REQUEST FOR PROPOSAL
CONSTRUCTION MANAGEMENT SERVICES

FOR

NEW SMYRNA BEACH MIDDLE
1200 SOUTH MYRTLE AVENUE, NEW SMYRNA BEACH FLORIDA 32168

HVAC, CEILING, LIGHTING AND FLOORING CAMPUS WIDE
PROJECT NO. 2047701

School Board of Volusia County Florida
Facilities Services
3750 Olson Drive, Daytona Beach Florida 32124
(386) 947-8786

SUBMITTALS DUE BY:
3:00 PM – MARCH 25, 2020
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Pursuant to Florida Statute 255.103 and 287.055, Consultants' Competitive Negotiations Act (CCNA) and State Requirements for Educations Facilities (SREF), the School Board of Volusia County Florida is hereby requesting proposals for construction management services for New Smyrna Beach Middle - HVAC, Ceiling, Lighting and Flooring Campus Wide – Project No. 2047701, New Smyrna Beach Florida. The estimated construction cost is $17,000,000.

The scope of services may include, but not be limited to, pre-construction services, construction estimating, value engineering, bid preparation, construction management, generation and update of project schedules, cost control and progress reports.

To be eligible for consideration, interested firms must be certified by the School Board and shall hold a current Certification as a Prequalified Contractor prior to the date of submission. Contact the Volusia County Schools Purchasing Department at (386) 947-8786 for the pre-qualification process.

A mandatory pre-submittal meeting, to describe the project more fully, will be held on Wednesday, February 26, 2020 at 8:30 AM at New Smyrna Beach Middle, 1200 South Myrtle Avenue, New Smyrna Beach Florida; all attendees must sign-in as a visitor in the main office. The firm’s representative shall be an authorized employee and shall sign-in the meeting accordingly. Only those firms signed-in attendance at this meeting will be eligible to submit for this project.

Solicitation information, RFP and all other relevant documents are available via the Volusia County School District web site at: https://www.vcsedu.org/facilities-design/construction-management-services. Documents are in PDF format and may be viewed, printed or saved to your computer.

To be considered, interested firms must submit one (1) original printed and bound submittal and one (1) CD or flash device of the submittal in combined PDF file format in the same order as the printed submittal with corresponding bookmarks for navigation.

Submittals must be received no later than 3:00 PM on March 25, 2020. Only responses from firms that have submitted the required information per the RFP and have a valid Certificate of Prequalification by the Volusia County School Board will be considered.

The School Board of Volusia County Florida reserves the right to waive any informality in the selection process and to reject any or all submittals in the best interest of the District.

Address submittal to:
Ms. Janice Lucas
Facilities Planning and Business Services
3750 Olson Drive
Daytona Beach, Florida 32124

The School Board of Volusia County, DeLand Florida
Ida D. Wright, Chairman
Project Description

The project includes a complete replacement and upgrade of the HVAC and related components. The school was constructed in 1981 and includes 15 buildings with a total of one hundred eighty six thousand, one hundred twenty nine square feet (186,129 SF). In addition to the HVAC project, it is anticipated that there may be renovation to the media center and or vocational spaces as well as ceiling, lighting, flooring replacement campus wide and site drainage. Construction is anticipated to occur over more than one fiscal year.

The initial construction budget is seventeen million dollars ($17,000,000). It is anticipated that the design team will be under contract by the first quarter 2020. Project planning and design is estimated to be ten (10) months with construction funding available in Fiscal Year 2021 (July 2020 – June 2021). Project team should include team members who can work collaboratively with district and school staff and a design team.

General Information

The Contractor shall provide the School Board of Volusia County Florida with construction management services per Florida Statutes. The School Board intends to award a contract as deemed to be in the best interest of the School District. For purposes of consistency and simplicity, School Board may also include the School District of Volusia County and/or the Superintendent or designee.

