

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

Editing Template

CAUTION: Take care not to remove or otherwise edit Project Data fill-point areas (Basic Information, Contract Details and Project Team) when making edits to this document.

This AIA Document A133-2009 has been revised with 2010 Arizona Modifications and approved by the Arizona Attorney General's Office.

AGREEMENT made as of the « » day of « » in the year « »  
(In words, indicate day, month and year.)

BETWEEN the Owner:  
(Name, and address)

and the Construction Manager:  
(Name, and address)

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

The Architect:  
(Name, and address)

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

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

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

The Owner and Construction Manager agree as follows.

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

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

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

**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

## TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 3 OWNER'S RESPONSIBILITIES
- 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 6 COST OF THE WORK FOR CONSTRUCTION PHASE
- 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 8 INSURANCE AND BONDS
- 9 DISPUTE RESOLUTION
- 10 TERMINATION OR SUSPENSION
- 11 MISCELLANEOUS PROVISIONS
- 12 SCOPE OF THE AGREEMENT

### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Supplementary and other Conditions of the Contract as defined in Article A.1.1.6 of AIA Document A133-2009, Exhibit A, the AIA Document A201-2007 with Arizona Modifications last approved by the Office of the Attorney General as of the date of this agreement, the Special Terms and Conditions, the Uniform Terms and Conditions, all documents cited or incorporated in the Special Terms and Conditions and the Uniform Terms and Conditions, Drawings, Specifications, Addenda issued prior to this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. Conflicts among any of these documents shall be resolved according to the Order of Precedence as stated in the Special Terms and Conditions or, in the absence of an Order of Precedence clause in the Special Terms and Conditions, conflicts shall be resolved according to the Order of Precedence clause stated in the Uniform Terms and Conditions. Project Manual, written specifications and drawing notes take precedence over illustrated descriptions.

#### § 1.2 Relationship of the Parties

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

#### § 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2007 with Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement, General Conditions of the Contract for

Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2007 with Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement, which document is incorporated herein by reference. The term "Contractor" as used in A201–2007 with Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement, shall mean the Construction Manager. The term "Architect" as used in this document and the A201-2007 with Arizona Modifications, as last approved by the Arizona Office of the Attorney General as of the date of this Agreement, shall mean the Design Professional.

## ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3 but under no circumstances shall construction proceed prior to execution of the Guaranteed Maximum Price Amendment. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### § 2.1 Preconstruction Phase

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

#### § 2.1.1.1 Construction Management Plan

The Construction Manager shall prepare a Construction Management Plan for the Project. In preparing the Construction Management Plan, the Construction Manager shall consider the Owner's schedule, cost, and design requirements for the Project. The Construction Manager shall then develop various alternatives for the sequencing and management of the Project and shall make recommendations to the Owner. The Construction Management Plan shall also include a description of the various bid packages recommended for the Project. The Construction Management Plan shall be developed by the project team based upon mutual concurrence.

#### § 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings at least one in each month or as determined by the Architect and Owner with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

#### § 2.1.3 Preliminary Project Schedule

When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Preliminary Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Preliminary Project schedule relating to the performance of the Architect's services. The Preliminary Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. As design proceeds, the Preliminary Project Schedule shall be updated. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; preparation and processing of shop drawings and samples; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner showing portions of the project having occupancy priority, and proposed date of Substantial Completion.

##### § 2.1.3.1 Master Schedule

In accordance with the Construction Management Plan, the Construction Manager shall prepare a Master Schedule for the Project. The Master Schedule shall specify the proposed start and finish dates for each project activity and

the dates by which certain construction activities must be complete. The Construction Manager shall submit the Master Schedule to the Owner for acceptance.

#### § 2.1.3.2 Design Phase Milestone Schedule

After the Owner accepts the Master Schedule, the Construction Manager shall prepare a Milestone Schedule for the Design Phase. The Design Phase Milestone Schedule may be used in the request for qualifications and contract for the Design Professional and shall be used as a method for judging progress during the Design Phase.

