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Agreement Between Owner and Construction Manager where the Construction Manager is also the Constructor

Based upon AIA Document A121/CMc with Maricopa County Community College District modifications

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES: CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.

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*Words that are shown in normal font are the original words from AIA C121CMC document, in the order and numbering shown. Words that have been **italicized and bolded** (in this fashion) have been added to the original document and words that have been struck through (~~in this fashion~~) have been deleted from the original AIA Document A121 wording. No other editing or differences in the document are intended.*

Use of the AIA language and out edits in this document does not constitute approval or endorsement by the AIA of the modifications made to the original document.

AGREEMENT

made as of **the >** _____ **day of** _____ **in the year of Two Thousand and <**
(In words, indicate day, month and year)

BETWEEN the Owner:

Maricopa County Community College District
2411 West 14th Street
Tempe, Arizona 85281-6942

and the Construction Manager:

(Name and address)

<>

The Project is and has the following address:

(Name, address and brief description)

<>

More particularly described as

<project name, location, type and proposed size/capacity/scope>

<>

The Architect is:

(Name and address)

<>

The Owner and Construction Manager agree as set forth below.

Updates/changes:

9-06 *general update*

6-08 *E-Verify*

3-09 *Addition of Owner-Contractor Agreement form to create a two-part agreement*

5-09 *Audit provisions rewritten to be consistent with General Conditions*

9-09 *Added detail within GMP categories; defined Pre-Construction Phase Contingency within the GMP and GMP proposal form; no personal use under GC's; monthly billing for insurance/bonds/general conditions and fee*

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EXHIBIT I *Owner-Contractor Agreement*

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Standard Form of Agreement Between Owner and Construction Manager Where the Construction Manager is also the Constructor

**ARTICLE 1
GENERAL PROVISIONS**

1.1 RELATIONSHIP OF PARTIES

The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager's ~~reasonable~~ **best** skill and judgment and to cooperate with the Architect in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner, **during Pre-Construction, Construction and Post-Construction (warranty and other services) phases**. The Owner shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager and other persons or entities employed by the Owner for the Project. **The Construction Manager represents that it has the necessary expertise and knowledge, management capability, financial and personnel resources to fulfill its obligations under the Contract and has the necessary approvals to execute this Agreement and perform the Work.**

1.2 GENERAL CONDITIONS

For the Construction Phase, the General Conditions of the Contract shall be the ~~1987 Edition of AIA Document A201, General Conditions of the Contract for Construction~~ **General Conditions of the Contract for Construction Based upon AIA Document A201-97 with Maricopa County Community College District modifications** which is attached, hereto as Exhibit F incorporated herein by reference. All references to AIA Document A201 shall refer to the attached General Conditions with Maricopa Community Colleges modifications. For the Preconstruction Phase, or in the event that the Preconstruction and Construction Phases proceed concurrently, AIA Document A201 shall apply to the Preconstruction Phase **to the extent it is applicable only as specifically provided in this Agreement. The term "Contractor" as used in AIA Document A201 shall mean the Construction Manager.**

1.3 DEFINITIONS

1.3.1 The Pre-Construction Phase the portion of the work of this Contract from the date of the Contract up to the establishment of the Guaranteed Maximum Price (GMP) as established in the Amendment No. 1 to Agreement Between Owner and Construction Manager. This will include the traditional programming, schematic design, design development and construction documents phases.

1.3.2 The Construction Phase shall commence upon the Owner's and Construction Manager's execution of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, as further defined in Paragraph 2.3.

1.3.3 The Post-Construction Phase shall commence upon final completion of all construction work and final acceptance of all punch list items by the Owner and Architect. This Phase will include the warranty period or further time as allowed by Statute of Limitations on contract work.

1.3.4 Guaranteed Maximum Price (GMP) is defined within Paragraph 2.2.

1.3.5 Other capitalized words or terms are defined in the AIA Document A201.

**ARTICLE 2
CONSTRUCTION MANAGER'S RESPONSIBILITIES**

The Construction Manager shall perform the services described in this Article. The services to be provided under Paragraphs 2.1 and 2.2 constitute the Preconstruction Phase services. If the Owner and Construction Manager agree, after consultation with the Architect, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases shall proceed concurrently. **The Construction Manager agrees to undertake and carry out all services and activities necessary to facilitate the design and construction of the Project in accordance with the Owner's budget, quality and schedule objectives. Without in any way limiting the foregoing, or of any other provision of the Contract, the Construction Manager agrees that during the preconstruction and construction phases, it will perform and provide all of the services, functions and activities listed and/or described in Exhibit D described within this Agreement.**

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Throughout both the Pre-Construction and Construction Phases, the Construction Manager will be responsible for actively interfacing and coordinating with the Owner and Architect as frequently and to such extent as is necessary or required to provide the Owner and the Architect with sufficient information, lead time, reminders and guidance from the Construction Manager in order to assure that the Owner, the Architect and others involved in the Project will have the opportunity to make informed, reasoned and timely decisions and choices consistent with the Owner's budget and schedule requirement and objectives. The Construction Manager will exercise due diligence to identify and provide the Owner and Architect with as much advance written notice as is possible of each matter that will require a decision or choice to be made. Each such notice shall inform the Owner and Architect of each milestone date by which the pertinent decision or choice must be made to prevent delays and shall be accompanied by the most accurate data relating to cost, quality and schedule impact of the item to which the choice or decision is required. If any such choice or decision may, or will, result in an increase to the Guaranteed Maximum Price, a change in the quality of the Work, a change in the Project Schedule or a delay in the Date of Substantial Completion, the notice will specify the Construction Manager's best estimate of that nature or change, with as much precision and back-up material as possible to enable the Owner, Architect or others to make an informed, reasoned decision or choice.

2.1 PRECONSTRUCTION PHASE

2.1.1 PRELIMINARY EVALUATION

Within fourteen (14) days after the signing of this Agreement, the The Construction Manager shall provide a preliminary evaluation of the Owner's program and Project budget requirements **and schedule**, each in terms of the other.

2.1.2 CONSULTATION

2.1.2.1 The Construction Manager with the Architect shall jointly schedule and attend regular meetings with the Owner and Architect. The Construction Manager shall consult with the Owner and Architect regarding site use and improvements, and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies. **The estimates of construction costs shall not include sums due the Architect, the costs of land, rights of way, financing or other costs that are the responsibility of the Owner, unless otherwise directed by the Owner.**

2.1.2.2 The Construction Manager shall make recommendations to the Owner and Architect with respect to constructability, construction cost, sequence of construction, construction duration, and means and methods of construction.

2.1.2.3 The Construction Manager shall make recommendations to the Owner and the Architect regarding the division of work in the Drawings and Specifications to facilitate the bidding and awarding of subcontracts, allowing for phased construction, if applicable, taking into consideration such factors as time of performance, availability of labor, overlapping trade jurisdictions and provisions for temporary facilities as defined in Division One of the Specifications.

2.1.2.4 During each phase of the Pre-design work, the Construction Manager shall provide a written detailed coordination and quality review of the design, all Drawings and Specifications, in a form acceptable to the Owner and coordinating with the Consultant. These reviews shall make an effort to the best of the Construction Manager's ability to (a) identify, minimize and eliminate areas of conflict, errors, omissions, and overlapping of the Work to be performed by the various subcontractors (b) examine and investigate the design, Drawings and Specifications for accuracy, adequacy, consistency and suitability for the intended purpose (c) confirm that the full scope of the Work has been included in the Drawings, including sufficient detailing, description and coordination to allow accurate pricing and full construction (d) endeavor to minimize cost and value engineer where appropriate to meet budgets or other Owner needs, and (e) allow for phased and/or fast-track bid packages and construction, as required. By the nature and length of the Contractor relationship with the Owner and the Work, and longer, more detailed familiarity with the Contract Documents and proposed Work, the Construction Manager agrees and accepts greater responsibility for coordination and review of the Contract Documents than may be uncovered through a normal hard bid period and contract. This obligation is in addition to the diligence required by AIA Document A201, Paragraph 3.2.

2.1.2.5 The Owner and Consultant will assist and cooperate with the Construction Manager in the preparation of the necessary bidding information, bidding forms, and pre-qualification criteria for bidders, development of subcontractor interest, establishment of bidding schedules, advertisement for bids, distribution of plans and specifications, review of prior approval requests by subcontractors or material suppliers, or conducting pre-bid conferences to familiarize bidders with the bidding documents and management techniques and with any special systems, materials, or methods.

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2.1.3 PRELIMINARY PROJECT SCHEDULE

~~When Project requirements~~ *Within fourteen (14) days after the signing of this Agreement, based upon materials and information* described in Subparagraph 3.1.1, *Subparagraph 3.3.3 and contained in the Exhibits*, ~~have been sufficiently identified~~, the Construction Manager shall prepare *and deliver to the Owner*, and ~~periodically update~~, a preliminary Project schedule for the Architect's review and the Owner's approval. The Construction Manager shall obtain the Architect's approval of the portion of the preliminary Project schedule relating to the performance of the Architect's services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Architect and Construction Manager. As design proceeds, the ~~preliminary Project schedule and cost estimate~~ shall be updated to indicate proposed activity sequences and duration, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

2.1.3.1 Master Schedule. *Using the information developed in 2.3.1, prepare a Master Schedule for the project that specifies the proposed start and finish dates for each significant project activity, and the dates by which certain construction and Owner activities must be completed. Submit the Master Schedule to the Owner for review and acceptance. During each phase of the project, update the Master Schedule as needed advising the Owner and Architects of any impacts or changes from the original Master Schedule.*

2.1.4 PHASED CONSTRUCTION

The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, *potential conflicts or coordination problems, errors or inefficiencies resulting from multiple contracts*, and provisions for temporary facilities.

2.1.5 PRELIMINARY COST ESTIMATES AND CASH FLOW

2.1.5.1 ~~When the Owner has sufficiently~~ *Within fourteen (14) days after the date of this Agreement and based upon the attached* identified the Project requirements and ~~Exhibits~~ the Architect has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

2.1.5.2 When Schematic Design Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare for the review of the Architect and approval of the Owner, a more detailed *cost* estimate with supporting data *and any modifications to the Project schedule*. During the preparation of the Design Development Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

2.1.5.3 When Design Development Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare a detailed *cost* estimate with supporting data *and any modifications to the Project schedule* for review by the Architect and approval by the Owner. During the preparation of the Construction Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

2.1.5.4 If any *cost* estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

2.1.5.5 *Estimates shall be based on quantitative takeoffs whenever possible and shall be sustained in sufficient depth and organization to be used in preparing budgets based on sub-trades, combinations of sub-trades, building systems, and bid packages. Lump sum estimates are not acceptable.*

2.1.5.6 *At his cost, the Owner may request that the Architect provide an independent confirming estimate at any phase or may request that an independent review of the Construction Manager's detailed estimate be made to generally confirm quantities, costs or rates shown. The Architect also may undertake his own independent, complete estimate at any phase. If the Architect's independent estimate or review of the Construction Manager's estimate significantly differ from the Construction Manager's estimate, the Architect and Construction Manager shall meet and resolve the differences, and then present one common, agreed upon cost estimate to the Owner. At Schematic Design Phase, the difference between the*

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Architect's and Contractor's estimate shall be five percent (5%) or less. At Design Development, this difference shall be two and one-half percent (2½%) or less. At Construction Documents/Guaranteed Maximum Price Phase, the Architect and Contractor shall reconcile and agree with the Estimate of Construction Costs or Guaranteed Maximum Price as developed by the Contractor, within the amount of the Owner's Project Construction Budget (Construction Contract Award Price).

2.1.5.7 The Construction Manger shall provide value analysis studies for major construction components and systems. The results of these studies shall be in report form and distributed to the Owner and Architect.

2.1.5.8 The Construction Manager shall prepare and distribute a Cash Flow projection by the end of the Schematic Design Phase and then periodically update and distribute that report with any significant changes.

2.1.5.9 The Construction Manager shall prepare and distribute a Design Phase Change Order Report that shall list all Owner-approved changes to as of the date of the report and shall state the effect of the changes on the Project and Construction Budget and Master Schedule.

2.1.6 SUBCONTRACTORS AND SUPPLIERS

2.1.6.1 The Construction Manager shall seek to develop subcontractor interest in the Project, pre-qualify and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers, who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner know of any objection to **any** such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier, or proposed product, assembly or work by a reviewed subcontractor. No review, approval or lack of objection by the Owner or Architect will result in assurance that the subcontractor's proposed product or work will be acceptable to the Owner or Architect. The Construction Manager shall only employ subcontractors who are properly licensed in Arizona, have adequate financial and personnel resources for the Work, and are fully committed to performing the Work consistent with the Construction Documents and with the same degree of skill, quality and competence required of the Construction Manager.

2.1.6.2 The Construction Manager shall cooperate with potential subcontractors and suppliers in processing and accepting requests for Prior Approvals and other alternate materials or construction approaches that are in compliance with the project Specifications. The Architect will review and approve/reject these requests based upon the Construction Documents and his professional judgment. Proprietary specifications must comply with the requirements of State Statutes.

2.1.6.3 The Construction Manager shall develop and use the sub-contractor and supplier pre-qualification process proposed during their original selection, per Arizona Revised Statutes §41-2578, and reviewed by the Owner during the Pre-Construction Phase. This plan may include items such as screening potential firms for current and future workload, material availability and cost, subcontract or purchase order conditions, insurance, safety record, available and capable tradesmen, financial condition, prior working relationship with the Construction Manager, willingness to perform the work, bonding ability, ability to meet the Project Schedule, and other factors as determined by the Construction Manager to protect its and the Owner's interests. Final selection of sub-contractors shall be through either a qualifications based selection only, with the Owner's prior consent, or pre-qualifications followed by competitive pricing. The Construction Manager shall hold pre-bid and pre-award meetings with all potential and selected subcontractors to assure that all qualifications will be met, scopes of work are proper to assure full coverage of the Work, and that there is full understanding of all issues or questions by all parties.

