



# AIA<sup>®</sup> Document B801<sup>™</sup>CMa – 1992

## Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is NOT a Constructor

AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year of \_\_\_\_\_  
*(In words, indicate day, month and year)*

BETWEEN the Owner:  
*(Name and address)*

and the Construction Manager:  
*(Name and address)*

for the following Project:  
*(Include detailed description of Project, location, address and scope.)*

[SCHOOL]

The Architect is:  
*(Name and address)*

The Owner and Construction Manager agree as set forth below.

**S&G DRAFT**  
**05/01/2009**  
**SUBJECT TO REVISION**

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

This document is intended to be used in conjunction with the 1992 editions of AIA Documents B141/CMa, A101/CMa and A201/CMa.

## ARTICLE 1 CONSTRUCTION MANAGER'S RESPONSIBILITIES

### § 1.1 RELATIONSHIP OF PARTIES

The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish to the Owner a degree of skill and judgment consistent with the Construction Manager's Standard of Care as defined hereinafter, and to cooperate with the Architect in furthering the interests of the Owner. The Construction Manager shall use the Construction Manager's best efforts consistent with the Construction Manager's Standard of Care to carry out the Services as defined herein in an expeditious and economical manner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager and other persons or entities employed by the Owner for the Project.

### § 1.2 GENERAL CONDITIONS

§ 1.2.1 For the Construction Phase, the General Conditions of the contract shall be the AIA® Document A201CMA™-1992, General Conditions of the Contract for Construction, which is incorporated herein by reference. For the Preconstruction Phase, or in the event that the Preconstruction and Construction Phases proceed concurrently, A201CMA™-1992 shall apply to the Preconstruction Phase only as specifically provided in this Agreement.

§ 1.2.2 Where reference is made in this Agreement to a provision of AIA Document A201 CMA or any other AIA document or provision, the reference refers to that document or provision as amended by the Owner and, if applicable, any other party to such document, or as amended and supplemented by other provisions of the Contract Documents.

### § 1.3 CONSTRUCTION MANAGER'S STANDARD OF CARE

The Construction Manager shall perform the Services, as defined hereinafter, as an independent contractor and in a good and workmanlike manner (i) consistent with the Contract Documents; (ii) consistent with the instructions, guidance and direction of the Owner and Architect; (iii) consistent with the with the highest prevailing applicable professional or industry standards; (iv) consistent with sound practices; (v) as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project and with the Contract Documents and the instructions, guidance and direction of the Owner and Architect; and (vi) in a manner that will not exceed the Construction Cost and the Project Schedule (the standards of this Section 1.3 shall be referred to herein as the "Construction Manager's Standard of Care"). The Construction Manager shall exercise Construction Manager's Standard of Care in performing all aspects of the Services. All references in the Contract Documents to the knowledge, inference, reliance, awareness, determination, belief, observation, recognition or discovery of the Construction Manager or reference to any similar term shall include the constructive knowledge, inference, reliance, awareness, determination, belief, observation, recognition attributed to the Construction Manager ("constructive knowledge"). Such constructive knowledge shall include the knowledge, inference, reliance, awareness, determination, belief, observation and recognition the Construction Manager would have obtained upon the exercise of the Construction Manager's Standard of Care.

### 1.4 CONSTRUCTION MANAGER'S SERVICES

§ 1.4.1 The Services shall consist of the responsibilities of the Construction Manager, Construction Manager's employees and Construction Manager's consultants under this Agreement. The Services shall include advising the Owner regarding the performance of the Project in compliance with all applicable laws, rules, regulations, ordinances, codes, orders and permits of all federal, state and local government bodies, agencies, authorities and courts having jurisdiction and with the Conditions as defined in Section 1.4.1.1.

§ 1.4.1.1 The "Conditions" are all applicable laws, rules, regulations, ordinances, codes, orders, guidelines, standards and conditions of funding imposed on the Project by the Agencies, as defined hereinafter.

§ 1.4.1.2 The "Agencies" are the Department of Education of the State of Connecticut (the "Department") and all other governmental authorities having regulatory or administrative jurisdiction over the Project and all representatives or designees of the Department or such other governmental authorities. The term "Agencies" shall also include any individuals or entities designated by the Department or such other governmental authorities or by the Owner to monitor or oversee compliance of the Project's energy and environmental design with the requirements of the Department or such other governmental authorities.

§ 1.4.1.3 The term "Agencies" shall also include any individual or entity not described in Section 1.4.1.2 from whom the Owner intends to request certification of the Project's energy and environmental design, to the extent included in the Contract Documents.

§ 1.4.1.4 The Construction Manager understands that performance of the Services will require communication with the Agencies and with individuals designated by the Agencies, and the Construction Manager will, at no additional cost to the Owner, so communicate and take all steps necessary to advise the Owner as to compliance with the conditions imposed on the Project by the Agencies.

§ 1.4.2 The Services shall be provided in conjunction with the services of an Architect as described in an agreement between the Owner and Architect.

§ 1.4.3 The Construction Manager shall provide sufficient organization, personnel and management to carry out the requirements of this Agreement in an expeditious and economical manner consistent with the interests of the Owner and with the Construction Manager's Standard of Care. A listing of the names, titles and responsibilities of those employees and consultants of the Construction Manager that will be assigned to the Project is attached hereto as Appendix \_\_\_\_\_. Such names, titles, and responsibilities shall not be changed without the prior written consent of the Owner.

§ 1.4.4 The Services are subject to the time limitations contained in Section 13.5.1.

§ 1.5 REPRESENTATIONS § 1.5.1 The Construction Manager represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute the Contract Documents, which representations and warranties shall survive the execution and delivery of the Contract Documents and the final completion of the Work:

- .1 the Construction Manager is authorized to do business in the State of Connecticut and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Construction Manager's duly authorized powers;
- .2 the Construction Manager possess a high level of experience and expertise in the business administration, regulation, construction, construction management and superintendence of projects of the size, complexity and nature of this particular Project.

§ 1.6 Any reference herein to the "Town" shall mean the Town of Glastonbury and any reference to the "Board of Education" shall mean the Board of Education of the Town of Glastonbury. To the extent that the Owner is the Town and/or the Board of Education, such terms shall be interchangeable with the term "Owner".

*(Paragraphs deleted)*

## ARTICLE 2 SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES

### § 2.1 DEFINITION

§ 2.1.1 The Construction Manager's Basic Services consist of those described in Sections 2.2 and 2.3 and any other services identified in Article 14 as part of Basic Services and all services usually and customarily performed in conjunction with, in furtherance of, any such services, to the extent consistent with the instructions, guidance and direction of the Owner.

### § 2.2 PRE-CONSTRUCTION PHASE

#### § 2.2.1 PRE-APPROVAL PHASE

§ 2.2.1.1 The Construction Manager shall conduct any Service described in this Section 2.2 during the Pre-Approval Phase, to the extent requested by the Owner.

§ 2.2.1.2 The Construction Manager shall assist the Owner in the preparation and presentation of materials necessary for a citizen referendum, and/or for such other municipal and Board of Education approval processes as may be applicable.

§ 2.2.1.3 Upon the Owner's request, the Construction Manager shall assist the Owner and the Architect to develop its Educational Specifications, preliminary cost estimates, and other submittals the Owner must produce to become eligible for funding from the Department.

§ 2.2.1.4 Upon the Owner's request, the Construction Manager shall assist the Owner to develop its application for funding from the Department.

## **2.2.2 PRELIMINARY EVALUATION**

**§ 2.2.2.1** The Construction Manager shall review the program furnished by the Owner to ascertain the requirements of the Project and shall, together with the Architect, arrive at a mutual understanding of such requirements with the Owner, which understanding the Architect shall put into writing under the terms of the Architect's agreement with Owner.

**§ 2.2.2.2** Upon receipt of the written understanding from Architect as described in Section 2.2.2.1, the Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other. The Construction Manager shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project. The Construction Manager shall consult with the Agencies as necessary during the Preliminary Evaluation.

*(Paragraph deleted)*

## **§ 2.2.3 CONSULTATION**

The Construction Manager with the Architect shall jointly schedule and attend regular meetings with the Owner and, as required or requested by the Agencies, with the Agencies or with any individual designated by the Agencies.

## **§ 2.2.4 PHASED CONSTRUCTION**

The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is approved by the Agencies to the extent necessary and 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.

## **§ 2.2.5 DESIGN REVIEW**

**§ 2.2.5.1** The Construction Manager shall cooperate with the Architect during each step of the design process to obtain the approvals of the Architect and, as necessary, the Agencies, and shall attend a reasonable number of conferences with the Architect and the Agencies.

**§ 2.2.5.2** Based on early schematic designs and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of Construction Cost for program requirements using area, volume or similar conceptual estimating techniques. The Construction Manager shall provide cost evaluations of alternative materials and systems. Biweekly, the Construction Manager shall update, and add detail to, such estimates.

**§ 2.2.5.3** The Construction Manager shall expeditiously review design documents during their development. During all phases of the development of the design documents, the Construction Manager shall advise on proposed site use and improvements, selection of materials, building systems and equipment, including the selection of such materials, systems and equipment as are necessary to comply with Conditions, and methods of Project delivery and shall provide recommendations on relative feasibility and costs of construction methods, 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, and possible economies. The Construction Manager shall determine, and advise the Owner and Architect as to, the compliance of each stage of design documents with the requirements for such design documents under the agreement between the Owner and the Architect.

**§ 2.2.5.4** The Construction Manager shall prepare and update biweekly a Project Schedule for the Architect's review and the Owner's approval. The Construction Manager shall obtain the Architect's approval for the portion of the preliminary project schedule relating to the performance of the Architect's services. In the Project Schedule, the Construction Manager shall coordinate and integrate the Construction Manager's services, the Architect's services and the Owner's responsibilities with anticipated construction schedules, and schedules for obtaining the approvals required by the Agencies highlighting critical and long-lead-time items.

**§ 2.2.5.4.1** On the Project Schedule, the Construction Manager shall identify, and recommend to the Owner and the Architect, a procurement schedule clearly indicating those items of work that require early procurement to maintain the completion date for a part or whole of the Project.

**§ 2.2.5.4.2** In planning the Project Schedule, the Construction Manager shall anticipate the amount of adverse weather conditions historical for the site of the Work for the season or seasons of the year involved. Only those

weather delays attributable to substantially more adverse than normal weather conditions will be considered by the Owner in assessing a request for a change to the Project Schedule.

§ 2.2.5.5 As information becomes available, as conditions require and at intervals requested by the Owner, the Project Schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information and approvals required by the Agencies, 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. The Construction Manager shall advise the Owner and Architect if it appears that previously submitted schedules may not be met, and make recommendations for corrective action.

§ 2.2.5.6 As the Architect progresses with the preparation of the Schematic, Design Development and Construction Documents, the Construction Manager shall prepare and update, at intervals requested by the Owner, estimates of Construction Cost of increasing detail and refinement. The estimated cost of each Contract shall be indicated with supporting detail. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall advise the Owner and Architect if it appears that the Construction Cost may exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.2.5.7 The Construction Manager shall consult with the Owner and Architect regarding the Construction Documents and make recommendations whenever design details adversely affect constructability, cost, schedules or compliance with the Conditions.

§ 2.2.5.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding the assignment of responsibilities for temporary Project facilities and equipment, materials and services for common use of the Contractors. The Construction Manager shall verify that such requirements and assignment of responsibilities are included in the proposed Contract Documents.

§ 2.2.5.9 The Construction Manager shall provide recommendations and information to the Owner regarding the allocation of responsibilities for safety programs among the Contractors.

§ 2.2.5.10 The Construction Manager shall advise on the division of the Project into individual Contracts for various categories of Work, including the method to be used for selecting Contractors and awarding Contracts. If multiple Contracts are to be awarded, the Construction Manager shall review the Construction Documents and make recommendations as required to provide that (1) the Work of the Contractors is coordinated, (2) all requirements for the Project have been assigned to the appropriate Contract, (3) the likelihood of jurisdictional disputes has been minimized, and (4) proper coordination has been provided for phased construction.

§ 2.2.5.11 The Construction Manager shall prepare a Project construction schedule providing for the components of the Work, including phasing of construction, times of commencement and completion required of each Contractor, ordering and delivery of products requiring long lead time, and the occupancy requirements of the Owner. The Construction Manager shall provide the current Project construction schedule for each set of bidding documents.

§ 2.2.5.12 The Construction Manager shall expedite and coordinate the ordering and delivery of materials requiring long lead time.

§ 2.2.5.13 The Construction Manager shall assist the Owner in selecting, retaining and coordinating the professional services of surveyors, special consultants and testing laboratories required for the Project.

§ 2.2.5.14 The Construction Manager shall provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. The Construction Manager shall make recommendations for actions designed to minimize adverse effects of labor shortages.

§ 2.2.5.15 The Construction Manager shall assist the Owner in obtaining information regarding applicable requirements for equal employment opportunity programs for inclusion in the Contract Documents.



§ 2.2.5.16 Following the Owner's approval of the Construction Documents, the Construction Manager shall update and submit the latest estimate of Construction Cost and the Project construction schedule for the Architect's review and the Owner's approval.

## § 2.2.6 BIDDING PHASE

### § 2.2.6.1 Generally

§ 2.2.6.1.1 The Construction Manager shall submit the list of prospective bidders for the Architect's review and the Owner's approval.

§ 2.2.6.1.2 The Construction Manager understands that the Conditions attach to the letting of bids on the Project. The Construction Manager shall assure that the bidding process and the Bidding Documents comply with the Conditions.

§ 2.2.6.1.3 The Construction Manager shall advise the Owner on the separation of the Project into Contracts for various categories of Work. If separate Contracts are to be awarded, the Construction Manager shall review the Drawings and Specifications and make recommendations as required to provide that (i) the Work of the separate Contractors is coordinated; (ii) all requirements for the Project have been assigned to the appropriate separate Contracts; (iii) the likelihood of jurisdictional disputes has been minimized, and (iv) a proper sequencing and coordination have been provided for phased construction.

