AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

AgendaTitle:
Acknowledgement of County Manager Signature; Preconstruction Management Contract; GE Johnson Construction Company, Inc.; Gunnison County Courthouse Construction Project

Action Requested: Motion

Parties to the Agreement: Gunnison County Commissioners and GE Johnson Contruction Company, Inc.

Term Begins: When executed **Term Ends:** 6/1/2014 **Grant Contract #:**

Summary:
Acknowlegement of County Manager's signature on Preconstruction Management Contract with GE Johnson. This item was already pre-authorized by the BOCC for County Manager's signature. Also, Art Trezise created this contract agreement.

Fiscal Impact: .

Submitted by: M. Birnie **Submitter's Email Address:** Mbirnie@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:

The cost of this service is included in the project

Reviewed by: Discharge Date:

County Attorney Review: (●) Required ( ) Not Required

Comments:

Reviewed by: Discharge Date: Certificate of Insurance Required Yes (●) No ( )

County Manager Review:

Comments:

Reviewed by: GUNCOUNTY1\MBIRNIE Discharge Date: 12/9/2013

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted:

Agenda Date: 12/17/2013 Follow Up Agenda Date:

Revised April 2013

PRECONSTRUCTION MANAGEMENT CONTRACT

THIS CONSTRUCTION MANAGEMENT CONTRACT ("Contract") made effective the 18th day of November, 2013, by and between the Board of County Commissioners of the County of Gunnison, Colorado, whose address is 200 East Virginia, Gunnison, CO 81230 (herein "Gunnison County") and G.E. Johnson Construction Company, Inc., whose address is 25 North Cascade Avenue, Suite 400, Colorado Springs, CO 80903 (herein "Construction Manager").

RECITALS

The Construction Manager desires to provide professional services regarding the Preconstruction Phase of the replacement of the Gunnison County Courthouse Building Facility (the "Project"), as the same is described in the attached documents.

Gunnison County desires to engage Construction Manager to provide professional services for the Preconstruction Phase of the Project, according to the following documents, attached hereto and incorporated herein by this reference:

1. Plan between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Final Guaranteed Maximum Price.
2. AIA Document A201 -2007, Conditions of the Contract for Construction, as modified by the Owner.
3. AIA Document E201 -2007. Digital Data Protocol Exhibit, if completed, or the following :
4. AIA Document E202-2008. Building Information Modeling Protocol Exhibit, if completed, or the following:
5. Other documents:

   Exhibit 1 which includes:
   - Attachment A – Budget Summary, a detailed estimate stating the Construction Manager's Fee, General Condition s Costs, Insurances and Bond Costs, as required:
   - Attachment B – General Conditions Budget, a detailed listing of anticipated general conditions costs;
   - Attachment C – Labor Burden Rates;
   - Attachment D - Staff Assignments;
   - Attachment E – Allowance List and Unit Prices;
   - Attachment F - Responsibility and Budget Matrix ;
   - Attachment G - A list of the clarifications and assumptions;
   - Attachment H - Project Schedule;
   - Attachment I – *(Not used.)*
   - Attachment J – *(Not used.)*

- Attachment K – The list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Initial Guaranteed Maximum Price proposal;
- Attachment L - A list of all Construction Manager provided equipment along with billable rates;
- Attachment M – *(Not used.)*
- Attachment N – A Preconstruction Phase Schedule; and
- When executed, Amendment No.1 and the Attachments listed in Section 2.2.3 of the Plan.

all of which, along with this Contract, shall be collectively referred to as the "Contract Documents". Gunnison County desires to engage Construction Manager to provide Services according to the Contract Documents.

AGREEMENT

NOW THEREFORE, in consideration of the Recitals and the mutual covenants and obligations hereinafter set forth, the parties agree as follows:

1. SERVICES.

Construction Manager shall furnish all materials, labor, supervision, supplies and equipment to commence, diligently pursue, and complete the Preconstruction Phase of Project as more specifically set forth in the Contract Documents. All Services shall be performed in a timely manner and in accordance with generally accepted standards for Construction Manager's profession and all applicable federal, state and local laws and regulations affecting the Project or the subject matter thereof.

2. TERM.

The term of this Agreement shall commence on the date first set forth above and shall terminate on June 1, 2014, unless sooner terminated or replaced as provided herein.

3. STRATEGIC RESULT.

Execution of this Agreement will assist the County with its strategic result that, by 2015, Gunnison County begin a courthouse project, securing funding not derived from new taxes, in order to address operational and energy efficiency, employee productivity, access, safety and judicial needs, as outlined in the Gunnison County Strategic Plan.

4. DISCRIMINATION.

The Construction Manager agrees not to discriminate against any person or class of persons by reason of age, race, color, sex, creed, religion, disability, national origin,

sexual orientation or political affiliation in providing any services or in the use of any facilities provided for the public in any manner prohibited by Part 21 of the Regulations of the Office of the Secretary of Transportation. Construction Manager shall further comply with the letter and spirit of the Colorado Anti-Discrimination Act of 1957, as amended, and any other laws and regulations respecting discrimination in unfair employment practices. Additionally, Construction Manager shall comply with such enforcement procedures as any governmental authority might demand that Gunnison County take for the purpose of complying with any such laws and regulations.

5. IMMIGRATION COMPLIANCE CERTIFICATION.

   a. Construction Manager certifies that Construction Manager does not and will not knowingly contract with or employ illegal aliens to work under this Agreement.

   b. Construction Manager certifies that Construction Manager has required its subcontractors to certify that they do not knowingly contract with or employ illegal aliens to work under this Agreement.

   c. Construction Manager certifies that it has attempted to verify the eligibility of its employees and subcontractors to work through the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security.

   d. Construction Manager agrees to comply with all reasonable requests made in the course of an investigation under C.R.S. 8-17.5-102 by the Colorado Department of Labor and Employment.

   e. Construction Manager agrees to comply with the provisions of C.R.S. 8-17.5-101 et seq.

6. ADA COMPLIANCE.

The Construction Manager assures Gunnison County that at all times during the performance of this Agreement no qualified individual with a disability shall, by reason of such disability, be exclude from participation in, or denied benefits of the service, programs, or activities performed by the Construction Manager, or be subjected to any discrimination by the Construction Manager upon which assurance Gunnison County relies.

7. MISCELLANEOUS.

a. SEVERABILITY. If any clause or provision of Contract Documents shall be held to be invalid in whole or in part, then the remaining clauses and provisions, or portions thereof, shall nevertheless be and remain in full force and effect.

b. AMENDMENT. No amendment, alteration, modification of or addition to Contract Documents shall be valid or binding unless expressed in writing and signed by the parties to be bound thereby.

c. NO WAIVER OF GOVERNMENTAL IMMUNITY. Nothing in this Agreement is, or shall be construed to be, a waiver, in whole or part, by Gunnison County of governmental immunity provided by the Colorado Governmental Immunity Act or otherwise.

8. COUNTERPARTS: FACSIMILE TRANSMISSION.

The Contract Documents may be executed by facsimile and/or in any number of counterparts, any or all of which my contain the signatures of less than all the parties, and all of which shall be construed together as but a single instrument and shall be binding on the parties as though originally executed on one originally executed document. All facsimile counterparts shall be promptly followed with delivery of original executed counterparts.

IN WITNESS WHEREOF, the parties have executed this Contract as of the date above written.

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

By: _____
Matthew Birnie,
County Manager

ATTEST:

_____
Deputy Clerk

GUNNISON COUNTY SEAL COLORADO

CONSTRUCTION MANAGER

By: _____
GE Johnson Construction Company, Inc.

Plan 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

This Plan is a complete description of the "Project" as the same is further defined below, and is intended to serve as an exhibit to the individual agreements to be executed between Owner and the Construction Manager, which will collectively constitute the Contract Documents. The term "Construction Manager", as used herein, is intended to be used interchangeably with the plural "Construction Managers" as each phase of the Project could involve different Construction Managers. The purpose of the this Plan is to ensure all parties involved in the Project have a complete overview and understanding of all phases of the Project.

For the following Project:

The "Project" is the Replacement of the Gunnison County Courthouse Building Facility located at 200 E. Virginia Avenue, Gunnison, Colorado 81231. The Project is to be comprised of a new, state-of-the-art County Courthouse & Administrative Office Building, with related site development. The professional services to be rendered by the Construction Manager under this Plan are the Preconstruction, Hazardous Materials Abatement and Demolition Phase, and Construction Phase of Professional Project Management and Delivery. In general, the Project is to be comprised of the Demolition of the Existing County Courthouse & Administrative Office Building, with Limited Partial Reconstructive Renovation/Replication of the circa 1881 Original Historic building element, and development of a new, state-of-the-art County Courthouse & Administrative Office Building Facility incorporating the 1881 historic building element. All Work of the Project, including the Work pertaining to hazardous materials abatement necessary in advance of existing building demolition, subsequent demolition, removal and replacement of an 8" city sanitary sewer line that traverses the site and including replacement of affected street asphalt and concrete curb and gutter, early removal of certain mature tree and landscaping, renovation/replication and new construction, and site development is to be designed and specified by a single Architect of Record as set forth below and its design team. Each phase will proceed with an individual contract with Construction Manager, to be followed by a Notice to Proceed and Work Authorization that triggers the performance of the Work of the Project.

The planning, programming, design and construction administration, and systems commissioning coordination services will pertain to and accommodate both the necessary demolition of the existing Courthouse building facility with attendant abatement of any hazardous materials, existing building demolition design and specification, and new building architectural and engineering design (including for potential structural improvement/integration), and overall renovation/replication and adaptive reuse, of the original circa 1881 Courthouse to be incorporated into the new Courthouse Facility.

The new Courthouse Facility Project is intended to be delivered, including the management of hazardous materials abatement, demolition, renovation/replication construction, and new facility construction, site development etc., inclusively, under the professional project management of a managing Construction Manager/General Contractor, for each phase , on the same site of the existing Courthouse. The Work of the Project will be awarded on the basis of the three phases described above. The first step will award and issue a contract and Notice to Proceed with Preconstruction Services only. While the Owner, Gunnison County, desires that the Work of the Project proceed seamlessly and expeditiously move from Preconstruction into Hazardous Materials Abatement and Demolition Phase, and subsequently into Construction Phase, the Owner cannot guarantee, at the point of execution of the individual contracts, that the subsequent Phases will proceed as desired.

Thus, the second step is intended to award Hazardous Materials Abatement and Demolition Phase via a separate contract and Notice to Proceed, and with Owner's issuance of individual Work Authorizations. The first Work Authorization , accompanying the general Notice to Proceed with Hazardous Materials Abatement and Demolition Phase, will trigger commencement of hazardous materials abatement, followed in sequence with a second Work Authorization to commence designated site landscaping and designated existing tree removal, removal and replacement of the 8" city sanitary sewer line traversing the site, and general designated existing building demolition.

The third step is intended to award the Construction Phase via a separate contract and Notice to Proceed, and a further Work Authorization for commencement of renovation/replication construction and new building facility construction, site development, etc., i.e., the full and entire remaining Work of the Construction Phase. The Work of the Hazardous Materials Abatement and Demolition Phase shall be organized into separate bid packages for purposes of the Construction Manager's procurement of the Work to be authorized via the Work Authorizations as set forth above for hazardous materials abatement and building demolition. The remaining Work shall be organized in a further series of bid packages as more fully described on a preliminarily planned basis in this Plan, subject to refinement during the Preconstruction Phase by the Project team.

Each Work Authorization shall be issued on the basis of the Construction Manager's Guaranteed Maximum Price (GMP) for the Work specific to the relevant Work Authorization and according to the schedule of events and activities set forth in the Project Schedule established by the Construction Manager and as accepted by the Owner. The aggregate sum of all GMPs pertaining to the scopes of Work for all of the Work Authorizations shall, at all times, remain within the Initial Guaranteed Maximum Price and Final Guaranteed Maximum Price of the Project, as proposed by the Construction Manager and as accepted by the Owner.

Should the Owner not be able, for reasons outside the control of the Owner, including funding of the Project and/or requirements of grant application processes for potential partial grant funding, to seamlessly and immediately trigger the Construction Phase; or if, for any other reason not anticipated at this time, should the commencement of the Construction Phase need to be postponed after completion of Preconstruction Phase Services, the Owner hereby reserves the exclusive right to entirely re-compete the Work of the Construction Phase in the CM/GC marketplace, or alternatively in the Owner's sole discretion, to potentially and if allowed by said funding and grant award processes, otherwise re-negotiate the terms of this Plan pertaining to the planned Construction Phase with the CM/GC awarded the Work of the Preconstruction Phase.

