

CONSTRUCTION MANAGEMENT AGREEMENT

between

WEST VILLAGES IMPROVEMENT DISTRICT

and

for the construction of the

ATLANTA BRAVES SPRING TRAINING FACILITY PROJECT

AT WEST VILLAGES, FL

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**AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER**

THIS AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER (“Agreement”), is entered into as of the ____ day of ____, 2017, by and between **WEST VILLAGES IMPROVEMENT DISTRICT** (the “Owner”) and _____ (the “Construction Manager”), for the construction of the **ATLANTA BRAVES SPRING TRAINING FACILITY PROJECT AT WEST VILLAGES, FL** pursuant to the Contract Documents.

WITNESSETH:

For and in consideration of the mutual covenants and conditions herein contained, and other good and valuable consideration, the parties hereto, intending to be legally bound do hereby covenant and agree as follows:

**ARTICLE 1
DEFINITIONS AND ATTACHMENTS**

Section 1.1 Certain Defined Terms. As used herein, the term:

1.1.1 “Adjacent Property” means all land adjoining and surrounding the Ballpark Facility Site, including streets, sidewalks, bridges and buildings adjoining the Ballpark Facility Site.

1.1.2 “Affiliate” or “Affiliated Entity” of a specified Person mean any entity, corporation, partnership, limited liability company, sole proprietorship or other Person that directly or indirectly, through one or more intermediaries controls, is controlled by, or is under common control with the Person specified. For purposes of this definition, the terms “controls,” “controlled by,” or “under common control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person.

1.1.3 “Agreement” means this Agreement between Owner and Construction Manager, including all schedules, exhibits, attachments and other documents annexed hereto and made part hereof or incorporated herein by reference, as well as any addenda hereto or modifications hereof made and entered into as provided herein.

1.1.4 “Allowances” means items of Work, if any, that are defined or provided for in the GMP Amendment that the Owner agrees are not detailed enough for the Construction Manager to provide a definitive price.

1.1.5 “ANLBC” shall mean Atlanta National League Baseball Club, LLC.

1.1.6 “Applicable Law” means any and all laws (including all statutory enactments and common law), constitutions, treaties, statutes, codes, ordinances, charters, resolutions, orders, rules, regulations, guidelines, standards, governmental approvals, authorizations, or other directives or requirements of any Governmental Authority enacted,

adopted, promulgated, entered, implemented, ordered or issued and in force or deemed applicable by or under the authority of any Governmental Authority.

1.1.7 “**Application for Payment**” has the meaning ascribed to it in Section 14.1.

1.1.8 “**Architect**” means that certain person or entity designated from time to time by the Owner Representative as the Architect by written notice delivered to the Construction Manager as herein provided. As of the date of this Agreement, the Architect is _____.

1.1.9 “**Ballpark Facility Construction Documents**” means the Drawings and Specifications prepared by the Architect, its subconsultants and the Owner Consultants and approved by Owner, setting forth in detail the requirements for the Work for the Ballpark Facility Project.

1.1.10 “**Ballpark Facility Project**” means a MLB spring training facility located within the Ballpark Stadium Facility Site.

1.1.11 “**Ballpark Facility Site**” means the area designated by the Owner as the area on which the Work is to be performed hereunder, as set forth on **Exhibit B** and such other areas as may be designated by the Owner for access thereto and for the storage of the Construction Manager’s materials and equipment.

1.1.12 “**Change Order**” has the meaning ascribed to it in Section 7.1.

1.1.13 “**City**” means the **City of North Point, Florida**.

1.1.14 “**Completion Dates**” means the Substantial Completion Date and any Milestone Date required by the Contract Documents.

1.1.15 “**Construction Cost**” means the total cost of all elements of the Work designed or specified by the Architect or its subconsultants or the Owner Consultants and to be included in the GMP. Construction Cost shall include the Construction Manager’s Fee, General Conditions Costs, and Contingency, but does not include the compensation of Architect or its subconsultants or the Owner Consultants, the cost of the acquisition of the Ballpark Facility Site, and financing costs.

1.1.16 “**Construction Manager’s Fee**” has the meaning ascribed to it in Section 6.1.

1.1.17 “**Construction Manager’s Representative**” means the person designated from time to time by the Construction Manager as its representative in a notice delivered to the Owner as herein provided. As of the date of this Agreement, the Construction Manager’s Representative is _____.

1.1.18 “**Construction Schedule**” has the meaning ascribed to it in Section 4.8.1 of the General Conditions.

1.1.19 “**Contingency**” has the meaning ascribed to it in Section 5.6.

1.1.20 “**Contract Documents**” means this Agreement (including all Change Orders thereto, and the GMP Amendment once executed), the General Conditions of the Contract, the Ballpark Facility Construction Documents, all documents incorporated by reference into any of the foregoing documents.

1.1.21 “**Construction Change Directive**” means a written order issued by Owner on the form attached hereto as **Exhibit I** for a change in the Work or Contract Documents, which may or may not require an adjustment in the GMP or Contract Time under other provisions of the Contract Documents.

1.1.22 “**Cost of the Work**” has the meaning ascribed to it in Section 8.1.

1.1.23 “**County**” means the **Sarasota County, Florida**.

1.1.24 “**Design Development Documents**” means Drawings, Specifications and other documents prepared by the Architect including sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Ballpark Facility Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents will also include outline specifications that identify major materials and systems and establish in general their quality levels, all as more specifically described in the agreement between Owner and the Architect.

1.1.25 “**Drawings**” means the graphic and pictorial portions of the Contract Documents, approved by Owner, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

1.1.26 “**Equipment**” means all machinery and equipment (exclusive of Small Tools), and any part thereof, which is reasonably necessary for the proper performance of the Work, but which is not actually incorporated into the Work.

1.1.27 “**FF&E**” means furniture and furnishings and other equipment to be furnished and installed as required by the Contract Documents.

1.1.28 “**Final Completion**” has the meaning ascribed to it in Section 8.6.1 of the General Conditions.

1.1.29 “**Final Payment**” has the meaning ascribed to it in Section 15.1.

1.1.30 “**Fixed Construction Budget**” shall mean the maximum established Construction Cost, including Contingency, for the Ballpark Facility Project. The Fixed Construction Budget will be established by the Owner after approval of the Schematic Design Documents, and may be amended by the Owner thereafter in writing to the Construction Manager. The Fixed Construction Budget shall establish the basis for determining the Final GMP.

1.1.31 “General Conditions” means the General Conditions of this Ballpark Facility Construction Management Agreement for Construction the Ballpark Facility Project attached hereto as **Exhibit A**.

1.1.32 “General Conditions Costs” has the meaning ascribed to it in Section 5.5.

1.1.33 “GMP Amendment” means the Change Order to this Agreement establishing the Final GMP.

1.1.34 “Governmental Authority(ies)” means any federal, state, county, municipal or other governmental department, entity, authority, commission, board, bureau, court, agency, or any instrumentality of any of them having jurisdiction with respect to the Work, the Ballpark Facility Project, Ballpark Facility Site, Site, Adjacent Property, Owner, Construction Manager, Architect, and any other Project Team member.

1.1.35 “Guaranteed Maximum Price”, “GMP” and “Final GMP” have the same meaning and shall mean the absolute maximum fixed amount that the Construction Manager may be entitled to receive under this Agreement, as further set forth in Section 5.2 of this Agreement.

1.1.36 “Indemnitees” means the Owner, County, City, ANLBC, Beach Ranchlands, LLLP, Calben (US) Corporation, Lender, and each of their respective supervisors, directors, officers, elected officials, board members, shareholders, members, partners, employees, staff, counsel, staff managers, and agents.

1.1.37 “Lender” means any Person or Persons providing financing to the Owner or its Affiliates, the proceeds of which, directly or indirectly, are applied to the cost of the Ballpark Facility Project.

1.1.38 “MLB” means, collectively, the Office of the Commissioner of Baseball, the Commissioner of Baseball, the Major League Baseball clubs, the Ownership Committee of Baseball, and/or any other Person appointed by any of the foregoing, or any successor substitute association or entity and which engages in professional baseball in a manner comparable to Major League Baseball.

1.1.39 “Milestone” means certain identified requirements for completing specific portions of the Work. Milestones are identified in the Project Milestone Schedule in **Exhibit D**, and any Milestones associated with liquidated damages are further defined in **Exhibit E**.

1.1.40 “Milestone Date” means the date(s) specified in **Exhibit E** and/or **Exhibit E** for completing a Milestone.

1.1.41 “Modification” means (1) a written amendment to the Contract Documents signed by both the Owner and the Construction Manager or (2) a Change Order.

1.1.42 “Notice to Proceed” means a notice given by the Owner Representative to the Construction Manager in which the Construction Manager is instructed to proceed with the Work.

1.1.43 “Owner” means West Villages Improvement District, which is a local unit of special-purpose government created and existing pursuant to Chapter 2004-456, *Laws of Florida*. Unless otherwise provided in this Agreement, the persons who have authority to act on behalf of Owner are the Owner Representative and the Owner Change Order Representatives.

1.1.44 “Owner Change Order Representatives” means the following individuals: _____, or such other individuals as provided by written notice to the Construction Manager pursuant to the notice provisions of this Agreement.

1.1.45 “Owner Consultants” means a Person engaged by Owner to perform a certain portion of the design services for the Ballpark Facility Project.

1.1.46 “Person” means: (1) an individual, sole proprietorship, corporation, limited liability company, partnership, joint venture, joint stock company, estate, trust, limited liability association, unincorporated association or other entity or organization; (2) any federal, state, county or municipal government (or any bureau, department, agency or instrumentality thereof); and (3) any fiduciary acting in such capacity on behalf of any of the foregoing.

1.1.47 “Preconstruction Services” has the meaning ascribed to it in Article 2.

1.1.48 “Preconstruction Services Fee” has the meaning ascribed to it in Section 2.8.

1.1.49 “Owner Representative” means _____ or such other individual(s) as provided by written notice to the Construction Manager pursuant to the notice provisions of this Agreement.

1.1.50 “Project Milestone Schedule” means the schedule of Ballpark Facility Project activities as set forth on **Exhibit D**.

1.1.51 “Project Team” means the Owner, Construction Manager and its Subcontractors, Sub-subcontractors, material and equipment suppliers of any tier, the Architect and its subconsultants of any tier, and any other Person involved in the Ballpark Facility Project and under a contract with the Owner.

1.1.52 “Punch List” means a list prepared by the prepared by the Construction Manager for the Owner and Architect's review and approval, containing minor incomplete or defective items to be completed or corrected by the Construction Manager in accordance with the Contract Documents, and which otherwise do not have a material impact on the use or operation of the Ballpark Facility Project.

1.1.53 “Schedule of Values” means the schedule attached to the GMP Amendment, which has been prepared by the Construction Manager and approved by the Owner Representative, allocating the entire Guaranteed Maximum Price among the various portions of

the Work, and including the Construction Manager's Fee, Contingency and General Conditions Costs as a single separate item. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner or Owner's Lender(s) may require, and shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

1.1.54 "**Schematic Design Documents**" means drawings and other documents prepared by the Architect, including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling; preliminary selections of major building systems and construction materials will be noted on the drawings or described in writing.

1.1.55 "**Site**" means that certain tract of land described on **Exhibit C**.

1.1.56 "**Small Tools**" means tools utilized by Construction Manager in the performance of the Work each of which cost Five Hundred Dollars (\$500) or less when purchased by Construction Manager.

1.1.57 "**Specifications**" means that portion of the Contract Documents, approved by Owner, consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related systems.

