



**AIA**<sup>®</sup>

# Document A133<sup>™</sup> – 2009

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

**AGREEMENT** made as of the — day of June in the year 2017  
(In words, indicate day, month and year.)

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

Scotts Bluff County School District 79-0016, a/k/a Gering Public Schools  
1519 10<sup>th</sup> Street  
Gering, NE 69341  
Phone: 308-436-3125  
FAX: 308-436-4301  
(Hereinafter referred to as "Owner" or "School District").

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

[Insert CM@R information]

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

Gering High School – High School Renovation and Addition Project: The Gering High School project involves additions to the existing building for the purpose of adding approximately 150 students and upgrading and renovating the existing facility. Additions of approximately 61,414 square feet, and improvements to the existing 104,187 square foot building, including but not limited to the following:

- Construction of a classroom wing to accommodate the movement of 9th grade students into the building (approximately 150 students);
- Construction of an auxiliary gymnasium;
- Renovations to existing locker and weight rooms as well as addition of additional space for these areas;
- Remodeling and expanding commons, lunchroom, and theater lobby areas;
- Construction of a new production kitchen;
- Renovations of the theater;
- Improvements to existing classrooms;
- Addition of handicapped accessible parking near the entrance;
- Construction of secure entrances and office areas;
- Safety and security updates and improvements; and
- HVAC and electrical upgrades and improvements.

(Hereinafter "the Project").

The Architect:  
(Name, legal status and address)

RB+B, Architects  
315 East Mountain Avenue, Suite 100

### **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.

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

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Fort Collins, CO 80524  
Phone: 970-484-0117  
(Hereinafter referred to as "Architect" or "Project Architect".)

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

Bob Hastings, Superintendent of Schools, or designee  
Scotts Bluff County School District 79-0016, a/k/a Gering Public Schools  
1519 10<sup>th</sup> Street  
Gering, NE 69341  
Phone: 308-436-3125  
FAX: 308-436-4301  
(Hereinafter referred to as "Owner's Representative".)

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

[Insert CM@R Project Executive]

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

Corky Bradley, AIA  
RB+B, Architects  
315 East Mountain Avenue, Suite 100  
Fort Collins, CO 80524  
Phone: 970-484-0117  
(Hereinafter referred to as "Architect").

The Owner and Construction Manager agree as follows.

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### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 The Contract Documents

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

#### § 1.2 Relationship of the Parties

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

#### § 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2007, which document is incorporated herein by reference. The term "Contractor" as used in A201–2007 shall mean the Construction Manager. In the event that there are conflicting provisions between this Agreement and the General Conditions, the provisions of this Agreement shall control.

#### § 1.4 Definitions

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**§ 1.4.1 THE PROJECT:** For purposes of this Agreement, "the Project" shall mean the Gering High School – High School Renovation and Addition Project. The Project shall have a single project budget, plans and specifications, schedule, and Guaranteed Maximum Price (GMP).

**§ 1.4.1.1 PROJECT BUDGET:** The total project budget is TWENTY-FOUR MILLION DOLLARS (\$24,000,000). The amount that will be subject to the CM contract is approximately TWENTY MILLION THREE HUNDRED THOUSAND DOLLARS (\$20,300,000) (hereinafter "the Project Budget").

**§ 1.4.2 THE WORK:** For purposes of this Agreement, "the Work" shall mean the Subcontracts or Multiple Prime Contracts for the construction of the Project. The CM@R is responsible for the construction, administration and/or supervision of the Work under the Construction Documents.

**§ 1.4.3 COST OF THE WORK:** For purposes of this Agreement, "Cost of the Work" shall mean the total cost of all Subcontracts for the construction of the Project and site improvements described in the Contract Documents, and Expenses to be Reimbursed, as defined in Article 6 to this Agreement. "Cost of the Work" shall not include the Construction Manager's Compensation under Articles 4 and 5 of this Agreement, the cost of any insurance and surety contracts purchased or controlled by the Owner, or any other contracts or agreements that are not part of or described by the Construction Documents, or Architect/Engineering or other professional fees and expenses.

**§ 1.4.4. EXPENSES TO BE REIMBURSED:** For purposes of this Agreement, "Expenses to be Reimbursed" shall mean those expenses incurred by the CM@R that are to be reimbursed pursuant to the provisions of Article 6.

**§ 1.4.5 CONSTRUCTION CONTINGENCY:** For purposes of this agreement, the term "Construction Contingency" as referred to and identified in the budget, cost estimates for the Project, including any form of guaranteed maximum price, shall mean a dollar amount not designated for any division of the Work which is available to be applied to the budget for a specified division or divisions of the Work for materials; provided that all funds identified as contingency funds are available for the project on an as needed basis and shall at all times be the sole property of the Owner. The Guaranteed Maximum Price (GMP) will contain a separately-identified contingency amount (the "Construction Contingency"). The Construction Contingency is not allocated to any particular item of the Cost of the Work and is established for the Construction Manager's use as may be required for costs incurred in the Work from causes, or details which should have been anticipated by the Construction Manager at the time of the Owner's approval of the GMP. Such causes or details are limited to refinement of details of design within the scope of standards, quality and quantities which were reasonably inferable from the Construction Documents at the time of the Owner's approval of the GMP. The Construction Manager, with Owner's written approval, may utilize the Construction Contingency for any of the above items within the Cost of the Work without the necessity of a Change Order, without constituting a change in the Scope of the Work, and without resulting in any change in the GMP. Any causes or unanticipated details which exceed the Construction Contingency shall be borne by the CM@R at the CM@R's sole risk. All savings in the Construction Contingency will accrue and be available for use, only as detailed above, by the CM@R until the CM@R's final accounting. In the final accounting, all supporting documentation for all uses of the Construction Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Contingency shall accrue to the Owner.

**§ 1.4.6 GUARANTEED MAXIMUM PRICE:** For purposes of this Agreement, "Guaranteed Maximum Price" or "GMP" shall mean the total of the sum of the Cost of the Work for the project, which amount is guaranteed by the CM@R not to exceed the amount provided in resolution of the Board of Education of the Owner approving such GMP, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the Guaranteed Maximum Price or GMP. IF THE GUARANTEED MAXIMUM PRICE IS EXCEEDED FOR THE PROJECT, AS THE CASE MAY BE, THE CONSTRUCTION MANAGER SHALL BE RESPONSIBLE FOR PAYMENT FROM ITS OWN RESOURCES WITH NO CONTRIBUTION FROM THE OWNER OF THE DIFFERENCE BETWEEN THE FINAL PRICE AS DEFINED AT PARAGRAPH 1.4.7 BELOW AND THE GUARANTEED MAXIMUM PRICE AS ADJUSTED BY CHANGE ORDERS, IF ANY.

**§ 1.4.7 FINAL PRICE:** For purposes of this Agreement, "Final Price" or "FP" shall mean the sum of the final Cost of the Work, Expenses to be Reimbursed, and the CM@R's Compensation for Basic Services as calculated by the Owner (hereinafter the "Final Price" or "FP"). The Final Price shall be determined by the Owner based upon disbursements made by the Owner for the Project to construct the Work under the Contract Documents. The

Owner shall notify the Construction Manager of the Final Price not less than thirty (30) days following the issuance of the Certificate of Substantial Completion by the Architect for the new school facility. The Construction Manager shall have the right to inspect the records of the Owner and conduct an audit to confirm the Owner's calculation of the Final Price; provided, that the CM@R must request such audit within thirty (30) days of the receipt from the Owner of the Final Price calculation or the right to such audit shall be waived and the Final Price calculated by the Owner shall be final and binding on all parties.

**§ 1.4.8 PROJECT TEAM:** For purposes of this agreement, "Project Team" shall mean the Owner, including the Superintendent, Board Facilities Committee and other parties assigned by the Owner, the Owner's Representative, the Construction Manager, the Project Architect, and the Fiscal Agent.

## **ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### **§ 2.1 Preconstruction Phase**

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

### **§ 2.1.2 Consultation**

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

**§ 2.1.3** When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

### **§ 2.1.4 Phased Construction**

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

### **§ 2.1.5 Preliminary Cost Estimates**

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

**§ 2.1.5.2** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by



the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

#### **§ 2.1.6 Subcontractors and Suppliers**

The Construction Manager shall develop bidders' interest in the Project.

**§ 2.1.7** The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

#### **§ 2.1.8 Extent of Responsibility**

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

#### **§ 2.1.9 Notices and Compliance with Laws**

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

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

**§ 2.2.1** At a time to be determined pursuant to paragraph 2.2.1.1 below based upon the Excel 16 Division Spreadsheet Report form, Appendix "A", the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

**§ 2.2.1.1** The Owner shall deliver to the Construction Manager the Drawings and Specifications per the Project Schedule established by the Architect, Owner and Construction Manager. These documents will be approximately 70% complete Construction Documents (the "Basis Documents"). At the same time, the Owner will also deliver to the Construction Manager the Architect's detailed listing of any material incomplete design elements and the Architect's statement of intended scope with respect to such incomplete elements and divisions of the work (the "Design Intent Statement").

**§ 2.2.1.1.1** The Construction Manager shall within twenty-one (21) days of the receipt of the Basis Documents and the Design Intent Statement, receipt of which shall be acknowledged in writing, prepare and submit to the Owner a Guaranteed Maximum Price (GMP) proposal based upon the standard construction industry sixteen (16) divisions of the Work following the Excel 16 Division Spreadsheet Report setting forth the estimated cost organized by materials and systems, trade categories, allowances, contingency, and other items, along with qualifications and assumptions based upon the Basis Documents and the Design Intent Statement and all information required under paragraph 2.2.3 below.

**§ 2.2.1.1.2** The Construction Manager, Owner, Project Architect, and selected consultants (Project Team) shall meet to identify the extent that Drawings and Specifications are anticipated to require further development by the Architect pursuant to subparagraph 2.2.2, contingencies pursuant to subparagraph 2.2.4, and reconcile any questions,

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discrepancies or disagreements relating to the qualifications and assumptions, the Basis Documents or the Design Intent Statement pursuant to subparagraph 2.2.5. The reconciliation shall be documented by an addendum to the GMP qualifications and assumptions that shall be approved in writing by the Project Team.

§ 2.2.1.1.3 The Construction Manager shall then prepare and submit to the Owner within twenty-one (21) days of the receipt of the addendum to the GMP, a final GMP proposal.

§ 2.2.1.1.4 The Owner shall provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment pursuant to subparagraph 2.2.8.

§ 2.2.1.1.5 The final negotiated GMP shall not exceed the project budget established for construction. If the GMP exceeds the project budget, the Owner reserves the right to terminate the agreement with the CM.

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

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems as set forth in the Excel 16 Division Spreadsheet Report, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

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

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

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

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

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction

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Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

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

## § 2.3 Construction Phase

### § 2.3.1 General

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

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

§ 2.3.1.3 **On-Site Staffing:** The CM@R shall maintain exclusively for the Project a competent, duly licensed and certified full-time staff at the Project Site to coordinate and direct the Work and progress of the Subcontractors. All of the CM@R's on-site management and supervisory personnel shall be consistent with the CM@R's interview presentation and shall not be removed or replaced without the Owner's consent, which consent will not be unreasonably withheld. The Owner shall have the right to direct the CM@R to remove or replace any on-site personnel whose performance becomes unsatisfactory to the Owner. In such event the CM@R shall promptly replace such personnel without consideration of any additional compensation for the replacement. Such on-site staffing shall include an on-site Superintendent who shall perform the following duties:

§ 2.3.1.3.1 **Project Manager:** CM@R's project manager, while not required to be present full-time at the site, shall remain assigned to this Work, and be available on an as-needed basis throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion have been completed or corrected in accordance with the Construction Documents.

