

**CIP DESIGN AND ENGINEERING MEMORANDUM**  
**#08-25**

July 24, 2008

**TO:** Honorable Mayor Kathleen M. Novak and City Council Members

**FROM:** David Allen, Acting City Manager *DA*  
Kurt Kowar, CIP Design and Engineering Manager *MH*  
Joliette Woodson, Civil Engineer II *JW*

**SUBJECT:** CR-115-Croke Reservoir GMP Contract #4 - 2008 Naiad Trail Improvements

**RECOMMENDATION:**

Attached to this memorandum is a Resolution which, if approved, would authorize the Mayor to execute a CM/GC GMP Contract #4 between the City of Northglenn and ECI Site Construction Management, Inc. (ECI) for construction services. Staff recommends approval of this Resolution.

**BACKGROUND:**

The City and ECI have approached the construction of the Croke Reservoir Shoreline Stabilization Project in three (3) Guaranteed Maximum Price GMP contracts. GMP#1 has been completed and included the draining of Croke Reservoir, removal of the existing fish, removal and replacement of the existing outflow structure and storm piping. GMP#2 is nearing completion and consists of grading of the new shoreline, construction of a mortared stone retaining wall, and the northern and southern node construction. GMP#3 consists of fencing, concrete flatwork, landscaping, and irrigation installation.

The Naiad Trail Improvements project is a 2008 CIP Project that includes replacing the existing asphalt trail on Naiad Drive south of Croke Reservoir with an eight foot concrete trail. The preliminary estimate and budgeted funds for the trail replacement was \$80,000.00. Through the design process, it was determined that the existing failing irrigation system should also be replaced and the dilapidated fence should be removed. This project was planned to go out to bid this summer. However, after further consideration, Staff has determined that it would be in the City's best interest to add this work to the Croke Reservoir Project as GMP #4.

Incorporating the Naiad Trail Improvement Project as GMP #4 will save the City both time and money. Staff compared the unit costs from the 2008 Street Improvements project to ECI's current contract and determined that unit costs are comparable. Through negotiations and partnerships formed on the Croke Reservoir Project, ECI proposed removing the fence at no cost to the City which would be a savings of \$14,152.00. Additionally, adding the Naiad Trail Improvements project to the existing ECI contract would save staff the labor costs required for procurement, contractor selection, project permitting, and overall coordination that would be incurred through a separate bid process.

**BUDGET/TIME IMPLICATIONS:**

Moving forward with GMP #4 would allow the Naiad Trail Improvement Project to be completed simultaneously with the Croke Reservoir Project. This will help minimize construction impacts to adjacent residents and open both projects to the public in one grand opening. There are sufficient funds in the following accounts:

- Account #210.69235.000.3999.447 in the amount of \$80,000.00
- Account #210.69235.000.3999.420 in the amount of \$20,000.00
- Account #210.69235.000.3999.473 in the amount of \$6,000.00
- Available dollars within existing GMP #3 account #410.69211.000.3999.497 in the amount of \$16,486.38

The total budget for GMP #4 is \$122,486.38.

**STAFF REFERENCE:**

Please contact Kurt Kowar, CIP Design and Engineering Manager at [kkowar@northglenn.org](mailto:kkowar@northglenn.org) or 303.450.8774.

SPONSORED BY: MAYOR NOVAK

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-115  
Series of 2008

\_\_\_\_\_  
Series of 2008

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NORTHGLENN AND ECI SITE CONSTRUCTION MANAGEMENT, INC. FOR THE CROKE RESERVOIR SHORELINE STABILIZATION PROJECT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

The Guaranteed Maximum Price (GMP) Contract #4 between the City of Northglenn and ECI Site Construction Management, Inc., attached hereto, in an amount not to exceed \$122,786.38 for the Croke Reservoir Shoreline Stabilization Project is hereby approved and the Mayor is authorized to execute same on behalf of the City of Northglenn.

DATED, at Northglenn, Colorado, this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
KATHLEEN M. NOVAK  
Mayor

ATTEST:

\_\_\_\_\_  
JOHANNA SMALL, CMC  
Acting City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
COREY Y. HOFFMANN  
City Attorney



## Site Construction Management Inc.

P.O. Box 2155, Loveland, CO 80539  
Phone: 970-669-6291 - Metro 303-530-7660 - Fax 970-669-6411

July 16, 2008

City of Northglenn  
Attn: Mr. Kurt Kowar  
11701 Community Center Drive  
Northglenn, CO 80233-8061

**RE: Croke Reservoir Shoreline Stabilization Project (GMP #4)**

Dear Mr. Kowar:

ECI Site Construction Management, Inc. (ECI) hereby acknowledges the preparation and submission of GMP#4 – "Huron Street Improvements and Croke Reservoir Stabilization GMP #4" which includes a detailed project and cost description of four (10) pages containing Exhibits D-I for a contract amount of \$122,486.38.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ted Johnson', is written over a horizontal line.

Ted Johnson, Estimator/ Project Manager  
ECI Site Construction Management, Inc.

**GUARANTEED MAXIMUM PRICE (GMP) CONTRACT #4**

**Between**

**The City of Northglenn, Colorado**

**And**

**ECI Site Construction Management, Inc.**

**Project: CROKE RESERVOIR SHORELINE STABILIZATION GMP #4**

**THE CITY of NORTHGLENN, COLORADO**  
11701 Community Center Drive  
P.O. Box 330061  
Northglenn, CO 80233

**THE CONSTRUCTION MANAGER/GENERAL CONTRACTOR:**  
ECI Site Construction Management, Inc.  
2526 East Highway 402  
P.O. Box 2135  
Loveland, CO 80539

**Date: July 24, 2008**

## **TABLE OF ARTICLES**

- 1 THE GUARANTEED MAXIMUM PRICE (GMP) DOCUMENTS
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- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTES
- 7 MISCELLANEOUS PROVISIONS
- 8 ENUMERATION OF THE GUARANTEED MAXIMUM PRICE (GMP) DOCUMENTS

## **TABLE OF EXHIBITS**

- A TERMS AND CONDITIONS
- B DETERMINATION OF THE COST OF THE WORK
- C INSURANCE AND BONDS

## **GUARANTEED MAXIMUM PRICE (GMP) TERMS AND CONDITIONS**

**GUARANTEED MAXIMUM PRICE (GMP) CONTRACT**, dated as of \_\_\_\_\_, 20\_\_\_, by and between the City of Northglenn, Colorado, a Colorado home rule municipality (the "City") and ECI Site Construction Management, Inc. (the "Construction Manager/General Contractor (CM/GC)").

### **RECITALS**

A. The City has the authority to enter into this agreement pursuant to Section 7.3 of the Northglenn Charter, and, as required by Section 7.3 of the Charter, this agreement has received approval from the City Council and all necessary budgetary appropriations have been made;

B. The City now desires to enter into a single construction contract providing for the construction of the Croke Reservoir Shoreline Stabilization GMP #3 ("the Project").

C. Construction Manager/General Contractor (CM/GC) desires to provide the construction services for the Project required by City.

**NOW, THEREFORE**, in consideration of the sums to be paid to the Construction Manager/General Contractor (CM/GC) by the City, the foregoing premises and the covenants and agreements set forth herein, the parties hereby agree as follows:

### **ARTICLE 1: THE GUARANTEED MAXIMUM PRICE (GMP) DOCUMENTS**

§ 1.1 The Guaranteed Maximum Price (GMP) Documents form the Guaranteed Maximum Price (GMP) Contract. The Guaranteed Maximum Price (GMP) Documents consist of this Guaranteed Maximum Price (GMP) Contract between City and Construction Manager/General Contractor (CM/GC) (hereinafter, the "Guaranteed Maximum Price (GMP) Contract") and its attached Exhibits; Supplementary and other Conditions; Addenda issued prior to execution of the Guaranteed Maximum Price (GMP) Contract; the Project Criteria, including changes to the Project Criteria proposed by the Construction Manager/General Contractor (CM/GC) and accepted by the City, if any; the Construction Manager/General Contractor (CM/GC)'s Proposal and written modifications to the Proposal accepted by the City, if any; other documents listed in this Guaranteed Maximum Price (GMP) Contract; and Modifications issued after execution of this Guaranteed Maximum Price (GMP) Contract. The Guaranteed Maximum Price (GMP) Documents shall not be construed to create a contractual relationship of any kind (1) between the Engineer and/or Architect and City, (2) between the City and a Contractor or Subcontractor, or (3) between any persons or entities other than the City and Construction Manager/General Contractor (CM/GC), including but not limited to any consultant retained by the City to prepare or review the Project Criteria. An enumeration of the Guaranteed Maximum Price (GMP) Documents, other than Modifications, appears in Article 8.

§ 1.2 The Guaranteed Maximum Price (GMP) Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

§ 1.3 The Guaranteed Maximum Price (GMP) Contract may be amended or modified only by a Modification. A Modification is (1) a written amendment to the Guaranteed Maximum Price (GMP) Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the City.

## **ARTICLE 2: THE WORK OF THE GUARANTEED MAXIMUM PRICE (GMP) CONTRACT**

§ 2.1 The Construction Manager/General Contractor (CM/GC) shall fully execute the Work described in the Guaranteed Maximum Price (GMP) Documents, except to the extent specifically indicated in the Guaranteed Maximum Price (GMP) Documents to be the responsibility of others.

## **ARTICLE 3: DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

§ 3.1 The date of commencement of the Work shall be the date of this Guaranteed Maximum Price (GMP) Contract unless a different date is stated below or provision is made for the date to be fixed in a notice issued by the City. The date of commencement shall be reflected on the Notice to Proceed.

§ 3.1.1 If, prior to the commencement of Work, the City requires time to file mortgages, documents related to mechanic's liens and other security interests, the City's time requirement shall be as follows:

§ 3.2 The Contract Time shall be measured from the date of commencement, subject to adjustments of this Contract Time as provided in the Guaranteed Maximum Price (GMP) Documents.

**Liquidated damages will occur beginning the first day after completion date, and the Construction Manager/General Contractor (CM/GC) will begin incurring liquidated damages at the rate of \$1,500.00 per day.**

§ 3.3 The Construction Manager/General Contractor (CM/GC) shall achieve Substantial Completion of the Work not later than sixty (60) days from the date of commencement, or as follows:

**60 calendar days from the date of the Notice to Proceed.**

## **ARTICLE 4: CONTRACT SUM**

§ 4.1 The City shall pay the Construction Manager/General Contractor (CM/GC) the Contract Sum in current funds for the Construction Manager/General Contractor (CM/GC)'s performance of the Guaranteed Maximum Price (GMP) Contract. The Contract Sum shall be one of the following:

(Check the appropriate box.)

Stipulated Sum in accordance with Section 4.2 below;

Cost of the Work Plus Construction Manager/General Contractor (CM/GC)'s Fee in accordance with Section 4.3 below;

Cost of the Work Plus Construction Manager/General Contractor (CM/GC)'s Fee with a Guaranteed Maximum Price in accordance with Section 4.4 below.

(Based on the selection above, complete either Section 4.2, 4.3 or 4.4 below.)

§ 4.2 RESERVED

§ 4.3 RESERVED

§ 4.4 COST OF THE WORK PLUS CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC)'S FEE WITH A GUARANTEED MAXIMUM PRICE

§ 4.4.1 The Cost of the Work is as defined in Exhibit B plus the Construction Manager/General Contractor (CM/GC)'s Fee

§ 4.4.2 The Construction Manager/General Contractor (CM/GC)'s fee shall be 7.75% of the cost of the work mutually agreed by the CM/GC and Owner, as more particularly described in Exhibit I..

§ 4.4.3 GUARANTEED MAXIMUM PRICE

§4.4.3.1 The sum of the Cost of the Work and the Construction Manager/General Contractor (CM/GC)'s Fee is guaranteed by the Construction Manager/General Contractor (CM/GC) not to exceed one hundred twenty two thousand four hundred eighty six dollars and thirty eight cents (\$ 122,486.38) subject to additions and deductions by changes in the Work as provided in the Guaranteed Maximum Price (GMP) Documents. Such maximum sum is referred to in the Guaranteed Maximum Price (GMP) Documents as the Guaranteed Maximum Price. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager/General Contractor (CM/GC) without reimbursement by the City.

**Savings generated will be credited back to the City or used for additional scopes of work as directed by the City.**

§ 4.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Guaranteed Maximum Price (GMP) Documents and are hereby accepted by the City:

§4.4.3.3 Unit Prices, if any, are as follows:



**Identified in Exhibit I**

§4.4.3.4 Allowances, if any, are as follows:

**Identified in Exhibit E and I**

§ 4.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based are as follows:

Identified in Exhibit F

**§ 4.5 CHANGES IN THE WORK**

§ 4.5.1 Adjustments of the Contract Sum on account of changes in the Work may be determined by any of the methods listed in Article A.7 of Exhibit A, Terms and Conditions.

§ 4.5.2 Where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price and no specific provision is made in Sections 4.3.2 or 4.4.2 for adjustment of the Construction Manager/General Contractor (CM/GC)'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 will cause substantial inequity to the City or Construction Manager/General Contractor (CM/GC), the Construction Manager/General Contractor (CM/GC)'s Fee shall be equitably adjusted on the basis of the Fee established for the original Work and the Contract Sum shall be adjusted accordingly.

**ARTICLE 5: PAYMENTS**

**§ 5.1 PROGRESS PAYMENTS**

§ 5.1.1 Based upon Applications for Payment submitted to the City by the Construction Manager/General Contractor (CM/GC), the City shall make progress payments on account of the Contract Sum to the Construction Manager/General Contractor (CM/GC) as provided below and elsewhere in the Guaranteed Maximum Price (GMP) Documents.

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

§ 5.1.3 Provided that an Application for Payment is received not later than the twenty eighth (28) day of the month, the City shall make payment to the Construction Manager/General Contractor (CM/GC) not later than the thirtieth (30) day of the following month. If an Application for Payment is received by the City after the application date fixed above, payment shall be made by the City not later than thirty (30) days after the City receives the Application for Payment.

§ 5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Construction Manager/General Contractor (CM/GC) shall submit payrolls, petty cash accounts, receipted invoices, or invoices with check vouchers attached, and any other evidence required by the City

to demonstrate that cash disbursements already made by the Construction Manager/General Contractor (CM/GC) on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager/General Contractor (CM/GC); less (2) that portion of those payments attributable to the Construction Manager/General Contractor (CM/GC)'s Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Construction Manager/General Contractor (CM/GC) shall submit the most recent schedule of values in accordance with the Guaranteed Maximum Price (GMP) Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Construction Manager/General Contractor (CM/GC)'s Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the City may require. This schedule of values, unless objected to by the City, shall be used as a basis for reviewing the Construction Manager/General Contractor (CM/GC)'s Applications for Payment.

§ 5.1.6 In taking action on the Construction Manager/General Contractor (CM/GC)'s Applications for Payment, the City shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager/General Contractor (CM/GC) and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections 5.1.4 or 5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Construction Manager/General Contractor (CM/GC) has used amounts previously paid on account of the Guaranteed Maximum Price (GMP) Contract. Such examinations, audits and verifications, if required by the City, will be performed by the City's accountants acting in the sole interest of the City.

§ 5.1.7 Except with the City's prior approval, the Construction Manager/General Contractor (CM/GC) shall not make advance payments to suppliers for materials or equipment that have not been delivered and stored at the site.

§ 5.2 RESERVED

§ 5.3 RESERVED

§ 5.4 PROGRESS PAYMENTS - COST OF THE WORK PLUS A FEE WITH A GUARANTEED MAXIMUM PRICE

§ 5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price 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/General Contractor (CM/GC) on

account of that portion of the Work for which the Construction Manager/General Contractor (CM/GC) 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.