2.1.6.4 The Construction Manager shall name any related parties or companies being considered for procurement of any labor, material, supplies or equipment for the Work.

2.1.6.5 By mutual agreement between the Owner and Construction Manager, key subcontractors may be selected by merit plus price or by merit only early in the Work, when their early selection will provide critical support, design information, or early materials procurement for the Work. The Construction Manager shall analyze the marketplace versus project needs and make a recommendation to the Owner on the selection process and timing of subcontractors and suppliers.

2.1.6.6 For work proposed to be self performed by the Construction Manager, all materials and supplies used shall be competitively bid. Billable hourly rates and production rates, where applicable, for self-performed work shall be established during the Pre-Construction phase and be competitive with similar contractors and trades providing similar work in the same geographical area.

2.1.7 LONG-LEAD TIME ITEMS

The Construction Manager shall recommend to the Owner and Architect a schedule for procurement of long-lead time items that will constitute part of the Work as required to meet the Project schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. ~~The Construction Manager shall expedite the delivery of long-lead time items.~~ **The Construction Manager shall recommend a schedule for such purchases after coordination with the Consultant regarding the schedule for preparation of construction documents, and expedite and coordinate delivery of long-lead time purchases to facilitate their delivery by the required dates.**

2.1.8 EXTENT OF RESPONSIBILITY

~~The Construction Manager does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price.~~ The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants. It is not the Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, the Construction Manager shall promptly notify the Architect and Owner in writing.

2.1.8.1 The Construction Manager shall assist the Owner and Architect, monitor transmittal of documents to regulatory agencies for review, and advise the Owner and Architect of potential problems in completing such reviews.

2.1.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs. **The Construction Manager shall comply with A.R.S. Title 41, Chapter 9, Article 4, and State of Arizona Executive Order 75-5, which relate to nondiscrimination against any employee because of race, religion, color, sex or national origin and further agrees to comply with the Immigration Reform and Control Act (I.R.C.A.) of 1986, in performing under this Agreement and to permit Owner inspection of his personnel records to verify such compliance.**

2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME

2.2.1 When the Drawings and Specifications are sufficiently complete, the Construction Manager shall propose a Guaranteed Maximum Price, which shall be the sum of the estimated Cost of the Work and the Construction Manager's Fee **for the construction and post-construction phase work, including all sales, use, consumer and other taxes required by law; all other fees, general conditions, bonds, required permits and insurance; tools, construction equipment and machinery, and temporary facilities required at the construction site; and all other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated in the Work.** The Guaranteed Maximum Price and project completion time shall not exceed the Owner's maximum budget and schedule for the Project, as shown in the Exhibits A and B attached to this Contract.

2.2.1.1 During the Design Phase, but not later than 60 days prior to the date that the Work shall begin, the Owner, at his sole option, may request the Construction Manager to establish a Guaranteed Maximum Price for the Work. The Guaranteed Maximum Price shall be documented by the Construction Manager per Paragraph 2.2.4, and once established, shall be subject to modification only as defined in this Agreement.

2.2.1.2 The Guaranteed Maximum Price shall be submitted to the Owner not more than 30 days after receipt of the Owner's request for the Guaranteed Maximum Price. The Owner may accept such Guaranteed Maximum Price within 45 days of receipt unless such time is mutually agreed to be extended. If the Owner does not accept the Guaranteed Maximum Price within the time period provided herein, such price shall be presumed to be rejected by the Owner.

2.2.1.3 In the event that the Owner does not request the Construction Manager to establish a Guaranteed Maximum Price or does not accept the proposed Guaranteed Maximum Price, but chooses to proceed with the Work, this Agreement shall be terminated per Paragraph 2.2.11.

2.2.2 As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Construction Manager shall ~~may~~ provide for a **Pre-Construction Phase contingency as defined** in the Guaranteed Maximum Price, **in cooperation with and agreement by the Owner.** Subject to the review and approval of its use as described below, the Construction Manager shall be permitted to use up to one hundred percent (100%) of this Contingency for changes initiated by the

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Construction Manager and is for his use to cover only the following costs. Any contingency remaining after the uses listed below shall become part of the funds to be used during the Construction Phase and will be added to the Construction Manager's Construction Phase contingency.

2.2.2.1 Further development of the Drawings and Specifications by the Architect that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as **material** changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

2.2.2.2 Refinement of design details within the scope of the Work and standards of quality and quantity on which the final approved Guaranteed Maximum Price proposal was based, that were not present in or reasonably inferable from or the Documents at the time the GMP is proposed, or are not common industry practice in similar situations or uses;

2.2.2.3 Balancing the differences between the Contractor's estimated values used to prepare the GMP proposal versus the actual contract ("buy out") costs of subcontracts, materials and equipment purchases determined prior to the start of the Work.

2.2.3 The estimated ~~Cost of the Work~~ shall ~~GMP~~ also may include the Construction Manager's Construction Phase Contingency, a sum established by the Construction Manager **in cooperation with and agreement by the Owner**, for the Construction Manager's exclusive use to cover costs arising under ~~Subparagraph 2.2.2 and other costs~~ which are properly reimbursable as Cost of the Work but not the basis for a Change Order. **The Construction Manager's Contingency shall be shown as a separate line amount within the GMP proposal and within the Schedule of Values for the Work.** Each use of the Contractor's Contingency will be approved per 2.2.3.9 and may be billed against the Schedule of Values line once that approval is obtained.

Subject to the review and approval of its use as described below, the Construction Manager shall be permitted to use up to one hundred percent (100%) of the Construction Manager's Construction Phase Contingency for changes initiated by the Construction Manager and is for his use to cover only the following costs:

2.2.3.1 Costs due to subcontractor or subcontracted labor disputes that impact the project

2.2.3.2 Labor, equipment, material or job site costs that exceed the amounts budgeted by the Construction Manager (**not** including superintendence, project management or project engineers, other indirect office or support personnel unless approved in writing in advance by the Owner), or due to overruns in the performance of the Work directly incorporated into the Work by the Construction Manager's own personnel;

2.2.3.3 Costs associated with any increase in actual or final bid or negotiated subcontracts or purchase order agreements versus those used by the Construction Manager to establish the Guaranteed Maximum Price, including unanticipated or materially higher than expected cost increases due to inflation or other market forces;

2.2.3.4 Costs for damaged or non-conforming Work for which the Construction Manager himself is responsible and is not caused by his own negligence, corrective work, labor disputes within the manufacturing or transportation industries causing delays in receipt of materials or equipment not the fault of the Construction Manager;

2.2.3.5 Costs due to delay for which the Construction Manager is responsible;

2.2.3.6 Costs due to unusually severe weather conditions as set forth in the A.I.A. General Conditions, Paragraph 4.3.8.2, lost time due to acts beyond the control of the Construction Manager, and fixed job site costs due to these delays;

2.2.3.7 Costs due to unusually large price increases in material costs or sub-contractor labor that are above expected levels and could not be reasonably anticipated within the proposed GMP; and

2.2.3.8 Costs attributable to insurance deductibles related to the project not caused by the Contractor's or sub-contractor's negligence.

2.2.3.9 The Construction Manager's Contingency is not available and shall not be used for any of the following:

- a. Payment of liquidated damages, reimbursement of additional consultant services due to deficient or delayed work, or similar back charges or direct damages from the Owner caused by the Construction Manager
- b. Correction of errors, omissions, conflicts or defects in the documents that would be discoverable through reasonable review and inspection of the documents during the constructability and buildability reviews required by this Contract.

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- c. Any costs identified in this sub-paragraph that are recovered by the Construction Manager from insurance, sub-contractors or suppliers, or other sources.
- d. To supplement the Construction Manager's own office or field staff, beyond the levels or commitment originally agreed to, without the prior written consent of the Owner.
- f. Any use regardless of meeting the conditions 2.2.3.1 through 2.2.3.8 that is for the sole use, benefit or convenience of the Construction Manager and would not create any additional benefit or difference to the final Work than the original Construction Documents would have provided.

2.2.3.10 With mutual consent of the Construction Manager, portions of the Contingency may be used for Owner requested change orders, changes in design, increases in allowances or to pay for the Architect's errors and omissions change orders. Use of this Construction Phase contingency shall be treated similar to an Owner allowance within the Contract sum, with Owner and Consultant written review and approval prior to its use or commitment by the Construction Manager. Any use of this contingency requires joint agreement by the Construction Manager, Architect and Owner. To the extent there is remaining Construction Manager Contingency when the Work is ready for final payment, the Owner shall be entitled to one hundred percent (100%) of the balance which shall be returned to the Owner by issuance of a Change Order. The final payment will reconcile amounts used and remaining through a final change order to the Contract. The Construction Manager shall keep full and detailed records regarding costs used from the Construction Manager's Contingency and the accounting and control systems for such costs shall be in accordance with generally accepted accounting principles acceptable to the Owner.

2.2.3.11 The Owner also may have other contingency funds in addition to the Construction Manager's Contingency. These Owner's contingencies, if they exist, shall not be considered to be used or held for benefit of the Construction Manager, and are not accessible to the Construction Manager for his costs that exceed the Construction Manager's Contingency, as defined in this Paragraph. The Owner's contingency funds will be used solely by the Owner at his discretion and for his sole benefit related to the project.

2.2.3.12 No claim for extra work done or materials furnished by the Construction Manager will be allowed by the Owner except as provided herein, nor will the Construction Manager do any work or furnish any material(s) not covered by this Contract unless such work or material is first reviewed and authorized in writing in advance by the Owner. Work or material(s) furnished by the Construction Manager without such prior written authorization will be the Construction Manager's sole jeopardy, cost, and expense, and the Construction Manager hereby agrees that without prior written authorization no claim for compensation for such work or materials furnished will be made.

2.2.3.13 When all of the funds in the Construction Manager's Contingency are expended, or in the event that the Cost of the Work exceeds the Guaranteed Maximum Price and any adjustments as may be due under the terms of this Agreement, the Construction Manager shall continue to perform at no additional cost to the Owner until the Work is complete. The Construction Manager shall be responsible for paying all costs, in accordance with the terms of this Agreement that may be necessary to complete the Work, even if such amounts are in aggregate in excess of the Guaranteed Maximum Price.

2.2.4 BASIS OF GUARANTEED MAXIMUM PRICE

The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:

.1 A list of the Drawings and Specifications, including all Addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal. **Unless a GMP is requested during an earlier design phase, only the Drawings and Specifications produced for the Construction Documents shall be used as a basis for pricing and construction; Drawings or Specifications produced during the Design Phases of the Work are for project development and refinement only and shall not be used or referenced as the basis of pricing, materials or assemblies selection or actual construction.**

.2 A list of allowances **and unit costs** and a statement of their basis.

.3 A **detailed** list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.

.4 The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories **by the Specification's major divisions**, allowances, contingency, and other items and the fee that comprise the Guaranteed Maximum Price **as described and** organized per Subparagraph 2.2.13.

.5 The Date(s) of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.

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.6 A list of the specific exclusions of work, costs, or other items that are not contained within the Guaranteed Maximum Price. All work necessary to complete the Project not listed within the specific exclusions shall be considered to be within the Guaranteed Maximum Price per the final Contract Documents. No work contained in the Contract Documents and Addenda shall be listed as exclusion without specific separate written notification to the Owner and specific written agreement by the Owner in advance of submitting the GMP.

2.2.5 When requested by the Owner, within fifteen (15) days after the Construction Manager proposes a Guaranteed Maximum Price pursuant to Subparagraph 2.2.2, the The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the Owner or Architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis or both.

2.2.6 Unless the Owner accepts the Guaranteed Maximum Price proposal in writing **within thirty (30) days after the meeting referenced in Paragraph 2.2.5** on ~~or before the date specified in the proposal for such acceptance~~ and so notifies the Construction Manager, the Guaranteed Maximum Price proposal shall not be effective without written acceptance by the Construction Manager.

2.2.7 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

2.2.8 Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price, its basis, **and the date of Substantial Completion** shall be set forth in an Amendment to this Agreement. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents and the date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

2.2.9 The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the Amendment. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Architect and Construction Manager. The Construction Manager shall promptly notify the Architect and Owner if such revised Drawings and Specifications are inconsistent with the agreed upon assumptions and clarifications.

2.2.10 The Guaranteed Maximum Price shall include in the Cost of the Work only those taxes which are enacted at the time the Guaranteed Maximum Price is established **by execution of an Amendment to this Agreement by the Owner and Construction Manager**.

2.2.11 If the GMP is not within the Owner's project budget, the Owner reserves the right to terminate this Agreement and proceed with the Project as a Design-Bid-Build **or other** delivery method **of the Owner's choice**. This Agreement will be terminated with no further obligations except payment of that portion of the Construction Manager's fee earned to that point as specified in the General Conditions and Exhibits.

2.2.12 **By proposing the GMP, the Construction Manager represents that he has the capability, in all respects, and the moral and business integrity, reliability, technical ability, financial resources, plant, management, superintendence, equipment and materials which will assure effective and efficient good faith performance in full compliance with the Contract Documents and with any and all schedules and Milestone and Completion dates, that he has made allowances for normal inclement weather indigenous to the Project Site, in his estimating, planning and scheduling of the Work. The Construction Manager further acknowledges that the Contract Documents, if not complete, will be upon completion, appropriate and adequate to complete this project and for the construction of sound and suitable work, and that the GMP submitted is complete and covers all of the Work shown or reasonable inferred, and as specified or shown, in the Contract Documents. The Construction Manager hereby certifies that the work shall be completed, in place, in full accordance with the Contract Documents, within the time limits specified.**

2.2.13 For the GMP proposal shown in Exhibit H and payment for the Work, proposed costs shall be segregated as follows:

- .1 Direct Cost of the Work: The Contractor's sub-contractor and supplier costs, including wages of construction labor as described in Paragraph 6.1.2.1, along with labor/fringe benefits and burden for that labor; materials/equipment used to perform construction of Work, including rental or use of Contractor-owned equipment; rental or purchased small tools used to perform construction of Work; municipal fees and costs for water and sewer system permits, development fees, installation and meters associated with water and sewer facilities; cranes, elevators, lifts and other lifting equipment including rental, operator costs and safety inspections; delivery, erecting and dismantling; fuel, normal repairs, maintenance and service costs; and**

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surveyor services. Costs incurred during extended equipment idle periods on the site may be declined by the Owner.

