

**STADIUM CONSTRUCTION MANAGEMENT AGREEMENT**

**between**

**COBB COUNTY, GEORGIA**

**and**

**AMERICAN BUILDERS 2017, A JOINT VENTURE**

**Dated May 27, 2014**

## TABLE OF CONTENTS

	<b>Page</b>
ARTICLE 1	DEFINITIONS AND ATTACHMENTS .....1
ARTICLE 2	THE WORK .....4
ARTICLE 3	THE CONSTRUCTION MANAGER’S DUTIES AND STATUS .....5
ARTICLE 4	TIME OF COMMENCEMENT AND COMPLETION.....6
ARTICLE 5	GUARANTEED MAXIMUM PRICE .....7
ARTICLE 6	CONSTRUCTION MANAGER’S FEE.....7
ARTICLE 7	CHANGES IN THE WORK .....8
ARTICLE 8	COSTS TO BE REIMBURSED.....8
ARTICLE 9	COSTS NOT TO BE REIMBURSED .....12
ARTICLE 10	ALLOWANCES.....12
ARTICLE 11	DISCOUNTS, REBATES AND REFUNDS .....13
ARTICLE 12	SUBCONTRACTS.....13
ARTICLE 13	ACCOUNTING RECORDS .....14
ARTICLE 14	PROGRESS PAYMENTS.....14
ARTICLE 15	FINAL PAYMENT .....17
ARTICLE 16	MISCELLANEOUS PROVISIONS .....19

**AGREEMENT  
BETWEEN OWNER AND CONSTRUCTION MANAGER**

THIS STADIUM CONSTRUCTION MANAGEMENT AGREEMENT (“**Agreement**”), entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2014, by and between **COBB COUNTY, GEORGIA** (the “**Owner**”) and **AMERICAN BUILDERS 2017, A JOINT VENTURE** (the “**Construction Manager**”), for the construction of the Cobb County/ Atlanta Braves Stadium Project (as defined herein) described in the Contract Documents listed on **Exhibit A** hereto.

**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 Stadium Site, including streets, sidewalks, bridges and buildings adjoining the Stadium 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”** means Atlanta National League Baseball Club, Inc., a Georgia corporation.

**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 Program Manager as the Architect by written notice delivered to the Construction Manager as herein provided. As of the date of this Agreement, the Architect is **Populous, Inc.**

1.1.9 “**Authority**” means the Cobb-Marietta Coliseum and Exhibit Hall Authority.

1.1.10 “**Authority Parking**” means certain parking serving the Stadium to be constructed pursuant to the Contract Documents.

1.1.11 “**BCC**” means Braves Construction Company, LLC, a Delaware limited liability company. Unless otherwise provided in this Agreement, the persons who have authority to act on behalf of BCC are the BCC Representative and the BCC Change Order Representatives.

1.1.12 “**BCC Change Order Representatives**” means the following individuals: **Mike Plant, Chip Moore, and Greg Heller**, or such other individuals as provided by written notice to the Construction Manager pursuant to the notice provisions of this Agreement.

1.1.13 “**BCC Consultants**” means a Person engaged by BCC to perform a certain portion of the design services for the Project.

1.1.14 “**BCC Representative**” means **Mike Plant**, or such other individual(s) as provided by written notice to the Construction Manager pursuant to the notice provisions of this Agreement.

1.1.15 “**BRED**” means BRED Co., LLC, a Georgia limited liability company.

1.1.16 “**BSC**” means Braves Stadium Company, LLC, a Delaware limited liability company.

1.1.17 “**Budget Control Estimates**” has the meaning ascribed to it in Section 2.6.

1.1.18 “**Buy-Out Savings**” has the meaning ascribed to it in Section 5.4.1.

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

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

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

1.1.22 “**Construction Administration Agreement**” means that certain Construction Administration Agreement dated on or about May 27, 2014 by and between the County, as Owner, and BCC, as the Owner’s exclusive agent for the management and administration of the construction of the Stadium Project. In this capacity, BCC may be referred to herein as the “Construction Administrator”.

1.1.23 “**Construction Administrator**” has the meaning ascribed to it in Section 1.1.21.

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

1.1.25 “**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 Len Moser.