§ 5.4.2 Subject to other provisions of the Guaranteed Maximum Price (GMP) 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 City of changes in the Work, amounts not in dispute shall be included as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;
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 City, suitably stored off the site at a location agreed upon in writing;
3. Add the Construction Manager/General Contractor (CM/GC)'s Fee, less retainage of 10% until 50% of the contract is completed, then the owner upon satisfactory performance of the contract may reduce the retainage withheld to 5% to completion. The Construction Manager/General Contractor (CM/GC)'s Fee shall be computed upon the Cost of the Work described in the two preceding sections at the rate stated in Section 4.4.2 or, if the Construction Manager/General Contractor (CM/GC)'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 in the two preceding sections bears to a reasonable estimate of the probable Cost of the Work upon its completion;
4. Subtract the aggregate of previous payments made by the City;
5. Subtract the shortfall, if any, indicated by the Construction Manager/General Contractor (CM/GC) in documentation required by Section 5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the City's accountants in such documentation; and
6. Subtract amounts, if any, for which the City has withheld or nullified a Certificate for Payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.4.3 Except with the City's prior approval, payments for the Work, other than for services provided by design professionals and other consultants retained directly by the Construction Manager/General Contractor (CM/GC), shall be subject to retainage of not less than 10% until 50% of the contract is completed, then the owner upon satisfactory performance of the contract

may reduce the retainage withheld to 5% to completion. The City and Construction Manager/General Contractor (CM/GC) shall agree on a mutually acceptable procedure for review and approval of payments and retention for Contractors.

#### § 5.5 FINAL PAYMENT

§ 5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the City to the Construction Manager/General Contractor (CM/GC) no later than Sixty (60) days after the Construction Manager/General Contractor (CM/GC) has fully performed the Guaranteed Maximum Price (GMP) Contract, including the requirements in Section A.9.10 of Exhibit A, Terms and Conditions, except for the Construction Manager/General Contractor (CM/GC)'s responsibility to correct non-conforming work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

#### ARTICLE 6: DISPUTES

§ 6.1 If the parties do not resolve their dispute through informal negotiations of the sort outlined in A.2.5.1, A.4, A.7.1, and A.7.2 of Exhibit A, Terms and Conditions, the parties shall resort to litigation only by filing an action in the Adams County District Court.

#### ARTICLE 7: MISCELLANEOUS PROVISIONS

§ 7.1 The Engineer, Architect, other design professionals, and consultants engaged by the Construction Manager/General Contractor (CM/GC) shall be persons or entities duly licensed to practice their professions in Colorado and are listed as follows:

*N/A*

§ 7.2 Consultants, if any, engaged directly by the City, their professions and responsibilities are listed below:

Civil Engineering  
*J&T Consulting, Inc*  
*1400 West 122<sup>nd</sup> Avenue, Suite 120*  
*Westminster, CO 80234*

Landscape Architecture  
*DHM Design Corp.*  
*1390 Lawrence Street, Suite 100*  
*Denver CO 80204*

§ 7.3 Separate contractors, if any, engaged directly by the City, their trades and responsibilities are listed below:

*N/A*

§ 7.4 The City's Designated Representative is:

Joliette Woodson  
Civil Engineer II  
City of Northglenn  
11701 Community Center Drive  
Northglenn, Colorado 80233

§ 7.4.1 The City's Designated Representative identified above shall be authorized to act on the City's behalf with respect to the Project.

§ 7.5 The Construction Manager/General Contractor (CM/GC)'s Designated Representative is:

Ted Johnson  
Project Manager  
ECI Site Construction Management, Inc.  
2526 East Highway 402  
P.O. Box 2135  
Loveland, Colorado 80539

§7.5.1 The Construction Manager/General Contractor (CM/GC)'s Designated Representative identified above shall be authorized to act on the Construction Manager/General Contractor (CM/GC)'s behalf with respect to the Project.

§7.6 Neither the City's nor the Construction Manager/General Contractor (CM/GC)'s Designated Representative shall be changed without ten (10) days' written notice to the other party.

§ 7.7 Other provisions:

§ 7.7.1 Where reference is made in this Guaranteed Maximum Price (GMP) Contract to a provision of another Guaranteed Maximum Price (GMP) Document, the reference refers to that provision as amended or supplemented by other provisions of the Guaranteed Maximum Price (GMP) Documents.

§ 7.7.2 Payments due and unpaid under the Guaranteed Maximum Price (GMP) Contract shall bear interest from the date payment is due at the rate stated below:

N/A

**ARTICLE 8: ENUMERATION OF THE GUARANTEED MAXIMUM PRICE (GMP) DOCUMENTS**

§ 8.1 The Guaranteed Maximum Price (GMP) Documents, except for Modifications issued after execution of this Guaranteed Maximum Price (GMP) Contract, are enumerated as follows:

§ 8.1.1 The Guaranteed Maximum Price (GMP) Contract is this executed Guaranteed Maximum Price (GMP) Contract.

§ 8.1.2 The Supplementary and other Conditions of the Guaranteed Maximum Price (GMP) Contract, if any, are as follows:

**City of Northglenn's General Conditions**  
**City of Northglenn Standards and Specifications for Streets and Drainage**  
**City of Northglenn Standards and Specifications for Utilities**

§ 8.1.3 The Project Criteria including changes to the Project Criteria proposed by the Construction Manager/General Contractor (CM/GC), if any, and accepted by the City, consist of the following:

N/A

§ 8.1.4 The Construction Manager/General Contractor (CM/GC)'s Proposal, dated November 28, 2007, consists of the following:

Attached hereto as Exhibit J, and incorporated herein by this reference.

§ 8.1.5 Amendments to the Construction Manager/General Contractor (CM/GC)'s Proposal, if any, are as follows:

N/A

§ 8.1.6 The Addenda, if any, are as follows:

Attached hereto as Addenda under Exhibit D, and incorporated herein by this reference.

§ 8.1.7 Exhibit A, Terms and Conditions.

§ 8.1.8 Exhibit B, Determination of the Cost of the Work, if applicable.

§ 8.1.9 Exhibit C, Insurance and Bonds, if applicable.

§ 8.1.10 Other documents, if any, forming part of the Guaranteed Maximum Price (GMP) Documents are as follows:

- Exhibit D, Bid Documents**
- Exhibit E, Allowances**
- Exhibit F, Clarifications and Assumptions**
- Exhibit G, Schedule**
- Exhibit H, Alternate Prices (not applicable)**
- Exhibit I, Unit Prices**

**IN WITNESS WHEREOF**, this Guaranteed Maximum Price (GMP) Contract is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Construction Manager/General Contractor (CM/GC) and one to the City.

CITY OF NORTHGLENN

\_\_\_\_\_  
Kathleen M. Novak, Mayor

ATTEST:

\_\_\_\_\_  
Johanna Small, Acting City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Corey Y. Hoffmann, City Attorney

*ECI Site Construction Management, Inc.*  
\_\_\_\_\_  

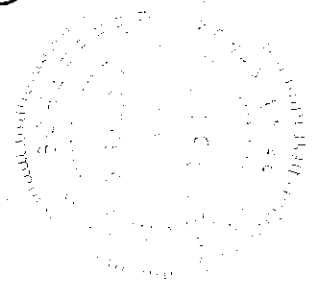

STATE OF COLORADO )  
 ) ss.  
COUNTY OF larimer )

The foregoing document was acknowledged before me this 17<sup>th</sup> day of July, 2008 by Ted Johnson as Sec/Treasurer of the EET Site Construction Management, Inc.

WITNESS my hand and official seal.

My Commission Expires: 8/21/2010

[Signature]  
Notary Public





## **City of Northglenn – Huron Street Improvements and Croke Reservoir Stabilization GMP #4**

GMP No. 4 includes a construction window of 60 calendar days. Insurance will be provided for the term of this GMP. The following additional work is included in this GMP #4: Demolition of existing fencing around the reservoir, removal of existing asphalt path along Nalad Drive, replacement with 1,300 LF of new 6" thick concrete path, 3 handicapped ramps, irrigation renovations including extending the existing mainline and adding new rotors for approximately 44,000 and sod repair. This is guaranteed maximum price (GMP) number 4.

### **EXHIBIT D –**

#### **Bid Documents -**

The following drawings, specifications and addenda apply to this GMP #4:

#### **Drawings:**

Directive provided by Mark Hofmeister dated 6/27/08

- Irrigation renovation sketch – Attachment "A" dated 6/27/08
- Arial plan of new concrete walk alignment – Attachment "A"
- Email Clarifications of equipment – Attachment "A" dated 6/27/08
- Email Clarifications of clock – Attachment "A" dated 6/30/08

#### **Specifications:**

Specifications prepared by J&T Consulting dated February 2008:

Invitation to Bid, Instructions to Bidders, Misc. Information, General Conditions, Bid Schedules, Technical sections:

- 01 32 16 Construction Progress Schedule
- 01 33 00 Submittal Procedures
- 01 40 00 Quality Requirements
- 01 50 00 Temporary Facilities and Controls
- 01 70 00 Execution and Closeout Requirements
- 02 41 16 Structure Demolition
- 03 10 00 Concrete Forming and Accessories
- 03 20 00 Concrete Reinforcing
- 03 30 00 Cast-In- Place Concrete
- 03 35 00 Concrete Finishing
- 03 35 10 Concrete Color Additives
- 03 36 10 Concrete Stamping
- 03 39 00 Concrete Curing

- 31 10 00 Site Clearing
- 31 23 16 Excavation
- 31 23 17 Trenching
- 32 84 00 Planting Irrigation
- 32 93 00 Plants

**Soils Report:**

N/A

**Addenda:**

N/A

**EXHIBIT E -**

Allowances – N/A

**EXHIBIT F -**

**Clarifications and Assumptions:**

1. The work will run concurrently with GMP #2
2. The existing irrigation clock will be sufficient to operate the new irrigation system. Irrigation will be design/build with existing field requirements including extending the 3" mainline. The existing 8 Station Irritrol clock will be utilized. All rotors will throw back over the new sidewalk.
3. Existing irrigation system will be abandoned in place or will be removed where new construction conflicts.
4. All existing fencing will be hauled off and disposed of offsite. This will be included by ECI at no charge to the City.
5. Unknown hazardous and/or contaminated materials handling and disposal, if encountered is not included in the cost of the work.
6. Surveying is not included. The work shall be laid out in the field with a representative of the City of Northglenn.
7. Bonds and insurance are included for the valuation of this GMP only

**EXHIBIT F (Continued)-**

**Clarifications and Assumptions:**

8. Description of work from Mill Brothers Landscape & Nursery
  - a. Provide and install 6,500 SF of bluegrass sod along sidewalk (2.5' each side)
  - b. Provide and install 2,400 SF of bluegrass sod for re-sodding over lateral lines
  - c. Provide and install 1,300 Lf of 3" PVC Class 200RT Mainline
  - d. Connect to existing 3" mainline (Cap other end)
  - e. Provide and install 1EA 3" Matco 100RT gate valve between old and new mainline.
  - f. Provide and install 3EA Rainbird 44LRC quick couplers on new mainline. Includes 1 key and swivel.
  - g. Provide and install 3EA Rainbird EFB-CP remote control valves for new lateral zones.
  - h. Provide and install 50 Hunter I-20 Rotor heads 30' O.C.
  - i. Provide and install 1,600 LF Class 160 lateral pipe.
  - j. Provide and install 700LF of 6" PVC Class 200 BE Sleeving
  
9. General clarifications and assumptions from Mill Brothers Landscape & Nursery, Inc.
  - a. Assumes intact wire bundle is located at proposed gate valve between old and new mainline containing an adequate quantity for this scope of work including any required spare wires. This wire bundle is assumed to be connected to the existing controller that is to be utilized for this scope of work.
  - b. The above values are based on 80 GPM and 85 PSI minimum at the POC for this scope of work.
  - c. Due to the preliminary nature of the information provided, any additional quantities of materials or change in scope of work from those shown above will be an add to the contract, or may require the utilization of portions of the contingency.
  - d. Unit cost for lateral sleeving passing under the 8' walk - \$6.80/LF

**EXHIBIT G -**

**Schedule:**

1. The Date of Substantial Completion upon which this proposed Guaranteed Maximum Price will be 60 Calendar days from the date of the Notice to Proceed. Weather days will be documented that affect the said scope of work.

**EXHIBIT H -**

**Alternate Prices-**

1. Additional Sleeving as requested passing under the walk \$6.80/LF

**EXHIBIT I -**

**Unit Prices:**

**Proposed Guaranteed Maximum Price: See attached Exhibit "I" Revised 7/15/2008**

**GMP #4 Exhibit "I" Revised 7/15/2008**

No.	Description	Units	ECI's Quantity	ECI's Unit Cost	ECI's Total
<b>Proposed GMP #4 Budget</b>					
<b>Demolish existing path/ fencing</b>					
1	Demolish/ hauloff and dispose of existing asphalt path along Nalad Drive approx. 1,300 LF (5'-20')	SY	1,318	\$ 5.71	\$ 7,528.84
2	Irrigation demo/ capping along path	LS	1	\$ 1,031.55	\$ 1,031.55
3	Remove existing fencing and gates along reservoir	LF	2,000	\$ 4.67	No Charge / By ECI
4	Hauloff and dispose of fencing and concrete bases 10 Loads	LS	1	\$ 4,812.50	No Charge / By ECI
<b>Concrete Work</b>					
5	Subgrade Prep for Concrete path	SF	10,400	\$ 0.50	\$ 5,200.00
6	8" Concrete Trail 8" Thick (Hoff)	SF	10,400	\$ 4.08	\$ 42,432.00
7	Joint Sealant	LF	168	\$ 2.75	\$ 462.00
8	Install ADA ramps with detectable warning	EA	3	\$ 1,223.25	\$ 3,669.75
9	Backfill and finegrade for sod along new sidewalk	LF	2,600	\$ 0.62	\$ 1,614.60
<b>Landscape, Irrigation Repair/ Replacement</b>					
10	6" PVC Class 200 Sleeving for new irrigation under walk	LF	700	Included Below	Included Below
11	Extend mainline 1,300 LF and install 50 new rotors and valves	LS	1	\$ 19,771.00	\$ 19,771.00
12	Landscaping - Sod repair along path 2'6" each side	SF	6,500	\$ 0.71	\$ 4,615.00
13	Landscaping - Sod repair for new lateral lines 50' O.C. (inc. Disposal)	SF	2,400	\$ 0.79	\$ 1,905.60
14	Mobilization/ General Conditions/ Staffing	MO	0.5	\$ 30,425.00	\$ 15,212.50
15	Bonds and Insurance (GMP #4)	LS	88,230	2.50%	\$ 2,205.76
16	ECI Fee on Cost of the work		88,230	7.75%	\$ 6,837.78
17	Contingency	LS	1	\$ 10,000.00	\$ 10,000.00
<b>Subtotal Remaining GMP #4 (With Contingency)</b>					<b>\$ 122,486.38</b>

ATTACHMENT "A"

6/27/2006



**Ted Johnson**

---

**From:** Mark Hofmeister [mhofmeister@northglenn.org]  
**Sent:** Friday, June 27, 2008 5:05 PM  
**To:** Ted Johnson  
**Cc:** Joliette Woodson  
**Subject:** RE: Huron - Croke Reservoir Add Mainline Sleeving and Sod/ GMP#4  
**Attachments:** log.PDF

The Irrigation components that the City Parks employees prefer are the following: The Parks dept would prefer as you mentioned Heads on the curb and the north side along the ditch and tree line therefore the heads would throw across the trail.

The old system can be abandon in place.

**Main Line:**

Irrigation main line shall be 24" deep, minimum Class 200 PVC. Main will need to be sleeved for the portion underneath the trail approximately 600 feet.

**Lateral Lines:**

Irrigation Laterals shall be 18" deep, minimum Class 160 PVC  
All Laterals should be sleeved underneath the trail.