- .2 General Conditions for Construction Phase Services to include:
- a. **Project/On-Site Jobsite Staff:** includes project manager, superintendent and project engineers; as-built and close-out documents; other clerical and support staff assigned and located at the Work site with prior Owner written approval; along with labor/fringe benefits, burden and vacation for that labor.
 - b. **Temporary Utilities:** temporary water, power, natural gas or propane, telephone, internet or wireless connectivity, including installation and removal, temporary extensions, monthly or other billing; all fees or costs for permits and meters associated with temporary utilities; temporary signs including permit costs; heating and cooling; light bulbs and other miscellaneous office and utilities supplies; periodic and final cleaning; trash chutes, bins, removal and disposal, dump permits and fees; flagman and other traffic control; dust permit, dust control, track out materials and required notification signage; temporary roads and their maintenance.
 - c. **Temporary Facilities:** office trailer, including rental, set up and removal; storage trailer and shed rentals; office furniture, copying equipment and fax machine (either direct rental costs or pro-rated ownership/purchase costs); postage, shipping and delivery costs; office and other supplies directly related to and required for the management and administration of the Work; project photographs; temporary toilets and sanitary facilities; project sign; temporary fencing, enclosures, barricades and covered walkways; temporary stairs; opening protection and safety railing; drinking water and associated supplies and coolers; safety and first aid supplies and equipment; firefighting equipment and extinguishers; security guards, watchman services, and security equipment or costs.
 - d. **Miscellaneous Costs:** Contractor required insurance deductibles with amounts and levels approved by the Owner prior to submitting the GMP; Owner training and other close out activities and support; printing of drawings and specifications if not included within the Pre-Construction CONFIRM other final/permanent utility and governmental permit (including general building permit and permits for off-site work), reviews and inspection fees with the Owner prior to submitting the GMP to confirm which will be paid by the Owner and which will be paid by the Contract.
- .3 Construction Manager's Pre-Construction Phase Contingency, as defined in Paragraphs 2.2.2
- .4 Construction Manager's Construction Phase Contingency, as defined in Paragraph 2.2.3.
- .5 Payment and Performance bonds, and insurance, including any sub-contractor default insurance such as Subguard[®]. If the Contractor wishes to use subcontractor default insurance, a request must be made in writing and receive specific written approval by the Owner prior to submitting the GMP proposal.
- .6 Sales Taxes
- .7 Construction Fee, to include any and all general office overhead:
- a. **Project/On-Site Jobsite Staff:** payment bonuses and similar awards for field staff
 - b. **Direct Job Costs:** Warranty work and coordination; corrective work damaged by the Contractor or his subcontractors; correction of non-conforming Work.
 - c. **Contractor's Home Office:** Other personnel not located at the site and devoted at least 50% to the Work, including Operations Manager, scheduling, accounting, technologies, safety and EEO officers or staff; corporate and local office executives and principal in charge; cost estimating and value engineering; scheduling; miscellaneous general drafting; purchasing, contracts, accounting and legal work (both general and pertaining to project); secretarial, clerk, typist and other general office support; computer/data processing staff, support, equipment, other costs and licenses; travel and subsistence; along with labor/fringe benefits, burden and vacation for that labor; overtime and similar payments to any salaried position for both field and home office staff; payment bonuses and similar awards for home office staff
 - d. All other costs not specifically delineated and allowed in the other portions of the GMP as noted above.

The Owner generally will pay for the following unless otherwise noted and mutually agreed to: initial geo-technical investigation and reports, standard testing and inspections; private plan reviewing and field observation in lieu of municipal permitting; hazardous materials testing and abatement; utility fees, meters, permits, development fees, installation fees and meters associated with power, telephone, cable and gas facilities; maintenance after occupancy, Owner training and receipt of close out manuals, plan check fees. Confirm the responsible party for each of these items prior to formulating the GMP proposal.

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NO personal use of any items Contractor provided equipment will be reimbursed to the Contractor, including use of vehicles, cell phones, fuel, etc. Any Temporary Facilities equipment such as small tools, cameras, etc. purchased for this project either shall have the purchase cost prorated over the typical lifetime of the item or the item shall be turned over to the Owner at the close-out of the Work.

2.3 CONSTRUCTION PHASE

2.3.1 GENERAL

2.3.1.1 The Construction Phase shall commence upon The Owner's and Construction Manager's execution of an Amendment to the Agreement and issuance of a Notice to Proceed. ~~on the earlier of:~~

- ~~(1) The Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, or~~
- ~~(2) the Owner's first authorization to the Construction Manager to: (a) award a subcontract, or (b) undertake construction Work with the Construction Manager's own forces, or (c) issue a purchase order for materials or equipment required for the Work.~~

2.3.1.2 Unless otherwise provided in the Contract Documents to be the responsibility of the Owner or separate contractor, the Construction Manager's construction phase services shall include team management and coordination; purchasing and procurement services; subcontract management and coordination, bidding; scheduling; cost controls and change order evaluation and management; periodic meetings between the Owner, Construction Manager and Architect; site coordination of Owner's independent consultants such as testing or inspection; submittal process management; subcontracting; field management; safety program; post-construction phase close-out process, and warranty period services. All of these services shall be included in the Construction Manager's agreed upon General Conditions costs. This also shall include, providing through itself or its subcontractors, all necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities, and other temporary facilities to permit the Construction Manager to complete all construction of the Work consistent with the Construction Documents.

2.3.1.3 The Construction Manager shall perform all construction activities efficiently and with the requisite expertise, skill, quality and competence to satisfy the requirements of the Contract Documents. The Construction Manager shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.3.1.4 Within fourteen (14) days after the award of a subcontract or purchase order for direct materials supplier, the Construction Manager shall furnish to the Owner one fully executed copy of each subcontract or purchase order for this Project. Each copy shall consist of the subcontract agreement and all special or supplementary conditions applicable to the subcontract. All pass-through provisions required by this Agreement and AIA Document A201 also shall be included.

2.3.1.5 The Construction Manager shall establish and implement a program to monitor the quality of construction to guard the Owner against defects and deficiencies in the Work. The Construction Manager shall reject the work and transmit to the Subcontractor or supplier a notice of non-confirming work when it is the opinion of the Construction Manager that the Work does not confirm to the requirements of the Contract Documents. The Construction Manager is not authorized as part of this requirement to change, enlarge, relax, alter or release any requirement of the Contract Documents or to approve or accept any portion of the Work not performed in accordance with the Contract Documents.

2.3.2 ADMINISTRATION

2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall **pre-qualify and** obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed **per Subparagraph 2.1.6** and, after analyzing such bids, shall ~~deliver~~ **evaluate** such bids ~~to~~ **with** the Owner and Architect **in an open book process, showing the Owner and Architect the results of all sub-contractor and supplier proposals.** The Construction Manager shall make a best effort to obtain at least three qualified competitive bids for each subcontract and supplier area within the Work except where sub-contractors or suppliers are selected early prior to fully competitive pricing being possible. Where early selection is proposed, the Construction Manager shall propose alternate pricing criteria and means to be able to assure the Owner that cost and pricing control can be provided for the Work. ~~The Owner~~ **The Construction Manager** shall then determine, ~~with the advice of the Construction Manager and~~ subject to the reasonable objection of the Owner or Architect, which bids will be accepted. The Owner may designate specific persons or entities from whom the Construction Manager shall obtain bids; however, if the Guaranteed Maximum Price has been established, the Owner may not prohibit the Construction Manager from obtaining bids from other qualified bidders. The Construction Manager shall not be required to contract with anyone to whom **he**

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~~the Construction Manager~~ **Owner or Architect** has reasonable objection. **For any portion of the Work that the Construction Manager desires or customarily performs with his own personnel, the Construction Manager shall prepare his own bid and procure at least two (2) other sealed competitive bids from qualified bidders. The Owner will participate in the opening and evaluation of such bids and the Construction Manager's bid. The award of the portion of the Work subject thereto shall be made to the Construction Manager or other qualified bidder submitting the lowest responsible, responsive bid.**

2.3.2.2 If the Guaranteed Maximum Price has been established and a specific bidder among those whose bids are delivered by the Construction Manager to the Owner and Architect (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a change in the Work be issued to adjust the Contract Time and the 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 of the subcontract or other agreement actually signed with the person or entity designated by the Owner. **Any subcontractors or suppliers that have been submitted and pre-approved by the Owner or Architect shall not be replaced without the Owner's written approval during any time of the Work. Any additional costs due to an approved change of subcontractor or supplier without a change in the scope of the Work shall not be the Owner's responsibility and will not increase the Guaranteed Maximum Price nor be paid for by the Contactor's Construction Phase Contingency. An initial proposal to accept other than a low lump sum bid shall be justified in writing by the Construction Manager, and be subject to prior written approval by the Owner, with no increase in the Guaranteed Maximum Price.**

2.3.2.3 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Subparagraphs 7.1.8 and 7.1.9 and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

2.3.2.4 The Construction Manager shall schedule and conduct meetings at which the Owner, Architect, Construction Manager and appropriate Subcontractors can discuss the status of the Work. ~~The Construction Manager shall prepare and promptly distribute meeting minutes.~~

2.3.2.5 Promptly after the Owner's acceptance of the Guaranteed Maximum Price proposal, the Construction Manager shall prepare a schedule in accordance with Paragraph 3.10 of AIA Document A201, including the Owner's occupancy requirements.

2.3.2.6 The Construction Manager shall provide monthly written reports to the Owner and Architect on the progress of the entire Work. The Construction Manager shall maintain a daily log **per subparagraph 3.10.6 of AIA Document A201**, containing a record of weather, ~~Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The Copies of the log shall be available provided each month to the Owner and Architect~~ **as a precondition to payment application approval.**

2.3.2.7 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect at regular intervals.

2.3.2.8 *Unless otherwise provided in the Contract Documents, the Construction Manager shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.*

2.3.2.9 *The Construction Manager shall update and distribute Master Schedules, construction schedules, and Cash Flow reports as appropriate.*

2.3.2.10 *The Construction Manager shall assist the Owner in obtaining Occupancy Permits by appropriate Governmental organizations during inspections of the Work, including preparing and submitting documentation, coordinating final testing and other activities.*

2.3.2.11 *If the Construction Manager supplies any construction equipment to be billed against the GMP, the billing rate shall be no higher than that of similar equipment provided by local rental companies. No idle time may be charged to the Work.*

2.4 PROFESSIONAL SERVICES

The Construction Manager shall not be required to provide professional services that constitute the practice of architecture or engineering, unless such services are specifically required by the Contract Documents for a portion of the Work, **are usually and customarily supplied by the Construction Manager in the normal course of the construction proposed**, or unless the Construction Manager has specifically

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agreed in writing to provide such services. In such event, the Construction Manager shall cause such services to be performed by appropriately licensed professionals. **Appropriate errors and omissions coverage for such engineering shall be provided within the Construction Manager's insurance coverage.**

2.5 UNSAFE MATERIALS

In addition to the provisions of Paragraph ~~10.1~~ **10.3** in AIA Document A201, if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered but not created on the site by the Construction Manager, the Construction Manager shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. The Owner, Construction Manager and Architect shall then proceed in the same manner described in Subparagraph ~~10.1-2~~ **10.3.2** of AIA Document A201. The Owner shall be responsible for obtaining the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Construction Manager and, in the event such material or substance is found to be present, to **have it abated or** verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Construction Manager and Architect will promptly reply to the Owner in writing stating whether or not either have reasonable objection to the persons or entities proposed by the Owner. If either the Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Construction Manager and Architect have no reasonable objection.

ARTICLE 3 OWNER'S RESPONSIBILITIES

3.1 INFORMATION AND SERVICES

3.1.1 The Owner shall ~~provide~~ **has provided to the Construction Manager** full information in a ~~timely manner~~ regarding the requirements of the Project including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

3.1.2 The Owner, ~~upon written request from the Construction Manager, shall furnish evidence of Project financing prior to the start of the Construction Phase and from time to time thereafter as the Construction Manager may request. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work.~~

3.1.3 The Owner shall ~~establish and update~~ **has established** an overall schedule and budget for the Project, ~~based on consultation with the Construction Manager and Architect,~~ which shall include contingencies for changes in the Work and other costs that are the responsibility of the Owner **as specifically described within this Agreement.**

3.1.4 STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS AND REPORTS

In the Preconstruction Phase, the Owner shall furnish the following with reasonable promptness and at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy of ~~materials~~ any such information, reports, surveys, drawings and tests described in Clauses 3.1.4.1 through 3.1.4.4, except to the extent that the Construction Manager knows of any inaccuracy **or becomes aware that any portion of the drawings, reports, surveys or tests are not in accordance with applicable laws, statutes, ordinances, building codes, rules or regulations; or can be readily ascertained by a visual inspection of the material, situation or site:**

3.1.4.1 Reports, ~~surveys, drawings~~ and tests concerning the conditions of the site that are required by law.

3.1.4.2 **A survey of the site prepared by the Architect** and a written legal description of the site. ~~Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a project benchmark.~~

3.1.4.3 The services of geo-technical engineers when such services are **reasonably** requested by the Construction Manager. Such services may include but are not limited to test borings, test pits,

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determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

~~3.1.4.4 Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law. Any tests, inspections or reports that pertain to the site and are in the Owner's possession or control.~~

3.1.4.5 The services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Construction Manager.

3.2 OWNER'S DESIGNATED REPRESENTATIVE

The Owner shall designate ~~in writing~~ a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization, **other than matters that require the approval of the Governing Board of the Owner. To the extent permitted by law and District delegation, this** This representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager.

