explosion, collapse and underground coverage as applicable
 - e. Contractual Liability (Hold Harmless Coverage):
 - Bodily Injury: \$ 1,000,000.00 Each Occurrence
 - Property Damage:
 - Included Each Occurrence
 - Included Aggregate
 - f. Personal Injury with Employment Exclusion deleted: \$ 1,000,000.00 Aggregate
 - g. If the General Liability policy includes a General Aggregate, such Aggregate shall not be less than \$ 2,000,000.00. Policy shall be endorsed to have General aggregate apply to this Project only.

- .3 Umbrella Excess Liability
 - \$ 10,000,000.00 Over primary insurance
 - \$ 10,000.00 maximum Retention or deductible

- .4 Comprehensive Automobile Liability (owned, non - owned, hired):
 - a. Bodily Injury: \$ 1,000,000.00 Per Accident
 - b. Property Damage: Included Each Occurrence

- .5 Professional Liability
 - a. Minimum coverage for each claim \$2,000,000
 - b. Minimum annual coverage \$2,000,000
 - c. Maximum deductible or self-insured retention \$100,000
 - d. Extended reporting period for six (6) years following the termination of this Agreement

§ 8.1.3 The Construction Manager shall cause each and every Subcontractor, at its expense, to obtain and maintain throughout the performance of the Work, insurance in such form and amounts set forth in Paragraph 8.1, unless a different form or a lesser amount is agreed to by the Owner and the Construction Manager on a case-by-case basis. Notwithstanding the foregoing, subcontractors not performing engineering or other design services shall not be obligated to carry the Professional Liability coverage required of the Construction Manager.

§ 8.1.3 See Section 11.1 of the General Conditions for information about those to be included as Additional Insureds and the required inclusions in certificates of insurance.

§ 8.2 Bonds

§ 8.2.1 The Owner, the Construction Manager shall furnish, with sureties satisfactory to the Owner:

- .1 a bond covering the Construction Manager's faithful performance of the Work, which bond shall be equal to one hundred percent (100%) of the TA Contract Sum(s) and on which the Owner shall be shown as the obligee and/or
- .2 a Payment Bond for the Construction Manager equal to one hundred percent (100%) of the TA Contract Sum(s).

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 A201–2007. 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.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, 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 Any Arbitration shall take place in Hartford, Connecticut.
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*
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§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 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.)

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ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of a Task Authorization

§ 10.1.1 Prior to the execution of the TA Guaranteed Maximum Price Amendment, 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 A201–2007.

§ 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 the TA Guaranteed Maximum Price Amendment, 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 to the date of termination;
- .2 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
- .3 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.

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 will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§10.1.4 Upon payment by the Owner of the amounts required under this Section 10.1, the Owner's obligations to the Construction Manager shall be fully satisfied, and the Construction Manager shall be deemed to have fully released the Owner from any claims or liabilities.

§ 10.2 Termination Subsequent to Establishing Task Authorization

Following execution of the TA 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 AIA Document A201–2007.

§ 10.2.1 If the Owner terminates the Contract for convenience after execution of a TA, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 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. . In the case of termination by the Owner for cause, the Construction Manager shall be paid in accordance with Section 14.2 of the A201.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of a TA, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager’s Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the TA Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that 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 A201–2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and 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.

§ 11.5 Other provisions:

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§ 11.6 The Construction Manager's representative is designated on the first page of this Agreement and shall have express authority to bind the Construction Manager with respect to all matters under the Contract Documents. The term "Construction Manager" means the Construction Manager or the Construction Manager's authorized representative. Such representative may only be changed with the consent of the Owner, which consent the Owner shall not unreasonably withhold.

§ 11.7 Any provision herein to the contrary notwithstanding, the Owner shall not be obligated to make any payment to the Construction Manager hereunder if any one or more of the following conditions exist:

- .1 The Construction Manager is in default of any of its obligations hereunder or otherwise is in default under any of the Contract Documents; Any part of such payment is attributable to Work which, because of the fault or neglect of the Construction Manager, is defective or not performed in accordance with the Plans and Specifications; provided, however, such payment shall be made as to the part thereof attributable to Work which is performed in accordance with the Plans and Specifications and is not defective; or
- .3 The Construction Manager has failed to make payments properly to the Subcontractors or Suppliers or for material or labor otherwise used in the Work for which the Owner has made payment to the Construction Manager.