**Swing Elbow:****Clocks:**

Weathermatic SL (Central Ready), Clock shall be enclosed in a steel enclosure.

**Valves:**

Isolation valve would be installed prior to all valves.

Manufactures:

Rainbird EFB Valves (Brass)

One Large Isolation Valve (between old system main and new irrigation system main).

**Sprinkler Heads:**

Rotors are preferred on all projects.

Manufactures:

"Hunter" Rotors,

when necessary Rainbird Pop-ups

Mark Hofmeister, E.I.T.  
City of Northglenn  
Civil Engineer I  
11701 Community Center Drive  
P.O. Box 330061  
Northglenn, CO 80233-8061  
Phone: 303-450-8780  
Cell: 720-490-6968  
Fax: 303-450-8708

ATTACHMENT "A"  
CONT.

>>> "Ted Johnson" <[ted@ecisite.net](mailto:ted@ecisite.net)> 6/27/2008 4:22 PM >>>

Rick- We may have a slightly different configuration along the proposed new path. We might want to look at putting in new +/-1,300 LF mainline and new irrigation where the new path goes to irrigate the existing sod. We met with the City yesterday to talk budget and also determined that when the path gets torn out and widened, the irrigation will also be impacted and have to be replaced. We would probably look at adding new rotors off the new main which could throw across the path to irrigate the whole sod strip where the new 8' concrete path would go. We will see if we can get you a little more info and a better plan for the change in irrigation. Thanks for your patience.

Mark- Do you have any info on the heads you (City) would want to use?

Thanks and have a good weekend -Ted

Ted Johnson

Estimator/ Project Manager

ECI Site Construction Management, Inc.

[www.ecisite.net](http://www.ecisite.net)

Ph:970-669-6291

Fx:970-669-6411

---

**From:** Rick Weaver [<mailto:rweaver@millbrothers.com>]  
**Sent:** Monday, June 23, 2008 9:20 AM  
**To:** Ted Johnson  
**Subject:** RE: Huron - Croke Reservoir Add Mainline Sleeving and Sod.xls

Ted,

I used the 1300 linear ft. x 2ft on each side = 5200 + 10% overage / waste = 5720 sf

Rick Weaver

Estimator

Mill Brothers Landscape & Nursery Inc.



ATTACHMENT "A"  
CONT.

**Ted Johnson**

---

**From:** Mark Hofmeister [mhofmeister@northglenn.org]  
**Sent:** Monday, June 30, 2008 9:43 AM  
**To:** Ted Johnson  
**Cc:** Joliette Woodson  
**Subject:** RE: Huron - Croke Reservoir Add Mainline Sleeving and Sod/GMP#4

Ted,

\* We will reuse the existing irrigation clock on this Project.

Thanks

Mark

Mark Hofmeister, E.I.T.  
City of Northglenn  
Civil Engineer I  
11701 Community Center Drive  
P.O. Box 330061  
Northglenn, CO 80233-8061  
Phone: 303-450-8780  
Cell: 720-490-6968  
Fax: 303-450-8708

>>> "Ted Johnson" <[ted@ecisite.net](mailto:ted@ecisite.net)> 6/30/2008 9:06 AM >>>

Are we providing and installing a new clock? There is an existing 8 station one?

Ted Johnson  
Estimator/ Project Manager  
ECI Site Construction Management, Inc.  
[www.ecisite.net](http://www.ecisite.net)  
Ph:970-669-6291  
Fx:970-669-6411

---

**From:** Mark Hofmeister [mailto:[mhofmeister@northglenn.org](mailto:mhofmeister@northglenn.org)]  
**Sent:** Friday, June 27, 2008 5:05 PM  
**To:** Ted Johnson  
**Cc:** Joliette Woodson  
**Subject:** RE: Huron - Croke Reservoir Add Mainline Sleeving and Sod/ GMP#4

**EXHIBIT A**  
to the  
**GUARANTEED MAXIMUM PRICE CONTRACT #4**  
Between  
**The City of Northglenn, Colorado**  
And

**ECI Site Construction Management, Inc.**

Project: CROKE RESERVOIR SHORELINE STABILIZATION GMP #4

THE CITY of NORTHGLENN, COLORADO  
11701 Community Center Drive  
P.O. Box 330061  
Northglenn, CO 80233

THE CONSTRUCTION MANAGER/GENERAL CONTRACTOR:  
ECI SITE CONSTRUCTION MANAGEMENT, INC.  
2526 East Highway 402  
P.O. Box 2135  
Loveland, CO 80539

## **TERMS AND CONDITIONS**

### **TABLE OF ARTICLES**

- A.1 GENERAL PROVISIONS
- A.2 CITY
- A.3 CONSTRUCTION MANAGER/GENERAL CONTRACTOR
- A.4 DISPUTES AND UNFORESEEN CHANGES
- A.5 AWARD OF CONTRACTS
- A.6 CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTORS
- A.7 CHANGES IN THE WORK
- A.8 TIME
- A.9 PAYMENTS AND COMPLETION
- A.10 PROTECTION OF PERSONS AND PROPERTY
- A.11 INSURANCE AND BONDS
- A.12 UNCOVERING AND CORRECTION OF WORK
- A.13 MISCELLANEOUS PROVISIONS
- A.14 TERMINATION OR SUSPENSION OF THE GUARANTEED MAXIMUM PRICE (GMP) CONTRACT

## **ARTICLE A.1: GENERAL PROVISIONS**

### **§ A.1.1 BASIC DEFINITIONS**

#### **§A.1.1.1 THE GUARANTEED MAXIMUM PRICE (GMP) DOCUMENTS**

The Guaranteed Maximum Price (GMP) Documents are identified in Section 1.1 of the Guaranteed Maximum Price (GMP) Contract.

#### **§ A.1.1.2 PROJECT CRITERIA**

The Project Criteria are identified in Section 8.1.3 of the Guaranteed Maximum Price (GMP) Contract and may describe the character, scope, relationships, forms, size and appearance of the Project, materials and systems and, in general, their quality levels, performance standards, requirements or criteria, and major equipment layouts.

#### **§ A.1.1.3 ARCHITECT**

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Guaranteed Maximum Price (GMP) Contract and having a direct contract with the Construction Manager/General Contractor (CM/GC) to perform design services for all or a portion of the Work, and is referred to throughout the Guaranteed Maximum Price (GMP) Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

#### **§ A.1.1.4 CONTRACTOR**

A Contractor is a person or entity, other than the Architect, that has a direct contract with the Construction Manager/General Contractor (CM/GC) to perform all or a portion of the construction required in connection with the Work. The term "Contractor" is referred to throughout the Guaranteed Maximum Price (GMP) Documents as if singular in number and means a Contractor or an authorized representative of the Contractor. The term "Contractor" does not include a separate contractor, as defined in Section A.6.1.2, or subcontractors of a separate contractor.

#### **§ A.1.1.5 SUBCONTRACTOR**

A Subcontractor is a person or entity who has a direct contract with a Contractor to perform a portion of the construction required in connection with the Work at the site. The term "Subcontractor" is referred to throughout the Guaranteed Maximum Price (GMP) Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.

#### **§ A.1.1.6 THE WORK**

The term "Work" means the design, construction and services required by the Guaranteed Maximum Price (GMP) Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Construction Manager/General Contractor (CM/GC) to fulfill the Construction Manager/General Contractor (CM/GC)'s obligations. The Work may constitute the whole or a part of the Project.

#### § A.1.1.7 THE PROJECT

The Project is the total design and construction of which the Work performed under the Guaranteed Maximum Price (GMP) Documents may be the whole or a part, and which may include design and construction by the City or by separate contractors.

#### § A.1.2 COMPLIANCE WITH APPLICABLE LAWS

§ A.1.2.1 If the Construction Manager/General Contractor (CM/GC) believes that implementation of any instruction received from the City would cause a violation of any applicable law, statute, ordinance, building code, rule or regulation, the Construction Manager/General Contractor (CM/GC) shall notify the City in writing.

§ A.1.2.2 The Construction Manager/General Contractor (CM/GC) shall be entitled to rely on the completeness and accuracy of the information contained in the Project Criteria, but not that such information complies with applicable laws, regulations and codes, which shall be the obligation of the Construction Manager/General Contractor (CM/GC) to determine. In the event that a specific requirement of the Project Criteria conflicts with applicable laws, regulations and codes, the Construction Manager/General Contractor (CM/GC) shall furnish Work that complies with such laws, regulations and codes. In such case, the City shall issue a Change Order to the Construction Manager/General Contractor (CM/GC) unless the Construction Manager/General Contractor (CM/GC) recognized such non-compliance prior to execution of this Guaranteed Maximum Price (GMP) Contract and failed to notify the City.

#### § A.1.3 CAPITALIZATION

§ A.1.3.1 Terms capitalized in these Terms and Conditions include those that are (1) specifically defined or (2) the titles of numbered articles and identified references to sections in the document.

#### § A.1.4 INTERPRETATION

§ A.1.4.1 In the interest of brevity, the Guaranteed Maximum Price (GMP) Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement,

§ A.1.4.2 Unless otherwise stated in the Guaranteed Maximum Price (GMP) Documents, words that have well-known technical or construction industry meanings are used in the Guaranteed Maximum Price (GMP) Documents in accordance with such recognized meanings.

#### § A.1.5 EXECUTION OF THE GUARANTEED MAXIMUM PRICE (GMP) DOCUMENTS

§ A.1.5.1 The Guaranteed Maximum Price (GMP) Documents shall be signed by the City and Construction Manager/General Contractor.

§ A.1.5.2 Execution of the Guaranteed Maximum Price (GMP) Contract by the Construction Manager/General Contractor (CM/GC) is a representation that the Construction Manager/General Contractor (CM/GC) has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Guaranteed Maximum Price (GMP) Documents.

#### § A.1.6 OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA

§ A.1.6.1 Drawings, specifications, and other documents including those in electronic form, prepared by the Architect and furnished by the Construction Manager/General Contractor (CM/GC) to the City become the property of the City.

§ A.1.6.2 RESERVED

### ARTICLE A.2: THE CITY

#### §A.2.1 GENERAL

§ A.2.1.1 The City is the City of Northglenn, Colorado, a Colorado home rule municipality, and is referred to throughout the Guaranteed Maximum Price (GMP) Documents as the "City." The term "City" means the City or the City's authorized representative. The City shall designate in writing a representative who shall have express authority to bind the City with respect to all Project matters requiring the City's approval or authorization. The City shall render decisions in a timely manner and in accordance with the Construction Manager/General Contractor (CM/GC)'s schedule submitted to the City.

§ A.2.1.2 The City shall furnish to the Construction Manager/General Contractor (CM/GC), within fifteen (15) days after receipt of a written request, information necessary and relevant for the Construction Manager/General Contractor (CM/GC) to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the City's interest therein.

#### § A.2.2 INFORMATION AND SERVICES REQUIRED OF THE CITY

§ A.2.2.1 Information or services required of the City by the Guaranteed Maximum Price (GMP) Documents shall be furnished by the City with reasonable promptness. Any other information or services relevant to the Construction Manager/General Contractor (CM/GC)'s performance of the Work under the City's control shall be furnished by the City after receipt from the Construction Manager/General Contractor (CM/GC) of a written request for such information or services.

§ A.2.2.2 RESERVED

§ A.2.2.3 The City shall provide, to the extent available to the City, and if not required by the Guaranteed Maximum Price (GMP) Documents to be provided by the Construction

Manager/General Contractor (CM/GC), the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems, chemical, air and water pollution, hazardous materials or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site.

§ A.2.2.4 The City may obtain independent review of the Guaranteed Maximum Project (GMP)'s design, construction and other documents by a separate architect, engineer, and contractor or cost estimator under contract to or employed by the City.

§ A.2.2.5 RESERVED

§ A.2.2.6 RESERVED

§ A.2.2.7 If the City observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Guaranteed Maximum Price (GMP) Documents, the City shall give prompt written notice thereof to the Construction Manager/General Contractor (CM/GC).

§ A.2.2.8 The City has appropriated an amount of money equal to or in excess of the Contract Price to be performed under this Guaranteed Maximum Price (GMP) Contract. And the City is prohibited from issuing any Change Order or other form of order or directive requiring additional compensable work to be performed by Contractor, if such directive causes the aggregate amount under the Guaranteed Maximum Price (GMP) Documents to exceed the amount originally appropriated, unless Construction Manager/General Contractor (CM/GC) is given written assurance by the City that lawful appropriations to cover the costs of the additional work have been made.

§ A.2.2.9 The City shall communicate through the Construction Manager/General Contractor (CM/GC) with persons or entities employed or retained by the Construction Manager/General Contractor (CM/GC), unless otherwise directed by the Construction Manager/General Contractor (CM/GC).

§ A.2.2.10 RESERVED

§ A.2.2.11 The City shall obtain easements, zoning variances, and legal authorizations regarding site utilization where essential to the execution of the City's program.

### § A.2.3 CITY REVIEW AND INSPECTION

§ A.2.3.1 The City shall review and approve or take other appropriate action upon the Construction Manager/General Contractor (CM/GC)'s submittals, including but not limited to design and construction documents, required by the Guaranteed Maximum Price (GMP) Documents. The City's action shall be taken with reasonable promptness.

§ A.2.3.2 Upon review of the design documents, construction documents, or other submittals required by the Guaranteed Maximum Price (GMP) Documents, the City shall take one of the following actions:

1. Determine that the documents or submittals are in conformance with the Construction Manager/General Contractor (CM/GC) Documents and approve them.
2. Determine that the documents or submittals are in conformance with the Guaranteed Maximum Price (GMP) Documents but request changes in the documents or submittals that shall be implemented by a Change in the Work.
3. Determine that the documents or submittals are not in conformity with the Guaranteed Maximum Price (GMP) Documents and reject them.
4. Determine that the documents or submittals are not in conformity with the Guaranteed Maximum Price (GMP) Documents, but accept them by implementing a Change in the Work.
5. Determine that the documents or submittals are not in conformity with the Guaranteed Maximum Price (GMP) Documents, but accept them and request changes in the documents or submittals that shall be implemented by a Change in the Work.

§ A.2.3.3 The Construction Manager/General Contractor (CM/GC) shall submit to the City for the City's approval, pursuant to Section A.2.3.1, any proposed change or deviation to previously approved documents or submittals. The City shall review each proposed change or deviation to previously approved documents or submittals that the Construction Manager/General Contractor (CM/GC) submits to the City for the City's approval with reasonable promptness in accordance with Section A.2.3.1 and shall make one of the determinations described in Section A.2.3.2.

§ A.2.3.4 Notwithstanding the City's responsibility under Section A.2.3.2, the City's review and approval of the Construction Manager/General Contractor (CM/GC)'s documents or submittals shall not relieve the Construction Manager/General Contractor (CM/GC) of responsibility for compliance with the Guaranteed Maximum Price (GMP) Documents unless (a) the Construction Manager/General Contractor (CM/GC) has notified the City in writing of the deviation prior to approval by the City or, (b) the City has approved a Change in the Work reflecting any deviations from the requirements of the (Guaranteed Maximum Price (GMP) Documents.

§ A.2.3.5 The City may visit the site to keep informed about the progress and quality of the portion of the Work completed. However, the City shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Visits by the City shall not be construed to create an obligation on the part of the City to make on-site inspections to check the quantity or quality of the Work. The City shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Construction Manager/General Contractor (CM/GC)'s rights and responsibilities under the Guaranteed Maximum Price (GMP) Documents, except as provided in Section A.3.3.7.



§ A.2.3.6 The City shall not be responsible for the Construction Manager/General Contractor (CM/GC)'s failure to perform the Work in accordance with the requirements of the Guaranteed Maximum Price (GMP) Documents. The City shall not have control over or charge of and will not be responsible for acts or omissions of the Construction Manager/General Contractor (CM/GC), Architect, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Construction Manager/General Contractor (CM/GC).