§ 2.2.6.1.4 The Construction Manager shall assist the Owner in identifying and verifying applicable requirements for equal employment opportunity programs.

§ 2.2.6.1.5 The Construction Manager shall assist the Architect and the Owner in obtaining the approval of the Agencies to begin the Bidding Phase. Such assistance shall include attending a reasonable number of meetings with the Agencies, producing any documents and providing any services required or requested of the Owner or Construction Manager by the Agencies, and working with the Architect and Owner to make any adjustments to the Contract Documents requested by the Agencies.

§ 2.2.6.1.6 The Construction Manager shall not issue bidding documents to, and shall assure bids are not submitted by, any subsidiary, parent company, or other affiliate of the Construction Manager.

### § 2.2.6.2 Bidding Documents

§ 2.2.6.2.1 The Construction Manager shall, with the assistance of the Architect, provide to the Owner prior to bidding a complete and final set of Bidding Documents fully suitable for both the bidding and construction phases of the Project work. Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 2.2.6.2.2 The Construction Manager shall prepare Supplemental Instructions to Bidders and Supplementary General Conditions.

§ 2.2.6.2.3 The Construction Manager will ensure that no Bidding Documents are preliminary, defective or incomplete in any material way.

### § 2.2.6.3 Bid Process

§ 2.2.6.3.1 The Bidding Documents shall not be released until the Owner so directs in writing.

§ 2.2.6.3.2 The Construction Manager shall assist the Owner in bidding the Project by:

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;

- .4 assist the Architect to prepare timely responses to questions from prospective bidders and providing timely clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda;
- .5 organizing and conducting the opening of the bids, and summarizing the bids as described in Section § 2.2.6.3.3; and
- .6 documenting and distributing the bidding results, as directed by the Owner.

§ 2.2.6.3.3 The Construction Manager shall summarize the bids received for each component of the Work in a spreadsheet format, including all analysis and adjustments necessary to permit a meaningful comparison among bidders. The Construction Manager shall also provide, as appropriate, comments concerning the subcontractors and suppliers under consideration, including financial strength, past performance, and current workload, and shall make recommendations to the Owner for the Owner's award of Contracts or rejection of bids.

§ 2.2.7 The Construction Manager shall assist the Owner in preparing Construction Contracts and advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Contractors.

§ 2.2.8 The Construction Manager shall assist the Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the various Contractors. The Construction Manager shall verify that the Owner has paid applicable fees and assessments. The Construction Manager shall assist the Owner and Architect in connection with the Owner's responsibility for filing documents required for the approvals of the Agencies.

§ 2.2.9 At such time prior to the commencement of the Construction Phase as is requested by the Owner, the Construction Manager the Project Schedule created prepared and updated pursuant to Section 2.2.5.4 shall be developed into a Critical Path Method Project Construction Schedule, which shall become the Project Schedule.

*(Paragraphs deleted)*

### § 2.3 CONSTRUCTION PHASE-ADMINISTRATION OF THE CONSTRUCTION CONTRACT

§ 2.3.1 The Construction Phase will commence with the award of the initial Construction Contract or purchase order and, together with the Construction Manager's obligation to provide Basic Services under this Agreement, will end 90 days after final payment to all Contractors is due except as otherwise provided in this Agreement.

§ 2.3.2 The Construction Manager shall provide administration of the Contracts for Construction in cooperation with the Architect as set forth below and in the edition of AIA Document A201/CMa, General Conditions of the Contract for Construction, Construction Manager-Adviser Edition, as amended.

§ 2.3.3 The Construction Manager shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the Contractors with each other and with those of the Construction Manager, the Owner and the Architect to endeavor to manage the Project in accordance with the latest approved estimate of Construction Cost, the Project Schedule and the Contract Documents.

§ 2.3.4 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress and scheduling. The Construction Manager shall prepare and promptly distribute minutes to the Owner, Architect and Contractors.

§ 2.3.5 Utilizing the Construction Schedules provided by the Contractors, the Construction Manager shall continue to update the Project construction schedule as required by Section 2.2.5.4 of this Agreement and incorporating the activities of the Contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery of products requiring long lead time and procurement. The Project construction schedule shall include the Owner's occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall update and reissue the Project construction schedule as required to show current conditions. If an update indicates that the previously approved Project construction schedule may not be met, the Construction Manager shall recommend corrective action to the Owner and Architect.

§ 2.3.6 Consistent with the various bidding documents, and utilizing information from the Contractors, the Construction Manager shall coordinate the sequence of construction and assignment of space in areas where the Contractors are performing Work.

§ 2.3.7 The Construction Manager shall endeavor to obtain satisfactory performance from each of the Contractors. The Construction Manager shall recommend courses of action to the Owner when requirements of a Contract are not being fulfilled.

§ 2.3.8 The Construction Manager shall monitor the approved estimate of Construction Cost. The Construction Manager shall show actual costs for activities in progress and estimates for uncompleted tasks by way of comparison with such approved estimate.

§ 2.3.9 The Construction Manager shall develop cash flow reports and forecasts for the Project and advise the Owner and Architect as to variances between actual and budgeted or estimated costs.

§ 2.3.10 The Construction Manager shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records.

§ 2.3.11 The Construction Manager shall develop and implement procedures for the review and processing of applications by Contractors for progress and final payments.

§ 2.3.11.1 The Construction Manager shall visit the site at intervals appropriate to the stage of construction, including regularly scheduled site meetings and visits, to become familiar with the progress and quality of the portion of the Work completed, to guard the Owner against defects and deficiencies in the Work that become known to the Construction Manager, and to determine if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. On the basis of the site visits, the Construction Manager shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and inform the Owner in writing of those defects and deficiencies in the Work and deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, that are known to the Construction Manager. Based on the Construction Manager's observations and evaluations of each Contractor's Application for Payment, the Construction Manager shall review the amounts claimed to be due the respective Contractors and certify such amounts as the Construction Manager believes to be due the respective Contractors.

§ 2.3.11.2 The Construction Manager shall prepare a Project Application for Payment based on the Contractors' Certificates for Payment.

§ 2.3.11.3 The Construction Manager's certification for payment shall constitute a representation to the Owner, based on the Construction Manager's determinations at the site as provided in Sections 2.3.11.1 and 2.3.13 and on the data comprising the Contractors' Applications for Payment, that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to further evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Construction Manager in writing at the time of certification. The issuance of a Certificate for Payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified. Preparation of an Application for Payment and certification thereof by the Construction Manager and the issuance of a Certificate for Payment by the Construction Manager and the Architect are recommendations only; payment to the Contractor of amounts applied for, certified by the Construction Manager, and certified in a Certificate for Payment is subject to the Owner's approval.

§ 2.3.11.4 The issuance of a Certificate for Payment shall not be a representation that the Construction Manager has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences for the Contractor's own Work, or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to



substantiate the Contractor's right to payment or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**§ 2.3.12** The Construction Manager shall review the safety programs developed by each of the Contractors for purposes of coordinating the safety programs with those of the other Contractors and shall report to the Owner, in writing, on the sufficiency of the each Contractor's safety programs and on any corrective measures taken by the Contractor on the direction of the Construction Manager. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager and the Construction Manager shall not be responsible for such acts or omissions as are negligent provided that the Construction Manager did not know of such negligent acts or omissions.

**§ 2.3.13** The Construction Manager shall determine in general that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents, endeavoring to guard the Owner against defects and deficiencies in the Work. As appropriate, the Construction Manager shall have authority, upon written authorization from the Owner, to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. The Construction Manager, in consultation with the Architect, may reject Work which does not conform to the requirements of the Contract Documents.

**§ 2.3.14** The Construction Manager shall schedule and coordinate the sequence of construction in accordance with the Contract Documents and the latest approved Project construction schedule.

**§ 2.3.15** With respect to each Contractor's own Work, the Construction Manager shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractors, since these are solely the Contractor's responsibility under the Contract for Construction. The Construction Manager shall not be responsible for a Contractor's failure to carry out the Work in accordance with the respective Contract Documents provided, however, that the Construction Manager shall be responsible for a Contractor's failure to carry out its Work in accordance with the Construction Documents to the extent that the Contractor's failure to perform is caused by the malfeasance of the Construction Manager in the Construction Manager's administration of the Work as set forth in this Agreement. The Construction Manager shall not have control over or charge of acts or omissions of the Contractors, Subcontractors, or their agents or employees, or any other persons performing portions of the Work not directly employed by the Construction Manager.

**§ 2.3.16** The Construction Manager shall transmit to the Architect requests for interpretations of the meaning and intent of the Drawings and Specifications, and assist in the resolution of questions that may arise.

**§ 2.3.17 Changes in the Work**

**§ 2.3.17.1** The Construction Manager will be responsible for the review, evaluation and documentation of any and all Change Orders and Construction Change Directives that may be required. No Change Order or Construction Change Directive, however, will be effective against the Owner unless it has been signed and approved by the Owner. The Construction Manager will submit to the Owner a cost breakdown, as prepared by the Contractor, for any additional or changed work that is to be performed pursuant to the Change Order. This cost breakdown will include a comparison of the proposed prices and quantities of the Change Order with the original prices and quantities as bid, and an evaluation by the Architect and the Construction Manager of the reasonableness of such Change Order in writing in a complete and expeditious manner for review with the Owner.

**§ 2.3.17.2** The Construction Manager will not present to the Owner for approval any Change Order that does not include the following provision prominently displayed on the face of the Change Order and previously agreed to by the Contractor involved:

'THE CONTRACTOR AGREES THAT THIS CHANGE ORDER ADJUSTS THE CONTRACT PRICE AND TIME TO REFLECT FAIRLY ALL OVERHEAD, PROFIT, CHARGES, COSTS, EXPENSES, DELAYS, DAMAGES AND OTHER PAYMENTS THAT MAY BE CLAIMED DUE AND OWING TO THE CONTRACTOR AS OF THE ABOVE STATED DATE, AND AGREES THAT THE

ACCEPTANCE OF THIS CHANGE ORDER BY THE OWNER WILL CONSTITUTE A COMPLETE AND FINAL ACCORD AND SETTLEMENT OF CONTRACTOR'S CLAIMS AGAINST THE OWNER ON ACCOUNT OF THIS OR ANY PRIOR CHANGE IN THE WORK."

§ 2.3.17.3 The Construction Manager will ensure that all Change Orders submitted to the Owner will be in the format of AIA, Document G701 Change Order, as revised, and will ensure that all such forms are fully and accurately completed for review by the Owner.

§ 2.3.18 The Construction Manager shall assist the Architect in the review, evaluation and documentation of Claims.

§ 2.3.19 The Construction Manager shall receive certificates of insurance from the Contractors and forward them to the Owner with a copy to the Architect prior to the Commencement of the Work.

§ 2.3.20 In collaboration with the Architect, the Construction Manager shall establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals. The Construction Manager shall review all Shop Drawings, Product Data, Samples and other submittals from the Contractors. The Construction Manager shall coordinate submittals with information contained in related documents and transmit to the Architect those which have been approved by the Construction Manager. The Construction Manager's actions shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner or Contractors.

§ 2.3.21 The Construction Manager shall record the progress of the Project. The Construction Manager shall submit written reports detailing, at a minimum, (i) the current status of the Project as it relates to the approved Project schedule, (ii) a look-ahead at the work to be progressed in the forth-coming month, (iii) actions to be taken where the work of contractors is failing to meet the approved Project schedule, (iv) the impact, if any, of change(s) issued during the previous month and actions needed to maintain the agreed to end date, (v) a listing of the requests for interpretations outstanding and the period they have been outstanding, (vi) bids to be issued during the forth-coming month, (vii) bids received and being analyzed, including their current status, (viii) Contract status on Contracts issued or where the Owner has approved the award of the Work, (ix) a cost report indicating the current anticipated completion cost, (x) major reasons for movement of cost during the previous month, (xi) items of change awaiting Owner decision, (xii) contractual claim status log, (xiii) Change Order status log, (xiv) Contracts closed out, (xv) Value of construction, and related work, paid for by the Owner as it relates to the approved cash flow forecast and the movement during the previous month. Such reports are to be submitted to the Owner at a minimum of monthly, or as otherwise requested, in writing, by the Owner. The actual format and the manner of providing the progress report(s) shall be subject to the acceptance of the Owner. The Construction Manager shall keep a daily log containing a record of weather, each Contractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as the Owner may require.

§ 2.3.22 The Construction Manager shall maintain at the Project site for the Owner one record copy of all Contracts, Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition, approved Shop Drawings, Product Data, Samples and similar required submittals. The Construction Manager shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer. The Construction Manager shall make all such records available to the Architect and upon completion of the Project shall deliver them to the Owner.

§ 2.3.23 The Construction Manager shall arrange for the delivery, storage, protection and security of Owner-purchased materials, systems and equipment that are a part of the Project until such items are incorporated into the Project.

§ 2.3.24 With the Architect and the Owner's maintenance personnel, the Construction Manager shall observe the Contractors' final testing and start-up of utilities, operational systems and equipment.

§ 2.3.25 When the Construction Manager considers each Contractor's Work or a designated portion thereof substantially complete, the Construction Manager shall, jointly with the Contractor, prepare for the Architect a list of incomplete or unsatisfactory items and a schedule for their completion. The Construction Manager shall assist the Architect in conducting inspections to determine whether the Work or designated portion thereof is substantially complete.

§ 2.3.26 The Construction Manager shall assist the Architect in conducting inspections to determine the date or dates of Substantial Completion and the date of final completion. The inspections of the Construction Manager shall be conducted to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected. The Construction Manager shall prepare for the Owner a written list of observable items, materials, or systems that are defective, or that require additional Work or replacement by the Contractor.

§ 2.3.27 The Construction Manager shall coordinate the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager shall evaluate the completion of the Work of the Contractors and make recommendations to the Architect when Work is ready for final inspection. The Construction Manager shall assist the Architect in conducting final inspections. Substantial Completion shall be deemed to have been achieved when all of the following have occurred: (i) the Project Architect has issued a Certificate of Substantial Completion; (ii) the Project or, in the case of a phased project, specific units in a particular phase are capable of being beneficially occupied for this intended use; and (iii) an unconditional Certificate of Occupancy has been issued by the appropriate governmental entity.