1.1.58 "**Subcontract Sum**" means the total amount stipulated in the Subcontract to be paid by the Construction Manager to the Subcontractor for the Subcontractor's performance of the Subcontract.

1.1.59 "**Subcontractor's Work**" means that portion of the Work to be performed by the Subcontractor under the Subcontract.

1.1.60 "**Subcontractor**" means those persons or other entities which contract directly with Construction Manager to furnish any portion of the Work. The term "Subcontractors" does not include any person or other entity furnishing materials only. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or its authorized representative.

1.1.61 "**Sub-subcontractor**" means a person or entity at any tier who has a direct or indirect contract with a Subcontractor to perform any of the Work at the site. The term Sub-subcontractor is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative thereof.

1.1.62 "**Subcontracts**" means those contractual agreements entered into between Construction Manager and Subcontractors in accordance with the provisions of Article 12.

1.1.63 "**Substantial Completion**" has the meaning ascribed to it in Section 8.4.1 of the General Conditions.

1.1.64 "**Substantial Completion Date**" has the meaning ascribed to it in Section 4.1 of this Agreement.

16.1. **1.1.65 “Third Party Beneficiary(ies)”** has the meaning ascribed to it in Section

1.1.66 “Value Engineering” means a process in which the Construction Manager, utilizing its professional skills, knowledge and expertise, reviews drawings and specifications for the Work and construction methods to be utilized in the performance of the Work and recommends to the Owner and Architect changes which either will improve the quality of the workmanship or materials incorporated into the Work without increasing the Cost of the Work, or will lower the Cost of the Work without sacrificing quality of such workmanship or materials.

1.1.67 “Work” means all of the labor, equipment, materials and services to be furnished by the Construction Manager pursuant to the Contract Documents.

Section 1.2 Meanings of Certain Words. Whenever the words “directed,” “permitted,” “ordered,” “designated,” “prescribed,” or words of like import are used, it shall be understood that the direction, requirements, permission, order, designation, or prescription of the Owner is intended. The words “approved,” “acceptable,” “satisfactory,” or words of like import, shall mean approved by, or acceptable to or satisfactory to the Owner, unless otherwise expressly stated.

Section 1.3 Additional Defined Terms. Terms used in this Agreement which are defined in the General Conditions shall have the meanings ascribed to them in the General Conditions.

Section 1.4 Attachments. Attached hereto and forming a part of this Agreement are the following Exhibits:

- .1 Exhibit A** – General Conditions
- .2 Exhibit B** – Ballpark Facility Site Description
- .3 Exhibit C** – Site Description
- .4 Exhibit D** – Project Milestone Schedule
- .5 Exhibit E** – Completion Dates and Liquidated Damages
- .6 Exhibit F** – General Conditions Costs
- .7 Exhibit G** – Personnel Rates
- .8 Exhibit H** – Change Order
- .9 Exhibit I** – Construction Change Directive
- .10 Exhibit J** – Interim and Final Lien Waivers
- .11 Exhibit K** – Construction Manager Affidavit

- .12 **Exhibit L** – Construction Manager Supplemental Affidavit
- .13 **Exhibit M** – Insurance
- .14 **Exhibit N** – Payment and Performance Bond Forms
- .15 **Exhibit O** – Collaboration Requirements
- .16 **Exhibit P** – Key Personnel Chart

ARTICLE 2 PRECONSTRUCTION SERVICES AND THE WORK

Section 2.1 Preconstruction Services. Construction Manager shall perform the Preconstruction Services set forth in this Article 2.

Section 2.2 General Preconstruction Services Obligations.

2.2.1 The Construction Manager shall coordinate its activities with the activities of the Owner's Architect and consultants, and shall respond promptly to requests for information from the Owner, the Architect or their consultants.

2.2.2 The Construction Manager shall visit the Ballpark Facility Site and shall carefully study and evaluate the Owner's program, schedule and budget requirements for the Ballpark Facility Project.

2.2.3 The Construction Manager shall render advice and assistance, consult with, and/or provide recommendations to the Owner, its design professionals and consultants regarding the following: the proposed design and any alternative approaches to design and construction of the Ballpark Facility Project; the various components of the Ballpark Facility Project's design as they are established; proposed or necessary site improvements and utilities, and site management issues; construction feasibility, actions designed to minimize adverse effects of labor or material shortages, time requirements for procurement, installation and completion of the Work, and factors related to Construction Cost.

2.2.4 The Construction Manager shall advise and assist the Owner with respect to phasing, sequencing and constructability considerations, and make recommendations regarding the phased issuance of Drawings and Specifications.

2.2.5 Construction Manager will provide Value Engineering analysis on construction components, such as, but not restricted to, mechanical system, exterior envelope, structural system, lighting and power service. The Value Engineering analysis will be summarized in report form and distributed to the Project Team. Construction Manager will conduct a series of Value Engineering analysis workshops during the Design Development Phase of the Ballpark Facility Project to develop cost saving ideas for the Work. The formal reports will be prepared following these workshops and distributed to the Project Team. Construction

Manager shall not be deemed to have guaranteed that any of the Value Engineering or other cost saving ideas will work and shall not be deemed to have taken on responsibility for design by Construction Manager's role in Value Engineering, offering cost savings ideas or in making other comments on the design.

2.2.6 The Construction Manager, if requested by the Owner, shall provide performance and cost analysis of Equipment and systems proposed in the Ballpark Facility Project's design.

2.2.7 The Project Milestone Schedule has been reviewed and approved by the Owner and Architect. The Project Milestone Schedule shall be updated by Construction Manager and delivered to the Owner for the Owner's review and approval on a monthly basis throughout the duration of the Work. However, notwithstanding the foregoing, any interim changes or reviews and approvals of the Project Milestone Schedule, shall not serve to change the Substantial Completion Date, which may only be modified by a Change Order in accordance with this Agreement.

2.2.8 The Construction Manager shall prepare, and periodically update as the Owner may require, a preliminary Construction Schedule in a CPM (Critical Path Method) format for the Owner's review and approval, which shall contain such detailed information as the Owner may reasonably require. Construction Manager shall investigate and recommend a schedule for the purchase of materials and equipment requiring long lead time procurement. The Construction Schedule shall be updated and distributed monthly to the Project Team throughout the duration of the Work to accurately reflect progress to date, remaining estimated durations and any new or revised logic or activities. Any interim changes or reviews and approvals of the Construction Schedule shall not serve to change the Substantial Completion Date, which may only be modified by a Change Order, signed by both parties as provided by this Agreement.

2.2.9 The Construction Manager shall prepare and submit cost estimates for the Ballpark Facility Project after the Owner's program has been reviewed and evaluated by the Construction Manager, and at each level of design completion thereafter, in a form reasonably acceptable to Owner. All cost estimates shall, consistent with the level of design documents completed, include a detailed breakdown denoting the labor, material, general conditions, contingency, subcontract and other costs and information as designated by the Owner and necessary to construct the Ballpark Facility Project. The Construction Manager shall include with each cost estimate the pertinent supporting data, including without limitation, a detailed description of all assumptions and qualifications included in each cost estimate.

2.2.10 If submitted cost estimates exceed previously approved estimates or the Owner's budget, the Construction Manager shall provide Owner with a detailed breakdown of all changes that increased the cost estimate and shall make appropriate recommendations to the Owner, including appropriate Value Engineering suggestions.

2.2.11 The Construction Manager shall schedule and attend meetings and prepare and distribute meeting minutes as the Owner may require within 3 business days.

2.2.12 The Construction Manager shall prepare bidding packages and related documents. The Construction Manager shall provide all prequalification documents, bids and related correspondence to the Owner. The Construction Manager shall provide notification in all bid packages specifying that, in addition to the bid proposals submitted and awarded upon, during the course of the Ballpark Facility Project and prior to final close-out, the awarded Subcontractor will be requested to provide additional pricing detail for specific portions of Work. This break-out may take the form of documents describing specific aspects of Work and related cost or may also take the form of simple spreadsheets listing the items of Work and their associated costs.

2.2.13 The Construction Manager shall assist the Owner as requested in obtaining various permits and approvals for the Ballpark Facility Project from Governmental Authorities. The Construction Manager shall assist the Owner as requested with coordination with utilities and connections.

2.2.14 The Construction Manager shall report weekly on the progress of the Preconstruction Services in a format reasonably acceptable to Owner.

Section 2.3 Schematic Design Phase and Design Development Phase.

2.3.1 Construction Manager shall review the Schematic Design Documents and the Design Development Documents during each stage of their development by Architect. Construction Manager shall provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to cost including Value Engineering analysis, costs of alternative designs or materials and possible economies.

2.3.2 During the preparation of the Schematic Design Documents and the Design Development Documents, the Owner, Architect and Construction Manager shall meet weekly and Architect shall, at such meetings, notify the Owner and Construction Manager of any material modifications in quantities or qualities from the documents previously issued by Architect.

2.3.3 Construction Manager shall provide an analysis of the types and quantities of labor required for the Work and shall review the availability of appropriate categories of labor required for critical phases. Construction Manager shall assure compliance of the performance of the Work with Applicable Laws, including equal employment opportunity programs, and other programs as may be required by Governmental Authorities for inclusion in the Contract Documents. Construction Manager shall make recommendations for and execute actions designed to minimize adverse effects of labor shortages.

Section 2.4 Cost Estimates.

2.4.1 Construction Manager shall work with the Architect and the Project Program Manager to provide cost estimating and constructability analysis on a prompt and regular basis with respect to all major construction components, systems and elements of the Work so that the Ballpark Facility Project design and budget can evolve in a timely, consistent and collaborative fashion. Estimates shall be based on the status of the documents at the time and

shall include a complete price breakdown and detailed listing of qualifications and assumptions and anticipated quantities, and shall identify any significant deviations from the prior cost estimates relative to quantities, costs and schedule that could impact budget parameters and final delivery of the Ballpark Facility Project. In addition, Construction Manager shall deliver to the Owner detailed estimates of the Construction Cost as required by Owner and as further set forth in this Article 2.

2.4.2 In preparing the Construction Cost estimates and any updates thereto, Construction Manager shall use recognized and accepted cost estimating techniques in the construction industry. After preparing the Construction Cost estimates and updates, Construction Manager, the Owner and Architect will meet to review the updates and to compare them against the Fixed Construction Budget. In the event Construction Manager's update exceeds the Fixed Construction Budget, Construction Manager, the Owner and Architect will discuss what revisions, if any, have to be made to the documents so that Construction Manager and the Owner can establish a mutually acceptable GMP, including the implementation of Value Engineering and other cost-saving alternatives (including reductions in quality or scope).

2.4.3 Concurrent with the submission of each cost estimate and the GMP proposal submission (as set forth below), the Construction Manager shall submit a cash flow analysis for the overall construction duration of the Ballpark Facility Project. The analysis shall list individual monthly billings, projected billings, accumulated billings to date and percentages of completion on a monthly basis.

Section 2.5 GMP Development and GMP Price Proposal.

2.5.1 Construction Manager understands and agrees that the Fixed Construction Budget constitutes the fixed limit of Construction Cost available for all Work. The Final GMP cannot exceed the Fixed Construction Budget. Accordingly, Construction Manager shall achieve a Final GMP that complies with the Fixed Construction Budget. To that end, Construction Manager shall propose to the Owner Value Engineering and other cost saving alternatives (including reductions in quality or scope) to cause the Final GMP to be within the Fixed Construction Budget, and the Owner may, in its sole discretion, select the items to be incorporated into the design documents.