This Plan sets forth separate fees for services and means for establishing Project costs for, first, the Preconstruction Phase, second, the Hazardous Materials Abatement and Demolition Phase , and finally, the Construction Phase, as such phases of the Work are generally described immediately above. The three phases of Work, Preconstruction, Hazardous Materials Abatement and Demolition, and Construction, will be undertaken separately, within a Cost Plus Fee, Guaranteed Maximum Prices Project delivery methodology, which, after completion of the Work of the Preconstruction Phase and subject to the Owner's ability and decision to trigger commencement of the Hazardous Materials Abatement and Demolition Phase and Construction Phase, will establish a single overall Final Guaranteed Maximum Price for the Work of the Project as defined herein.

The site of the Project is located within the City of Gunnison on a full city block owned by Gunnison County.

The Architect:

Roth Sheppard Architects, LLP
1900 Wazee Street, Suite 100
Denver, CO 80202
Mr. Herb Roth, Principal

The Owner's Designated Representative:
Matthew Birnie. County Manager
200 East Virginia
Gunnison, CO 81230
(970) 641-0248
mbirnie@gunnisoncounty.org

The Owner's Project Consultant (not a party to this Plan) is:
Michael J. Mismash
dba MJM Project Consulting, LLC
7400 W. Grant Ranch Blvd., No. 23
ttleton, CO 80123
(303) 619-3707
emjem@comcast.net

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Plan, Conditions of the Contract (General, Supplementary and other Conditions) Drawings, Specifications, Addenda issued prior to the execution of Contract with Construction Manager, other documents listed in this Plan, and Modifications issued after execution of a Contract with Construction Manager, all of which form the Contract Documents, and are as fully a part of the Contract Documents as if attached to this Plan or repeated herein. Upon the Owner's acceptance of the Construction Manager's Final Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Final Guaranteed Maximum Price Amendment No. 1 and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract Documents 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, are inconsistent with this Plan, the terms of this Plan shall govern.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by the Contract Documents and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's best professional skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Construction Manager further agrees to function in an Open Book collaborative process during every phase of the Project. An Open Book approach requires the Construction Manager to make available to the Owner, in detail, all correspondence, documentation and transactions related to the Project, in a timely manner as requested by the Owner. The Owner agrees to furnish or approve, in a timely manner, information required of the Owner by the Construction Manager, and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.3 Conditions of the Contract for Construction

For the Preconstruction Phase, AIA Document A201 - 2007, Conditions of the Contract for Construction, as modified by the Owner, shall apply only as specifically provided in this Plan. For the Hazardous Materials Abatement and Demolition Phase and the Construction Phase, the Conditions of the Contract for Construction shall be as set forth in AIA document A201 - 2007, as modified by the Owner, which document is incorporated herein by reference. Whenever, in the Construction Documents, a reference is made to the "Conditions of the Contract for Construction" or merely the "Conditions of the Contract" or sometimes "The General Conditions of the Contract" or to Document A201-2007, such reference shall mean the Form A201 -2007, Conditions of the Contract for Construction, as modified by the Owner specifically for this Project. The term "Contractor" as used in the Conditions of the Contract for Construction, shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER RESPONSIBILITIES

The Construction Manager has been selected through a process known as the Request for Proposal (RFP). The Construction Manager proposal offered in response to this RFP identified specific terms and conditions that, once approved by the Owner, shall be incorporated into the Initial Guaranteed Maximum Price and carried through to the Final Guaranteed Maximum Price, unless specific adjustments are approved in writing by the Owner. These terms and conditions are attached here to as Exhibit 1.

The Construction Manager Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, that some initial Work elements of the Construction Phase may 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. The Construction Manager hereby designates Matthew Birnie as its Project Manager, who shall

have responsibilities for execution of the Project, and who shall act as the point of contact with the Owner and Architect in all matters on behalf of the Construction Manager. During any absence of the Project Manager while Work is being performed on the Project, the Construction Manager shall ensure that one of its senior supervisory personnel, who shall have full authority to direct the construction of the Work on behalf Construction Manager and to bind the Construction Manager, is present on site full time to oversee the Project during construction.

The Owner shall have the right to approve any and all management and supervisory staff of the Construction Manager assigned to the Project, which approval shall not be unreasonably withheld. The Construction Manager shall not change its representatives without Owner's prior written consent, unless such representative leaves the employment of the Construction Manager. In this event, Construction Manager shall notify Owner immediately. All management and supervisory staff replacements will require approval in writing by the Owner prior to replacement. The Owner shall not compensate the Construction Manager for any added costs associated with the Construction Manager's replacement of staff.

The Construction Manager shall perform its services consistent with the professional skill and care ordinarily provided by Construction Managers practicing in the same or similar locations under the same or similar circumstances as this Project. The Construction Manager has represented throughout the proposal made in response to the RFP and the subsequent interview process that it has valuable and extensive experience in similar projects, and that it possesses expertise in this project type that a limited number of Construction Managers possess. The Owner has selected this Construction Manager based on the Construction Manager's representation that the Construction Manager and its proposed key staff possess such expertise. The Construction Manager shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

The Construction Manager warrants that it has the requisite experience and sufficient personnel to perform the services set forth herein in a highly skilled and professional manner; that employees of Construction Manager shall be adequately trained and supervised; and Construction Manager is and shall be in compliance with all applicable laws. Construction Manager shall ensure that each Subcontractor it utilizes on this Project shall have the requisite expertise and competent personnel to properly perform services for this Project.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall review and evaluate the Owner's Program, Project Schedule and Construction Budget requirements, each in terms of the other. At the time of execution of the Contract Documents, the Construction Manager will already have provided a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other. This preliminary evaluation is reflected in the Contract as the Initial GMP, as the process is described in section 2.1.5.

§ 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 other factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, value engineering and life-cycle data, and possible cost reductions.

§ 2.1.3 Preliminary Project Schedule

As a condition of selection, the Construction Manager has provided a Preliminary Project Schedule. Immediately upon selection, the Construction Manager shall prepare a Preliminary Project Schedule Update in an Open Book, critical-path format for the Owner's and Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's concurrence for the portion of the Preliminary Project Schedule relating to the performance of the Architect's services. The Preliminary Project Schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities, as well as identify major

milestone events and activities that could affect the Project's timely completion. Thereafter, the Construction Manager shall, at least monthly, or more often if required by the Owner, update the Preliminary Project Schedule, and the updated Project Schedule shall also include the following: dates for proposal of an Initial Guaranteed Maximum Price pledge, milestone budget updates, and the Final Guaranteed Maximum Price; components of the Work; dates of commencement of the Work Bid Packages established for the Project; dates of Work element commencement and completion required of each subcontractor; dates or periods of ordering and delivery of products, including those that must be ordered well in advance of construction; and incorporation of the occupancy requirements of the Owner, including, but not limited to, phased occupancy if such phased occupancy is the Owner's requirement for the Project.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, bid packaging, procurement, and phased Construction. The Construction Manager shall take into consideration opportunities for cost reductions, generation and communication of cost information, constructability, approvals, provisions for temporary facilities, impacts upon the cost of elements of the general conditions, and procurement and construction scheduling issues.

It is anticipated that there will be a need for separate bid packaging for the project, particularly for achievement of early commencement of hazardous materials abatement, existing building demolition, structural protection and exterior envelope preparation of the to-be renovated circa 1881 original courthouse building element, site preparation and foundation construction relative to seasonal building constraints. Multiple bid packaging for purposes of potentially early procurement of long-lead items or more extensive fast-tracking of the Project is to be a consideration undertaken during planning and evolution of design, by the Project team, during the Preconstruction Phase.

The initially contemplated number and type of Bid Packages within the preliminary phasing plan contemplated by the Architect, subject to further development by the entire Owner/Architect/Construction Manager team, include the following Bid packages:

Bid Package No. 1-Hazardous Materials Abatement
Bid Package No. 2-Existing Courthouse Demolition and 1881 Courthouse Structure Protection/Reinforcement
Bid Package No. 3 –All Renovation and New Construction Subsequent to Abatement & Demolition

Provision for a long-lead item procurement for potential courtroom finishes and components, security systems, security holding cell hardware, control and communications systems and other technical components may be required in addition to the above listed bid packages, to achieve the Occupancy Milestone. Permitting policies of the City of Gunnison allow for the potential early permitting of excavation, footings and foundation construction. The advice of the Construction Manager will be sought regarding the advisability of incorporating a separate excavation, footings and foundation package for purposes of expediting construction in the field on a continuous and unimpeded basis after the Demolition Phase.

The Construction Manager shall prepare detailed estimates and a Guaranteed Maximum Price (GMP) for each established Bid Package.

Execution of this Construction Documents is not authorization to proceed with the Work of the Hazardous Materials Abatement and Demolition Phase or the Construction Phase. The commencement of Work of the Construction shall require separate Work Authorizations triggering commencement of the Work of Bid Packages individually.

§ 2.1.5 Construction Manager Selection/Cost Estimates

§ 2.1.5.1

As an element of the RFP process, the Construction Manager provided a detailed Initial Cost Estimate, based on the level of design established at the time of the RFP process, as contained in Exhibit 1 attached hereto. Prior to further evolutio of the design by the Architect, the Construction Manager shall work closely with the Architect, and through it, with its design team members and the Owner to ensure that the current design scope/intent aligns with the Construction

Manager's Initial Cost Estimate, and that both are within the Owner's current approved scope, as defined in the approved current design documents, and that both are within the Owner's Approved Budget, as described in Article 3.1.3 of this Plan. Once the Constructions Manager's Initial Cost Estimate is approved in writing by the Owner, this estimate shall become the Initial Guaranteed Maximum Price, itself the basis of the Construction Manager's pledge to work in collaboration with the Architect in a partnered approach toward achieving a Final Guaranteed Maximum Price that is to be less than or equal to the Owner's Approved Budget for the Cost of the Work.

§ 2.1.5.1.1 The Construction Manager is required to develop an Initial Guaranteed Maximum Price document submitted to the Owner within a bound report, including detailed estimate information and data, assumptions made in developing the report and Initial Guaranteed Maximum Price, the project schedule upon which it is based, fixed or not-to-exceed general conditions items costs, approved billable rates and rental rates, and additional information as required by the Owner for documentation as its basis. The Construction Manager is not required to execute a formal guarantee of this Initial Guaranteed Maximum Price; however, the Owner is relying on the accuracy and reasonableness of the Initial Guaranteed Maximum Price. Therefore, the Initial Guaranteed Maximum Price should be the Constructions Manager's most realistic estimate of what the Construction Manager believes will be each Phase's final cost of the Work based upon the Construction Manager's expectation of what the complete, final design documents still to be produced by the Architect for construction will intend, describe, entail and represent once the design and specifications are complete for permitted use in construction, and, thereupon, the Final Initial Guaranteed Maximum Price is projected to be proposed by the Construction Manager and the Final Guaranteed Maximum Price is anticipated to be based for Owner's consideration for approval.

§ 2.1.5.1.2 As the plans and specifications evolve through each design phase, the Construction Manager will perform cost studies and major estimates of the Cost of the Work, using area, volume or similar conceptual estimating techniques, and, in the later evolutionary phases of design, more accurate quantity take-off or design-assist techniques for the Architect's review and the Owner's consideration for approval. If the Architect or Construction Manager, in review and discussion of such studies and estimates, suggest or recommend alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems being discussed and considered.

§ 2.1.5.1.3 Once the Initial Guaranteed Maximum Price has been approved in writing by the Owner, the Construction Manager and the Architect shall work together throughout the further evolution of the design to assure that the Final Guaranteed Maximum Price will remain within the approved Initial Guaranteed Maximum Price accepted by the Owner.