§ 2.3.1.3.2 **On-Site Superintendent(s):** The CM@R shall have a Superintendent on the site of the Work at all times the Work is being performed. CM@R's Superintendent shall be present full-time on the site as soon as possible after commencement of the Work, and shall remain assigned to this Work, and present on the site, throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion have been completed or corrected. From Substantial Completion until Final Completion, the Superintendent shall be on the site as necessary to ensure that Final Completion occurs within the time specified. The CM@R's Superintendent's services shall include: (1) Review of all stages of construction to become intimately familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents; (2) shall be responsible to assure that the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work performed by the Contractor are in compliance with the Contract Documents and all local, state and federal regulations; (3) shall make continuous on-site inspections to check quality or quantity of the Work; and, (5) shall keep the Owner informed of progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

### § 2.3.2 Administration

§ 2.3.2.1 **ACTUAL PERFORMANCE OF THE WORK THROUGH MULTIPLE PRIME CONTRACTS:** All of the Work on the Project, except such work identified and approved by the Owner's Designated Representative as an Aid-to-Construction as a Reimbursable Expense under Article 6, shall be performed under contracts to be held by the Construction Manager as the contracting party and such contract shall be covered by the Construction Manager's payment and performance bonds (hereinafter referred to as "Subcontracts"). The Construction Manager shall advertise for competitive bids for each Subcontract and award such Subcontracts as set forth below. As part of the process of obtaining competitive bids for the Work, the Construction Manager shall perform the following responsibilities.



**§ 2.3.2.2 CONSTRUCTION MANAGER DEVELOPMENT OF BID PACKAGES:** The Construction Manager shall develop bid packages and solicit Subcontractor interest in the Project with emphasis on the development of bid packages that will encourage participation by local contractors.

**§ 2.3.2.3 ADVERTISEMENT FOR COMPETITIVE BIDS:** The Construction Manager shall advertise for competitive bids for all portions of the Work pursuant to the bid process that shall include (a) preparing invitations for bids and proposals and proposed contract documents; (b) publishing public notice which includes the general nature of the proposed work, fixes the hour, date, time and place where such bids and proposals shall close, or be received or opened, and provides the name and telephone number of a person to be contacted by anyone interested in submitting a bid and proposal to contract for such work in a newspaper of general circulation in the school district at least fourteen (14) days prior to bid and proposal opening and providing other public notice; (c) establishing evaluation criteria, interview and selection procedures which may include consultations with one or more bidders according to the requirements of any federal, state, and local laws applicable, with the board giving approval to and making the award of any final contracts; and (d) preparing, signing, executing and delivering all documents, and taking or causing to be taken all other necessary or appropriate action to complete the bidding and proposal process for each contract; and that the above shall and is hereby determined to be the regular manner established by the Owner for advertising for bids and proposals for all contracts for the Project.

**§ 2.3.2.3.1** In implementing the forgoing bid process, the Construction Manager shall be generally responsible to including, but not limited to:

**§ 2.3.2.3.1.1 Schedule for Letting Bids:** Establish a schedule for letting bids for each portion of the Work pursuant to the schedule for the construction of the Work established for the Project;

**§ 2.3.2.3.1.2 Dates for Advertisement of Bids:** Establish dates for advertising for and opening of bids;

**§ 2.3.2.3.1.3 Location of Bid Opening and Reading and Availability of Bids:** All bids will be opened at the Owner's administrative offices, and shall be read aloud in public to those present. All submitted bids shall be available for public inspection thereafter during the normal business hours for the Owner's administrative offices; and the Construction Manager shall provide to each submitting bidder a summary of the bids within five (5) business days of the opening of the bids;

**§ 2.3.2.3.1.4 Publication of Bids:** Arrange for publication of advertisement for bids, which publication shall fix the day and hour upon which the bids shall be returned or received, and the date, hour and location the bids will be opened, and that the bids shall be opened in the presence of the bidders, or representatives of the bidders, when the hour is reached for the bids to close;

**§ 2.3.2.3.1.5 Provision of Construction Documents:** Provide to all prospective bidders the Plans and Specifications for the portion of the Work being let for bids;

**§ 2.3.2.3.1.6 Pre-Bid Conferences:** Be in attendance at and conduct pre-bid conferences with firms interested in submitting bids as Subcontractors following the schedule for the Project;

**§ 2.3.2.3.1.7 Specify Required Information From Bidders:** Confirm with all prospective Subcontract bidders that they will provide all information requested of bidders on the Work required by the Owner in the bid documents;

**§ 2.3.2.3.1.8 Presence at Bid Openings:** Be present at all bid openings;

**§ 2.3.2.3.1.9 Minimum Number of Bids and Evaluation of Bids:** For a bid package to proceed to award there must be not less than three (3) bona fide bids submitted, unless such requirement is waived for good cause by the Owner's Designated Representative; "good cause" shall be determined on a case-by-case basis in consideration of the receipt of competitive nature of the bids received and the progress of the Work. In consultation with the Owner and Project Architect, evaluate each bid and bidder, and make recommendations to the Owner regarding which bids will be accepted as the lowest responsible bid for portions of the Work being bid; and,

**§ 2.3.2.3.1.10 Low Responsible Bidder:** For purposes of the Work of this Agreement, the term "lowest responsible bidder" shall mean financial responsibility, the general ability and capacity of the bidder to perform the

Work, the bidder's facilities and suitability for the task, and those qualities which the bidder must necessarily have in order to be able to perform the contract strictly in accordance with its terms.

**§ 2.3.2.3.1.11 Construction Manager Assistance in Determining Low Bid:** For purposes of the Work of this Agreement, upon identifying the responsible bidders for a portion of the Work, the Construction Manager shall advise on which of the responsible bidders has submitted the lowest bid. The lowest total price is not always dispositive of this question because public bodies retain an official discretion to determine which bid offers the best value to their constituents. The Owner shall have discretion to award the contract to one other than the lowest of the responsible bidders whenever a submitted bid contains a relevant advantage; e.g. for example, a bid that promises an early completion date or construction with higher quality materials.

**§ 2.3.2.3.1.11.1** The Construction Manager shall provide to each submitting bidder notice of the bid determined to be the low responsible bidder within ten (10) business days of the determination by the Owner.

**§ 2.3.2.3.2 Bidding By Construction Manager:** Should the Construction Manager or a construction contractor in any way affiliated with the Construction Manager as defined by the Owner submit a bid for a portion of the Work being let for bids, the same procedures and processes as required of all bidders shall be followed, **except that any bid by the Construction Manager must be submitted Twenty-Four (24) hours before all other bids are due to be submitted (unless granted permission otherwise by the Owner)**, and the bid of the Construction Manager or a construction contractor affiliated in any way with the Construction Manager may only be accepted if such bid is the lowest responsible dollar amount bid.

**§ 2.3.2.3.3 Non-Acceptance by Owner of Low Bid Determined By Construction Manager:** If the Guaranteed Maximum Price has been established and a specific bidder among those whose bids are received through the competitive bidding process (1) is determined by the Construction Manager to be the lowest responsible bid; (2) is qualified to perform that portion of the Work; (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a change in the Work be issued to adjust the schedule of the Work and the Guaranteed Maximum Price by the difference between the bid of the person or entity determined by the Construction Manager to be the low bid and the amount of the Subcontract or other agreement actually signed with the person or entity designated by the Owner.

**§ 2.3.2.3.4 Conformance By Material Suppliers:** Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the bidding provisions herein and the payment provisions of subparagraph 6.2.

**§ 2.3.2.3.5 Rebidding of Work:** In cooperation with the Architect and Owner, the Construction Manager shall assist with the rebidding of any portion of the Work for which no satisfactory bid has been received.

**§ 2.3.2.3.6 Bid Bonds:** The Construction Manager shall require bidders to submit bid bonds or other bid security and, as applicable, payment and performance bonds and certificates of insurance acceptable to the Construction Manager and Owner as a prerequisite to bidding on portions of the Work to be performed by Subcontract.

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

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

**§ 2.3.2.6** The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

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§ 2.3.2.7 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

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

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

#### § 2.4 Professional Services

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

#### § 2.5 Hazardous Materials

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

### ARTICLE 3 OWNER'S RESPONSIBILITIES

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

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

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

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

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

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

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

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

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

### § 3.2 Owner's Designated Representative

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

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

### § 3.3 Architect

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

## ARTICLE 4 COMPENSATION AND PAYMENTS FOR CONSTRUCTION PHASE SERVICES

### § 4.1 Basis of Compensation

§ 4.1.1 The basis for the Construction Manager's compensation for the Project to be paid by the Owner to the Construction Manager shall be established as follows:

*(Paragraphs deleted)*

§ 4.1.1.1 **CM@R'S COMPENSATION FOR CONSTRUCTION PHASE BASIC SERVICES:** The CM@R's Compensation for Basic Services shall be determined as follows:

§ 4.1.1.1.1 **COMPONENTS OF CM@R'S COMPENSATION FOR BASIC SERVICES:** For purposes of this Agreement, "CM@R's Compensation for Basic Services" shall mean the reimbursement for (1) the Direct Personnel Expense for the personnel assigned to the Project to perform the Construction Phase services of CM@R for the Project according to the Construction Documents; and, (2) a Construction Phase services only fee to cover the CM@R's corporate overhead, profit and risk for construction of the Project to be paid only if financing for the project is approved and a Notice to Proceed issued by the Owner. Such CM@R's Compensation for Basic Services shall include all compensation to be paid to the CM@R for anticipated Project Manager, and Site Superintendent direct personnel expense.



**§ 4.1.1.1.1 DIRECT PERSONNEL EXPENSE:** An employee's "Direct Personnel Expense" as used in this Article 4 shall mean the direct salaries of all of the CM@R's personnel engaged in the Project, and the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, pensions and similar contributions and benefits, and all costs for transportation and subsistence (meals and lodging) relating to the Project.

**§ 4.1.1.1.2 DETERMINATION OF MAXIMUM PERSONNEL EXPENSE.** The CM@R shall prepare an Efforts Schedule for the Construction Phase services for the Project based upon the Scope of the Work established by the Owner. The Efforts Schedule shall identify the positions and specific personnel to be assigned to the Project excluding personnel at the CM@R's principal office or offices other than the site office, and setting forth the anticipated number of hours per month that the CM@R's project specific personnel assigned to the Project (e.g. the Project Executive, Project Manager and Site Superintendent) will be providing services during the Pre-Construction and Construction Phases of the Project. The Efforts Schedule shall specifically provide for personnel hours dedicated to the Project Completion and Warranty Work services to be provided by the CM@R, which shall be separately identified and set off as a dedicated portion of the CM@R's Maximum Personnel Expense (MPE) which shall be available to compensate the CM@R for such services. The Efforts Schedule shall also provide for the hourly rates to be charged to the Owner for the Direct Personnel Expense for each of the personnel identified and assigned to the Project by the CM@R. The maximum personnel cost for each position shall be calculated based upon the following formula: Total Anticipated Hours x Hourly Rate = Total Anticipated Cost.

**§ 4.1.1.1.2.1 NEGOTIATION OF FINAL EFFORTS SCHEDULE.** Upon completion of the Efforts Schedule, the CM@R will meet with the Owner and review the Efforts Schedule, and negotiate and agree upon the positions and personnel to be assigned to the Project, and the hours and hourly rate for each such position to be included in the Final Efforts Schedule in light of the overall Construction Budget and scope.