The School Board will select a qualified firm under provisions of Florida Statutes to provide construction management services for New Smyrna Beach Middle - HVAC, Ceiling, Lighting and Flooring Campus Wide – Project No. 2047701.

The construction management services shall consist of two phases. The first phase of the contract will be for pre-construction services wherein the Construction Manager shall function as an agent of the Owner, shall be paid a fixed fee for services performed and shall be an integral part of the design team. Pre-construction services shall include value engineering and the development of a Guaranteed Maximum Price (GMP). If the GMP is accepted, the construction phase will proceed. During the construction phase, the Construction Manager shall become contractually bound to the Owner to provide the actual labor and materials for the project.

Previous construction experience with occupied school campuses is preferred.

A current Certification as a Prequalified Contractor with the School Board is required to meet the minimum qualifications necessary for consideration as a contractor. Contact the Volusia County Schools Purchasing Department at (386) 947-8786 for the pre-qualification process.

Except for the District employee named below and the recipient of submittals as indicated in this RFP, respondents are cautioned not to contact or discuss with any committee, School Board member, or employee of the Volusia County Schools, any matter regarding this solicitation until the School Board has approved the ranking of firms. Failure to do so may be cause for rejection of the firm's submittal and consideration of the firm under this RFP.

A mandatory pre-submittal meeting, to describe the project more fully, will be held on Wednesday, February 26, 2020 at 8:30 AM at New Smyrna Beach Middle, 1200 South Myrtle Avenue, New Smyrna Beach Florida; all attendees must sign-in as a visitor in the main office. The firm's representative shall be an authorized employee and shall sign-in the meeting accordingly. Only those firms signed-in attendance at this meeting will be eligible to submit for this project.

It is the intent of the School District to utilize the internet to disseminate information for this request to include the RFP, any/all addenda or subsequent information as applicable.
Solicitation information, this RFP and all other relevant documents are available via the Volusia County School District web site at: https://www.vcsedu.org/facilities-design/construction-management-services. Documents are in PDF format and may be viewed, printed or saved to your computer.

All questions regarding this RFP shall be in writing via mail, hand delivery or email to:

Mr. Tom Brown
Facilities Design and Construction
3750 Olson Drive, Daytona Beach Florida 32124
Email: tbrown@volusia.k12.fl.us

All written inquiries must be received no later than 3:00 PM on March 9, 2020. Written inquiries will be provided a written response that shall be made available at: https://www.vcsedu.org/facilities-design/construction-management-services.
SUBMITTAL INSTRUCTIONS

The following submittal format is intended to provide the selection committee with information regarding the qualifications of each prospective construction management firm.

Submit one (1) original printed and bound submittal and one (1) CD, DVD or flash device of the submittal in combined PDF format in the same order as the printed submittal with corresponding bookmarks for navigation. Do not use mailing labels on CD or DVD, handwrite or use proper CD or DVD type labels; submitted CD or DVD with mailing labels will not be accepted.

The specific facility name, project name and project number, as shown on the cover of this RFP, must be clearly shown on the submittal cover.

Firm submittals shall contain the following information in the order indicated below. Submittals without these documents will be disqualified.

1. Letter of Interest
   a) Include a paragraph which states the firm’s intent to qualify under Florida Statutes Chapter 287.055 (CCNA).
   b) Include address, phone and email of the person designated by the firm as contact for this submittal.
   c) Letter must be signed by a person legally authorized to bind the firm.

2. Table of Contents

3. Provide a copy of the firm’s current Certificate of Pre-qualification as approved by the School Board of Volusia County.

4. Contractor’s Qualification Statement
   a) Provide AIA Document A305-1986, Contractor’s Qualification Statement, including state-certified licensed general contractor information qualifying the firm.

5. Insurance and Bond-ability
   a) Attach proof of General Liability Insurance, Workers’ Compensation Insurance and Automobile Liability written for limits not less than $2,000,000.
   b) Attach a letter of intent from a surety company indicating the firm’s ability to obtain a bond for projects with a construction cost of $17,000,000. The surety company must be licensed to do business in the state of Florida and have an A.M. Best rating of “A-” or better.