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

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

1.1.28 “**Contract Documents**” means this Agreement (including all Change Orders thereto, and the GMP Amendment once executed), the General Conditions of the Contract, the Stadium Construction Documents, all documents incorporated by reference into any of the foregoing documents, and all other documents, if any, set forth in the Schedule of Contract Documents attached hereto as **Exhibit A**.

1.1.29 “**Construction Change Directive**” means a written order issued by BCC on behalf of the County on the form attached hereto as **Exhibit E** 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.

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

1.1.31 “**County**” means Cobb County, Georgia.

1.1.32 “**County Project Manager**” means the person appointed by the County from time-to-time to perform Owner’s representative services on behalf of the County. As of the date of this Agreement, the County Project Manager is a person to be determined by written notice to the Construction Manager pursuant to the notice provisions of this Agreement. The

Construction Manager agrees to cooperate with the County Project Manager and comply with the County Project Manager's reasonable requests for information.

**1.1.33** "**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.

**1.1.34** "**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.

**1.1.35** "**Excusable Delay**" means delays for which the Construction Manager is entitled under the Contract Documents to an extension of one or more of the Completion Dates.

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

**1.1.37** "**Final Completion**" has the meaning ascribed to it in Section 8.6.1 of the General Conditions.

**1.1.38** "**Final GMP Design Documents**", "**IGMP Design Documents**" or "**Phased GMP Design Documents**" means, as appropriate, the documents accompanying the Final GMP, IGMP, or Phased GMP, as they case may be, as further set forth in Section 2.6.2.

**1.1.39** "**Final GMP Qualifications and Assumptions**", "**Phased GMP Qualifications and Assumptions**", "**IGMP Qualifications and Assumptions**" means the written statement of qualifications and assumptions prepared by Construction Manager, based on the Final GMP Design Documents, the Phased GMP Design Documents, or the IGMP Design Documents and corresponding Prose Statements, as the case may be.

**1.1.40** "**Final Payment**" has the meaning ascribed to it in Section 15.1.

**1.1.41** "**Fixed Construction Budget**" shall mean the maximum established Construction Cost, including Contingency, for the Stadium Project, which amount is no more than **\$500,000,000.00**, as may be amended by the Owner in writing to the Construction Manager. The Fixed Construction Budget shall establish the basis for determining the IGMP, Phased GMP, and Final GMP.

**1.1.42** "**General Conditions**" means the General Conditions of the Stadium Construction Management Agreement for Construction the Stadium Project attached hereto as **Exhibit B**.

**1.1.43** "**General Conditions Costs**" has the meaning ascribed to it in Section 5.5.

**1.1.44** "**GMP Amendment**" means the amendment to this Agreement establishing the Final GMP.

1.1.45 “**GMP Deadband**” has the meaning ascribed to it in Section 6.2.

1.1.46 “**GMP Development Documents**” means the Drawings, Specifications and other documents prepared by the Architect that establish and describe the size and character of the Stadium Project as to architectural, civil, structural, landscape, mechanical and electrical systems, graphics and signage, and other elements, and which include typical construction details, equipment layouts and specifications that identify major materials and systems and as more specifically described in the agreement between BCC and the Architect.

1.1.47 “**GMP Design Documents**” means, collectively, the IGMP Design Documents, the Phased Design Documents, and the Final GMP Design Documents.

1.1.48 “**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 Stadium Project, Stadium Site, Site, Adjacent Property, Owner, BCC, Construction Manager, Architect, and any other Project Team member.

1.1.49 “**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.

1.1.50 “**IGMP**” means the interim guaranteed maximum price to be provided by Construction Manager, based on the IGMP Design Documents, as further defined in **Exhibit J**.

1.1.51 “**IGMP Amendment**” means the amendment to this Agreement establishing an IGMP.

1.1.52 “**Indemnitees**” means BCC, BRED, ANLBC, BSC, each of their respective Affiliates, the County, the Authority and Program Manager, the Lender(s), and each of their respective directors, officers, board members, elected officials, shareholders, members, partners, employees and agents.

1.1.53 “**Lender**” means any Person providing financing for the Stadium Project.

1.1.54 “**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.

1.1.55 “**Milestone**” means certain identified requirements for completing specific portions of the Work. Milestones are identified in the Project Milestone Schedule in **Exhibit H** and may be further defined in **Exhibit P**.

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

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

**1.1.58 “Notice to Proceed”** means a notice given by the Program Manager to the Construction Manager in which the Construction Manager is instructed to proceed with the Work.