**§ 4.1.1.1.2.2 EXECUTION OF FINAL EFFORTS SCHEDULE.** The Owner and CM@R shall then sign the Final Efforts Schedule for Construction Phase services which shall be attached to this Agreement; see Appendix "B" attached. The Final Efforts Schedule shall establish the Maximum Personnel Expense (MPE) to be paid by the Owner for the services of the CM@R's personnel for the Construction Phase of the Project. Upon establishment of the Final Efforts Schedule for each such phase, the CM@R's compensation for basic services shall be calculated as set forth in Article 5.

## **ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

**§ 5.1** For the Construction Manager's performance of the Work as described in Sections 2.1, 2.2 and 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

**§ 5.1.1** The Construction Manager's Fee:

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

**§ 5.1.1.1 CONSTRUCTION PHASE COMPENSATION - CONSTRUCTION PHASE PERSONNEL EXPENSES.** The CM@R's personnel expenses for Construction Phase services pursuant to paragraphs 2.3 through 2.5 of this Agreement for the Project shall be reimbursed by multiplying the stated hourly rates for each personnel position set forth in the Final Efforts Schedule times the actual hours expended for each such personnel not to exceed the MPE of [INSERT DOLLAR AMOUNT] DOLLARS (\$\_\_\_\_\_.00) for such phase of CM@R services set forth in the Final Efforts Schedule plus any savings realized in 4.1.2 above. Savings derived from an under-run to the total MPE set forth on the Final Efforts Schedule shall be applied to over-runs elsewhere within the GMP, shall be applied to the Construction Contingency, or shall accrue to the Owner.

**§ 5.1.1.2 CM@R'S FEE FOR CORPORATE OVERHEAD, PROFIT AND RISK:** The fixed fee to cover the CM@R's corporate overhead, profit and risk shall be the sum of [INSERT PERCENTAGE AMOUNT] (\_\_\_\_%) of the total Cost of the Work as defined herein PROVIDED, that should the Cost of the Work exceed the GMP, the Construction Manager's fee shall be calculated based upon the amount of the Cost of the Work set forth in the GMP.

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

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**§ 5.1.2.1 ADJUSTMENT OF THE EFFORTS SCHEDULE AND MPE FOR CHANGES IN THE SCOPE OF THE WORK:** Adjustments on account of changes in the Scope of the Work subsequent to the execution of the Agreement may be the basis for an adjustment of the CM@R's Efforts Schedule and attendant MPE; such adjustment shall be determined based upon the revised Schedules and Scope of the Work, and added to the Agreement by addendum.

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

None

**§ 5.1.4** Rental rates for Construction Manager-owned equipment shall not exceed EIGHTY-FIVE PERCENT (85%) of the standard rate paid at the place of the Project.

*(Table deleted)*

*(Paragraphs deleted)*

**§ 5.2 Guaranteed Maximum Price**

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

*(Insert specific provisions if the Construction Manager is to participate in any savings.)*

Not Applicable.

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

**§ 5.3 Changes in the Work**

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

**§ 5.3.2** Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

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

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

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

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

### **§ 6.1 Costs to Be Reimbursed**

**§ 6.1.1** For purposes of this Article the term Costs to be Reimbursed (or Reimbursable Expenses) shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work to include the total cost of all Subcontracts or Multiple Prime Contracts for the construction of the Project and site improvements described in the Contract Documents, and Construction Manager's Compensation for Basic Services, and other expenses to be reimbursed, as defined in this Article 6. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

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

### **§ 6.2 Labor Costs**

**§ 6.2.1** Labor Costs shall not include wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops; such costs are included in the Construction Manager's Fees under Article 4 and Article 5.

**§ 6.2.2** Labor Costs shall not include wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site; such costs are included in the Construction Manager's Fees under Article 4 and Article 5.

**§ 6.2.3** Labor Costs shall not include wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road; such costs are included in the Construction Manager's Fees under Article 4 and Article 5.

**§ 6.2.4** Labor Costs shall not include costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions; such costs are included in the Construction Manager's Fees under Article 4 and Article 5.

**§ 6.2.5** Labor Costs shall not include bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval; such costs are included in the Construction Manager's Fees under Article 4 and Article 5.

### **§ 6.3 Subcontract Costs**

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts, including any subcontracts awarded to the construction manager.

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

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

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

### **§ 6.5 Aid-to-Construction, and Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ 6.5.1 Aid-to-Construction.** The Construction Manager or a subcontractor upon written authorization of the Construction Manager may upon approval of the Owner's Designated Representative be reimbursed for costs of labor and material for work that is incidental to the construction of the Work of the Project but necessary to maintain the quality, budget and/or schedule of the Work; such reimbursement to be made on a cost plus ten percent (10%) basis. Such Aid-to-Construction work need not be bid as long as it is determined to be incidental to the original bid work of a subcontractor by the Owner's Designated Representative. The Aid-to-Construction shall be a

cost-not-to-exceed line item in the Reimbursable Expense section of the GMP provided by the Construction Manager.

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

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

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

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

§ 6.5.6 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

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

#### § 6.6 Miscellaneous Costs

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

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable, PROVIDED, that the Owner is an exempt entity under the tax laws of the State of Nebraska and is not subject to sales, use or similar taxes.

§ 6.6.2.1 The Owner represents that this Project is eligible for exemption from the State Sales Tax on tangible personal property and material incorporated in the Project, provided that the Contractor fulfills the requirements of Neb. Rev. Stat. § 77-2704.15. For the purpose of establishing exemption, it is understood and agreed that the Construction Manager may be required to segregate materials and labor costs at the time a Contract for the Work is awarded. Construction Manager will accept Purchase Agent Appointment and Exempt Sales Certificate forms from the Owner. Construction Manager shall obtain Resale Certificates from Contractor's suppliers. Failure of Contractor or any Sub-Contractor to obtain Resale Certificates from their suppliers shall make the Contractor or Sub-Contractor responsible for absorbing the tax, without compensation from Owner. Construction Manager shall pay all necessary local, county and state taxes, income tax, compensation tax, social security and withholding payments as required by law. CONSTRUCTION MANAGER HEREBY RELEASES, INDEMNIFIES, AND HOLDS HARMLESS OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF CONSTRUCTION MANAGER OR ANY SUBCONTRACTOR TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH LAWS AND REGULATIONS.

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

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

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

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

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

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

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

#### § 6.7 Other Costs and Emergencies

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

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

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

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

#### § 6.8 Costs Not To Be Reimbursed

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

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

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## § 6.9 Discounts, Rebates and Refunds

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

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

## § 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

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

## § 6.11 Accounting Records

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

## ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

### § 7.1 Progress Payments

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

### § 7.1.2 PAYMENT OF CM@R'S COMPENSATION

§ 7.1.2.1 **PAYMENT OF CM@R'S COMPENSATION FOR PRE-CONSTRUCTION AND CONSTRUCTION PHASE PERSONNEL SERVICES:** Based upon Applications for Payment submitted to the Project Architect by the CM@R, the Owner shall make progress payments to the CM@R as compensation for Pre-Construction and Construction Phase Personnel services for Direct Personnel Expense for actual hours worked by CM@R personnel for supervision of the Work and for Expenses to be Reimbursed based upon invoices submitted on a monthly basis as provided below and elsewhere in the Contract Documents.



§ 7.1.2.1.1 The period covered by each Application for Payment submitted by the CM@R for Pre-Construction and Construction Phase Personnel services and Expenses to be Reimbursed shall be one (1) calendar month ending on the last day of the month.

§ 7.1.2.1.2 The portion of the CM@R's Compensation for Pre-Construction and Construction Phase Personnel services to be paid with each Application for Payment shall be determined by the actual hours worked by the CM@R's personnel for the Project as confirmed by the Project Architect and Owner.

§ 7.1.2.1.3 Provided an Application for Payment of the CM@R's Compensation for Pre-Construction and Construction Phase Personnel services is received by the Owner's representatives not later than the FIRST (1<sup>st</sup>) day of the month, the Owner shall pursuant to Nebraska Construction Prompt Pay Act, Neb. Rev. Stat. § 45-1203 et seq., pay the amount due within THIRTY (30) days after receipt of a correct notice of amount due for the goods or services provided.

**§ 7.1.2.2 PAYMENT OF CM@R'S FEE FOR CORPORATE OVERHEAD, PROFIT AND RISK:** Based upon Applications for Payment submitted to the Owner by the CM@R, the Owner shall make progress payments to the CM@R of the CM@R's Fee for Corporate Overhead, Profit and Risk, based on the CM@R's GMP amount pending determination of final cost of the work, subject to a retainage amount to be held by the Owner. Payment of the CM@R'S Fee for Corporate Overhead, Profit and Risk (OPR Fee) shall be made in proportion of the Cost of the Work completed based upon the following formula:

- $OPR \text{ Fee of } \$ \times \text{ Cost of the Work completed to date} = \text{portion of OPR fee due, less retainage and previous OPR payments.}$

The OPR fee shall be subject to the retainage in the amount of FIVE PERCENT (5%) of the OPR Fee paid pursuant to the foregoing formula.

#### § 7.1.2.3 FINAL PAYMENT OF CM@R FEES AND OPR

§ 7.1.2.3.1 **CONDITIONS OF FINAL PAYMENT:** Final payment of the CM@R's Compensation for Pre-Construction and Construction Phase Personnel services and CM@R'S Fee for Corporate Overhead, Profit and Risk, including any retainage held by the Owner shall be made by the Owner to the CM@R when (1) the Contract has been fully performed by the CM@R, including the CM@R's correction of nonconforming Work to the satisfaction of the Owner; (2) a final Application for Payment of all Subcontracts has been received and approved by the Owner; (3) a final accounting for the Expenses to be Reimbursed has been submitted by the CM@R and reviewed and approved by the Owner; (4) a final Certificate for Payment has then been issued by the Owner to all Subcontractors; and (5) the Architect has certified the total Cost of the Work for the Project pursuant to Paragraph 1.4.3. Such final payment of the CM@R's Compensation for Pre-Construction and Construction Phase Personnel services and CM@R'S Fee For Corporate Overhead, Profit and Risk shall be made by the Owner not more than THIRTY (30) days after the issuance of the Owner's final Certificate for Payment to all Subcontractors. The amount of the final payment of the CM@R's Compensation for Basic Services shall be calculated pursuant to the provisions of Article 4 and Article 5.

**§ 7.1.3 PAYMENT OF COST OF THE WORK AND REIMBURSEABLE EXPENSES:** Payment of the Cost of the Work, including all subcontracts held by the Construction Manager for the performance of the Work of the Project, and of all reimbursable expenses pursuant to Article 6 shall be governed by subparagraph 7.1.3 through 7.2.4 hereof.

§ 7.1.3.1 Provided that an Application for Payment is received by the Architect not later than the FIRST (1<sup>st</sup>) of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the TWENTY-FIRST (21<sup>st</sup>) day of the month the application is received. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than THIRTY (30) days after the Architect receives the Application for Payment pursuant to Nebraska Construction Prompt Pay Act, Neb. Rev. Stat. § 45-1203 et seq.

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost

of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.4.1 With each Application for Payment of the Expenses to be Reimbursed, the CM@R shall submit payrolls, receipted invoices or invoices with check vouchers attached and any other evidence required by the Owner or Project Architect to demonstrate the cash disbursements made by the Owner on the Project on account of the Expenses to be Reimbursed.

§ 7.1.4.1.1 In taking action on the CM@R's Applications for Payment for Expenses to be Reimbursed, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the CM@R and shall not be deemed to represent that the Owner has made a detailed examination, audit or arithmetic verification of the documentation submitted or other supporting data and that the Owner has made exhaustive or continuous on-site inspections or that the Owner has made examinations to ascertain how or for what purposes the CM@R has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the interests of the Owner.