6. Executive Summary, Team Organization and Personnel Resumes
   a) Provide an overview of the firm and the process and strategies used in delivering project management services to include years in business, total staff and total technical staff.
   b) Provide an organizational chart of the assigned management team.
   c) Provide resumes of key personnel, respective roles, education and their construction experience. Identify and highlight their experience as related to educational facilities.

7. Program Understanding, Services and Capabilities
   a) Present a concise outline of specific services the firm is qualified and prepared to provide.
   b) State operational timelines for accomplishing work of similar educational projects with samples of schedules and cost estimates. Include examples of value engineering, life cycle analysis,
constructability, management information, reporting systems, quality control, safety management, and partnering.

c) Identify any of services or method of approach to services that your firm believes to be unique, outstanding or which is recognized as giving the firm a competitive edge or advantage.

d) Provide information about the firm’s qualifications including technical competence to perform services required. Specifically outline how the firm’s services will match the need of this project and your understanding thereof.

8. Project Experience

a) Submit the firm’s construction management services experience documenting projects within the past five (5) years evidence of school construction experience. Consider project range between $15,000,000 and $20,000,000. Identify:

1) Projects of comparable size and complexity; define specific services provided.
2) Construction cost (original GMP and final construction cost), current phase of development and estimated (or past) completion date.
3) Lead personnel and their respective responsibilities.
4) Client’s name and contact person with address, phone numbers, email, dates of services performed and any written references. Please be advised that Orange County Public Schools does not provide references to requests from other school districts.
5) Project architectural firm with contact person’s name, address, email and phone number.

b) The firm’s direct project experience must be differentiated from individual personnel experience; therefore, if you choose to identify individual’s experience gained at other firms, this section should be clearly subdivided as follows:

1) Firm’s Project Experience
2) Individuals’ Project Experience (while employed by other firms)

9. Project Examples Similar in Scope

a) Provide graphic examples (photos, etc.) of projects that best represent the firm’s ability to provide construction management services for projects of comparable size.

10. Technology Equipment and Resources

a) Describe equipment and technology resources available to your firm. Indicate how these resources benefit the District as a potential client.

b) Indicate office technologies and web based services the firm currently uses and how you intend to maximize their use for this contract.

c) Indicate the firm’s experience in community engagement, reaching out, involving and communicating with stakeholders.

11. Availability and Location

a) Provide the business addresses, phone numbers and emails for the firm’s offices from which any part of the work will be administered.

b) Explain the status of current workload addressing the availability of lead personnel as it relates to the submittal.

c) Indicate other Volusia County area projects your firm may have which would help in securing local construction services for the district.
12. Litigation
   
a) Identify all legal action in which the firm has been a party to including litigation, mediation, 
arbitration, administrative proceedings, etc. during the last five (5) years involving a client for 
claims in excess of $100,000.
   
b) Include a brief legal description and status of the dispute.
   
c) Where the action or lawsuit has involved a guaranteed maximum price contract; describe the 
   particular circumstances giving rise to the dispute and the actions which your firm took to 
   attempt to settle the matter prior to and after suit being filed.
   
d) Describe in detail any projects within the last five (5) years where liquidated damages, 
   penalties, liens, defaults, cancellations of contract or termination of contract were imposed, 
sought to be imposed, threatened or filed against the firm.
   
e) Identify any disputes or claims in which the firm has been a party and which were resolved 
   without legal action.

13. Appendix
   
a) Additional information deemed necessary by the firm. Indicate any other considerations the 
   firm may wish to highlight or discuss such as awards, company brochures, letters of 
   accommodation, periodical articles, etc.

Submittals are due no later than 3:00 PM on March 25, 2020 and must be clearly labeled showing the name 
of the submitting firm.