§ A.2.3.7 The City may reject Work that does not conform to the Guaranteed Maximum Price (GMP) Documents. Whenever the City considers it necessary or advisable, the City shall have authority to require inspection or testing of the Work in accordance with Section A.13.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the City nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the City to the Construction Manager/General Contractor (CM/GC), the Architect, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ A.2.3.8 The City may appoint an on-site project representative to observe the Work and to have such other responsibilities as the City and the Construction Manager/General Contractor (CM/GC) agree to in writing.

§ A.2.3.9 The City shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion.

#### § A.2.4 CITY'S RIGHT TO STOP WORK

§ A.2.4.1 If the Construction Manager/General Contractor (CM/GC) fails to correct Work that is not in accordance with the requirements of the Guaranteed Maximum Price (GMP) Documents as required by Section A.12.2 or persistently fails to carry out Work in accordance with the Guaranteed Maximum Price (GMP) Documents, the City may issue a written order to the Construction Manager/General Contractor (CM/GC) to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the City to stop the Work shall not give rise to a duty on the part of the City to exercise this right for the benefit of the Construction Manager/General Contractor (CM/GC) or any other person or entity.

#### § A.2.5 CITY'S RIGHT TO CARRY OUT THE WORK

§ A.2.5.1 If the Construction Manager/General Contractor (CM/GC) defaults or neglects to carry out the Work in accordance with the Guaranteed Maximum Price (GMP) Documents and fails within a seven (7) -day period after receipt of written notice from the City to commence and continue correction of such default or neglect with diligence and promptness, the City may after such seven (7) -day period give the Construction Manager/General Contractor (CM/GC) a second written notice to correct such deficiencies within a three (3) -day period. If the Construction Manager/General Contractor (CM/GC) within such three (3) -day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the City may, without prejudice to other remedies the City may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or

thereafter due the Construction Manager/General Contractor (CM/GC) the reasonable cost of correcting such deficiencies. If payments due the Construction Manager/General Contractor (CM/GC) are not sufficient to cover such amounts, the Construction Manager/General Contractor (CM/GC) shall pay the difference to the City.

**ARTICLE A.3: CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC)**

**§A.3.1 GENERAL**

§ A.3.1.1 The Construction Manager/General Contractor (CM/GC) is also known as the Contractor. The Construction Manager/General Contractor (CM/GC) is the person or entity identified as such in the Guaranteed Maximum Price (GMP) Contract and the is referred to throughout the Guaranteed Maximum Price (GMP) Documents as "Construction Manager/General Contractor (CM/GC)". The Construction Manager/General Contractor (CM/GC) agrees to furnish to City its reasonable skill and judgment and agrees to cooperate with the Engineer, Architect in furthering the interests of the City. The Construction Manager/General Contractor (CM/GC) shall furnish construction administration and management services and use their best efforts to perform the project in an expeditious and economical manner consistent with the interests of the City. The City shall endeavor to promote harmony and cooperation among the City, Engineer, Architect, Construction Manager/General Contractor (CM/GC), and other persons or entities employed by the City for the Project.

§ A.3.1.2 The Construction Manager/General Contractor (CM/GC) shall perform the Work in accordance with the Guaranteed Maximum Price (GMP) Documents.

§ A.3.1.3 The Guaranteed Maximum Price (GMP) contract documents are being prepared and approved by others and furnished to the Construction Manager/General Contractor (CM/GC) for construction.

§ A.3.1.4 It is understood and agreed that the Construction Manager/General Contractor (CM/GC) will not be providing any design services for the Project required by the City.

§ A.3.1.5 The Construction Manager/General Manager (CM/GC) is providing construction services and does not warrant any design as contemplated in any of the drawings which were prepared by the Engineer/Architect under a separate contract with the City. The Construction Manager/General Contractor (CM/GC) shall be held harmless relative to any and all errors and/or omissions made by the Owner, Architect, Consultants, Engineer or any other design consultants.

§ A.3.1.6 The parties agree that the Guaranteed Maximum Price (GMP) Documents do not require that Contractor to provide professional design services and the parties agree that the Construction Manager/General Contractor (CM/GC) is entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such Design Professionals as engaged by the City for the preparation of the Guaranteed Maximum Price (GMP) Documents.

§ A.3.2 DESIGN SERVICES AND RESPONSIBILITIES

§ A.3.2.1 RESERVED

§ A.3.2.2 RESERVED

§ A.3.2.3 The Construction Manager/General Contractor (CM/GC) shall be responsible to the City for acts and omissions of the Construction Manager/General Contractor (CM/GC)'s employees, Architect, Contractors, Subcontractors and their agents and employees, and other persons or entities, including the Architect and other design professionals, performing any portion of the Construction Manager/General Contractor (CM/GC)'s obligations under the Guaranteed Maximum Price (GMP) Documents.

§ A.3.2.4 The Construction Manager/General Contractor (CM/GC) shall carefully study and compare the Guaranteed Maximum Price (GMP) Documents, materials and other information provided by the City pursuant to Section A.2.2, shall take field measurements of any existing conditions related to the Work, shall observe any conditions at the site affecting the Work, and report promptly to the City any errors, inconsistencies or omissions discovered.

§ A.3.2.5 RESERVED

§ A.3.2.6 RESERVED

§ A.3.2.7 The Construction Manager/General Contractor (CM/GC) shall meet with the City periodically to review progress of the design and construction documents.

§ A.3.2.8 Upon the City's written approval of construction documents, the Construction Manager/General Contractor (CM/GC), with the cooperation of the City, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ A.3.2.9 RESERVED

§ A.3.2.10 RESERVED

§ A.3.2.11 RESERVED

§ A.3.2.12 The Construction Manager/General Contractor (CM/GC) shall secure, at its expense, all necessary building and other permits, licenses and inspections unless the cost of such fees is specifically excluded from the responsibility of the Construction Manager/General Contractor (CM/GC) under the Guaranteed Maximum Price(GMP) Documents.

§ A.3.2.13 RESERVED

### § A.3.3 CONSTRUCTION

§ A.3.3.1 The Construction Manager/General Contractor (CM/GC) shall perform no construction Work prior to the City's review and approval of the construction documents. The Construction Manager/General Contractor (CM/GC) shall perform no portion of the Work for which the Guaranteed Maximum Price (GMP) Documents require the City's review of submittals, such as Shop Drawings, Product Data and Samples, until the City has approved each submittal.

§ A.3.3.2 The construction Work shall be in accordance with approved submittals, except that the Construction Manager/General Contractor (CM/GC) shall not be relieved of responsibility for deviations from requirements of the Guaranteed Maximum Price (GMP) Documents by the City's approval of design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals unless the Construction Manager/General Contractor (CM/GC) has specifically informed the City in writing of such deviation at the time of submittal and (1) the City has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Construction Manager/General Contractor (CM/GC) shall not be relieved of responsibility for errors or omissions in design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals by the City's approval thereof.

§ A.3.3.3 The Construction Manager/General Contractor (CM/GC) shall direct specific attention, in writing or on resubmitted design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the City on previous submittals. In the absence of such written notice, the City's approval of a resubmission shall not apply to such revisions.

§ A.3.3.4 When the Guaranteed Maximum Price (GMP) Documents require that a Contractor provide professional design services or certifications related to systems, materials or equipment, or when the Construction Manager/General Contractor (CM/GC) in its discretion provides such design services or certifications through a Contractor, the Construction Manager/General Contractor (CM/GC) shall cause professional design services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professionals, if prepared by others, shall bear such design professional's written approval. The City shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ A.3.3.5 The Construction Manager/General Contractor (CM/GC) shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Guaranteed Maximum Price (GMP) Documents.

§ A.3.3.6 The Construction Manager/General Contractor (CM/GC) shall keep the City informed of the progress and quality of the Work.

§ A.3.3.7 The Construction Manager/General Contractor (CM/GC) shall be responsible for the supervision and direction of the Work, using the Construction Manager/General Contractor (CM/GC)'s best skill and attention. If the Guaranteed Maximum Price (GMP) Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Construction Manager/General Contractor (CM/GC) shall evaluate the jobsite safety thereof and shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Construction Manager/General Contractor (CM/GC) determines that such means, methods, techniques, sequences or procedures may not be safe, the Construction Manager/General Contractor (CM/GC) shall give timely written notice to the City and shall not proceed with that portion of the Work without further written instructions from the City.

§ A.3.3.8 The Construction Manager/General Contractor (CM/GC) shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

#### § A.3.4 LABOR AND MATERIALS

§ A.3.4.1 Unless otherwise provided in the Guaranteed Maximum Price (GMP) Documents, the Construction Manager/General Contractor (CM/GC) shall provide or cause to be provided and shall pay for design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ A.3.4.2 When a material is specified in the Guaranteed Maximum Price (GMP) Documents, the Construction Manager/General Contractor (CM/GC) may make substitutions only with the consent of the City and, if appropriate, in accordance with a Change Order.

§ A.3.4.3 The Construction Manager/General Contractor (CM/GC) shall enforce strict discipline and good order among the Construction Manager/General Contractor (CM/GC)'s employees and other persons carrying out the Guaranteed Maximum Price (GMP) Contract. The Construction Manager/General Contractor (CM/GC) shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

#### § A.3.5 WARRANTY

§ A.3.5.1 The Construction Manager/General Contractor (CM/GC) warrants to the City that materials and equipment furnished under the Guaranteed Maximum Price (GMP) Documents will be of good quality and new unless otherwise required or permitted by the Guaranteed Maximum Price (GMP) Documents, that the Work will be free from defects not inherent in the quality required or permitted by law or otherwise, and that the Work will conform to the requirements of the Guaranteed Maximum Price (GMP) Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Construction Manager/General Contractor (CM/GC)'s warranty

excludes remedy for damage or defect caused by abuse, modifications not executed by the Construction Manager/General Contractor (CM/GC), improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the City, the Construction Manager/General Contractor (CM/GC) shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

#### § A.3.6 TAXES

§ A.3.6.1 The Construction Manager/General Contractor (CM/GC) shall pay all sales, consumer, use and similar taxes for the Work provided by the Construction Manager/General Contractor (CM/GC) that had been legally enacted on the date of the Guaranteed Maximum Price (GMP) Contract, whether or not yet effective or merely scheduled to go into effect.

#### § A.3.7 PERMITS, FEES AND NOTICES

§ A.3.7.1 The Construction Manager/General Contractor (CM/GC) shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work that are customarily secured after execution of the Guaranteed Maximum Price (GMP) Contract and that were legally required on the date the City accepted the Construction Manager/General Contractor (CM/GC)'s proposal.

§ A.3.7.2 The Construction Manager/General Contractor (CM/GC) shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.

§ A.3.7.3 It is the Construction Manager/General Contractor (CM/GC)'s responsibility to ascertain that the Work is in accordance with applicable laws, ordinances, codes, rules and regulations.

§ A.3.7.4 If the Construction Manager/General Contractor (CM/GC) performs Work contrary to applicable laws, ordinances, codes, rules and regulations, the Construction Manager/General Contractor (CM/GC) shall assume responsibility for such Work and shall bear the costs attributable to correction.

#### § A.3.8 ALLOWANCES

§ A.3.8.1 The Construction Manager/General Contractor (CM/GC) shall include in the Contract Sum all allowances stated in the Guaranteed Maximum Price (GMP) Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the City may direct, but the Construction Manager/General Contractor (CM/GC) shall not be required to employ persons or entities to which the Construction Manager/General Contractor (CM/GC) has reasonable objection.

§ A.3.8.2 Unless otherwise provided in the Guaranteed Maximum Price (GMP) Documents:

1. allowances shall cover the cost to the Construction Manager/General Contractor (CM/GC) of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
2. Construction Manager/General Contractor (CM/GC)'s costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
3. whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section A.3.8.2(1) and (2) changes in Construction Manager/General Contractor (CM/GC)'s costs under Section A.3.8.2(2).

§ A.3.8.3 Materials and equipment under an allowance shall be selected by the City in sufficient time to avoid delay in the Work.

#### § A.3.9 CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC)'S SCHEDULE

§ A.3.9.1 The Construction Manager/General Contractor (CM/GC), promptly after execution of the Guaranteed Maximum Price (GMP) Contract, shall prepare and submit for the City's information the Construction Manager/General Contractor (CM/GC)'s schedule for the Work. The schedule shall not exceed time limits and shall be in such detail as required under the Guaranteed Maximum Price (GMP) Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Guaranteed Maximum Price (GMP) Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the City's review and for approval of submissions by authorities having jurisdiction over the Project.

§ A.3.9.2 The Construction Manager/General Contractor (CM/GC) shall prepare and keep current a schedule of submittals required by the Guaranteed Maximum Price (GMP) Documents.

§ A.3.9.3 The Construction Manager/General Contractor (CM/GC) shall perform the Work in general accordance with the most recent schedules submitted to the City.

#### § A.3.10 DOCUMENTS AND SAMPLES AT THE SITE

§ A.3.10.1 The Construction Manager/General Contractor (CM/GC) shall maintain at the site for the City's access and convenience at least one record copy of the drawings, specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and at least one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be delivered to the City upon completion of the Work.

### § A.3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ A.3.11.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Construction Manager/General Contractor (CM/GC) or a Contractor, Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ A.3.11.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Construction Manager/General Contractor (CM/GC) to illustrate materials or equipment for some portion of the Work.

§ A.3.11.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ A.3.11.4 Shop Drawings, Product Data, Samples and similar submittals are not Guaranteed Maximum Price (GMP) Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Guaranteed Maximum Price (GMP) Documents the way by which the Construction Manager/General Contractor (CM/GC) proposes to conform to the Guaranteed Maximum Price (GMP) Documents.

§ A.3.11.5 The Construction Manager/General Contractor (CM/GC) shall review for compliance with the Guaranteed Maximum Price (GMP) Documents and approve and submit to the City only those Shop Drawings, Product Data, Samples and similar submittals required by the Guaranteed Maximum Price (GMP) Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the City or of separate contractors.

§ A.3.11.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Construction Manager/General Contractor (CM/GC) represents that the Construction Manager/General Contractor (CM/GC) has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Guaranteed Maximum Price (GMP) Documents.

### § A.3.12 USE OF SITE

§ A.3.12.1 The Construction Manager/General Contractor (CM/GC) shall confine operations at the site to areas permitted by law, ordinances, permits and the Guaranteed Maximum Price (GMP) Documents, and shall not unreasonably encumber the site with materials or equipment.

### § A.3.13 CUTTING AND PATCHING

§ A.3.13.1 The Construction Manager/General Contractor (CM/GC) shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.



§ A.3.13.2 The Construction Manager/General Contractor (CM/GC) shall not damage or endanger a portion of the Work or fully or partially completed construction of the City or separate contractors by cutting, patching or otherwise altering such construction or by excavation. The Construction Manager/General Contractor (CM/GC) shall not cut or otherwise alter such construction by the City or a separate contractor except with written consent of the City and of such separate contractor. The Construction Manager/General Contractor (CM/GC) shall not unreasonably withhold from the City or a separate contractor the Construction Manager/General Contractor (CM/GC)'s consent to cutting or otherwise altering the Work.

#### § A.3.14 CLEANING UP

§ A.3.14.1 The Construction Manager/General Contractor (CM/GC) shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Guaranteed Maximum Price (GMP) Contract. At completion of the Work, the Construction Manager/General Contractor (CM/GC) shall remove from and about the Project waste materials, rubbish, the Construction Manager/General Contractor (CM/GC)'s tools, construction equipment, machinery and surplus materials.

§ A.3.14.2 If the Construction Manager/General Contractor (CM/GC) fails to clean up as provided in the Guaranteed Maximum Price (GMP) Documents, the City may do so and the cost thereof shall be charged to the Construction Manager/General Contractor (CM/GC).