#### § 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction and the issuance of drawings and specifications to facilitate phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

##### § 2.1.4.1 Revisions to the Construction Management Plan

During the Design Phase, the Construction Manager shall make recommendations to the Owner regarding revisions to the Construction Management Plan. Revisions approved by the Owner shall be incorporated into the Construction Management Plan and accepted by the Owner.

##### § 2.1.4.2 Design Phase Information

The Construction Manager shall monitor the Design Professional's compliance with the Construction Management Plan and shall coordinate and expedite the flow of information between the Owner, Design Professional and others.

#### § 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggest alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

##### § 2.1.5.3 Project and Construction Budget

Based on the Construction Management Plan, the Construction Manager shall prepare a Project and Construction Budget based on separate divisions of the work required for the Project. The Construction Manager shall submit the Project and Construction Budget to the Owner for acceptance. The Project and Construction Budget shall be revised as directed by the Owner.

#### § 2.1.6 Subcontractors and Suppliers

If the Owner included its subcontractor selection plan in the request for qualifications, the Owner's subcontractor selection, and the procedures proposed by the Construction Manager at Risk submitting its qualifications with those modifications to the procedures as the Owner and the Construction Manager at Risk agree, is hereby incorporated by reference.

If the Owner did not include its subcontractor selection plan in the request for qualifications, the subcontractor selection plan proposed by the Construction Manager at Risk in submitting its qualifications, with those modifications as the Owner and the Construction Manager at Risk agree, is hereby incorporated by reference.

The Construction Manager shall furnish to the Owner and Architect for their information, a list of possible Subcontractors including (see 2.1.8.22 and 2.3.2.1) suppliers who are to furnish materials or equipment fabricated to a special design. The Architect will promptly reply in writing to the Construction Manager if the Architect or

Owner know of any objection to 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.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner will consider requests by the Construction Manager regarding the terms and conditions of the procurement to the extent that such terms and conditions directly affect the ability of the Construction Manager to perform the Work. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

#### § 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

##### § 2.1.8.1 Project Meetings

The Construction Manager shall conduct periodic Project meetings attended by the Owner, Design Professional and others. Such meetings shall serve as a forum for the exchange of information concerning the Project and the view of design progress. The Construction Manager shall prepare and distribute minutes of these meetings to the Owner, the Design Professional and others.

##### § 2.1.8.2 Review of Design Documents

The Construction Manager shall review the design documents for clarity, consistency, constructability and coordination among the Contractors. The results of the review shall be provided as notations on the documents. The Construction Manager is not responsible for providing, nor does the Construction Manager control the Project design and contents of the design documents. By performing the reviews described herein, the Construction Manager is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of the Project design and design documents. The Construction Manager's action in reviewing the Project design, design documents and in making recommendations as provided herein are only advisory to the Owner.

##### § 2.1.8.3 Design Recommendations

The Construction Manager shall make recommendations to the Owner and Design Professional with respect to constructability, construction cost, and sequence of construction, construction duration, possible means and methods of construction, time for construction and separation of the Project into contracts for various categories of the Work.

##### § 2.1.8.4 Owner Design Reviews

The Construction Manager shall expedite the Owner's design reviews by compiling and conveying the Owner's comments to the Design Professional.

##### § 2.1.8.5 Approvals by Regulatory Agencies

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

##### § 2.1.8.6 Public Relations

The Construction Manager shall assist the Owner in public relations activities and shall prepare information for and attend public meetings regarding the project.

#### § 2.1.8.7 Revisions to Master Schedule

While performing the services provided in paragraph 2.1.3.1, and as necessary throughout the Design Phase, the Construction Manager shall recommend revisions to the Master Schedule.

#### § 2.1.8.8 Monitoring the Design Phase Milestone Schedule

While performing the services provided in paragraphs 2.1.4.2, and 2.1.8.1, the Construction Manager shall monitor compliance with the Design Phase Milestone Schedule.

#### § 2.1.8.9 Project and Construction Budget Revisions

The Construction Manager shall make recommendations to the Owner concerning design changes that may result in revision to the Project and Construction Budget and divisions of the Work required for the Project.