Address Submittals to:

Ms. Janice Lucas
Facilities Planning and Business Services
3750 Olson Drive
Daytona Beach, Florida 32124

All firms will receive notification via email, to the attention of the person designated by the firm as contact 
for this submittal, of the selection results.
SUBMITTAL CONDITIONS

Issuance of this RFP does not constitute a commitment by the School Board to award a contract. The School Board reserves the right to reject any or all submittals received in response to this RFP or to cancel this RFP if it is deemed in the best interest of the District.

The School Board reserves the right to request clarification of information submitted and to request additional information from one or more firms.

Submittals become the property of the School Board and will not be returned.

The School Board operates under the public disclosure laws required of governmental agencies as part of its normal procedures. Proprietary information must be identified and will be protected to the greatest extent possible; however, there can be no guarantees.

By making a submittal the firm agrees to comply with all applicable federal, state and local statutes and regulations.

Cost of developing the submittal, attendance at an oral interview or any other such costs are entirely the responsibility of the firm and shall not be reimbursed in any manner by the School Board.

The School Board reserves the right to proceed to interview without further discussion of submittals received, operating strictly under the Consultants’ Competitive Negotiations Act (CCNA).

In the event shortlisted firms are invited for interview, the person(s) who will be assigned to the contract must attend the interview as well as any others deemed necessary by the applicant. In accordance with CCNA the School Board reserves the right to conduct or not conduct interviews at its sole discretion.

The final selection shall be based on the written submittal, responses of references and (if applicable) the interview. Firms shall be ranked in accordance the CCNA provisions.

In accordance with CCNA, the School Board shall negotiate an agreement with the top ranked firm until an agreement has been reached or until impasse.

The successful firm shall obtain approval from the School Board prior to reassigning any key personnel involved in the performance of the project. Approval will not unreasonably be withheld. The School Board may require removal of any contracted employee who the School Board deems unacceptable.

News releases pertaining to this procurement or contract shall not be made without prior written approval from the Superintendent or designee.
Required Services

Successful firms shall be responsible for all services as set forth in AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor, attached to this RFP for reference. The School Board has the right to require the selected Firm to sign the contract as attached or negotiate contract language prior to execution, at its discretion.

Firm Selection Process

This Request for Proposal (RFP) is the first step in the selection process. A selection committee will evaluate the submittals of interested firms. A “short list” of firms will be identified. Short listed firms may be asked to present their qualifications and construction management approach by interview to the selection committee as part of the selection process. A final ranking will be established by the selection committee which shall constitute its recommendation to the School Board to negotiate with the top ranked firm to provide construction management services for this project.

The Selection Committee shall be composed of a minimum of five representatives. Committee members shall include representatives from the District Facilities Department which may include but not necessarily limited to the Planning Director, Maintenance and Operations Director, and Construction Coordinator. Additional representatives may include a Volusia County School Board member, a member of the Finance Department, school based personnel and/or a private citizen.

In general, the evaluation criteria are based on:

1. Experience and qualification of the firm.
2. Experience and qualifications of proposed team members to be assigned to the contract.
3. Experience and performance of the firm on school projects.
4. Construction management approach including program understanding.
5. Technology use and equipment resources.
6. Availability to perform services.
7. References.
8. Location of firm.
9. Responsiveness to the RFP instructions.

All firms will receive notification via email, to the attention of the person designated by the firm as contact for this submittal, of the selection results. It is currently anticipated that a shortlisting will occur on or around April 3, 2020 with interviewing, if necessary, occurring on or around April 23, 2020.
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B  AIA Document A133-2009
   Standard Form of Agreement Between Owner and Construction Manager as Constructor

C  Construction Management Rating Sheet – Shortlisting

D  Construction Management Rating Sheet - Interviews
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16. Greenhouse
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18. Storage
AGREEMENT made as of the day of in the year
(In words, indicate day, month and year.)

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

The School Board of Volusia County Florida
200 North Clara Avenue (PO Box 2118), DeLand Florida 32720

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

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

The Architect:
(Name, legal status 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.