§ 2.3.28 The Construction Manager shall secure and transmit to the Architect warranties and similar submittals required by the Contract Documents for delivery to the Owner and deliver all keys, manuals, record drawings and maintenance stocks to the Owner. The Construction Manager shall, additionally, secure and transmit to the Architect the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents. The Construction Manager shall forward to the Architect a final Project Application for Payment upon compliance with the requirements of the Contract Documents.

§ 2.3.29 Duties, responsibilities and limitations of authority of the Construction Manager as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Construction Manager and Architect. Consent shall not be unreasonably withheld.

§ 2.3.30 Upon request of the Owner, the Construction Manager will cooperate and assist the Owner and the Department during any audit of the Project as conducted by the Owner or the Department at any time after Substantial Completion.

### ARTICLE 3 ADDITIONAL SERVICES

#### § 3.1 GENERAL

§ 3.1.1 The services described in this Article 3, to the extent not included in Basic Services and not identified in Article 14, are Additional Services that may be required for the Project which shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. The Optional Additional Services described under Section 3.3 shall only be provided if authorized or confirmed in writing by the Owner. If services described under Contingent Additional Services in Section 3.2 are required due to circumstances beyond the Construction Manager's control, the Construction Manager shall notify the Owner prior to commencing such services, to the extent such services are not included in Basic Services. If the Owner deems that such services described under Section 3.2, to the extent such services are not included in Basic Services, are not required, the Owner shall give prompt written notice to the Construction Manager. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, the Construction Manager shall have no obligation to provide those services.

§ 3.1.2 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. The Construction Manager shall perform all services requested by the Owner. Services requested by the Owner or recognized to be necessary after execution of this Agreement are presumed to be included within Basic Services unless clearly shown to not be so included. If the Construction Manager believes a service requested by the Owner

or recognized to be necessary after execution of this Agreement is an Additional Service, prior to such performance, the Owner and the Construction Manager, solely after notice from the Construction Manager, given within five (5) days of the Owner's request, shall meet to determine if such services are within the Basic Services or Additional Services. If the Construction Manager fails to submit such notice, the Construction Manager shall be deemed to have waived any right to additional compensation for such services and the same shall be deemed part of the Basic Services.

**§ 3.1.3** Notwithstanding anything to the contrary, (i) the Construction Manager shall provide any service requested by the Owner and at no additional cost to the Owner, to the extent such designated service is included in the Basic Services and (ii) any services made necessary by the act or omission of the Construction Manager, its consultants or subcontractors shall be provided by the Construction Manager as Basic Services, at no additional cost to the Owner.

**§ 3.2 CONTINGENT ADDITIONAL SERVICES (to the extent not included in the Basic Services)**

**§ 3.2.1** Providing services required because of significant changes in the Project including, but not limited to, changes in size, quality, complexity or the Owner's schedule.

**§ 3.2.2** Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

**§ 3.2.3** Providing services made necessary by the termination or default of the Architect or a Contractor, by those major defects or deficiencies in the Work of a Contractor that are unrelated to a negligent act or omission of the Construction Manager and to the failure of the Construction Manager to perform the Services in a manner consistent with this Agreement, or by failure of performance of either the Owner or Contractor under a Contract for Construction.

**§ 3.2.4** Providing services in evaluating an more than \_\_\_\_ of claims submitted by a Contractor or others in connection with the Work.

**§ 3.2.5** Providing services in connection with, to the extent not reasonably foreseeable on the date of execution of this Agreement, a public hearing, arbitration proceeding or legal proceeding except where the Construction Manager is party thereto.

**§ 3.3 OPTIONAL ADDITIONAL SERVICES (to the extent not included in the Basic Services)**

**§ 3.3.1** Providing services relative to future facilities, systems and equipment.

**§ 3.3.2** Providing services to investigate existing conditions or facilities or to provide measured drawings thereof in excess of those such services as are part of the Basic Services.

**§ 3.3.3** Providing services to verify the accuracy of drawings or other information furnished by the Owner in excess of those such services as are part of the Basic Services.

**§ 3.3.4** Providing services required for or in connection with the Owner's selection, procurement or installation of furniture, furnishings and related equipment.

**§ 3.3.5** Providing services for tenant improvements.

**§ 3.3.6** Providing any other services not otherwise included in this Agreement.

**ARTICLE 4 OWNER'S RESPONSIBILITIES**

**§ 4.1** The Owner shall provide full information regarding requirements for the Project, including a program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems, and site requirements.

**§ 4.2** The Owner shall establish and update, if necessary, an overall budget for the Project based on consultation with the Construction Manager and Architect, which shall include the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.



§ 4.3 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner, or such authorized representative, shall render decisions in a timely manner pertaining to documents submitted by the Construction Manager in order to avoid unreasonable delay in the orderly and sequential progress of the Construction Manager's services.

§ 4.4 The Owner shall retain an architect whose services, duties and responsibilities are described in the edition of AIA Document B141/Cma, Standard Form of Agreement Between Owner and Architect, Construction Manager-Adviser Edition, current as of the date of this Agreement. The Terms and Conditions of the Agreement Between the Owner and Architect shall be furnished to the Construction Manager and shall not be modified without notification to the Construction Manager. The Construction Manager shall not be responsible for those actions of the Architect unrelated to the negligent acts or omissions of the Construction Manager and to the failure of the Construction Manager to perform the Services in a manner consistent with this Agreement. § 4.5 The Owner shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

§ 4.6 The Owner shall furnish all legal, accounting and insurance counseling services as the Owner, in its sole discretion, deems necessary at any time for the Project, including auditing services the Owner may require to verify the Contractors' Applications for Payment or to ascertain how or for what purposes the Contractors have used the money paid by or on behalf of the Owner.

§ 4.7 The Owner shall furnish the Construction Manager with a sufficient quantity of Construction Documents.

*(Paragraphs deleted)*

§ 4.8 The services, information and reports required by Sections 4.4 through 4.7 shall be furnished at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy and completeness thereof unless notified otherwise by the Owner in writing; provided, however, that the Construction Manager shall inform the Owner of any error or omission in such services, information and reports of which the Construction Manager has knowledge.

§ 4.9 Prompt written notice shall be given by the Owner to the Construction Manager and Architect if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents provided, however, that the Owner shall have no obligation to investigate for the purpose of becoming aware of faults, defects, errors, omissions or inconsistencies.

§ 4.10 The Owner reserves the right to perform construction and operations related to the Project with the Owner's own forces, and to award contracts in connection with the Project which are or are not part of the Construction Manager's responsibilities under this Agreement. The Construction Manager shall notify the Owner if any such independent action will interfere with the Construction Manager's ability to perform the Construction Manager's responsibilities under this Agreement. When the Owner performs construction or operations related or unrelated to the Project, the Owner agrees to refrain from unreasonably interfering with the Construction Manager's ability to carry out its responsibilities under this Agreement.

*(Paragraph deleted)*

§ 4.11 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Construction Manager's services and the progress of the Work.

§ 4.12 Notwithstanding anything to the contrary in this Agreement, the Owner's review and approval of any and all documents, including but not limited to, the Construction Documents, bidding documents and the Construction Contracts or other matters required herein shall be for the purpose of providing the Construction Manager with information as to the Owner's objectives and goals with respect to the Project and not for the purpose of determining the accuracy and completeness of such documents and shall in no way create any liability on the part of the Owner for errors, inconsistencies or omissions in any approved documents, nor shall any such review and approval alter the Construction Manager's responsibilities hereunder and with respect to such documents.



## ARTICLE 5 CONSTRUCTION COST

### § 5.1 DEFINITION

§ 5.1.1 The Construction Cost shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Architect.

§ 5.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner; of equipment designed, specified, selected or specially provided for by the Architect; a reasonable allowance for the Contractors' overhead and profit; and a contingency in an amount approved by the Owner for market conditions at the time of bidding and for changes in the Work during construction. Except as provided in Section 5.1.3, Construction Cost shall also include the compensation of the Construction Manager and Construction Manager's consultants approved by the Owner in writing.

§ 5.1.3 Construction Cost does not include the compensation of the Architect and Architect's consultants, costs of the land, rights-of-way, financing or other costs which are the responsibility of the Owner as provided in Article 4. If any portion of the Construction Manager's compensation is based upon a percentage of Construction Cost, then Construction Cost, for the purpose of determining such portion, (i) shall not include the compensation of the Construction Manager or Construction Manager's consultants and (ii) shall not be raised on account of increased prices for construction materials.

### § 5.2 RESPONSIBILITY FOR CONSTRUCTION COST

§ 5.2.1 Evaluations of the Owner's Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Cost prepared by the Construction Manager represent the Construction Manager's best judgment as a person or entity familiar with the construction industry. It is recognized, however, that neither the Construction Manager nor the Owner has control over the cost of labor, materials or equipment, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the Project budget proposed, established or approved by the Owner, or from any cost estimate or evaluation prepared by the Construction Manager; provided, however, that the Construction Manager shall be responsible for any overrun of the Construction Cost caused by the act or omission of the Construction Manager or its consultants, or caused by factors of which the Construction Manager was aware but failed to consider in providing estimates to the Owner.

§ 5.2.2 If the Bidding or Negotiation Phase has not commenced within 90 days after submittal of the Construction Documents to the Owner, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the Owner and the date on which proposals are sought.

§ 5.2.3 The Fixed Limit of Construction Costs for this Project is \_\_\_\_\_ Dollars (\$ \_\_\_\_\_). The Fixed Limit includes all matters included in the Construction Cost and, notwithstanding anything in this Agreement to the contrary, shall not be adjusted under any circumstances. This amount is hereby accepted by the Owner and Construction Manager as the Fixed Limit. The actual costs of the Project shall not exceed the Fixed Limit.

§ 5.2.3.1 If the actual costs of the Project exceeds the Fixed Limit, the Owner shall, without limiting its other remedies, be entitled to terminate this Agreement and such termination shall be termination for cause. The Construction Manager shall be permitted to include those contingencies set forth in Attachment \_\_\_\_\_ to adjust the Construction Cost to the Fixed Limit.

### § 5.2.4 If

*(Paragraphs deleted)*

at any time during the term of this Agreement the estimate of the Construction Cost deviates from the estimate of the Construction Cost most recently approved by the Owner, the Owner may terminate this Agreement at any time after such deviation occurs and without limiting the other remedies of the Owner, and with such termination being a termination for cause.

§ 5.2.5 If the Owner does not so terminate the Agreement upon any deviation described in this Section 5.2.3 or 5.2.4, the Construction Manager shall, upon the Owner's request, cooperate with the Architect to provide the Owner a

written explanation of the deviation and propose changes that would bring the Project within the most recently approved estimate of the Construction Cost.

**§ 5.2.6** The Construction Manager shall be liable to the Owner for any amount the actual Project costs exceed the Fixed Limit or the Construction Cost, as the case may be, to the extent that such excess is due to the negligent act or omission of the Construction Manager.

**§ 5.2.7** If the estimate of the Construction Cost approved by the Owner at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Construction Cost;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.2;
- .4 in consultation with the Architect and the Construction Manager, revise the Project program, scope, or quality as required to reduce the Construction Cost; or
- .5 implement any other collectively acceptable alternative.

**§ 5.2.7** If the Owner chooses to proceed under Section 5.2.7.4, the Construction Manager, without additional compensation, shall work with the Architect to modify the Construction Documents as necessary to comply with the Construction Cost at the conclusion of the Construction Documents Phase, or, where applicable, the Construction Cost adjusted under Section 5.2.7.1. If the Owner chooses to proceed under Section 5.2.7.2, the Construction Manager shall provide rebid services without additional compensation. The scope of such rebid services shall be the same as the scope of the bidding phase services the Construction Manager is required to provide under this Agreement.

#### **ARTICLE 6 CONSTRUCTION SUPPORT ACTIVITIES**

**§ 6.1** Construction support activities, if provided by the Construction Manager, shall be governed by separate contractual agreements unless otherwise provided in Article 14.

**§ 6.2** Reimbursable expenses listed in Article 14 for construction support activities may be subject to trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment which shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured.

#### **ARTICLE 7 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS**

##### **§ 7.1**

*(Paragraphs deleted)*

Article 1.3 of A201/CMA shall apply to both the Preconstruction and Construction Phases.

#### **ARTICLE 8 DISPUTE RESOLUTION**

*(Paragraph deleted)*

**§ 8.1** During both the Preconstruction and Construction Phases, Claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in Article 15 of AIA Document A201/CMA, General Conditions of the Contract for Construction, Construction Manager-Adviser Edition with references therein to the "Contractor" including the Construction Manager, except that, during the Preconstruction Phase, a decision by the Initial Decision Maker shall not be a condition precedent to mediation and binding dispute resolution.

*(Paragraphs deleted)*

#### **ARTICLE 9 TERMINATION, SUSPENSION OR ABANDONMENT**

**§ 9.1** If the Owner suspends the Project for 90 consecutive days for reasons unrelated to a fault of the Construction Manager, the Construction Manager shall be compensated for services fully and satisfactorily performed by the Construction Manager prior to notice of such suspension and, upon such suspension by the Owner or upon the Owner's suspension of the project for more than 120 cumulative days, the Construction Manager may terminate this Agreement by giving not less than 30 days' written notice to the Owner and upon the Owner's failure to resume the Project within such 30 day period. If the Agreement is not so terminated, when the Project is resumed, the Construction Manager's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Construction Manager's services.

**§ 9.2** This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Construction Manager for cause as provided in this Agreement and upon the Construction Manager's material

failure to perform in accordance with the terms of this Agreement. Upon such termination for cause, the Construction Manager shall be compensated for services fully and satisfactorily performed by the Construction Manager prior to notice of such termination.