#### § 2.1.8.10 Cost Control

The Construction Manager shall prepare an estimate of the construction cost for each submittal of design drawings and specifications from the Design Professional. The estimate for each submittal shall be accompanied by a report to the Owner and Design Professional identifying variances from the Project and Construction Budget. The Construction Manager shall coordinate and expedite the activities of the Owner and Design Professional when changes to the design are required to remain within the Project and Construction Budget.

#### § 2.1.8.11 Value Analysis Studies

The Construction Manager shall provide value analysis studies for major construction components. The results of these studies shall be in report form and distributed to the Owner and Design Professional.

#### § 2.1.8.12 Cash Flow Report

The Construction Manager shall periodically prepare and distribute a Cash Flow Report.

#### § 2.1.8.13 Design Phase Change Order Report

The Construction Manager shall prepare and distribute Design Phase Change Order Reports that shall list all Owner-approved change orders as of the date of the report and shall state the effect of the change orders on the Project and Construction Budget and the Master Schedule.

#### § 2.1.8.14 Contractor and Major Supplier Selections

i) If the Owner included its subcontractor selection plan in the request for qualifications, the Owner's subcontractor selection, and the procedures proposed by the Construction Manager at Risk submitting its qualifications with those modifications to the procedures as the Owner and the Construction Manager at Risk agree are hereby incorporated in this Contract and shall be followed by the Construction Manager at Risk in the selection of subcontractors.

ii) If the Owner did not include its subcontractor selection plan in the request for qualifications, the subcontractor selection plan proposed by the Construction Manager at Risk in submitting its qualifications, with those modifications as the Owner and the Construction Manager at Risk agree are hereby incorporated in this Contract and shall be followed by the Construction Manager at Risk in the selection of subcontractors.

§ 2.1.8.15 Qualification based selection of a Subcontractor(s) should only occur prior to the submittal of the Guaranteed Maximum Price Proposal.

§ 2.1.8.16 The Construction Manager must receive approval from Owner of the selected Subcontractor(s).

§ 2.1.8.17 Construction contracts for the Work required for the Project shall be between the Construction Manager and Subcontractors.

§ 2.1.8.18 At the Owner's option and mutual agreement the Construction Manager shall be eligible to perform work on the Project. To assist in the Owner's decision-making process, the Owner may require the Construction Manager to provide verification that their qualifications and pricing are consistent with the market. If the Owner agrees to allow the Construction Manager to self-perform the work, the contract shall be amended to reflect the work the Construction Manager will self-perform and the Cost of Work associated with said self-performance.

#### § 2.1.8.19 Construction Contracts

At the direction of the Owner, the Construction Manager shall prepare, execute, and deliver the Contract Documents between the Construction Manager and the Subcontractors. The Construction Manager shall also issue the notices to proceed.

#### § 2.1.8.20 Pre-Construction Conference

In connection with the Design Professional, the Construction Manager shall conduct a Pre-Construction Conference during which the Construction Manager shall review the reporting procedures and other rules.

#### § 2.1.8.21 Permits, Insurance and Labor Affidavits

The Construction Manager shall verify that the Contractor has secured the required building permits, bonds, insurance, labor affidavits and waivers.

#### § 2.1.8.22 Contractor's Construction Schedule

The Construction Manager shall provide a copy of the Master Schedule to the bidders. As part of the Notice of Award, the Construction Manager shall inform each Subcontractor of the requirements for the preparation of the Subcontractor's Construction Schedule. Each Subcontractor shall prepare its own Construction Schedule in accordance with the requirements of the Contract Documents.

#### § 2.1.9 Notices and Compliance with Laws

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

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

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

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

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

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

**§ 2.2.5 The Guaranteed Maximum Price Determination:**

The Guaranteed Maximum Price is the total Cost of the Project, as defined herein. The Guaranteed Maximum Price includes the cost of labor, equipment, supplies, materials, services and allowances to complete the Project. The cost data shall be directly correlated to the specific design drawings and specifications in existence at the time the Guaranteed Maximum Price is prepared. The assumptions used in the preparation of the Guaranteed Maximum Price shall be identified by the Construction Manager as part of the Guaranteed Maximum Price documentation, in accordance with Article A.1 of Exhibit A of A133-2009 and appended hereto. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment, Exhibit A, A133-2009, amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment (Exhibit A, A133-2009) shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

**§ 2.2.5.1** During the Design Phase, the Owner, at his sole option, may request the Construction Manager to establish a Guaranteed Maximum Price for the Project. The Guaranteed Maximum Price shall be documented by the Construction Manager and, once established the Guaranteed Maximum Price shall be subject to modification only as defined in this Agreement.