**Project Budget, including CM Fee:**

**Project Summary:**
The parties intend the Contract to include all labor, equipment and materials reasonably necessary for the proper completion of the Work. All Work to be in accordance with the plans, specifications and applicable law and codes.
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ARTICLE 1  GENERAL PROVISIONS

§ 1.1 The Contract Documents

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

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager’s 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, 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, which document is incorporated herein by reference. The term "Contractor" as used in A201—2007 shall mean the Construction Manager. Any reference to AIA Document A201—2007 General Conditions of the Contract for Construction shall mean the School Board of Volusia County Florida modified AIA Document A201—2007 General Conditions of the Contract for Construction.
ARTICLE 2  CONSTRUCTION MANAGER’S RESPONSIBILITIES
The Construction Manager’s Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager’s Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

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

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

§ 2.1.3 When Project requirements described in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a Project schedule for the Architect’s review and the Owner’s acceptance. The Construction Manager shall obtain the Architect’s approval for the portion of the Project schedule relating to the performance of the Architect’s services. The Project schedule shall coordinate and integrate the Construction Manager’s services, the Architect’s services, other Owner consultants’ services, and the Owner’s responsibilities and identify items that could affect the Project’s timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal, components of the Work, times of commencement and completion required of each Subcontractor; ordering and delivery of materials, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner approval. The Construction Manager shall coordinate and integrate the Project schedule with the services and activities of the Owner, Architect and Construction Manager. As design proceeds, the Project schedule shall be updated to indicate proposed activity sequences and durations, 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 Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make timely appropriate recommendations to the Owner and Architect.

§ 2.1.4 Phased Construction
The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues, 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, and provisions for temporary facilities.

§ 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 suggests 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, update 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.

§ 2.1.6 Subcontractors and Suppliers
The Construction Manager shall develop 'bidders' interest in the Project, seek to develop subcontractor interest in the Project 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 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 shall procure the items on terms and conditions acceptable to the Construction Manager. 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, as set forth in Section 3.4.4, A201-2007 General Conditions of the Contract for Construction.

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

§ 2.1.9 Notices and Compliance with Laws
The Construction Manager shall comply with applicable 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 allowances and a statement of their basis.
3. 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;

4—5. 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;

5—6. The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and

6. 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—Contingency

§ 2.2.4.1 Construction Manager’s Contingency

The estimated Cost of Work shall include the Construction Manager’s Contingency, an amount mutually agreeable between the Construction Manager and Owner, to cover costs arising under Subparagraph 2.2.2, and other costs which are properly reimbursable as Costs of Work, but not the basis for a Change Order. The Construction Manager’s Contingency is for the exclusive use of the Construction Manager while executing the Construction Work to address unexpected circumstances (but not material escalation, force majeure impacts, and to correct unanticipated circumstances which are not otherwise reimbursable and do not constitute a change in the Work, as defined in this Agreement. The Construction Manager’s Contingency shall only be adjusted by the Owner issuing a written Constructive Change Directive (CCD) and it shall be clearly noted on the CCD that costs are allocated against the Construction Manager’s Contingency. The Construction Manager shall maintain a Contingency tracking log updated each time Construction Manager’s contingency funds are used.

§ 2.2.4.2 Buyout Contingency

It is expected that some cost savings between the Construction Manager’s Guaranteed Maximum Price (GMP) and the actual Cost of Work may be gained as a result of the final bidding and negotiations of subcontracts. Any cost savings generated as a result of the final bidding or negotiation of subcontracts, and actual expenses by the Construction Manager, which are less than was estimated in establishing the GMP shall be retained by the Owner as the Buyout Contingency. The negotiated fee and general conditions will not be adjusted as result of these savings. The Buyout Contingency shall only be adjusted by means of the Owner issuing a written Construction Change Directive (CCD) and it shall be clearly noted on the CCD that costs are allocated against the Buyout Contingency. The Construction Manager shall maintain a Buyout Contingency tracking log updated each time Buyout contingency funds are used.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment(s) amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment(s) shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. 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.