#### § A.3.15 ACCESS TO WORK

§ A.3.15.1 The Construction Manager/General Contractor (CM/GC) shall provide the City access to the Work in preparation and progress wherever located.

#### § A.3.16 ROYALTIES, PATENTS AND COPYRIGHTS

§ A.3.16.1 The Construction Manager/General Contractor (CM/GC) shall pay all royalties and license fees. The Construction Manager/General Contractor (CM/GC) shall defend suits or claims for infringement of copyrights and patent rights and shall hold the City harmless from loss on account thereof.

#### § A.3.17 INDEMNIFICATION

§ A.3.17.1 To the fullest extent permitted by law, the Construction Manager/General Contractor (CM/GC) shall indemnify and hold harmless the City, City's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Construction Manager/General Contractor (CM/GC), Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section A.3.17.

§ A.3.17.2 In claims against any person or entity indemnified under this Section A.3.17 by an employee of the Construction Manager/General Contractor (CM/GC), the Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section A.3.17.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Construction Manager/General Contractor (CM/GC), the Architect or a Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

#### **ARTICLE A.4: DISPUTES AND UNFORESEEN CHANGES**

##### **§ A.4.1 DISPUTES AND UNFORESEEN CHANGES**

§ A.4.1.1 Disputes shall be resolved by the parties informally and by resort to the various procedures outlined in Sections A.2.5.2, A.7.1, and A.7.2. Either party may result to litigation in Adams County District Court if satisfactory informal resolution of disputes is not possible.

§ A.4.1.2 Requests for Additional Cost. If the Construction Manager/General Contractor (CM/GC) wishes to request an increase in the Contract Sum, the process outlined in Sections A.7.1 and A.7.2 shall be followed. Prior notice is not required for requests for additional costs relating to an emergency endangering life or property arising under Section A.10.6.

§ A.4.1.3 Requests for Additional Time. If the Construction Manager/General Contractor (CM/GC) wishes to make a request for an increase in the Contract Time, the process outlined in Sections A.7.1 and A.7.2 shall be followed. The Construction Manager/General Contractor (CM/GC)'s Claim shall include an estimate of the time and its effect on the progress of the Work. In the case of a continuing delay, only one request is necessary.

§ A.4.1.4 Injury or Damage to Person or Property. If either party to the Guaranteed Maximum Price (GMP) Contract suffers injury or damage to person or property because of an act or omission of the other party or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding twenty-one (21) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ A.4.1.5 If unit prices are stated in the Guaranteed Maximum Price (GMP) Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the City or Construction Manager/General Contractor (CM/GC), the applicable unit prices shall be equitably adjusted.

§ A.4.1.6 Claims for Consequential Damages. Construction Manager/General Contractor (CM/GC) and City waive Claims against each other for consequential damages arising out of or relating to the Guaranteed Maximum Price (GMP) Contract. This mutual waiver includes:

1. damages incurred by the City for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
2. damages incurred by the Construction Manager/General Contractor (CM/GC) for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article A.14. Nothing contained in this Section A.4.1.6 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Guaranteed Maximum Price (GMP) Documents.

§ A.4.1.7 If the enactment or revision of codes, laws or regulations or official interpretations that govern the Project cause an increase or decrease of the Construction Manager/General Contractor (CM/GC)'s cost of, or time required for, performance of the Work, the Construction Manager/General Contractor (CM/GC) may be entitled to an equitable adjustment in Contract Sum or Contract Time by following the procedures outlined in Sections A.7.1 and A.7.2.

#### **ARTICLE A.5: AWARD OF CONTRACTS**

§ A.5.1 Unless otherwise stated in the Guaranteed Maximum Price (GMP) Documents or the bidding or proposal requirements, the Construction Manager/General Contractor (CM/GC), as soon as practicable after award of the Guaranteed Maximum Price (GMP) Contract, shall furnish in writing to the City the names of additional persons or entities not originally included in the Construction Manager/General Contractor (CM/GC)'s proposal or in substitution of a person or entity (including those who are to furnish design services or materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The City will reply to the Construction Manager/General Contractor (CM/GC) in writing within thirty (30) days stating whether or not the City has objection to any such proposed additional person or entity. Failure of the City to reply within the time allowed shall constitute notice of no objection.

§ A.5.2 The Construction Manager/General Contractor (CM/GC) shall not contract with a proposed person or entity to whom or which the City has made timely objection. The Construction Manager/General Contractor (CM/GC) shall not be required to contract with anyone to whom the Construction Manager/General Contractor (CM/GC) has made reasonable objection.

§ A.5.3 If the City has objection to a person or entity proposed by the Construction Manager/General Contractor (CM/GC), the Construction Manager/General Contractor (CM/GC) shall propose another to whom the City has no objection.

§ A.5.4 The Construction Manager/General Contractor (CM/GC) shall not change a person or entity previously selected if the City, after being given notice of the Construction

Manager/General Contractor (CM/GC)'s intent to make such a change, submits an objection to such substitute within thirty (30) days of being given notice thereof.

#### § A.5.5 CONTINGENT ASSIGNMENT OF CONTRACTS

§ A.5.5.1 Each agreement for a portion of the Work is assigned by the Construction Manager/General Contractor (CM/GC) to the City provided that:

1. assignment is effective only after termination of the Guaranteed Maximum Price (GMP) Contract by the City for cause pursuant to Section A.14.2 and only for those agreements that the City accepts by notifying the contractor in writing; and
2. assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Guaranteed Maximum Price (GMP) Contract.

§ A.5.5.2 Upon such assignment, if the Work has been suspended for more than thirty (30) days, the Contractor's compensation may be equitably adjusted for increases in cost resulting from the suspension.

#### **ARTICLE A.6: CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTORS**

##### § A.6.1 CITY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ A.6.1.1 The City reserves the right to perform construction or operations related to the Project with the City's own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. The Construction Manager/General Contractor (CM/GC) shall cooperate with the City and separate contractors whose work might interfere with the Construction Manager/General Contractor (CM/GC)'s Work. If the Construction Manager/General Contractor (CM/GC) claims that delay or additional cost is involved because of such action by the City, the Construction Manager/General Contractor (CM/GC) shall make a request for a change as provided in Sections A.7.1 and A.7.2.

§ A.6.1.2 The term "separate contractor" shall mean any contractor retained by the City pursuant to Sections A.6.1.1. and A.6.1.3 The Construction Manager/General Contractor (CM/GC) shall provide for coordination of the activities of the City's own forces and of each separate contractor with the work of the City, who shall cooperate with them. The Construction Manager/General Contractor (CM/GC) shall participate with other separate contractors and the City in reviewing their construction schedules when directed to do so. The Construction Manager/General Contractor (CM/GC) shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Construction Manager/General Contractor (CM/GC), separate contractors, and the City until subsequently revised.

## § A.6.2 MUTUAL RESPONSIBILITY

§ A.6.2.1 The Construction Manager/General Contractor (CM/GC) shall afford the City and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Construction Manager/General Contractor (CM/GC)'s construction and operations with theirs as required by the Guaranteed Maximum Price (GMP) Documents.

§ A.6.2.2 If part of the Construction Manager/General Contractor (CM/GC)'s Work depends for proper execution or results upon design, construction or operations by the City or a separate contractor, the Construction Manager/General Contractor (CM/GC) shall, prior to proceeding with that portion of the Work, promptly report to the City apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Construction Manager/General Contractor (CM/GC) so to report shall constitute an acknowledgment that the City's or separate contractor's completed or partially completed construction is fit and proper to receive the Construction Manager/General Contractor (CM/GC)'s Work, except as to defects not then reasonably discoverable.

§ A.6.2.3 The City shall be reimbursed by the Construction Manager/General Contractor (CM/GC) for costs incurred by the City that are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Construction Manager/General Contractor (CM/GC). The City may, upon agreement by the parties, be responsible to the Construction Manager/General Contractor (CM/GC) for costs incurred by the Construction Manager/General Contractor (CM/GC) because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

§ A.6.2.4 The Construction Manager/General Contractor (CM/GC) shall promptly remedy damage wrongfully caused by the Construction Manager/General Contractor (CM/GC) to completed or partially completed construction or to property of the City or separate contractors.

§ A.6.2.5 The City and each separate contractor shall have the same responsibilities for cutting and patching as are described in Section A.3.13.

## § A.6.3 CITY'S RIGHT TO CLEAN UP

§ A.6.3.1 If a dispute arises among the Construction Manager/General Contractor (CM/GC), separate contractors, and the City as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the City may clean up and the City shall, in its sole discretion, allocate the cost among those responsible.

## ARTICLE A.7: CHANGES IN THE WORK

### § A.7.1 GENERAL

§ A.7.1.1 Changes in the Work may be accomplished after execution of the Guaranteed Maximum Price (GMP) Contract, and without invalidating the Guaranteed Maximum Price

(GMP) Contract, by Change Order or Construction Change Directive, subject to the limitations stated in this Article A.7 and elsewhere in the Guaranteed Maximum Price (GMP) Documents.

§ A.7.1.2 A Change Order shall be based upon agreement between the City and Construction Manager/General Contractor (CM/GC). A Construction Change Directive may be issued by the City with or without agreement by the Construction Manager/General Contractor (CM/GC).

§ A.7.1.3 Changes in the Work shall be performed under applicable provisions of the Guaranteed Maximum Price (GMP) Documents, and the Construction Manager/General Contractor (CM/GC) shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive.

#### § A.7.2 CHANGE ORDERS

§ A.7.2.1 A Change Order is a written instrument signed by the City and Construction Manager/General Contractor (CM/GC) stating their agreement upon all of the following:

1. a change in the Work;
2. the amount of the adjustment, if any, in the Contract Sum; and
3. the extent of the adjustment, if any, in the Contract Time.

§A.7.2.2 If the City requests a proposal for a change in the Work from the Construction Manager/General Contractor (CM/GC) and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse the Construction Manager/General Contractor (CM/GC) for one half of any costs incurred for estimating services, design services or preparation of proposed revisions to the Guaranteed Maximum Price (GMP) Documents.

§ A.7.2.3 Methods used in determining adjustments to the Contract Sum may include those listed in Section A.7.3.3.

#### § A.7.3 CONSTRUCTION CHANGE DIRECTIVES

§A.7.3.1 A Construction Change Directive is a written order signed by the City directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The City may by Construction Change Directive, without invalidating the Guaranteed Maximum Price (GMP) Contract, order changes in the Work within the general scope of the Guaranteed Maximum Price (GMP) Documents consisting of additions, deletions or other revisions, the Contract Sum, and Contract Time being adjusted accordingly.

§ A.7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ A.7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

1. mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
2. unit prices stated in the Guaranteed Maximum Price (GMP) Documents or subsequently agreed upon, or equitably adjusted as provided in Section A.4.1.5;
3. cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
4. as provided in Section A.7.3.6.

§ A.7.3.4 Upon receipt of a Construction Change Directive, the Construction Manager/General Contractor (CM/GC) shall promptly proceed with the change in the Work involved and advise the City of the Construction Manager/General Contractor (CM/GC)'s agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ A.7.3.5 A Construction Change Directive signed by the Construction Manager/General Contractor (CM/GC) indicates the agreement of the Construction Manager/General Contractor (CM/GC) therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ A.7.3.6 If the Construction Manager/General Contractor (CM/GC) does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the City on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Section A.7.3.3(3), the Construction Manager/General Contractor (CM/GC) shall keep and present, in such form as the City may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Guaranteed Maximum Price (GMP) Documents costs for the purposes of this Section A.7.3.6 shall be limited to the following:

1. additional costs of professional services;
2. costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
3. costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
4. rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Construction Manager/General Contractor (CM/GC) or others;

5. costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
6. additional costs of supervision and field office personnel directly attributable to the change.

§ A.7.3.7 The amount of credit to be allowed by the Construction Manager/General Contractor (CM/GC) to the City for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ A.7.3.8 Pending final determination of the total cost of a Construction Change Directive to the City, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the City shall make an interim determination for purposes of monthly payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order.

§ A.7.3.9 When the City and Construction Manager/General Contractor (CM/GC) reach agreement concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

#### § A.7.4 MINOR CHANGES IN THE WORK

§ A.7.4.1 The City shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Guaranteed Maximum Price (GMP) Documents. Such changes shall be effected by written order and shall be binding on the Construction Manager/General Contractor (CM/GC). The Construction Manager/General Contractor (CM/GC) shall carry out such written orders promptly.

### **ARTICLE A.8: TIME**

#### § A.8.1 DEFINITIONS

§ A.8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Guaranteed Maximum Price (GMP) Documents for Substantial Completion of the Work.

§ A.8.1.2 The date of commencement of the Work shall be the date stated in the Guaranteed Maximum Price (GMP) Contract unless provision is made for the date to be fixed in a notice to proceed issued by the City.



§ A.8.1.3 The date of Substantial Completion is the date determined by the City in accordance with Section A.9.8.

§ A.8.1.4 The term "day" as used in the Guaranteed Maximum Price (GMP) Documents shall mean calendar day unless otherwise specifically defined.

#### § A.8.2 PROGRESS AND COMPLETION

§ A.8.2.1 Time limits stated in the Guaranteed Maximum Price (GMP) Documents are of the essence of the Guaranteed Maximum Price (GMP) Contract. By executing the Guaranteed Maximum Price (GMP) Contract, the Construction Manager/General Contractor (CM/GC) confirms that the Contract Time is a reasonable period for performing the Work.

§ A.8.2.2 The Construction Manager/General Contractor (CM/GC) shall not knowingly, except by agreement or instruction of the City in writing, prematurely commence construction operations on the site or elsewhere prior to the effective date of insurance required by Article A.1.1 to be furnished by the Construction Manager/General Contractor (CM/GC) and City. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Guaranteed Maximum Price (GMP) Documents or a notice to proceed given by the City, the Construction Manager/General Contractor (CM/GC) shall notify the City in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§A.8.2.3 The Construction Manager/General Contractor (CM/GC) shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

#### § A.8.3 DELAYS AND EXTENSIONS OF TIME

§ A.8.3.1 If the Construction Manager/General Contractor (CM/GC) is delayed at any time in the commencement or progress of the Work by an act or neglect of the City or of a separate contractor employed by the City, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Construction Manager/General Contractor (CM/GC)'s control, or by delay authorized by the City pending resolution of disputes pursuant to the Guaranteed Maximum Price (GMP) Documents, or by other causes that the City determines may justify delay, then the Contract Time may be extended by Change Order for such reasonable time as the City may determine.

§ A.8.3.2 Requests for changes relating to time shall be made in accordance with applicable provisions of Sections A.7.1 and A.7.2.

§ A.8.3.3 This Section A.8.3 does not preclude recovery of damages for delay by either party under other provisions of the Guaranteed Maximum Price (GMP) Documents.

## **ARTICLE A.9: PAYMENTS AND COMPLETION**

### **§ A.9.1 CONTRACT SUM**

§ A.9.1.1 The Contract Sum is stated in the Guaranteed Maximum Price (GMP) Documents and, including authorized adjustments, is the total amount payable by the City to the Construction Manager/General Contractor (CM/GC) for performance of the Work under the Guaranteed Maximum Price (GMP) Documents.

### **§ A.9.2 SCHEDULE OF VALUES**

§ A.9.2.1 Before the first Application for Payment, where the Contract Sum is based upon a Stipulated Sum or the Cost of the Work plus Contractor's Fee with a Guaranteed Maximum Price, the Construction Manager/General Contractor (CM/GC) shall submit to the City an initial schedule of values allocated to various portions of the Work prepared in such form and supported by such data to substantiate its accuracy as the City may require. This schedule, unless objected to by the City, shall be used as a basis for reviewing the Construction Manager/General Contractor (CM/GC)'s Applications for Payment. The schedule of values may be updated periodically to reflect changes in the allocation of the Contract Sum.