2.5.2 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work and the Construction Manager's Fee. Alternatively, and notwithstanding anything to the contrary herein, the Owner reserves the right in its sole discretion to enter into a lump sum agreement with the Construction Manager, and, if so elected by the Owner, the Owner and the Construction Manager shall work in good faith to enter into an amendment to this Contract authorizing the Work on a lump-sum basis.

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

- i. A list of the Drawings and Specifications, including all addenda thereto, which were used in preparing the proposal;
- ii. A list of allowances and a statement of the basis for each.
- iii. A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications;
- iv. A final CPM Construction Schedule that shows proposed dates of Substantial Completion, initial occupancy, final occupancy and final completion including any and all Milestone Dates upon which the proposal is based;
- v. The Construction Manager's Fee that is proposed as part of the GMP;
- vi. A list of the General Conditions Costs to be included as part of the Cost of the Work, and not included in the Preconstruction Contractor's fee;
- vii. A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, with separate line items for the Construction Manager's General Conditions Costs and the Construction Manager's Fee; and
- viii. A detailed list of the insurance costs included in the proposal.

2.5.4 The Construction Manager shall meet with the Owner and Architect to review and reconcile any questions, discrepancies, or disagreements relating to the Guaranteed Maximum Price proposal. The reconciliation shall be documented in writing by the parties, and the Construction Manager shall make adjustments to the Guaranteed Maximum Price proposal, its basis, or both, as required.

2.5.5 If the Owner notifies the Construction Manager in writing that the Owner has accepted the Guaranteed Maximum Price proposal, or a revised version thereof, the Owner and Construction Manager shall execute the GMP Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The GMP Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

2.5.6 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the GMP Amendment and the revised Drawings and Specifications. If the Owner disapproves of the proposed Final GMP, then the Owner may terminate this Agreement without cause as is set forth in the General Conditions.

2.5.7 Upon execution of the GMP Amendment, the Construction Manager shall provide the Owner with Payment and Performance bonds in the same form as **Exhibit N** in the amount of the Final GMP.

2.5.8 The Owner and Construction Manager agree to enter into such Change Orders, as may be requested by Owner, as necessary to facilitate the release of bid packages prior to the finalization of the Final GMP. Upon execution of such Change Orders, the Construction Manager shall provide the Owner with Payment and Performance bonds in the same form as **Exhibit N**. The penal sum of such bonds shall be equal to the amount of the existing GMP, or such other amount as the Owner may reasonably agree, and when a Final GMP is established via the GMP Amendment, the penal sum of the bonds shall be increased to the amount of the Final GMP.

Section 2.6 Construction Documents Phase.

2.6.1 Construction Manager shall (a) consult with the Owner and Architect, in Construction Manager's capacity as a contractor and not as a design professional, with respect to constructability, Ballpark Facility Site access and use, selection of materials, building systems and equipment and means and methods of construction, (b) provide comments and recommendations on the relative feasibility of construction methods, availability of materials, time requirements for procurement, installation and construction, and factors related to cost, including costs of alternative designs or materials and possible economies, Value Engineering analysis, constructability analysis and (c) when requested to do so, submit reports to the Owner regarding same.

2.6.2 Construction Manager, as a contractor and not as a design professional, shall advise Architect and the Owner concerning materials to be used in the Work. Construction Manager shall promptly review potential materials specified by Architect and, where appropriate, promptly prepare written cost analysis of such materials. Where appropriate, Construction Manager shall promptly propose any alternative materials of which Construction Manager is aware that may not have been considered by Architect if requested by the Owner or Architect, Construction Manager shall promptly prepare written cost analysis of such alternative materials.

2.6.3 Construction Manager shall verify that the Contract Documents include requirements and assignment of responsibilities for safety precautions and programs and temporary Work facilities for common use of Construction Manager and the Subcontractors.

2.6.4 On a continuing basis, as a contractor and not as a design professional, Construction Manager shall review the Ballpark Facility Construction Documents as they are being prepared, recommend alternative solutions whenever design details adversely affect construction feasibility, Construction Cost or the Construction Schedule without, however, assuming responsibilities for design.

2.6.5 Construction Manager, as a contractor and not as a design professional, shall review the Drawings and Specifications for each bid package to minimize areas of conflict, gaps and overlapping in the Work to be performed by the various Subcontractors. In conjunction

with Architect, Construction Manager shall identify areas Construction Manager recognizes as having incomplete documentation and uncoordinated multi-discipline Work.

2.6.6 Construction Manager and the Owner recognize that, subsequent to the execution of this Agreement, the final Ballpark Facility Construction Documents shall be prepared by Architect. Construction Manager acknowledges that, by signing the GMP Amendment, it is agreeing that it will have had sufficient involvement with the Ballpark Facility Project to understand the program requirements and Ballpark Facility Project scope as expressed in the documents attached to or referenced in the GMP Amendment and, therefore, agrees that it will make no claim against the Owner for an increase in the Final GMP based upon the more fully developed plans, sections or details contained in the Ballpark Facility Construction Documents.

Section 2.7 Other Services.

2.7.1 Throughout the Design Development Phase and Construction Documents Phase, Construction Manager shall:

2.7.1.1 Investigate, in consultation with Architect and recommend a schedule for the Owner's purchase of materials and equipment with particular emphasis on items requiring long lead-time procurement. Construction Manager shall coordinate such schedule with the early preparation of portions of the Contract Documents by Architect, and if requested by the Owner, assist the Owner with expediting and coordinating delivery of these purchases.

2.7.1.2 Make recommendations to the Owner and Architect regarding the phasing and prioritization of Contract Documents and discuss Construction Manager's expected construction activities and the division of Work and the orderly bidding and awarding of Subcontracts, and in doing so, allow for phased construction and take into consideration such factors as time of performance, availability of labor, overlapping trade jurisdictions, and provisions for temporary facilities for the Work, including hoists and cranes.

2.7.1.3 Provide appropriate instructions clearly describing site logistics, including but not limited to, Site coordination and staging and storage areas for common use of Construction Manager and Subcontractors, including applicable rules relative to the operation of Ballpark Facility Project facilities.

2.7.1.4 Prepare and submit to the Owner for review and information, all necessary bidding information, instructions to bidders, bidding forms, special conditions (as provided by Owner in writing), Subcontract agreement forms and other documents to be submitted to bidders, incorporating the Ballpark Facility Construction Documents as prepared by Architect and including a scope of Work defining what is included in each Subcontract bid package.

2.7.1.5 Obtain, with assistance from the Owner and Architect, the building permits for the Work, including shoring and excavation, substructure and superstructure, and finishing components as required for the Work.

2.7.1.6 Arrange and coordinate other permits, licenses or approvals that are necessary for proper execution, completion, and initial occupancy (but not use) of the Work and that are required by Governmental Authorities, including: certificates of inspection, use and occupancy; temporary easements, fees, assessments and charges relating to use or closure of public rights-of-way; and sewer availability charges and water access charges. Construction Manager is required to obtain permits and licenses required for Construction Manager's general business operations, which Construction Manager shall obtain at its sole expense.

2.7.1.7 Develop and implement, in cooperation with the Owner, a plan to mitigate the impacts of construction on surrounding businesses and neighborhoods.

2.7.1.8 To the extent practicable, make recommendations for the use of environmentally friendly materials in construction of the Ballpark Facility Project.

2.7.1.9 Develop, with the cooperation of the Owner and the City, a transportation management plan for the construction period, including traffic control, street signage, street closures or diversions, public transportation issues, parking meters and truck routing for approval by Governmental Authorities.

Section 2.8 Preconstruction Services Fee. For all Preconstruction Services in this Article 2, the Construction Manager shall be paid \$_____ (“**Preconstruction Services Fee**”).

ARTICLE 3

THE CONSTRUCTION MANAGER'S CONSTRUCTION DUTIES AND STATUS

Section 3.1 Performance of the Work. Construction Manager shall furnish all supervision, labor, materials, tools, equipment, supplies, and services, and shall perform all other acts and supply all other things (including, but not limited to, all light, power, water, and sanitary facilities for workmen during the progress of the Work) necessary to produce the buildings, structures, improvements and related facilities described in the Contract Documents, including all Work expressly specified therein and such additional Work as may be reasonably inferable therefrom, saving and excepting only such items of work as are specifically stated in the Contract Documents not to be the obligation of the Construction Manager. Unless provided otherwise in the Contract Documents, the Construction Manager shall specifically be responsible for coordinating its activities with any FF&E suppliers, contractors, and/or installers retained by the Owner so as to avoid delays in the orderly progress in the Work and any completion dates required by the Contract Documents.

Section 3.2 [Reserved.]

Section 3.3 Representations and Warranties. Construction Manager represents and warrants to the Owner that Construction Manager (a) is experienced and skilled in the construction of structures and improvements of the type described in the Contract Documents, and (b) has, by careful examination, satisfied itself as to (i) the nature, location and character of the Ballpark Facility Site, including, without limitation, the surface and subsurface (by review of available reports and information, as well as Construction Manager's own independent investigation) condition of the land and all structures and obstructions thereon, both natural and

man-made, and all surface and subsurface (by review of available reports and information, as well as Construction Manager's own independent investigation) water conditions of the Ballpark Facility Site and the surrounding area, as more specifically provided in Section 4.1.2 of the General Conditions; (ii) the nature, location and character of the general area in which the Ballpark Facility Site is located, including, without limitation, its climatic conditions, available labor supply, labor cost equipment supply and equipment cost; (iii) the quality and quantity of all materials, supplies, tools, equipment, labor and professional services necessary to complete the Work in the manner required by the Contract Documents; and (iv) all other matters or things which, in the reasonable judgment of the Construction Manager, could in any manner affect the performance of the Work.

Section 3.4 Construction Manager's Covenant. The Construction Manager recognizes and accepts the relationship of trust and confidence established between it and the Owner by this Agreement. Construction Manager covenants with the Owner to furnish its best skill and judgment and to cooperate with the Owner and the Architect in furthering and protecting the interests of the Owner. Construction Manager agrees to furnish estimates and technical advice as to construction methods and equipment to the Owner and the Architect from time to time in order to ensure that the Ballpark Facility Project remains within the Guaranteed Maximum Price. Construction Manager further agrees to furnish efficient business administration and superintendence and to use every effort to keep an adequate supply of workmen and materials at the Ballpark Facility Project at all times, and to secure execution of the Work in the best and soundest way, and in the most expeditious and economical manner consistent with the interests of the Owner. In addition to Construction Manager's other obligations under this Agreement with respect to performance of the Work, any services under this Agreement that are solely professional shall be performed by Construction Manager in accordance with the standard of care and skill for construction managers experienced and specializing in the construction (and construction management) of comparable MLB ballpark facilities.

Section 3.5 Construction Manager's Representative. The Construction Manager's Representative shall be authorized to represent the Construction Manager in all matters regarding this Agreement and the Ballpark Facility Project and shall be a person acceptable to Owner. If, at any time, Owner shall advise the Construction Manager that the Construction Manager's Representative is not acceptable to Owner, Construction Manager shall forthwith designate a new Construction Manager's Representative acceptable to Owner.

ARTICLE 4 TIME OF COMMENCEMENT OF THE WORK AND COMPLETION

Section 4.1 Commencement and Completion of the Work. The Construction Manager shall commence the Work only upon receipt of the Notice to Proceed and shall achieve Substantial Completion of the Work on or before the Substantial Completion Date in **Exhibit E**, and shall achieve any Milestones before the required Milestone Dates in **Exhibit E**, subject to any extensions of time pursuant to the terms of the Contract Documents.