§ 2.2.7 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 in writing of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 2.3 Construction Phase
§ 2.3.1 General
§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

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

§ 2.3.2 Administration
§ 2.3.2.1 Construction Manager shall obtain bids on all of the Work, including obtaining third party bids on any work Construction Manager desires to self-perform. Bids shall be obtained from at least three bidders for each trade package. Construction Manager shall prepare and submit its own bids on any Work it intends to self-perform. 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 Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Owner and Architect. Owner shall be notified of and shall attend the bid opening, and the actual bids, bid tabulation and all backup for same shall be made available to the Owner the next day at the Construction Manager’s office. The bids for each bid package shall be delivered to the Owner all on the same day. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection will be provided the opportunity to investigate Owner’s recommended subcontractors. Copies of executed subcontracts and supplier contracts shall be provided by Construction Manager to Owner within 3 days of the subcontractor’s or supplier’s signature.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the 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 for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

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

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.
§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment(s), the Construction Manager shall prepare and submit to the Owner and Architect for Owner's approval a construction schedule for the Work including the Owner's occupancy requirements and submittal schedule in accordance with Section 3.10 of A201–2007.

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

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

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

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

§ 2.6 Key Personnel
The Construction Manager shall maintain sufficient off-site support staff and competent full-time staff at the Project site, authorized to act on behalf of the Construction Manager to coordinate, inspect and provide general direction of the work and progress of the Subcontractors; and, the Construction Manager shall provide no less than those personnel during the respective phases of construction that are set forth in Attachment No. 1 to this Agreement. The Construction Manager shall not change any of those persons named in Attachment No. 1 unless mutually agreed to by the Owner and Construction Manager. In such case, the Owner shall have the right of approval of the qualifications of replacement personnel. Such approval will not be unreasonably withheld.

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, systems sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment(s), the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a material change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payments when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and may periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.
§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner’s control and relevant to the Construction Manager’s performance of 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 invert 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, the Architect does not have such authority. The term “Owner” means the Owner or the Owner’s authorized representative. Owner’s Representative is the Superintendent or designee. The Owner’s Representative is authorized to act on Owner’s behalf as provided herein and in applicable law, regulation, or ordinance. The Owner’s Representative has the authority to reject unsatisfactory work and to stop the work if necessary to insure its proper execution. Failure of the Owner’s Representative, in any one or more instances, to insist on strict performance of any of the terms of this Contract or to exercise any option herein conferred shall not be construed as a waiver or relinquishment for the future insistence of any such terms or options.

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

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B103™ – 2007, Owner’s FAC Document 620, Standard Form of Agreement Between Owner and Architect, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

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 -days of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager’s compensation for Preconstruction Phase services shall be equitably adjusted.

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

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

§ 4.2.2 Payments are due and payable twenty one (21) days upon presentation of the Construction Manager’s invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

% 

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
§ 5.1 For the Construction Manager’s performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager’s 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.)

Lump sum of

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

For changes in the Work, the Construction Manager’s Fee shall be adjusted as provided in AIA Document A201-2007, paragraph 7.3.11. Notwithstanding the above, however, absent an Owner Directed Change in the Scope of Work, changes in the quality, complexity, difficulty of performance or in the agreed upon Construction Schedule for this Project shall not entitle Construction Manager changes to the Construction Manager’s Fixed Fee (including overhead and profit) under any circumstances, unless agreed to by Owner in Owner’s sole opinion and discretion, and then only as specifically authorized in writing by the Owner prior to the performance of the changed Work or altered schedule by the Construction Manager.

In the event of Owner directed changes as described above, the Construction Manager’s Fee shall be five percent (5%) of the increase in the Cost of Work for the change.

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

As stipulated in Section 7.3.11 of AIA Document A201-2007.

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed percent (—%) 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.)