§ 2.1.5.1.4 The Construction Manager's estimating and budgeting systems, techniques and reports shall be flexible to allow comparison of building systems and components. The estimating and budgeting tools employed shall include a means to provide a variance analysis throughout each Project Cost update, starting with the Initial Guaranteed Maximum Price and continuing through the Final Guaranteed Maximum Price. The format of the estimating system shall include detail sheets for each Work task that shall reflect unit prices, quantities and extensions for labor and materials. The Construction Manager shall work closely with the Architect to provide "real time" cost advice and shall meet with the Architect weekly to observe the progress of design and to provide cost advice. During these weekly design observation and cost discussion meetings, the Construction Manager shall present to the Architect updated cost information updates based upon the results of the meeting held one week prior, and shall identify those cost elements that have either increased or decreased from the prior cost projection. If the cost projection exceeds the Owner's Budget, the Construction Manager and Architect shall work together to determine how the Architect might revise the design, and the Construction Manager shall take any revisions made into consideration for the update of its cost projection to be presented at the next weekly meeting. The Construction Manager shall set up and organize the successive Project cost estimates in a Construction Specifications Institute (CSI) format in a detailed, Open Book collaborative manner that allows for full disclosure thus allowing the Owner to make timely and informed decisions. In the later evolutionary phases of design, as practical, and in the Construction Documents preparation phase of design in particular, Project cost updates shall also be sorted into a contracts format, coordinated with the CSI format estimate. Each cost and budget comparison update shall also include a detailed list of relevant clarifications and assumptions as they relate to the preparation of each cost and budget comparison update. Allowances are also to be clearly identified,

and their basis defined within each cost and budget comparison update and be included within a separate summary level report at each design phase milestone triggering a new budget update as required in Section 2.1.5.2 below.

§ 2.1.5.1.5 The Construction Manager may involve key candidate, qualified and experienced subcontractors during the evolution of the design documents to assist with budgeting and design solutions, however, the Construction Manager may not award or commit Work to a subcontractor other than through a competitive selection process during the development of the Final Guaranteed Maximum Price, unless specifically approved otherwise in writing by the Owner.

§ 2.1.5.1.6 In the event the Construction Manager's proposed Final Guaranteed Maximum Price exceeds the Initial Guaranteed Maximum Price, and if the Owner so directs in writing, the Construction Manager and the Architect shall work together to bring the Project back within the Owner's Approved Budget which serves as the Owner's basis for Project funding, all within the Owner's approved scope as based on the Owner's written acceptance of the 100% Construction Documents. This collaborative effort may include consideration of alternative means and methods, review and reassessment of values, cost/benefit analyses, and/or recommendation of potential alternates which may be acceptable to the Owner, or via other means appropriate to achieve the Owner's Approved Budget without adversely reducing scope or adversely impacting quality or performance of the affected elements of the Project; and the results of the effort shall be subject to the acceptance of the Architect, and the acceptance and written approval of the Owner prior to incorporation of any results of, or recommendations from, the collaborative effort into the Work. The Construction Manager's expenses associated with this effort shall be the sole responsibility of the Construction Manager, and the Owner shall have no obligation to pay or reimburse any expenses thereof.

§ 2.1.5.2 As the Architect progresses with any refinement of the Schematic Design Documents, and the subsequent preparation of the Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals as set forth below in this section or as otherwise directed by the Owner, estimates, of the Cost of the Work, of increasing detail and refinement, based on the then-current detailed level of design and specifications, including multiple cost studies of alternate systems and materials, and allowing for the further development of the design and specifications until such time as the Owner and Construction Manager agree on the Final Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Owner's and Architect's review toward the Owner's consideration for approval using estimating systems and procedures which are acceptable to the Owner. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the Initial Guaranteed Maximum Price or any subsequent Owner-approved budget, and make recommendations for corrective action. The Construction Manager shall prepare a detailed estimate of the expected Final Guaranteed Maximum Price for at least the following design phases; 1) depending upon design evolution progress timing, approximately 50% - 100% Design Development Documents; 2) with a check estimate focused upon any previously identified aspects of design potentially not projected to remain within budget, after sufficient time allowance for pertinent Architect revisions; 3) based upon the approximately 50% Construction Documents to be issued by the Architect, after any necessary revisions are made to the drawings and specifications following the Second Architect/CM-GC formal CD Documents Design Phase Work Session; and, finally, as may be necessary, 4) in the form of a check estimate focused upon the intended 100% Construction Documents (intended Permit set). Each estimate shall be developed in a format acceptable to the Owner and consistent with Section 2.1.5.1.4 and shall detail the variance to previous estimates. At the request of the Owner, Construction Manager shall also develop interim cost studies, value recommendations and budgets and participate in additional budget comparison and estimating exercises with the Architect throughout the Preconstruction Phase.

§ 2.1.6 Subcontractor and Suppliers

Whenever the word "subcontractor" is used within this Plan it shall mean subcontractor, sub-subcontractor, a vendor or supplier as an entity that provides labor, materials, equipment, or services to the Project through an agreement with the Construction Manager. The Construction Manager shall develop bidders' interest in the project. The Construction Manager shall furnish to the Owner and Architect a list of subcontractors, including major vendors and suppliers, who are to be invited to compete to furnish materials or equipment fabricated to a special design, from which bids or proposals will be requested for each principal portion of the Work. The Owner and/or Architect will promptly reply in writing to the Construction Manager if the Architect or Owner knows of any objection to such subcontractor. The receipt

of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractor, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor.

§ 2.1.6.1 The Final Guaranteed Maximum Price shall be estimated by incorporating the Construction Manager's final fee and general condition costs, approved during the RFP process, with the Direct Cost Work all secured in a competitive process approved by the Owner. The Construction Manager shall competitively bid all Direct Cost Work to a minimum of five (5) subcontractors for each subcontracted scope of Work unless the Owner agrees otherwise, in advance, in writing. Prior to issuing bid documents to subcontractors, for the Final Guaranteed Maximum Price, the Construction Manager shall ensure that the list of proposed subcontractor for each division or Scope of Work is acceptable to the Owner. Once bids are received, the Construction Manager shall share the results of the bidding process with the Owner and the Architect and make recommendation on the selection of the subcontractor based on cost, schedule, and other factors that the Construction Manager believes will maximize the success of the total Project. Where other non-cost driven selection criteria are approximately equal, competitive cost based on a complete understanding of intended scope, followed by ability to successfully perform and timely produce a quality product shall take precedence in recommendation of decision for award. For selected or major trades, the Owner may, in its sole discretion, elect to participate in scope confirmation meetings with the Construction Manager and key subcontractors.

§ 2.1.6.1.1 Direct Work shall be defined as actual Work described in Article 6 of this Plan that has not already been secured though the fee and general conditions costs. Fee and general conditions cost are defined during the Construction Manager selection process and incorporated into the Initial Guaranteed Maximum Price, and will be carried forward to the Final Guaranteed Maximum Price. The Direct Work shall be performed by subcontractors via competitive procurement, and the Construction Manager out of competition, at actual costs, when approved in advance in writing by the Owner.

§ 2.1.6.1.2 Self Performance (or sometimes referred below as "self-perform" or "self-performed") Work means Direct Cost Work performed by the Construction Manager's own forces, other than Work defined in the general conditions costs. In the event the Construction Manager prefers to perform Work other than general conditions Work or emergency safety activities, with its own forces, the Construction Manager must secure this Work through a competitive process approved by the Owner. Construction Manager shall not be entitled to perform Direct Cost Work with its own forces unless Owner approves, in the Owner's sole and absolute discretion. The Owner shall be entitled to require Construction Manager to obtain competitive bids from at least three (3) qualified and approved subcontractors for the same specific Scope of Work proposed to be directly performed by Construction Manager. In this event, the Construction Manager shall submit its own bid for the same Scope of Work to the Owner at least twenty-four (24) hours prior to the time when the subcontractors' sealed bids are due. The Construction Manager's and subcontractor's bids shall be opened simultaneously in the presence of the Owner and Architect, who shall jointly analyze the bids for price, thoroughness, schedule, proposed staff, and relevant expertise. Owner shall be entitled to determine, in its sole and absolute discretion, whether Construction Manager's request to perform Direct Cost Work with its own forces will be approved. Owner may require the Work to be performed by a subcontractor regardless of whether it appears that Construction Manager can perform Self Perform Work in accordance with the requirement of the Contract Documents applicable thereto. The Construction Manager shall develop and administer an Open Book bidding strategy that assures the Owner that the firms competing for this Work are competing through a fair and balanced process.

§ 2.1.6.3 Construction Manager shall administer and account for all costs, management and financial tracking of any Self Perform Work as though it were being performed under a separate contract. If Self Perform Work is awarded to Construction Manager after a competitive bidding process, the pricing for such Work shall be in accordance with the Construction Manager's bid (subject to the Final Guaranteed Maximum Price). If Self Perform Work is awarded to Construction Manager without competitive bidding, such Work shall be billed at Construction Manager's actual direct cost without including any additional markups for profit, overhead, general conditions costs or other fees in the nature thereof other than the established mark-ups determined as the Construction Manager's fee and general conditions costs for the total Project. Owner maintains full audit rights to all Self Perform Work including cost reimbursable and lump sum work (lump sum for review of the proper allocation of costs, not for adjustment of billings).

§ 2.1.6.4 Prior to entering into any financial obligation with any subcontractor, the Construction Manager shall prepare and submit to the Owner for written approval, Authorization Letters, drafted by the Construction Manager, which shall clearly state the Scope of Work to be completed, the Cost of the Work to be released, the comparison of those costs to the equivalent costs carried in the Initial Guaranteed Maximum Price or Final Guaranteed Maximum Price for the same Work, and any impact that the selection of the proposed subcontractor may have on the approved project schedule.

§ 2.1.6.5 The subcontractor list shall be divided into Major Subcontracts (Subcontracts that exceed $50,000) and Minor Subcontracts (Subcontracts that are below $50,000).

§ 2.1.6. 6 The release of any Major Subcontractor to perform Work for the Project requires an executed Authorization Letter from the Owner to the Construction Manager in a form approved by the Owner.

§ 2.1.6.7 The release of Minor Subcontractors to perform Work for the Project requires an executed Authorization Letter from the Owner to the Construction Manager in a form approved by the Owner when a sequential group of Minor Subcontracts achieves a total value of $50,000.

§ 2.1.6.8 Except per the provision of Section 2.3.2.1.1 below, pertaining to establishment of separate additional Bid Packages for subcontract commitments for the procurement of mechanical, electrical, plumbing, and fire protection systems Work, there will be no commitment made to any subcontractor or supplier, until the Final Guaranteed Maximum Price is approved, unless such other commitment is specifically approved in writing by the Owner.

§ 2.1.7 The Construction Manager shall prepare, for the Owner's and 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 Final Guaranteed Maximum Price, the Owner may secure these items directly or authorize the Construction Manager to secure the items on behalf of the Owner. If the Owner secures any items, the Owner shall procure the items on reasonable terms and conditions. Upon the establishment of the Final Guaranteed Maximum Price, the Owner may assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept full responsibility for them. The costs of all items assigned to the Construction Manager by the Owner shall be incorporated into the Final Guaranteed Maximum Price and therefore shall be entitled to the same fee markup as other items within the Final Guaranteed Maximum Price.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and cost estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of and as the schedule basis respectively for the Final 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 if the Construction Manager recognizes that the drawings or specifications are not in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, the Construction Manager shall promptly and timely report to the Architect and Owner in writing any nonconformity discovered by or made known to the Construction Manager as a request for information (RFI) in a form agreed to between the Construction Manager and the Architect. Notwithstanding anything herein to the contrary, the Construction Manager shall be responsible for any delays caused by the Construction Manager's failure to obtain any necessary permits or delays of approving authorities or other governmental authorities if such delays arise out of intentional or negligent acts of the Construction Manager, or arise out of the Construction Manager's failure to perform under the Contract Documents.

§ 2.1.9 Notices and Compliance with Laws

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

Construction Manager shall comply with the various funding requirements for this Project as identified by the Owner. No part of this Plan shall be performed by Construction Manager in a manner that discriminates against any person on the basis of race, age, color, sexual orientation, religion, marital status, national origin, military status, gender or physical or mental disability.

§ 2.2 Final Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 When the design is sufficiently complete (i.e. intended permit level drawings or Construction Documents) to describe the clear intent and scope of the Project, the Construction Manager shall develop the Final Guaranteed Maximum Price proposal for the Owner's review and acceptance, which acceptance shall occur only with the Owner's execution of Amendment No. 1. The Final Guaranteed maximum Price in the proposal shall be computed as provided in Section 5.2.1.1. Amendment No.1 shall include the Attachments listed in Section 2.2.3 in form and substance acceptable to Owner, and become a part of this Plan. Amendment No.1 and all such attachments shall be executed by an officer of Construction Manager authorized to bind Construction Manager to the Final Guaranteed Maximum Price and Project Schedule established in conjunction with the Final Guaranteed Maximum Price.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall identify and provide reasonable cost coverage in the Final Guaranteed Maximum Price for any impact from such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order; however, the Final Guaranteed Maximum Price shall include the Contract Documents and all Work necessary to provide a complete Project.

