

locations of the Work, has examined all Contract Documents, all conditions affecting the Work, all facilities upon which the Work is in any way dependent and all available engineering or geotechnical reports. Based on such inspection and examination, Construction Manager agrees, as of the date of submission of the Guaranteed Maximum Price proposal, that the proposed GMP (including the proposed Guaranteed Maximum Construction Manager Personnel Cost) is just and reasonable compensation for all of the Work, including all foreseen or foreseeable risks, hazards and difficulties in connection therewith. Notwithstanding the foregoing, should concealed conditions be encountered below the surface of the ground which are unknown and unforeseeable by Construction Manager at the time of execution of Amendment No. 1, the GMP and, if necessary, the Substantial and Final Completion Dates shall be equitably adjusted by Change Order issued with mutual agreement of Owner and Construction Manager; provided, however, that as a condition precedent to the issuance of such a Change Order, Construction Manager shall submit a Claim to Owner in accordance with Article 17 within fourteen (14) days after Construction Manager first observes, or with the exercise of reasonable diligence should have observed, any such condition; and provided, further, that the GMP and Substantial and Final Completion Dates shall be adjusted only to the extent such condition differs materially from those described or referred to or otherwise indicated in the Contract Documents and from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents and would not have been foreseen, as of the date of execution of Amendment No. 1, by a construction manager having Construction Manager's experience and expertise. Any such adjustments to the GMP or the Substantial or Final Completion Dates must be made by Change Order in accordance with Article 12.

9.9 Exhibit III attached to Amendment No. 1 shall specify the Unit Prices of materials or services to be included in Allowances, and the quantity of such materials or services included in the GMP. Should the actual quantity of such materials or services provided be more or less than the Allowance, the GMP shall be adjusted accordingly by Change Order in accordance with Article 12.

9.10 For Work performed under the Agreement, Owner shall pay to Construction Manager, as full compensation for Construction Manager's services performed subsequent to the date of complete execution of Amendment No. 1 by the parties thereto, a fee in an amount equal to Six percent (**6 %**) of the Cost of the Work stated in Amendment No. 1 to the Agreement (the "Construction Manager's Fee"). The amount of Construction Manager's Fee shall be calculated at the time of execution of Amendment No. 1, and shall be set forth in Amendment No. 1 as a lump sum amount. The costs to Construction Manager that are to be covered by Construction Manager's Fee include, but are not limited to, salaries or other compensation of Construction Manager's employees in its principal or branch offices, the general operating expenses of Construction Manager's principal or branch offices, Construction Manager's capital expenses including interest on Construction Manager's capital employed for the Project, all overhead and profit, and all amounts not specifically identified as Costs of the Work under Paragraph 10.2. The Construction Manager's Fee shall not be increased or decreased except in accordance with Paragraph 12.3.7 of this Agreement.

9.11 In the event that the sum of the Cost of the Work plus the Construction Manager's Fee shall be less than the GMP at Final Completion of all Work, the difference shall be deemed savings and shall accrue to the Owner.

9.12 Construction Manager shall be paid its Construction Manager's Fee, less retainage, in monthly progress payments as provided in Paragraph 11.1.4 of this Agreement. Each monthly progress payment shall be calculated by multiplying the total Construction Manager's Fee times the ratio the Cost of the Work incurred bears to the total estimated Cost of the Work included in the Guaranteed Maximum Price, as adjusted by Change Order.

ARTICLE 10

COST OF THE WORK

10.1 Definition. The term Cost of the Work means actual direct costs necessarily incurred for construction of the Project and includes only the items set forth below in Paragraph 10.2. Construction Manager shall be solely