<table>
<thead>
<tr>
<th>Item</th>
<th>Units and Limitations</th>
<th>Price per Unit ($0.00)</th>
</tr>
</thead>
</table>

§ 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, Amendment(s), subject to additions and deductions by changes in the Work as provided in the Contract Documents. 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.)

§ 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 Changes in the Work
§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager may 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 Amendment(s) may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

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

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE
§ 6.1 Costs to Be Reimbursed
§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.
§ 6.1.2 Where any cost is subject to the Owner’s prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment(s).

§ 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 only when stationed at the site with the Owner’s prior written approval. Pro rata share of wages or salaries of the Construction Manager’s principal office personnel assigned to this project for time actually expended on this project. Construction Manager shall furnish in writing the names of such personnel for approval by the Owner.

(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. In lieu of detailed cost certification, the Construction Manager shall be paid percent (%) of direct labor cost of those personnel described in subparagraphs 6.2.1 through 6.2.3 above, to cover the costs described in this subparagraph. The aforesaid percentage shall also cover all items described in subparagraph 6.2.5.

§ 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 written prior approval.

§ 6.3 Subcontract Costs
Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.3.1 The Construction Manager shall provide the Owner with a copy of each subcontractor’s contract.

§ 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


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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 expenses of the Construction Manager’s supervisory or administrative personnel incurred while traveling outside Central Florida in discharge of duties connected with the Work as specifically approved by the Owner in writing.

§ 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. Off-site storage shall be in a bonded and insured facility approved by Owner.

§ 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. If the Contractor seeks approval and reimbursement for self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner’s prior approval, these coverages and costs must be disclosed in the GMP Proposal and accepted by Owner in the GMP Amendment.

§ 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 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

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

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work 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 Legal, mediation and arbitration costs, including attorneys’ fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner’s prior approval, which shall not be unreasonably withheld.

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

§ 6.7 Other Costs and Emergencies
§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.
§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming work executed by the Construction Manager, Subcontractors or suppliers, 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. Notwithstanding anything herein to the contrary, no costs shall be paid by Owner to Construction Manager for any expenses made necessary to correct defective workmanship or to correct any work not in conformance with the Plans and Specifications or to correct any deficiency or damage caused by negligent acts by Construction Manager.

§ 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.
9. Rental costs of machinery and equipment, except as specifically provided in Section 6.5.2.
10. Legal costs of whatever nature.

§ 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 all other data relating to this Contract. The Construction Manager shall preserve these records for a period of three (3) 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 Provided that an Application for Payment is received by the Architect not later than the first (1st) day of a month, and the certificate for payment is received by the Owner within seven (7) days, the Owner shall make payment of the certified amount to the Construction Manager not later than the twenty-second (21st) day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than twenty-one (21) days after the Architect receives the Application for Payment. Payment provided the Architecl’s certificate for payment is received by the Owner within seven (7) days.

(Federal, state or local laws may require payment within a certain period of time.)

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipts invoices or invoices with check vouchers attached, each subcontractor’s application for payment/invoice, affidavits and lien waivers as requested, 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 Work including original Guaranteed Maximum Price values and contracted (buy out) values, allowances, contingency and 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, Architect or Owner, 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

Init.  /  Init.
(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 within Owner's statutory authority not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;

.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 percent (\%) - Fee. The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.4 Subtract retainage of ten percent (10\%) from that portion of the Work that the Construction Manager self-performs;

.5 Subtract the aggregate of previous payments made by the Owner;

.6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 7.1.8 Except with the Owner's prior approval, payments for the Cost of the Work shall be subject to retention of not less than ten (10\%). The Owner and the Construction Manager shall agree upon 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, and retention for subcontracts. Any reduction of retainage shall be in accordance with the Florida Local Government Prompt Payment Act (Fla. Stat. §218.70 – §218.80).