Section 4.2 Delays. Time is of the essence in the performance of this Agreement. The Construction Manager acknowledges and agrees that the Completion Dates are of critical

importance to the Owner and ANLBC, as a Third-Party Beneficiary. The Construction Manager shall take all necessary actions required to remedy any delay due to the fault of the Construction Manager or anyone working under Construction Manager, including, without limitation, providing additional forces to perform the Work, or working overtime at the Construction Manager's expense. If the Construction Manager fails to complete the Work according to the Completion Dates set forth in **Exhibit E**, after adjustment in such dates as may be allowed by the Contract Documents, the Construction Manager agrees to pay the ANLBC, as a Third-Party Beneficiary, the liquidated damages set forth in **Exhibit E** corresponding to such Completion Dates. The Construction Manager acknowledges and agrees that the amounts set forth in **Exhibit E** are liquidated damages, and not penalties and shall be the sole remedy available to Owner and ANLBC in the aggregate for delay in achieving the Completion Dates. The Construction Manager further acknowledges and agrees that because of the unique nature of this Ballpark Facility Project (including the potential expense involved in playing in a substitute facility), it is difficult to determine with precision the amount of damages that would or might be incurred by the Owner or ANLBC, as a Third-Party Beneficiary, as a result of Construction Manager's failure to achieve the Completion Dates, but that the liquidated damages in **Exhibit E** are a reasonable estimate of the damages to be incurred by Owner or ANLBC, as a Third-Party Beneficiary, in the event of a delay in the completion of the Work by the Completion Dates. Liquidated damages identified for each Completion Date may be assessed on a cumulative basis. Construction Manager's obligations pursuant to this Section 4.2 shall survive any termination of this Agreement with respect to any act or omission which took place prior to such termination. The liquidated damages in **Exhibit E** are intended only to cover damages suffered by Owner or ANLBC, as a Third-Party Beneficiary, as a result of delay and shall not be deemed to cover the cost of completion of the Work or damages for defective Work.

Section 4.3 Adverse Weather Conditions. Construction Manager shall include in the Construction Schedule an adequate number of days to compensate for customary adverse weather conditions, and no extensions of time will be granted because of days lost to adverse weather conditions except as permitted by Section 7.3 of the General Conditions.

Section 4.4 Information, Decisions and Approvals. The Owner shall furnish the Construction Manager with all information reasonably necessary for the Construction Manager to expeditiously perform the Work. Decisions and approvals required of the Owner shall be provided in a timely manner so as not to delay the orderly progression of the Work, and Construction Manager shall allow a reasonable amount of time for review of submittals by the Owner.

Section 4.5 Phased Construction. Construction Manager acknowledges that the Work is to proceed on the basis of sequential bidding and that bids for some portions of the Work will be obtained before design of the overall Project is complete. Construction Manager represents that it has all requisite expertise in the "fast track" method of construction and related "fast tracking" practices and understands that said representation has served as a material inducement in Owner's selection of Construction Manager. Construction Manager hereby waives any and all rights and remedies it may otherwise have at law or in equity for claiming, or otherwise asserting, that it is entitled to extra compensation or damages of any kind, or to an extension to the Contract Time by reason, or as a result, of schedule changes necessitated to accommodate performance of the Work on a "fast track" basis (and Construction Manager shall

so provide in all Subcontracts). Construction Manager expressly recognizes that the "fast track" method may require Construction Manager to prepare, issue and analyze bid packages in excess of the number ordinarily required under standard construction practices and hereby agrees to prepare, issue and analyze the same, if and as needed, in a timely manner.

ARTICLE 5 GUARANTEED MAXIMUM PRICE

Section 5.1 Cost to be Reimbursed. The Owner agrees to reimburse the Construction Manager for the Cost of the Work as defined in Article 8. Such reimbursement shall be in addition to the Construction Manager's Fee set forth in Article 6.

Section 5.2 Guaranteed Maximum Price. The Construction Manager agrees that the cost to the Owner of performing the Work hereunder, including the Cost of the Work and the Construction Manager's Fee shall not exceed the GMP, as established by the GMP Amendment. In the event that the actual cost of performing the Work hereunder, and the Construction Manager's Fee exceed the Guaranteed Maximum Price, the Construction Manager shall bear such excess cost. All of the Construction Manager's qualifications and exclusions shall be set forth in the GMP Amendment establishing the GMP.

Section 5.3 Adjustment of Guaranteed Maximum Price. The Guaranteed Maximum Price stated above shall be increased or decreased for changes in the Work as provided in Article 7.

Section 5.4 Project Savings. In the event that the aggregate of (i) the Cost of Work, and (ii) the Construction Manager's Fee is less than the Guaranteed Maximum Price, after giving effect to any Change Orders and any other adjustment(s) provided for herein, then the difference between (a) the Cost of Work plus the Construction Manager's Fee and (b) Guaranteed Maximum Price, is defined herein as "**Project Savings**". Owner and Construction Manager agree that any Project Savings shall be shared between Owner and Contractor, in the proportion of _____ percent to Owner and _____ percent to Construction Manager. In the event Construction Manager is entitled to receive a proportionate share of Project Savings, Owner shall pay such amount to Construction Manager, as an additional fee, within thirty (30) days after Final Completion of the Work. Reductions in the Cost of the Work due to Change Orders that reduce the scope of the Work shall not be treated as Project Savings, notwithstanding any other provisions in this Agreement.

Section 5.5 General Conditions Costs. [TBD]

Section 5.6 Contingency.

5.6.1 The GMP contains a line item created to fund certain unanticipated Costs of the Work ("**Contingency**"), which shall not exceed _____ **PERCENT** (____%) of the Cost of the Work. The Contingency (but not the GMP) shall be adjusted to reflect (a) net savings or net losses resulting from the buy-out of the Work, and (b) approved expenditures from, or additions to, the Contingency pursuant to the terms of this Agreement. Construction Manager may use funds from the Contingency for Costs of the Work incurred for completion of the Work with the Owner's prior written approval, which will not be unreasonably withheld.

5.6.2 In no event shall the Contingency be available for the following: (a) costs not to be reimbursed pursuant to Article 9 or any other provision of this Agreement; (b) costs resulting from breaches of this Agreement by the Construction Manager; (c) liquidated damages for which the Construction Manager is responsible under this Agreement; (d) increases to the Construction Manager's Fee or General Conditions Costs; or (e) any Owner-directed upgrades or additions to the Work (unless approved by the Owner in writing).

5.6.3 Any unused Contingency upon Final Completion shall be considered savings and returned to the Owner pursuant to Section 5.4.

ARTICLE 6 CONSTRUCTION MANAGER'S FEE

Section 6.1 Construction Manager's Fee. Owner agrees to pay to Construction Manager as part of the Guaranteed Maximum Price, and as compensation for its services rendered pursuant to this Agreement, _____ percent (____%) of the Cost of the Work (the "**Construction Manager's Fee**"), to cover the Construction Manager's profit, general overhead and all costs and expenses incurred in connection with the performance of the Work not to be reimbursed under other provisions of this Agreement. The Construction Manager's Fee shall be payable to the Construction Manager as provided in Section 14.2.

Section 6.2 Adjustment of Construction Manager's Fee and General Conditions Costs.

6.2.1 Construction Manager's Fee shall be increased or decreased (as the case may be) by an amount equal to _____ percent (____%) multiplied by the Cost of the Work for any changes in the Work required by Owner. There shall be no automatic markup for General Conditions Costs in any Change Order. General Conditions Costs shall be itemized as part of any proposed Change Order, if required by the change in the Work. Any such adjustment shall be incorporated into an appropriate Change Order issued pursuant to Article 7. For changes in the Work, a Subcontractor shall be limited to a markup of ten percent (10%) to cover all fee and general conditions costs if the Work is performed by a Subcontractor's forces and five percent (5%) if performed by a Sub-subcontractor.

ARTICLE 7 CHANGES IN THE WORK

Section 7.1 Changes. The Owner may, from time to time, by written instructions or drawings issued to the Construction Manager, make changes in the Drawings and Specifications, issue additional instructions, require additional work or direct the omission of work previously ordered, and the provisions of this Agreement shall apply to all such changes, modifications, and additions with the same effect as if they were embodied in the original Contract Documents. Neither the Architect nor the Owner has authority to authorize any additional or changed Work that would require an increase in the Guaranteed Maximum Price or an extension of the Contract Time. Construction Manager shall not be entitled to any reimbursement for additional Costs of the Work, or for an increase in the Guaranteed Maximum Price, due to any alleged extra or changed work unless a Change Order, as defined in Section 11.1 of the General Conditions in the

form attached as **Exhibit H**, or a Construction Change Directive (in the event the Owner and Construction Manager disagree as to the appropriate amount of a proposed Change Order) in the form attached as **Exhibit I**, shall first have been signed and issued by the Owner Change Order Representatives. If the Construction Manager proceeds with any extra or changed work without a Change Order or Construction Change Directive signed by the Owner Change Order Representatives (even if verbal approval has been obtained for any of the foregoing), Construction Manager shall be deemed to have waived any claim based upon such extra or changed work. Neither a Change Order nor Change Order Directive is valid unless two of the identified Owner Change Order Representatives have signed. Any work performed on a time and material basis pursuant to a signed Construction Change Directive is subject to the Owner's prior approval of labor, overtime and equipment rental rates. All such change order work shall be subject to audit by the Owner.

Section 7.2 Adjustments to Guaranteed Maximum Price. Adjustments to the Guaranteed Maximum Price on account of changes in the Work shall be made as provided in Section 11.1.3 of the General Conditions.

ARTICLE 8 COSTS TO BE REIMBURSED

Section 8.1 Cost of the Work. Subject to the provisions of Section 5.2, the Owner agrees to reimburse the Construction Manager for the Cost of the Work. The term "**Cost of the Work**" means all actual and direct costs reasonably and necessarily incurred in the proper performance of the Work and paid or payable by the Construction Manager, except as limited by this Agreement. Such actual and direct costs comprising the Cost of the Work shall be at rates not higher than the standard paid in the locality of the Work, except with the prior consent of the Owner, and shall only include the following items set forth in this Article 8. To the extent any of the items listed below are included in the list of General Conditions Costs in **Exhibit L**, the Construction Manager's entitlement to reimbursement for such Costs of the Work shall be as set forth in Section 5.5 of this Agreement.

8.1.1 Labor and Personnel Costs. Wages for labor in the direct employ of the Construction Manager in the performance of the Work under applicable collective bargaining agreements, or under a salary or wage rate schedule approved in writing by the Owner and included as **Exhibit G** (subject to limited audit by Owner to confirm that applicable rates were applied).

8.1.1.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the Ballpark Facility Site with the Owner's agreement (but not including bonuses paid to such personnel unless approved in advance by Owner). Construction Manager's supervisory or administrative personnel engaged at shops or on the road in expediting the production or transportation of materials or equipment shall be considered as stationed at the field office and their rates paid for that portion of their time spent on the Work.

8.1.1.3 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by Applicable 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 (net of employee contributions, experience modifications and the like), provided such rates are agreed to by the Owner prior to commencement of the Work (subject to limited audit by Owner to confirm that applicable rates were applied).

8.1.1.4 Reasonable travel expenses (including transportation at coach or economy rates, meals and lodging) of the officers or employees of the Construction Manager incurred in connection with the performance of the Work. Out of town travel is subject to the prior, reasonable approval of the Owner.

8.1.2 Costs of Materials and Equipment Incorporated in the Completed Construction.

8.1.2.1 Costs, including transportation, of materials, supplies and equipment incorporated, or to be incorporated, in the completed construction in accordance with the Contract Documents.