**§ 9.3** The Construction Manager may, upon thirty days notice to the Owner, terminate or suspend this Agreement upon the Owner's failure, without cause, to make a payment to the Construction Manager required under this Agreement. The notice of termination or suspension must state with specificity the means by which the Owner may cure its nonperformance, and, the Construction Manager may not terminate or suspend this Agreement if, within thirty days of the notice, the Owner substantially takes such curative measures.

**§ 9.4** The Owner may, on seven day's notice, terminate the Contract for the Owner's convenience and without cause.

**§ 9.4.1** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Construction Manager shall:

- .1 cease operations as directed by the Owner in the notice; and
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work.

**§ 9.4.2** In case of such termination by the Owner, the Construction Manager shall be entitled to receive payment for Services executed and actual costs incurred by reason of such termination.

*(Paragraphs deleted)*

## **ARTICLE 10 MISCELLANEOUS PROVISIONS**

**§ 10.1** Unless otherwise provided, this Agreement shall be governed by the law of the State of Connecticut.

**§ 10.2** Terms in this Agreement shall have the same meaning as those in the edition of AIA Document A201/CMA, General Conditions of the Contract for Construction, Construction Manager-Adviser Edition.

**§ 10.3** Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion, or the date of issuance of the final Project Certificate for Payment for acts or failures to act occurring after Substantial Completion.

**§ 10.4** Waivers of Subrogation. The Owner and Construction Manager waive all rights against each other and against the Contractors, Architect, consultants, agents and employees of any of them, for damages, but only to the extent covered by property insurance during construction, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201/CMA, General Conditions of the Contract for Construction, Construction Manager-Adviser Edition. The Owner and Construction Manager each shall require similar waivers from their Contractors, Architect, consultants, agents, and persons or entities awarded separate contracts administered under the Owner's own forces.

**§ 10.5** The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Construction Manager shall assign this Agreement without the written consent of the other.

**§ 10.6** This Agreement represents the entire and integrated agreement between the Owner and Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager. If anything in any document incorporated into this Agreement, including the A201 CMA, directly conflicts with this Agreement regarding the rights and responsibilities of the Construction Manager, this Agreement shall govern.

**§ 10.7** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Construction Manager.

**§ 10.8** Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

**§ 10.9** The Construction Manager shall promptly advise the Owner of any claim or demand by a Contractor claiming that any amount is due to such Contractor or claiming any default by the Construction Manager or the Owner in any of their obligations to such Contractor.

**§ 10.10** Any provision herein to the contrary notwithstanding, the Owner shall not be obligated to make any payment to the Construction Manager hereunder if Construction Manager is in default of any of its material obligations hereunder or otherwise is in default under any of the Contract Documents. The Owner may withhold such amount necessary to protect it from loss on account of such Construction Manager default.

**§ 10.11** To the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless the Owner and the Architect and their respective consultants, agents, representatives, officials and employees from and against claims, suits and/or legal actions of any type by third-parties, including without limitation claims for loss of or damage to property, personal or bodily injury, including death, and claims for losses of any type; from all judgments or decrees recovered therefore; and from all expenses for defending such claims, suits or legal actions, including without limitation court costs and attorneys' fees, which result or arise from the negligent acts or omissions, breaches, errors, torts or other improper unauthorized and/or unlawful acts of the Construction Manager and/or the Construction Manager's failure to comply with the provisions of this Agreement, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 10.11.

#### **§ 10.12 CONFIDENTIALITY**

Any information obtained by the Construction Manager from the Owner or Architect may not be used, published, distributed, sold or divulged by the Construction Manager for such party's own purposes or for the benefit of any person, firm, corporation or other entity other than the Owner, without the prior written consent of the Owner. Any information obtained by the Construction Manager that is designated by the Owner in accordance with applicable law as confidential shall not be disclosed to any other parties without the prior written consent of the Owner.

### **ARTICLE 11 INSURANCE**

#### **§ 11.1 CONSTRUCTION MANAGER'S LIABILITY INSURANCE**

**§ 11.1.1** The Construction Manager shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Construction Manager from claims set forth below which may arise out of or result from the Construction Manager's operations under this Agreement and for which the Construction Manager may be legally liable. The Construction Manager shall require its consultants to maintain the same types of insurance the Construction Manager is required to maintain under this Agreement, in amounts approved by the Owner. [Subject to review by Owner's Risk Manager.] :

- .1 claims under workers compensation, disability benefit and other similar employee benefit acts which are applicable to the operations to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Construction Manager's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Construction Manager's employees;
- .4 claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Construction Manager, or (2) by another person;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle.

**§ 11.1.2** The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in Article 14 or required by law, whichever coverage is greater. Coverages shall be written on an occurrence basis, except as otherwise provided herein, and shall be maintained without interruption from date of commencement of operations under this Agreement until \_\_\_\_\_ years after Substantial Completion.



§ 11.1.3 The Owner, the Town, the Board of Education, and their employees and agents shall be named as Additional Insureds on a primary and non-contributory basis to all policies required under this Section 11.1, other than Workers Compensation. These requirements shall be clearly stated in the remarks section on the Construction Manager's Certificate of Insurance.

§ 11.1.4 Insurance required under this Section 11.1 shall be written with Carriers approved in the State of Connecticut and with a minimum Best's Rating of A-. In addition, all Carriers are subject to approval by the Owner.

§ 11.1.5 Before commencing the Construction Manager's services, the Construction Manager shall file with the Owner certificates of insurance for the required insurance and shall update such certificates throughout the duration of this Agreement and during any additional period specified in this Agreement. Certificates of professional liability insurance shall bear the endorsement 'Not to be canceled without thirty days' prior written notice to Owner.

## **ARTICLE 12 PAYMENTS TO THE CONSTRUCTION MANAGER**

### **§ 12.1 DIRECT PERSONNEL EXPENSE**

§ 12.1.1 Direct Personnel Expense is defined as the direct salaries of the Construction Manager's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

### **§ 12.2 REIMBURSABLE EXPENSES**

§ 12.2.1 Reimbursable Expense are in addition to compensation for Basic and Additional Services and include expenses incurred by the Construction Manager and Construction Manager's employees and consultants in the interest of the Project, as identified in the following Clauses, to the extent such expenses were incurred for reasons unrelated to the fault of the Construction Manager. All reimbursable expenses greater than \$\_\_\_\_\_ individually or in the aggregate by the categories set forth in paragraph 12.2.1.1 through 12.2.1.4, shall be subject to the prior approval of the Owner.

§ 12.2.1.1 Expense of transportation in connection with the Project, expenses in connection with authorized out-of-town travel; long-distance communications; and fees paid for securing approval of authorities having jurisdiction over the Project.

§ 12.2.1.2 Expense of reproductions, postage, express deliveries, electronic facsimile transmissions and handling of Drawings, Specifications and other documents.

§ 12.2.1.3 If authorized in advance by the Owner, expense of overtime work requiring higher than regular rates.

§ 12.2.1.4 Expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Construction Manager.

### **§ 12.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES**

§ 12.3.1 An initial payment as set forth in Section 13.1 is the minimum payment under this Agreement.

§ 12.3.2 Subsequent payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in Section 13.2.1.

§ 12.3.3 If and to the extent that the time initially established in Section 13.5.1 of this Agreement is exceeded or extended through no fault of the Construction Manager, compensation for any services rendered during the additional period of time shall be computed in the manner set forth in Section 13.3.1.

§ 12.3.4 When compensation is based on a percentage of Construction Cost and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with Section 13.2.1, based on (1) the lowest bona fide bids or negotiated proposals, or (2) if no such bids or proposals are received, the latest approved estimate of such portions of the Project.



**§ 12.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES**

**§ 12.4.1** Payments on account of the Construction Manager's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Construction Manager's statement of services rendered or expenses incurred.

**§ 12.5 CONSTRUCTION MANAGER'S ACCOUNTING RECORDS**

**§ 12.5.1** Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative or the Department at mutually convenient times or at any time such records are lawfully requested by a government authority. The Construction Manager shall maintain such records for the longest of six years after final payment, until the Department issues the findings of its audit of the Project, and any period required by law.

**§ 12.6 CONSTRUCTION MANAGER COSTS NOT TO BE REIMBURSED OR COMPENSATED**

*(Paragraph deleted)*

**§ 12.6.1** The following costs of the Construction Manager shall not be reimbursed by the Owner:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's offices other than the site office, except as specifically provided in Paragraph 12.1.1.
- .2 Expenses of the Construction Manager's principal office and offices other than the site office unless directly incurred in the course of managing or expediting this Project.
- .3 Corporate Office Overhead and general expenses
- .4 Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Services.
- .5 Costs due to the negligence or failure to fulfill a specific responsibility of the Construction Manager or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

**ARTICLE 13 BASIS OF COMPENSATION**

The Owner shall compensate the Construction Manager as follows:

**§ 13.1 AN INITIAL PAYMENT** of (\$ ) shall be made upon execution of this Agreement and credited to the owner's account at final payment.

**§ 13.2 BASIC COMPENSATION**

**§ 13.2.1 FOR BASIC SERVICES**, as described in Article 2, and any other services included in Article 14 as part of Basic Services, Basic Compensation shall be computed as follows:

For Pre-Construction Phase Services:

*(Insert basis of compensation, including stipulated sums, multiples or percentages.)*

For Construction Phase Services:

*(Insert basis of compensation, including stipulated sums, multiples or percentages.)*

**§ 13.3 COMPENSATION FOR ADDITIONAL SERVICES**

**§ 13.3.1 FOR ADDITIONAL SERVICES OF THE CONSTRUCTION MANAGER**, as described in Article 3, and any other services included in Article 14 as Additional Services, compensation shall be computed as follows:

*(Insert basis of compensation, including rates and/or multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply, if necessary.)*

**§ 13.4 REIMBURSABLE EXPENSES**

**§ 13.4.1 FOR REIMBURSABLE EXPENSES**, as described in Section 12.2, and any other items included in Article 14 as Reimbursable Expenses, a multiple of ( ) times the expenses incurred by the Construction Manager and the Construction Manager's employees and consultants in the interest of the Project.

**§ 13.5 ADDITIONAL PROVISIONS**

**§ 13.5.1** IF THE BASIC SERVICES covered by this Agreement have not been completed within ( ) months of the date hereof, through no fault of the Construction Manager, extension of the Construction Manager’s services beyond that time shall be compensated as provided in Sections 12.3.3 and 13.3.1.

**§ 13.5.2** Payments are due and payable ( ) days from the date of the Construction Manager’s invoice. Amounts unpaid ( ) 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 interest agreed upon.)*

per annum

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner’s and Construction Manager’s principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)*

**§ 13.5.3** The rates for Additional Services shall be as indicated on the breakdown of "Estimated Reimbursable Expenses" attached hereto as Exhibit \_\_\_\_.

**§ 13.5.4** The compensation due to the Construction Manager under Sections 13.2 and 13.3 shall be subject to a retainage of \_\_\_\_\_(\_\_\_\_%), due and payable to the Construction Manager upon Substantial Completion, except as provided hereinafter.

**§ 13.5.4.1** Retainage withheld from compensation for Pre-Approval Services shall be due and payable within seven (7) days of the commencement of the Construction Phase. If Approval is not obtained or the Construction Phase fails to begin due to the fault of the Construction Manager, the Owner may, without limiting its other remedies, apply such retainage to offset any costs the Owner incurs due to the same.

**§ 13.5.4.2** In the event the Construction Cost or Project Schedule is exceeded due to the fault of the Construction Manager, the Owner may, without limiting its other remedies, apply such retainage to offset any costs the Owner incurs due to the same.

**ARTICLE 14 OTHER CONDITIONS OR SERVICES**

*(Insert descriptions of other services, identify Additional Services included within Basic Compensation and modifications to the payment and compensation terms included in this Agreement.)*

**§ 14.1 LIMITS ON INSURANCE**

The insurance required by Article 11 shall be written for not less than the following limits, or greater if required by law:

*(Insert the specific dollar amounts for the appropriate insurance limits of liability.)*

**Type of insurance**

**Limit of liability (\$ 0.00)**

\$0.00

**§ 14.2** Any provision herein to the contrary notwithstanding, the Owner shall not be obligated to make any payment to the Construction Manager if the Construction Manager is in material default of any of its obligations hereunder or otherwise is in material default under any of the Contract Documents.

**§ 14.3** Partial payments to any party, a Certificate for Payment, a progress payment, a filing of a final grant application with the Department, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents due to an act or omission of the Contract Manager nor an admission by the Owner that the Construction Manager has performed the Services in a manner consistent with this Agreement.

**§ 14.4** Where changes in the Work have been authorized by the Owner, the Construction Manager will be entitled to reimbursement of actual costs incurred per Paragraph 12.2 at the rates indicated in Exhibit \_\_\_\_.

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

**OWNER**

**CONSTRUCTION MANAGER**

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

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

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

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



Init.

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# Additions and Deletions Report for AIA<sup>®</sup> Document B801<sup>™</sup> CMA – 1992

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:48:07 on 06/18/2009.

## PAGE 1

**AGREEMENT** made as of the            day of            in the year of       
(In words, indicate day, month and ~~year~~ year)

...

(~~Name, legal status~~ (Name and address)

...

(~~Name, legal status~~ (Name and address)

...

[SCHOOL]

...

(~~Name, legal status~~ (Name and address)

...

The Owner and Construction Manager agree as set forth below.

**S&G DRAFT**  
**05/01/2009**  
**SUBJECT TO REVISION**

### **§ 1.1 RELATIONSHIP OF PARTIES**

The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish to the Owner a degree of skill and judgment consistent with the Construction Manager's Standard of Care as defined hereinafter, and to cooperate with the Architect in furthering the interests of the Owner. The Construction Manager shall use the Construction Manager's best efforts consistent with the Construction Manager's Standard of Care to carry out the Services as defined herein in an expeditious and economical manner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager and other persons or entities employed by the Owner for the Project.

### **§ 1.2 GENERAL CONDITIONS**

§ 1.2.1 For the Construction Phase, the General Conditions of the contract shall be the AIA® Document A201CMa™-1992, General Conditions of the Contract for Construction, which is incorporated herein by reference. For the Preconstruction Phase, or in the event that the Preconstruction and Construction Phases proceed concurrently, A201CMa™-1992 shall apply to the Preconstruction Phase only as specifically provided in this Agreement.