3.3 ARCHITECT

The Owner shall retain an Architect to provide the ~~Basic S~~ services, including normal structural, mechanical and electrical engineering services, other than **primary** cost estimating services, ~~described in the edition of AIA Document B141 current as of the date of this Agreement. The Owner shall authorize and cause the Architect to provide those Additional Services described in AIA Document B141 those services~~ requested by the Construction Manager that must necessarily be provided by the Architect for the Preconstruction and Construction Phases of the Work **as contemplated by the Owner's Agreement with the Architect**. Such services shall be provided in accordance with time schedules agreed to by the Owner, Architect and Construction Manager. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the Owner's Agreement with the Architect, from which compensation provisions may be deleted.

~~3.4 LEGAL REQUIREMENTS~~

~~The Owner shall determine and advise the Architect and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal services as are necessary to provide the information and services required under Paragraph 3.1.~~

3.4 SEPARATE CONTRACTS

If the Owner is performing other work with separate contractors or vendors under its control, the Construction Manager agrees to cooperate and coordinate its Work with the work of the Owner's separate contractors or vendors so that the Project can be completed in an orderly and coordinated manner, reasonably free of significant disruption to any party.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

The Owner shall compensate and make payments to the Construction Manager for Preconstruction Phase services as follows:

4.1 COMPENSATION

4.1.1 For the services described in Paragraphs 2.1 and ~~2.2~~ the Construction Manager's compensation shall be calculated as follows:

(State basis of compensation, whether a stipulated sum, multiple of Direct Personnel Expense, actual cost, etc. Include a statement of reimbursable cost items as applicable.)

Compensation shall be the stipulated sum of _____ Dollars (\$ _____), plus the reimbursable costs items contained in the Construction Manager's proposal, attached in Exhibit E.

4.1.2 Compensation for Preconstruction Phase services shall be equitably adjusted if such services extend beyond **ninety (90) days** from the date of **schedule shown in** this Agreement **through no fault of the Construction Manager** or if the originally contemplated scope of services is significantly modified.

4.1.3 If compensation is based on a multiple of Direct Personnel Expense, Direct Personnel Expense is defined as the direct salaries of the Construction Manager's personnel engaged in the Project and the

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5.3.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of Amendment No. 1 **shall be determined as provided in Article 7** ~~may be determined by any of the methods listed in Subparagraph 7.3.3 of AIA Document A201, except that mark-ups used shall be the lower of the rates stated in Paragraph 7.2 or those used to calculate the actual original fee proposals.~~

5.3.2 ~~In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Clause 7.3.3.3 of AIA Document A201 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Subparagraph 7.3.6 of AIA Document A201 shall have the meanings assigned to them in that document~~ **Adjustments to subcontracts shall be determined as provided in Paragraph 7.2 of AIA Document A201** and shall not be modified by this Article 5, **except that mark-ups used shall be the lower of the rates stated in Paragraph 7.2 or those used to calculate the actual original subcontractor cost proposal.** Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

5.3.3 In calculating adjustments to the Contract, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201 shall ~~mean~~ **refer to** the Cost of the Work as defined in Article 6 of this Agreement and ~~the terms "and a reasonable allowance for overhead and profit" shall mean the Construction Manager's Fee as defined in Subparagraph 5.1.1 of this Agreement.~~

5.3.4 ~~If no specific provision is made in Subparagraph 5.1.1 for adjustment~~ **Adjustment** of the Construction Manager's Fee in the case of changes in the Work **shall be determined as provided in Subparagraph 7.2.8 of AIA Document A201, except that mark-ups used shall be the lower of the rates stated in Paragraph 7.2 or those used to calculate the actual original Contractor fee proposals.** ~~or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Subparagraph 5.1.1 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the basis of the fee established for the original Work.~~

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

6.1 COSTS TO BE REIMBURSED

6.1.1 The term "Cost of the Work" shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work **as allowed in Paragraph 7.2 of AIA Document A201.** Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 6.

6.1.2 LABOR COSTS

.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of Work at the site or, with the Owner's agreement, at off-site workshops.

.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's agreement **attributable solely to services rendered with respect to the Project.**

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal office or offices other than the site office shall be included in the Cost of the Work, such personnel shall be identified below.)

.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries **for personnel at the site and** included in the Cost of the Work under Clauses 6.1.2.1 through 6.1.2.3.

.5 Bonuses attributable to performance of Construction Manager personnel shall not be chargeable to or reimbursed by the Project.

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.6 Salaried personnel shall not be charged at an hourly rate to the Project. Overtime shall not be reimbursed to either hourly or salaried personnel without evidence of actual payment to the individual is provided.

6.1.3 SUBCONTRACT COSTS

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

6.1.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

.1 Costs, including transportation **expenses normally and customarily charged** of materials and equipment incorporated or to be incorporated in the completed construction.

.2 Costs of materials described in the preceding Clause 6.1.4.1 in excess of those actually installed but required to provide **the normal and customary** reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager **on commercially reasonable terms**; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

6.1.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

.1 Costs, including transportation, installation, maintenance, dismantling and removal **expenses normally and customarily charged** of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost less **fair market salvage** value on such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.

.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

.3 Costs of removal of debris from the site.

.4 Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges **related directly and solely to the Project**, telephone service at the site and reasonable petty cash expenses of the site office **related directly and solely to the Project**.

.5 That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling **outside of the State of Arizona solely** in discharge of duties connected with the Work. **These expenses shall be approved by the Owner in advance and shall not exceed prevailing rates applicable to State of Arizona employees per Arizona Department of Administration Rate Index and rules. Airfare for out of town travel will not exceed the average coach airfare provided by a range of major air carriers for the same route and travel arrangements.**

6.1.6 MISCELLANEOUS COSTS

.1 That portion directly attributable to this Contract of premiums for insurance and bonds.
(If charges for self-insurance are to be included, specify the basis of reimbursement.)

.2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable **under the Contract Documents**.

.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.

.4 Fees of testing laboratories for tests required by the Contract Documents, except those **that the Contract Documents require the Construction Manager to pay or that are** related to nonconforming Work. ~~other than that for which payment is permitted by Clause 6.1.8.2.~~

.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 or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or

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claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or the Guaranteed Maximum Price and provided that such royalties, fees and costs are not excluded by the last sentence of Subparagraph 3.17.1 of AIA Document A201 or other provisions of the Contract Documents.

.6 Data processing costs related **solely and directly** to the Work.

.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.

.8 Legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager ~~in~~ **and related solely and directly** to the performance of the Work and with the Owner's written permission, which permission shall not be unreasonably withheld.

~~.9 Expenses incurred in accordance with the Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.~~

6.1.7 OTHER COSTS

.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

6.1.8 EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK

The Cost of the Work shall also include costs described in Subparagraph 6.1.1 that are incurred by the Construction Manager:

.1 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 Paragraph ~~10-3~~ **10.6** of AIA Document A201, **provided that such threatened damage, injury or loss was not caused by the negligent acts, omissions, or failure to fulfill a responsibility to the Owner set forth in the Contract Documents of the Construction Manager, the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative managerial personnel or subcontractors of the Construction Manager, or the failure of the Construction Manager's personnel to adequately supervise, coordinate or manage the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from their insurance, Subcontractors or suppliers.**

~~.2 In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement of the Construction Manager or the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, or the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, Subcontractors or suppliers.~~

~~6.1.9 The costs described in Subparagraphs 6.1.1 through 6.1.8 shall be included in the Cost of the Work notwithstanding any provision of AIA Document A201 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Paragraph 6.2.~~

6.2 COSTS NOT TO BE REIMBURSED

6.2.1 The Cost of the Work shall not include **nor will any of the following receive payment or reimbursement**:

.1 Salaries and other compensation of the Construction Manager's **supervisory and/or administrative** personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Clauses 6.1.2.2 and 6.1.2.3.

.2 Expenses of the Construction Manager's principal office and offices other than the site office except as specifically provided in Paragraph 6.1.

.3 Overhead and general expenses, except as may be expressly included in Paragraph 6.1, **including such functions as purchasing, accounting and other support located at the Construction Manager's offices.**

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.4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

.5 Rental costs of machinery and equipment, except as specifically provided in Subparagraph 6.1.5.2.

.6 ~~Except as provided in Clause 6.1.8.2, costs~~ **Costs** due to the negligence of the Construction Manager **or any person acting by, through, under or on behalf of the Construction Manager, including any employee or agent of the Construction Manager or any tier of Subcontractor or Supplier or any other person for whose acts, efforts, mistakes, omission, work or services the Construction Manager is legally liable or responsible,** or to the failure of the Construction Manager to fulfill a specific responsibility to the Owner set forth in this Agreement.

.7 Costs incurred in the performance of Preconstruction Phase Services

.8 **Personal use of Contractor provided cell phones, vehicles, fuel for vehicles, etc. used by any of the Contractor's employees.**

.9 Except as provided in Clause 6.1.7.1, any cost not specifically and expressly described in Paragraph 6.1.

.10 Costs that would cause the Guaranteed Maximum Price to be exceeded.

.11 **Costs that are not related to the Work or that are related to any activity or enterprise of the Construction Manager other than the direct performance of the Work at the site.**

6.2.2 Where small tools, equipment, cameras, etc. are purchased for but not fully expended for this Work, and then retained by the Contractor, only the pro-rated portion of the cost used in this Work shall be reimbursed, or the items shall be turned over to the Owner at the completion of the Work.

6.3 DISCOUNTS, REBATES AND REFUNDS

6.3.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, ~~the Construction Manager~~ **amounts thereof** included them in an Application for Payment and ~~the Construction Manager~~ received payment therefor 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 secured.

6.3.2 Amounts which accrue to the Owner in accordance with the provisions of Subparagraph 6.3.1 shall be credited to the Owner as a deduction from, **and shall not be included in,** the Cost of the Work.

6.4 ACCOUNTING RECORDS

6.4.1 The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants **or other representatives** shall be afforded access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Construction Manager shall preserve these for a period of ~~three~~ **five** years after final payment, or for such longer period as may be required by law.

ARTICLE 7 CONSTRUCTION PHASE

7.1 PROGRESS PAYMENTS

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

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

7.1.3 Provided an Application for Payment is received by the Architect **and Owner** not later than the **last** day of a month, the Owner shall make payment to the Construction Manager **as required by law, not later than after submission of a complete and approved payment application, including all required**

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attachments per Subparagraph 9.4.2 of AIA Document A201; receipt of securities in lieu of retention, if applicable; receipt of partial lien releases from the prior month's payment; schedule and as-built updates; and required attachments for any payments for stored materials, as required by AIA Document A201. ~~the day of the month.~~ If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner **as required by law, but in any event not later than twenty-one (21) days** after the Architect receives the Application for Payment.

7.1.4 At the Owner's request, with each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached **for Work completed and fees earned by the Construction Manager and all subcontractors**, 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 (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the ~~present~~ **current** Application for Payment.

7.1.5 Each Application for Payment shall be based upon the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents **as it may be modified by the Architect as follows**. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect **and Owner** 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. **The initial schedule of values shall be submitted by the Construction Manager at the time the Guaranteed Maximum Price is established by the execution of Amendment No. 1. Any changes to a previously approved schedule of values resulting from any additional, deleted, change or substitution of subcontractors must be submitted by the Construction Manager to the Owner and Architect within ten (10) days after such change or substitution occurs.** If the Architect objects to any schedule of values submitted by the Construction Manager, the Architect will make such modifications to the Schedule of Values as he deems appropriate and the modified schedule of values shall be used for purposes of preparing Applications for Payment. If either the Owner or Construction Manager is dissatisfied with any schedule of values as accepted or modified by the Architect, such schedule of values shall be processed as a change in the Work under Article 7 of the AIA Document A201 including, without limitation, the right of either party to disagree and assert a claim in accordance with Article 4 of AIA Document A201. Once values are listed and approved for the Work within the original GMP, these values may not be modified during the course of the Work, except through Change Order. The original value will change and the Change Order will be shown separately. No value shown shall be billed more than 100% of that value.

~~**7.1.6** Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage 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 which has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.~~

7.1.7 Subject to **the other provisions of A.R.S. 41-2577**, of the Contract Documents and **General Conditions Paragraph 9.3**, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the **current** schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Subparagraph **7.3.8** ~~7.3.7~~ of AIA Document A201, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.

.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work **per Subparagraph 9.3.2 of AIA Document A201** ~~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. The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Clauses at the rate stated in Subparagraph 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Subparagraph, shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Clauses bears to a reasonable estimate of the probable Cost of the Work upon its completion.

.4 Subtract the aggregate of previous payments made by the Owner.

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.5 Subtract the shortfall, if any, **(a)** indicated by the Construction Manager in the documentation required by Subparagraph 7.1.4 to substantiate prior Applications for Payment, or **(b)** resulting from errors subsequently discovered by the Owner's accountants **or other representatives** in such documentation **or (c) otherwise ascertained or established by the Owner or Construction Manager and confirmed by the Architect. As used herein, "shortfall" means the amount by which the reasonable estimated probable total Cost of the Work plus the Construction Manager's Fee exceeds the Guaranteed Maximum Price.**

.6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of AIA Document A201.

7.1.8 Except with the Owner's prior approval, payments to the Construction Manager shall be subject to retention of not less than **ten percent (10%)**, **until such time that the Work is fifty percent complete, at which time the retainage may be reduced to five percent (5%) in the manner specified by A.R.S. Section 41-2576 and Subparagraph 9.3.1.4 of AIA Document A201. Retention shall be held by the Owner and delivered to the Construction Manager at the time the final payment is made by the Owner to the Construction Manager.** The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

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

7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Subparagraph 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 accountants **or other representatives** acting in the sole interest of the Owner.