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

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

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, and subtract retainage in the amount of TEN PERCENT (10%) for the first FIFTY PERCENT (50%) of the GMP paid pursuant to the foregoing schedule, and with no retainage requirement for the last FIFTY PERCENT (50%), UNLESS the Owner notifies the Construction Manager in writing that retainage will be withheld on the second FIFTY PERCENT (50%) and the amount of such retainage, such notice to be provided with the last GMP payment attributable to the first FIFTY PERCENT (50%) of the GMP.
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

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

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

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

## § 7.2 Final Payment

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

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

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

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

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

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

## ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2007.

*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)*

*(Table deleted)*

**§ 8.1 COVERAGE – OCCURRENCE BASIS:** Coverages, written on an occurrence basis, shall be maintained without interruption from date of commencement of the Contractor’s Work until date of final payment and termination of any coverage required to be maintained after final payment to the Contractor.

**§ 8.2 CERTIFICATES OF INSURANCE:** Certificates of insurance acceptable to the Owner shall be filed by the Contractor with the Owner prior to commencement of the Contractor’s Work. These certificates and the insurance policies required by this Article 8 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days’ prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

**§ 8.3 PERFORMANCE AND PAYMENT BOND AND GMP BOND:** The CM@R shall as required by Neb. Rev. Stat. § 52-118 furnish payment bonds, as necessary, and bonds covering faithful performance of this CM@R Agreement and payment of obligations arising thereunder with minimum Best Rating "A". The amount of said bonds shall be equal to the sum of (1) the CM@R’s Compensation for Basic Services set forth in Articles 4 and 5 and (2) the budgeted amount in the GMP for Expenses to be Reimbursed pursuant to sections 6.5, 6.6 and 6.7 of Article 6. All subcontractors and suppliers shall provide separate payment and performance bonds for the amount of such subcontract. The CM@R shall also furnish a guarantee bond covering Ten Percent (10%) of the GMP established pursuant to paragraph 2.4 to secure payment of the difference between the Final Price and the GMP as adjusted by Change Orders, if any.

## ARTICLE 9 DISPUTE RESOLUTION

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

**§ 9.2** For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

Arbitration pursuant to Section 15.4 of AIA Document A201–2007

Litigation in a court of competent jurisdiction

Other: *(Specify)*

### § 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

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

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Bob Hastings, Superintendent of Schools, or designee  
Scotts Bluff County School District 79-0016, a/k/a Gering Public Schools  
1519 10<sup>th</sup> Street  
Gering, NE 69341  
Phone: 308-436-3125  
FAX: 308-436-4301  
(Hereinafter referred to as "Owner's Administration.")

## ARTICLE 10 TERMINATION OR SUSPENSION

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

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201-2007.

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

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

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

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

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

### § 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

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

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201-2007 shall not exceed the

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amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

**§ 10.2.2** If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager’s Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

**§ 10.3 Suspension**

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

**ARTICLE 11 MISCELLANEOUS PROVISIONS**

**§ 11.1** Terms in this Agreement shall have the same meaning as those in A201–2007.

**§ 11.2 Ownership and Use of Documents**

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

**§ 11.3 Governing Law**

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

**§ 11.4 Assignment**

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

**§ 11.5 Other provisions:**

**11.5.1 CONSTRUCTION MANAGER’S RESPONSIBILITY AND SUPERVISION OF CONSTRUCTION SITE AND ON-SITE PERSONNEL:**

**11.5.1.1 ACTS OR OMISSIONS OF CONSTRUCTION MANAGER’S EMPLOYEES:** The Construction Manager shall be responsible to the Owner for acts and omissions of the Construction Manager’s employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Construction Manager or any of its Subcontractors. As part of that responsibility, Construction Manager shall enforce the Owner’s alcohol-free, drug-free, tobacco-free, harassment-free and weapon-free policies and zones, which will require compliance with those policies and zones by Construction Manager’s employees, subcontractors, and all other persons carrying out the Contract.

**11.5.1.2 SITE SECURITY IDENTIFICATION:** Construction Manager shall require all construction workers, whether Construction Manager’s own forces or the forces of Construction Manager’s subcontractors, to wear identification tags on the front of their persons during all times that they are on Owner’s property. Such identification tags shall contain a current photograph and the worker’s full name in a typeface large enough to be seen from a reasonable distance.

**11.5.1.3 VEHICLE PARKING:** Construction Manager shall require all construction workers, whether Construction Manager’s own forces or the forces of Construction Manager’s subcontractors, to park their personal motor vehicles on Owner’s property only in the parking places designated by the Owner’s. Any vehicles not parked in the appropriate locations shall be towed at the vehicle owner’s sole expense.

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**11.5.1.4 COMPLIANCE WITH APPLICABLE ORDINANCES:** Construction Manager shall follow, and shall require all employees, agents or subcontractors to follow, applicable ordinances of the municipality in which the Project is located. In addition, if not covered by the municipality's tree ordinance, Construction Manager shall barricade and protect all trees on the Project.

**11.5.1.5 THEFT DETERRENCE PROGRAM:** Construction Manager shall consult and coordinate with Owner with analysis of cost of the institution of a theft deterrence program designed to restrict construction worker access to properties of Owner that are currently in use, to maintain supervision of Construction Manager's and Construction Manager's subcontractor's forces, and to reimburse the Owner or those persons suffering a theft loss which results from Construction Manager's forces or Construction Manager's subcontractor's forces' actions, omissions, or failure to secure the Work or adjoining property.

**11.5.2 EQUAL OPPORTUNITY EMPLOYER:** By signing this Agreement, the Construction Manager does hereby agree, certify, warrant and represent on behalf of itself, that it is an equal opportunity employer and actively recruits a well-qualified and diverse staff including minority applicants, and does not discriminate against any employee or applicant for employment by reason of sex, disability, race, color, religion, veteran status, national or ethnic origin, age, marital status, pregnancy, childbirth or related medical condition, or other protected status. By submitting a proposal and signing an Agreement with the Owner, the Construction Manager and any Contractor agrees to actively continue and implement this policy throughout any awarded project.

**11.5.3 COMPLIANCE WITH STATUTES:** As a material term of this Agreement, the Construction Manager shall at all times comply with all applicable federal and state statutes. Compliance with applicable laws shall consist of consultation with the Project Team in complying with and satisfying applicable codes, ordinances, rules, and regulations of any governmental authority having jurisdiction over the construction of each Project. With regard to the supervision of contractors performing the work of the Projects, the Construction Manager shall be responsible for determining the applicability of such codes, ordinances, rules, and regulations to work of the Project, except those applicable to the design services of the Project Architect; for investigating, confirming and/or verifying compliance therewith; for filing of all documents that are required for compliance therewith; and for obtaining the approval of governmental authorities having jurisdiction over the Project, including, but not limited to:

(a) E-Verification of Immigration Status: Compliance with federal and state immigration verification system regulations to determine the work eligibility status of new employees physically performing services on the Project within the State of Nebraska.

(b) OSHA: Compliance with federal occupational safety and health standards by all contractors performing the Work of the project.

**11.5.4 EQUAL EMPLOYMENT OPPORTUNITY AND VERIFICATION OF IMMIGRATION STATUS:** The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs; and specifically shall comply with all requirements of the federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska, if required by state or federal law or regulation.

**11.5.5.1 GOVERNANCE:** Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in General Conditions.

**11.5.5.2 EXTENT OF CONTRACT:** This Contract which includes this Agreement and the other documents incorporated herein by reference represents the entire and integrated Agreement between the Owner and Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

**11.5.5.3 OWNERSHIP AND USE OF DOCUMENTS:** The Drawings, Specifications and other documents prepared by the Architect and copies thereof furnished to the Construction Manager is for use solely with respect to this Project.

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

**11.5.5.4 CLAIMS FOR CONSEQUENTIAL DAMAGES.** The Owner hereby expressly reserves the right to claim consequential damages against the CM@R for claims, disputes or other matters in question arising out of or relating to the subject matter of this Agreement. For purposes of this paragraph, the term "consequential damages" shall mean those damages incurred by the School District as a consequence of the negligence of the CM@R. Such damages incurred by the School District include injuries to persons or damage to property or economic loss.

**11.5.5.5 GOVERNING LAW:** The Contract shall be governed by the laws of the State of Nebraska and any litigation shall be conducted in state district court. Mandatory and exclusive venue for any dispute shall be Scotts Bluff County, Nebraska, or, if no county is specified, then in the county in which the District's main administrative office is located.

**11.5.5.6 ASSIGNMENT:** Once this Agreement is accepted and signed by the Owner, the Owner and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without the written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**11.5.5.7 FORCE MAJEURE:** None of the parties hereto shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

**11.5.5.8 INDEPENDENT CONTRACTOR:** The Construction Manager shall function as an independent contractor for the purposes of this Contract and shall not be considered an employee of the Owner for any purpose. The Construction Manager shall assume sole responsibility for any debts or liabilities that may be incurred by Construction Manager in fulfilling the terms of this Contract and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing Construction Manager or its agents and/or employees to act as an agent or representative of or on behalf of the Owner, or to incur any obligation of any kind on behalf of the Owner. Construction Manager agrees that no health/hospitalization benefits, workers' compensation, and/or similar benefits available to Owner employees will extend to the benefit of Construction Manager or the Construction Manager's agents and/or employees as a result of this Contract.

**11.5.5.9 KICKBACKS:** The Construction Manager certifies and warrants that no gratuities, kickbacks, or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. If the Construction Manager breaches or violates this warranty, the Owner may, at its discretion, terminate this Contract without liability to the Owner, or deduct from the Contract price or consideration, or otherwise recover the full amount of any commission, percentage, brokerage, or contingency fee.

**11.5.5.10 NOTICE:** All notices or invoices arising out of, or from, the provisions of this Contract shall be in writing and given to the parties at the address provided under this Contract, either by regular mail, facsimile, e-mail, or delivery in person. All notices sent via the U.S. Postal Service are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

**11.5.5.11 SEVERABILITY:** This Agreement is subject to all applicable federal and state laws, rules, and regulations. Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of this Contract shall continue in full force and effect, and either party may attempt to renegotiate the terms affected by the severance.

**11.5.5.12 NO WAIVER OF RIGHTS:** The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach. No delay or omission by either of the parties hereto in exercising any right or power accruing upon the noncompliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

**11.5.5.13 WARRANTY:** Construction Manager warrants that it has the ability to perform the agreed upon services; it shall provide suitable resources to perform work in accordance with this Agreement; it will provide the agreed upon services on a timely basis; it shall perform services in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently providing construction management services under similar circumstances, and with the requirements of the Contract Documents; and it is responsible for the construction of the Work of the Project in accordance with all designs, drawings, specifications, and other services furnished by Owner through the Project Architect for the Project.

**11.5.5.14** This Agreement, in its entirety, shall be binding upon all the parties hereto, their respective successors, heirs, executors, administrators or assigns.

**11.5.5.15** Execution of this Agreement shall constitute approval and acceptance of all terms, covenants and conditions as modified and contained in the Contract Documents.

**11.5.5.16** Contractor stipulates that Owner is a political subdivision of the State of Nebraska, and, as such, enjoys immunities from suit and liability provided by the Constitution and laws of the State of Nebraska. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law.

## **ARTICLE 12 SCOPE OF THE AGREEMENT**

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

**§ 12.2** The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:
  - .4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
- .5 Other documents:  
*(List other documents, if any, forming part of the Agreement.)*

Appendix "A" - Excel 16 Division Spreadsheet Report

Appendix "B" – Construction Manager’s Maximum Personnel Expense - Efforts Schedule

Init.