**§ 2.2.5.2** The Construction Manager shall submit the Guaranteed Maximum Price to the Owner not more than 30 days after receipt of the Owner's request for the Guaranteed Maximum Price. The Owner shall accept such Guaranteed Maximum Price within 15 days of the date 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 herein provided, such price shall be presumed to be rejected by the Owner.

**§ 2.2.5.3** In the event the Owner does not accept the Construction Manager's Guaranteed Maximum Price and elects not to go forward with the Project, the Construction Manager shall be reimbursed in accordance with the requirements for termination *without cause* as defined in Articles 10 of this Agreement.

**§ 2.2.5.4** In the event the Owner does not request the Construction Manager to establish a Guaranteed Maximum Price or does not accept the Construction Manager's Guaranteed Maximum Price, but chooses to proceed with the Project, then all provisions of this Agreement regarding the Guaranteed Maximum Price and adjustments thereto shall become null and void. All other provisions of this Agreement shall remain in full force and effect, with all Project costs being reimbursed to the Construction Manager by the Owner in accordance with this Agreement.

**§ 2.2.5.5** *In the event that the Guaranteed Maximum Price is acceptable by the Owner within the time stipulated herein, a Guaranteed Maximum Price Amendment shall be executed to commemorate such agreement. The Construction Manager shall become responsible for the means, methods, sequences, and procedures used in the construction of the Project and shall proceed with the construction in accordance with the contract terms.*

*In the event the Guaranteed Maximum Price includes project savings participation by the Construction Manager, the Guaranteed Maximum Price Amendment shall amend Section 5.2.1 to include such provisions, which shall be initialed by both parties.*

**§ 2.2.6** The Owner may change the scope of the Project or a part thereof and the Guaranteed Maximum Price shall then be adjusted as provided in Article 7 (Changes in the Work) of the AIA 201-2007 with latest Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement.

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

**§ 2.2.8** The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

**§ 2.2.9** The Guaranteed Maximum Price shall include those taxes applicable to the Project that are legally enacted at the time the Guaranteed Maximum Price is established. Any increase or decrease in taxes that affect the Guaranteed

Maximum Price and that are enacted after the Guaranteed Maximum Price is submitted shall be incorporated into that Price by Change Order, see 2.2.4.

## § 2.3 Construction Phase

### § 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007 with latest Arizona Modifications last approved by the Office of the Attorney General as of date of this Agreement, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs later.

### § 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 contract amendment with the Construction Manager.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific prospective subcontractor (1) is recommended to the Owner by the Construction Manager, and (2) is qualified to perform that portion of the Work, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the subcontract (see 2.3.2.2) for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

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

### § 2.3.2.5 Onsite Management and Construction Phase Communication Procedures

The Construction Manager shall provide and maintain a management team on the Project site to provide contract administration and the Construction Manager shall establish and implement coordination and communication procedures among the Construction Manager, Owner, Design Professional and Subcontractors.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201—with latest Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

#### §2.3.2.9 Construction Administration Procedures

The Construction Manager shall be the party to whom requests for information, submittals, Subcontractor schedule adjustment, substitutes, Change Order requests (see 2.2.4) and payment requests shall be submitted. The Construction Manager shall establish and implement procedures for expediting and processing requests for information, shop drawings, material and equipment sample submittals, Contract Schedule adjustment, Change Orders, substitutes, payment requests and the maintenance of logs. The Construction Manager shall maintain daily job reports.

#### §2.3.2.10 Project Site Meetings

Periodically the Construction Manager shall conduct meetings at the Project site with each Subcontractor and the Construction Manager shall conduct coordination meetings with all Subcontractors, the Owner and Design Professional. The Construction Manager shall record, transcribe and distribute minutes to all attendees, the Owner and Design Professional.