7.2 FINAL PAYMENT

7.2.1 Final payment shall be made by the Owner to the Construction Manager when (1) the Contract has been fully performed by the Construction Manager except for the Construction Manager's responsibility to correct nonconforming Work, as provided in Subparagraph 12.2.2 of AIA Document A201, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner's accountants **or other representatives**; and (3) a final Certificate for Payment has then been issued by the Architect; such final payment shall be made by the Owner ~~not more than 30 days~~ after the issuance of the Architect's final Certificate for Payment, **as provided in A.R.S. 41-2577 or as follows**; and (4) **other allotted requirements of Paragraph 9.10 of AIA Document A201 have been completed.**

7.2.2 The amount of the final payment shall be calculated as follows:

.1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee; but not more than the Guaranteed Maximum Price.

.2 Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment as provided in Subparagraph 9.5.1 of AIA Document A201 or other provisions of the Contract Documents.

.3 Subtract the aggregate of previous payments made by the Owner.

.4 *Subtract the amount of any unused contingency and allowance(s).*

If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner **no later than thirty (30) days after the issuance of the Architect's Final Certificate for Payment.**

7.2.3 The Owner's accountants **or other representatives** will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's accountants **or other representatives** report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of **Paragraphs 7.2 and 9.10 of AIA Document A201** ~~Subparagraph 7.2.1~~ have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants **or other representatives**, either issue to the Owner a final Certificate for Payment with a

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copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Subparagraph 9.5.1 of AIA Document A201. **In the case of any discrepancy between the** The time periods stated in this Paragraph 7.2 supersede **and** those stated in **Paragraph 9.4** ~~Subparagraph 9.4.1~~ of AIA Document A201, **the longer time frame shall apply.**

7.2.4 If the Owner's accountants **or other representatives** report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 9 without a further decision of the Architect **provided that the representatives of the Construction Manager and Owner shall first meet and attempt in good faith to resolve such a dispute.** Unless agreed to otherwise, ~~a demand for mediation or arbitration proceedings for administrative resolution~~ of the disputed amount shall be ~~made~~ **initiated** by the Construction Manager within 60 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to make such demand within this 60-day period shall result in the substantiated amount reported by the Owner's accountants **or other representatives** becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager ~~the all amounts not disputed by the Owner certified in the Architect's final Certificate for Payment.~~

7.2.5 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Paragraph 6.1 and not excluded by Paragraph 6.2 ~~(1) to correct nonconforming Work, or (2) arising from the resolution of disputes,~~ the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

7.2.6 *Under the provisions of Arizona Revised Statutes Sections §35-214 and §41-2548, the Contractor's records related to this Contract shall be subject to audit for five years after expiration of this Agreement. Such records shall include, but not be limited to, any and all financial accounting records, checking accounts, written policies and procedures, subcontractor files, original estimates, estimating work sheets, correspondence, change order files (including documentation covering negotiated settlements), back-charge logs and supporting documentation, general ledger entries related to this Work, insurance rebates and dividends, and any other Contractor records which may have a bearing on matters of interest to the Owner in connection with the Contractor's Work.*

All of the foregoing is referred to as "Records" and shall be open for inspection and subject to audit and/or reproduction by the Owner's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of:

- (a) Contractor compliance with Contract requirements*
- (b) Compliance with District and State business ethics Statutes and regulations*
- (c) Compliance with provisions for pricing change orders, invoices or claims submitted by the Contractor or any of his payees.*

Records shall be produced at a place designated by the Owner, upon reasonable notice to the Construction Manager.

Other specific records subject to audit, by the Owner or his designee, will include any and all other sources of information that may, in the Auditor's judgment, have any bearing on or pertain to matters, rights, duties or obligations covered by the Contract Documents, State Statute or Regulations. Computerized data shall be provided in a format requested by the Owner. When requested by the Owner or his designee, direct access to hard drives, business information software employed by the Contractor and subcontractors.

**ARTICLE 8
INSURANCE AND BONDS**

INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER *DURING THE PRE-CONSTRUCTION PHASE*

8.1.1 *During the Pre-Construction Phase of the Project, the Construction Manager shall purchase and maintain insurance set forth as follows.*

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Without limiting any of their obligations or liabilities, the Construction Manager, at the Construction Manager's own expense, shall purchase and maintain for the duration of the pre-construction phase of this Contract the following stipulated minimum insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work hereunder by the Construction Manager, its agents, representatives, employees, or subcontractors.

All insurance shall be with companies duly licensed or approved unlicensed to do business in the State of Arizona with policies and forms satisfactory to the Maricopa County Community College District (MCCCD). Each insurer shall have a current Best rating of not less than A:VII. Use of alternative insurers requires prior approval of MCCCD. Construction Manager shall include all subconsultants and subcontractors providing work during the pre-construction phase as insureds under its policies or shall furnish separate certificates of insurance and endorsements for each. All coverages for subconsultants and subcontractors shall be subject to all of the insurance requirements stated herein.

8.1.1.1 The insurance policies, except Workers' Compensation, required by this Contract, shall name the Maricopa County Community College District (MCCCD), its agents, representatives, officers, directors, officials, employees, volunteers, and consultants as Additional Insured, and shall specify that insurance afforded the Construction Manager shall be primary insurance, and that any insurance coverage carried by the entity or its employees shall be excess coverage, and not contributory coverage to that provided by the Construction Manager.

8.1.1.2 All insurance policies required herein shall be maintained in full force and effect until all Work required to be performed under the terms of the Contract is satisfactorily completed and formally accepted, or other insurance with equal or greater protection (such as during the construction phase) is in place. Failure to do so may constitute a material breach of this Contract upon which MCCCD may immediately terminate the Contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by MCCCD shall be repaid by Construction Manager to the MCCCD upon demand, or MCCCD may offset the cost of the premiums against any monies due to the Construction Manager from MCCCD. Costs for coverages maintained by Construction Manager in excess of those required shall not be charged to the MCCCD without prior written approval of MCCCD.

The Construction Manager's insurance shall be primary insurance as respect MCCCD, and any insurance or self insurance maintained by MCCCD shall be excess of the Construction Manager's and shall not contribute to it. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect MCCCD.

The policies may provide coverage that contains deductible or self-insured retentions. Such deductible and/or self insured retentions shall not be applicable with respect to the coverage provided to MCCCD under such policies. The Construction Manager shall be solely responsible for deductibles and/or self-insured retentions and MCCCD, at its option, may require the Construction Manager to secure the payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit. (However, evidence of qualified self-insured status will satisfy this agreement.) The insurance policies that contain deductibles or self-insured retentions in excess of \$100,000 per occurrence shall not be acceptable without the prior approval of MCCCD.

8.1.1.3 MCCCD reserves the right to request and to receive, within 10 working days, complete certified copies of any or all of the policies and/or endorsements. MCCCD shall not be obligated, however, to review same or to advise Construction Manager of any deficiencies in such policies and endorsements, and such receipt shall not relieve Construction Manager from, or be deemed waiver of, MCCCD's right to insist on, strict fulfillment of Construction Manager's obligations under this Contract.

At the execution of this Contract, Construction Manager shall furnish the MCCCD Risk Manager with Certificates of Insurance, or formal endorsements as required by the Contract, issued by Construction Manager's insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this Contract are in full force and effect. Such Certificates and endorsements shall identify the Contract or Project. Each insurance policy required by this Contract shall be endorsed to state the coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by regular mail has been given to the MCCCD Risk Manager. Such notice shall be sent directly to:

Len Wonsey, Purchasing
Maricopa County Community College District
2411 W. 14th Street
Tempe, AZ 85281

The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the MCCCD before work commences. In the event any insurance policy(ies) required by this Contract is(are) written on a "claims made" basis, coverage shall extend for two years past completion

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and acceptance of the Construction Manager's work or services and as evidenced by annual certificates of insurance. If a policy expires during the life of the Contract, a renewal certificate must be sent to MCCCDC thirty (30) days prior to the expiration date.

8.1.1.4 Required Coverages

1. Construction Manager shall maintain Commercial General Liability insurance with an unimpaired limit of liability of not less than \$5,000,000 for each occurrence with a \$1,000,000 Products and Completed Operations Aggregate and a \$5,000,000 General Aggregate Limit. The general aggregate limit shall apply separately to the Work under this Contract or the general aggregate shall be twice the required per occurrence limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products/completed operations, and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Contract.
2. Such policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, or any provision that would serve to limit third party over claims.
3. Construction Manager shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to any of the Construction Manager's owned, hired, and non-owned vehicles assigned to or used in performance of the Construction Manager's Work. Coverage will be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 0011293, or any replacements thereof). Such insurance shall include coverage for loading and off loading hazards. If hazardous substances, materials, or wastes are to be transported, MCS 90 endorsement shall be included and \$5,000,000 per accident combined single limits for bodily injury and property damage shall apply.
4. The Construction Manager shall carry Workers' Compensation insurance to cover obligations imposed by Federal and State statutes having jurisdiction of Construction Manager's employees engaged in the performance of the Work, and Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease policy limit. In case any work is subcontracted, the Construction Manager will require the Subconsultant to provide Workers' Compensation and Employer's Liability insurance to at least the same extent as required of the Construction Manager.
5. Failure on the part of Construction Manager to procure or maintain required insurance shall constitute a material breach upon which the OWNER may immediately terminate this Agreement, or, at its discretion, procure or renew such insurance and pay any and all premiums, and all monies paid by the OWNER shall be repaid by Construction Manager to the OWNER upon demand, or the OWNER may offset the cost of premiums against any monies due to Construction Manager.
6. Required coverages may be modified by an amendment to this Agreement.

8.2 INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER DURING THE CONSTRUCTION PHASE

During the Construction Phase of the Work, the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A201, Article 11, which shall be supplied to the Owner as a pre-condition to the Owner issuing the Notice to Proceed.

~~8.1.2 During both phases of the Project, the Construction Manager shall purchase and maintain insurance as set forth in of AIA Document A201 Paragraph 11.1. Such insurance shall be written for not less than the following limits, or greater if required by law:~~

~~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 coverages and limits for such insurance shall be as follows:~~

~~8.1.2 Commercial General Liability including coverage for Premises Operations, Independent Contractors' Protective, Products Completed Operations, Contractual Liability, Personal Injury, and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards)~~

~~Each Occurrence
General Aggregate
Personal and Advertising Injury
Products Completed
Operations Aggregate~~

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~~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 period of at least 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 AIA Document A201 under Paragraph 3.18.~~

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

~~§ Each Accident~~

~~8.1.4 Other coverage:~~

~~(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.)~~

8.3 INSURANCE REQUIRED OF THE OWNER

During both phases of the Project, the Owner shall purchase and maintain **the Owner's usual** liability and property insurance, including waivers of subrogation, ~~as set forth in Paragraphs 11.2 and 11.3 of AIA Document A201. Such insurance shall be written for not less than the following limits, or greater if required by law:~~

~~8.3.1 Property Insurance:~~

~~Deductible Per Occurrence
Aggregate Deductible~~

~~Boiler and Machinery insurance with a limit of:~~

~~(If not a blanket policy, list the objects to be insured.)~~

8.4 PERFORMANCE BOND AND PAYMENT BOND

~~8.4.1 The Construction Manager shall furnish bonds covering the faithful performance of the Contract and payments of obligations arising hereunder as required by law and as required by Article 11 of the AIA A201 Document. The cost of the bonds shall be included in the Cost of the Work. (insert "shall" or "shall not") furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Construction Manager's usual source and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to percent (+) of the Contract Sum.~~

~~8.4.2 The Construction Manager shall deliver the required bonds to the Owner as a pre-condition to the Owner issuing the Notice to Proceed at least three days before the commencement of any Work at the Project site.~~

~~8.4.3 Subcontractors are not required to be bonded by the Owner and no subcontract's bond shall be part of this Agreement or GMP without the prior written approval of the Owner. If the Construction Manager still wishes to bond subcontractors, he may do so at his own cost.~~

ARTICLE 9 MISCELLANEOUS PROVISIONS

9.1 DISPUTE RESOLUTION DURING THE PRECONSTRUCTION PHASE

~~9.1.1 Any claim or dispute between the Construction Manager and the Owner arising out of or relating to this Contract, which has not been resolved in a manner acceptable to both the Consultant and the Owner, shall be resolved pursuant to the Maricopa County Community College District Purchasing Procedures Manual, Section 902, "Contract Claims and Dispute Resolution", which can be found at <http://www.maricopa.edu/purchasing/pmanual/902.htm>.~~

~~Claims, disputes or other matters in question between the parties to this Agreement which arise prior to the commencement of the Construction Phase or which relate solely to the Preconstruction Phase services of the Construction Manager or to the Owner's obligations to the Construction Manager during the Preconstruction Phase, shall be resolved by mediation or by arbitration.~~

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~~9.1.2 The parties agree that the Claims Procedures and Legal Remedies set forth or identified in this Article 9 shall be the exclusive means for resolving disputes arising under the Contract. Construction Manager acknowledges and understands that it must follow this process before instituting any judicial proceeding and that all decisions reached, along with their reasoning, shall become part of the legal record of any proceeding.~~

~~Any mediation conducted pursuant to this Paragraph 9.1 shall be held in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, unless the parties mutually agree otherwise. Demand for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. Any demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based upon such claim, dispute or other matter in question would be barred by the applicable statute of limitations or notice of claim statute.~~

~~9.1.3 No suit or action shall be commenced hereunder by any claimant other than in the Arizona Superior Court for Maricopa County. The procedures described in Paragraphs 9.1.1 and 9.1.2 for resolving claims shall be exhausted before any lawsuit may be filed.~~

~~Any claim, dispute or other matter in question not resolved by mediation shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise.~~

~~9.1.4 Nothing in this Contract shall be construed to waive the requirements of Arizona Revised Statutes Sections 12-820 et seq. In addition the requirements of the Contract, the Construction Manager shall file any notice of claim under the Contract within the time limits and in the manner specified in Arizona Revised Statutes Section 12-821.01.~~

~~Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration may be made concurrently with a demand for mediation and shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based upon such claim, dispute or other matter in question would be barred by the applicable statute of limitations.~~

~~9.1.5 Unless otherwise agreed in writing, the Construction Manager shall carry on the work and maintain its progress during the resolution of any claim or controversy and the Owner shall continue to make payments that are due and owing to the Construction Manager, and not in dispute, in accordance with this Contract.~~

~~No arbitration arising out of or relating to the Contract Documents shall include, by consolidation or joinder or in any other manner, the Architect, the Architect's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the Architect, Owner, Construction Manager and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Construction Manager, a separate contractor as described in Article 6 of AIA Document A201 and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the Owner or Construction Manager or a separate contractor as described in Article 6 of AIA Document A201 shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute agreement to arbitration of a dispute not described in such consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

~~9.1.6 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

9.2 DISPUTE RESOLUTION DURING THE CONSTRUCTION PHASE

~~9.2.1 Any other claim, dispute or other matter in question arising out of or related to this Agreement or breach thereof shall be settled in accordance with Article 4 Paragraphs 4.3, 4.4 and 4.5 of AIA Document A201, except that in addition to and prior to arbitration, the parties shall endeavor to settle disputes by mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise. Any mediation arising under this Paragraph shall be conducted in accordance with the provisions of Subparagraphs 9.1.2 and 9.1.3.~~

9.3 OTHER PROVISIONS

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9.3.1 Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in the ~~1987 Edition of AIA Document A201, General Conditions of the Contract for Construction.~~

9.3.2 EXTENT OF CONTRACT

This ~~The~~ entire Contract, which includes this Agreement and the other **Contract Documents, as defined in AIA Document A201**, or documents incorporated herein by reference, represents the entire and integrated agreement between the Owner and Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager. ~~If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.~~

9.3.3 OWNERSHIP AND USE OF DOCUMENTS

The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Construction Manager, are for use solely with respect to this Project. They are not to be used by the Construction Manager, Subcontractors, Sub-subcontractors or suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of the Owner and Architect. The Construction Manager, Subcontractors, Sub-subcontractors and suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents.