**1.1.59 “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.

**1.1.60 “Phased GMP Amendment”** means the amendment to this Agreement establishing a Phased GMP.

**1.1.61 “Phased GMP Design Documents”** means the interim guaranteed maximum price to be provided by Construction Manager, based on the Phased Design Documents.

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

**1.1.63 “Preconstruction Services Fee”** has the meaning ascribed to it in Section 2.10.

**1.1.64 “Program Manager”** means Jones Lang LaSalle Americas, Inc. (“JLL”) pursuant to that certain Development Advisory Services Agreement between BCC and JLL, or any successor or permitted assign pursuant thereto.

**1.1.65 “Program Manager Authorized Representative”** means **Mike Hall**, or such other person as may be designated in writing by Program Manager.

**1.1.66 “Project Milestone Schedule”** means the schedule of Stadium Project activities as set forth on **Exhibit H**.

**1.1.67 “Project Team”** means the County, BCC, Program Manager and County Project Manager, as well as any Person involved in the Stadium Project and under a contract with BCC or the County (as applicable), including Construction Manager and its Subcontractors, sub-subcontractors, material and equipment suppliers, the Architect and its subconsultants of any tier.

**1.1.68 “Prose Statement”** means Architect’s description of all material incomplete design elements of the IGMP Design Documents, Phased GMP Development Documents, or the Final GMP Design Documents, as the case may be, and Architect’s statement of intended scope (including anticipated qualities and quantities) with respect to such incomplete elements.

**1.1.69 “Punch List”** means a list prepared by the prepared by the Construction Manager for the Owner, Architect, and Program Manager’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 Stadium.

**1.1.70 “Schedule of Values”** means the schedule attached to the GMP Amendment, which has been prepared by the Construction Manager and approved by the Program Manager, 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 Program Manager or Owner’s Lender(s) may require, and shall be used as a basis for reviewing the Construction Manager’s Applications for Payment.

**1.1.71 “Schematic Design Documents”** means drawings prepared by the Architect that illustrate the scale and relationship of the various Stadium Project components and which may also contain square footage and volume calculations for the building interior spaces, building exterior spaces, and major architectural and interior finishes.

**1.1.72 “Site”** means that certain tract of land described on **Exhibit N**.

**1.1.73 “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.

**1.1.74 “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.

**1.1.75 “Stadium Construction Documents”** means the Drawings and Specifications prepared by the Architect, its subconsultants and the BCC Consultants and approved by BCC, on behalf of the Owner, setting forth in detail the requirements for the Work for the Stadium Project.

**1.1.76 “Stadium Project”** means the construction and equipping of the new MLB stadium and Authority Parking serving the Atlanta National League Baseball Club, Inc. located within the “Circle 75” site near the NW Intersection of I 75 and I 285, Cobb County, GA.

**1.1.77 “Stadium 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 M** and such other areas as may be designated by the Program Manager for access thereto and for the storage of the Construction Manager’s materials and equipment.

**1.1.78 “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.

**1.1.79 “Subcontractor’s Work”** means that portion of the Work to be performed by the Subcontractor under the Subcontract.

**1.1.80 “Subcontractors”** 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.

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

**1.1.82 “Substantial Completion”** has the meaning ascribed to it in Section 8.4.1 of the General Conditions.

**1.1.83 “Substantial Completion Date”** has the meaning ascribed to it in Section 4.1 of this Agreement.

**1.1.84 “Third Party Beneficiaries”** has the meaning ascribed to it in Section 16.3.

**1.1.85 “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, Architect, and Project Manager 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.

**1.1.86 “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 or the Program Manager 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 - Schedule of other Contract Documents**

- .2 **Exhibit B** – General Conditions
- .3 **Exhibit C** - Interim and Final Waivers of Lien
- .4 **Exhibit D** - Change Order
- .5 **Exhibit E** - Construction Change Directive
- .6 **Exhibit F** - Insurance
- .7 **Exhibit G** - Payment and Performance Bond Forms
- .8 **Exhibit H** – Project Milestone Schedule
- .9 **Exhibit I** – Collaboration Requirements
- .10 **Exhibit J** – Budget Control Estimates / GMP Estimates
- .11 **Exhibit K** – Construction Manager Affidavit
- .12 **Exhibit L** – General Conditions Costs
- .13 **Exhibit M** – Stadium Site Description
- .14 **Exhibit N** – Site Description
- .15 **Exhibit O** – Special Conditions
- .16 **Exhibit P** – Completion Dates and Liquidated Damages
- .17 **Exhibit Q** – Key Personnel Chart
- .18 **Exhibit R** – Personnel Rates
- .19 **Exhibit S** – Interim Insurance Requirements

**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 Stadium Site and shall carefully study and evaluate the Owner's program, schedule and budget requirements for the Stadium 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 Stadium Project; the various components of the Stadium 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 Costs.