8.1.2.2 Costs of materials described in Section 8.1.2.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be turned over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager, and any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

8.1.3 Costs of Other Materials and Equipment, Temporary Facilities and Related Items.

8.1.3.1 Costs, including transportation and maintenance, of all materials, supplies, Equipment, temporary facilities, Small Tools, and hand tools not owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or, if and to the extent approved in writing by the Owner, retained by the Construction Manager. Cost for items previously used by the Construction Manager means fair market value, of the item used, as reasonably determined by the Owner.

8.1.3.2 Rental charges for Equipment which are provided by the Construction Manager at the Ballpark Facility Site, whether rented from the Construction Manager or others, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery costs thereof. In no event shall the rental rates of any piece of Equipment from the Construction Manager's own stock exceed 75% of the published AED rate or those prevailing in the area, whichever is lower, unless otherwise approved by the Owner in writing. In no event shall the total cost of renting a piece of Equipment exceed seventy-five percent (75%) of the Construction Manager's original cost of the Equipment determined at the commencement of the rental period, and substitution of similar or like Equipment on the Ballpark Facility Site will not be considered as a change in Equipment under this provision. Rental charge rates shall be established in the GMP Amendment.

As to the cost charged for any piece of Equipment, the rates charged for rental shall conform to the following: if on any day a piece of Equipment is used for three (3)

hours or more, the daily rate of rental shall be applied (instead of the hourly rate); if in any week any piece of Equipment is used for three (3) days or more, the weekly rental rate for that piece of Equipment shall be applied (instead of the daily rate); if in any month a piece of Equipment is used for three (3) weeks or more, the monthly rental rate shall be applied (instead of the weekly rate). The movement of all rental Equipment on and off the job is to be recorded by the Construction Manager and approved in writing by the Owner. Equipment and facilities which are job purchased shall be salvaged at the completion of the Ballpark Facility Project and such salvage values shall be credited to the Cost of the Work. The Owner shall accrue any accumulated equity in the rental of Equipment used at the Ballpark Facility Site which is leased under a purchase option agreement.

8.1.4 Subcontract Costs.

8.1.4.1 Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the Subcontracts and the Contract Documents, net of any backcharges to any such Subcontractor.

8.1.4.2 The cost of subcontractor default insurance, required or allowed by the Contract Documents, at the following rates: _____.

8.1.5 Miscellaneous Costs.

8.1.5.1 Costs of removal of all debris caused by the Construction Manager's operations.

8.1.5.2 Costs of long-distance telephone calls, postage and parcel delivery charges, telephone service at the Ballpark Facility Site and reasonable petty cash expenses of the site office.

8.1.5.3 If maintenance of a site office is approved in advance by Owner, reasonable costs and expenses of the operation of the site office, such as stationery, supplies, document reproduction, furniture, fixtures, and office equipment (all of which are subject to salvage by the Owner).

8.1.5.4 Cost of premiums for all bonds and insurance required or allowed by the Contract Documents that the Construction Manager purchases and maintains, net of all adjustments or credits related to the Work for discounts, dividends or premium modifications. As allowed by the Contract Documents, premiums for insurance that cover other operations of the Construction Manager in addition to its operations pursuant to this Agreement will be allocated to this Agreement in the same proportion that the value of the Work completed during the premium period bears to the value of all work (including the Work) completed by the Construction Manager during the same period.

8.1.5.5 Subject to the provisions of the Contract Documents regarding the applicability of taxes to this project, sales, use or similar taxes imposed by any governmental authority which are related to the Work and for which the Owner or the Construction Manager are liable or obligated to collect under the Contract Documents or Applicable Law.

8.1.5.6 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses, judgment and settlements shall not be included in the calculation of the Construction Manager's Fee or of the Guaranteed Maximum Price, and provided that such royalties, fees and costs are not excluded by the last sentence of Subsection 4.14 of the General Conditions or other provisions of the Contract Documents.

8.1.5.7 Fees and assessments for permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

8.1.5.8 Costs of obtaining utility service for the Ballpark Facility Project.

8.1.5.9 Deposits lost for causes other than the Construction Manager's fault or negligence.

8.1.6 Other Costs.

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

8.1.7 Emergency-Related Costs and Damaged Work.

8.1.7.1 The Cost of the Work shall also include costs described in Section 8.1 which are incurred by the Construction Manager:

8.1.7.1.1 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 9.3 of the General Conditions.

8.1.7.1.2 In repairing damaged Work, provided such damage did not result from the fault or negligence of the Construction Manager or the Construction Manager's personnel, and only to the extent that the cost of such repairs is not recoverable by the Construction Manager from others and the Construction Manager is not compensated therefor by insurance or otherwise.

8.1.7.2 The costs incurred by the Construction Manager described in Section 8.1.7.1.2 do not include the cost of repairing or replacing non-conforming or defective Work, and such costs shall not be included in the calculation of the Construction Manager's Fee or the Cost of the Work.

ARTICLE 9 COSTS NOT TO BE REIMBURSED

Section 9.1 Exclusions from Cost of the Work. The Cost of the Work shall not include any of the items set forth below in this Article 9:

9.1.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as expressly provided in clauses 8.1.1.2, 8.1.1.3 and 8.1.1.5, or approved in writing by the Owner.

9.1.2 Expenses of the Construction Manager's principal branch offices other than the field office.

9.1.3 Any part of the Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

9.1.4 Overhead or general expenses of any kind, except as expressly included in Article 8.

9.1.5 Except as provided in Section 8.1.7 hereof and Section 14.4 of the General Conditions, costs due to the fault or negligence of the Construction Manager, Subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to costs for the correction of damaged Work, delay, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work (including by way of example costs incurred by Construction Manager under Sections 12.2.3, 12.2.5 and 14.4.3 of the General Conditions).

9.1.6 Rental costs for machinery and equipment, except as expressly provided in Section 8.1.3.2, including repairs to such machinery and equipment.

9.1.7 The cost of any item not specifically and expressly identified in Article 8.

9.1.8 Costs which would cause the Guaranteed Maximum Price to be exceeded.

9.1.9 Costs and fees of attorneys, accountants or other consultants, unless expressly authorized by Owner in writing in advance.

ARTICLE 10 ALLOWANCES

Section 10.1 Allowances Included in Guaranteed Maximum Price. The Construction Manager shall include in the Guaranteed Maximum Price all Allowances stated in the Contract Documents. Items covered by these Allowances shall be supplied for such amounts and by such persons as the Owner may direct, but the Construction Manager will not be required to employ persons against whom it makes a reasonable objection.

Section 10.2 Provisions Respecting Allowances. Unless otherwise provided in the Contract Documents:

10.2.1 materials and equipment under an Allowance shall be selected by the Owner so as to avoid unreasonable delay in the Work;

10.2.2 an Allowance shall cover the cost to the Construction Manager of materials and equipment delivered at the Ballpark Facility Site and all required taxes, less applicable trade discounts;

10.2.3 the Construction Manager's costs for unloading and handling at the Ballpark Facility Site, labor, installation costs, overhead, profit and other expenses contemplated for stated Allowance amounts shall be included in the Construction Manager's Fee, the General Conditions Costs, or Subcontract Sums, and not in the Allowances, unless specifically stated otherwise;

10.2.4 whenever costs are more than or less than Allowances, the Guaranteed Maximum Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual costs and the Allowances listed in the Contract. The Construction Manager shall comply with all notice requirements in the Contract Documents concerning any potential increase in the Allowance amounts, and thus the GMP.

ARTICLE 11 DISCOUNTS, REBATES AND REFUNDS

Section 11.1 Disposition of Discounts, Rebates and Refunds. Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (i) before making the payment, the Construction Manager included them in an Application for Payment and received payment therefor from the Owner, or (ii) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise cash discounts shall accrue to the Construction Manager. All trade discounts, rebates and refunds, and all returns from sale of surplus Small Tools, materials and Equipment (or credit in the amount of fair market value thereof, if retained by the Construction Manager) shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be properly determined and secured.

Section 11.2 No Adjustment of Guaranteed Maximum Price. Amounts which accrue to the Owner in accordance with the provisions of Section 11.1 shall be credited to the Owner as a deduction from the Cost of the Work and shall not result in adjustment of the Guaranteed Maximum Price.

ARTICLE 12 SUBCONTRACTS

Section 12.1 Form of Subcontracts; Conformance with Certain Requirements.

12.1.1 All subcontracts (i) shall be written on a standard subcontract form meeting the requirements of Section 5.3 of the General Conditions, without modification thereof unless approved by the Owner, (ii) shall conform to the payment provisions of Section 14.3 of this Agreement, (iii) shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner (in which case the Owner shall have the complete right to audit the Subcontractor's records for the Ballpark Facility Project), (iv) shall not provide for the Subcontractor to furnish labor and material payment bonds unless approved by Owner, and (v) shall otherwise conform to the requirements of the General Conditions.

ARTICLE 13 ACCOUNTING RECORDS

Section 13.1 Records to be Maintained by Construction Manager. The Construction Manager shall keep full and detailed accounts, and exercise such controls as may be necessary for proper financial management under this Agreement. All accounting and control systems shall be satisfactory to the Owner. At all reasonable times, the Owner, the Owner's Lender and the Owner's accountants and representatives shall be afforded access to, and shall be permitted to copy and audit, the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Agreement, and the Construction Manager shall preserve all of the same for a period of ten (10) years after final payment, or for such longer period as may be required by law.

ARTICLE 14 PROGRESS PAYMENTS

Section 14.1 Applications for Payment.

14.1.1 Time for Submission; Supporting Data. Notwithstanding anything to the contrary herein, Florida's Local Government Prompt Payment Act, Sections 218.70 et seq., Florida Statutes, shall govern all payments under this Contract and all payments to any subcontractors. By the 24th day of each calendar month, the Construction Manager shall furnish to the Owner (and, if directed by the Owner, shall furnish a copy to the Architect) a statement (the "**Application for Payment**") of the Cost of the Work performed, and of the Construction Manager's Fee earned, during the preceding calendar month (through the 24th day of the month) for which it claims it is entitled to be paid. Each Application for Payment shall be in a form approved by Owner, and shall be accompanied by payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by Owner, the Owner's Lender(s) or the Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (i) progress payments already received by the Construction Manager, less (ii) that portion of those payments attributable to the Construction Manager's Fee, plus (iii) payrolls for the period covered by the Application for Payment in question, plus (iv) retainage provided in Section 14.2.1.3, if any, applicable to prior progress payments. Five (5) business days before submitting the Construction Manager's Application for Payment, the Construction Manager shall submit a "pencil draft" Application for Payment for the Owner's review.

14.1.2 Schedule of Values. Each Application for Payment shall be based upon the most recent Schedule of Values approved by the Owner.

14.1.3 Percentage of Completion. Each Application for Payment shall show the percentage of completion applicable to each portion of the Work, as of the end of the period covered by the Application for Payment.

14.1.4 Lien Waivers. Each Application for Payment shall be accompanied by: (i) duly executed and correctly completed lien waivers, in the same form as **Exhibit J**, executed by the Construction Manager, each Subcontractor and every other person or entity entitled to assert a lien or claim against the Ballpark Facility Project; (ii) an affidavit signed by the Construction Manager, and notarized, listing all subcontractors and suppliers who are furnishing, on an aggregate basis, in excess of \$25,000 worth of labor, materials or services for the Work on the form attached as **Exhibit K**; and (iii) an affidavit signed by the Construction Manager, and notarized, in the form attached as **Exhibit L**.

14.1.5 Progress Reports. Each Application for Payment shall be accompanied by a signed and completed Progress Report, in a form to be approved by the Owner, for the period covered by the Application for Payment.

14.1.6 Requirements of Owner's Lender. In addition to the foregoing provisions of this Section 14.1, each Application for Payment shall be in such form and shall be accompanied by such supporting data as may be required by Owner's Lender(s).