9.3.4 GOVERNING LAW

The Contract shall be governed by the law of ~~the State of Arizona~~ **the State of Arizona** ~~the place where the Project is located.~~

9.3.5 ASSIGNMENT

The Owner and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. **The parties may assign the Contract only as provided in Paragraph 13.2 of AIA Document A201.** ~~Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.~~

9.3.6 RECOVERY OF LEGAL COSTS AND FEES

The prevailing party in any litigation arising out of this Agreement shall be entitled to recover attorneys fees and other reasonable, substantiated costs associated with the litigation from the other party based upon the reasonable hourly rate for attorneys with similar experience in the community.

9.3.7 CANCELLATION DUE TO FAILURE TO FUND

Each payment obligation of the Owner created hereby is conditioned upon the availability of funds which are allocated for the payment of such an obligation. If funds are not allocated and available for the continuance of the Contractor's services, this Agreement may be terminated by the Owner at the end of the period for which funds are available. The Owner shall notify the Contractor at the earliest possible time if the Contractor's services will or may be affected by a shortage of funds. No penalty shall accrue to the Owner in the event this provision is exercised, and the Owner shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph. This provision shall not be construed so as to permit the Owner to terminate this Agreement solely in order to acquire similar services from another Contractor.

9.3.8 CONFLICT OF INTEREST

Consistent with the Maricopa Community College District Purchasing Procedures Manual, Section 401: Specifications, no person preparing or assisting in the preparation of specifications, plans or scopes of work shall receive any direct benefit from the manufacturer, supplier or sales representative for the utilization of those specifications, plans or scopes of work. Contractor or Architect recommendations shall be made only to provide the best value to, and be in the best interest of, the Owner. A violation of the clause may be considered a material breach of the terms of this Agreement.

9.4 INDEMNIFICATION

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To the fullest extent permitted by law the Construction Manager shall defend, indemnify and hold harmless the Owner, Architect, Architect's Consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, court costs and the cost of appellate proceedings, arising out of the negligent acts or omissions of the Construction Manager, it's Subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to any party or person described in this Paragraph 3.18 of the General Conditions for Construction.

**ARTICLE 10
TERMINATION OR SUSPENSION**

10.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE

10.1.1 Prior to execution by both parties of an Amendment No. 1 establishing the Guaranteed Maximum Price, the Owner reserves the right, at its discretion and without cause, to may terminate this Contract at any time, and the Construction Manager may terminate this Contract for any of the reasons described in Subparagraph 14.1.1 and 14.1.2 of AIA Document A201. In the event the Owner terminates any or all of the services or any part of the services as herein provided, the Owner will notify the Construction Manager in writing. After receiving such notice, the Construction Manager will immediately discontinue advancing the Work specified under this Agreement and mitigate the expenditure, if any, of costs resulting from such abandonment or termination. The Construction Manager, upon such termination or abandonment, will promptly deliver to the Owner all reports, estimates and other work or Deliverable entirely or partially completed, together with all unused materials supplied by the Owner. The Owner will have the right to inspect the Construction Manager's work or Deliverable to appraise the work completed.

10.1.2 If the Owner or Construction Manager terminates this Contract pursuant to this Paragraph 10.1 prior to commencement of the Construction Phase, the Construction Manager shall be equitably compensated for Preconstruction Phase services actually performed prior to its giving or receipt of notice of termination and the reasonable costs and expenses attributable to such termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Subparagraph 4.1.1 and shall not include any anticipated overhead or profit on any Work that was not executed. If there is no mutual agreement, the final determination will be made in accordance with paragraph 9.1, "Disputes During the Pre-Construction Phase". The Owner will make the final payment within sixty Days after the Construction Manager has delivered the last of the partially or otherwise completed work items and the final fee has been agreed upon.

10.1.3 If the Owner or Construction Manager terminates this Contract pursuant to this Paragraph 10.1 after commencement of the Construction Phase, rights and obligations of the parties shall be governed by Article 14 of AIA Document A201. In no event shall the Construction Manager be entitled to payment of any anticipated overhead or profit or any Work that was not executed. the Construction Manager shall, in addition to the compensation provided in Subparagraph 10.1.2, be paid an amount calculated as follows:

~~.1 Take the Cost of the Work incurred by the Construction Manager.~~

~~.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Paragraph 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Paragraph, an amount which bears the same ratio to that fixed sum Fee as the Cost of Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion.~~

~~.3 Subtract the aggregate of previous payments made by the Owner on account of the Construction Phase.~~

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Clause 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 or Article 14 of AIA Document A201, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

10.1.4 Subcontracts, purchase orders and rental agreements entered into by the Construction Manager with the Owner's written approval prior to the execution of Amendment No. 1 shall contain provisions permitting assignment to the Owner as described above. If the Owner accepts such assignment, the Owner

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shall reimburse or indemnify the Construction Manager with respect to all costs arising under the subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager shall terminate such subcontract, purchase order or rental agreement and the Owner shall **not have any obligation to** pay the Construction Manager the costs necessarily incurred by the Construction Manager by reason of such termination.

10.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE

Subsequent to execution by both parties of Amendment No. 1, the Contract may be terminated as provided in Article 14 of AIA Document A201.

~~10.2.1 In the event of such termination by the Owner, the amount payable to the Construction Manager pursuant to Subparagraph 14.1.2 of AIA Document A201 shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Subparagraphs 10.1.2 and 10.1.3 of this Agreement.~~

~~10.2.2 In the event of such termination by the Construction Manager, the amount to be paid to the Construction Manager under Subparagraph 14.1.2 of AIA Document A201 shall not exceed the amount the Construction Manager would be entitled to receive under Subparagraphs 10.1.2 or 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, including a reasonable estimate of the Cost of the Work for Work not actually completed.~~

10.3 SUSPENSION

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201; in such case, the Guaranteed Maximum Price, if established, shall be increased as provided in Subparagraph 14.3.2 of AIA Document A201 except that the term "cost of performance of the Contract" in that Subparagraph shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Construction Manager's Fee as described in Subparagraphs 5.1.1 and 5.3.4 of this Agreement.

10.4 CONFLICT OF INTEREST

This Agreement may be terminated by the Owner pursuant to A.R.S. Section 38-511, regarding Conflict of Interest of Officers and Employees.

10.5 LEGAL WORKING REQUIREMENTS

As mandated by Arizona Revised Statutes § 41-4401, MCCCDC is prohibited from awarding a contract to any contractor who fails, or whose subcontractors fail, to comply with Arizona Revised Statutes §23-214-A, which requires that employers verify the employment eligibility of their employees through the Federal E-verify system. An "employer" is an independent contractor, a self-employed person, the State of Arizona or any of its political subdivisions, or any individual or type of organization that transacts business in the State of Arizona, that has a license issued by an agency in the State and that employs one or more employees in the State. (See A.R.S. §23-211-4.) Therefore, in signing or performing any contract for MCCCDC, the Contractor fully understands that:

- A. It warrants that both it and any subcontractors it may use comply with all federal immigration laws and regulations that relate to their employees and with A.R.S. § 23-214-A;*
- B. Any breach of that warranty is material and is subject to penalties up to and including immediate termination of the contract; and*
- C. MCCCDC or its designee is authorized by law to randomly inspect the records relating to an employee of the Contractor or any of its subcontractors who works on the contract to ensure compliance with the warranty made in Paragraph A above.*

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**ARTICLE 11
OTHER CONDITIONS AND SERVICES**

11.1 INITIAL AGREEMENT IS FOR PRE-CONSTRUCTION PHASE SERVICES ONLY

11.1.1 This Agreement initially is for Pre-Construction Phase services only, as defined in Sections 2.1 and 2.2. Paragraphs and sections in Articles 3, 8, 9, 10 and 11, as applicable only to Pre-Construction Phase services, also shall apply as part of this initial Agreement.

11.1.2 When the Contractor offers and the Owner accepts a Guaranteed Maximum Price (GMP) per Paragraph 2.2, and the Owner-Contractor Agreement in Exhibit I is signed by both parties, the portion of the services and Work covered by the accepted GMP will convert the Pre-construction Phase Services Agreement to a Construction Services Agreement, which will include the balance of the A121 document, as well as the A201 General Conditions document. If multiple GMP's are offered for phased work, only the work within the accepted GMP converts to a construction services Agreement; the balance of the work remains Pre-Construction phase services.

11.1.3 If no GMP is proposed, or the GMP offered is not acceptable to the Owner, this Agreement terminates per Paragraph 10.1.

11.1.4 The intent of this initial Pre-Construction Phase agreement is to be in compliance with A.R.S. §42-5075, which allows Pre-construction phase services in a Construction Manager at Risk contract to be exempt from the transaction privilege tax.

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

OWNER

CONSTRUCTION MANAGER

Maricopa Community College District _____

BY Michael McIntier, CPPO, C.P.M.,
Director Strategic Business Support Services

BY _____

Date _____

Date _____

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EXHIBIT A
DESIGN, CONSTRUCTION AND EQUIPMENT BUDGET

Date: _____ Consultant: _____

Owner: The Maricopa County Community College District

Project: _____

Location _____

Source of Funds: _____

Owner Project Number: _____

Gross Sq. Ft.: (See Education Specification)

The not-to-exceed Fixed sums established by the Owner for the construction of the Project is:

- | | |
|---|----|
| 1. a) Budget for Building Construction* to exclude site improvements | \$ |
| b) Budget for site improvements | \$ |
| c) Design Contingency fund ____% of Items 1a and 1b: | \$ |
| d) Construction Contract Award Price (CCAP)- Includes Guaranteed Maximum Price (GMP) and General Conditions for construction, as well as CMAR fee for the construction period at time of Contractor | \$ |

* The following items are included in the building construction and NOT considered FF&E: all fixed/permanently installed casework (including science laboratory casework and top surfaces), chalk and markerboards, tack and bulletin boards, projections screens, window blinds, interior signage and projection screens. Other FF&E items that may be added to the construction budget will be defined and budgeted for during programming or Schematic Design.

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EXHIBIT B
CRITICAL DATE SCHEDULE

Project _____
Campus _____

The following tabulation reflects milestone completion dates to accomplish the scheduled completion of each line item. All dates are the latest acceptable finish dates for each activity.

Schedule

Execute Owner/Consultant Agreement _____
Execute Owner/Construction Manager at
Risk Agreement _____
Programming _____
District Review _____
Schematic Design Submittal _____
District Review _____
Design Development Submittal _____
District Review _____
Construction Document Submittal _____
District Review _____
Guaranteed Maximum Price _____
Receive Sub-Bids and Final Pricing _____
Submit for Board Approval to Award _____
Award _____
Notice to Proceed _____

Early Construction Phase <> Start <Completion

Date for <>

Early Construction Phase <> Start <Completion

Date for <>

Substantial Completion _____ <> calendar days

**<Data Room(s): To be complete and ready for use 14 Days
ahead of Substantial Completion**

Final Completion _____ <> calendar days

Warranty Period Two years, plus specific item or
assemblies listed to be longer as
required by the Contract Documents

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EXHIBIT C
DETAILED PROJECT DESCRIPTION OR EDUCATION SPECIFICATION

(incorporated by reference)

Maricopa Community Colleges
Educational Specification for Construction/Remodeling
Statement of Program Requirements

for the
< Community College <project name

dated as <revised <d/m/y

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EXHIBIT D
CONSTRUCTION MANAGER SCOPE OF SERVICES

- 1. Evaluate the project budget.
- 2. Develop a Construction Management plan including costs and time parameters, protocol and a complete management information system for the Project.
- 3. Establish, monitor and enforce a Project schedule that includes a construction schedule.
- 4. Provide value engineering and constructability reviews within the overall design parameters.
- 5. Prepare complete, line item project cost estimates for 100% Design Development, and 50% and 100% Contract Documents phases, and review these with the Architect's and/or Owner's estimates. The Owner may request either an independent estimate at each stage or require an independent review and confirmation, in general, of the Construction Manager's detailed estimate. Should the estimates between parties not be in reasonable agreement, the Architect and Construction Manager will meet, review and resolve differences and discrepancies, and then provide to the Owner a jointly agreed upon final cost estimate for that phase.
- 6. Prepare pricing package documents for subcontractor bids, and consult with, and where applicable, assist or receive assistance from the Architect in preparation of bid packages, including Division One specifications.
- 7. Analyze construction market and promote the Project to obtain maximum subcontractor and supplier interest and bid competition.
- 8. Identify, qualify and recommend selection of subcontractors for the bid list. All subcontracted work shall be made through a qualifications based selection process followed by competitive pricing except as allowed in the Contract for Work that the Construction Manager desires to provide with his own personnel or with the Owner's written consent.
- 9. Manage and evaluate subcontractor and supplier bidding.
- 10. Subject to the Owner's and Architect's right to disapprove, award and administer the subcontract and materials purchases.
- 11. Obtain approvals and permits from regulatory agencies.
- 12. Establish and maintain a Project financial report and Project team communications information system.
- 13. Provide the following on-site services:
 - a. Coordinate subcontractors and the Construction Manager's own consultants.