§ 1.2.2 Where reference is made in this Agreement to a provision of AIA Document A201 CMa or any other AIA document or provision, the reference refers to that document or provision as amended by the Owner and, if applicable, any other party to such document, or as amended and supplemented by other provisions of the Contract Documents.

### **§ 1.3 CONSTRUCTION MANAGER'S STANDARD OF CARE**

The Construction Manager shall be perform the Services, as defined hereinafter, as an independent contractor and in a good and workmanlike manner (i) consistent with the Contract Documents; (ii) consistent with the instructions, guidance and direction of the Owner and Architect; (iii) consistent with the with the highest prevailing applicable professional or industry standards; (iv) consistent with sound practices; (v) as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project and with the Contract Documents and the instructions, guidance and direction of the Owner and Architect; and (vi) in a manner that will not exceed the Construction Cost and the Project Schedule (the standards of this Section 1.3 shall be referred to herein as the "Construction Manager's Standard of Care"). The Construction Manager shall exercise Construction Manager's Standard of Care in performing all aspects of the Services. All references in the Contract Documents to the knowledge, inference, reliance, awareness, determination, belief, observation, recognition or discovery of the Construction Manager or reference to any similar term shall include the constructive knowledge, inference, reliance, awareness, determination, belief, observation, recognition attributed to the Construction Manager ("constructive knowledge"). Such constructive knowledge shall include the knowledge, inference, reliance, awareness, determination, belief, observation and recognition the Construction Manager would have obtained upon the exercise of the Construction Manager's Standard of Care.

### **1.4 CONSTRUCTION MANAGER'S SERVICES**

§ 1.4.1 The Services shall consist of the responsibilities of the Construction Manager, Construction Manager's employees and Construction Manager's consultants under this Agreement. The Services shall include advising the Owner regarding the performance of the Project in compliance with all applicable laws, rules, regulations, ordinances, codes, orders and permits of all federal, state and local government bodies, agencies, authorities and courts having jurisdiction and with the Conditions as defined in Section 1.4.1.1.

§ 1.4.1.1 The "Conditions" are all applicable laws, rules, regulations, ordinances, codes, orders, guidelines, standards and conditions of funding imposed on the Project by the Agencies, as defined hereinafter.

§ 1.4.1.2 The "Agencies" are the Department of Education of the State of Connecticut (the "Department") and all other governmental authorities having regulatory or administrative jurisdiction over the Project and all representatives or designees of the Department or such other governmental authorities. The term "Agencies" shall also include any individuals or entities designated by the Department or such other governmental authorities or by the Owner to monitor or oversee compliance of the Project's energy and environmental design with the requirements of the Department or such other governmental authorities.



§ 1.4.1.3 The term "Agencies" shall also include any individual or entity not described in Section 1.4.1.2 from whom the Owner intends to request certification of the Project's energy and environmental design, to the extent included in the Contract Documents.

§ 1.4.1.4 The Construction Manager understands that performance of the Services will require communication with the Agencies and with individuals designated by the Agencies, and the Construction Manager will, at no additional cost to the Owner, so communicate and take all steps necessary to advise the Owner as to compliance with the conditions imposed on the Project by the Agencies.

§ 1.4.2 The Services shall be provided in conjunction with the services of an Architect as described in an agreement between the Owner and Architect.

§ 1.4.3 The Construction Manager shall provide sufficient organization, personnel and management to carry out the requirements of this Agreement in an expeditious and economical manner consistent with the interests of the Owner and with the Construction Manager's Standard of Care. A listing of the names, titles and responsibilities of those employees and consultants of the Construction Manger that will be assigned to the Project is attached hereto as Appendix . Such names, titles, and responsibilities shall not be changed without the prior written consent of the Owner.

§ 1.4.4 The Services are subject to the time limitations contained in Section 13.5.1.

§ 1.5 REPRESENTATIONS § 1.5.1 The Construction Manager represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute the Contract Documents, which representations and warranties shall survive the execution and delivery of the Contract Documents and the final completion of the Work:

- .1 the Construction Manager is authorized to do business in the State of Connecticut and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Construction Manager's duly authorized powers;
- .2 the Construction Manager possess a high level of experience and expertise in the business administration, regulation, construction, construction management and superintendence of projects of the size, complexity and nature of this particular Project.

§ 1.6 Any reference herein to the "Town" shall mean the Town of Glastonbury and any reference to the "Board of Education" shall mean the Board of Education of the Town of Glastonbury. To the extent that the Owner is the Town and/or the Board of Education, such terms shall be interchangeable with the term "Owner".

§ 1.1.1 The Construction Manager's services consist of those services performed by the Construction Manager, Construction Manager's employees and Construction Manager's consultants as enumerated in Articles 2 and 3 of this Agreement and any other services included in Article 14.

§ 1.1.2 The Construction Manager's services shall be provided in conjunction with the services of an Architect as described in the edition of AIA Document B141/CMA, Standard Form of Agreement Between Owner and Architect, Construction Manager Adviser Edition, current as of the date of this Agreement.

§ 1.1.3 The Construction Manager shall provide sufficient organization, personnel and management to carry out the requirements of this Agreement in an expeditious and economical manner consistent with the interests of the Owner.

§ 1.1.4 The services covered by this Agreement are subject to the time limitations contained in Section 13.5.1.

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§ 2.1.1 The Construction Manager's Basic Services consist of those described in Sections 2.2 and 2.3 and any other services identified in Article 14 as part of Basic Services. Services and all services usually and customarily performed in conjunction with, in furtherance of, any such services, to the extent consistent with the instructions, guidance and direction of the Owner.

...

§ 2.2.1 The Construction Manager shall review the program furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner.

#### PRE-APPROVAL PHASE

§ 2.2.1.1 The Construction Manager shall conduct any Service described in this Section 2.2 during the Pre-Approval Phase, to the extent requested by the Owner.

§ 2.2.1.2 The Construction Manager shall assist the Owner in the preparation and presentation of materials necessary for a citizen referendum, and/or for such other municipal and Board of Education approval processes as may be applicable.

§ 2.2.1.3 Upon the Owner's request, the Construction Manager shall assist the Owner and the Architect to develop its Educational Specifications, preliminary cost estimates, and other submittals the Owner must produce to become eligible for funding from the Department.

§ 2.2.1.4 Upon the Owner's request, the Construction Manager shall assist the Owner to develop its application for funding from the Department.

#### 2.2.2 PRELIMINARY EVALUATION

§ 2.2.2.1 The Construction Manager shall review the program furnished by the Owner to ascertain the requirements of the Project and shall, together with the Architect, arrive at a mutual understanding of such requirements with the Owner, which understanding the Architect shall put into writing under the terms of the Architect's agreement with Owner.

§ 2.2.2.2 Upon receipt of the written understanding from Architect as described in Section 2.2.2.1, the Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other. The Construction Manager shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project. The Construction Manager shall consult with the Agencies as necessary during the Preliminary Evaluation.

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

§ 2.2.3 Based on early schematic designs and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of Construction Cost for program requirements using area, volume or similar conceptual estimating techniques. The Construction Manager shall provide cost evaluations of alternative materials and systems.

#### CONSULTATION

The Construction Manager with the Architect shall jointly schedule and attend regular meetings with the Owner and, as required or requested by the Agencies, with the Agencies or with any individual designated by the Agencies.

§ 2.2.4 The Construction Manager shall expeditiously review design documents during their development and advise on proposed site use and improvements, selection of materials, building systems and equipment, and methods of Project delivery. The Construction Manager shall provide recommendations on relative feasibility of construction methods, 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, and possible economies.

#### PHASED CONSTRUCTION

The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is approved by the Agencies to the extent necessary and 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.

§ 2.2.5 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 preliminary project schedule relating to the performance of the Architect's services. In the Project Schedule, the Construction Manager shall coordinate and integrate the Construction Manager's services, the Architect's services and the Owner's responsibilities with anticipated construction schedules, highlighting critical and long lead time items.

#### DESIGN REVIEW

§ 2.2.5.1 The Construction Manager shall cooperate with the Architect during each step of the design process to obtain the approvals of the Architect and, as necessary, the Agencies, and shall attend a reasonable number of conferences with the Architect and the Agencies.

§ 2.2.5.2 Based on early schematic designs and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of Construction Cost for program requirements using area, volume or similar conceptual estimating techniques. The Construction Manager shall provide cost evaluations of alternative materials and systems. Biweekly, the Construction Manager shall update, and add detail to, such estimates.

§ 2.2.5.3 The Construction Manager shall expeditiously review design documents during their development. During all phases of the development of the design documents, the Construction Manager shall advise on proposed site use and improvements, selection of materials, building systems and equipment, including the selection of such materials, systems and equipment as are necessary to comply with Conditions, and methods of Project delivery and shall provide recommendations on relative feasibility and costs of construction methods, 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, and possible economies. The Construction Manager shall determine, and advise the Owner and Architect as to, the compliance of each stage of design documents with the requirements for such design documents under the agreement between the Owner and the Architect.

§ 2.2.5.4 The Construction Manager shall prepare and update biweekly a Project Schedule for the Architect's review and the Owner's approval. The Construction Manager shall obtain the Architect's approval for the portion of the preliminary project schedule relating to the performance of the Architect's services. In the Project Schedule, the Construction Manager shall coordinate and integrate the Construction Manager's services, the Architect's services and the Owner's responsibilities with anticipated construction schedules, and schedules for obtaining the approvals required by the Agencies highlighting critical and long-lead-time items.

§ 2.2.5.4.1 On the Project Schedule, the Construction Manager shall identify, and recommend to the Owner and the Architect, a procurement schedule clearly indicating those items of work that require early procurement to maintain the completion date for a part or whole of the Project.

§ 2.2.5.4.2 In planning the Project Schedule, the Construction Manager shall anticipate the amount of adverse weather conditions historical for the site of the Work for the season or seasons of the year involved. Only those weather delays attributable to substantially more adverse than normal weather conditions will be considered by the Owner in assessing a request for a change to the Project Schedule.

§ 2.2.5.5 As information becomes available, as conditions require and at intervals requested by the Owner, the Project Schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information and approvals required by the Agencies, 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. The Construction Manager shall advise the Owner and Architect if it appears that previously submitted schedules may not be met, and make recommendations for corrective action.

§ 2.2.5.6 As the Architect progresses with the preparation of the Schematic, Design Development and Construction Documents, the Construction Manager shall prepare and update, at intervals requested by the Owner, estimates of Construction Cost of increasing detail and refinement. The estimated cost of each Contract shall be indicated with supporting detail. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall advise the Owner and Architect if it appears that the Construction Cost may exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.2.5.7 The Construction Manager shall consult with the Owner and Architect regarding the Construction Documents and make recommendations whenever design details adversely affect constructability, cost, schedules or compliance with the Conditions.

§ 2.2.5.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding the assignment of responsibilities for temporary Project facilities and equipment, materials and services

for common use of the Contractors. The Construction Manager shall verify that such requirements and assignment of responsibilities are included in the proposed Contract Documents.

§ 2.2.5.9 The Construction Manager shall provide recommendations and information to the Owner regarding the allocation of responsibilities for safety programs among the Contractors.

§ 2.2.5.10 The Construction Manager shall advise on the division of the Project into individual Contracts for various categories of Work, including the method to be used for selecting Contractors and awarding Contracts. If multiple Contracts are to be awarded, the Construction Manager shall review the Construction Documents and make recommendations as required to provide that (1) the Work of the Contractors is coordinated, (2) all requirements for the Project have been assigned to the appropriate Contract, (3) the likelihood of jurisdictional disputes has been minimized, and (4) proper coordination has been provided for phased construction.

§ 2.2.5.11 The Construction Manager shall prepare a Project construction schedule providing for the components of the Work, including phasing of construction, times of commencement and completion required of each Contractor, ordering and delivery of products requiring long lead time, and the occupancy requirements of the Owner. The Construction Manager shall provide the current Project construction schedule for each set of bidding documents.

§ 2.2.5.12 The Construction Manager shall expedite and coordinate the ordering and delivery of materials requiring long lead time.

§ 2.2.5.13 The Construction Manager shall assist the Owner in selecting, retaining and coordinating the professional services of surveyors, special consultants and testing laboratories required for the Project.

§ 2.2.5.14 The Construction Manager shall provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. The Construction Manager shall make recommendations for actions designed to minimize adverse effects of labor shortages.

§ 2.2.5.15 The Construction Manager shall assist the Owner in obtaining information regarding applicable requirements for equal employment opportunity programs for inclusion in the Contract Documents.

§ 2.2.5.16 Following the Owner's approval of the Construction Documents, the Construction Manager shall update and submit the latest estimate of Construction Cost and the Project construction schedule for the Architect's review and the Owner's approval.

~~§ 2.2.6 As the Architect progress with the preparation of the Schematic, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of Construction Cost of increasing detail and refinement. The estimated cost of each Contract shall be indicated with supporting detail. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall advise the Owner and Architect if it appears that the Construction Cost may exceed the latest approved Project budget and make recommendations for corrective action.~~

#### **BIDDING PHASE**

##### **§ 2.2.6.1 Generally**

§ 2.2.6.1.1 The Construction Manager shall submit the list of prospective bidders for the Architect's review and the Owner's approval.

§ 2.2.6.1.2 The Construction Manager understands that the Conditions attach to the letting of bids on the Project. The Construction Manager shall assure that the bidding process and the Bidding Documents comply with the Conditions.

§ 2.2.6.1.3 The Construction Manager shall advise the Owner on the separation of the Project into Contracts for various categories of Work. If separate Contracts are to be awarded, the Construction Manager shall review the Drawings and Specifications and make recommendations as required to provide that (i) the Work of the separate Contractors is coordinated; (ii) all requirements for the Project have been assigned to the appropriate separate Contracts; (iii) the likelihood of jurisdictional disputes has been minimized, and (iv) a proper sequencing and coordination have been provided for phased construction.