§ 11.8 No partial payment made hereunder shall be or be construed to be final acceptance or approval of that part of the Work to which such partial payment relates or relieve the Construction Manager of any of its obligations hereunder with respect thereto.

§ 11.9 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 11.10 Except for the Construction Manager's Fee, the Construction Manager shall use the sums advanced to it solely for the purpose of performance of the Work and the construction, furnishing, and equipping of the improvements in accordance with the Contract Documents. If so requested by the Owner, the Construction Manager shall furnish to the Owner a statement accounting for the disbursement of funds received from the Owner. Such statement shall itemize all disbursements to Subcontractors and Suppliers and shall be accompanied by copies of subcontract payment vouchers, vendor's invoices, payrolls and other data substantiating actual expenditures and any other information requested by the Owner. However, no provision hereof shall be construed to require the Owner to ensure the proper disposition or application of the monies so advanced to the Construction Manager.

§ 11.11 The Construction Manager represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract Documents) as a material inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement and the final completion of the Work:

- .1 the Construction Manager is financially solvent, able to pay all debts as they mature and possessed of sufficient working capital to complete the work and perform all obligations hereunder;
- .2 the Construction Manager is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to so;
- .3 the Construction Manager is authorized to do business in the State of Connecticut and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Construction Manager's duly authorized powers;
- .4 the Construction Manager's execution of this Agreement and performance thereof is within the Construction Manager's duly authorized powers;
- .5 the Construction Manager's duly authorized representative has visited the site of the Project and is familiar with the local conditions under which the Work is to be performed including the location, condition, accessibility, layout and nature of the Project site; the generally prevailing climactic conditions; the anticipated labor supply and costs; and the availability and costs of materials, tools and equipment, and has correlated observations with the requirements of the Contract Documents; and
- .6 the Construction Manager possess a high level of experience and expertise in the business administration, construction, construction management and superintendence of school construction projects in the State of Connecticut of the size, complexity and nature of this particular Project and will perform the Work in a manner consistent with the Construction Manager's Standard of Care.

§ 11.12 The Construction Manager shall pay all bills for labor and material performed and furnished by others in connection with the construction, furnishing, and equipping of the improvements and the performance of the Work within thirty (30) days after the date the Construction Manager receives payment from the Owner. The Construction Manager shall include in each of its subcontracts a provision requiring each Subcontractor and Supplier to pay any amounts due any of its subcontractors or suppliers, whether for labor performed or materials furnished, not later than thirty (30) days after the date such Subcontractor or Supplier receives a payment from the Construction Manager which encompasses labor performed or materials furnished by such subcontractor or supplier.

§ 11.13 Exhibit A entitled Administrative and Statutory Requirements is attached hereto and made a part hereof. The Construction Manager hereby acknowledges receipt of a copy of and agrees to comply with the provisions of Exhibit A.

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 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 as amended.
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction, as amended

(Paragraphs deleted)



- .5 Other documents:
(List other documents, if any, forming part of the Agreement.)

«Exhibit A – Administrative and Statutory Requirements
 Schedule B – Form of Task Authorization
 Schedule C – CRDA RFP Instruction to Bidders
 Schedule C.1 – CRDA RFP Addendums
 Schedule D – CM Labor Rates
 Schedule E – Dillon Stadium Aerial Photo (Attachment F from CRDA RFP)
 Schedule F – Dillon Site Plan (Attachment H from CRDA RFP)
 Schedule G – Preliminary Master Plans (Attachment I from CRDA RFP) »

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

 OWNER *(Signature)*

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(Printed name and title)

 CONSTRUCTION MANAGER *(Signature)*

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(Printed name and title)