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- b. *Create, monitor and enforce the construction schedule.*
 - c. *Analyze, negotiate and process change orders for the Architect's review and Owner's approval.*
 - d. *Prepare Project reports and schedules.*
 - e. *Develop and implement a quality assurance plan and site safety plan, accepting responsibility for contractor safety programs.*
 - f. *Maintain the record document set.*
 - g. *Prepare punch list for each trade or subcontractor, and assist in Substantial Completion and Final Completion inspections.*
 - h. *Prepare Contractor payment applications, and obtain partial lien releases from each subcontractor who supplied work, and each supplier who provided materials in the prior pay period.*
 - i. *Provide other services normally provided by the general contractor.*
14. *Provide, or coordinate subcontractor provided, Owner training; prepare and complete record documents; provide as-built CAD/D utility location records of all site utilities installed or relocated as part of the Project; assist in receiving and preparing close-out documents including without limitation, warranties, operating and maintenance manuals, etc.*
15. *Coordinate installation and hook-ups of Owner supplied, Contractor installed equipment, as specified in the Contract Documents, as well as coordinate and cooperate as needed with other outside Owner contracts for furniture, audio/visual equipment, data and telephone systems and wiring, etc.*
16. *Manage transfer of building operations to Owner.*

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EXHIBIT E
CONSTRUCTION MANAGER FEE PROPOSAL

1. Construction Manager Proposal and Fee for Pre-Construction and Post Construction Phase Services, dated <>, attached
2. Construction Manager Proposal and Fee for Construction Phase Services, dated <>, attached

The total proposed Pre-Construction Phase Fee is as follows:

GMP Pre-Construction Phase Services Fee Proposal Summary		AMOUNT
A.	Owner's Total GMP Budget from Exhibit A	\$0
Pre-Construction Phase Fees and Costs		RATE
B.	Construction Manager's Pre-Construction Phase Fee	0.0% ¹
C.	Construction Manager's Pre-Construction Phase Allowance for Reimbursable Expenses	
D.	TOTAL PRE- CONSTRUCTION PHASE FEE	\$0

Construction Phase Fees and Costs		RATE
E.	Construction Fee	0.0% ²
F.	General Conditions \$<> cost per month*, based upon <> months construction duration. <i>Provide a detailed, line item breakdown as an attachment.</i>	0.0% ³
G.	Payment and Performance Bond* cost of \$<>/\$1000	0.0% ³
H.	Insurance* Liability rate of \$<>/\$1000 and Builder's Risk rate of \$<>/\$1000	0.0% ³
I.	Sales Tax Rate*	0.0%

* Determined at the time of original Agreement negotiation. These amounts/percentages may adjust later by mutual consent if Project scope or situations merit it.

Formulas:

1. Pre-Construction Phase percentage fee is the percentage applied to the total GMP budget in A.
2. Construction Fee is calculated as a percentage applied to the total cost of the work that includes all direct costs, labor, materials, sub-contracts, tax, insurance, bond, and general conditions.
3. Rates (Percentages) are calculated by dividing each amount by A, such as B/A, E/A, etc.

BE SURE TO FILL IN PRE-CONSTRUCTION PHASE FEE IN 4.1.1

BE SURE TO FILL IN CONSTRUCTION PHASE FEE IN 5.1.1

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EXHIBIT F

General Conditions of the Contract for Construction

(Based upon AIA Document A201-97 with Maricopa County Community College District modifications)

(attachment)

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EXHIBIT G
Construction Close Out Requirements

Submit the following as specified herein and as per the various Sections of the specifications.

1. **Project Record Documents.** Provide one reproducible set and two CD-ROMs of the electronic As-Built drawings.
2. **Extra materials.** Provide signed receipts for all extra materials or other items called out in sections of the Specifications to be turned over to the Owner. Unless a receipt is provided, another set of materials or items shall be provided.
3. **Finishes List.** Provide a complete list of all finishes used on this project including material, brand name, model/color/line/serial number, etc.
4. **Recording Shop Drawings.** Maintain Shop Drawings as record documents; legibly annotate appropriate drawings to record changes made after review.
5. **Submittals.** Provide one full set of the final and approved shop drawings and submittals to the Owner at the close-out of the project.
6. **Building Official's Certificate of Occupancy (MUST BE RECEIVED IN TIME TO ALLOW OCCUPANCY ON DATE REQUIRED IN CONTRACT DOCUMENTS.)**

RECORDING AS-BUILT DRAWINGS

1. The Owner will furnish the Contractor one (1) complete set of new prints of the drawings at the beginning of the Work. The Contractor and/or Sub-contractor under his direction shall record each and every change from the Contract Documents at the time it is made. This includes any changes that are made in partitions, doors, or otherwise in arrangement of construction of buildings as well as a complete record of exact manner in which electrical and mechanical work, piping, etc., are installed. Dimensions shall be included where necessary to accurately locate piping and other items that will be concealed in the finished building and on the site that may later be necessary to service. Markings on reproducible materials shall be in dark ink or pencil. No "white out" or similar material should be used. Markings on paper drawings should be in red pencil, made dark and clear enough to reproduce via photocopy process.
2. Keep As-Built Drawings current on a weekly basis and available for inspection by the Owner's Construction Administrator on a monthly basis.

Failure to show evidence of current changes may delay processing of the Contractor's payment application.

Legibly mark to record the following, as they occur, transferring this information to final As-Built drawings:

- a. Vertical location of underground utilities, including electrical, and appurtenance referenced to permanent surface improvements.
- b. Field changes of dimensions and detail.
- c. Change made by Change Order.
- d. Details not on original Contract Drawings.
- e. References to all RFI's, ASI's and change orders which, in any fashion, alter the information on the drawings or within the specifications.

All RFI's, ASI's or change orders referenced on the face of the drawings as part of the As-Built information either shall be taped to the drawing sheet with the reference (without covering or obscuring other information on the

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sheet) or taped to a separate blank drawing sheet that is the same size as the rest of the sheets and then bound into the drawing set. References to files or a separate binder are not acceptable.

3. Final CAD/D Record Drawings

The final Record Drawings consist of a set of electronic files and set of subsequent reproducible drawings that update the original Drawings indicating all field changes that were made to adapt to field conditions, changes resulting from Supplemental Instructions or Contract Change Orders, and all concealed and buried installation of piping, conduits and utilities services installed or changed as part of this Work. All buried and concealed items both inside and outside the facility shall be accurately located on the final Record Drawings as to the depth and in relationship to not less than two permanent features, such as interior or exterior wall faces or corners. Also include hard copies and electronic copies of all systems designed by subcontractors, such as fire sprinklers or fire alarm systems.

The Record Drawings shall be clean and all changes, corrections and dimensions shall be made in a neat and legible manner in contrasting color or bubble indicating the changes. All RFI's, ASI's, Change Orders, etc. that are referenced in the final Record Drawings shall be attached or included in the Drawings' electronic files; cross referencing alone to an unattached document is not acceptable. CAD/D drawings shall be in Auto-CAD format; confirm which release with the Owner. Provide two CD-ROM's and one set of reproducible drawings of the Final Record Documents. The Contractor may work with or sub-contract this work to the Architect at his option and be responsible for any additional costs by the Architect.

4. Utilities Locations

Retain a professional utilities locating firm to identify, locate and record the locations of **all** new and modified site utilities on the project, beginning at the outside face of the building. This firm shall produce an electronic file in AutoCad format (confirm version with Owner). The Owner will provide information on colors, pen weights, symbols and nomenclature to be used so that this file can be inserted into existing electronic documents showing utilities. Utilities may be located either relative to a permanent site feature that existed prior to the construction associated with this project, or be located relative to the new work. If utilities are shown relative to the new project, the new building shall also be accurately located by locating at least two corners versus two other permanent site features that existed prior to this Work.

Accompany final submittal with transmittal letter to Owner containing:

1. Date
2. Project title and number
3. Contractor's name and address
4. Title and number of each record document
5. Certification that each document as submitted is completed and accurate.
6. Signature of Contractor, or his authorized representative.

RECORDING SPECIFICATIONS AND BID ADDENDA

Legibly mark up each section of the Specifications to record the following:

- a. Changes made by Change Order and/or Bid Addenda items.
- b. Other matters not originally specified.
- c. Actual selections of the manufacturer or option when more than one choice is listed.

5. **Submittals and Shop Drawings**

Provide one full set of the final and approved shop drawings and submittals to the Owner at the close-out of the project.

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EXHIBIT H
Amendment No. <> to Agreement Between Owner and Construction Manager

Pursuant to Paragraph 2.2 of the Agreement, dated <> between

The Maricopa County Community College District

and _____

(Construction Manager),

for _____

(the Project),

the Owner and Construction Manager establish a Guaranteed Maximum Price and Contract Time for the Work as set forth below and in the Owner-Contractor Agreement shown in Exhibit I:

GUARANTEED MAXIMUM PRICE

The Construction Manager's Guaranteed Maximum Price for the Work, including the estimated Cost of the Work as defined in Article 6 and the Construction Manager's Fee as defined in Article 5, is _____ Dollars (\$<>), which includes a combined Pre-Construction and Construction Phase contingency of _____ Dollars (\$<>), for the Construction Manager's use as defined in Paragraph 2.2.3.

The total proposed GMP, containing the costs per Paragraph 2.2.13, is as follows:

GMP Summary		RATE	AMOUNT
A.	Direct Cost of the Work (Labor, Materials, Equipment, Warranty)	%	\$
INDIRECT COSTS			
B.	General Conditions \$<> cost per month*, based upon <> months construction duration. Provide a detailed, line item breakdown as an attachment to this Exhibit.	%	\$
C.	Contractor's Pre-Construction Phase Contingency (actual direct costs before mark-ups)	%	
D.	Contractor's Construction Phase Contingency (actual direct costs before mark-ups)	%	
E.	Bonds and Insurance		
	E1. Payment and Performance Bond*	%	
	E2. Insurance*	%	
F.	Sales Taxes	%	\$
G.	Construction Fee*	%	\$
H. Owner's Contingency within the GMP		%	\$
I. Total GMP Amendment No. <>		100 %	\$
J. Total of Prior Amendments			\$
K. New Project Total GMP			\$

* Determined at the time of original Agreement negotiation. These amounts/percentages may adjust later by mutual consent if Project scope or situations merit it.

Formulas:

- GMP for this Amendment: $A + B + C + D + E + F + G + H = I$
- Rates (Percentages) are calculated by dividing each amount by I, such as B/I, D/I, and E1/I, etc.

This Price is for the performance of the Work in accordance with the Contract Documents listed and attached to this Amendment and marked **Exhibits H.1 through H.10**, and any additional Exhibits agreed upon by the Owner and Construction Manager listed below, as shown on the following page:

This Agreement is based closely upon the American Institute of Architects 1997 Edition of AIA Document A121, "Standard Form of Agreement Between Owner and Construction Manager, where the Construction Manager is also the Constructor". AIA has not granted specific authorization for this use, nor has Maricopa Community Colleges requested such use. MCCCDC pays an annual license fee for unlimited use of all AIA documents. Our use is intended to be an edited version of the AIA standard documents and not intended to override or avoid copyright or other use of their documents.

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(list of Exhibits for GMP is continued on next page)

- Exhibit H.1** A brief description of the Scope of Work to be performed by Construction Manager and major points that the Construction Manager and the Owner must be aware of pertaining to the scope.
- Exhibit H.2** Drawings, Specifications, Addenda and supplemental or other conditions of the Contract on which the Guaranteed Maximum Price is based, pages <> through <>, dated <> (date stamped and signed by the Construction Manager)
- Exhibit H.3** Allowance items, pages <> through <> dated <>
- Exhibit H.4** A detailed list of assumptions and clarifications made in preparing the Guaranteed Maximum Price, pages <> through <>, dated <>
❖ All assumed or requested changes to the Contract Documents listed by the Construction Manager shall be reviewed with and receive specific written approval of both the Owner and Architect.
- Exhibit H.5** A detailed CPM schedule for the entire Work as required by AIA Document A201 Paragraph 3.10, pages <> through <>, dated <>
- Exhibit H.6** Alternate prices, pages <> through <>, dated <>
- Exhibit H.7** Unit prices, pages <> through <>, dated <>
- Exhibit H.8** A list of the specific *exclusions* of work, costs, or other items that are not contained within the Guaranteed Maximum Price. All Work necessary to complete the Project not listed within the specific exclusions shall be considered to be within the Guaranteed Maximum Price.
❖ No work contained in the Contract Documents and Addenda shall be listed as an exclusion without specific separate written notification to the Owner and specific written agreement by the Owner in advance of submitting the GMP.
- Exhibit H.9** Schedule of Values. A spread sheet with the estimated cost organized by subcontract categories, allowances, bid contingency, general conditions costs, taxes, bonds, insurance, and the Construction Manager's construction phase fee. The supporting document for the spreadsheet must be provided in an organized manner that correlates with the Schedule of Values. The backup information shall consist of the request for bids, bids or price proposals received, detailed breakdown of proposed General Conditions costs, and clarification assumptions used for the particular bid item listed on the schedule of values, if applicable.