§ 2.2.6.1.4 The Construction Manager shall assist the Owner in identifying and verifying applicable requirements for equal employment opportunity programs.

§ 2.2.6.1.5 The Construction Manager shall assist the Architect and the Owner in obtaining the approval of the Agencies to begin the Bidding Phase. Such assistance shall include attending a reasonable number of meetings with the Agencies, producing any documents and providing any services required or requested of the Owner or Construction Manager by the Agencies, and working with the Architect and Owner to make any adjustments to the Contract Documents requested by the Agencies.

§ 2.2.6.1.6 The Construction Manager shall not issue bidding documents to, and shall assure bids are not submitted by, any subsidiary, parent company, or other affiliate of the Construction Manager.

#### **§ 2.2.6.2 Bidding Documents**

§ 2.2.6.2.1 The Construction Manager shall, with the assistance of the Architect, provide to the Owner prior to bidding a complete and final set of Bidding Documents fully suitable for both the bidding and construction phases of the Project work. Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 2.2.6.2.2 The Construction Manager shall prepare Supplemental Instructions to Bidders and Supplementary General Conditions.

§ 2.2.6.2.3 The Construction Manager will ensure that no Bidding Documents are preliminary, defective or incomplete in any material way.

#### **§ 2.2.6.3 Bid Process**

§ 2.2.6.3.1 The Bidding Documents shall not be released until the Owner so directs in writing.

§ 2.2.6.3.2 The Construction Manager shall assist the Owner in bidding the Project by:

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 assist the Architect to prepare timely responses to questions from prospective bidders and providing timely clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda;
- .5 organizing and conducting the opening of the bids, and summarizing the bids as described in Section § 2.2.6.3.3; and
- .6 documenting and distributing the bidding results, as directed by the Owner.

§ 2.2.6.3.3 The Construction Manager shall summarize the bids received for each component of the Work in a spreadsheet format, including all analysis and adjustments necessary to permit a meaningful comparison among bidders. The Construction Manager shall also provide, as appropriate, comments concerning the subcontractors and suppliers under consideration, including financial strength, past performance, and current workload, and shall make recommendations to the Owner for the Owner's award of Contracts or rejection of bids.

§ 2.2.7 The Construction Manager shall ~~consult with the Owner and Architect regarding the Construction Documents and make recommendations whenever design details adversely affect constructability, cost or schedules.~~ assist the Owner in preparing Construction Contracts and advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Contractors.

§ 2.2.8 The Construction Manager shall ~~provide recommendations and information to the Owner and Architect regarding the assignment of responsibilities for temporary Project facilities and equipment, materials and services for common use of the~~ assist the Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the various Contractors. The Construction



Manager shall verify that such requirements and assignment of responsibilities are included in the proposed Contract Documents. The Owner has paid applicable fees and assessments. The Construction Manager shall assist the Owner and Architect in connection with the Owner's responsibility for filing documents required for the approvals of the Agencies.

~~§ 2.2.9 The Construction Manager shall provide recommendations and information to the Owner regarding the allocation of responsibilities for safety programs among the Contractors. At such time prior to the commencement of the Construction Phase as is requested by the Owner, the Construction Manager the Project Schedule created prepared and updated pursuant to Section 2.2.5.4 shall be developed into a Critical Path Method Project Construction Schedule, which shall become the Project Schedule.~~

~~§ 2.2.10 The Construction Manager shall advise on the division of the Project into individual Contracts for various categories of Work, including the method to be used for selecting Contractors and awarding Contracts. If multiple Contracts are to be awarded, the Construction Manager shall review the Construction Documents and make recommendations as required to provide that (1) the Work of the Contractors is coordinated, (2) all requirements for the Project have been assigned to the appropriate Contract, (3) the likelihood of jurisdictional disputes has been minimized, and (4) proper coordination has been provided for phased construction.~~

~~§ 2.2.11 The Construction Manager shall prepare a Project construction schedule providing for the components of the Work, including phasing of construction, times of commencement and completion required of each Contractor, ordering and delivery of products requiring long lead time, and the occupancy requirements of the Owner. The Construction Manager shall provide the current Project construction schedule for each set of bidding documents.~~

~~§ 2.2.12 The Construction Manager shall expedite and coordinate the ordering and delivery of materials requiring long lead time.~~

~~§ 2.2.13 The Construction Manager shall assist the Owner in selecting, retaining and coordinating the professional services of surveyors, special consultants and testing laboratories required for the Project.~~

~~§ 2.2.14 The Construction Manager shall provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. The Construction Manager shall make recommendations for actions designed to minimize adverse effects of labor shortages.~~

~~§ 2.2.15 The Construction Manager shall assist the Owner in obtaining information regarding applicable requirements for equal employment opportunity programs for inclusion in the Contract Documents.~~

~~§ 2.2.16 Following the Owner's approval of the Construction Documents, the Construction Manager shall update and submit the latest estimate of Construction Cost and the Project construction schedule for the Architect's review and the Owner's approval.~~

~~§ 2.2.17 The Construction Manager shall submit the list of prospective bidders for the Architect's review and the Owner's approval.~~

~~§ 2.2.18 The Construction Manager shall develop bidders' interest in the Project and establish bidding schedules. The Construction Manager, with the assistance of the Architect, shall issue bidding documents to bidders and conduct prebid conferences with prospective bidders. The Construction Manager shall assist the Architect with regard to questions from bidders and with the issuance of addenda.~~

~~§ 2.2.19 The Construction Manager shall receive bids, prepare bid analyses and make recommendations to the Owner for the Owner's award of Contracts or rejection of bids.~~

~~§ 2.2.20 The Construction Manager shall assist the Owner in preparing Construction Contracts and advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Contractors.~~

~~§ 2.2.21 The Construction Manager shall assist the Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the various Contractors. The Construction Manager shall verify that the Owner has paid applicable fees and assessments. The Construction~~

~~Manager shall assist the Owner and Architect in connection with the Owner's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project.~~

§ 2.3.1 The Construction Phase will commence with the award of the initial Construction Contract or purchase order and, together with the Construction Manager's obligation to provide Basic Services under this Agreement, will end 30-90 days after final payment to all Contractors is due, due except as otherwise provided in this Agreement.

§ 2.3.2 The Construction Manager shall provide administration of the Contracts for Construction in cooperation with the Architect as set forth below and in the edition of AIA Document A201/CMA, General Conditions of the Contract for Construction, Construction Manager-Adviser Edition, current as of the date of this Agreement as amended.

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§ 2.3.5 Utilizing the Construction Schedules provided by the Contractors, the Construction Manager shall continue to update the Project construction schedule as required by Section 2.2.5.4 of this Agreement and incorporating the activities of the Contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery of products requiring long lead time and procurement. The Project construction schedule shall include the Owner's occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall update and reissue the Project construction schedule as required to show current conditions. If an update indicates that the previously approved Project construction schedule may not be met, the Construction Manager shall recommend corrective action to the Owner and Architect.

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§ 2.3.11.1 The Construction Manager shall visit the site at intervals appropriate to the stage of construction, including regularly scheduled site meetings and visits, to become familiar with the progress and quality of the portion of the Work completed, to guard the Owner against defects and deficiencies in the Work that become known to the Construction Manager, and to determine if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. On the basis of the site visits, the Construction Manager shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and inform the Owner in writing of those defects and deficiencies in the Work and deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, that are known to the Construction Manager. Based on the Construction Manager's observations and evaluations of each Contractor's Application for Payment, the Construction Manager shall review and certify the amounts the amounts claimed to be due the respective Contractors and certify such amounts as the Construction Manager believes to be due the respective Contractors.

...

§ 2.3.11.3 The Construction Manager's certification for payment shall constitute a representation to the Owner, based on the Construction Manager's determinations at the site as provided in ~~Section 2.3.13 and Sections 2.3.11.1 and 2.3.13~~ and on the data comprising the Contractors' Applications for Payment, that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to ~~an further~~ evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Construction ~~Manager-Manager~~ Manager in writing at the time of certification. The issuance of a Certificate for Payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified. Preparation of an Application for Payment and certification thereof by the Construction Manager and the issuance of a Certificate for Payment by the Construction Manager and the Architect are recommendations only; payment to the Contractor of amounts applied for, certified by the Construction Manager, and certified in a Certificate for Payment is subject to the Owner's approval.

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**§ 2.3.12** The Construction Manager shall review the safety programs developed by each of the Contractors for purposes of coordinating the safety programs with those of the other ~~Contractors.~~ Contractors and shall report to the Owner, in writing, on the sufficiency of the each Contractor's safety programs and on any corrective measures taken by the Contractor on the direction of the Construction Manager. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by ~~the Construction Manager.~~ the Construction Manager and the Construction Manager shall not be responsible for such acts or omissions as are negligent provided that the Construction Manager did not know of such negligent acts or omissions.

...

**§ 2.3.15** With respect to each Contractor's own Work, the Construction Manager shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractors, since these are solely the Contractor's responsibility under the Contract for Construction. The Construction Manager shall not be responsible for a Contractor's failure to carry out the Work in accordance with the respective Contract ~~Documents.~~ Documents provided, however, that the Construction Manager shall be responsible for a Contractor's failure to carry out its Work in accordance with the Construction Documents to the extent that the Contractor's failure to perform is caused by the malfeasance of the Construction Manager in the Construction Manager's administration of the Work as set forth in this Agreement. The Construction Manager shall not have control over or charge of acts or omissions of the Contractors, Subcontractors, or their agents or employees, or any other persons performing portions of the Work not directly employed by the Construction Manager.

...

**§ 2.3.17** ~~The Construction Manager shall review requests for changes, assist in negotiating Contractors' proposals, submit recommendations to the Architect and Owner, and, if they are accepted, prepare Change Orders and Construction Change Directives which incorporate the Architect's modifications to the Documents.~~ **Changes in the Work**

**§ 2.3.17.1** The Construction Manager will be responsible for the review, evaluation and documentation of any and all Change Orders and Construction Change Directives that may be required. No Change Order or Construction Change Directive, however, will be effective against the Owner unless it has been signed and approved by the Owner. The Construction Manager will submit to the Owner a cost breakdown, as prepared by the Contractor, for any additional or changed work that is to be performed pursuant to the Change Order. This cost breakdown will include a comparison of the proposed prices and quantities of the Change Order with the original prices and quantities as bid, and an evaluation by the Architect and the Construction Manager of the reasonableness of such Change Order in writing in a complete and expeditious manner for review with the Owner.

**§ 2.3.17.2** The Construction Manager will not present to the Owner for approval any Change Order that does not include the following provision prominently displayed on the face of the Change Order and previously agreed to by the Contractor involved:

'THE CONTRACTOR AGREES THAT THIS CHANGE ORDER ADJUSTS THE CONTRACT PRICE AND TIME TO REFLECT FAIRLY ALL OVERHEAD, PROFIT, CHARGES, COSTS, EXPENSES, DELAYS, DAMAGES AND OTHER PAYMENTS THAT MAY BE CLAIMED DUE AND OWING TO THE CONTRACTOR AS OF THE ABOVE STATED DATE, AND AGREES THAT THE ACCEPTANCE OF THIS CHANGE ORDER BY THE OWNER WILL CONSTITUTE A COMPLETE AND FINAL ACCORD AND SETTLEMENT OF CONTRACTOR'S CLAIMS AGAINST THE OWNER ON ACCOUNT OF THIS OR ANY PRIOR CHANGE IN THE WORK.'

**§ 2.3.17.3** The Construction Manager will ensure that all Change Orders submitted to the Owner will be in the format of AIA, Document G701 Change Order, as revised, and will ensure that all such forms are fully and accurately completed for review by the Owner.

§ 2.3.19 The Construction Manager shall receive certificates of insurance from the Contractors and forward them to the Owner with a copy to the ~~Architect~~ Architect prior to the Commencement of the Work.

...

§ 2.3.21 The Construction Manager shall record the progress of the Project. The Construction Manager shall submit written progress reports to the Owner and Architect including information on each Contractor and each Contractor's Work, as well as the entire Project, showing percentages of completion. ~~reports detailing, at a minimum, (i) the current status of the Project as it relates to the approved Project schedule, (ii) a look-ahead at the work to be progressed in the forth-coming month, (iii) actions to be taken where the work of contractors is failing to meet the approved Project schedule, (iv) the impact, if any, of change(s) issued during the previous month and actions needed to maintain the agreed to end date, (v) a listing of the requests for interpretations outstanding and the period they have been outstanding, (vi) bids to be issued during the forth-coming month, (vii) bids received and being analyzed, including their current status, (viii) Contract status on Contracts issued or where the Owner has approved the award of the Work, (ix) a cost report indicating the current anticipated completion cost, (x) major reasons for movement of cost during the previous month, (xi) items of change awaiting Owner decision, (xii) contractual claim status log, (xiii) Change Order status log, (xiv) Contracts closed out, (xv) Value of construction, and related work, paid for by the Owner as it relates to the approved cash flow forecast and the movement during the previous month. Such reports are to be submitted to the Owner at a minimum of monthly, or as otherwise requested, in writing, by the Owner. The actual format and the manner of providing the progress report(s) shall be subject to the acceptance of the Owner.~~ The Construction Manager shall keep a daily log containing a record of weather, each Contractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as the Owner may require.

§ 2.3.26 The Construction Manager shall ~~coordinate the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager shall evaluate the completion of the Work of the Contractors and make recommendations to the Architect when Work is ready for final inspection. The Construction Manager shall assist the Architect in conducting final inspections.~~ assist the Architect in conducting inspections to determine the date or dates of Substantial Completion and the date of final completion. The inspections of the Construction Manager shall be conducted to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected. The Construction Manager shall prepare for the Owner a written list of observable items, materials, or systems that are defective, or that require additional Work or replacement by the Contractor.