#### §2.3.2.11 Coordination of Other Independent Consultants:

Technical inspection and testing provided by the Design Professional or others shall be coordinated by the Construction Manager. The Construction Manager shall be provided a copy of all inspection and testing reports on the day of the inspection or test. The Construction Manager is not responsible for providing, nor does the Construction Manager control the actual performance of technical inspection and testing. The Construction Manager performs a coordination function and does not act in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of such inspection and testing.

#### §2.3.2.12 Review of Requests For Changes To The Contract Time and Price

The Construction Manager shall review the contents of a request for changes to the contract time or price submitted by a Subcontractor, assemble information concerning the request and endeavor to determine the cause of the requests. In instances where the Construction Manager's analysis reveals that the request is valid, the Construction Manager shall prepare a detailed report to the Owner for approval. The Construction Manager shall prepare the necessary Change Order documents for signing by the Subcontractor or the Owner.

#### §2.3.2.13 Quality Review

The Construction Manager shall establish and implement a program to monitor the quality of the construction. The purpose of the program shall be to guard the Owner against defects and deficiency in the Work of the Subcontractor. The Construction Manager shall reject Work and transmit to the Subcontractor a notice of nonconforming Work when it is the opinion of the Construction Manager that the Work does not conform to the requirements of the Contract Documents. Except for minor variations as stated herein, the Construction Manager is not authorized as part of this service to change, evoke, 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.

#### §2.3.2.14 Operation and Maintenance Materials

The Construction Manager shall receive from the Subcontractors operation and maintenance manuals, warranties and guarantees for materials and equipment installed in the Project.

#### § 2.4 Professional Services

Section 3.12.10 of A201-2007 with latest Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement, shall apply to both the Preconstruction and Construction Phases.

#### § 2.5 Hazardous Materials

Section 10.3 of A201-2007 with latest Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement, shall apply to both the Preconstruction and Construction Phases.

#### §2.6 Master Schedule

The Construction Manager shall adjust and update the Master Schedule and distribute copies to the Owner and Design Professional. All adjustments to the Master Schedule shall be made for the benefit of the Project.

### §2.6.1 Subcontractor's Construction Schedule

The Construction Manager shall review each Subcontractor's Construction Schedule and shall verify that the schedule is prepared in accordance with the requirements of the Contract Documents and that it establishes completion dates that comply with the requirements of the Master Schedule.

### §2.6.2 Construction Schedule Report

The Construction Manager shall review the progress of construction of each Subcontractor on a monthly basis, shall evaluate the percentage complete of each construction activity as indicated in the Subcontractor's Construction Schedule and shall review such percentages with the Subcontractor. This evaluation shall serve as data for input to the periodic Construction Schedule Report that shall be prepared and distributed to the Subcontractor, Owner and Design Professional. The Report shall indicate the actual progress compared to scheduled progress and shall serve as the basis for the progress payment to the Contractor. The Construction Manager shall determine and implement alternative courses of action that may be necessary to achieve contract compliance by the Subcontractor.

### §2.6.3 Construction Manager Review of the Time Extension Requests

The Construction Manager shall, prior to the issuance of a Change Order, determine the effect on the Master Schedule of time extensions requested by the Subcontractor.

### §2.6.4 Recovery Schedules

If the Construction Manager determines that the Subcontractor's work is critical to completion of work on schedule, the Construction Manager may deny Subcontractor's request for time extension and require the Subcontractor to re-submit a plan showing an accelerated construction plan. If the Construction Manager accepts the accelerated construction plan, then the Subcontractor may stay on the project otherwise the Subcontractor may be replaced with another Subcontractor who can meet the scheduled completion date.

### §2.6.5 Schedule of Values (Each Contract)

The Construction Manager shall, in participation with the Subcontractors, determine a Schedule of Values for each of the construction contracts. The Schedule of Values shall be the basis for the allocation of the contract price to the activities shown on the Subcontractor's Construction Schedule.

### §2.6.6 Allocation of Costs to Subcontractor's Construction Schedule

The Subcontractor's Construction Schedule shall have the total contract price allocated among the Subcontractor's scheduled activities so that each of the Subcontractors activities shall be allocated a price and the sum of the prices of the activities shall equal the total contract price. The Construction Manager shall review the contract price allocations and verify that such allocations are made in accordance with the requirements of the Contract Documents.