§ 2.2.3 The Construction Manager shall include with the Final Guaranteed Maximum Price proposal a written statement of its basis, which shall be bound and include the following, in a format approved by the Owner:

§ 2.2.3.1 Attachment A - The Final Guaranteed Maximum Price summary page, providing a detailed cost breakout for all elements of the Project. The Construction Manager's fee (converted to a lump sum). General conditions cost summary (as a not-to-exceed amount), insurance, bonds and other costs as required;

§ 2.2.3.2 Attachment B - General Conditions Budget, expressed as a detailed outline of the previously approved general conditions costs;

§ 2.2.3.3 Attachment C – Labor Burden Rates;

§ 2.2.3.4 Attachment D – Staff Assignments;

§ 2.2.3.5 Attachment E - A list of allowances, if any, with description/definition; and unit prices;

§ 2.2.3.6 Attachment F – Responsibility and Budget Matrix;

§ 2.2.3.7 Attachment G – A list of the clarifications made by the Construction Manager in the preparation of the Final Guaranteed Maximum Price proposal, including clarifications under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications.

§ 2.2.3.8 Attachment H – Project Schedule, including a detailed Critical Path Method construction schedule of events and activities intended to lead to, and setting forth the date of Substantial Completion upon which the proposed Final Guaranteed Maximum Price is based (which, when approved by the Owner, shall be the Approved Substantial Completion Date, subject to adjustment as provided herein and in the Conditions of the Contract), and a schedule of the Construction Documents issue dates upon which the date of Substantial Completion is based;

§ 2.2.3.9 Attachment I - Insurance Certificates;

§ 2.2.3.10 Attachment J - Approved Lien Waiver Forms (Conditional and Unconditional, Partial and Final);

§ 2.2.3.11 Attachment K - A list of Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Final Guaranteed Maximum Price proposal;

§ 2.2.3. 12 Attachment L - A list of all Construction Manager provided equipment with equipment rates for said equipment,

§ 2.2.3.13 Attachment M - Alternates; and

§ 2.2.3.14 Attachment N – A Preconstruction Phase Schedule

§ 2.2.4 The Final Guaranteed Maximum Price proposal shall include the Construction Manager's Construction Contingency, which is a sum established for the Construction Manager's exclusive use, upon the prior written approval of the Owner, to cover costs arising under Section 2.2.2 and for other unanticipated costs which are properly considered reimbursable as a cost of the Work but which do not form the basis for a Change Order as a result of changes in the Scope of the Work, but which are required to properly complete the Work. The Construction Manager's Construction Contingency shall not exceed eight percent (8%) of the estimated direct cost of the Work in the preparation of the proposed Initial Guaranteed Maximum Price, and shall not exceed three percent (3%) of the estimated direct Cost of the Work set forth in the Final Guaranteed Maximum Price. No additional fee is added to the Contractor's Construction Contingency at the time the Final Guaranteed Maximum Price proposal is prepared. As may be necessary during the course of the Work, the Construction Manager's Contingency funds will be allocated to the specifically affected line items in the Direct Cost portion of the Final Guaranteed Maximum Price, as approved by the Owner, through the use of a Change Order signed by the Owner and Construction Manager, including the description of the nature of the changes and items covered by the Change Order. The allocation of Contingency funds shall not increase the Final Guaranteed maximum Price. The Construction Manager shall provide to the Owner a separate report and reconciliation of the use and application of contingency costs with each monthly Application for Payment. The Owner shall not unreasonably withhold such authorization to utilize the Construction Contingency as long as the costs are allowable costs within the Plan and, (1) the Construction Manager is not in breach of, or in default under any of the Contract Documents, (2) the Construction Contingency is used for items required by the Contract Documents for the Project, and (3) the Construction Contingency is used for items outlined in clauses 2.2.4.1 through 2.2.4.3 below:

§ 2.2.4.1 Cost of the Work not shown clearly, or completely, or Work that is conflicting on the Contract Documents yet which is reasonably inferable as being necessary to produce the highest intended results; or

§ 2.2.4.2 Cost of the Work to recover lost time for Work under the control of, or at the fault of, the Construction Manager. The Construction Manager shall make every effort to limit overtime by efficiently planning and managing the Project. (If excessive overtime is required to maintain the Project Schedule, the Construction Manager shall obtain the Owner's prior written approval before moving forward with such overtime); or

§ 2.2.4.3 Cost of the Work for delays caused by market, labor, materials or transportation conditions, labor disputes, standard weather delays or other causes which the Owner is not obligated to fund under the Contract Documents.

§ 2.2.4.4 The Construction Contingency shall not be available for the Construction Manager's fee or general condition costs, each of which are capped within the Final Guaranteed Maximum price and subject only to adjustments through Change Orders specifically involving changes in Project Scope and/or Time.

§ 2.2.4.5 The Construction Contingency shall not be available to correct mistakes in the field that are the responsibility of subcontractors (including Self Perform Work of the Construction Manager) and shall not be available for Constructior Manager and subcontractors' performance of warranty work.

§ 2.2.4.6 The Construction Contingency shall not be available for use by the Owner for Owner-allowance overruns, changes in the Scope of Work, design changes, or other items for which the Owner is responsible under the Contract Documents unless the Construction Manager releases such funds to the Owner prior to completion of the Project.

2.2.4.7 Any and all unused portions of the Construction Contingency shall remain the property of the Owner and shall not be included in any shared savings provision which is not allowed by this Plan.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Final Guaranteed Maximum Price proposal. 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 Final Guaranteed Maximum Price proposal , its basis, or both. If the Final Guaranteed Maximum Price proposal is greater in total amount than the Initial Guaranteed Maximum Price as was accepted by the Owner, the Construction Manager shall work in collaboration with the Architect and Owner, as described in Section 2.1.5.1.6 above, to bring the Project back within the Owner's Approved Budget which serves as the Owner's basis for Project funding.

§ 2.2.6 (Intentionally Deleted.)

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

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Final Guaranteed Maximum Price Amendment No 1. The Owner shall promptly furnish, through the Architect, those revised Drawings and Specifications to the Construction Manager as they are revised by the Architect and provided to the Owner. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Final Guaranteed Maximum Price, Amendment No.1 and the revised Drawings and Specifications.

2.2.9 The Construction Manager shall include in the Final Guaranteed Maximum Price any and all taxes that are legally enacted, whether or not yet effective, for the Work for which the Construction Manager is liable and which are not exempt under the Owner's Tax Exemptions, at the time the Final Guaranteed Maximum Price Amendment No. 1 is executed. In the event of a tax audit, the Construction Manager shall be responsible for any deficiencies or penalties imposed on the Owner or Project.

§ 2.2.10 The "general conditions costs" were submitted by the Construction Manager as costs-not-to-be-exceeded and originally defined by the Construction Manager in the RFP process and attached hereto as Exhibit 1. The general conditions costs were then approved by the Owner and incorporated into the Initial Guaranteed Maximum Price. The allowed general conditions costs shall remain unchanged between the establishment of the Initial Guaranteed Maximum Price and the establishment of the Final Guaranteed Maximum Price, unless the Owner agrees, in writing, that the general conditions costs have been impacted by a substantial change in the Contract Time.

§ 2.2.11 The Construction Manager shall include all trade fees and special permits costs, within the Final Guaranteed Maximum Price including Amendment No. 1.

§ 2.3 Hazardous Materials Abatement and Demolition Phase & Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of the Conditions of the Contract, the date of Construction Manager mobilization on the Project site for commencement of the hazardous materials abatement Work shall mean the date of commencement of the Hazardous Materials Abatement and Demolition Phase. Similarly, issuance of a Notice to Proceed shall mean the date of commencement of the Construction Phase, for purposes 8.1.2.

§ 2.3.1.2 The Hazardous Materials Abatement and Demolition Phase and the Construction Phase can commence only upon, as a condition precedent, the Owner's acceptance of the Construction Manager's Final Guaranteed Maximum

Price proposal including Amendment No.1 and the Owner's issuance of a Notice to Proceed with the Work for the Hazardous Materials Abatement and Demolition Phase and a Notice to Proceed with the Construction Phase.

§ 2.3.2 Administration

§ 2.3.2.1 Work that the Construction Manager has not secured as a General Conditions or Self Perform Work shall be performed by subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect and Owner. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. The Owner's determination shall not relieve the Construction Manager of its obligations under the Contract Documents.

§ 2.3.2.1.1 Selection of Hazardous Materials Abatement, Demolition, Mechanical, Electrical, Plumbing and Fire Protection Subcontractors With the Owner's prior approval, the Construction Manager, working in collaboration with the Architect to organize and establish the Bid Packages for Hazardous Materials Abatement and Demolition and sanitary sewer main replacement, street asphalt and curb/gutter replacement; and, when advised by the Architect that its development of relevant building systems and structural designs have progressed to an appropriate degree that design assistance would be of benefit, to organize and establish the separate additional relevant Bid Packages for Mechanical, Electrical, Plumbing and Fire Protection, will promptly implement a formal competitive selection process, approved by the Owner, for each of the Hazardous Materials Abatement, Demolition, Mechanical, Electrical, Plumbing and Fire Protection subcontractors. The Construction Manager shall submit for the Owner's prior review and approval, the list of candidate Hazardous Materials Abatement, Demolition, Mechanical, Electrical, Plumbing and Fire Protection subcontractors from which the Construction Manager proposes to request participation in design/specification-assist, bid package organization and establishment, value engineering, and cost/benefit analyses efforts of the Construction Manager to work collectively as a team with the Architect and its relevant sub-consultant design team members. This Work for these separate subcontracts shall be secured either through lump sum bids or with the Owner's prior approva' the successful subcontractors may be added to the Project team under separate Guaranteed Maximum Price Subcontract Agreements and their cost estimates will be incorporated within the Construction Manager's Final Guaranteed Maximum Price. The Construction Manager shall be required to obtain a contractual commitment from each such subcontractor that the Work of these individual Bid Packages and subcontracts will be performed at competitive market prices at the building trade level of the marketplace. If, at any time, the Construction Manager or Owner believes that a Bid Package pricing is not within competitive market pricing, the Construction Manager will secure additional competitive pricing, as directed by the Owner.

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

§ 2.3.2.2.1 The subcontractor list shall be divided into major Subcontractors (subcontracts that equal or exceed $50,000) and minor subcontractors (subcontracts that are below $50,000). Except as set forth in Section 2.3.2.1.1 above, there will be no commitment made to any subcontractors until the Final Guaranteed Maximum Price is approved, unless such commitments are specifically approved in writing by the Owner. At the Owner's sole discretion, the Owner reserves the right to require the Construction Manager to obtain approval prior to entering into any financial obligations, subcontract agreement or purchase order with any subcontractors and material suppliers in excess of $25,000. In such event, the Construction Manager must prepare Authorization Letters and submit to the Owner for written approval in a form approved by the Owner. The Authorization Letters must clearly state the Scope of Work to be completed, the Cost of the Work to be released (including any holds), the comparison to the costs to those carried in

the Initial Guaranteed Maximum Price and in the Final Guaranteed Maximum Price for this Work, the cost of the subcontractor's bond, if required, and any impact that this Work may have on the approved Project Schedule. These Authorization Letters must have a clear and complete link to the Final Guaranteed Maximum Price for cost tracking purposes.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Plan, 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 a fee basis, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit-rights with regard to the subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 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. The Owner shall be the final decision maker for the awarding of work to "related parties".

§ 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 distribute meeting minutes, within three (3) business days after said meetings occur, to the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Final Guaranteed Maximum Price Amendment No. 1, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of the Conditions of the Contract.

§ 2.3.2.7 The Construction Manager shall continuously monitor and 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 of scheduled Work activities, and other information required by the Owner. 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. 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 the Conditions of the Contract, shall apply to the Preconstruction and Hazardous Materials Abatement and Demolition Phase , and the Construction Phase.