### **§ A.9.3 APPLICATIONS FOR PAYMENT**

§ A.9.3.1 At least ten (10) days before the date established for each progress payment, the Construction Manager/General Contractor (CM/GC) shall submit to the City an itemized Application for Payment for operations completed in accordance with the current schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Construction Manager/General Contractor (CM/GC)'s right to payment as the City may require, such as copies of requisitions from Contractors and material suppliers, and reflecting retainage if provided for in the Guaranteed Maximum Price (GMP) Documents.

§ A.9.3.1.1 As provided in Section A.7.3.8, such applications may include requests for payment on account of Changes in the Work that have been properly authorized by Construction Change Directives but are not yet included in Change Orders.

§ A.9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Construction Manager/General Contractor (CM/GC) does not intend to pay to a Contractor or material supplier or other parties providing services for the Construction Manager/General Contractor (CM/GC), unless such Work has been performed by others whom the Construction Manager/General Contractor (CM/GC) intends to pay.

§ A.9.3.2 Unless otherwise provided in the Guaranteed Maximum Price (GMP) Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the City, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Construction Manager/General Contractor (CM/GC) with

procedures satisfactory to the City to establish the City's title to such materials and equipment or otherwise protect the City's interest and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ A.9.3.3 The Construction Manager/General Contractor (CM/GC) warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Construction Manager/General Contractor (CM/GC) further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the City shall, to the best of the Construction Manager/General Contractor (CM/GC)'s knowledge, information and belief, be free and clear of liens, Claims, security interests or encumbrances in favor of the Construction Manager/General Contractor (CM/GC), Contractors, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### § A.9.4 ACKNOWLEDGEMENT OF APPLICATION FOR PAYMENT

§ A.9.4.1 The City shall, within seven (7) days after receipt of the Construction Manager/General Contractor (CM/GC)'s Application for Payment, issue to the Construction Manager/General Contractor (CM/GC) a written acknowledgement of receipt of the Construction Manager/General Contractor (CM/GC)'s Application for Payment indicating the amount the City has determined to be properly due and, if applicable, the reasons for withholding payment in whole or in part.

#### § A.9.5 DECISIONS TO WITHHOLD PAYMENT

§ A.9.5.1 The City may withhold a payment in whole or in part to the extent necessary to protect the City due to the City's determination that the Work has not progressed to the point indicated in the Application for Payment or that the quality of Work is not in accordance with the Guaranteed Maximum Price (GMP) Documents. The City may also withhold a payment because of subsequently discovered evidence, or may nullify the whole or a part of an Application for Payment previously issued to such extent as may be necessary to protect the City from loss for which the Construction Manager/General Contractor (CM/GC) is responsible, including loss resulting from acts and omissions, because of, but not limited to, the following:

1. defective Work not remedied;
2. third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the City is provided by the Construction Manager/General Contractor (CM/GC);
3. failure of the Construction Manager/General Contractor (CM/GC) to make payments properly to Contractors or for design services labor, materials or equipment;

4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
5. damage to the City or a separate contractor;
6. reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
7. failure to carry out the Work in accordance with the Guaranteed Maximum Price (GMP) Documents.

§ A.9.5.2 When the above reasons for withholding payment are removed to the City's satisfaction, payment will be made for amounts previously withheld.

#### § A.9.6 PROGRESS PAYMENTS

§ A.9.6.1 After the City has issued a written acknowledgement of receipt of the Construction Manager/General Contractor (CM/GC)'s Application for Payment, the City shall make payment of the amount, in the manner and within the time provided, in the Guaranteed Maximum Price (GMP) Documents.

§ A.9.6.2 The Construction Manager/General Contractor (CM/GC) shall promptly pay the Architect, each design professional and other consultants retained directly by the Construction Manager/General Contractor (CM/GC), upon receipt of payment from the City, out of the amount paid to the Construction Manager/General Contractor (CM/GC) on account of each such party's respective portion of the Work, the amount to which each such party is entitled.

§ A.9.6.3 The Construction Manager/General Contractor (CM/GC) shall promptly pay each Contractor, upon receipt of payment from the City, out of the amount paid to the Construction Manager/General Contractor (CM/GC) on account of such Contractor's portion of the Work, the amount to which said Contractor is entitled, reflecting percentages actually retained from payments to the Construction Manager/General Contractor (CM/GC) on account of the Contractor's portion of the Work. The Construction Manager/General Contractor (CM/GC) shall, by appropriate agreement with each Contractor, require each Contractor to make payments to Subcontractors in a similar manner.

§ A.9.6.4 The City shall have no obligation to pay or to see to the payment of money to an Architect, design professional, consultant, or Contractor, except as may otherwise be required by law.

§ A.9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections A.9.6.3 and A.9.6.4,

§ A.9.6.6 A progress payment, or partial or entire use or occupancy of the Project by the City shall not constitute acceptance of Work not in accordance with the Guaranteed Maximum Price (GMP) Documents.

§ A.9.6.7 Unless the Construction Manager/General Contractor (CM/GC) provides the City with a payment bond in the full penal sum of the Contract Sum, payments received by the Construction Manager/General Contractor (CM/GC) for Work properly performed by Contractors and suppliers shall be held by the Construction Manager/General Contractor (CM/GC) for those Contractors or suppliers who performed Work or furnished materials, or both, under contract with the Construction Manager/General Contractor (CM/GC) for which payment was made by the City.

#### § A.9.7 FAILURE OF PAYMENT

§ A.9.7.1 If for reasons other than those enumerated in Section A.9.5.1, the City does not issue a payment within the time period required by Section 5.1.3 of the Guaranteed Maximum Price (GMP) Contract, then the Construction Manager/General Contractor (CM/GC) may, upon seven (7) additional days' written notice to the City, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Construction Manager/General Contractor (CM/GC)'s reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Guaranteed Maximum Price (GMP) Documents.

#### § A.9.8 SUBSTANTIAL COMPLETION

§ A.9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Guaranteed Maximum Price (GMP) Documents so that the City can occupy or use the Work or a portion thereof for its intended use.

§ A.9.8.2 When the Construction Manager/General Contractor (CM/GC) considers that the Work, or a portion thereof that the City agrees to accept separately, is substantially complete, the Construction Manager/General Contractor (CM/GC) shall prepare and submit to the City a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Construction Manager/General Contractor (CM/GC) to complete all Work in accordance with the Guaranteed Maximum Price (GMP) Documents.

§ A.9.8.3 Upon receipt of the Construction Manager/General Contractor (CM/GC)'s list, the City shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the City's inspection discloses any item, whether or not included on the Construction Manager/General Contractor (CM/GC)'s list, that is not substantially complete, the Construction Manager/General Contractor (CM/GC) shall complete or correct such item. In such case, the Construction Manager/General Contractor (CM/GC) shall then submit a request for another inspection by the City to determine whether the Construction Manager/General Contractor (CM/GC)'s Work is substantially complete.

§ A.9.8.4 In the event of a dispute regarding whether the Construction Manager/General Contractor (CM/GC)'s Work is substantially complete, the dispute shall be resolved by informal negotiations of the parties or pursuant to the processes outlined in Sections A.7.1 and A.7.2.

§ A.9.8.5 When the Work or designated portion thereof is substantially complete, the Construction Manager/General Contractor (CM/GC) shall prepare for the City's signature an Acknowledgement of Substantial Completion which, when signed by the City, shall establish (1) the date of Substantial Completion of the Work, (2) responsibilities between the City and Construction Manager/General Contractor (CM/GC) for security, maintenance, heat, utilities, damage to the Work and insurance, and (3) the time within which the Construction Manager/General Contractor (CM/GC) shall finish all items on the list accompanying the Acknowledgement. When the City's inspection discloses that the Work or a designated portion thereof is substantially complete, the City shall sign the Acknowledgement of Substantial Completion. Warranties required by the Guaranteed Maximum Price (GMP) Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Acknowledgement of Substantial Completion.

§ A.9.8.6 Upon execution of the Acknowledgement of Substantial Completion and consent of surety, if any, the City shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Guaranteed Maximum Price (GMP) Documents.

#### § A.9.9 PARTIAL OCCUPANCY OR USE

§ A.9.9.1 The City may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Construction Manager/General Contractor (CM/GC), provided such occupancy or use is consented to by the insurer, if so required by the insurer, and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the City and Construction Manager/General Contractor (CM/GC) have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for completion or correction of the Work and commencement of warranties required by the Guaranteed Maximum Price (GMP) Documents. When the Construction Manager/General Contractor (CM/GC) considers a portion substantially complete, the Construction Manager/General Contractor (CM/GC) shall prepare and submit a list to the City as provided under Section A.9.8.2. Consent of the Construction Manager/General Contractor (CM/GC) to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the City and Construction Manager/General Contractor (CM/GC).

§ A.9.9.2 Immediately prior to such partial occupancy or use, the City and Construction Manager/General Contractor (CM/GC) shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.

§ A.9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Guaranteed Maximum Price (GMP) Documents.

#### § A.9.10 FINAL COMPLETION AND FINAL PAYMENT

§ A.9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the City shall promptly make such inspection and, when the City finds the Work acceptable under the Guaranteed Maximum Price (GMP) Documents and fully performed, the City shall, subject to Section A.9.10.2, promptly make final payment to the Construction Manager/General Contractor (CM/GC).

§ A.9.10.2 Neither final payment nor any remaining retained percentage will become due until the Construction Manager/General Contractor (CM/GC) submits to the City (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the City or the City's property might be responsible or encumbered (less amounts withheld by City) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Guaranteed Maximum Price (GMP) Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) days' prior written notice has been given to the City, (3) a written statement that the Construction Manager/General Contractor (CM/GC) knows of no substantial reason that the insurance will not be renewable to cover the period required by the Guaranteed Maximum Price (GMP) Documents, (4) consent of surety, if any, to final payment, and (5) if required by the City, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Guaranteed Maximum Price (GMP) Contract, to the extent and in such form as may be designated by the City. If a Contractor refuses to furnish a release or waiver required by the City, the Construction Manager/General Contractor (CM/GC) may furnish a bond satisfactory to the City to indemnify the City against such lien. If such lien remains unsatisfied after payments are made, the Construction Manager/General Contractor (CM/GC) shall refund to the City all money that the City may be liable to pay in connection with the discharge of such lien, including all costs and reasonable attorneys' fees.

§ A.9.10.3 If, after the City determines that the Construction Manager/General Contractor (CM/GC)'s Work or designated portion thereof is substantially completed, final completion thereof is materially delayed through no fault of the Construction Manager/General Contractor (CM/GC) or by issuance of a Change Order or a Construction Change Directive affecting final completion, the City shall, upon application by the Construction Manager/General Contractor (CM/GC), make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Guaranteed Maximum Price (GMP) Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Construction Manager/General Contractor (CM/GC). Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ A.9.10.4 The making of final payment shall constitute a waiver of Claims by the City except for those claims arising from the following or similar issues:

1. liens, Claims, security interests or encumbrances arising out of the Guaranteed Maximum Price (GMP) Documents and unsettled;
2. failure of the Work to comply with the requirements of the Guaranteed Maximum Price (GMP) Documents; or
3. terms of special warranties required by the Guaranteed Maximum Price (GMP) Documents.

§ A.9.10.5 Acceptance of final payment by the Construction Manager/General Contractor (CM/GC), a Contractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## **ARTICLE A.10: PROTECTION OF PERSONS AND PROPERTY**

### **§ A.10.1 SAFETY PRECAUTIONS AND PROGRAMS**

§ A.10.1.1 The Construction Manager/General Contractor (CM/GC) shall be responsible for initiating and maintaining all safety precautions and programs in connection with the performance of the Guaranteed Maximum Price (GMP) Contract.

### **§ A.10.2 SAFETY OF PERSONS AND PROPERTY**

§ A.10.2.1 The Construction Manager/General Contractor (CM/GC) shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

1. employees on the Work and other persons who may be affected thereby;
2. the Work and materials and equipment to be incorporated therein, whether in storage on or off the site or under the care, custody or control of the Construction Manager/General Contractor (CM/GC) or the Construction Manager/General Contractor (CM/GC)'s Contractors or Subcontractors; and
3. other property at the site or adjacent thereto, such as, but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ A.10.2.2 The Construction Manager/General Contractor (CM/GC) shall give notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.



§ A.10.2.3 The Construction Manager/General Contractor (CM/GC) shall erect and maintain, as required by existing conditions and performance of the Guaranteed Maximum Price (GMP) Documents, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ A.10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Construction Manager/General Contractor (CM/GC) shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ A.10.2.5 The Construction Manager/General Contractor (CM/GC) shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Guaranteed Maximum Price (GMP) Documents) to property referred to in Sections A.10.2.1(2) and A.10.2.1(3) caused in whole or in part by the Construction Manager/General Contractor (CM/GC), the Architect, a Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable and for which the Construction Manager/General Contractor (CM/GC) is responsible under Sections A.10.2.1(2) and A.10.2.1(3). The foregoing obligations of the Construction Manager/General Contractor (CM/GC) are in addition to the Construction Manager/General Contractor (CM/GC)'s obligations under Section A.3.17.

§ A.10.2.6 The Construction Manager/General Contractor (CM/GC) shall designate in writing to the City a responsible individual whose duty shall be the prevention of accidents.

§ A.10.2.7 The Construction Manager/General Contractor (CM/GC) shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

### §A.10.3 HAZARDOUS MATERIALS

§ A.10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Construction Manager/General Contractor (CM/GC), the Construction Manager/General Contractor (CM/GC) shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the City.

§ A.10.3.2 The Construction Manager/General Contractor (CM/GC) shall obtain the services of a licensed laboratory satisfactory to the City to verify the presence or absence of the material or substance reported by the Construction Manager/General Contractor (CM/GC) and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Guaranteed Maximum Price (GMP) Documents, the Construction Manager/General Contractor (CM/GC) shall furnish in writing to the City the names and qualifications of persons or entities who are to perform tests verifying the presence or

absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The City shall promptly reply to the Construction Manager/General Contractor (CM/GC) in writing stating whether or not the City objects to the persons or entities proposed by the Construction Manager/General Contractor (CM/GC). If the City has an objection to a person or entity proposed by the Construction Manager/General Contractor (CM/GC), the City shall propose another to whom the City has no reasonable objection. When the material or substance has been rendered harmless, work in the affected area shall resume upon written agreement of the City and Construction Manager/General Contractor (CM/GC). The Contract Time shall be extended appropriately, and the Contract Sum shall be increased in the amount of the Construction Manager/General Contractor (CM/GC)'s reasonable additional costs of shutdown, delay and start-up, which adjustments shall be accomplished as provided in Article A.7.

§ A.10.4 If, without negligence on the part of the Construction Manager/General Contractor (CM/GC), the Construction Manager/General Contractor (CM/GC) is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Guaranteed Maximum Price (GMP) Documents, the City shall indemnify the Construction Manager/General Contractor (CM/GC) for one half of all cost and expense thereby incurred.

§ A.10.5 RESERVED

§ A.10.6 EMERGENCIES

§ A.10.6.1 In an emergency affecting safety of persons or property, the Construction Manager/General Contractor (CM/GC) shall act to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Construction Manager/General Contractor (CM/GC) on account of an emergency shall be determined by consultation with the City according to the process outlined in Sections A.7.1 and A.7.2.

## **ARTICLE A.11: INSURANCE AND BONDS**

§ A.11.1 Except as may otherwise be set forth in the Guaranteed Maximum Price (GMP) Contract or elsewhere in the Guaranteed Maximum Price (GMP) Documents, the City and Construction Manager/General Contractor (CM/GC) shall purchase and maintain the following types of insurance with limits of liability and deductible amounts and subject to such terms and conditions, as set forth in this Article A.1.1.