In additional columns within the proposed Schedule of Values worksheet, also show the original budget, the final item or line price, use of contingency, balance of contingency remaining if any, allowances, contingency, and other items and the fees that comprise the Guaranteed Maximum Price.
- Exhibit H.10** A Critical Path Method (CPM) construction schedule for the Work.

NOTE: The submittal package must be kept as simple as possible all on 8 ½ x 11 sheets. Color or shading must be kept to a minimum. If used, make sure the color or shading will not affect the reproduction of the submittal in black and white.

(balance of this page is blank. Signature page follows)

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This Amendment Number <> is executed on the _____ day of _____, 200__.

OWNER

CONSTRUCTION MANAGER

Maricopa County Community College District

BY _____

BY _____

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EXHIBIT I
OWNER-CONTRACTOR AGREEMENT

PROJECT: _____

PROJECT ADDRESS: _____

COLLEGE: _____

RFP NO.: _____ OWNER PROJECT NO.: _____

THIS AGREEMENT is dated as of the ____ day of _____, in the year 20 __, by and between Maricopa County Community College District, ("Owner"), whose mailing address is:

MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT
2411 West 14th Street
Tempe, Arizona 85281

and

<contractor name _____

("Contractor"), whose mailing address is:

<address _____

<city/state/zip _____

<phone _____

<contact name _____

< contact e-mail _____

All correspondence, submittals and notices relating to or required under this Contract shall be sent in writing to the above addresses, unless either party is notified in writing by the other of a change in address.

WITNESSETH:

WHEREAS, it is the intention of the Owner to obtain the services of the Contractor to complete all Work as specified in the Contract documents in connection with the construction of:

< project name and description _____

hereinafter referred to as the "Project" or the "Work" and

WHEREAS, the Contractor desires to perform such construction in accordance with the terms and conditions of this Agreement,

NOW, THEREFORE, in consideration of the promises made herein and other good and valuable consideration, the following terms, covenants and conditions are hereby mutually agreed to, by and between the Owner and Contractor:

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Article 1
DEFINITIONS

1.1 All terms in this Agreement which are defined in the Information for Bidders and the General Conditions shall have the meanings designated therein.

1.2 The Contract Documents are as defined in the General and Supplemental Conditions. Such documents form the Contract, and all are as fully a part thereof as if attached to this Agreement or repeated herein.

Article 2
STATEMENT OF WORK

2.1 The Contractor shall provide and pay for all materials, tools, transportation, equipment, temporary facilities and labor; and associated required management, supervision, coordination, professional and non-professional services; and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the Work, as required by the Contract Documents.

2.2 The Contractor shall further provide and pay for all related facilities described in any of the Contract Documents, including all work expressly specified therein and such additional work as may be reasonably inferred therefrom, saving and exception only such items of work as are specifically stated in the Contract Documents not to be the obligation of the Contractor. The totality of the obligations imposed upon the Contractor by this Article and by all other provisions of the Contract Documents, as well as the structures to be built and the labor to be performed, is herein referred to as the "Work."

Article 3
ARCHITECT

3.1 The Owner had retained the following professional services architectural or engineering firm (Architect) who is to act on behalf of the Owner, assume all duties and responsibilities of and have the rights and authority assigned to the Architect in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents. The Architect (as defined in the General Conditions) shall be:

<name _____

<address _____

<city/state/zip _____

<phone _____

<contact name and e-mail _____

provided, however, that the Owner may, without liability to the Contractor, unilaterally amend this Article from time to time by designating a different person or organization to act as its Consultant and so advising the Contractor in writing, at which time the person or organization so designated shall be the Consultant for purposes of this Contract.

3.2 For the purposes of this Agreement, if no Architect is retained, all requirements and responsibilities of the Architect will be provided by the Owner.

Article 4
COMMENCEMENT, CONTRACT TIME AND COMPLETION

4.1 The Contractor shall commence the Work promptly upon the date established in the Notice to Proceed. If there is no Notice to Proceed, the date of commencement of the Work shall be the date of this Agreement or such other date as may be established herein.

4.2 Time is of the essence

The Contractor shall achieve Substantial Completion and Final Completion as defined in the General Conditions, within the time periods stated hereunder taken from the date of Notice to Proceed or the date otherwise established for the commencement of Work. Pursuant to the final approved GMP Proposal established through the procedures described in the pre-construction services contract, the periods allowed for completion of the construction phase Work is as follows:

4.2.1 The entire Work shall be Substantially Complete <on or before the following date <within the number of calendar Days in accordance with the requirements of the Contract Documents, General Conditions or Contract Conditions:

_____ <show date or number of calendar days

4.2.2 The Work shall be complete and ready for Final Completion <on or before the following date <within the number of calendar Days in accordance with the requirements of the Contract Documents, General Conditions or Contract Conditions:

_____ < show date or number of calendar days

The Contractor also shall consider that the Owner needs the complete use of these facilities as quickly as possible. If the Contractor proposes completion of the Work on an accelerated schedule, the requirements within the General Conditions shall be met with regard to early completion and any resulting adjustment to the Date of Substantial Completion.

4.3 Liquidated Damages

4.3.1 Owner and Contractor recognize that time is of the essence to this Agreement and that Owner will suffer financial loss if the Work does not reach Substantial Completion within the times specified in paragraph 4.2.1, above, plus any extensions thereof allowed in accordance with the General Conditions. They also recognize the delays, expense and difficulties involved in proving the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner

< dollars (\$<)

for each consecutive calendar Day (Sundays and holidays included) that expires after the time specified in paragraph 4.2.1 for Substantial Completion of the Work, until the Work reaches Substantial Completion.

4.3.2. Owner and Contractor further recognize that time is of the essence to this Agreement and that Owner will suffer additional financial loss and adverse impact if the Work does not reach Final Completion within the times specified in paragraph 4.2.2 above, plus any extensions thereof allowed in accordance with the General Conditions. They also recognize the delays, expense and difficulties involved in proving the actual loss or adverse impacts suffered by Owner if the Work does not reach Final Completion on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner

< dollars (\$<)

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for each consecutive calendar Day (Sundays and holidays included) that expires after the time specified in paragraph 4.2.2 for Final Completion of the Work until the Work is Accepted.

4.4 Because the District is further damaged or adversely impacted in their ability to properly operate and maintain the Work due to late or incomplete Owner training, and failure to receive complete close out documents including O&M Manuals, as-constructed drawings and specifications. They also recognize the delays, expense and difficulties involved in proving the actual loss or adverse impacts suffered by Owner if the training and full close out of the Work per the Contract Documents is not completed on a timely basis. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as additional liquidated damages for delay (but not as a penalty) Contractor shall pay Owner the following for each calendar day past 30 calendar days following the date of Substantial Completion that these items remain incomplete or absent:

Close-out Completion	<u>\$ 50.00</u>
----------------------	-----------------

4.5 Items in Paragraph 4.4 which remain incomplete after providing a reasonable amount of time to complete past final close out of this Agreement shall result in a deduction of up to ONE PERCENT (1%) of the subcontract Schedule of Values amount for the particular trade or subcontractor. The Owner has sole discretion regarding a reasonable time limit to complete the close out requirements or the application of some or all of the allowed one percent reduction in Contract Price. Only the District Director of Facilities Planning and Development may waive collection of these damages.

4.6 The amount of liquidated damages set forth above shall be assessed cumulatively and independently of each other. Liquidated damages are agreed to because actual damages or adverse impacts in many areas will be difficult or impossible to ascertain. The Agreement also makes provision for recovery of certain known costs in addition to the liquidated damages. This provision for liquidated damages does not bar Owner's right to collect actual costs as stated in the General Conditions, or enforce other rights and remedies against Contractor, including but not limited to, specific performance or injunctive relief.

Article 5
CONTRACT PRICE

5.1 Provided that the Contractor shall strictly and completely perform all of its obligations under the Contract Documents, and subject only to additions and deductions by Change Order or as otherwise provided in the Contract Documents, the Owner shall pay to the Contractor, in current funds and at the times and in the installments hereinafter specified, which is a not-to-exceed amount for the construction phase the sum of

_____ Dollars \$ _____

("Contract Sum") which includes all specific cash and contingencies and allowances which have been computed in accordance with the General Conditions, as well as all applicable sales tax.

Article 6
PROGRESS PAYMENTS and INTEREST

6.1 The Contractor hereby agrees that on or about the twenty-fifth day of the month for every month during the performance of the Work, he will deliver to the Architect an Application for Payment in accordance with the provisions of the General Conditions. This date may be changed upon mutual agreement, stated in writing, between the Owner and Contractor. Payment under this Contract shall be made as provided in the General Conditions.

6.2 All moneys not paid when due as provided in the General Conditions shall bear interest in accordance with Arizona Revised Statutes §41-2577.

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Article 7
CONTRACTOR'S REPRESENTATIONS

In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

7.1. Contractor has examined and carefully studied the Contract Documents, including any Addenda, and all other related data identified in the Construction Documents including "technical data" and geo-technical reports.

7.2. Contractor has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.

7.3. Contractor is familiar with and is satisfied as to all Federal, State, and local Laws and Regulations which may affect cost, progress, performance and furnishing of the Work.

7.4. Contractor is aware of the general nature of work to be performed by Owner and others at the site that relates to the Work as indicated in the Contract Documents.

7.5. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

7.6 Contractor has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site which have been identified in the Contract Documents or been provided to the Contractor as supplemental information to the Contract Documents. Contractor accepts the extent of the data contained in such reports and drawings upon which Contractor is entitled to rely as provided in the General Conditions. Contractor acknowledges that, unless specifically included within or by reference into the Contract Documents, such reports and drawings are not Contract Documents and may not be complete for Contractor's purposes. Contractor has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and underground features or utilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing all the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions an programs incident thereto. Contractor does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

7.6. Contractor has given Architect written notice of all conflicts, errors, ambiguities or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Architect is acceptable to Contractor, and the Contract Documents are sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

Article 8
CONTRACT DOCUMENTS

The Contract Documents, which comprise the entire agreement for construction services between Owner and Contractor concerning the Work, consist of the following:

8.1. Agreement

8.2. Any Addenda issued

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8.3. Performance Bond and Payment Bond

8.4 Notice to Proceed

8.5. General Conditions

8.6 Specifications <including bidability and constructibility review comments, dated XXXX XX, 200X, received by Architect from Contractor, which will be addressed by Architect and issued to Contractor as supplemental information.

8.7. Drawings consisting of a cover sheet and sheets listed in the Index of Drawings <including bidability and constructibility review comments, dated XXXX XX, 200X, received by Architect from Contractor, which will be addressed by Architect and issued to Contractor as supplemental drawings or information.

8.8 Contractor's Bid Proposal <GMP Proposal Form

The Contract Documents may only be amended, modified or supplemented as provided in the General Conditions. The Contractor shall submit the Performance Bond, Labor and Material Payment Bond and Certification of Insurance as required by the Contract Documents.

Article 9
MISCELLANEOUS AND OTHER REQUIREMENTS

9.1. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.2. Owner and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

9.3. Any provision or part of the Contract Documents held to be void or unenforceable under any Law of Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.4 Affirmative Action Requirements

9.4.1. Any Contractor in performing under this contract shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice.

9.4.2. The Contractor will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, gender or national origin, age or disability. Such action shall include but not be limited to the following: Employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training; including apprenticeship as well as all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract.

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9.5 Sudan or Iran Scrutinized Business

9.5.1 Pursuant to Arizona Revised Statutes §35-391.06(A) and §35-393.06(B), Contractor certifies that it does not have a "scrutinized" business operation in either Sudan or Iran, as that term is defined in Arizona Revised Statutes §35-391(15) and §35-393(12) respectively.

9.6 Legal Worker Requirements

9.6.1 As required by Arizona Revised Statutes §41-4401, Owner is prohibited from awarding a contract to any contractor who fails, or whose subcontractors fail, to comply with the requirements to verify the employment eligibility of their employees through the Federal E-verify system. The undersigned entity warrants that it complies fully with all Federal immigration laws and regulations that relate to its employees, that it shall verify, through employment verification pilot programs as jointly administered by the U.S. Department of Homeland Security and the Social Security Administration or any of its successor programs, that the eligibility of each employee hired after December 31, 2007, and that it shall require its subcontractors to provide the same warranties to the Owner. Note that this also applies to all subcontractors and sub-consultants that Contractor may use for this work.

9.6.2 The undersigned acknowledges that a breach of this warranty by the Contractor or any subcontractor under any contract resulting from this Agreement shall be deemed a material breach of the Agreement, and is grounds for penalties, including termination, by the Owner. The Owner reserves the right to inspect records of the Contractor, subcontractors, and employees who perform work under the Contract, to conduct random verification of the employment records of the Contractor and any subcontractor who is part of the Work, to ensure that the Contractor and each subcontractor is complying with the warranties set forth above. Contractor shall be responsible for all costs associated with the compliance of such programs.

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IN WITNESS WHEREOF, the parties, acting through their authorized signatories have set their hands as of the date first above.

OWNER: **MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT**

By: _____

Title: Michael McIntier, CPPO, C.P.M., Director Strategic Business Operations

Date: _____

CONTRACTOR: _____

By: _____

Title: _____

Date: _____

[CORPORATE SEAL]

Attest: _____

License No.: _____

Agent for service of process: _____

(If CONTRACTOR is a corporation, attach evidence of authority to sign.)

This Agreement is based closely upon the American Institute of Architects 1997 Edition of AIA Document A121, "Standard Form of Agreement Between Owner and Construction Manager, where the Construction Manager is also the Constructor". AIA has not granted specific authorization for this use, nor has Maricopa Community Colleges requested such use. MCCCCD pays an annual license fee for unlimited use of all AIA documents. Our use is intended to be an edited version of the AIA standard documents and not intended to override or avoid copyright or other use of their documents.