**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 Stadium 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 Program Manager, shall provide performance and cost analysis of Equipment and systems proposed in the Stadium Project's design.

**2.2.7** The Project Milestone Schedule has been reviewed and approved by the Program Manager and Architect. The Project Milestone Schedule shall be updated by Construction Manager and delivered to the Program Manager 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 Stadium 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 and Program Manager. 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 Program Manager and necessary to construct the Stadium 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 and Program Manager, 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 Stadium 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 Stadium 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.

**2.2.15** The Construction Manager will promote and generate interest of local and regional bidders as well as M/WBE (Minority/Women Business Enterprise) and DBE (Disadvantaged Business Enterprise) bidders, including veteran enterprises, and assist the Program Manager in developing a master list of vendors and Subcontractors which have shown interest in submitting bid proposals for the Stadium Project. This list should include vendors and Subcontractors for all categories of Work included in the Stadium Project.

## **Section 2.3 Schematic Design Phase.**

**2.3.1** The Schematic Design Documents have been approved by the Owner and BCC.

#### **Section 2.4 Design Development Phase.**

**2.4.1** Construction Manager shall review the GMP 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.

**2.4.2** During the preparation of the GMP Development Documents, the Program Manager, Architect and Construction Manager shall meet weekly and Architect shall, at such meetings, notify the Program Manager and Construction Manager of any material modifications in quantities or qualities from the documents previously issued by Architect.

**2.4.3** 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. Construction Manager shall make recommendations for and execute actions designed to minimize adverse effects of labor shortages.

#### **Section 2.5 Cost Estimates.**

**2.5.1** Construction Manager shall work with the Architect and the Project Program Manger 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 Stadium Project design and budget can evolve in a timely, consistent and collaborative fashion. In addition, Construction Manager shall deliver to the Program Manager detailed estimates of the Construction Cost on the dates set forth on **Exhibit H** and as further set forth in this Article 2.

**2.5.2** 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 Program Manager 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 Program Manager 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).

#### **Section 2.6 GMP.**

**2.6.1** Construction Manager understands and agrees that the Fixed Construction Budget constitutes the fixed limit of Construction Cost available for all Work. The IGMP,

Phased GMP, and Final GMP cannot exceed the Fixed Construction Budget. Accordingly, Construction Manager shall achieve an IGMP, Phased GMP and 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 IGMP, Phased GMP, and 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.

**2.6.2** The GMP shall be developed in three stages that correspond to the IGMP, Phased GMP and the Final GMP as set forth in **Exhibit J** attached hereto. The IGMP and Phased GMP shall be arrived at prior to the Final GMP for the entire Work. Before submitting the IGMP, Phased GMP, and Final GMP, the Construction Manager shall submit Budget Control Estimates, as further described in **Exhibit J**. The IGMP, Phased GMP, and Final GMP shall be based on an estimate of the Cost of the Work (including Contingency and General Conditions Costs) plus Construction Manager's Fee. The Construction Manager's Fee and General Conditions Costs, in each instance, shall be stated as percentage of the Cost of the Work (including Contingency), such percent being the same percentages as set forth in Section 6.1 for the Contractor's Fee and Section 5.5 for the General Conditions Costs. Unless waived in writing by the Program Manager, the procedures set forth in **Exhibit J** and Sections 2.6.2.1 and 2.6.2.2 shall apply to the process of producing Budget Control Estimates and the establishment of the IGMP, Phased GMP and the Final GMP. The Owner shall be entitled to full access to all Subcontractor bids and underlying documentation establishing the IGMP, Phase GMP, and Final GMP.

**2.6.2.1 Budget Control Estimates.** Construction Manager shall provide Owner with three (3) Budget Control Estimates in accordance with the Project Milestone Schedule in **Exhibit H** and the process set forth in **Exhibit J**.