### **§A.11.2 CONSTRUCTION MANAGER/GENERAL CONTRACTOR'S LIABILITY INSURANCE**

§ A.11.2.1 The Construction Manager/General Contractor (CM/GC) shall purchase from and maintain in a company or companies lawfully authorized to do business in Colorado such insurance as will protect the Construction Manager/General Contractor (CM/GC) from claims set forth below that may arise out of or result from the Construction Manager/General Contractor (CM/GC)'s operations under the Guaranteed Maximum Price (GMP) Contract and for which the

Construction Manager/General Contractor (CM/GC) may be legally liable, whether such operations be by the Construction Manager/General Contractor (CM/GC), by a Contractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed with minimum limits of five hundred thousand dollars (\$500,000) each incident, five hundred thousand dollars (\$500,000) disease – policy limit, and five hundred thousand dollars (\$500,000) disease – each employee;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of the Construction Manager/General Contractor (CM/GC)'s employees with a limit of liability of not less than one million dollars (\$1,000,000) for all damages arising out of bodily injury, personal injury, including death, at any time resulting therefrom, for any one (1) person, and not less than two million dollars (\$2,000,000) for all damages arising out of bodily injury, personal injury, including death, at any time resulting therefrom sustained by two (2) or more persons in any one (1) accident;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than the Construction Manager/General Contractor (CM/GC)'s employees with a limit of liability of not less than one million dollars (\$1,000,000) for all damages arising out of bodily injury, personal injury, including death, at any time resulting therefrom, for any one (1) person, and not less than two million dollars (\$2,000,000) for all damages arising out of bodily injury, personal injury, including death, at any time resulting therefrom sustained by two (2) or more persons in any one (1) accident;
4. claims for damages insured by usual personal injury liability coverage with a limit of liability of not less than one million dollars (\$1,000,000) for all damages arising out of bodily injury, personal injury, including death, at any time resulting therefrom, for any one (1) person, and not less than two million dollars (\$2,000,000) for all damages arising out of bodily injury, personal injury, including death, at any time resulting therefrom sustained by two (2) or more persons in any one (1) accident;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom with a limit of liability of not less than one million dollars (\$1,000,000) for all damages arising out of the injury to or destruction of property in any one (1) accident, and not less than two million dollars (\$2,000,000) for all damages arising out of injury to, or destruction of property, including the City's property, during the policy period;

6. claims for damages because of bodily injury, death of a person, or property damage arising out of ownership, maintenance or use of a motor vehicle with minimum combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000) each occurrence and one million dollars (\$1,000,000) aggregate with respect to each of CM/GC's owned, hired, or non-owned vehicle assigned to or used in performance of the services
7. claims for bodily injury or property damage arising out of completed operations with a limit of liability of not less than one million dollars (\$1,000,000) for all damages arising out of bodily injury, personal injury, including death, at any time resulting therefrom, for any one person, and not less than two million dollars (\$2,000,000) for all damages arising out of bodily injury, personal injury, including death, at any time resulting therefrom sustained by two or more persons in any one accident; and
8. claims involving contractual liability insurance applicable to the Construction Manager/General Contractor (CM/GC)'s obligations under Section A.3.17, with minimum limits of six hundred thousand dollars (\$600,000) each claim and one million dollars (\$1,000,000) general aggregate.

§ A.11.2.2 The insurance required by Section A.11.2.1 shall be written for not less than set forth above or as otherwise required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

§ A.11.2.3 Certificates of insurance acceptable to the City shall be filed with the City prior to commencement of the Work. These certificates and the insurance policies required by this Section A.11.2 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 City. 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 as required by Section A.9.10.2. Any information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be promptly furnished to the City by the Construction Manager/General Contractor (CM/GC).

#### § A.11.3 CITY'S LIABILITY INSURANCE

§ A.11.3.1 The City shall be responsible for purchasing and maintaining the City's usual liability insurance.

#### § A.11.4 PROPERTY INSURANCE

§ A.11.4.1 Unless otherwise provided, the City shall be responsible for purchasing and maintaining the City's usual liability insurance.

## A.11.5 PAYMENT, PERFORMANCE MAINTENANCE AND WARRANTY BOND

§ A.11.5.1 The City shall have the right to require the Construction Manager/General Contractor (CM/GC) to furnish bonds covering faithful performance of the Guaranteed Maximum Price (GMP) Contract and payment of obligations arising thereunder, including payment to design professionals engaged by or on behalf of the Construction Manager/General Contractor (CM/GC), as stipulated in bidding requirements or specifically required in the Guaranteed Maximum Price (GMP) Contract or elsewhere in the Guaranteed Maximum Price (GMP) Documents on the date of execution of the Guaranteed Maximum Price (GMP) Contract.

## ARTICLE A.12: UNCOVERING AND CORRECTION OF WORK

### § A.12.1 UNCOVERING OF WORK

§ A.12.1.1 If a portion of the Work is covered contrary to requirements specifically expressed in the Guaranteed Maximum Price (GMP) Documents; it must be uncovered for the City's examination and be replaced at the Construction Manager/General Contractor (CM/GC)'s expense without change in the Contract Time.

§ A.12.1.2 If a portion of the Work has been covered that the City has not specifically requested to examine prior to its being covered, the City may request to see such Work, and it shall be uncovered by the Construction Manager/General Contractor (CM/GC). If such Work is in accordance with the Guaranteed Maximum Price (GMP) Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the City's expense. If such Work is not in accordance with the Guaranteed Maximum Price (GMP) Documents, correction shall be at the Construction Manager/General Contractor (CM/GC)'s expense.

### § A.12.2 CORRECTION OF WORK

#### § A.12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

§ A.12.2.1.1 The Construction Manager/General Contractor (CM/GC) shall promptly correct Work rejected by the City or failing to conform to the requirements of the Guaranteed Maximum Price (GMP) Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing, shall be at the Construction Manager/General Contractor (CM/GC)'s expense.

#### § A.12.2.2 AFTER SUBSTANTIAL COMPLETION

§ A.12.2.2.1 In addition to the Construction Manager/General Contractor (CM/GC)'s obligations under Section A.3.5, if, within two (2) years after the date of Substantial Completion, or after the date for commencement of warranties established under Section A.9.8.5, or by terms of an applicable special warranty required by the Guaranteed Maximum Price (GMP) Documents, any of the Work is found to be not in accordance with the requirements of the Guaranteed Maximum

Price (GMP) Documents, the Construction Manager/General Contractor (CM/GC) shall correct it promptly after receipt of written notice from the City to do so unless the City has previously given the Construction Manager/General Contractor (CM/GC) a written acceptance of such condition. The City shall give such notice promptly after discovery of the condition. During the two-year period for correction of Work, if the City fails to notify the Construction Manager/General Contractor (CM/GC) and give the Construction Manager/General Contractor (CM/GC) an opportunity to make the correction, the City waives the rights to require correction by the Construction Manager/General Contractor (CM/GC) and to make a claim for breach of warranty, unless discovery of the condition was not possible or reasonable within the two-year period. If the Construction Manager/General Contractor (CM/GC) fails to correct non-conforming Work promptly and to the City's satisfaction after receipt of notice from the City, the City may correct it in accordance with Section A.2.5.

§ A.12.2.2.2 The two-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

§ A.12.2.2.3 The two-year period for correction of Work shall not be extended by corrective Work performed by the Construction Manager/General Contractor (CM/GC) pursuant to this Section A.12.2.

§ A.12.2.3 The Construction Manager/General Contractor (CM/GC) shall remove from the site portions of the Work that are not in accordance with the requirements of the Guaranteed Maximum Price (GMP) Documents and are neither corrected by the Construction Manager/General Contractor (CM/GC) nor accepted by the City.

§ A.12.2.4 The Construction Manager/General Contractor (CM/GC) shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the City or separate contractors caused by the Construction Manager/General Contractor (CM/GC)'s correction or removal of Work that is not in accordance with the requirements of the Guaranteed Maximum Price (GMP) Documents.

§ A.12.2.5 Nothing contained in this Section A.12.2 shall be construed to establish a period of limitation with respect to other obligations the Construction Manager/General Contractor (CM/GC) might have under the Guaranteed Maximum Price (GMP) Documents. Establishment of the two-year period for correction of Work as described in Section A.12.2.2 relates only to the specific obligation of the Construction Manager/General Contractor (CM/GC) to correct the Work, and has no relationship to the time within which the obligation to comply with the Guaranteed Maximum Price (GMP) Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Construction Manager/General Contractor (CM/GC)'s liability with respect to the Construction Manager/General Contractor (CM/GC)'s obligations other than specifically to correct the Work.

§ A.12.3 ACCEPTANCE OF NONCONFORMING WORK

§ A.12.3.1 If the City prefers to accept Work not in accordance with the requirements of the Guaranteed Maximum Price (GMP) Documents, the City may do so instead of requiring its removal and correction, in which case the Contract Sum will be equitably adjusted by Change Order. Such adjustment shall be effected whether or not final payment has been made.

## **ARTICLE A.13: MISCELLANEOUS PROVISIONS**

### **§ A.13.1 GOVERNING LAW**

§ A.13.1.1 The Guaranteed Maximum Price (GMP) Contract shall be governed by the law of the state of Colorado.

### **§ A.13.2 SUCCESSORS AND ASSIGNS**

§ A.13.2.1 The City and Construction Manager/General Contractor (CM/GC) 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 Guaranteed Maximum Price (GMP) Documents. Except as provided in Section A.13.2.2, neither party to the Guaranteed Maximum Price (GMP) Contract shall assign the Guaranteed Maximum Price (GMP) 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 Guaranteed Maximum Price (GMP) Contract.

§ A.13.2.2 The City may, without consent of the Construction Manager/General Contractor (CM/GC), assign the Guaranteed Maximum Price (GMP) Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the City's rights and obligations under the Guaranteed Maximum Price (GMP) Documents. The Construction Manager/General Contractor (CM/GC) shall execute all consents reasonably required to facilitate such assignment.

### **§ A.13.3 WRITTEN NOTICE**

§ A.13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if sent by registered or certified mail to the last business address known to the party giving notice.

### **§ A.13.4 RIGHTS AND REMEDIES**

§ A.13.4.1 Duties and obligations imposed by the Guaranteed Maximum Price (GMP) Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ A.13.4.2 No action or failure to act by the City or Construction Manager/General Contractor (CM/GC) shall constitute a waiver of a right or duty afforded them under the Guaranteed

Maximum Price (GMP) Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

#### § A.13.5 TESTS AND INSPECTIONS

§ A.13.5.1 Tests, inspections and approvals of portions of the Work required by the Guaranteed Maximum Price (GMP) Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Construction Manager/General Contractor (CM/GC) shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the City or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Construction Manager/General Contractor (CM/GC) shall give timely notice of when and where tests and inspections are to be made so that the City may be present for such procedures.

§ A.13.5.2 If the City or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section A.13.5.1, the City shall in writing instruct the Construction Manager/General Contractor (CM/GC) to make arrangements for such additional testing, inspection or approval by an entity acceptable to the City, and the Construction Manager/General Contractor (CM/GC) shall give timely notice to the City of when and where tests and inspections are to be made so that the City may be present for such procedures. Except as provided in Section A.13.5.3, the City shall pay one half of such costs.

§ A.13.5.3 If such procedures for testing, inspection or approval under Sections A.13.5.1 and A.13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Guaranteed Maximum Price (GMP) Documents, all costs made necessary by such failure, including those of repeated procedures, shall be the Construction Manager/General Contractor (CM/GC)'s expense.

§ A.13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Guaranteed Maximum Price (GMP) Documents, be secured by the Construction Manager/General Contractor (CM/GC) and promptly delivered to the City.

§ A.13.5.5 If the City is to observe tests, inspections or approvals required by the Guaranteed Maximum Price (GMP) Documents, the City will do so promptly and, where practicable, at the normal place of testing.

§ A.13.5.6 Tests or inspections conducted pursuant to the Guaranteed Maximum Price (GMP) Documents shall be made promptly to avoid unreasonable delay in the Work.

#### § A.13.6 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

§ A.13.6.1 As between the City and Construction Manager/General Contractor (CM/GC):



1. Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
2. Between Substantial Completion and Final Application for Payment. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Application for Payment; and
3. After Final Application for Payment. As to acts or failures to act occurring after the relevant date of issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Construction Manager/General Contractor (CM/GC) pursuant to any Warranty provided under Section A.3.5, the date of any correction of the Work or failure to correct the Work by the Construction Manager/General Contractor (CM/GC) under Section A.12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Construction Manager/General Contractor (CM/GC) or City, whichever occurs last.

**ARTICLE A.14: TERMINATION OR SUSPENSION OF THE GUARANTEED  
MAXIMUM PRICE (GMP) CONTRACT**

**§ A.14.1 TERMINATION BY THE CONSTRUCTION MANAGER/GENERAL  
CONTRACTOR (CM/GC)**

§ A.14.1.1 The Construction Manager/General Contractor (CM/GC) may terminate the Guaranteed Maximum Price (GMP) Contract if the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Construction Manager/General Contractor (CM/GC) or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Construction Manager/General Contractor (CM/GC), for any of the following reasons:

1. issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
2. an act of government, such as a declaration of national emergency that requires all Work to be stopped;
3. the City has failed to furnish to the Construction Manager/General Contractor (CM/GC) promptly, upon the Construction Manager/General Contractor (CM/GC)'s request, reasonable evidence of proper budget appropriations as required by Section A.2.2.8.

§ A.14.1.2 The Construction Manager/General Contractor (CM/GC) may terminate the Guaranteed Maximum Price (GMP) Contract if, through no act or fault of the Construction Manager/General Contractor (CM/GC) or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Construction Manager/General Contractor (CM/GC), repeated suspensions, delays or interruptions of the entire Work by the City, as described in Section A.14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ A.14.1.3 If one of the reasons described in Sections A.14.1.1 or A.14.1.2 exists, the Construction Manager/General Contractor (CM/GC) may, upon thirty (30) days' written notice to the City, terminate the Guaranteed Maximum Price (GMP) Contract and recover from the City payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ A.14.1.4 If the Work is stopped for a period of ninety (90) consecutive days through no act or fault of the Construction Manager/General Contractor (CM/GC) or a Contractor or their agents or employees or any other persons performing portions of the Work under a director indirect contract with the Construction Manager/General Contractor (CM/GC) because the City has persistently failed to fulfill the City's obligations under the Guaranteed Maximum Price (GMP) Documents with respect to matters important to the progress of the Work, the Construction Manager/General Contractor (CM/GC) may, upon thirty (30) additional days' written notice to the City, terminate the Guaranteed Maximum Price (GMP) Contract and recover from the City as provided in Section A.14.1.3.

#### § A.14.2 TERMINATION BY THE CITY FOR CAUSE

§ A.14.2.1 The City may terminate the Guaranteed Maximum Price (GMP) Contract if the Construction Manager/General Contractor (CM/GC):

1. fails to supply enough properly skilled workers or proper materials;
2. fails to make payment to Contractors for services, materials or labor in accordance with the respective agreements between the Construction Manager/General Contractor (CM/GC) and the Architect and Contractors;
3. disregards laws, ordinances or rules, regulations or orders of a public authority having jurisdiction; or
4. is otherwise guilty of breach of a provision of the Guaranteed Maximum Price (GMP) Documents.

§ A.14.2.2 When any of the above reasons exist, the City may without prejudice to any other rights or remedies of the City and after giving the Construction Manager/General Contractor (CM/GC) and the Construction Manager/General Contractor (CM/GC)'s surety, if any, seven (7)

days' written notice, terminate employment of the Construction Manager/General Contractor (CM/GC) and may, subject to any prior rights of the surety:

1. take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Construction Manager/General Contractor (CM/GC);
2. accept assignment of contracts pursuant to Section A.5.5.1; and
3. finish the Work by whatever reasonable method the City may deem expedient. Upon request of the Construction Manager/General Contractor (CM/GC), the City shall furnish to the Construction Manager/General Contractor (CM/GC) an accounting of the costs incurred by the City in finishing the Work.