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

**SCOTTS BLUFF COUNTY SCHOOL DISTRICT 79-0016,  
A/K/A GERING PUBLIC SCHOOLS**

**[INSERT CONSTRUCTION MANAGER]**

\_\_\_\_\_  
**SCHOOL DISTRICT/OWNER** (Signature)  
Brian Copsey, President, Board of Education

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

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

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



Init.

/



# Additions and Deletions Report for AIA® Document A133™ – 2009

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 11:01:36 on 04/05/2017.

## PAGE 1

**AGREEMENT** made as of the — day of June in the year 2017

...

*(Name, legal status and address)*

Scotts Bluff County School District 79-0016, a/k/a Gering Public Schools  
1519 10<sup>th</sup> Street  
Gering, NE 69341  
Phone: 308-436-3125  
FAX: 308-436-4301  
(Hereinafter referred to as "Owner" or "School District").

...

[Insert CM@R information]

...

Gering High School – High School Renovation and Addition Project: The Gering High School project involves additions to the existing building for the purpose of adding approximately 150 students and upgrading and renovating the existing facility. Additions of approximately 61,414 square feet, and improvements to the existing 104,187 square foot building, including but not limited to the following:

- Construction of a classroom wing to accommodate the movement of 9th grade students into the building (approximately 150 students);
  - Construction of an auxiliary gymnasium;
  - Renovations to existing locker and weight rooms as well as addition of additional space for these areas;
  - Remodeling and expanding commons, lunchroom, and theater lobby areas;
  - Construction of a new production kitchen;
  - Renovations of the theater;
  - Improvements to existing classrooms;
  - Addition of handicapped accessible parking near the entrance;
  - Construction of secure entrances and office areas;
  - Safety and security updates and improvements; and
  - HVAC and electrical upgrades and improvements.
- (Hereinafter "the Project").

...

RB+B, Architects  
315 East Mountain Avenue, Suite 100

Fort Collins, CO 80524  
Phone: 970-484-0117  
(Hereinafter referred to as "Architect" or "Project Architect")."

**PAGE 2**

Bob Hastings, Superintendent of Schools, or designee  
Scotts Bluff County School District 79-0016, a/k/a Gering Public Schools  
1519 10<sup>th</sup> Street  
Gering, NE 69341  
Phone: 308-436-3125  
FAX: 308-436-4301  
(Hereinafter referred to as "Owner's Representative").

...

[Insert CM@R Project Executive]

...

Corky Bradley, AIA  
RB+B, Architects  
315 East Mountain Avenue, Suite 100  
Fort Collins, CO 80524  
Phone: 970-484-0117  
(Hereinafter referred to as "Architect").

**PAGE 3**

**12 SCOPE OF THE AGREEMENT**

**~~EXHIBIT A – GUARANTEED MAXIMUM PRICE AMENDMENT~~**

...

For the Preconstruction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2007, which document is incorporated herein by reference. The term "Contractor" as used in A201–2007 shall mean the Construction Manager. In the event that there are conflicting provisions between this Agreement and the General Conditions, the provisions of this Agreement shall control.

**§ 1.4 Definitions**

**§ 1.4.1 THE PROJECT:** For purposes of this Agreement, "the Project" shall mean the Gering High School – High School Renovation and Addition Project Project. The Project shall have a single project budget, plans and specifications, schedule, and Guaranteed Maximum Price (GMP).

**§ 1.4.1.1 PROJECT BUDGET:** The total project budget is TWENTY-FOUR MILLION DOLLARS (\$24,000,000). The amount that will be subject to the CM contract is approximately TWENTY MILLION THREE HUNDRED THOUSAND DOLLARS (\$20,300,000) (hereinafter "the Project Budget").

**§ 1.4.2 THE WORK:** For purposes of this Agreement, "the Work" shall mean the Subcontracts or Multiple Prime Contracts for the construction of the Project. The CM@R is responsible for the construction, administration and/or supervision of the Work under the Construction Documents.

**§ 1.4.3 COST OF THE WORK:** For purposes of this Agreement, "Cost of the Work" shall mean the total cost of all Subcontracts for the construction of the Project and site improvements described in the Contract Documents, and

Expenses to be Reimbursed, as defined in Article 6 to this Agreement. "Cost of the Work" shall not include the Construction Manager's Compensation under Articles 4 and 5 of this Agreement, the cost of any insurance and surety contracts purchased or controlled by the Owner, or any other contracts or agreements that are not part of or described by the Construction Documents, or Architect/Engineering or other professional fees and expenses.

**§ 1.4.4. EXPENSES TO BE REIMBURSED:** For purposes of this Agreement, "Expenses to be Reimbursed" shall mean those expenses incurred by the CM@R that are to be reimbursed pursuant to the provisions of Article 6.

**§ 1.4.5 CONSTRUCTION CONTINGENCY:** For purposes of this agreement, the term "Construction Contingency" as referred to and identified in the budget, cost estimates for the Project, including any form of guaranteed maximum price, shall mean a dollar amount not designated for any division of the Work which is available to be applied to the budget for a specified division or divisions of the Work for materials; provided that all funds identified as contingency funds are available for the project on an as needed basis and shall at all times be the sole property of the Owner. The Guaranteed Maximum Price (GMP) will contain a separately-identified contingency amount (the "Construction Contingency"). The Construction Contingency is not allocated to any particular item of the Cost of the Work and is established for the Construction Manager's use as may be required for costs incurred in the Work from causes, or details which should have been anticipated by the Construction Manager at the time of the Owner's approval of the GMP. Such causes or details are limited to refinement of details of design within the scope of standards, quality and quantities which were reasonably inferable from the Construction Documents at the time of the Owner's approval of the GMP. The Construction Manager, with Owner's written approval, may utilize the Construction Contingency for any of the above items within the Cost of the Work without the necessity of a Change Order, without constituting a change in the Scope of the Work, and without resulting in any change in the GMP. Any causes or unanticipated details which exceed the Construction Contingency shall be borne by the CM@R at the CM@R's sole risk. All savings in the Construction Contingency will accrue and be available for use, only as detailed above, by the CM@R until the CM@R's final accounting. In the final accounting, all supporting documentation for all uses of the Construction Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Contingency shall accrue to the Owner.

**§ 1.4.6 GUARANTEED MAXIMUM PRICE:** For purposes of this Agreement, "Guaranteed Maximum Price" or "GMP" shall mean the total of the sum of the Cost of the Work for the project, which amount is guaranteed by the CM@R not to exceed the amount provided in resolution of the Board of Education of the Owner approving such GMP, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the Guaranteed Maximum Price or GMP. IF THE GUARANTEED MAXIMUM PRICE IS EXCEEDED FOR THE PROJECT, AS THE CASE MAY BE, THE CONSTRUCTION MANAGER SHALL BE RESPONSIBLE FOR PAYMENT FROM ITS OWN RESOURCES WITH NO CONTRIBUTION FROM THE OWNER OF THE DIFFERENCE BETWEEN THE FINAL PRICE AS DEFINED AT PARAGRAPH 1.4.7 BELOW AND THE GUARANTEED MAXIMUM PRICE AS ADJUSTED BY CHANGE ORDERS, IF ANY.

**§ 1.4.7 FINAL PRICE:** For purposes of this Agreement, "Final Price" or "FP" shall mean the sum of the final Cost of the Work, Expenses to be Reimbursed, and the CM@R's Compensation for Basic Services as calculated by the Owner (hereinafter the "Final Price" or "FP"). The Final Price shall be determined by the Owner based upon disbursements made by the Owner for the Project to construct the Work under the Contract Documents. The Owner shall notify the Construction Manager of the Final Price not less than thirty (30) days following the issuance of the Certificate of Substantial Completion by the Architect for the new school facility. The Construction Manager shall have the right to inspect the records of the Owner and conduct an audit to confirm the Owner's calculation of the Final Price; provided, that the CM@R must request such audit within thirty (30) days of the receipt from the Owner of the Final Price calculation or the right to such audit shall be waived and the Final Price calculated by the Owner shall be final and binding on all parties.

**§ 1.4.8 PROJECT TEAM:** For purposes of this agreement, "Project Team" shall mean the Owner, including the Superintendent, Board Facilities Committee and other parties assigned by the Owner, the Owner's Representative, the Construction Manager, the Project Architect, and the Fiscal Agent.

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

...

~~§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager determined pursuant to paragraph 2.2.1.1 below based upon the Excel 16 Division Spreadsheet Report form, Appendix "A", the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.~~

§ 2.2.1.1 The Owner shall deliver to the Construction Manager the Drawings and Specifications per the Project Schedule established by the Architect, Owner and Construction Manager. These documents will be approximately 70% complete Construction Documents (the "Basis Documents"). At the same time, the Owner will also deliver to the Construction Manager the Architect's detailed listing of any material incomplete design elements and the Architect's statement of intended scope with respect to such incomplete elements and divisions of the work (the "Design Intent Statement").

§ 2.2.1.1.1 The Construction Manager shall within twenty-one (21) days of the receipt of the Basis Documents and the Design Intent Statement, receipt of which shall be acknowledged in writing, prepare and submit to the Owner a Guaranteed Maximum Price (GMP) proposal based upon the standard construction industry sixteen (16) divisions of the Work following the Excel 16 Division Spreadsheet Report setting forth the estimated cost organized by materials and systems, trade categories, allowances, contingency, and other items, along with qualifications and assumptions based upon the Basis Documents and the Design Intent Statement and all information required under paragraph 2.2.3 below.

§ 2.2.1.1.2 The Construction Manager, Owner, Project Architect, and selected consultants (Project Team) shall meet to identify the extent that Drawings and Specifications are anticipated to require further development by the Architect pursuant to subparagraph 2.2.2, contingencies pursuant to subparagraph 2.2.4, and reconcile any questions, discrepancies or disagreements relating to the qualifications and assumptions, the Basis Documents or the Design Intent Statement pursuant to subparagraph 2.2.5. The reconciliation shall be documented by an addendum to the GMP qualifications and assumptions that shall be approved in writing by the Project Team.

§ 2.2.1.1.3 The Construction Manager shall then prepare and submit to the Owner within twenty-one (21) days of the receipt of the addendum to the GMP, a final GMP proposal.

§ 2.2.1.1.4 The Owner shall provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment pursuant to subparagraph 2.2.8.

§ 2.2.1.1.5 The final negotiated GMP shall not exceed the project budget established for construction. If the GMP exceeds the project budget, the Owner reserves the right to terminate the agreement with the CM.

## PAGE 7

- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or ~~systems,~~ systems as set forth in the Excel 16 Division Spreadsheet Report, allowances, contingency, and the Construction Manager's Fee;

...

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the ~~agreed-upon~~ agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction



Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

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**§ 2.3.1.3 On-Site Staffing:** The CM@R shall maintain exclusively for the Project a competent, duly licensed and certified full-time staff at the Project Site to coordinate and direct the Work and progress of the Subcontractors. All of the CM@R's on-site management and supervisory personnel shall be consistent with the CM@R's interview presentation and shall not be removed or replaced without the Owner's consent, which consent will not be unreasonably withheld. The Owner shall have the right to direct the CM@R to remove or replace any on-site personnel whose performance becomes unsatisfactory to the Owner. In such event the CM@R shall promptly replace such personnel without consideration of any additional compensation for the replacement. Such on-site staffing shall include an on-site Superintendent who shall perform the following duties:

**§ 2.3.1.3.1 Project Manager:** CM@R's project manager, while not required to be present full-time at the site, shall remain assigned to this Work, and be available on an as-needed basis throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion have been completed or corrected in accordance with the Construction Documents.