**2.6.2.2 GMP Estimates / Final GMP.** With respect to the IGMP, Phased GMP and the Final GMP, on or before the respective dates set forth in the Project Milestone Schedule in **Exhibit H**, the Owner shall cause Architect (and such other BCC Consultants as required) to prepare and deliver to Construction Manager a set of the IGMP Design Documents, Phased GMP Design Documents, and the Final GMP Design Documents and the corresponding Prose Statements for each at the stage of completion described in **Exhibit J**. Within thirty (30) days after receipt of such GMP Design Documents and the corresponding Prose Statement, Construction Manager shall submit to the Owner and Architect its proposed IGMP, Phased GMP, and Final GMP, as the case may be, and its corresponding IGMP Qualifications and Assumptions, Phased Qualifications and Assumptions, and Final Qualifications and Assumptions, based upon the respective GMP Design Documents and the corresponding Prose Statement. Within fourteen (14) days after the Owner and Architect receive the proposed IGMP, Phased GMP, and Final GMP and respective GMP Qualifications and Assumptions, Construction Manager, the Owner and Architect (along with Architect's Consultants) shall meet to reconcile any questions, discrepancies or disagreements relating to the IGMP, Phased GMP and Final GMP, and the GMP Qualifications and Assumptions, the respective GMP Design Documents and/or the Prose Statement. The reconciliation shall be documented by an addendum to the respective GMP Qualifications and Assumptions that shall be approved in writing by the Owner, Architect and Construction Manager. The Owner and Construction Manager will enter

into an IGMP Amendment and/or Phased GMP Amendment, as may be requested by Owner, as necessary to facilitate the release of bid packages. Contingent upon the Owner's approval of the Final GMP, the Owner and Construction Manager will enter into the GMP Amendment, and Construction Manager shall post Payment and Performance bonds in the same form as **Exhibit G** at the time of signing the GMP Agreement. Until there is a Final GMP, the penal sum of such bonds shall be equal to the Fixed Construction Budget, or such other amount as may be reasonably required by Owner, and when a Final GMP is established, the penal sum of the bonds shall be equal to the Final GMP. The Owner shall promptly authorize and cause the Architect to revise the GMP Design Documents, the Prose Statement and the Stadium Construction Documents to reflect the agreed upon GMP Qualifications and Assumptions in accordance with the schedules agreed to by Construction Manager and the Owner. 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. At all times the bonds required by this Section will comply with all requirements of O.C.G.A. §13-10-1, *et seq.*, commonly referenced as Georgia's Little Miller Act.

**2.6.3** The Final GMP shall be based upon completion of the Work pursuant to the dates for Substantial Completion and Final Completion set forth in the Project Milestone Schedule.

#### **Section 2.7 Cash Flow Analysis**

**2.7.1** Concurrent with the submission of each budget estimate and GMP submission, the Construction Manager shall submit a cash flow analysis for the overall construction duration of the Project. The analysis shall list individual monthly billings, projected billings, accumulated billings to date and percentages of completion on a monthly basis.

#### **Section 2.8 Construction Documents Phase.**

**2.8.1** 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, Stadium 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 Program Manager regarding same.

**2.8.2** 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.

**2.8.3** 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.

**2.8.4** On a continuing basis, as a contractor and not as a design professional, Construction Manager shall review the Stadium 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.

**2.8.5** 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.

**2.8.6** Construction Manager and the Owner recognize that, subsequent to the execution of this Agreement, the final Stadium 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 Stadium Project to understand the program requirements and Stadium 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 Stadium Construction Documents, provided that the Stadium Project Construction Documents do not vary from the terms of the GMP Agreement..

## **Section 2.9 Other Services.**

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

2.9.1.1 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.

2.9.1.2 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.

2.9.1.3 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 Stadium Project facilities.

2.9.1.4 Prepare and submit to the Program Manager for review and information, all necessary bidding information, instructions to bidders, bidding forms, special conditions (as set forth in **Exhibit O**), Subcontract agreement forms and other documents to be submitted to bidders, incorporating the Stadium Construction Documents as prepared by Architect and including a scope of Work defining what is included in each Subcontract bid package.

2.9.1.5 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.

2.9.1.6 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.

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

2.9.1.8 To the extent practicable, make recommendations for the use of environmentally friendly materials in construction of the Stadium Project.