§ 2.5 Hazardous Materials Abatement; Subsequent Existing Courthouse Building Demolition; and Hazardous Materials Management During Renovation & New Construction

The Hazardous Materials Abatement and Demolition Phase of the Work generally includes (1) Hazardous Materials Abatement in the Existing Courthouse Building, (2) designated Demolition of the Existing Courthouse and designated landscaping and tree removal in preparation of the building site in preparation for new construction and incorporation of the renovation of the circa 1881 Original Courthouse Building, removal and replacement of the 8" city sanitary sewer main traversing the site, repair and replacement respectively of the street asphalt and curb/gutter affected by the sewer main replacement. The Construction Phase of the Work generally includes (1) Structural Reinforcement and Renovation/Finish Replication of the circa 1881 Courthouse building element, and (2) New Courthouse Building New Construction and Site Development. Responsibility for establishment, integration and oversight of all designs and

specifications of all Work of the Project is that of the Architect. With respect specifically to the development of design of, and final specifications and requirements for existing building Hazardous Materials Abatement and Demolition portions of the Work, and with respect to organization of Bid Packaging for the Construction Manager's procurement of subcontractors to perform such portions of the Work of the Project, the provisions of Section 2.3.2.1.1 above shall apply in regard to participation in final design/specification-assistance within performance specifications generated by the Architect, bid package organization and establishment, value engineering, and cost/benefit analyses efforts to be employed on the Project under the leadership of the Construction Manager and its coordination and cooperation with the Architect and its relevant sub-consultant design team members.

§ 2.5.1 Abatement of any and all hazardous materials that exist in the existing courthouse building, prior to demolition of the existing courthouse building by the Construction Manager, with such abatement to be performed via subcontract to the Construction Manager and/or via partial self-performance of such Work by the Construction Manager itself, is part of the Scope of Work of this Plan. The cost of such abatement Work shall be included in the Initial Guaranteed Maximum Price and Final Guaranteed Maximum Price proposed by the Construction Manager for acceptance by the Owner.

§ 2.5.2 Existing courthouse building demolition, early designated mature tree and landscaping removal, removal and replacement of the 8" city sanitary sewer main traversing the site, all after hazardous materials abatement by the Construction Manager, with such demolition, etc., to be performed via subcontract to the Construction Manager and/or via self-performance of such Work by the Construction Manager itself, is also all part of the Scope of the Work of this Plan. The cost of such Work shall also be included in the Initial Guaranteed Maximum Price and Final Guaranteed Maximum Price proposed by the Construction manager for acceptance by the Owner.

§ 2.5.2 Section 10.3 of the Conditions of the Contract, shall apply to the Preconstruction, Hazardous Materials Abatement and Demolition, and Construction Phases, with respect to hazardous materials during the renovation and new courthouse building construction.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information and decisions 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 the Final Guaranteed Maximum Price Amendment No. 1, 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 Contract Sum, 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 Approved Budget for the Project which shall include (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 Approved 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. The Owner shall provide the Architect and the Construction Manager with an Owner's Approved Budget for construction costs based on a an initial program developed by the Owner and Architect's design team. The Architect and the Construction Manager, under separate agreements, shall work together to ensure that the

evolution of the design achieves the Owner's program intent within the design parameters, all within the Owner's Approved Budget.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish with reasonable promptness the following information or services under the Owner's control and relevant to the Construction Manager's performance of the Work, after receiving the Construction Manager's written request for such information or services. Except to the extent that the Construction Manager knows of any inconsistencies or inaccuracies, the Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner. Nothing provided by the Owner under this section relieves the Construction Manager of its duty to 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 The Owner, via information received from the Architect via Licensed Surveyor retained by the Architect, shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site which the Architect shall obtain from the recorded plat of the site and property from the City Record. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and any adjoining property and structures; designated wetlands, irrigation ditches; 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 existing on the site, 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 reasonably requested, 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, depth of water table, with written reports and appropriate professional recommendations obtained.

§ 3.1.4.4 During the Hazardous Materials Abatement and Demolition and Construction Phases, 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 endeavor to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of the Conditions of Contract, the Architect does not have such authority to act on behalf of the Owner, however, the Architect, as set forth in Sections 9.2 and 9.3 specifically and only related to claims as they may develop, has a responsibility to act as Initial Decision Maker. The term "Owner" means the Owner or the Owner's authorized, designated representative.

§ 3.2.1 Legal Requirements The Owner shall furnish all legal, insurance and accounting services, including auditing services, services that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 3.3 Architect
The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B103-2007, Standard Form of Agreement Between Owner and Architect, as amended by the Owner, including any additional

services requested of the Architect by the Owner that are necessary for support of the Preconstruction and Construction Phase services under this Plan. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, upon request by the Construction Manager, and any further modification to the agreement, exclusive of the compensation provisions.

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 for services described in Sections 2.1 and 2.2 as follows:

§ 4.1.1.1 Preconstruction Phase services shall be reimbursed through an Open Book, collaborative process relying on the Construction Manager's fee as determined through the RFP process and, as approved by the Owner, are detailed in Exhibit 1; and shall be based on actual costs as provided in Section 4.1.2 below, subject to a not-to-exceed amount of $45,000.

§ 4.1.1.2 Actual compensation shall be evaluated by the Owner based on the Construction Manager's Preconstruction Phase Fee as well as the level of services to be performed, as established during the RFP process in the form of a Schedule of Values proposed by the Construction Manager and approved by the Owner. In the event the Construction Manager fails to provide the resources, expertise, or time commitment to perform appropriate Preconstruction Services, the Owner shall compensate the Construction Manager only for the Preconstruction services that have provided value to the Project, in the Owner's sole discretion.

§ 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 item, as applicable.)

The costs incurred by the Construction Manager for the Preconstruction Phase shall be tracked and submitted to the Owner on a monthly basis for the Owner's review and approval. Actual compensation for Preconstruction Phase services shall be based on the level of the services rendered to the project by the Construction Manager as evaluated by the Owner in accordance with the basis for, and including the Construction Manager's Preconstruction Phase Fee as established in Exhibit 1 to this Plan.

§ 4.1.3 If the Preconstruction Phase services covered by this Plan have not been completed within five (5) months of the date of this Plan, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 The rates of reimbursable compensation for Direct Personnel Expense for Construction Manager's personnel involved in performing the Preconstruction Phase services shall be set forth in the labor burden rate schedule attached in Exhibit 1.

§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for Preconstruction Phase services shall be made monthly in proportion to such services performed during the month. The Construction Manager shall provide a monthly report to the Owner showing the actual service performance and time commitment provided against an Owner approved Schedule of Values of Preconstruction Work provided to the Owner by the Construction Manager in a form satisfactory to the Owner.

§ 4.2.2 Amounts unpaid thirty (30) days after the approved 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 rate agreed upon.)

Four percent (4%) per annum.

ARTICLE 5 COMPENSATION FOR HAZARDOUS MATERIALS ABATEMENT AND DEMOLITION PHASE AND CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager 's performance of the Contract defined in this Plan and the Final Guaranteed Maximum Price document Amendment No. 1 to this Plan. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee subject to the not-to-exceed limit of the Final Guaranteed Maximum Price accepted by the Owner.

§ 5.1.1 The Construction Manager's Fee:

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

The Construction Manager's Fee, hereinafter also referred to simply as the Fee, defined as the Construction Manager's contribution to company overhead earned from its performance of services on the Project and profit, was proposed as a percentage during the RFP process and remains, with Owner approval thereof, as a percentage for establishment of the method for calculation of the Fee amount to be contained in the Initial Guaranteed Maximum Price and the subsequent Final Guaranteed Maximum Price. With the establishment of the Final Guaranteed Maximum Price, as accepted by the Owner, the Fee portion therein shall be converted to, and maintained as a lump sum amount that corresponds to the fee percentage applied as calculated at that time. The Construction Manager's Fee, when calculated, shall be based on the said percent mark-up of the Direct Cost of the Work portion of the Final Guaranteed Maximum Price, as accepted by the Owner, excluding Construction Contingency, but including the approved general conditions costs, as, then and thereafter, a not-to exceed Fee amount in total. The Fee shall not be calculated via application of the percentage on insurance premiums, bonds and Construction Manager's Construction Contingency or direct, general conditions or other costs which might be paid from such Construction Manager's Construction Contingency.

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

§ 5.1.2.1 Adjustments to Fee shall only be allowed under the following conditions:

§ 5.1.2.1.1 Change Orders approved in writing by the Owner as follows:

§ 5.1.2.1.1.1 For additive change orders, the Construction Manager's Fee shall be increased by the same percentage used to calculate the Fee within the Final Guaranteed Maximum Price, as accepted by the Owner, pursuant the provisions of Article 7 of the Conditions of the Contract.

§ 5.1.2.1.1.2 For deductive change orders, the Construction Manager's Fee shall be decreased by the same percentage used to calculate the Fee within the Final Guaranteed Maximum Price, as accepted by the Owner pursuant the provisions of Article 7 of the Conditions of the Contract.

§ 5.1.2.1.1.3 Fee shall not apply to the Construction Contingency when developing the Final Guaranteed Maximum Price, and Fee shall not apply to the use of the Construction Contingency as it is being expended for and applied to the completion of the Work during the Construction Phase.

§ 5.1.2.1.1.4 No change in the Work, including the materials or labor utilized in connection therewith, shall be the basis of an increase to the Final Guaranteed Maximum Price accepted by the Owner or the Construction Manager's Fee, unless and until said change has been authorized and approved in writing by the Owner, which approval shall not be unreasonably withheld.

§ 5.1.2.1.1.5 If the Owner allows sub-guard insurance, the premium charge included in the Final Guaranteed Maximum Price accepted by the Owner, and any Change Order shall be calculated at the same percentage rate established in the budget for the Final Guaranteed Maximum Price or the percentage rate actually charged by the sub-guard insurer, whichever is the lesser amount.

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

§ 5.1.3.1 The maximum cumulative allowable percent of mark-ups by the subcontractors for changes in the Work shall be **four** percent **(4%)** for overhead expenses, and **seven** percent **(7%)** for profit.

§ 5.1.3.2 The maximum cumulative allowable percent of mark-ups by the subcontractor, sub-subcontractors, vendors and suppliers for changes in the Work shall be a total of **fifteen** percent **(15%)** overhead and profit.

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed **seventy five** percent **(75%)** of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any, shall be as determined in Amendment No. 1 and the attachments thereto.

§ 5.2 Final Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Final Guaranteed Maximum Price set forth in the Final Guaranteed Maximum Price Amendment No. 1, as it may be amended from time to time by the mutual agreement of the parties, and according to the provisions for such potential amendment, via executed Change Order(s), to this Plan. To the extent the sum of the Cost of the Work plus the Construction Manager's Fee exceeds the Final Guaranteed Maximum Price, as accepted by the Owner and thereafter as may be so amended, the Construction Manager shall bear such costs in excess of the Final Guaranteed Maximum Price, as accepted by the Owner or so thereafter amended, without reimbursement or additional compensation from the Owner.

§ 5.2.1.1 The Final Guaranteed Maximum Price shall be calculated based on the following allowable costs and markups:

1. Costs of Direct Work at actual costs secured through the competitive processes required by this Plan;
2. General Conditions costs at actual costs incurred, provided they shall not exceed the General Conditions Cost Budget as outlined in Amendment No. 1 and described in Section 2.2.3.2. Any changes to the established basis for General Conditions costs shall be made only within an authorized Change Order executed and issued in accordance with the Contract Document;
3. Construction Manager's Fee (computed as provided in Section 5.1.1);
4. Construction Contingency as outlined in Section 2.2.4;
5. Applicable taxes, insurance, bonds and permit fees; and
6. Allowances.

§ 5.2.1.2 All savings not applied to the actual cost of the Work of the Project and thus representing the true final difference between the actual final cost of the Work of the Project and the approved Final Guaranteed Maximum Price as accepted by the Owner and thereafter amended, as provided in the Contract Documents via all executed Change Orders, shall remain one hundred percent (100%) with the Owner. There is no provision for shared savings of any unused or unallocated portion of the Final Guaranteed Maximum Price in this Plan.

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

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of the Conditions of the Contract. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work, which adjustment shall not unreasonably be withheld by the Owner.