§ A.14.2.3 When the City terminates the Guaranteed Maximum Price (GMP) Contract for one of the reasons stated in Section A.14.2.1, the Construction Manager/General Contractor (CM/GC) shall not be entitled to receive further payment until the Work is finished.

§ A.14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the City and not expressly waived, such excess shall be paid to the Construction Manager/General Contractor (CM/GC). If such costs and damages exceed the unpaid balance, the Construction Manager/General Contractor (CM/GC) shall pay the difference to the City.

#### § A.14.3 SUSPENSION BY THE CITY FOR CONVENIENCE

§ A.14.3.1 The City may, without cause, order the Construction Manager/General Contractor (CM/GC) in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the City may determine.

§ A.14.3.2 The Contract Sum and Contract Time may be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section A.14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

1. that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Construction Manager/General Contractor (CM/GC) is responsible; or
2. that an equitable adjustment is made or denied under another provision of the Guaranteed Maximum Price (GMP) Contract.

#### § A.14.4 TERMINATION BY THE CITY FOR CONVENIENCE

§ A.14.4.1 The City may, at any time, terminate the Guaranteed Maximum Price (GMP) Contract for the City's convenience and without cause.

§ A.14.4.2 Upon receipt of written notice from the City of such termination for the City's convenience, the Construction Manager/General Contractor (CM/GC) shall:

1. cease operations as directed by the City in the notice;
2. take actions necessary, or that the City may direct, for the protection and preservation of the Work; and
3. except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing contracts and purchase orders and enter into no further contracts and purchase orders.

§ A.14.4.3 In the event of termination for the City's convenience prior to commencement of construction, the Construction Manager/General Contractor (CM/GC) shall be entitled to receive payment for design services performed, costs incurred by reason of such termination and reasonable overhead and profit on design services not completed. In case of termination for the City's convenience after commencement of construction, the Construction Manager/General Contractor (CM/GC) shall be entitled to receive payment for Work executed and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

**EXHIBIT B**  
to the  
**GUARANTEED MAXIMUM PRICE (GMP) CONTRACT #4**  
Between  
**The City of Northglenn, Colorado**  
And

**ECI Site Construction Management, Inc.**

Project: CROKE RESERVOIR SHORELINE STABILIZATION GMP #4

THE CITY of NORTHGLENN, COLORADO  
11701 Community Center Drive  
P.O. Box 330061  
Northglenn, CO 80233

THE CONSTRUCTION MANAGER/GENERAL CONTRACTOR:  
ECI Site Construction Management, Inc.  
2526 East Highway 402  
P.O. Box 2135  
Loveland, CO 80539

**Determination of the Cost of the Work**

**ARTICLE B.1: CONTROL ESTIMATE**

§ B.1.1 Where the Contract Sum is the Cost of the Work, plus the Construction Manager/General Contractor (CM/GC)'s Fee without a Guaranteed Maximum Price pursuant to Section 4.3 of the Guaranteed Maximum Price (GMP) Contract, the Construction Manager/General Contractor (CM/GC) shall prepare and submit to the City prior to the Construction Manager/General Contractor (CM/GC)'s first Application for Payment, in writing, a Control Estimate. The Control Estimate shall include the estimated Cost of the Work plus the Construction Manager/General Contractor (CM/GC)'s Fee. The Control Estimate shall be used to monitor actual costs.

§ B.1.2 The Control Estimate shall include:

1. the documents enumerated in Article 8 of the Guaranteed Maximum Price (GMP) Contract, including all Addenda thereto and the Terms and Conditions of the Contract;
2. a statement of the estimated Cost of the Work showing separately the compensation for design services, construction costs organized by trade categories or systems and the Construction Manager/General Contractor (CM/GC) Fee; and
3. contingencies for further development of design and construction.

§ B.1.3 The Construction Manager/General Contractor (CM/GC) shall meet with the City to review the Control Estimate, in the event that the City discovers any inconsistencies or inaccuracies in the information presented, it shall promptly notify the Construction Manager/General Contractor (CM/GC), who shall make appropriate adjustments to the Control Estimate. When the Control Estimate is acceptable to the City, the City shall acknowledge its acceptance in writing. The City's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ B.1.4 The Construction Manager/General Contractor (CM/GC) shall develop and implement a detailed system of cost control that will provide the City with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the City, in writing, no later than the Construction Manager/General Contractor (CM/GC)'s first Application for Payment and shall be revised monthly or at other intervals as mutually agreed.

## **ARTICLE B.2: COSTS TO BE REIMBURSED**

### **§ B.2.1 COST OF THE WORK**

The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager/General Contractor (CM/GC) in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the City. The Cost of the Work shall include only the items set forth in this Article B.2.

### **§ B.2.2 LABOR COSTS**

§ B.2.2.1 Wages of construction workers directly employed by the Construction Manager/General Contractor (CM/GC) to perform the construction of the Work at the site or, with the City's approval, at off-site locations.

§ B.2.2.2 Wages or salaries of the Construction Manager/General Contractor (CM/GC)'s supervisory and administrative personnel when stationed at the site with the City's approval.

§ B.2.2.3 Wages and salaries of the Construction Manager/General Contractor (CM/GC)'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.

§ B.2.2.4 Costs paid or incurred by the Construction Manager/General Contractor (CM/GC) 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 8.2.2.1 through B.2.2.3.

### § B.2.3 CONTRACT COSTS

§ B.2.3.1 Payments made by the Construction Manager/General Contractor (CM/GC) to Contractors in accordance with the requirements of their contracts.

### § B.2.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

§ B.2.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ B.2.4.2 Costs of materials described in the preceding Section 8.2.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the City's property at the completion of the Work or, at the City's option, shall be sold by the Construction Manager/General Contractor (CM/GC). Any amounts realized from such sales shall be credited to the City as a deduction from the Cost of the Work.

### § B.2.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

§ B.2.5.1 Costs, including transportation and 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/General Contractor (CM/GC) at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Construction Manager/General Contractor (CM/GC). The basis for the cost of items previously used by the Construction Manager/General Contractor (CM/GC) shall mean the fair market value.

§ B.2.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager/General Contractor (CM/GC) at the site, whether rented from the Construction Manager/General Contractor (CM/GC) or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the City's prior approval.

§ B.2.5.3 Costs of removal of debris from the site.

§ B.2.5.4 Cost 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.

§ B.2.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the City.

#### § B.2.6 DESIGN AND OTHER CONSULTING SERVICES

§ B.2.6.1 Compensation, including fees and reimbursable expenses, paid by the Construction Manager/General Contractor (CM/GC) for design and other consulting services required by the Guaranteed Maximum Price (GMP) Documents.

#### § B.2.7 MISCELLANEOUS COSTS

§ B.2.7.1 That portion of insurance and bond premiums that can be directly attributed to this Guaranteed Maximum Price (GMP) Contract.

§ B.2.7.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work.

§ B.2.7.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager/General Contractor (CM/GC) is required by the Guaranteed Maximum Price (GMP) Documents to pay.

§ B.2.7.4 Fees of laboratories for tests required by the Guaranteed Maximum Price (GMP) Documents except those related to defective or non-conforming Work for which reimbursement is excluded by Section A.13.5.3 of Exhibit A, Terms and Conditions, or other provisions of the Guaranteed Maximum Price (GMP) Documents and that do not fall within the scope of Section A.13.5.3.

§ B.2.7.5 Royalties and license fees paid for the use of a particular design process or product required by the Guaranteed Maximum Price (GMP) Documents, the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Guaranteed Maximum Price (GMP) Documents, and payments made in accordance with legal judgments against the Construction Manager/General Contractor (CM/GC) resulting from such suits or claims and payments of settlements made with the City's consent. However such costs of legal



defenses judgments and settlements shall not be included in the calculation of the Construction Manager/General Contractor (CM/GC)'s Fee or subject to the Guaranteed Maximum Price. If such royalties fees and costs are excluded by the last sentence of Section A.3.16.1 of Exhibit A, Terms and Conditions, or other provisions of the G Documents then they shall not be included in the Cost of the Work

§ B.2.7.6 Data processing costs related to the Work

#### § B.2.8 OTHER COSTS AND EMERGENCIES

§ B.2.8.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the City.

§ B.2.8.2 Costs due to emergencies 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 A.10.6 of Exhibit A, Terms and Conditions.

§ B.2.8.3 Cost of repairing or correcting damaged or non-conforming Work executed by the Construction Manager/General Contractor (CM/GC), Contractors, Subcontractors or suppliers, provided that such damaged or non-conforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager/General Contractor (CM/GC) and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager/General Contractor (CM/GC) from insurance, sureties, Contractors, Subcontractors or suppliers.

### **ARTICLE B.3: COSTS NOT TO BE REIMBURSED**

§ B.3.1 The Cost of the Work shall not include:

§ B.3.1.1 Salaries and other compensation of the Construction Manager/General Contractor (CM/GC)'s personnel stationed at the Construction Manager/General Contractor (CM/GC)'s principal office or offices other than the site office except as specifically provided in Sections B.2.2.2 and B.2.2.3.

§ B.3.1.2 Expenses of the Construction Manager/General Contractor (CM/GC)'s principal office and offices other than the site office.

§ B.3.1.3 Overhead and general expenses except as may be expressly included in Article B 2 of this Exhibit

§ B.3.1.4 The Construction Manager/General Contractor (CM/GC)'s capital expenses, including interest on the Construction Manager/General Contractor (CM/GC)'s capital employed for the Work.

§ B.3.1.5 Rental costs of machinery and equipment, except as specifically provided in Section B.2.5.2.

§ B.3.1.6 Except as provided in Section B.2.8.3 of this Guaranteed Maximum Price (GMP) Contract, costs due to the negligence or failure of the Construction Manager/General Contractor (CM/GC) to fulfill a specific responsibility of the Construction Manager/General Contractor (CM/GC), Contractors, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them maybe liable.

§ B.3.1.7 Any cost not specifically and expressly described in Article B.2, Costs to be Reimbursed.

§ B.3.1.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price, if any, to be exceeded.

#### **ARTICLE B.4: DISCOUNTS, REBATES AND REFUNDS**

§ B.4.1 Cash discounts obtained on payments made by the Construction Manager/General Contractor (CM/GC) shall accrue to the City if (1) before making the payment, the Construction Manager/General Contractor (CM/GC) included them in an Application for Payment and received payment from the City, or (2) the City has deposited funds with the Construction Manager/General Contractor (CM/GC) with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager/General Contractor (CM/GC). Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the City, and the Construction Manager/General Contractor (CM/GC) shall make provisions so that they can be secured.

§ B.4.2 Amounts that accrue to the City in accordance with the provisions of Section B.4.1 shall be credited to the City as a deduction from the Cost of Work.

#### **ARTICLE B.5: CONTRACTS AND OTHER AGREEMENTS OTHER THAN FOR DESIGN PROFESSIONALS HIRED BY THE CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC)**

§ B.5.1 Those portions of the Work that the Construction Manager/General Contractor (CM/GC) does not customarily perform with the Construction Manager/General Contractor (CM/GC)'s own personnel shall be performed by others under contracts or by other appropriate agreements with the Construction Manager/General Contractor (CM/GC). The City may designate specific persons or entities from whom the Construction Manager/General Contractor (CM/GC) shall obtain bids. The Construction Manager/General Contractor (CM/GC) shall obtain bids from Contractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the City. The City shall then determine which bids will be accepted. The Construction Manager/General Contractor (CM/GC) shall not be required to contract with anyone to whom the Construction Manager/General Contractor (CM/GC) has reasonable objection.

§ B.5.2 Contracts or other agreements shall conform to the applicable payment provisions of this Guaranteed Maximum Price (GMP) Contract, and shall not be awarded on the basis of cost plus

a fee without the City's prior consent.

## **ARTICLE B.6: ACCOUNTING RECORDS**

§ B.6.1 The Construction Manager/General Contractor (CM/GC) or any affiliated person or entity that performs a portion of the Work shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Guaranteed Maximum Price (GMP) Contract, and the accounting and control systems shall be satisfactory to the City. The City and the City's accountants shall be afforded access to, and shall be permitted to audit and copy, the Construction Manager/General Contractor (CM/GC)'s records, books, correspondence, instructions, receipts, contracts, purchase orders, vouchers, memoranda and other data relating to this Guaranteed Maximum Price (GMP) Contract, and the Construction Manager/General Contractor (CM/GC) shall preserve these for a period of three (3) years after final payment, or for such longer period as may be required by law.

§ B.6.2 When the Construction Manager/General Contractor (CM/GC) believes that all the Work required by the Guaranteed Maximum Price (GMP) Contract has been fully performed, the Construction Manager/General Contractor (CM/GC) shall deliver to the City's accountant a final accounting of the Cost of the Work.

§ B.6.3 The City's accountants will review and report in writing on the Construction Manager/General Contractor (CM/GC)'s final accounting within thirty (30) days after delivery of the final accounting. Based upon such Cost of the Work as the City's accountants report to be substantiated by the Construction Manager/General Contractor (CM/GC)'s final accounting, and provided the other conditions of Section A.9.10 of the Guaranteed Maximum Price (GMP) Contract have been met, the City will, within twenty-one (21) days after receipt of the written report of the City's accountants, notify the Construction Manager/General Contractor (CM/GC) in writing of the City's intention to make final payment or to withhold final payment.

§ B.6.4 If the City's accountants report the Cost of the Work as substantiated by the Construction Manager/General Contractor (CM/GC)'s final accounting to be less than claimed by the Construction Manager/General Contractor (CM/GC), the Construction Manager/General Contractor (CM/GC) shall be entitled to initiate resolution of the dispute pursuant to Article 6 of the Guaranteed Maximum Price (GMP) Contract and Article A.4 of Exhibit A, Terms and Conditions, for the disputed amount. If the Construction Manager/General Contractor (CM/GC) fails to initiate resolution of the dispute within sixty (60) days, the substantiated amount reported by the City's accountants shall become binding on the Construction Manager/General Contractor (CM/GC).

§ B.6.5 If, subsequent to final payment and at the City's request, the Construction Manager/General Contractor (CM/GC) incurs costs in connection with the correction of defective or non-conforming work as described in Article B.2, Costs to be Reimbursed, and not excluded by Article B.3, Costs Not to be Reimbursed, the City shall reimburse the Construction Manager/General Contractor (CM/GC) such costs and the Construction Manager/General Contractor (CM/GC)'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 any. If

the Construction Manager/General Contractor (CM/GC) has participated in savings as provided in Section 4.4.3.1 of the Guaranteed Maximum Price (GMP) Contract, the amount of such savings shall be recalculated and appropriate credit given to the City in determining the net amount to be paid by the City to the Construction Manager/General Contractor (CM/GC).

**EXHIBIT C**  
to the  
**GUARANTEED MAXIMUM PRICE (GMP) CONTRACT #4**  
Between  
**The City of Northglenn, Colorado**  
And

**ECI Site Construction Management, Inc.**

Project: CROKE RESERVOIR SHORELINE STABILIZATION GMP #4

THE CITY of NORTHGLENN, COLORADO  
11701 Community Center Drive  
P.O. Box 330061  
Northglenn, CO 80233

THE CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC):  
ECI Site Construction Management, Inc.  
2526 East Highway 402  
P.O. Box 2135  
Loveland, CO 80539

**Insurance and Bonds**

**ARTICLE C.1**

The City and Construction Manager/General Contractor (CM/GC) shall provide policies of liability insurance as required by the Guaranteed Maximum Price (GMP) Documents, or as follows:

**ARTICLE C.2**

The Construction Manager/General Contractor (CM/GC) shall provide surety bonds as follows:

**Payment and Performance Bonds**

§ C.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Guaranteed Maximum Price (GMP) Contract, the Construction Manager/General Contractor (CM/GC) shall promptly furnish a copy of the bonds or shall permit a copy to be made.