14.1.7 Allocation of Cost. Each Application for Payment shall include sufficient documentation, as required by Owner, for allocation of cost to specific accounts as directed by the Owner.

Section 14.2 Payments to Construction Manager.

14.2.1 Computation of Payment Amounts. Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

14.2.1.1 There shall first be determined the Cost of the Work actually incurred by the Construction Manager on account of that portion of the Work which has been completed, by adding together (i) the sum of all payments to Subcontractors for completed Work constituting Cost of the Work actually made by Construction Manager or which Construction Manager intends to make prior to the next Application for Payment, and (ii) all other expenses constituting Cost of the Work actually incurred by Construction Manager on account of completed Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment; provided, however, that the aggregate payments to Construction Manager shall not exceed that amount representing the aggregate percentage of Work completed to date as compared to the GMP. The Construction Manager's Application for Payment shall include copies of any subcontractor applications forming the basis, in whole or in part, of the Construction Manager's Application for Payment.

14.2.1.2 There shall be added to such amount the Cost of the Work actually incurred by the Construction Manager on account of materials and equipment delivered and suitably stored at the Ballpark Facility Site for subsequent incorporation in the Work or, if and to the extent that the requirements of Section 8.3.2 of the General Conditions have been met, suitably stored offsite. Such expense shall be determined by adding together the sum of all payments to Subcontractors constituting Cost of the Work with respect to such materials and equipment actually made by Construction Manager or which Construction Manager intends to make payment prior to the next Application for Payment and all other expenses constituting Cost

of the Work actually incurred by Construction Manager on account of such materials and equipment for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment.

14.2.1.3 There shall be added to such sum the earned portion of the Construction Manager's Fee, less retainage. The earned portion of the Construction Manager's Fee shall be an amount which bears the same ratio to the Construction Manager's Fee (as the same may have been adjusted pursuant to Section 6.2) as the completed portion of the Work determined in accordance with Sections 14.2.1.1 and 14.2.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion. Subject to the provisions of Section 14.3.2, the retainage applicable to the Construction Manager's Fee shall be **ten percent (10%)** of the earned portion thereof included in each Application for Payment.

14.2.1.4 There shall be subtracted from such sum:

14.2.1.4.1 The aggregate of previous payments made by the Owner.

14.2.1.4.2 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 14.1.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner in such documentation.

14.2.1.4.3 Amounts, if any, for which the Owner has withheld approval for payment as provided in Section 8.3.2 of the General Conditions.

14.2.2 Payment of Certain Work Precluded. Any Work performed pursuant to a Construction Change Directive shall not be included in the Construction Manager's Application for Payment until such Work is included in a Change Order executed by Owner.

14.2.3 Time Within Which Payments Are To Be Made. Within twenty-five (25) days after the Construction Manager shall have furnished the Owner with a complete and accurate Application for Payment in accordance with the provisions of Section 14.1.1, the Owner shall make payment to the Construction Manager of the amount computed in accordance with the provisions of Section 14.2.1 with respect to such Application for Payment. All payments due and not made within the time prescribed by Section 218.735, Florida Statutes, shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance in accordance with Section 218.74, Florida Statutes.

Section 14.3 Payments to Subcontractors.

14.3.1 Calculation of Maximum Allowable Payments. Except with the Owner's prior approval, and subject to audit by the Owner, payments to Subcontractors included in any Application for Payment shall not exceed an amount for each Subcontractor calculated as follows:

14.3.1.1 That portion of the Subcontract Sum properly allocable to completed Work shall first be determined by multiplying the Subcontractor's percentage of completion of each portion of Subcontractor's Work by the share of the total Subcontract Sum

allocated to that portion in the approved Schedule of Values, less retainage equal to ten percent (10%) thereof (or, after 50% completion of the Work, **five percent (5%)** thereof).

14.3.1.2 There shall be added to such sum that portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the Ballpark Facility Site for subsequent incorporation in the Work or, if and to the extent that the requirements of Section 8.3.2 of the General Conditions have been met, suitably stored offsite, less retainage equal to **ten percent (10%)** of the amount thereof (or, after 50% completion of the Work, **five percent (5%)** thereof).

14.3.1.3 There shall be subtracted from such sum:

14.3.1.3.1 The aggregate of previous payments made by the Construction Manager to the Subcontractor.

14.3.1.3.2 Amounts, if any, for which the Owner has withheld approval for payment to the Construction Manager for reasons which are the fault of the Subcontractor.

14.3.2 Retainage. Owner shall be entitled to retain **ten percent (10%)** of each monthly payment to Construction Manager. When the Work is fifty percent (50%) complete according to the approved Schedule of Values, and the manner of completion of the Work and its progress are reasonably satisfactory to the Owner, and pursuant to Section 218.735(8), Florida Statutes, the Owner shall hold **five percent (5%)** retainage on future progress payments. At the Owner's discretion, and with the Construction Manager's approval, retainage of each Subcontractor who has completed its work prior to Substantial Completion may be released separately. After 50-percent completion of the Work purchased pursuant to this Agreement, the Construction Manager may present to the Owner a payment request for up to one-half of the retainage held by the Owner, which shall be processed in accordance with the terms of this Agreement and pursuant to Section 218.735(8), Florida Statutes. If the Owner makes payment of retainage to the Construction Manager under this paragraph which is attributable to the labor, services, or materials supplied by one or more Subcontractors or suppliers, the Construction Manager shall timely remit payment of such retainage to those Subcontractors and suppliers.

14.3.3 Subcontractor Documentation. Subcontractors shall submit all documentation reasonably requested by Owner to substantiate their right to payment, including lien waivers on the forms attached hereto as **Exhibit J**.

Section 14.4 Material or Equipment Not Delivered to Ballpark Facility Site. Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the Ballpark Facility Site.

Section 14.5 Reliance on Information Furnished by Construction Manager. The Construction Manager represents, warrants and covenants to and with the Owner that all data and information contained in each Application for Payment, and all other information furnished in connection therewith is and shall be true, accurate and complete and that all documents furnished in connection therewith are and shall be genuine and, if not originals, are true, accurate and

complete copies of the originals thereof. This representation, warranty and covenant shall be deemed to be repeated as to each Application for Payment presented to Owner as provided herein. In taking action on the Construction Manager's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, as well as on the genuineness of all documents furnished by Construction Manager in connection therewith, and such reliance shall not be deemed to represent that the Owner has made a detailed examination, audit or arithmetic verification of such information or supporting data or documents or that the Owner has made exhaustive or continuous on-site inspections, or that they have made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of this Agreement.

ARTICLE 15 FINAL PAYMENT

Section 15.1 Conditions Precedent to Final Payment. The final payment of all amounts due and owing by the Owner to the Construction Manager under this Agreement (the "**Final Payment**") shall be made within twenty-five (25) business days after all of the following shall have occurred:

15.1.1 All of Construction Manager's obligations under this Agreement and the other Contract Documents shall have been fully performed, including punch list work, but excluding Construction Manager's responsibility to correct defective or nonconforming Work, as provided in Section 12.2.2 of the General Conditions, and to satisfy other requirements, if any, which necessarily survive final payment.

15.1.2 A final Application for Payment and a final accounting for the Cost of the Work shall have been submitted by the Construction Manager to the Owner, and the Owner's accountants or representatives shall have completed such review or audit thereof as they shall deem appropriate. The Construction Manager shall submit the final Application for Payment within forty-five (45) days after Substantial Completion of the Work and completion of all punch list items as provided in Section 8.4 of the General Conditions, along with the consent of Construction Manager's Surety (if any) to final payment.

15.1.3 The Construction Manager shall have delivered to the Owner (i) final lien waivers, in the same form as set forth in **Exhibit J**, executed by the Construction Manager, each Subcontractor and every other person or entity entitled to assert a lien or claim against the Ballpark Facility Project; (ii) an affidavit signed by the Construction Manager, and notarized, listing all subcontractors and suppliers who are furnishing, on an aggregate basis, in excess of \$25,000 worth of labor, materials or services for the Work on the form attached as **Exhibit K**; and (iii) an affidavit signed by the Construction Manager, and notarized, in the form attached as **Exhibit L**.

15.1.4 The issuance of a permanent certificate of occupancy for the Ballpark Facility Project and any other permits, licenses or approvals required by the Contract Documents, unless the issuance of such permanent certificate of occupancy or other permit, license or approval shall be withheld or delayed due to no fault of the Construction Manager or anyone working under Construction Manager.

15.1.5 Submittal of any and all as-built documents, training or operation manuals, warranties, guarantees, attic stock and any other closeout documents or items required by the Contract Documents.

Section 15.2 Amount of Final Payment. The amount of the Final Payment shall be calculated as follows:

15.2.1 There shall first be determined the Cost of the Work, as substantiated by Construction Manager's final accounting and adjusted to reflect the results of the review or audit conducted by the Owner's accountants or representatives.

15.2.2 There shall be added to such amount the Construction Manager's Fee.

15.2.3 There shall be subtracted from such sum the amount, if any, by which it exceeds the Guaranteed Maximum Price.

15.2.4 There shall be subtracted from such sum:

15.2.4.1 Amounts, if any, for which the Owner has withheld approval for payment as provided in Section 8.3.2 of the General Conditions.

15.2.4.2 The aggregate of previous payments made by the Owner. If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner upon demand.

Section 15.3 Audit and Approval for Final Payment. The Owner's accountants or representatives will conduct such review and audit of the Construction Manager's final accounting as they deem appropriate and will report the results of same in writing within forty-five (45) days after delivery of the final accounting to the Owner by the Construction Manager. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 15.1 have been met, the Owner shall, within seven (7) days after receipt of the written report of the Owner's accountants, either approve for final payment by the Owner such amount as shall be due Construction Manager (in which event the Owner shall make payment to the Construction Manager of such amount within twenty-five (25) days after such approval), or notify the Construction Manager in writing of the Owner's reasons for withholding such approval as provided in Section 8.3.2 of the General Conditions.

Section 15.4 Costs Incurred Subsequent to Final Application for Payment. After Construction Manager delivers the final Application for Payment to the Owner, Construction Manager shall not be entitled to make any further Applications for Payment or to be reimbursed or paid any sum not claimed in the final Application for Payment; provided, however, that if, subsequent to the delivery of the final Application for Payment and at the Owner's written request, the Construction Manager incurs costs described in Section 8.1.7 (and not excluded by Article 9), the Owner shall reimburse the Construction Manager for such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price.

The Contractor agrees that the time frames for payment set forth herein are consistent with the time requirements set forth in Section 218.735, Florida Statutes.

ARTICLE 16 MISCELLANEOUS PROVISIONS

Section 16.1 Third Party Beneficiary. Owner and the Construction Manager hereby expressly acknowledge and agree that ANLBC and its Affiliates (“**Third-Party Beneficiaries**”) are express, intended third-party beneficiaries of this Agreement. However, this Agreement is not intended to create any contractual rights against the Third-Party Beneficiaries. Nothing contained herein shall be deemed to give any other third party any claim or right of action against Owner or Construction Manager that does not otherwise exist without regard to this Agreement, except that the Indemnitees are third-party beneficiaries to the extent of their indemnification rights under Section 4.15.1 of the General Conditions.

Section 16.2 Notices. Any notice, demand, request, consent or approval required or permitted hereunder shall be in writing and shall be deemed to have been sufficiently given if sent either by (a) personal delivery to the individual or duly authorized officer or agent of the entity specified below, (b) by prepaid recognized overnight delivery service with receipt, or (c) prepaid registered or certified mail, return receipt requested, addressed in any case as follows:

To Owner:

With copies to

To Construction Manager:

With a copy to:

Notices shall be deemed properly given, delivered, served and received as of date of receipt or rejection.