### §2.6.7 Change Order Control

The Construction Manager shall establish and implement a Change Order control system. All proposed Change Orders shall first be described in detail in writing by the Owner to the Construction Manager and then shall be described in detail in a Request for Proposal to the Subcontractor, accompanied by technical drawings and specifications prepared by the Design Professional. In response to the Request for Proposal, the Subcontractor shall submit to the Construction Manager for evaluation detailed information concerning the costs and time adjustments, if any, necessary to perform the proposed Change Order work. The Construction Manager shall discuss the proposed Change Order with the Subcontractor and endeavor to determine the Subcontractor's basis for the cost to perform the work and the effect, if any, on the Guaranteed Maximum Price. The Construction Manager shall make recommendations to the Owner to assist in the Owner's appraisal of the Change Order and, following Owner request, shall prepare for signature by the Construction Manager and Subcontractor or Owner, the Change Order documents. The Construction Manager shall verify that the Work and any adjustment of time required by approved Change Order have been incorporated into the Subcontractor's Construction Schedule.

### §2.6.8 Cost Records

In instances where a lump sum or unit price is not determined prior to performing work described in the request for proposal, the Construction Manager shall request from the Subcontractor records of the cost of payroll, materials and equipment and the amount of payments to Sub-subcontractors incurred by the Subcontractor in performing the Work.

### §2.6.9 Project Site Meeting

Periodically the Construction Manager shall conduct meetings at the Project site with each Subcontractor and the Construction Manager shall conduct coordination meetings with all Subcontractors, the Owner and Design Professional. The Construction Manager shall record, transcribe and distribute minutes to all attendees, the Owner and Design Professional.

## ARTICLE 3 OWNER'S RESPONSIBILITIES

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

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

### § 3.1.2 Not used

§ 3.1.3. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work as defined in Section 6.1.1, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

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

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

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

### § 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007 with latest Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

### § 3.3 Architect

The Owner shall retain an Architect to provide the Basic Services, including normal structural, mechanical and electrical engineering services described in Article 2 of AIA Document B201-2007 with latest Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement. Owner shall authorize and cause the Architect to provide those other services requested by the Construction Manager which must necessarily be provided by the Architect for the Preconstruction and Construction Phases of the Work. 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 AIA B201-2007 with latest Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement, Standard Form of Architect's Services.

### § 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 Section 3.1.

## ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

### § 4.1 Compensation

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

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

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

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

### § 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed, subject to A.R.S. §41-2577

§ 4.2.2 Progress payments are due on or before fourteen (14) days after the estimate of the Work is certified and approved by the Design Professional. Estimate of the Work shall be deemed approved and certified after seven (7) days from the date of submission unless before that time the Owner or Design Professional prepares and issues a specific written finding detailing those items in the estimate of the Work that are not approved and certified. The Owner may withhold an amount from the progress payment sufficient to pay the expenses the Owner reasonably expects to incur in correcting the deficiency set forth in the written finding. Payments not made in accordance with the above shall be late. Late payments shall incur interest at the rate of 1% per month or fraction of the month on such unpaid balance as may be due.

### § 4.3 Reimbursable Expenses

Reimbursable expenses are direct actual costs which are in addition to the Construction Manager's compensation for Work and are limited to: Mileage, meals, lodging and travel and shall also apply to travel by the Construction Manager, its officers, employees and consultants.

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

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

§ 5.1.1 The Construction Manager’s Fee:  
*(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager’s Fee.)*

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

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

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed << >> ( << >> ) of the standard rate paid at the place of the Project.

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

Item	Units and Limitations	Price per Unit (\$0.00)

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.  
*(Insert specific provisions if the Construction Manager is to participate in any savings.)*

In the event the Guaranteed Maximum Price includes project savings participation by the Construction Manager, the Guaranteed Maximum Price Amendment shall amend this Section to include such provisions, and this Section shall be initialed by both parties.

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

§ 5.3 Owner Made Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007 with latest Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007 with latest Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement, General Conditions of the Contract for Construction.