§ 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, shall be performed by the Owner's auditors 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, 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, Payment has been reviewed and approved by Owner's auditors; and
3. Construction Manager's application for Final Payment has been submitted to the Owner, along with all warranties, guarantees, close out documents including all as-built drawings in paper document and digital form on CD or DVD combined PDF format (scanned documents acceptable), and any other items required under the Contract Documents; and

4. Board approval of the Certificate of Final Inspection (CFI) has been obtained; and

5. A final Certificate for Payment has been issued by the Architect.

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

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be 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 provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting 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 Section 9.5.1 of A201-2007 or other provisions of the Contract Documents.

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

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.

§ 7.2.3 If the Owner's auditors may review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Owner by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.4 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 re-captured and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager. If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of

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A201–2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.5 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 Sections 6.7.3 and 6.8, the Owner shall reimburse the Construction Manager such costs 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.

ARTICLE 8 INSURANCE AND BONDS
For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds, all as set forth in Article 11 of AIA Document A201–2007. The Construction Manager shall deliver the required bonds to the Owner at the time of execution of Amendment(s).
(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

<table>
<thead>
<tr>
<th>Type of Insurance or Bond</th>
<th>Limit of Liability or Bond Amount ($0.00)</th>
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</table>

ARTICLE 9 DISPUTE RESOLUTION
§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows set forth in Article 15 of AIA Document A201-2007. (Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

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

§ 9.3 Initial Decision Maker
The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint another individual, not a party to the Agreement, to serve as the Initial Decision Maker, in writing. (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(s), the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's

Init. / 1


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convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

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

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

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

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

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

§ 10.1.4 In no event shall Owner be liable to Construction Manager for anticipated fee or profit on work not performed.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment Amendment(s) and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3.10.1.2, 10.1.3 and 10.1.4 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 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.
§ 10.3 Suspension
The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time-Time, if established, shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager’s Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS
§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

§ 11.2 Ownership and Use of Documents
Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law
Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

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

§ 11.5 Other provisions:
No person or entity shall be deemed to be a third party beneficiary of any provisions of the Contract, nor shall any provisions thereof be interpreted to create a right of action or otherwise permit anyone not a signatory party to the Contract to maintain an action for personal injury or property damage.

ARTICLE 12 SCOPE OF THE AGREEMENT
§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

1. AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

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

3. AIA Document E201TM–2007, Digital Data Protocol Exhibit, if completed, or the following:

4. AIA Document E202TM–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

5. 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.

<table>
<thead>
<tr>
<th>OWNER (Signature)</th>
<th>CONSTRUCTION MANAGER (Signature)</th>
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<tbody>
<tr>
<td>Chairman</td>
<td>(Printed name and title)</td>
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<td>WITNESS (Signature)</td>
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<td>Secretary</td>
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CONSTRUCTION MANAGEMENT SELECTION FOR
[Insert school, project name, project number]

Committee Meeting
Rating Sheet to Short-List
[Insert date]

Committee Members: (initial after your name)
[Insert committee members for this selection]

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<tr>
<th>Profiles</th>
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<th>Volume of Work with VCS (last 5 years)</th>
<th>Past Performance 1 – 5</th>
<th>Experience 1 – 5</th>
<th>Timeline 1 – 5</th>
<th>Budget Adherence 1 - 5</th>
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Volume of Work:
$0 - $250,000 = Low
$251,000 - $750,000 = Medium
$751,000 + = High

Rating Items (C) – (G):
point values = 1 poor; 3 average; 5 outstanding
CONSTRUCTION MANAGEMENT SELECTION FOR

[Insert school, project name, project number]

Interviews of Firms by Selection Committee

[Insert date]

RATING SHEET

Committee Members: (initial after your name)

[Insert committee members for this selection]

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<tr>
<th>FIRMS</th>
<th>(A) Capacity of Proposed Team 1 - 5</th>
<th>(B) Past Performance 1 - 5</th>
<th>(C) Understands Project Scope/Requests 1 - 5</th>
<th>(D) Approach &amp; Method 1 - 5</th>
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Items (A), (B), (C) & (D) Point Values: 1 poor; 3 average; 5 outstanding