Section 16.3 Owner Designation. The Construction Manager acknowledges that even though the Owner is designated as the “Owner” under this Agreement, the Owner is not the owner of the real property on which the Ballpark Facility Project is being constructed.

Section 16.4 Further Documents. The Construction Manager agrees to provide from time to time such certificates, documents, reports and information, including forms of Construction Manager performance letters and notices for the benefit of the Owner’s Lender, as

may be reasonably requested by such Lender, or any escrowee under any construction loan escrow or title insurer, and to cooperate with such Lender, escrowee or insurer to the fullest extent possible. This specifically includes providing a full lien subordination in favor of Lender on a form reasonably acceptable to Lender.

Section 16.5 Insurance. Construction Manager shall comply with, and shall require each Subcontractor to comply with, the insurance requirements in **Exhibit M** at its sole cost and expense.

Section 16.7 Headings and Captions. The headings and captions contained in this Agreement are inserted for convenience of reference only, and are not to be deemed part of or to be used in construing this Agreement.

Section 16.8 Pronouns; Joint and Several Liability. The necessary grammatical changes required to make this Agreement apply in the plural sense where there is more than one person or entity constituting the Construction Manager and to either corporations, partnerships, individual males or females, shall in all instances be assumed as though in each case fully expressed. If there be more than one person or entity constituting the Construction Manager, the liability of all such persons or entities for compliance with and performance of the terms of this Agreement shall be joint and several.

Section 16.9 Partial Invalidity. If any term of this Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term of this Agreement shall be valid and enforced to the fullest extent permitted by law.

Section 16.10 Survival. All representations and warranties of Construction Manager herein and any provision of this Agreement which obligates the Construction Manager after the termination of this Agreement shall be deemed to survive such termination.

Section 16.11 Time of Essence. Time is of the essence of this Agreement.

Section 16.12 Counterparts. This Agreement may be signed in several counterparts, each of which shall be deemed an original and all such counterparts together shall constitute one and the same instrument.

Section 16.13 Corporate Status and Qualification of Construction Manager. The persons executing this Agreement on behalf of the Construction Manager represent and warrant that: (i) the Construction Manager is a duly organized corporation under the laws of the state of its domestication identified in the opening paragraph of this Agreement and is qualified and licensed to perform construction services in the state in which the Ballpark Facility Project is located; (ii) is authorized to do business in such state; (iii) all of Construction Manager's franchise and corporate taxes have been paid to date; and (iv) such persons are duly authorized by the board of directors (and shareholders, if required) of such corporation to execute and deliver this Agreement on behalf of the corporation.

Section 16.14. Sovereign Immunity. Notwithstanding anything to the contrary in any of the Construction Documents, Construction Manager and Owner agree that nothing in this Contract shall be deemed a waiver of the Owner's sovereign immunity or the Owner's limits of liability as set forth in Section 768.28, Florida Statutes or other statute or law, and nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under such limitations of liability or by operation of law.

Section 16.15. Construction Manager's Certifications. Construction Manager certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Section:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
3. "collusive practice" means a scheme or arrangement between two or more bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

Section 16.16. Direct Purchase of Materials

- A. Owner represents to Construction Manager that Owner is a governmental entity exempt from Florida sales and use tax, and will provide Construction Manager with a copy of its Consumer Exemption Certificate. Owner may elect to implement a direct purchase arrangement whereby Owner will directly acquire certain materials ("**Direct Purchase Materials**") necessary for the completion of the Work directly from the suppliers to take advantage of Owner's tax exempt status.
- B. Within 21 days of the issuance of the Notice to Proceed or other written authorization for Work, Owner shall provide Construction Manager with a list of materials that will be treated as Direct Purchase Materials.
- C. Owner shall issue purchase orders directly to suppliers of Direct Purchase Materials. Such purchase orders shall include Owner's consumer certificate of exemption number and shall require that the supplier provide the required shipping and handling insurance and provide for delivery with title and risk of loss transferring upon delivery at the jobsite and after acceptance by Owner. Corresponding change orders shall be executed at the time of the direct purchase to reflect the direct purchases made by the Owner and if the original contract contemplated sale of materials and installation by same person, the change order needs to reflect sale of materials and installation by different legal entities.

- D. Owner shall issue a Certificate of Entitlement to each supplier of Direct Purchase Materials, and furnish a copy of same to the Construction Manager. Each Certificate of Entitlement must have attached thereto the corresponding purchase order. Each Certificate of Entitlement shall acknowledge that if the Department of Revenue determines the purchase is not a tax exempt purchase by a governmental entity, then the governmental entity will be responsible for any tax, penalties and interest determined to be due. Each Certificate of Entitlement shall affirm that (1) the attached purchase order is being issued directly to the vendor supplying the tangible personal property the Construction Manager will use in the identified public works; (2) the vendor's invoice will be issued directly to the governmental entity; (3) payment of the vendor's invoice will be made directly by the governmental entity to the vendor from public funds; (4) the governmental entity will take title to the tangible personal property from the vendor at the time of delivery by the vendor; and (5) the governmental entity assumes the risk of damage or loss at the time of delivery by the vendor.
- E. Upon delivery of the Direct Purchase Materials to the jobsite, the Owner, through Construction Manager as its agent, shall inspect the materials and invoices to determine that they conform to the purchase order. If the materials conform, Owner shall accept and take title to the Direct Purchase Materials through its agent, which is Construction Manager.
- G. Suppliers shall issue invoices directly to Owner. Owner shall process invoices and issue payment directly to the suppliers.
- H. Upon acceptance of Direct Purchase Materials, Owner shall assume risk of loss of same until they are incorporated into the Project. Construction Manager, as Owner's agent, shall be responsible for safeguarding all Direct Purchase Materials and for obtaining and managing all warranties, bonds, and guarantees for all material and products as required under the Contract Documents. All contract terms, including but not limited to warranties, payment and performance bonds and other forms of indemnification, provided by Construction Manager as part of Contract shall continue to apply to all Direct Purchase Materials, as though Construction Manager had purchased the Direct Purchase Materials.
- I. Construction Manager shall maintain builder's risk insurance (or equivalent) on the Direct Purchase Materials and shall name Owner as an additional insured under such insurance policy or alternatively, in the Owner's sole discretion, Owner shall maintain such insurance.
- K. Construction Manager shall be responsible for any taxes as a result of Construction Manager's failure to coordinate with the Owner regarding the direct purchase of materials, and failure to comply with the provisions of this Section.

Section 16.17. Notice and Cure Provisions for Construction Defects. CLAIMS FOR CONSTRUCTION DEFECTS ARE NOT SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

Section 16.18. Public Records. Construction Manager understands and agrees that all documents of any kind provided to the District in connection with this Agreement may be considered public records in accordance with Chapter 119, Florida Statutes, and other Florida law.

Accordingly, Construction Manager agrees to comply with all such laws, and cooperate with the District in retaining such records for the applicable time periods established under Florida law, and provision of such records in response to such requests. Construction Manager shall promptly notify the District in the event that the Construction Manager receives a request for any such records. To the extent applicable, the provisions of Section 119.0701, Florida Statutes are incorporated herein by this reference.

IF THE CONSTRUCTION MANAGER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSTRUCTION MANAGER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT DISTRICT MANAGER, WEST VILLAGES IMPROVEMENT DISTRICT, c/o TODD WODRASKA, SPECIAL DISTRICT SERVICES, INC., 2501A BURNS ROAD, PALM BEACH GARDENS, FLORIDA 33410, TWODRASKA@SDSINC.ORG, (877) 737-4922.

Section 16.19. Restriction on Removal of Fill Dirt from Work Site Construction Manager acknowledges that all suitable soil/fill material shall remain on-site. Fill material shall not be removed from the Project site without the written consent of the Owner.

Section 16.20. Public Entity Crimes. Pursuant to Section 287.133(3)(a), Florida Statutes:

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

Construction Manager represents that neither it nor any of its officers, directors, executives, partners, shareholders, members, or agents, or Subcontractors, Sub-subcontractors, or materialmen has been placed on the convicted vendor list within the last 36 months and, in the event that any such individuals or entities are placed on the convicted vendor list, the Construction Manager shall immediately notify the Owner whereupon this Contract may be terminated by the Owner for cause.

Section 16.21. Scrutinized Companies. Pursuant to Section 287.135, Florida Statutes, this Contract may be terminated by the Owner for cause if the Construction Manager, or any of

its officers, directors, executives, partners, shareholders, members, or agents, or Subcontractors, Sub-subcontractors, or materialmen

1. Is found to have submitted a false certification as provided under Section 287.135;
2. Has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel;
3. Has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; or
4. Has been engaged in business operations in Cuba or Syria.

In the event that any such statuses change, the Construction Manager shall immediately notify Owner whereupon this Contract may be terminated by the Owner.

Section 16.22. Acceptance by Local Governments. Construction Manager acknowledges that all work shall be subject to inspections, tests, and approvals by Owner, city, county, federal, state, other governmental entity, or utility company inspectors and that all or some portion of the work may be conveyed to another governmental entity or utility company. No work is complete until it passes final inspection / approval by the Owner as well as the applicable city, county, federal state, other governmental entity, or utility company. Construction Manager shall provide at its expense any written warranties, certifications, bonds or other documentation as may be required in connection with the conveyance of any Work, or as may be otherwise required, by any city, county, federal, state, other governmental entity or utility company.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the parties hereto have executed these presents in form and manner proper and sufficient in law as of the day and year first above written.

WEST VILLAGES IMPROVEMENT DISTRICT

By: _____

Name: _____

Title: _____

[SIGNATURES CONTINUED ON NEXT PAGE]

[EXECUTION PAGE FOR AGREEMENT BETWEEN OWNER AND CONSTRUCTION
MANAGER]

[CONSTRUCTION MANAGER]:

By: _____

Name: _____

Title: _____

DRAFT

Exhibit A
General Conditions

SEE ATTACHED

Exhibit B
Ballpark Facility Site Description

DRAFT

**Exhibit C
Site Description**

DRAFT

Exhibit D
Project Milestone Schedule

DRAFT

Exhibit E
COMPLETION DATES AND LIQUIDATED DAMAGES

I. MILESTONE DATES / MILESTONE LIQUIDATED DAMAGES

A. _____ Milestone / Milestone Dates / Liquidated Damages

The “_____ Milestone” is defined as _____.

If the Construction Manager fails to achieve the _____ Milestone on or before _____, (the “_____”), the Construction Manager shall pay to ANLBC, as a Third-Party Beneficiary to this Agreement, the amount of _____ **DOLLARS (\$_____)** for each calendar day that the Construction Manager fails to achieve the _____ Milestone.

B. _____ Milestone / Milestone Dates / Liquidated Damages

The “_____ Milestone” is defined as _____.

If the Construction Manager fails to achieve the _____ Milestone on or before _____, (the “_____”), the Construction Manager shall pay to ANLBC, as a Third-Party Beneficiary to this Agreement, the amount of _____ **DOLLARS (\$_____)** for each calendar day that the Construction Manager fails to achieve the _____ Milestone.

C. _____ Milestone / Milestone Dates / Liquidated Damages

The “_____ Milestone” is defined as _____.

If the Construction Manager fails to achieve the _____ Milestone on or before _____, (the “_____”), the Construction Manager shall pay to ANLBC, as a Third-Party Beneficiary to this Agreement, the amount of _____ **DOLLARS (\$_____)** for each calendar day that the Construction Manager fails to achieve the _____ Milestone.