§ 2.3.27 The Construction Manager shall ~~secure and transmit to the Architect warranties and similar submittals required by the Contract Documents for delivery to the Owner and deliver all keys, manuals, record drawings and maintenance stocks to the Owner. The Construction Manager shall forward to the Architect a final Project Application for Payment upon compliance with the requirements of the Contract Documents.~~ coordinate the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager shall evaluate the completion of the Work of the Contractors and make recommendations to the Architect when Work is ready for final inspection. The Construction Manager shall assist the Architect in conducting final inspections. Substantial Completion shall be deemed to have been achieved when all of the following have occurred: (i) the Project Architect has issued a Certificate of Substantial Completion; (ii) the Project or, in the case of a phased project, specific units in a particular phase are capable of being beneficially occupied for this intended use; and (iii) an unconditional Certificate of Occupancy has been issued by the appropriate governmental entity.

§ 2.3.28 Duties, responsibilities and limitations of authority of the Construction Manager as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Construction Manager, Architect and Contractors. Consent shall not be unreasonably withheld. ~~The Construction Manager shall secure and transmit to the Architect warranties and similar submittals required by the Contract Documents for delivery to the Owner and deliver all keys, manuals, record drawings and maintenance stocks to the Owner. The~~



Construction Manager shall, additionally, secure and transmit to the Architect the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents. The Construction Manager shall forward to the Architect a final Project Application for Payment upon compliance with the requirements of the Contract Documents.

§ 2.3.29 Duties, responsibilities and limitations of authority of the Construction Manager as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Construction Manager and Architect. Consent shall not be unreasonably withheld.

§ 2.3.30 Upon request of the Owner, the Construction Manager will cooperate and assist the Owner and the Department during any audit of the Project as conducted by the Owner or the Department at any time after Substantial Completion.

...

§ 3.1.1 The services described in this Article ~~3~~ are not included in Basic Services unless so identified in Article 14, and ~~they~~ 3, to the extent not included in Basic Services and not identified in Article 14, are Additional Services that may be required for the Project which shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. The Optional Additional Services described under Section 3.3 shall only be provided if authorized or confirmed in writing by the Owner. If services described under Contingent Additional Services in Section 3.2 are required due to circumstances beyond the Construction Manager's control, the Construction Manager shall notify the Owner prior to commencing ~~such services~~ such services, to the extent such services are not included in Basic Services. If the Owner deems that such services described under Section ~~3.2~~ 3.2, to the extent such services are not included in Basic Services, are not required, the Owner shall give prompt written notice to the Construction Manager. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, the Construction Manager shall have no obligation to provide those services.

§ 3.1.2 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. The Construction Manager shall perform all services requested by the Owner. Services requested by the Owner or recognized to be necessary after execution of this Agreement are presumed to be included within Basic Services unless clearly shown to not be so included. If the Construction Manager believes a service requested by the Owner or recognized to be necessary after execution of this Agreement is an Additional Service, prior to such performance, the Owner and the Construction Manager, solely after notice from the Construction Manager, given within five (5) days of the Owner's request, shall meet to determine if such services are within the Basic Services or Additional Services. If the Construction Manager fails to submit such notice, the Construction Manager shall be deemed to have waived any right to additional compensation for such services and the same shall be deemed part of the Basic Services.

§ 3.1.3 Notwithstanding anything to the contrary, (i) the Construction Manager shall provide any service requested by the Owner and at no additional cost to the Owner, to the extent such designated service is included in the Basic Services and (ii) any services made necessary by the act or omission of the Construction Manager, its consultants or subcontractors shall be provided by the Construction Manager as Basic Services, at no additional cost to the Owner.

### § 3.2 CONTINGENT ADDITIONAL SERVICES (to the extent not included in the Basic Services)

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§ 3.2.3 Providing services made necessary by the termination or default of the Architect or a Contractor, by those major defects or deficiencies in the Work of a ~~Contractor~~, Contractor that are unrelated to a negligent act or omission of the Construction Manager and to the failure of the Construction Manager to perform the Services in a manner consistent with this Agreement, or by failure of performance of either the Owner or Contractor under a Contract for Construction.

§ 3.2.4 Providing services in evaluating an ~~extensive number~~ more than \_\_\_\_\_ of claims submitted by a Contractor or others in connection with the Work.



~~§ 3.2.5~~ Providing services in connection ~~with-with~~, to the extent not reasonably foreseeable on the date of execution of this Agreement, a public hearing, arbitration proceeding or legal proceeding except where the Construction Manager is party thereto.

**§ 3.3 OPTIONAL ADDITIONAL SERVICES (to the extent not included in the Basic Services)**

...

~~§ 3.3.2~~ Providing services to investigate existing conditions or facilities or to provide measured drawings thereof. ~~thereof in excess of those such services as are part of the Basic Services.~~

~~§ 3.3.3~~ Providing services to verify the accuracy of drawings or other information furnished by the ~~Owner-Owner~~ in excess of those such services as are part of the Basic Services.

...

~~§ 4.2~~ The Owner shall establish and ~~update-update~~, if necessary, an overall budget for the Project based on consultation with the Construction Manager and Architect, which shall include the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.

~~§ 4.3~~ The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. ~~The Owner, or such authorized representative, shall render decisions in a timely manner pertaining to documents submitted by the Construction Manager in order to avoid unreasonable delay in the orderly and sequential progress of the Construction Manager's services.~~

~~§ 4.4~~ The Owner shall retain an architect whose services, duties and responsibilities are described in the edition of AIA Document B141/Cma, Standard Form of Agreement Between Owner and Architect, Construction Manager-Adviser Edition, current as of the date of this Agreement. ~~The Terms and Conditions of the Agreement Between the Owner and Architect shall be furnished to the Construction Manager and shall not be modified without notification to the Construction Manager. The Construction Manager shall not be responsible for those actions of the Architect unrelated to the negligent acts or omissions of the Construction Manager and to the failure of the Construction Manager to perform the Services in a manner consistent with this Agreement.~~ ~~§ 4.5~~ The Owner shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

~~§ 4.6~~ The Owner shall furnish all legal, accounting and insurance counseling services as the Owner, in its sole discretion, deems necessary at any time for the Project, including auditing services the Owner may require to verify the Contractors' Applications for Payment or to ascertain how or for what purposes the Contractors have used the money paid by or on behalf of the Owner.

~~§ 4.7~~ The Owner shall furnish the Construction Manager with a sufficient quantity of Construction Documents.

~~§ 4.3~~ If requested by the Construction Manager, the Owner shall furnish evidence that financial arrangements have been made to fulfill the Owner's obligations under this Agreement.

~~§ 4.4~~ The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. ~~The Owner, or such authorized representative, shall render decisions in a timely manner pertaining to documents submitted by the Construction Manager in order to avoid unreasonable delay in the orderly and sequential progress of the Construction Manager's services.~~

~~§ 4.5~~ The Owner shall retain an architect whose services, duties and responsibilities are described in the edition of AIA Document B141/Cma, Standard Form of Agreement Between Owner and Architect, Construction Manager-Adviser Edition, current as of the date of this Agreement. ~~The Terms and Conditions of the Agreement Between the Owner and Architect shall be furnished to the Construction Manager and shall not be modified without written~~

consent of the Construction Manager, which consent shall not be unreasonably withheld. The Construction Manager shall not be responsible for actions taken by the Architect.

~~§ 4.6~~ The Owner shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

~~§ 4.7~~ The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services the Owner may require to verify the Contractors' Applications for Payment or to ascertain how or for what purposes the Contractors have used the money paid by or on behalf of the Owner.

~~§ 4.8~~ The Owner shall furnish the Construction Manager with a sufficient quantity of Construction Documents services, information and reports required by Sections 4.4 through 4.7 shall be furnished at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy and completeness thereof unless notified otherwise by the Owner in writing; provided, however, that the Construction Manager shall inform the Owner of any error or omission in such services, information and reports of which the Construction Manager has knowledge.

~~§ 4.9~~ The services, information and reports required by Sections 4.5 through 4.8 shall be furnished at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy and completeness thereof. Prompt written notice shall be given by the Owner to the Construction Manager and Architect if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents provided, however, that the Owner shall have no obligation to investigate for the purpose of becoming aware of faults, defects, errors, omissions or inconsistencies.

~~§ 4.10~~ The Owner reserves the right to perform construction and operations related to the Project with the Owner's own forces, and to award contracts in connection with the Project which are or are not part of the Construction Manager's responsibilities under this Agreement. The Construction Manager shall notify the Owner if any such independent action will interfere with the Construction Manager's ability to perform the Construction Manager's responsibilities under this Agreement. When the Owner performs construction or operations related or unrelated to the Project, the Owner agrees to refrain from unreasonably interfering with the Construction Manager's ability to carry out its responsibilities under this Agreement.

~~§ 4.10~~ Prompt written notice shall be given by the Owner to the Construction Manager and Architect if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents.

~~§ 4.11~~ The Owner reserves the right to perform construction and operations related to the Project with the Owner's own forces, and to award contracts in connection with the Project which are not part of the Construction Manager's responsibilities under this Agreement. The Construction Manager shall notify the Owner if any such independent action will interfere with the Construction Manager's ability to perform the Construction Manager's responsibilities under this Agreement. When performing construction or operations related to the Project, the Owner agrees to be subject to the same obligations and to have the same rights as the Contractors. Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Construction Manager's services and the progress of the Work.

~~§ 4.12~~ Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Construction Manager's services and the progress of the Work. Notwithstanding anything to the contrary in this Agreement, the Owner's review and approval of any and all documents, including but not limited to, the Construction Documents, bidding documents and the Construction Contracts or other matters required herein shall be for the purpose of providing the Construction Manager with information as to the Owner's objectives and goals with respect to the Project and not for the purpose of determining the accuracy and completeness of such documents and shall in no way create any liability on the part of the Owner for errors, inconsistencies or omissions in any approved documents, nor shall any such review and approval alter the Construction Manager's responsibilities hereunder and with respect to such documents.

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**§ 5.1.2** The Construction Cost shall include the cost at current market rates of labor and materials furnished by the ~~Owner and~~ Owner; of equipment designed, specified, selected or specially provided for by the ~~Architect, plus~~ Architect; a reasonable allowance for the Contractors' overhead ~~and profit. In addition, a reasonable allowance for contingencies shall be included~~ and profit; and a contingency in an amount approved by the Owner for market conditions at the time of bidding and for changes in the Work during construction. Except as provided in Section 5.1.3, Construction Cost shall also include the compensation of the Construction Manager and Construction Manager's ~~consultants~~ consultants approved by the Owner in writing.

**§ 5.1.3** Construction Cost does not include the compensation of the Architect and Architect's consultants, costs of the land, rights-of-way, financing or other costs which are the responsibility of the Owner as provided in Article 4. If any portion of the Construction Manager's compensation is based upon a percentage of Construction Cost, then Construction Cost, for the purpose of determining such portion, (i) shall not include the compensation of the Construction Manager or Construction Manager's ~~consultants~~ consultants and (ii) shall not be raised on account of increased prices for construction materials.

...

**§ 5.2.1** Evaluations of the Owner's Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Cost prepared by the Construction Manager represent the Construction Manager's best judgment as a person or entity familiar with the construction industry. It is recognized, however, that neither the Construction Manager nor the Owner has control over the cost of labor, materials or equipment, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the Project budget proposed, established or approved by the Owner, or from any cost estimate or evaluation prepared by the ~~Construction Manager~~ Construction Manager; provided, however, that the Construction Manager shall be responsible for any overrun of the Construction Cost caused by the act or omission of the Construction Manager or its consultants, or caused by factors of which the Construction Manager was aware but failed to consider in providing estimates to the Owner.

**§ 5.2.2** ~~No fixed limit of Construction Cost shall be established as a condition of this Agreement by the furnishing, proposal or establishment of a Project budget unless such fixed limit has been agreed upon in writing and signed by the parties hereto. If such a fixed limit has been established, the Construction Manager shall be permitted to include contingencies for design, bidding and price escalation, and shall consult with the Architect to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to suggest reasonable adjustments in the scope of the Project, and to suggest inclusion of alternate bids in the Construction Documents to adjust the Construction Cost to the fixed limit. Fixed limits, if any, shall be increased in the amount of any increase in the Contract Sums occurring after execution of the Contracts for Construction. If the Bidding or Negotiation Phase has not commenced within 90 days after submittal of the Construction Documents to the Owner, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the Owner and the date on which proposals are sought.~~

**§ 5.2.3** ~~If the Bidding or Negotiation Phase has not commenced within 90 days after submittal of the Construction Documents to the Owner, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the Owner and the date on which proposals are sought. The Fixed Limit of Construction Costs for this Project is \_\_\_\_\_ Dollars (\$ \_\_\_\_\_). The Fixed Limit includes all matters included in the Construction Cost and, notwithstanding anything in this Agreement to the contrary, shall not be adjusted under any circumstances. This amount is hereby accepted by the Owner and Construction Manager as the Fixed Limit. The actual costs of the Project shall not exceed the Fixed Limit.~~

**§ 5.2.3.1** ~~If the actual costs of the Project exceeds the Fixed Limit, the Owner shall, without limiting its other remedies, be entitled to terminate this Agreement and such termination shall be termination for cause. The Construction Manager shall be permitted to include those contingencies set forth in Attachment \_\_\_\_\_ to adjust the Construction Cost to the Fixed Limit.~~

§ 5.2.4 If a fixed limit of Construction Cost (adjusted as provided in Section 5.2.3) is exceeded by the sum of the lowest bona fide bids or negotiated proposals plus the Construction Manager's estimate of other elements of Construction Cost for the Project, the Owner shall:

- .1 give written approval of an increase in such fixed limit;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 if the Project is abandoned, terminate in accordance with Section 9.3; or
- .4 cooperate in revising the Project scope and quality as required to reduce the Construction Cost.

at any time during the term of this Agreement the estimate of the Construction Cost deviates from the estimate of the Construction Cost most recently approved by the Owner, the Owner may terminate this Agreement at any time after such deviation occurs and without limiting the other remedies of the Owner, and with such termination being a termination for cause.