**§ 2.3.1.3.2 On-Site Superintendent(s):** The CM@R shall have a Superintendent on the site of the Work at all times the Work is being performed. CM@R's Superintendent shall be present full-time on the site as soon as possible after commencement of the Work, and shall remain assigned to this Work, and present on the site, throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion have been completed or corrected. From Substantial Completion until Final Completion, the Superintendent shall be on the site as necessary to ensure that Final Completion occurs within the time specified. The CM@R's Superintendent's services shall include: (1) Review of all stages of construction to become intimately familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents; (2) shall be responsible to assure that the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work performed by the Contractor are in compliance with the Contract Documents and all local, state and federal regulations; (3) shall make continuous on-site inspections to check quality or quantity of the Work; and, (5) shall keep the Owner informed of progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

**§ 2.3.2.1** ~~Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.~~**ACTUAL PERFORMANCE OF THE WORK THROUGH MULTIPLE PRIME CONTRACTS:** All of the Work on the Project, except such work identified and approved by the Owner's Designated Representative as an Aid-to-Construction as a Reimbursable Expense under Article 6, shall be performed under contracts to be held by the Construction Manager as the contracting party and such contract shall be covered by the Construction Manager's payment and performance bonds (hereinafter referred to as "Subcontracts"). The Construction Manager shall advertise for competitive bids for each Subcontract and award such Subcontracts as set forth below. As part of the process of obtaining competitive bids for the Work, the Construction Manager shall perform the following responsibilities.

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

~~the subcontract or other agreement actually signed with the person or entity designated by the Owner.~~ **CONSTRUCTION MANAGER DEVELOPMENT OF BID PACKAGES:** The Construction Manager shall develop bid packages and solicit Subcontractor interest in the Project with emphasis on the development of bid packages that will encourage participation by local contractors.

~~§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.~~ **ADVERTISEMENT FOR COMPETITIVE BIDS:** The Construction Manager shall advertise for competitive bids for all portions of the Work pursuant to the bid process that shall include (a) preparing invitations for bids and proposals and proposed contract documents; (b) publishing public notice which includes the general nature of the proposed work, fixes the hour, date, time and place where such bids and proposals shall close, or be received or opened, and provides the name and telephone number of a person to be contacted by anyone interested in submitting a bid and proposal to contract for such work in a newspaper of general circulation in the school district at least fourteen (14) days prior to bid and proposal opening and providing other public notice; (c) establishing evaluation criteria, interview and selection procedures which may include consultations with one or more bidders according to the requirements of any federal, state, and local laws applicable, with the board giving approval to and making the award of any final contracts; and (d) preparing, signing, executing and delivering all documents, and taking or causing to be taken all other necessary or appropriate action to complete the bidding and proposal process for each contract; and that the above shall and is hereby determined to be the regular manner established by the Owner for advertising for bids and proposals for all contracts for the Project.

**§ 2.3.2.3.1** In implementing the forgoing bid process, the Construction Manager shall be generally responsible to including, but not limited to:

**§ 2.3.2.3.1.1** **Schedule for Letting Bids:** Establish a schedule for letting bids for each portion of the Work pursuant to the schedule for the construction of the Work established for the Project;

**§ 2.3.2.3.1.2** **Dates for Advertisement of Bids:** Establish dates for advertising for and opening of bids;

**§ 2.3.2.3.1.3** **Location of Bid Opening and Reading and Availability of Bids:** All bids will be opened at the Owner's administrative offices, and shall be read aloud in public to those present. All submitted bids shall be available for public inspection thereafter during the normal business hours for the Owner's administrative offices; and the Construction Manager shall provide to each submitting bidder a summary of the bids within five (5) business days of the opening of the bids;

**§ 2.3.2.3.1.4** **Publication of Bids:** Arrange for publication of advertisement for bids, which publication shall fix the day and hour upon which the bids shall be returned or received, and the date, hour and location the bids will be opened, and that the bids shall be opened in the presence of the bidders, or representatives of the bidders, when the hour is reached for the bids to close;

**§ 2.3.2.3.1.5** **Provision of Construction Documents:** Provide to all prospective bidders the Plans and Specifications for the portion of the Work being let for bids;

**§ 2.3.2.3.1.6** **Pre-Bid Conferences:** Be in attendance at and conduct pre-bid conferences with firms interested in submitting bids as Subcontractors following the schedule for the Project;

**§ 2.3.2.3.1.7** **Specify Required Information From Bidders:** Confirm with all prospective Subcontract bidders that they will provide all information requested of bidders on the Work required by the Owner in the bid documents;

**§ 2.3.2.3.1.8** **Presence at Bid Openings:** Be present at all bid openings;

**§ 2.3.2.3.1.9** **Minimum Number of Bids and Evaluation of Bids:** For a bid package to proceed to award there must be not less than three (3) bona fide bids submitted, unless such requirement is waived for good cause by the Owner's Designated Representative; "good cause" shall be determined on a case-by-case basis in consideration of the receipt of competitive nature of the bids received and the progress of the Work. In consultation with the Owner

and Project Architect, evaluate each bid and bidder, and make recommendations to the Owner regarding which bids will be accepted as the lowest responsible bid for portions of the Work being bid; and,

**§ 2.3.2.3.1.10 Low Responsible Bidder:** For purposes of the Work of this Agreement, the term "lowest responsible bidder" shall mean financial responsibility, the general ability and capacity of the bidder to perform the Work, the bidder's facilities and suitability for the task, and those qualities which the bidder must necessarily have in order to be able to perform the contract strictly in accordance with its terms.

**§ 2.3.2.3.1.11 Construction Manager Assistance in Determining Low Bid:** For purposes of the Work of this Agreement, upon identifying the responsible bidders for a portion of the Work, the Construction Manager shall advise on which of the responsible bidders has submitted the lowest bid. The lowest total price is not always dispositive of this question because public bodies retain an official discretion to determine which bid offers the best value to their constituents. The Owner shall have discretion to award the contract to one other than the lowest of the responsible bidders whenever a submitted bid contains a relevant advantage; e.g. for example, a bid that promises an early completion date or construction with higher quality materials.

**§ 2.3.2.3.1.11.1** The Construction Manager shall provide to each submitting bidder notice of the bid determined to be the low responsible bidder within ten (10) business days of the determination by the Owner.

**§ 2.3.2.3.2 Bidding By Construction Manager:** Should the Construction Manager or a construction contractor in any way affiliated with the Construction Manager as defined by the Owner submit a bid for a portion of the Work being let for bids, the same procedures and processes as required of all bidders shall be followed, **except that any bid by the Construction Manager must be submitted Twenty-Four (24) hours before all other bids are due to be submitted (unless granted permission otherwise by the Owner)**, and the bid of the Construction Manager or a construction contractor affiliated in any way with the Construction Manager may only be accepted if such bid is the lowest responsible dollar amount bid.

**§ 2.3.2.3.3 Non-Acceptance by Owner of Low Bid Determined By Construction Manager:** If the Guaranteed Maximum Price has been established and a specific bidder among those whose bids are received through the competitive bidding process (1) is determined by the Construction Manager to be the lowest responsible bid; (2) is qualified to perform that portion of the Work; (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a change in the Work be issued to adjust the schedule of the Work and the Guaranteed Maximum Price by the difference between the bid of the person or entity determined by the Construction Manager to be the low bid and the amount of the Subcontract or other agreement actually signed with the person or entity designated by the Owner.

**§ 2.3.2.3.4 Conformance By Material Suppliers:** Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the bidding provisions herein and the payment provisions of subparagraph 6.2.

**§ 2.3.2.3.5 Rebidding of Work:** In cooperation with the Architect and Owner, the Construction Manager shall assist with the rebidding of any portion of the Work for which no satisfactory bid has been received.

**§ 2.3.2.3.6 Bid Bonds:** The Construction Manager shall require bidders to submit bid bonds or other bid security and, as applicable, payment and performance bonds and certificates of insurance acceptable to the Construction Manager and Owner as a prerequisite to bidding on portions of the Work to be performed by Subcontract.

**§ 2.3.2.4** ~~If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2. Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.~~

~~§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect. If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.~~

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

~~§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner. Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2007.~~

~~§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above. record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.~~

~~§ 2.3.2.9 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.~~

## PAGE 12

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

...

The Owner shall retain an Architect to provide services, ~~duties, duties~~ and responsibilities as described in AIA Document ~~B133™-2014, B103™-2007~~, Standard Form of Agreement Between Owner and Architect, ~~Construction Manager as Constructor Edition~~, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.



~~ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES~~  
~~ARTICLE 4 COMPENSATION AND PAYMENTS FOR CONSTRUCTION PHASE SERVICES~~

~~§ 4.1 Basis of Compensation~~

~~§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager. The basis for the Construction Manager's compensation for the Project to be paid by the Owner to the Construction Manager shall be established as follows:~~

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

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

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

~~§ 4.2 Payments~~

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

~~§ 4.2.2 Payments are due and payable upon presentation 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 monthly or annual interest agreed upon.)~~

~~—%~~

~~§ 4.1.1.1 CM@R'S COMPENSATION FOR CONSTRUCTION PHASE BASIC SERVICES: The CM@R's Compensation for Basic Services shall be determined as follows:~~

~~§ 4.1.1.1.1 COMPONENTS OF CM@R'S COMPENSATION FOR BASIC SERVICES: For purposes of this Agreement, "CM@R's Compensation for Basic Services" shall mean the reimbursement for (1) the Direct Personnel Expense for the personnel assigned to the Project to perform the Construction Phase services of CM@R for the Project according to the Construction Documents; and, (2) a Construction Phase services only fee to cover the CM@R's corporate overhead, profit and risk for construction of the Project to be paid only if financing for the project is approved and a Notice to Proceed issued by the Owner. Such CM@R's Compensation for Basic Services shall include all compensation to be paid to the CM@R for anticipated Project Manager, and Site Superintendent direct personnel expense.~~

~~§ § 4.1.1.1.1.1 DIRECT PERSONNEL EXPENSE: An employee's "Direct Personnel Expense" as used in this Article 4 shall mean the direct salaries of all of the CM@R's personnel engaged in the Project, and the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, pensions and similar contributions and benefits, and all costs for transportation and subsistence (meals and lodging) relating to the Project.~~

~~§ 4.1.1.1.1.2 DETERMINATION OF MAXIMUM PERSONNEL EXPENSE. The CM@R shall prepare an Efforts Schedule for the Construction Phase services for the Project based upon the Scope of the Work established by the Owner. The Efforts Schedule shall identify the positions and specific personnel to be assigned to the Project excluding personnel at the CM@R's principal office or offices other than the site office, and setting forth the anticipated number of hours per month that the CM@R's project specific personnel assigned to the Project (e.g. the Project Executive, Project Manager and Site Superintendent) will be providing services during the Pre-Construction and Construction Phases of the Project. The Efforts Schedule shall specifically provide for personnel hours dedicated to the Project Completion and Warranty Work services to be provided by the CM@R, which shall be~~

separately identified and set off as a dedicated portion of the CM@R's Maximum Personnel Expense (MPE) which shall be available to compensate the CM@R for such services. The Efforts Schedule shall also provide for the hourly rates to be charged to the Owner for the Direct Personnel Expense for each of the personnel identified and assigned to the Project by the CM@R. The maximum personnel cost for each position shall be calculated based upon the following formula: Total Anticipated Hours x Hourly Rate = Total Anticipated Cost.

**§ 4.1.1.1.2.1 NEGOTIATION OF FINAL EFFORTS SCHEDULE.** Upon completion of the Efforts Schedule, the CM@R will meet with the Owner and review the Efforts Schedule, and negotiate and agree upon the positions and personnel to be assigned to the Project, and the hours and hourly rate for each such position to be included in the Final Efforts Schedule in light of the overall Construction Budget and scope.