§ 5.3.3 Not used.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 with latest Arizona Modifications last approved by the

Office of the Attorney General as of the date of this Agreement, shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

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

## ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing *the* Guaranteed Maximum Price Amendment.

### § 6.2 Labor Costs

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

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

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

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

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

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

### § 6.3 Subcontract Costs

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

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

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

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

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

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

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

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 That portion of the reasonable travel and subsistence expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work in accordance with current State of Arizona rate published by the Arizona General Accounting Office.

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

## § 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

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

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

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 with latest Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement, or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 with latest Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement, or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

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

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

§ 6.6.8 Not used.

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

#### § 6.7 Other Costs and Emergencies

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

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2007 with latest Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

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

#### § 6.8 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

#### § 6.9 Discounts, Rebates and Refunds

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

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

#### § 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate;

or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

#### § 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of five (5) years after final payment, or for such longer period as may be required by law.

### ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

#### § 7.1 Progress Payments

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

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

§ 7.1.3 The payment for each application for payment will be made in accordance with the time frames set forth in A.R.S. §41.2577.

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

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

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201–2007 with latest Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement;
- .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, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of « » ( « » ). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of « » ( « » ) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner or the Design Professional in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007 with latest Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement.

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

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

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

## § 7.2 Final Payment

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

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007 with latest Arizona Modifications last approved by Office of the Attorney General as of the date of this Agreement, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The Owner or the Design Professional 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 or the Design Professional's report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner or the Design Professional, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007 with latest Arizona Modifications last approved by Office of the Attorney General as of the date of this Agreement. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007 with latest Arizona Modifications last approved by Office of the Attorney General as of the date of this Agreement. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's report shows 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 submit a Contract Claim to the State pursuant to the Arizona Procurement Code (Chapter 23, Title 41, A.R.S.) and the Rule of the Director of the Department of Administration without seeking an initial decision pursuant to Section 15.2 of A201-2007 with latest Arizona Modifications last approved by Office of the Attorney General as of the date of this Agreement. Failure to submit a Contract Claim within the time required in the Arizona Procurement Code (Chapter 23, Title 41, A.R.S.) and the Rules of the Director of the Department of Administration shall result in the substantiated amount reported by the Owner becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

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

**ARTICLE 8 INSURANCE AND BONDS**

For all phases of the Project, the Construction Manager shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007 with latest Arizona Modifications last approved by Office of the Attorney General as of the date of this Agreement .  
*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)*

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

§ 8.1 The insurance requirements under this contract refers to the requirements under AIA A201-2007 with latest Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement –  
**ARTICLE 11 INSURANCE AND BONDS.**

**ARTICLE 9 DISPUTE RESOLUTION**

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007 with latest Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to the Arizona Procurement Code (Chapter 23, Title 41, A.R.S) and the Rules of the Director of the Department of Administration and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any claim not resolved after exhausting the applicable administrative review through the Arizona Procurement Code (Chapter 23, Title 41, A.R.S.) and the Rules of the Director of the Department of the

Administration, the method of binding dispute resolution shall be by arbitration pursuant to Section 15.4 of AIA A201-207 with latest Arizona Modifications last approved by the office of the Attorney General as of the date of this Agreement.

### § 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007 with latest Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement, for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

## ARTICLE 10 TERMINATION OR SUSPENSION

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

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201-2007 with latest Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement.

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

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

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

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

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

## § 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007 with latest Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 with latest Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement, shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 with latest Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement, shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above.

## § 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007 with latest Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007 with latest Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

## ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007 with latest Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement, except as otherwise provided in this document, the Uniform Terms and Conditions or the Special Terms and Conditions.

## § 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 with latest Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement, shall apply to both the Preconstruction and Construction Phases.

## § 11.3 Governing Law

Section 13.1 of A201–2007 with latest Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement, shall apply to both the Preconstruction and Construction Phases.

## § 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

## § 11.5 Other provisions:

## ARTICLE 12 SCOPE OF THE AGREEMENT

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

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009 with latest Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

- .2 AIA Document A201–2007 with latest Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement, General Conditions of the Contract for Construction
- .3 Other documents: *(List other documents, if any, forming part of the Agreement.)*

« »

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

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

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

« »« »

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

« »« »

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