II. SUBSTANTIAL COMPLETION – LIQUIDATED DAMAGES

The Substantial Completion Date for the Work is _____.

If the Construction Manager fails to achieve Substantial Completion of the Work by the Substantial Completion Date, then Construction Manager shall pay to ANLBC, as a Third-Party Beneficiary to this Agreement, the amounts listed below, as liquidated damages.

(1) The amount per calendar day (hereinafter “**Daily Liquidated Damages**”) for each calendar day Construction Manager fails to achieve Substantial Completion beyond the Substantial Completion Date, as it may be adjusted as provided in the Contract Documents, is as follows:

(a) within the period beginning on the _____ day and ending on the _____ following the Substantial Completion Date (“**First Delay Period**”), the liquidated damages shall be _____ **DOLLARS PER DAY** (\$ _____) per calendar day;

(b) within the period beginning on the _____ day and ending on the _____ following the Substantial Completion Date (“**First Delay Period**”), the liquidated damages shall be _____ **DOLLARS PER DAY** (\$ _____) per calendar day.

(2) _____ and No/100 Dollars (\$ _____) (hereinafter “**Game Liquidated Damages**”) for each Atlanta Braves 2019 MLB spring training home baseball game (a “**Game**”) that ANLBC or its Affiliated Entities are unable to hold or conduct at the Ballpark Facility Site as scheduled before Construction Manager achieves Substantial Completion as a result of Construction Manager’s failure to achieve Substantial Completion of the Work by the Substantial Completion Date.

Exhibit F
General Conditions Costs

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**Exhibit G
Personnel Rates**

DRAFT

Exhibit H

CHANGE ORDER

PROJECT NAME:

OWNER:

CONSTRUCTION MANAGER:

DATE OF AGREEMENT:

DATE OF THIS CHANGE ORDER:

CHANGE ORDER NUMBER:

The Agreement between Owner and Construction Manager (the "Agreement") is changed as follows: *(include a specific and detailed description of the change in the Agreement, including, where applicable, references to relevant paragraphs in the original Agreement, specific pages of the Contract Documents, or relevant sections of the Drawings and Specifications; refer to attachments as applicable):*

The Contract Time is hereby [increased] [decreased] by the following number of calendar days:

The Construction Manager hereby waives and releases any claim it may have against the Owner for any adjustment in the Contract Time resulting from, or related to, the change reflected in this Change Order, except as agreed to above.

The Contract Sum / GMP is hereby [increased] [decreased] by \$ _____.

The Construction Manager hereby waives and releases any claim it may have against the Owner for any adjustment in the Contract Sum / GMP arising out of, or related to, the changes reflected in this Change Order, including, but not limited to, any claim for damages due to delay, disruption, hindrance, impact, interference, inefficiencies or extra work arising out of, resulting from, or related to, the change reflected in this Change Order, except as agreed to above.

Original Contract Sum / GMP:

Net Change by Previous Change Orders:

Contract Sum / GMP before this Change Order:

[Increase] [Decrease] in this Change Order:

Contract Sum / GMP, as adjusted by this Change Order:

Substantial Completion Date, as adjusted previously:

[Increase] [Decrease] in Contract Time:

New Substantial Completion Date:

Upon execution of this Change Order by Owner and Construction Manager, the above-referenced change shall become a valid and binding part of the original Agreement without exception or qualification, unless noted in this Change Order. Any language in proposals or other documents attached hereto that conflict with the terms contained herein is null and void.

Owner

Construction Manager

By: _____

By: _____

Date: _____

Date: _____

DRAFT

Exhibit I

CONSTRUCTION CHANGE DIRECTIVE

PROJECT NAME:

OWNER:

CONSTRUCTION MANAGER:

ORIGINAL AGREEMENT DATE:

DATE OF THIS CONSTRUCTION CHANGE DIRECTIVE:

CONSTRUCTION CHANGE DIRECTIVE NUMBER:

Pursuant to the Agreement between the Owner and Construction Manager dated _____, 20__, the Construction Manager is hereby instructed by the Owner to change or modify the original scope of the Contract Documents as follows: *(include a specific and detailed description of the change, attaching relevant documents as appropriate)*:

Unless indicated below, the Owner does not intend to enter into a Change Order increasing the Contract Sum or Guaranteed Maximum Price as a result of the issuance of this Construction Change Directive.

[If the Owner does intend to enter into a Change Order adjusting the Contract Sum or Guaranteed Maximum Price, enter any not to exceed amount on expenditures or methods for determining amount (approved hourly rates, etc.) here]

In the event Construction Manager disagrees with the Owner's intention, as stated above, concerning adjustments in the completion dates, or the Contract Sum or Guaranteed Maximum Price, the Construction Manager shall give notice of a claim pursuant to the terms of the Contract Documents, and otherwise comply with the terms thereof.

The parties intend to execute a Change Order formalizing all of the terms relative to this Construction Change Directive within thirty (30) days, and Construction Manager acknowledges that it cannot be paid until a formal Change Order is signed by the Owner Change Order Representatives.

OWNER

By: _____

Date: _____

Construction Manager acknowledges receipt, and agrees to “not to exceed” amounts (if any) and/or approved rates (if any) that may be referenced herein.

This __ day of _____, 20__.

Name:

Title:

DRAFT

Exhibit J
Interim and Final Lien Waivers

DRAFT

**Exhibit K
CONSTRUCTION MANAGER AFFIDAVIT**

State of _____

County of _____

_____ being first duly sworn under oath, states that he/she is _____ [title] of _____ [name of Construction Manager] ("Construction Manager") which has contracted for the construction of _____ [name of Project per the Contract] ("Ballpark Facility Project") with _____ [Owner name per the Contract] ("Owner").

The Construction Manager has contracted with only the individuals or entities listed below for the furnishing of labor and/or materials for the Ballpark Facility Project ("Subcontractors"). Amounts currently owed to each Subcontractor are identified below.

These statements herein are being made to the Owner to induce payment under its contract with the Owner for the Ballpark Facility Project, and the Construction Manager represents that these statements and the information herein are complete and accurate.

<u>SUBCONTRACTOR NAME</u>	<u>TRADE</u>	<u>CONTACT NAME.</u>	<u>PHONE NO.</u>	<u>AMOUNT CURRENTLY OWED</u>
TOTAL				\$

COMPANY NAME: _____

By: _____
 Print Name: _____
 Its: _____

Sworn to and subscribed
 before me this ____ day of _____, 20__.

 Notary Public
 Notary's printed name: _____
 My Commission Expires: _____

(NOTARY SEAL)

Exhibit L
Construction Manager Supplemental Affidavits

INTERIM PAYMENT AFFIDAVIT

TO: _____ (Owner) Ballpark Facility Project

(1) The defined terms in this Affidavit have the same meanings as set forth in the Agreement between Owner and Construction Manager dated _____ for the Ballpark Facility Project. The undersigned acknowledges and represents that all persons or entities that have provided labor, material, services or equipment for or through the undersigned for use or incorporation into the Ballpark Facility Project have been paid and satisfied in full for the periods covered by previous payments to the undersigned, that previous payments to the undersigned have been properly applied to pay all outstanding invoices relating to the Ballpark Facility Project, and that the undersigned is not aware of any outstanding claims of any character which could give rise to future claims against the Owner, its Affiliates, the Indemnitees, the Lenders, the Construction Manager (if this affidavit is signed by a subcontractor or supplier) or the Ballpark Facility Project or Site.

(2) This Affidavit constitutes a representation by the undersigned that the payment of \$_____, once received, constitutes full and complete payment for all work performed, and all costs or expenses incurred (including, but not limited to, costs for supervision, general conditions costs, home office overhead, interest on capital and profit) relative to the work or improvements at the Ballpark Facility Project through the date of this Affidavit, except for the payment of retainage. To the extent permitted by law, the undersigned hereby specifically waives and releases any claim for damages due to delay, hindrance, interference, acceleration, inefficiencies or extra work, or any other claim of any kind it may have against any applicable payment bond and related Surety, the Owner, its Affiliates, the Indemnitees, the Lenders, the Construction Manager (if this affidavit is signed by a subcontractor or supplier) or the Ballpark Facility Project or Site, and any other person or entity with a legal or equitable interest in the Ballpark Facility Project or the Site, as of the date of this Affidavit, except as follows:_____.

(3) The amount of money set forth as due and owing in the immediately preceding interim payment affidavit dated _____, 20____, has been received, and is deemed paid in full, and execution of this Affidavit shall constitute the undersigned's Acknowledgment of payment in full as to the that interim lien waiver.

GIVEN UNDER HAND AND SEAL THIS _____ DAY OF _____, 20_____.

Sworn to and subscribed
before me this ____ day of
_____, 20__.

Notary Public
Notary's printed name: _____
My Commission Expires: _____
(NOTARY SEAL)

FIRM OR COMPANY:

By: _____

Print Name: _____

Its: _____
(and duly authorized agent of company)

FINAL PAYMENT AFFIDAVIT

TO: _____ (Owner) Ballpark Facility Project

(1) The defined terms in this Affidavit have the same meanings as set forth in the Agreement between Owner and Construction Manager dated _____ for the Ballpark Facility Project. The undersigned acknowledges and represents that all persons and entities that have provided labor, material, equipment or services to the undersigned for use or incorporation into the Ballpark Facility Project have been paid in full, that previous payments to the undersigned have been properly applied to pay all outstanding invoices relating to the Ballpark Facility Project, and that the undersigned is not aware of any outstanding claims of any character which could give rise to future claims against the Owner, its Affiliates, the Indemnitees, the Lenders, the Construction Manager (if this affidavit is signed by a subcontractor or supplier) or the Ballpark Facility Project or Site.

(2) This Affidavit constitutes a representation by the undersigned that the payment of \$ _____, once received, constitutes full and complete payment for all work performed, and all costs or expenses incurred (including, but not limited to, costs for supervision, general conditions costs, home office overhead, interest on capital and profit) relative to the work or improvements at the Ballpark Facility Project. To the extent permitted by law, the undersigned hereby specifically waives and releases any claim for damages due to delay, hindrance, interference, acceleration, inefficiencies or extra work, or any other claim of any kind it may have against any applicable payment bond and related Surety, or the Owner, its Affiliates, the Indemnitees, the Lenders, the Construction Manager (if this affidavit is signed by a subcontractor or supplier) or the Ballpark Facility Project or Site, and any other person or entity with a legal or equitable interest in the Ballpark Facility Project or Site.

This ____ day of _____, 20__.

FIRM OR COMPANY:

Sworn to and subscribed
before me this ____ day of _____, 20__.

By: _____

Notary Public
Notary's printed name: _____
My Commission Expires: _____

Print Name: _____
Its: _____
(and duly authorized agent of the company)

(NOTARY SEAL)

**Exhibit M
Insurance**

DRAFT

Exhibit N
Payment and Performance Bonds

DRAFT

Exhibit O
Collaboration Requirements

Promptly after execution of this Agreement, the Construction Manager shall coordinate with the Owner and Architect to develop protocols, expected levels of development, and authorized use of Building Information Modeling (BIM) on the Ballpark Facility Project. The Construction Manager and Architect shall execute a Project BIM collaboration and information exchange agreement ("BIM Collaboration Agreement") that incorporates these agreed-upon elements. The Architect will provide the Construction Manager with drawing files or Building Information Models for supplemental information purposes pursuant to the BIM Collaboration Agreement. Such drawing files or Building Information Models will not be relied upon by the Construction Manager for construction and will not be used as a substitute for paper construction documents issued for construction.

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Exhibit Q
Key Personnel Chart

DRAFT