**§ 4.1.1.1.2.2 EXECUTION OF FINAL EFFORTS SCHEDULE.** The Owner and CM@R shall then sign the Final Efforts Schedule for Construction Phase services which shall be attached to this Agreement; see Appendix "B" attached. The Final Efforts Schedule shall establish the Maximum Personnel Expense (MPE) to be paid by the Owner for the services of the CM@R's personnel for the Construction Phase of the Project. Upon establishment of the Final Efforts Schedule for each such phase, the CM@R's compensation for basic services shall be calculated as set forth in Article 5.

**§ 5.1** For the Construction Manager's performance of the Work as described in ~~Section~~ Sections 2.1, 2.2 and 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

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**§ 5.1.1.1 CONSTRUCTION PHASE COMPENSATION - CONSTRUCTION PHASE PERSONNEL EXPENSES.** The CM@R's personnel expenses for Construction Phase services pursuant to paragraphs 2.3 through 2.5 of this Agreement for the Project shall be reimbursed by multiplying the stated hourly rates for each personnel position set forth in the Final Efforts Schedule times the actual hours expended for each such personnel not to exceed the MPE of [INSERT DOLLAR AMOUNT] DOLLARS (\$ \_\_\_\_\_ .00) for such phase of CM@R services set forth in the Final Efforts Schedule plus any savings realized in 4.1.2 above. Savings derived from an under-run to the total MPE set forth on the Final Efforts Schedule shall be applied to over-runs elsewhere within the GMP, shall be applied to the Construction Contingency, or shall accrue to the Owner.

**§ 5.1.1.2 CM@R'S FEE FOR CORPORATE OVERHEAD, PROFIT AND RISK:** The fixed fee to cover the CM@R's corporate overhead, profit and risk shall be the sum of [INSERT PERCENTAGE AMOUNT] ( \_\_\_\_\_ %) of the total Cost of the Work as defined herein PROVIDED, that should the Cost of the Work exceed the GMP, the Construction Manager's fee shall be calculated based upon the amount of the Cost of the Work set forth in the GMP.

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**§ 5.1.2.1 ADJUSTMENT OF THE EFFORTS SCHEDULE AND MPE FOR CHANGES IN THE SCOPE OF THE WORK:** Adjustments on account of changes in the Scope of the Work subsequent to the execution of the Agreement may be the basis for an adjustment of the CM@R's Efforts Schedule and attendant MPE; such adjustment shall be determined based upon the revised Schedules and Scope of the Work, and added to the Agreement by addendum.

...

None

**§ 5.1.4** Rental rates for Construction Manager-owned equipment shall not exceed ~~percent (—%)~~ EIGHTY-FIVE PERCENT (85%) of the standard rate paid at the place of the Project.

**§ 5.1.5** Unit prices, if any:

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

Item

Units and Limitations

Price per Unit (\$0.00)

...

Not Applicable.

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...

**§ 6.1.1** ~~The term Cost of the Work~~ For purposes of this Article the term Costs to be Reimbursed (or Reimbursable Expenses) shall mean costs necessarily incurred by the Construction Manager in the proper performance of the ~~Work~~. Work to include the total cost of all Subcontracts or Multiple Prime Contracts for the construction of the Project and site improvements described in the Contract Documents, and Construction Manager's Compensation for Basic Services, and other expenses to be reimbursed, as defined in this Article 6. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

...

**§ 6.2.1** ~~Wages-Labor Costs shall not include wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops-workshops;~~ such costs are included in the Construction Manager's Fees under Article 4 and Article 5.

**§ 6.2.2** ~~Wages-Labor Costs shall not include wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval. (If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)~~ site; such costs are included in the Construction Manager's Fees under Article 4 and Article 5.

**§ 6.2.3** ~~Wages-Labor Costs shall not include wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.~~ road; such costs are included in the Construction Manager's Fees under Article 4 and Article 5.

**§ 6.2.4** Labor Costs shall not include costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3. ~~pensions;~~ such costs are included in the Construction Manager's Fees under Article 4 and Article 5.

**§ 6.2.5** ~~Bonuses, Labor Costs shall not include bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.~~ approval; such costs are included in the Construction Manager's Fees under Article 4 and Article 5.

...

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the ~~subcontracts-subcontracts,~~ including any subcontracts awarded to the construction manager.

...

**§ 6.5 Aid-to-Construction, and Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ 6.5.1** ~~Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of~~

~~materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.~~Aid-to-Construction. The Construction Manager or a subcontractor upon written authorization of the Construction Manager may upon approval of the Owner's Designated Representative be reimbursed for costs of labor and material for work that is incidental to the construction of the Work of the Project but necessary to maintain the quality, budget and/or schedule of the Work; such reimbursement to be made on a cost plus ten percent (10%) basis. Such Aid-to-Construction work need not be bid as long as it is determined to be incidental to the original bid work of a subcontractor by the Owner's Designated Representative. The Aid-to-Construction shall be a cost-not-to-exceed line item in the Reimbursable Expense section of the GMP provided by the Construction Manager.

~~§ 6.5.2 Rental charges for~~ Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and ~~costs of transportation, installation, minor repairs, dismantling and removal.~~ The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.~~fully consumed in the performance of the Work.~~ Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

~~§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.~~Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

~~§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.~~removal of debris from the site of the Work and its proper and legal disposal.

~~§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.~~Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

~~§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.~~That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

~~§ 6.5.7 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.~~

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~~§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.~~liable, PROVIDED, that the Owner is an exempt entity under the tax laws of the State of Nebraska and is not subject to sales, use or similar taxes.

~~§ 6.6.2.1~~ The Owner represents that this Project is eligible for exemption from the State Sales Tax on tangible personal property and material incorporated in the Project, provided that the Contractor fulfills the requirements of Neb. Rev. Stat. § 77-2704.15. For the purpose of establishing exemption, it is understood and agreed that the Construction Manager may be required to segregate materials and labor costs at the time a Contract for the Work is awarded. Construction Manager will accept Purchase Agent Appointment and Exempt Sales Certificate forms from



the Owner. Construction Manager shall obtain Resale Certificates from Contractor's suppliers. Failure of Contractor or any Sub-Contractor to obtain Resale Certificates from their suppliers shall make the Contractor or Sub-Contractor responsible for absorbing the tax, without compensation from Owner. Construction Manager shall pay all necessary local, county and state taxes, income tax, compensation tax, social security and withholding payments as required by law. CONSTRUCTION MANAGER HEREBY RELEASES, INDEMNIFIES, AND HOLDS HARMLESS OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF CONSTRUCTION MANAGER OR ANY SUBCONTRACTOR TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH LAWS AND REGULATIONS.

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§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows: **PAYMENT OF CM@R'S COMPENSATION**

§ 7.1.2.1 **PAYMENT OF CM@R'S COMPENSATION FOR PRE-CONSTRUCTION AND CONSTRUCTION PHASE PERSONNEL SERVICES:** Based upon Applications for Payment submitted to the Project Architect by the CM@R, the Owner shall make progress payments to the CM@R as compensation for Pre-Construction and Construction Phase Personnel services for Direct Personnel Expense for actual hours worked by CM@R personnel for supervision of the Work and for Expenses to be Reimbursed based upon invoices submitted on a monthly basis as provided below and elsewhere in the Contract Documents.

§ 7.1.2.1.1 The period covered by each Application for Payment submitted by the CM@R for Pre-Construction and Construction Phase Personnel services and Expenses to be Reimbursed shall be one (1) calendar month ending on the last day of the month.

§ 7.1.2.1.2 The portion of the CM@R's Compensation for Pre-Construction and Construction Phase Personnel services to be paid with each Application for Payment shall be determined by the actual hours worked by the CM@R's personnel for the Project as confirmed by the Project Architect and Owner.

§ 7.1.2.1.3 Provided an Application for Payment of the CM@R's Compensation for Pre-Construction and Construction Phase Personnel services is received by the Owner's representatives not later than the FIRST (1<sup>st</sup>) day of the month, the Owner shall pursuant to Nebraska Construction Prompt Pay Act, Neb. Rev. Stat. § 45-1203 et seq., pay the amount due within THIRTY (30) days after receipt of a correct notice of amount due for the goods or services provided.

§ 7.1.2.2 **PAYMENT OF CM@R'S FEE FOR CORPORATE OVERHEAD, PROFIT AND RISK:** Based upon Applications for Payment submitted to the Owner by the CM@R, the Owner shall make progress payments to the CM@R of the CM@R's Fee for Corporate Overhead, Profit and Risk, based on the CM@R's GMP amount pending determination of final cost of the work, subject to a retainage amount to be held by the Owner. Payment of the CM@R'S Fee for Corporate Overhead, Profit and Risk (OPR Fee) shall be made in proportion of the Cost of the Work completed based upon the following formula:

- OPR Fee of \$ x Cost of the Work completed to date = portion of OPR fee due, less retainage and previous OPR payments.

The OPR fee shall be subject to the retainage in the amount of FIVE PERCENT (5%) of the OPR Fee paid pursuant to the foregoing formula.

§ 7.1.2.3 **FINAL PAYMENT OF CM@R FEES AND OPR**

§ 7.1.2.3.1 **CONDITIONS OF FINAL PAYMENT:** Final payment of the CM@R's Compensation for Pre-Construction and Construction Phase Personnel services and CM@R'S Fee for Corporate Overhead, Profit and Risk, including any retainage held by the Owner shall be made by the Owner to the CM@R when (1) the Contract has been fully performed by the CM@R, including the CM@R's correction of nonconforming Work to the satisfaction of the Owner; (2) a final Application for Payment of all Subcontracts has been received and approved by the Owner; (3) a final accounting for the Expenses to be Reimbursed has been submitted by the CM@R and reviewed and approved by the Owner; (4) a final Certificate for Payment has then been issued by the Owner to all Subcontractors; and (5)

the Architect has certified the total Cost of the Work for the Project pursuant to Paragraph 1.4.3. Such final payment of the CM@R's Compensation for Pre-Construction and Construction Phase Personnel services and CM@R'S Fee For Corporate Overhead, Profit and Risk shall be made by the Owner not more than THIRTY (30) days after the issuance of the Owner's final Certificate for Payment to all Subcontractors. The amount of the final payment of the CM@R's Compensation for Basic Services shall be calculated pursuant to the provisions of Article 4 and Article 5.

~~§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the — day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the — day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than — ( — ) days after the Architect receives the Application for Payment.~~  
**PAYMENT OF COST OF THE WORK AND REIMBURSEABLE EXPENSES:** Payment of the Cost of the Work, including all subcontracts held by the Construction Manager for the performance of the Work of the Project, and of all reimbursable expenses pursuant to Article 6 shall be governed by subparagraph 7.1.3 through 7.2.4 hereof. (Federal, state or local laws may require payment within a certain period of time.)  
**§ 7.1.3.1** Provided that an Application for Payment is received by the Architect not later than the FIRST (1<sup>st</sup>) of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the TWENTY-FIRST (21<sup>st</sup>) day of the month the application is received. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than THIRTY (30) days after the Architect receives the Application for Payment pursuant to Nebraska Construction Prompt Pay Act, Neb. Rev. Stat. § 45-1203 et seq.

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**§ 7.1.4.1** With each Application for Payment of the Expenses to be Reimbursed, the CM@R shall submit payrolls, receipted invoices or invoices with check vouchers attached and any other evidence required by the Owner or Project Architect to demonstrate the cash disbursements made by the Owner on the Project on account of the Expenses to be Reimbursed.