2.9.1.9 Develop, with the cooperation of the Owner, the County and the Authority, 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 2.10 Preconstruction Services Fee.** For all Preconstruction Services in this Article 2, the Construction Manager shall be paid the lump sum of \$ 997,500 ("**Preconstruction Services Fee**"). The Preconstruction Services Fee shall be paid in four amounts upon completion of the following stages:

<b>2.10.1</b>	Schematic Design Documents:	\$	250,000
<b>2.10.2</b>	IGMP:	\$	250,000
<b>2.10.3</b>	Phased GMP:	\$	250,000
<b>2.10.4</b>	Final GMP:	\$	247,500

The Preconstruction Services Fee will not be included as part of the Final GMP, and will be billed separately to the Owner from amounts outside of the GMP.

### **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 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 Stadium Site, including, without limitation, the surface and subsurface (by review of available reports and information) 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) water conditions of the Stadium 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 Stadium 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 3.3 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 Program Manager 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 Program Manager and the Architect from time to time in order to insure that the Stadium 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 Stadium 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 MLB ballparks and mixed-use developments in comparable urban areas.

#### **Section 3.4 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 Stadium 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, and shall achieve any Milestones before the required Milestone Dates, 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 County 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 P**, after adjustment in such dates as may be allowed by the Contract Documents, the Construction Manager agrees to pay the Owner and ANLBC, as a Third-Party Beneficiary to this Agreement, the liquidated damages set forth in **Exhibit P** corresponding to such Completion Dates. The Construction Manager acknowledges and agrees that the amounts set forth in **Exhibit P** are liquidated damages, and not penalties and shall be the sole remedy available to ANLBC, the Owner, the Indemnitees and the Third- Party Beneficiaries 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 Stadium Project (including the 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

to this Agreement, as a result of Construction Manager's failure to achieve the Completion Dates, but that the liquidated damages in **Exhibit P** are a reasonable estimate of the damages to be incurred by Owner or ANLBC, as a Third-Party Beneficiary to this Agreement, 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 P** are intended only to cover damages suffered by Owner or ANLBC, as a Third-Party Beneficiary to this Agreement, 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 provide for adverse weather conditions as further set forth in this Section 4.3, 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. The Construction Manager's Construction Schedule shall accommodate for adverse weather conditions as follows: (i) 200% of the average rain days on the immediately preceding 5-year average for site work and foundations; (ii) 125% of the average rain days on the immediately preceding 5-year average for the remainder of the Work.

#### **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.** Contractor 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. Contractor 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 Contractor Manager. Contractor 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 Contractor Manager shall so provide in all Subcontracts). Contractor Manager expressly recognizes that the "fast track" method may require Contractor 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 Savings.**

**5.4.1** Any underrun in a line item set forth in the Schedule of Values as a result of the buy-out of the Work shall be considered "**Buy-Out Savings**". Buy-Out Savings shall be reallocated to a separate line-item in the Schedule of Values (and shall be designated as Buy-Out Savings). The Construction Manager shall furnish the Owner with copies of all bids, proposals, subcontract agreements, purchase orders, invoices and other materials and information reasonably requested by the Owner to evaluate and verify the amount, or absence, of any Buy-Out Savings. The Buy-Out Savings may only be used as set forth in this Section 5.4.1. The Construction Manager may use amounts in the Buy-Out Savings line item for overruns incurred in the buy-out process. Once eighty percent (80%) of the value of the Work to be subcontracted is awarded and Subcontracts or purchase orders executed for such Work, amounts in the Buy-Out Savings line-item shall be credited to the Owner by deductive Change Order.

**5.4.2** Upon completion of the Work, the Construction Manager shall make an accounting to the Owner of the Cost of the Work and, should the actual final cost, including the Cost of the Work and the Construction Manager's Fee, be less than the Guaranteed Maximum Price as adjusted pursuant to this Agreement, the savings, if any, shall be credited to the Owner by deductive Change Order.

**Section 5.5 General Conditions Costs.**

For all Cost of the Work identified in **Exhibit L**, the Construction Manager shall be paid a lump sum amount that will be determined at the time of the Phased GMP, which amount is included within the GMP (“**General Conditions Costs**”). This amount shall be paid to the Construction Manager in the same manner as the Construction Manager’s Fee as set forth in Section 14.2.1.3.