§ 5.2.5 If the Owner chooses to proceed under Section 5.2.4.4, the Construction Manager, without additional charge, shall cooperate with the Owner and Architect as necessary to bring the Construction Cost within the fixed limit, if established as a condition of this Agreement. does not so terminate the Agreement upon any deviation described in this Section 5.2.3 or 5.2.4, the Construction Manager shall, upon the Owner's request, cooperate with the Architect to provide the Owner a written explanation of the deviation and propose changes that would bring the Project within the most recently approved estimate of the Construction Cost.

§ 5.2.6 The Construction Manager shall be liable to the Owner for any amount the actual Project costs exceed the Fixed Limit or the Construction Cost, as the case may be, to the extent that such excess is due to the negligent act or omission of the Construction Manager.

§ 5.2.7 If the estimate of the Construction Cost approved by the Owner at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Construction Cost;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.2;
- .4 in consultation with the Architect and the Construction Manager, revise the Project program, scope, or quality as required to reduce the Construction Cost; or
- .5 implement any other collectively acceptable alternative.

§ 5.2.7 If the Owner chooses to proceed under Section 5.2.7.4, the Construction Manager, without additional compensation, shall work with the Architect to modify the Construction Documents as necessary to comply with the Construction Cost at the conclusion of the Construction Documents Phase, or, where applicable, the Construction Cost adjusted under Section 5.2.7.1. If the Owner chooses to proceed under Section 5.2.7.2, the Construction Manager shall provide rebid services without additional compensation. The scope of such rebid services shall be the same as the scope of the bidding phase services the Construction Manager is required to provide under this Agreement.

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§ 7.1 The Drawings, Specifications and other documents prepared by the Architect are instruments of the Architect's service through which the Work to be executed by the Contractors is described. The Construction Manager may retain one record set. The Construction Manager shall not own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect, and unless otherwise indicated the Architect shall be deemed the author of them and will retain all common law, statutory and other reserved rights, in addition to the copyright. All copies of them, except the Construction Manager's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Project. The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Construction Manager, are for use solely with respect to this Project. They are not to be used by the Construction Manager on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner and Architect. The Construction Manager is granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the performance of the Construction Manager's services under this Agreement.



All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's copyright or other reserved rights.

Article 1.3 of A201/CMA shall apply to both the Preconstruction and Construction Phases.

## **ARTICLE 8 DISPUTE RESOLUTION**

### **ARTICLE 8 ARBITRATION**

~~§ 8.1 During both the Preconstruction and Construction Phases, Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise shall be resolved as provided in Article 15 of AIA Document A201/CMA, General Conditions of the Contract for Construction, Construction Manager-Adviser Edition with references therein to the "Contractor" including the Construction Manager, except that, during the Preconstruction Phase, a decision by the Initial Decision Maker shall not be a condition precedent to mediation and binding dispute resolution.~~

~~§ 8.2 Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitations.~~

~~§ 8.3 No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement signed by the Owner, Construction Manager, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 8.4 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 9.1 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.~~

~~If the Owner suspends the Project for 90 consecutive days for reasons unrelated to a fault of the Construction Manager, the Construction Manager shall be compensated for services fully and satisfactorily performed by the Construction Manager prior to notice of such suspension and, upon such suspension by the Owner or upon the Owner's suspension of the project for more than 120 cumulative days, the Construction Manager may terminate this Agreement by giving not less than 30 days' written notice to the Owner and upon the Owner's failure to resume the Project within such 30 day period. If the Agreement is not so terminated, when the Project is resumed, the Construction Manager's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Construction Manager's services.~~

~~§ 9.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Construction Manager's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Construction Manager's services.~~

~~This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Construction Manager for cause as provided in this Agreement and upon the Construction Manager's material failure to perform in accordance with the terms of this Agreement. Upon such termination for cause, the Construction Manager shall be compensated for services fully and satisfactorily performed by the Construction Manager prior to notice of such termination.~~



~~§ 9.3 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Construction Manager in the event that the Project is permanently abandoned. If the Project is abandoned by the Owner for more than 90 consecutive days, the Construction Manager may terminate this Agreement by giving written notice.~~

~~The Construction Manager may, upon thirty days notice to the Owner, terminate or suspend this Agreement upon the Owner's failure, without cause, to make a payment to the Construction Manager required under this Agreement. The notice of termination or suspension must state with specificity the means by which the Owner may cure its nonperformance, and, the Construction Manager may not terminate or suspend this Agreement if, within thirty days of the notice, the Owner substantially takes such curative measures.~~

~~§ 9.4 Failure of the Owner to make payments to the Construction Manager in accordance with this Agreement shall be considered substantial nonperformance and cause for termination. The Owner may, on seven day's notice, terminate the Contract for the Owner's convenience and without cause.~~

~~§ 9.4.1 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Construction Manager shall:~~

- ~~.1 cease operations as directed by the Owner in the notice; and~~
- ~~.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work.~~

~~§ 9.4.2 In case of such termination by the Owner, the Construction Manager shall be entitled to receive payment for Services executed and actual costs incurred by reason of such termination.~~

~~§ 9.5 If the Owner fails to make payment when due the Construction Manager for services and expenses, the Construction Manager may, upon seven days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Construction Manager within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Construction Manager shall have no liability to the Owner for delay or damage caused to the Owner because of such suspension of services.~~

~~§ 9.6 In the event of termination not the fault of the Construction Manager, the Construction Manager shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.~~

~~§ 9.7 Termination Expenses are those costs directly attributable to termination for which the Construction Manager is not otherwise compensated.~~

~~§ 10.1 Unless otherwise provided, this Agreement shall be governed by the law of the place where the Project is located. State of Connecticut.~~

~~§ 10.2 Terms in this Agreement shall have the same meaning as those in the edition of AIA Document A201/CMA, General Conditions of the Contract for Construction, Construction Manager-Adviser Edition, current as of the date of this Agreement. Edition.~~

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~~§ 10.4 Waivers of Subrogation. The Owner and Construction Manager waive all rights against each other and against the Contractors, Architect, consultants, agents and employees of any of them, for damages, but only to the extent covered by property insurance during construction, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201/CMA, General Conditions of the Contract for Construction, Construction Manager-Adviser Edition, current as of the date of this Agreement. Edition. The Owner and Construction Manager each shall require similar waivers from their Contractors, Architect, consultants, agents, and persons or entities awarded separate contracts administered under the Owner's own forces.~~

...

~~§ 10.6 This Agreement represents the entire and integrated agreement between the Owner and Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be~~

amended only by written instrument signed by both Owner and Construction Manager. If anything in any document incorporated into this Agreement, including the A201 CMA, directly conflicts with this Agreement regarding the rights and responsibilities of the Construction Manager, this Agreement shall govern.

...

**§ 10.8** ~~Unless otherwise provided~~required in this Agreement, the ~~Construction Manager and the Construction Manager's consultants~~Architect shall have no responsibility for the discovery, presence, handling, removal or disposal ~~of, or~~ exposure of persons ~~to,~~ hazardous materials or toxic substances in any form at the Project site, ~~including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.~~site.

**§ 10.9** The Construction Manager shall promptly advise the Owner of any claim or demand by a Contractor claiming that any amount is due to such Contractor or claiming any default by the Construction Manager or the Owner in any of their obligations to such Contractor.

**§ 10.10** Any provision herein to the contrary notwithstanding, the Owner shall not be obligated to make any payment to the Construction Manager hereunder if Construction Manager is in default of any of its material obligations hereunder or otherwise is in default under any of the Contract Documents. The Owner may withhold such amount necessary to protect it from loss on account of such Construction Manager default.

**§ 10.11** To the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless the Owner and the Architect and their respective consultants, agents, representatives, officials and employees from and against claims, suits and/or legal actions of any type by third-parties, including without limitation claims for loss of or damage to property, personal or bodily injury, including death, and claims for losses of any type; from all judgments or decrees recovered therefore; and from all expenses for defending such claims, suits or legal actions, including without limitation court costs and attorneys' fees, which result or arise from the negligent acts or omissions, breaches, errors, torts or other improper unauthorized and/or unlawful acts of the Construction Manager and/or the Construction Manager's failure to comply with the provisions of this Agreement, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 10.11.

#### **§ 10.12 CONFIDENTIALITY**

Any information obtained by the Construction Manager from the Owner or Architect may not be used, published, distributed, sold or divulged by the Construction Manager for such party's own purposes or for the benefit of any person, firm, corporation or other entity other than the Owner, without the prior written consent of the Owner. Any information obtained by the Construction Manager that is designated by the Owner in accordance with applicable law as confidential shall not be disclosed to any other parties without the prior written consent of the Owner.

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**§ 11.1.1** The Construction Manager shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Construction Manager from claims set forth below which may arise out of or result from the Construction Manager's operations under this Agreement and for which the Construction Manager may be legally liable. The Construction Manager shall require its consultants to maintain the same types of insurance the Construction Manager is required to maintain under this Agreement, in amounts approved by the Owner. [Subject to review by Owner's Risk Manager.] :

- .1 ~~claims under workers' workers~~ compensation, disability benefit and other similar employee benefit acts which are applicable to the operations to be performed;

...

**§ 11.1.2** The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in Article 14 or required by law, whichever coverage is greater. ~~Coverages, whether written on an occurrence or claims made basis,~~ Coverages shall be written on an occurrence basis, except as otherwise provided herein, and shall

be maintained without interruption from date of commencement of operations under this Agreement until ~~date of final payment and termination of any coverage required to be maintained after final payment.~~ \_\_\_\_\_ years after Substantial Completion.

§ 11.1.3 The Owner, the Town, the Board of Education, and their employees and agents shall be named as Additional Insureds on a primary and non-contributory basis to all policies required under this Section 11.1, other than Workers Compensation. These requirements shall be clearly stated in the remarks section on the Construction Manager's Certificate of Insurance.

§ 11.1.4 Insurance required under this Section 11.1 shall be written with Carriers approved in the State of Connecticut and with a minimum Best's Rating of A-. In addition, all Carriers are subject to approval by the Owner.

§ 11.1.5 Before commencing the Construction Manager's services, the Construction Manager shall file with the Owner certificates of insurance for the required insurance and shall update such certificates throughout the duration of this Agreement and during any additional period specified in this Agreement. Certificates of professional liability insurance shall bear the endorsement 'Not to be canceled without thirty days' prior written notice to Owner.

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§ 12.2.1 Reimbursable Expense are in addition to compensation for Basic and Additional Services and include expenses incurred by the Construction Manager and Construction Manager's employees and consultants in the interest of the Project, as identified in the following ~~Clauses.~~Clauses, to the extent such expenses were incurred for reasons unrelated to the fault of the Construction Manager. All reimbursable expenses greater than \$ \_\_\_\_\_ individually or in the aggregate by the categories set forth in paragraph 12.2.1.1 through 12.2.1.4, shall be subject to the prior approval of the Owner.

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#### § 12.5 PAYMENTS WITHHELD CONSTRUCTION MANAGER'S ACCOUNTING RECORDS

§ 12.5.1 No deductions shall be made from the Construction Manager's compensation on account of penalty, liquidated damages or other sums withheld from payments to Contractors, or on account of the cost of changes in Work other than those for which the Construction Manager has been found to be liable.

Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative or the Department at mutually convenient times or at any time such records are lawfully requested by a government authority. The Construction Manager shall maintain such records for the longest of six years after final payment, until the Department issues the findings of its audit of the Project, and any period required by law.

#### § 12.6 CONSTRUCTION MANAGER COSTS NOT TO BE REIMBURSED OR COMPENSATED

##### § 12.6 CONSTRUCTION MANAGER'S ACCOUNTING RECORDS

§ 12.6.1 Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times. The following costs of the Construction Manager shall not be reimbursed by the Owner:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's offices other than the site office, except as specifically provided in Paragraph 12.1.1.
- .2 Expenses of the Construction Manager's principal office and offices other than the site office unless directly incurred in the course of managing or expediting this Project.
- .3 Corporate Office Overhead and general expenses
- .4 Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Services.
- .5 Costs due to the negligence or failure to fulfill a specific responsibility of the Construction Manager or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

...

§ 13.1 AN INITIAL PAYMENT of ~~(\$—(\$~~) shall be made upon execution of this Agreement and credited to the owner's account at final payment.

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per annum

...

~~§ 13.5.3 The rates and multiples set forth for Additional Services shall be annually adjusted in accordance with normal salary review practices of the Construction Manager.~~  
for Additional Services shall be as indicated on the breakdown of "Estimated Reimbursable Expenses" attached hereto as Exhibit \_\_\_\_\_.

§ 13.5.4 The compensation due to the Construction Manager under Sections 13.2 and 13.3 shall be subject to a retainage of \_\_\_\_\_ ( \_\_\_\_\_ %), due and payable to the Construction Manager upon Substantial Completion, except as provided hereinafter.

§ 13.5.4.1 Retainage withheld from compensation for Pre-Approval Services shall be due and payable within seven (7) days of the commencement of the Construction Phase. If Approval is not obtained or the Construction Phase fails to begin due to the fault of the Construction Manager, the Owner may, without limiting its other remedies, apply such retainage to offset any costs the Owner incurs due to the same.

§ 13.5.4.2 In the event the Construction Cost or Project Schedule is exceeded due to the fault of the Construction Manager, the Owner may, without limiting its other remedies, apply such retainage to offset any costs the Owner incurs due to the same.

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\$0.00

§ 14.2 Any provision herein to the contrary notwithstanding, the Owner shall not be obligated to make any payment to the Construction Manager if the Construction Manager is in material default of any of its obligations hereunder or otherwise is in material default under any of the Contract Documents.

§ 14.3 Partial payments to any party, a Certificate for Payment, a progress payment, a filing of a final grant application with the Department, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents due to an act or omission of the Contract Manager nor an admission by the Owner that the Construction Manager has performed the Services in a manner consistent with this Agreement.

§ 14.4 Where changes in the Work have been authorized by the Owner, the Construction Manager will be entitled to reimbursement of actual costs incurred per Paragraph 12.2 at the rates indicated in Exhibit \_\_\_\_\_.

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:48:07 on 06/18/2009 under Order No. 1000381180\_5 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B801™CMA – 1992 - Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is NOT a Constructor, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
*(Signed)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Dated)*