**§ 7.1.4.1.1** In taking action on the CM@R's Applications for Payment for Expenses to be Reimbursed, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the CM@R and shall not be deemed to represent that the Owner has made a detailed examination, audit or arithmetic verification of the documentation submitted or other supporting data and that the Owner has made exhaustive or continuous on-site inspections or that the Owner has made examinations to ascertain how or for what purposes the CM@R has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the interests of the Owner.

...

- ~~3~~ 3 Add the Construction Manager's Fee, less retainage of — percent ( — %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion; and subtract retainage in the amount of TEN PERCENT (10%) for the first FIFTY PERCENT (50%) of the GMP paid pursuant to the foregoing schedule, and with no retainage requirement for the last FIFTY PERCENT (50%), UNLESS the Owner notifies the Construction Manager in writing that retainage will be withheld on the second FIFTY PERCENT (50%) and the amount of such retainage, such notice to be provided with the last GMP payment attributable to the first FIFTY PERCENT (50%) of the GMP.
- ~~4~~ 4 Subtract retainage of — percent ( — %) from that portion of the Work that the Construction Manager self performs;
- ~~5~~ 5 Subtract the aggregate of previous payments made by the Owner;
- ~~6~~ 6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- ~~7~~ 7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

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

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**Type of Insurance or Bond**

**Limit of Liability or Bond Amount (\$0.00)**

**§ 8.1 COVERAGE – OCCURRENCE BASIS:** Coverages, written on an occurrence basis, shall be maintained without interruption from date of commencement of the Contractor's Work until date of final payment and termination of any coverage required to be maintained after final payment to the Contractor.

**§ 8.2 CERTIFICATES OF INSURANCE:** Certificates of insurance acceptable to the Owner shall be filed by the Contractor with the Owner prior to commencement of the Contractor's Work. These certificates and the insurance policies required by this Article 8 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

**§ 8.3 PERFORMANCE AND PAYMENT BOND AND GMP BOND:** The CM@R shall as required by Neb. Rev. Stat. § 52-118 furnish payment bonds, as necessary, and bonds covering faithful performance of this CM@R Agreement and payment of obligations arising thereunder with minimum Best Rating "A". The amount of said bonds shall be equal to the sum of (1) the CM@R's Compensation for Basic Services set forth in Articles 4 and 5 and (2) the budgeted amount in the GMP for Expenses to be Reimbursed pursuant to sections 6.5, 6.6 and 6.7 of Article 6. All subcontractors and suppliers shall provide separate payment and performance bonds for the amount of such subcontract. The CM@R shall also furnish a guarantee bond covering Ten Percent (10%) of the GMP established pursuant to paragraph 2.4 to secure payment of the difference between the Final Price and the GMP as adjusted by Change Orders, if any.

...

[  ] Litigation in a court of competent jurisdiction

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Bob Hastings, Superintendent of Schools, or designee  
Scotts Bluff County School District 79-0016, a/k/a Gering Public Schools  
1519 10<sup>th</sup> Street  
Gering, NE 69341  
Phone: 308-436-3125  
FAX: 308-436-4301  
(Hereinafter referred to as "Owner's Administration.")

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**11.5.1 CONSTRUCTION MANAGER'S RESPONSIBILITY AND SUPERVISION OF CONSTRUCTION SITE AND ON-SITE PERSONNEL:**

**11.5.1.1 ACTS OR OMISSIONS OF CONSTRUCTION MANAGER'S EMPLOYEES:** The Construction Manager shall be responsible to the Owner for acts and omissions of the Construction Manager's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Construction Manager or any of its Subcontractors. As part of that responsibility, Construction Manager shall enforce the Owner's alcohol-free, drug-free, tobacco-free, harassment-free and weapon-free policies and zones,

which will require compliance with those policies and zones by Construction Manager's employees, subcontractors, and all other persons carrying out the Contract.

**11.5.1.2 SITE SECURITY IDENTIFICATION:** Construction Manager shall require all construction workers, whether Construction Manager's own forces or the forces of Construction Manager's subcontractors, to wear identification tags on the front of their persons during all times that they are on Owner's property. Such identification tags shall contain a current photograph and the worker's full name in a typeface large enough to be seen from a reasonable distance.

**11.5.1.3 VEHICLE PARKING:** Construction Manager shall require all construction workers, whether Construction Manager's own forces or the forces of Construction Manager's subcontractors, to park their personal motor vehicles on Owner's property only in the parking places designated by the Owner's. Any vehicles not parked in the appropriate locations shall be towed at the vehicle owner's sole expense.

**11.5.1.4 COMPLIANCE WITH APPLICABLE ORDINANCES:** Construction Manager shall follow, and shall require all employees, agents or subcontractors to follow, applicable ordinances of the municipality in which the Project is located. In addition, if not covered by the municipality's tree ordinance, Construction Manager shall barricade and protect all trees on the Project.

**11.5.1.5 THEFT DETERRENCE PROGRAM:** Construction Manager shall consult and coordinate with Owner with analysis of cost of the institution of a theft deterrence program designed to restrict construction worker access to properties of Owner that are currently in use, to maintain supervision of Construction Manager's and Construction Manager's subcontractor's forces, and to reimburse the Owner or those persons suffering a theft loss which results from Construction Manager's forces or Construction Manager's subcontractor's forces' actions, omissions, or failure to secure the Work or adjoining property.

**11.5.2 EQUAL OPPORTUNITY EMPLOYER:** By signing this Agreement, the Construction Manager does hereby agree, certify, warrant and represent on behalf of itself, that it is an equal opportunity employer and actively recruits a well-qualified and diverse staff including minority applicants, and does not discriminate against any employee or applicant for employment by reason of sex, disability, race, color, religion, veteran status, national or ethnic origin, age, marital status, pregnancy, childbirth or related medical condition, or other protected status. By submitting a proposal and signing an Agreement with the Owner, the Construction Manager and any Contractor agrees to actively continue and implement this policy throughout any awarded project.

**11.5.3 COMPLIANCE WITH STATUTES:** As a material term of this Agreement, the Construction Manager shall at all times comply with all applicable federal and state statutes. Compliance with applicable laws shall consist of consultation with the Project Team in complying with and satisfying applicable codes, ordinances, rules, and regulations of any governmental authority having jurisdiction over the construction of each Project. With regard to the supervision of contractors performing the work of the Projects, the Construction Manager shall be responsible for determining the applicability of such codes, ordinances, rules, and regulations to work of the Project, except those applicable to the design services of the Project Architect; for investigating, confirming and/or verifying compliance therewith; for filing of all documents that are required for compliance therewith; and for obtaining the approval of governmental authorities having jurisdiction over the Project, including, but not limited to:

(a) E-Verification of Immigration Status: Compliance with federal and state immigration verification system regulations to determine the work eligibility status of new employees physically performing services on the Project within the State of Nebraska.

(b) OSHA: Compliance with federal occupational safety and health standards by all contractors performing the Work of the project.

**11.5.4 EQUAL EMPLOYMENT OPPORTUNITY AND VERIFICATION OF IMMIGRATION STATUS:** The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs; and specifically shall comply with all requirements of the federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska, if required by state or federal law or regulation.



**11.5.5.1 GOVERNANCE:** Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in General Conditions.

**11.5.5.2 EXTENT OF CONTRACT:** This Contract which includes this Agreement and the other documents incorporated herein by reference represents the entire and integrated Agreement between the Owner and Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

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

**11.5.5.4 CLAIMS FOR CONSEQUENTIAL DAMAGES.** The Owner hereby expressly reserves the right to claim consequential damages against the CM@R for claims, disputes or other matters in question arising out of or relating to the subject matter of this Agreement. For purposes of this paragraph, the term "consequential damages" shall mean those damages incurred by the School District as a consequence of the negligence of the CM@R. Such damages incurred by the School District include injuries to persons or damage to property or economic loss.

**11.5.5.5 GOVERNING LAW:** The Contract shall be governed by the laws of the State of Nebraska and any litigation shall be conducted in state district court. Mandatory and exclusive venue for any dispute shall be Scotts Bluff County, Nebraska, or, if no county is specified, then in the county in which the District's main administrative office is located.

**11.5.5.6 ASSIGNMENT:** Once this Agreement is accepted and signed by the Owner, the Owner and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without the written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**11.5.5.7 FORCE MAJEURE:** None of the parties hereto shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

**11.5.5.8 INDEPENDENT CONTRACTOR:** The Construction Manager shall function as an independent contractor for the purposes of this Contract and shall not be considered an employee of the Owner for any purpose. The Construction Manager shall assume sole responsibility for any debts or liabilities that may be incurred by Construction Manager in fulfilling the terms of this Contract and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing Construction Manager or its agents and/or employees to act as an agent or representative of or on behalf of the Owner, or to incur any obligation of any kind on behalf of the Owner. Construction Manager agrees that no health/hospitalization benefits, workers' compensation, and/or similar benefits available to Owner employees will extend to the benefit of Construction Manager or the Construction Manager's agents and/or employees as a result of this Contract.

**11.5.5.9 KICKBACKS:** The Construction Manager certifies and warrants that no gratuities, kickbacks, or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. If the Construction Manager breaches or violates this warranty, the Owner may, at its discretion, terminate this Contract without liability to the Owner, or deduct from the Contract price or consideration, or otherwise recover the full amount of any commission, percentage, brokerage, or contingency fee.

**11.5.5.10 NOTICE:** All notices or invoices arising out of, or from, the provisions of this Contract shall be in writing and given to the parties at the address provided under this Contract, either by regular mail, facsimile, e-mail, or delivery in person. All notices sent via the U.S. Postal Service are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

**11.5.5.11 SEVERABILITY:** This Agreement is subject to all applicable federal and state laws, rules, and regulations. Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of this Contract shall continue in full force and effect, and either party may attempt to renegotiate the terms affected by the severance.

**11.5.5.12 NO WAIVER OF RIGHTS:** The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach. No delay or omission by either of the parties hereto in exercising any right or power accruing upon the noncompliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

**11.5.5.13 WARRANTY:** Construction Manager warrants that it has the ability to perform the agreed upon services; it shall provide suitable resources to perform work in accordance with this Agreement; it will provide the agreed upon services on a timely basis; it shall perform services in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently providing construction management services under similar circumstances, and with the requirements of the Contract Documents; and it is responsible for the construction of the Work of the Project in accordance with all designs, drawings, specifications, and other services furnished by Owner through the Project Architect for the Project.

**11.5.5.14** This Agreement, in its entirety, shall be binding upon all the parties hereto, their respective successors, heirs, executors, administrators or assigns.

**11.5.5.15** Execution of this Agreement shall constitute approval and acceptance of all terms, covenants and conditions as modified and contained in the Contract Documents.

**11.5.5.16** Contractor stipulates that Owner is a political subdivision of the State of Nebraska, and, as such, enjoys immunities from suit and liability provided by the Constitution and laws of the State of Nebraska. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law.

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Appendix "A" - Excel 16 Division Spreadsheet Report

Appendix "B" - Construction Manager's Maximum Personnel Expense - Efforts Schedule

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**SCOTTS BLUFF COUNTY SCHOOL DISTRICT 79-0016,  
A/K/A GERING PUBLIC SCHOOLS**

**[INSERT CONSTRUCTION MANAGER]**

**OWNER-SCHOOL DISTRICT/OWNER** (Signature)  
Brian Copsey, President, Board of Education

**CONSTRUCTION MANAGER-CONTRACTOR** (Signature)



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

**AIA® Document D401™ – 2003**

I, Rex R. Schultze, 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 11:01:36 on 04/05/2017 under Order No. 8740817023\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

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*(Signed)*

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*(Title)*

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*(Dated)*