§ 5.3.2 Adjustments to the Final Guaranteed Maximum Price on account of changes in the Work ordered by a

Construction Change Directive, as defined in Section 7.3 of the Conditions of the Contract, subsequent to the execution of the Final Guaranteed Maximum Price Amendment No. 1, may be determined by any of the methods listed in Section 7.3.3 of the said Conditions of the Contract and when determined, shall be confirmed in a Change Order in accordance with Section 7.3.10 of the said Conditions of the Contract.

§ 5.3.3 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 as approved in writing by the Owner. Subcontract and purchase order adjustments to contracts not awarded on the basis of cost plus a fee shall not be made without either a guaranteed maximum price or a fixed price for the adjusted work.

§ 5.3.4 In calculating adjustments to the Final Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above referenced provisions of the Conditions of the Contract, shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Plan, and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Plan.

§5.3.5 (Intentionally Deleted.)

§ 5.3.6 Change Orders shall be governed per the terms of Article 7 of the Conditions of the Contract. All requests for Changes in the Work shall be entered in the Construction Manager's Change Order log with an estimated or actual incurred cost by the Construction Manager with accompanying designation of whether the logged cost is an estimated amount or actually incurred cost of the Change Order, summed to a grand total amount for each category, be it estimated total or actual total. A copy of each log shall be available to the Owner and Architect during the weekly Owner/Architect/Construction Manager (OAC) meetings and at other times upon request by the Owner. Written documentation for the Construction Manager to be authorized, upon review and approval, by the Owner to perform added Work shall be prepared timely by the Construction Manager and presented with adequate detail to the Owner for written approval. The detail shall provide adequate information to allow the Owner to fully understand the impact of the proposed change as it relates to cost, schedule impact, and quality expectations, as applicable.

ARTICLE 6 COST OF THE WORK

§ 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, including Preconstruction Phase and Construction Phase Work. Such costs shall be at rates no higher than the standard paid at the place of the Project except with prior written consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval, in writing, prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Final Guaranteed Maximum Price Amendment No. 1.

§ 6.2 Labor Costs

§ 6.2.1 Actual and justifiable wages paid to 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, in accordance with the approved hourly billing rates reflected in Exhibit 1, attached hereto, which include all labor burden. Labor costs must be supportable through Certified Payrolls, if requested by the Owner. Administrative markups, other indirect burdens, bonuses, profit sharing or fees shall not be reimbursable as labor rates.

§ 6.2.2 Actual and justifiable wages or salaries paid to the Construction Manager's supervisory and administrative personnel when stationed at the site, or with the Owner's prior written approval, for the Construction Manager's staff specifically performing Project-related services at the Project site or in the Construction Manager's offices, all at actual costs without administrative mark-ups, added burdens, bonuses, profit sharing or added fees. The Owner may consider fixed billable rates for these personnel. The billable rates, if approved in writing by the Owner, shall be calculated at actual direct costs. Under no circumstances shall salaried employees be compensated for overtime without the Owner's

prior written approval.

(If it is intended that the wages or salaries of certain non-supervisory staff personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, 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 only if approved in advance, in writing by the Owner, shall be identified in Section 11.5 below.)

§ 6.2.3 Actual and justifiable wages or 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 , in accordance with the hourly billing rates reflected in Exhibit 1, attached hereto, which include all fringe benefits and labor burden. Under no circumstances shall salaried employees be compensated for overtime without the Owner's prior written approval.

§ 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 actually provided by Construction Manager, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1through 6.2.3. No added markups for administrative expenses, administrative mark-ups directly within wages, overhead, profit, bonuses, profit sharing, cell telephones or vehicle reimbursement shall be included as a component of any of the rates allowed under Sections 6.2.1 through 6.2.4.

§ 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, shall not be reimbursable as a Cost of the Work and shall not be allocated to, or included within, the wages, salaries or hourly billing rates reflected on Exhibit 1. Bonuses, profit sharing and other discretionary incentive compensation must be included in the Construction Manager's Fee, if provided.

§ 6.2.6 Owner may audit or pre-audit the billable rates proposed by Contractor for the categories of Costs described in this Section 6.2. In connection with such audit, Owner may, at its option, pre-approve appropriate annual escalation adjustments for such rates. The approved rates shall remain in effect for the duration of the Project subject only to adjustments approved from time to time by the Owner. All taxable payroll, benefits, taxes, fringe benefits, and burdens will be based on the Construction Manager's actual and auditable cost and will include all insurance modifiers, scheduled credits, premium discounts, and other actual cost modifications, return premiums, dividends, etc. Actual and auditable cost will take precedence over any labor related schedules in proposals or attachments to this Plan.

§ 6.2.7 In the event that a Sub-guard insurance program is proposed by the Construction Manager, the Owner shall determine if this program is acceptable for the Project. If a sub-guard insurance program is approved in writing by the Owner, the approved markup as a percent of subcontract value shall be not more than N/A%, and shall apply only to subcontracts in excess of $50,000. Sub-guard markup shall not be applied to Construction Manager's Fee, general condition costs, insurance, bonds or self-perform Work.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to subcontractors in accordance with the requirements of the subcontracts entered into in accordance with the provisions of this Plan, including the cost of Subcontractor payment and performance bonds.

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

§ 6.4.1 Costs, including transportation and storage, of materials and equipment already incorporated or to be incorporated in the completed construction.

§ 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, only at the Owner's expressed 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, vehicle and/or vehicle allowance costs for Construction Manager's supervisory personnel to the extent directly attributable to the Project, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs 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 retail used equipment market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the wholesale purchase price of any comparable item. The rates charged for equipment owned by the Construction Manager or any affiliate of the Construction Manager, and the quantities of such equipment to be used on the Project shall be subject to the Owner's prior written approval. Notwithstanding any such approval, the rates for such equipment to be utilized on the Project shall be 75% or less than competitive rates available to Construction Manager for the same or comparable equipment and shall not exceed the limit provided in Section 5.1.4. Otherwise, the Construction Manager shall rent the equipment from an outside rental company.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal or transport for purposes of recycling of materials as provision therefore may be established in the Work specifications and other Contract Documents when completed.

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 As a component of general conditions costs, subject to the limitation of the General Conditions Cost Budget, 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, with Owner's prior written approval for such travel. Payment for Travel and Business Related Expenses shall be reimbursed at actual costs without mark-ups. Travel expenses for the Construction Manager's Executives and Officers will not be reimbursed under any circumstances, unless they are assigned full-time on-site to the Project. Travel expenses shall be at standard commercial rates and based on proper timely planning to avoid premiums for last minute scheduling. Per mile vehicle mileage reimbursement charges shall be made at the current rate allowed by the Internal Revenue Service.

§ 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 The Construction Manager shall provide for temporary office space and utilities for one (1) staff member between the Owner and the A/E team within the temporary site office compound, and include these costs within the General Conditions estimate. The Construction Manager shall provide data lines but will not be required to provide computers for the Owner or A/E team. This space shall include desks, chairs and miscellaneous supplies as well as provide access to copiers and printers in a clean and well lighted environment.

§ 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 at actual costs without any mark-ups for administrative costs, overhead, profit or other fees. Premiums for self-insurance for full or partial amount of the coverage required by the Contract Documents may be

included only with the Owner's prior written approval and are fully auditable. All insurance and bond costs are to be at actual and auditable cost inclusive of all premium adjustments, credits, and/or rebates. Actual and auditable cost will take precedence over any proposals or attached stipulated rates or schedules. This is to include Subguard, or any other surety or surety substitute product.

§ 6.6.2 Sales, use, value added or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable, provided however, any taxes paid or reserves set aside or included in a burden rate for future payment by Construction Manager relating to its income shall not be deemed Cost of Work.

§ 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 the Conditions of the Contract, 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 Final Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of the Conditions of the Contract, 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, specifically related to the Work, with the Owner's prior approval, provided that such costs are included in the General Conditions Cost Budget.

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

§6.6.8. (Intentionally Deleted.)

§ 6.6.9 The Owner will not pay for relocation and temporary living unless this was clearly included within the proposed general conditions costs at the time of Construction Manager's selection for award and was specifically approved in writing by the Owner. If, in principal, as a component of general conditions cost, subject to the limitation of the General Conditions Cost Budget, expenses are to be incurred by the Owner, they shall be based 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 which provisions shall be provided to the Owner for review and approval by the Owner in writing. These costs, as approved by the Owner, shall be set forth in Exhibit 1, and included within Amendment No. 1.

§ 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 the Conditions of the Contract, unless such emergency was caused by the act or negligence of the Construction Manager and/or its subcontractor or supplier, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, sureties, subcontractor, supplier or other source.

§ 6.7.3 Costs of the repairing or correcting damage or non-conforming Work executed by the Construction Manager, subcontractor or supplier provided that repair or correction of such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, sureties, subcontractor, supplier or other source.

§ 6.7.4 (Intentionally Deleted.)

§ 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 Project site office, except as specifically provided in Section 6.2, or as may be provided in Article 11. All costs for officers of the Construction Manager's firm and or project Executives shall be included within the Construction Manger's Fee and otherwise shall not be reimbursable unless specifically approved otherwise in writing by the Owner through Amendment No.1;
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. Except as provided in Section 6.7.3 above, costs due to the negligence or failure of the Construction Manager 's self-perform Work, or subcontractors, or anyone directly or indirectly employed or contracted with by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
6. Any cost not specifically and expressly described in Sections 6.1 to 6.7;
7. Costs that would cause the Final Guaranteed Maximum Price, as defined in Section 5.2 of this Plan, to be exceeded;
8. Costs for services incurred during the Preconstruction Phase;
9. Except as provided in Section 6.7.3 above, costs for repairing or correcting damaged or non-conforming Work executed by Construction Manager's self-perform Work, or by its subcontractors. The costs of the management effort direct toward such repair or correction of damaged or non-conforming Work only is allowed to be charged, provided such management cost is within the not-to-exceed general conditions costs and within the established Final Guaranteed Maximum Price;
10. Costs incurred by the Construction Manager or its Subcontractors for the implementation of warranty work;
11. Bonuses, profit sharing, incentives and any another related discretionary costs paid to anyone hired by the Construction Manager or paid to any subcontractor or supplier, and;
12. Any bonuses, profit sharing, incentives and any other related discretionary costs awarded to employees or Owners or Officers of the Construction Manager. These costs shall be the responsibility of the Construction Manager and not reimbursable from the Owner as a Project related cost other than as may be earned for such distribution from the proceeds of the Construction Manager's earned fee.

§ 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 for the benefit of the Owner.

§ 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 Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity

having common or partially common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee to 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

The Construction Manager shall keep full and detailed records and accounts in accordance with Generally Accepted Accounting Principles (GAAP) 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, vendor's quotes, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

§ 6.11.1 Audits 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, 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.

(a) Construction Manager's records shall include full project accounting records including project actual cost detail transaction/payroll detail reports (cost reimbursable and lump sum portions of the Project) or any other Project related data/reports as requested (hard copy, as well as computer readable data), full and detailed substantiation as requested for all reimbursable costs, written policies and procedures, subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets correspondence; change order files (including documentation); general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other supporting evidence necessary to substantiate charges related to this Plan (all foregoing hereinafter referred to as "records") shall be open to inspection and subject to audit and/or reproduction by Owner's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of (1) Construction Manager's compliance with this Plan, and (2) compliance with provisions for Change Orders, payments or claims submitted by the Construction Manager or any of its subcontractors or other payees.

(b) Such audits may require inspection and copying from time-to-time and at reasonable times and places of any and all such information, materials and data as set forth above of every kind and character. Such records subject to audit shall also include those records necessary to evaluate and verify direct costs (including overhead allocations) as they may apply to costs associated with this Plan.

(c) Owner's agent or its authorized representative shall have reasonable access at reasonable times to the Construction

Manager's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Plan, may contact subcontractors or other vendors related to the Project, shall have access to all necessary records, shall be provided adequate and appropriate work space in order to conduct audits in compliance with this Section, and will be provided support from the Construction Manager's staff as required. In the event that onstruction Manager does not provide such access and/or all necessary records or support upon reasonable notice to Construction Manager by Owner (at least seven (7) business days), Construction Manager shall be responsible for the reasonable actual cost of Owner's fees and any associated expenses for any attempted audit which cannot be completed for such reasons. Early in the Project audits, interim audits, and final audits may be performed by the Owner, or its representative.

(d) If, at the conclusion of any audit performed as set forth herein, the audit discloses overcharges by the Construction Manager to the Owner that are (i) proven in the reasonable discretion of Owner (of any nature) and (ii) in excess of two (2%) percent of the total Cost of Work, then the reasonable actual cost of the Owner's audit shall be reimbursed to the Owner by the Construction Manager within thirty (30) days of submission. Any adjustments and/or records due to the overcharges shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of Owner's findings to Construction Manager.

(e) The Construction Manager shall provide the Owner with an executed copy of any subcontracts, (with subcontractors, material-men, suppliers or other vendors of services, supplies or materials) including Change Orders or other contracts and/or any document required entered into in furtherance of the Work, if specifically requested by the Owner, and shall make all of its subcontractors and other commitments subject to this Section. Owner may audit the subcontractor's books and records for the purpose of determining compliance with change order pricing, progress payments, invoicing and conformance with the Contract Documents and specifications. If further inquiry is needed, Owner, using its reasonable discretion, may request other books and records. Nothing in a contract between subcontractor and Construction Manager may override this provision. Early Project audits, interim audits, and final audits may be performed by the Owner, or its representative.

6.11.2 Equipment purchased and charged to the Project as a Cost of the Work shall become the property of the Owner. Any lease/purchase rental arrangements must be disclosed to the Owner in a timely manner. If the Construction Manager purchases equipment under a lease/purchase arrangement whereby rental payments are charged to Owner as a Cost of the Work, an appropriate credit shall be given to the Owner for the fair market value of the equipment at the time it was last used on the Project. For Construction Manager-owned equipment, the Construction Manager shall maintain daily equipment usage reports. The equipment use reports shall be used by the Construction Manager to determine the most economical billing rate (hourly, weekly, monthly) to the Owner.

ARTICLE 7 PAYMENTS FOR HAZARDOUS MATERIALS ABATEMENT AND DEMOLITION PHASE CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

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

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

§ 7.1.2.1 The Construction Manager shall, during the last week of each month, meet with the Architect and Owner, and/or other parties designated by the Owner, to review and approve an itemized draft pay request indicating the total estimated value of the Work completed through the end of the current calendar month . This draft pay request shall include the value of all materials and equipment suitably stored at the jobsite or at an approved location. Such draft will set forth the dollar amounts of completion for each portion of the work, including a prorated share of the Construction Manager's Fee, less applicable retention. The approved draft will then be refined with all required and necessary supporting documentation and made in final form into a formal Application for Payment and will be submitted to the

Owner for processing and payment.

§ 7.1.2.2 The draft pay request shall include detailed documentation supporting the amount requested, including at least the following: Individual subcontractor detailed applications, invoices, ledgers, payroll documentation, and all other information requested by the Owner and relevant and suitable to a complete, Open Book guaranteed maximum price project delivery method where all costs must be justified prior to reimbursement. Each Application for Payment must include Lien Waivers as defined in Section 2.2.3.10, including but not limited to those outlined in Section 9.3.4 of Conditions of the Contract.

§ 7.1.2.3 Subcontractors, vendors and suppliers shall be compensated within seven (7) day of the date that the Construction Manager has been compensated for such subcontractors', vendors' and suppliers' work or materials deliveries. Construction Manager shall not invoice for subcontractors', vendors' or suppliers' work for which it does not intend to pay within such seven (7) day period.

§ 7.1.3 Provided that an Application for Payment is approved by the Owner and Architect not later than the 1st day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 1st day of the following month. If an Application for Payment is received by the Architect and approved by the Owner after the 1st day of the month, payment shall be made by the Owner not later than thirty (30) days after the Architect received and Owner approved the Application for Payment. No Application for Payment shall be deemed complete and approved until all documentation required to be supplied in connection therewith, by the Contract Documents, including all pertinent lien waivers, has been furnished to the Owner in correct form. If specific lien waivers or other proper documentation has not been provided as required, that subcontractor's portion of the Application for Payment shall be removed from the current Application and must, thereafter, be included within a future Application for Payment.

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, 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.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager and approved by the Architect and the Owner in accordance with the Contract Documents. The schedule of values shall allocate the entire Final Guaranteed Maximum Price among the various portions of the Work. 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 or Owner, shall be used as a basis for reviewing the Construction Manager's Applications for Payment during the Construction Phase. The schedule of values shall also provide a separate identifying breakout for each subcontract or purchase order, and identify specific holds related to each subcontractor's scope of work, and shall clearly define self-perform Work and/or Work not yet assigned.

§ 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 Final 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 Final 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 Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of the Conditions of the Contract. With respect to the costs attributed to general conditions cost items, it is agreed that approved general conditions cost line items amounts shall be payable on a monthly basis, based upon actual documented expenses associated with the general conditions costs up to the established not-to-exceed cap for this general conditions Work. Construction Manager shall supply Owner with complete, back-up documentation materials substantiating general conditions costs on a monthly basis. If the general conditions costs, as a percent of the Work complete, substantially exceed the percent of all other Work billed on the project, the Owner may elect to modify future general conditions disbursements on a monthly basis to allow for adequate general conditions funds to be available to complete the Project;

2. Add that portion of the Final 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;
3. Add the Construction Manager's Fee, less retainage of ten percent (10%). The Construction Manger'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 retain age 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 Architect, the Owner or 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 the Conditions of the Contract.

7.1.8 The Owner and Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to subcontractors. Ten percent (10%) retainage shall be held by the Owner on amounts payable under subcontracts. The Construction Manager shall execute subcontracts in accordance with such agreed upon procedures and retainage provision. With the Owner's prior written approval, provided the Construction Manager determined, in its opinion, that a particular subcontractor is performing satisfactorily, the Construction Manager may request approval to discontinue future retainage withholding once such subcontractor's work achieves fifty percent (50%)completion, but the Owner will, acting in its sole discretion, make the final determination on any such reductions of retainage.

§ 7.1.9 Except with the Owner's prior written approval, the Construction Manager not may make advance payment for Work, materials, or equipment expecting reimbursement by the Owner; unless and until: (1) with respect to Work, the Architect has certified the completion of the portion of the Work sought to be reimbursed for payment, (2) with respect to materials, such materials are stored materials; and (3) with respect to equipment, the Construction Manager certifies that such equipment was utilized in Work performed during such period.

§ 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 With each Application for Payment, the Construction Manager shall submit the Lien Waivers in the forms attached under Amendment No. 1 and as further required by Section 9.3.4 of the Conditions of the Contract.

§ 7.1.12 With each Application for Payment, the Construction Manager shall submit copies of each subcontractor's original invoice together with Construction Manager's invoice for Self Perform Work, all with required, detailed, supporting documentation substantiating the Application to the Owner. Each such invoice shall provide all of the information as to the portion of the Work for which payment is being requested, that is required to be reported and shown in the Construction Manager's Application for Payment, including without limitation, the amount of the original subcontract, all change orders (itemized) to such subcontract, the current contracted amount of the subcontract, all amounts previously requested and paid pursuant an approved Application for Payment, the amount now applied for as due and owing under that subcontract, the percentage of Work completed pursuant such subcontract, and the percentage of Work reflected by the current amount due.

§ 7.1.13 With each Application for Payment , if requested by Owner, the Construction Manager shall submit its own invoices pertaining to each category of Self Perform Work for which Construction Manager is requesting payment. These invoices shall show all information required to be shown on each subcontractor invoice, together with a list of employees and others performing the Self Perform Work, showing for each, the number of hours worked, the Work performed, the wage rate, with the approved wage-burden rate identified, and copies of invoices received by Construction Manager for each category of Self Perform Work for expendable supplies, materials, rental of equipment, and other portions of the Self Perform Work provided by third parties.

§ 7.1.14 With each Application for Payment Construction Manager shall submit an affidavit of payments disbursed in a form determined by the Owner, with respect to all prior payments made by Owner.

§ 7.1.15 As used herein, Stored Materials shall be materials required for the Project which are either; (1) store on the project site; (2) stored off-site with the written approval of Owner and for which the Owner has received a certificate of insurance evidencing coverage of the full replacement value of such materials, all satisfactory to the Owner. No materials intended to be used in the Project are to be stored off-site without the Owner's written approval, which may be withheld in the Owner's discretion; or without full replacement insurance coverage. Unless materials are Stored materials, the Owner will not be responsible for the payment for such materials and will not be considered the owner, receipt, or beneficiary of such materials for purposes of liens or insurance.

§ 7.1.16 Warranties of Construction Manager. In addition to those warranties and warranty provisions set forth in the Conditions of the Contract, the Construction Manager's submittal of each Application for Payment pursuant to Paragraph 9.3 of the said Conditions of the Contract, and the Architect's approval thereof shall constitute the warranty and representation of Construction Manager that:

§ 7.1.16.1 The Work for which payment is requested has been completed in accordance with the Construction Documents and in a good workmanlike manner, with new, first-class materials, and is free from all defects in workmanship or materials (except defects, if any, which cannot be discovered by inspection, none of which are known or suspected to exist);

§ 7.1.16.2 All amounts paid to Construction Manager on account of the work of subcontractors, vendors, and suppliers have been paid by the Construction Manager to those subcontractors, vendors and suppliers in accordance with prior Applications for Payment;

§ 7.1.16.3 Each subcontractor or material-man for which a payment is requested is entitled to receive such amount under its Subcontract or purchase order/contract;

§ 7.1.16.4 The Construction Manager, on a monthly basis, shall review all payments made to subcontractor and sub-subcontractors and ensure that all appropriate Lien Waivers have been provided for all Work, materials, and equipment performed on, or provided to the Project and paid for by the Owner. The Construction Manager shall immediately notif the Owner of the failure of any subcontractor or sub-subcontractor to provide such Lien Waivers and shall diligently pursue obtaining same.

§ 7.1.17 Additional Assurances

§ 7.1. 17.1 The Construction Manager shall, in each subcontract, reserve the right to require additional assurances, from the subcontractor and its sub-subcontractors, beyond those provided for in this Plan as to the proper delivery and receipt of payments.

§ 7.1.17.2 The Owner reserves the right to require, upon written request, additional assurances, from the Construction Manager, its subcontractors and the sub-subcontractors, beyond those provided for on this Plan as to the proper delivery and receipt of payment, including, but not limited to, requiring checks drawn by the Construction Manager be made payable jointly to Construction Manager and the payment recipient.

§ 7.2 Final Payment

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

1. the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of the Conditions of the Contract, and to satisfy other requirements, if any, which necessarily survive final payment;
2. the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment approved by the Owner; and
3. a final Certificate for Payment has been issued by the Architect.

To the extent any of the Work is determined to be incomplete or unacceptable, the Owner may make final payment and withhold an amount equal to three hundred percent (300%) of the cost of completing or correcting such incomplete and unacceptable Work, as reasonably estimated by the Owner. If the Owner withholds amounts for incomplete or unacceptable wok, the Owner shall pay such amounts within thirty (30) days of (1) the satisfactory completion of all of said Work, and (2) the Architect's certification that all of the Work has been completed and corrected in accordance with the Contract Documents.

Final Payment will also be subject to the Construction Manager providing red-lined, as-built, record drawings to the Architect for its preparation of Mylar drawings and electronic files.

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:

§ 7.2.2 The Owner 's auditors will review and report in writing on the adequacy and completeness of the Construction Manager's final accounting within sixty (60) days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work accounting as the Owner's auditor's report to be substantiated by the Construction Manager, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven (7) 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 such certificate as provided in Section 9.5.1 of the Conditions of the Contract.

§ 7.2.3 If the Owner's auditor reports that the Cost of the Work it deems as substantiated to be less than the Cost of the Work claimed by the Construction Manager as substantiated, the Construction Manager shall be entitled to request negotiation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of the Conditions of the Contract. A request for negotiation shall be made by the Construction Manager within thirty(30) days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request negotiations within this thirty (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 achieved via negotiation, the Owner shall pay the Construction Manager the amount certified by the Owner's Auditor.

§ 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 discovered after final payment was made, 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 Final Guaranteed Maximum Price.

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 the Conditions of the Contract.
(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of the Conditions of the Contract.)

Type of Insurance or Bond	Limit of Liability or Bond Amount ($0.00)

§ 8.1 INSURANCE REQUIRED OF THE OWNER AND CONSTRUCTION MANAGER

§ 8.1.1 Workers Compensation and Employers' Liability meeting statutory limits mandated by state and federal laws. If (1) limits in excess of those required by statute are to be provided, or (2) the employer is not statutorily bound to obtain such insurance coverage, or (3) additional coverages are required, additional coverage and limits for such insurance shall be as follows:

§ 8.1.2 Commercial General Liability including coverages for Premise-Operations, Independent Contractors' Protective, Product – Completed Operations, Contractual Liability, Personal Injury and Broad Form Property Damage (including coverage for Explosions, Collapse and Underground Hazards):

$1,000,000 – Each Occurrence
$2,000,000 – General Aggregate

Such insurance shall include the Owner along with each of their employees and agents as additional insureds and shall be primary and non-contributing with respect to any insurance or self-insurance program of the Owner. Construction Manager shall maintain this insurance for the duration of the applicable Colorado statute of repose.

1. The policy shall be endorsed to have the General Aggregate apply to this Project only;
2. Products and Completed operations insurance shall be maintained for a minimum of at least eight (8) year(s) after either 90 days following Substantial Completion or final payment, whichever is earlier;
3. The Contractual Liability insurance shall include coverage sufficient to meet the obligations in Article 11 of the Conditions of the Contract.

§ 8.1.3 Automobile Liability (owner, non-owned and hired vehicles) for bodily injury and property damage:

$1,000,000 Each Accident

§ 8.1.4 Other Coverage:

Workers Compensation – Limits as required per the State of Colorado
Builders Risk – Completed Value of Project (by Construction Manager)
Umbrella Excess liability - $5,000,000.

(If umbrella Excess Liability coverage is required over the primary insurance or retention, insert the coverage limits. Commercial General liability and Automobile Liability limits may be attained by individual policies or by a combination of primary policies and Umbrella and/or Excess Liability policies. If Project Management Protective Liability Insurance is to be provided, state the limit here.

§ 8.2 INSURANCE REQUIRED OF THE OWNER

During both phases of the Project, the Preconstruction Phase and Construction Phase, the Owner shall purchase and

maintain liability and property insurance, including waivers of subrogation, as set forth in Section 11.3 of the Conditions of the Contract. Such insurance shall be written for not less than the following limits, or greater if required by law:

§ 8.2.1 Property Insurance:
25,000 Deductible per Occurrence
$50,000 Aggregate Deductible

§ 8.2.2 Boiler and Machinery insurance with a limit of:
(If not a blanket policy, list the objects to be insured.)

§ 8.3 PERFORMANCE BOND AND PAYMENT BOND
§ 8.3.1 The Construction Manager shall, at the Owner's discretion, furnish separate bonds covering faithful performance of the Contract and of obligations arising there under. Bonds may be obtained through the Construction Manager's usual source. The amount of each bond shall be equal to I00% of the Contract Sum.

§ 8.3.2 The Construction Manager shall deliver the required bonds to the Owner at least three days before the commencement of any Work at the Project site.

§ 8.3.3 (Intentionally Deleted.)

§ 8.3.4 A sub-guard program requires the Owner's prior written approval.

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 the Conditions of the Contract. 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 Plan shall not apply.

§ 9.2 Claims subject to dispute resolution shall be resolved by :
(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not 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 the Conditions of the Contract, AIA Document A201-2007, as amended by the Owner.

X Litigation in a court of competent jurisdiction, with venue in Gunnison County, Colorado, District Court.

☐ Other(Specify).

§ 9.3 Initial Decision Maker
The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of the General Conditions for Claims arising from or relating to the Construction Manager's Hazardous Material Abatement and Demolition Phase and Construction Phase services, unless the parties appoint below another individual, not a party to the Plan , 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.)

When the Architect serves as the initial Decision Maker, the initial Decision Maker shall not obligate the Owner in terms related to cost, schedule, or quality without the Owner's prior written authorization.

ARTICLE 10 TERMINATION OR SUSPENSION

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

§ 10.1.1 Prior to the execution of the Final Guaranteed Maximum Price Amendment, the Owner may, for the Owner's convenience and without cause, terminate performance of this Plan upon not less than seven (7) days' written notice to the Construction Manager, and the Construction Manager may terminate performance of this Plan, upon not less than seven (7) days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of the Conditions of the Contract.

§10.1.2 In the event of termination of this Plan pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed and which provided value to the Owner 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 Final 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 for Preconstruction Phase services rendered:

1. Take the Cost of the Work for Construction Phase services incurred by the Construction Manager to the date of termination;
2. Add the Construction Manager's Fee computed upon the Cost of the Work for Construction Phase services 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 the cost of the work contained in the budget for the Initial Guaranteed Maximum Price or the most recent budget approved by Owner; 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 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 necessary 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 and/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 and allowing for further potential assignment by the Owner.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner shall reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement (excluding amounts included in the Cost of the Work under Section 10.1.3.2) 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 Plan not been terminated, the Construction Manager shall terminate the subcontract, purchase order or rental agreement and the Owner shall pay the Construction Manager the direct, justifiable costs incurred pursuant the subcontract, purchase order or rental agreement because of such termination, provided that Owner is obligated to make such payment only if the Owner had executed an Authorization Letter approving Construction Manager's undertaking liability pursuant such agreement.

§ 10.2 Termination Subsequent to Establishing Final Guaranteed Maximum Price

Following execution of the Final Guaranteed Maximum Price Amendment 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 the Conditions of the Contract.

§ 10.2.1 If the Owner terminates the Contract after execution of the Final Guaranteed Maximum Price Amendment, the

amount payable to the Construction Manager pursuant Sections 14.2 and 14.4 of the Conditions of the Contract, shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Plan.

10.2.2 If the Construction Manager terminates the Contract after execution of the Final Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of the Conditions of the Contract, shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and I0.1.3 of this Plan.

§ 10.3 Suspension
The Work may be suspended by the Owner as provided in Article 14 of the Conditions of the Contract. In such case, the Final Guaranteed Maximum Price shall be increased and Contract Time shall be extended as provided in Section 14.3.2 of the Conditions of the Contract.

ARTICLE 11 MISCELLANEOUS PROVISIONS
§ 11.1 Terms in this Plan shall have the same meaning as those in the Conditions of the Contract. The following additional provisions shall also apply:

§ 11.1.1 Attorney's Fees. If either party to this Plan engages legal counsel to enforce any terms or conditions of this Plan , the initiation of any arbitration, legal proceedings or other defense thereof, including any appeals, the party, if any, prevailing on the more substantial part of its claims and defenses shall be entitled to prompt payment and reimbursement in full for its reasonable attorney's fees and expenses.

§ 11.1.2 The proposed Project on-site staff, including at a minimum, the Project Manager and Superintendent shall be committed to the Project full-time for the duration of the Construction Phase of the Project and shall not be reassigned without the Owner's prior written approval.

11.1.3 Owner-requested Alternates shall include adjustment for Fee based, on the adjustment in the Cost of the Work for the Alternate. Owner –Requested Alternate may include adjustments to the General Conditions Budget only if the selection of the Alternate would substantially affect the construction schedule. Construction Manager's Voluntary Alternates shall consider all related costs, including impacts to design and Owner's other costs that may be a result of implementation.

§ 11.1.4 The Owner desires to retain the Construction Manager for the Construction Phase, but nothing contained herein shall obligate Owner to do so. Should the Owner not be able, for reasons outside the control of the Owner, potentially involving components of the full funding of the Project and/or requirements of grant application processes for potential partial grant funding to be pursued, to seamlessly and immediately trigger the Construction Phase; or if, for any other reason not anticipated at this time, should the commencement of the Construction Phase need to be postponed after completion of Preconstruction Phase Services, the Owner hereby must and does reserve the exclusive right to entirely re-compete the Work of the Construction Phase in the CM/GC marketplace, or alternatively in the Owner's sole discretion, to potentially and if allowed by said funding and grant award processes, otherwise re-negotiate the terms of this Plan pertaining to the planned Construction Phase with the CM/GC awarded the Work of the Preconstruction Phase and that is party to this Plan.

§ 11.2 Ownership and Use of Documents
Section 1.5 of the Conditions of the Contract shall apply to both the Preconstruction and Construction Phases, if, at the election of the Owner, the Construction Phase is commenced via issuance of a Notice to Proceed with the separate Work of the Construction Phase, issued to the Construction Manager.

11.3 Governing Law
Section 13.1 of the Conditions of the Contract 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 Plan. Neither the Owner nor the Construction Manager shall assign this Plan without the written consent of the other, except that the Owner may assign this Plan to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Plan. Except as provided in Section 13.2.2 of the Conditions of the Contract, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all of its obligations under the Contract.

§ 11.5 Liens
The Construction Manager shall indemnify and hold the Owner harmless from all liens and other encumbrances against the Owner's property or facilities relating to the work on account of debts or claims alleged to be due from the Construction Manager or its subcontractors to any persons, and Construction Manager shall defend at its own expense any claim or litigation in connection therewith, except to the extent the same is caused solely by the Owner's wrongful withholding of payments due the Construction Manager.

§ 11.6 WAIVER
No waiver by either party of any breach by the other party of any of the provisions of the Contract Documents shall be construed as a waiver of any subsequent breach. No provisions of the Contract Documents or obligations of a party arising with respect to this Plan shall be deemed to have been waived by a party unless such waiver is in writing and signed by the party to be bound thereby. No waiver by a party in any instance shall constitute a waiver by such party in any similar or different instance.

§ 11.7 NO PARTNERSHIP
The parties are independent and this Plan shall not be construed to create any partnership, agency, joint venture or other relationship. Nothing contained in this Plan or the Statement of Work shall create a relationship between the Owner and anyone else not a party to this Plan or create a cause of action against the Owner in favor of anyone not a party to this Plan.

§ 11.8 SURVIVAL
Notwithstanding the termination of this Plan, any duty or obligation which has been incurred and which has not been fully observed, performed, or discharged, and any right, unconditional or conditional, which has been created and has not been fully enjoyed, enforced, or observed, performed, or satisfied (including but not limited to the duties, obligations, and rights with respect to confidentiality)shall survive such expiration or termination until such duty or obligation has been fully observed, or discharged and such right has been enforced, enjoyed, or satisfied.

§ 11.9 ENFORCEABILITY
In the event that any of the provisions, or portions or applications thereof, of this Plan are held to be unenforceable or invalid by any court of competent jurisdiction, the Construction Manager and Owner shall negotiate an equitable adjustment in the provisions of this Plan with a view toward effecting the purpose of this Plan, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

ARTICLE 12 SCOPE OF THE PLAN
§ 12.1 This Plan and the documents enumerated in section 12.2, and the individual Contracts for each Phase collectively constitute the Contract Documents and represent 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 Plan may be amended only by written instrument signed by both Owner and Construction Manager.

§12.2 The following documents, which includes this Plan and the individual Contracts for each Phase collectively constitute the Contract Documents:

1. Plan between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Final Guaranteed Maximum Price.

2. AIA Document A201 -2007, Conditions of the Contract for Construction, as modified by the Owner.
3. AIA Document E201 -2007. Digital Data Protocol Exhibit, if completed, or the following :
4. AIA Document E202-2008. Building Information Modeling Protocol Exhibit, if completed, or the following:
5. Other documents:

List other documents, if any, forming part of the Agreement.)

Exhibit 1 which includes:

- Attachment A – Budget Summary , a detailed estimate stating the Construction Manager's Fee, General Condition s Costs, Insurances and Bond Costs, as required:
- Attachment B – General Conditions Budget, a detailed listing of anticipated general conditions costs;
- Attachment C – Labor Burden Rates;
- Attachment D - Staff Assignments;
- Attachment E – *(Not used.)*
- Attachment F - Responsibility and Budget Matrix ;
- Attachment G - A list of the clarifications and assumptions;
- Attachment H - Project Schedule;
- Attachment I – *(Not used.)*
- Attachment J – *(Not used.)*
- Attachment K – The list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Initial Guaranteed Maximum Price proposal;
- Attachment L - A list of all Construction Manager provided equipment along with billable rates;
- Attachment M – Alternates;
- Attachment N – A Preconstruction Phase Schedule; and
- When executed, Amendment No.1 and the Attachments listed in Section 2.2.3 of this Plan.

This Plan is acknowledged as of the day and year first entered above.

OWNER *(Signature)*

CONSTRUCTION MANAGER *(Signature)*

Matthew Birnie County Manager
(Printed Name and Title)

James M Johnson
President / CEO
(Printed Name and Title)