### **Section 5.6 Contingency.**

The GMP contains a line item created to fund certain unanticipated Costs of the Work (“Contingency”). At the time of the Final GMP and assuming one hundred percent complete Construction Documents, the Contingency shall not exceed **THREE PERCENT (3%)** of the Cost of the Work, excluding the “Acceleration Contingency” (described in Section 5.7 below). The Contingency (but not the GMP) shall be adjusted to reflect (a) net savings or net losses resulting from the award of Subcontracts entered into after the Effective Date of the GMP Amendment, and (b) approved expenditures from, or additions to, the Contingency pursuant to the terms of this Agreement. The amount of the adjustment to the Contingency contemplated by the preceding clause (a) shall be determined by subtracting the face amount of each Subcontract at the time the Subcontract is entered into from the amount allocated in the Schedule of Values attached to the GMP Amendment applicable to the Work to be performed under such Subcontract. Construction Manager may expend funds from the Contingency for Costs of the Work incurred for completion of the Work; provided, however, that Construction Manager shall obtain the prior written approval of the Owner for any such expenditure in excess of ONE HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$125,000.00), which shall not be withheld unreasonably; any expenditure less than the previously stated amount shall be reported at the Owner/Architect/Construction Manager biweekly meeting. The Owner may withhold approval only if either (a) the expenditure does not qualify as a Cost of the Work under the Agreement or (b) the Owner reasonably determines that the expenditure relates to the failure of a Subcontractor to perform its Work in accordance with the terms and conditions of its Subcontract; provided, however, that the Owner may not withhold its written approval if Construction Manager shall first demonstrate, to Owner's reasonable satisfaction, that Construction Manager has in good faith exercised reasonable steps to obtain performance by Subcontractor or Subcontractor's surety and that the claim is not covered by subcontractor default insurance or otherwise not covered by insurance. Any permitted expenditures of Contingency shall be evidenced on the Application for Payment requesting release of Contingency. For purposes of this Agreement, the term "covered by insurance" shall mean that the event or claim underlying Construction Manager's request for the use of Construction Contingency is an insured claim under any policy of insurance carried by Construction Manager or any Subcontractor.

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 (e) any Owner-directed upgrades or additions to the Work. Any unused Contingency upon Final Completion shall be considered savings and returned to the Owner pursuant to Section 5.4.2.

**Section 5.7 Acceleration Contingency.** Construction Manager and Owner agree that the GMP Amendment for the Final GMP shall identify a line item in addition to the Contingency not to exceed one half of one percent (0.5%) of the estimated Cost of the Work (the "Acceleration Contingency") that shall be expended only in accordance with this Section 5.7.

Notwithstanding any term or provision of this Agreement to the contrary, to the extent that the Work is delayed as a result of an Excusable Delay for which Construction Manager is not otherwise entitled to an adjustment to the GMP under the Contract Documents, and provided that Construction Manager provides notice of such delay in accordance with the terms of this Agreement, then unless Owner and Construction Manager agree to extend the Contract Time, Construction Manager shall have the right and obligation, with Owner's prior written approval, not to be unreasonably withheld, conditioned or delayed, to use the Acceleration Contingency for Cost of the Work (including General Conditions Costs) in excess of ONE HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$125,000.00) required to accelerate the performance of the Work as necessary to maintain the Construction Schedule in effect as of the date of the occurrence of event giving rise to such excusable delay; any expenditure less than the above stated amount shall be reported at the Owner/Architect/Construction Manager biweekly meeting but not subject to prior approval. Construction Manager shall implement the acceleration of the Work in the most cost efficient manner by employing extra shifts or additional crews before using overtime or premium time. Prior to implementation, Construction Manager shall present for Owner's review and approval the Construction Manager's make-up schedule and plan for scheduled additional shifts, crews, overtime or premium time, as the case may be.

Notwithstanding the foregoing, Construction Manager shall not have the right to use Acceleration Contingency to the extent that delay is caused by adverse weather that is or should have been accounted for in the Construction Schedule contemplated by Section 4.3 of this Agreement. Acceleration Contingency may be increased by the Owner through a Change Order at the Owner's discretion.

**Section 5.8. Early Release of Contingency.** On or about the date by which subcontracts have been awarded for the value of ninety five percent (95%) of the Cost of the Work and foundations are complete, Construction Manager and Owner shall enter into a Change Order decreasing the GMP and the Contingency by the amount, if any, by which the Contingency exceeds the sum of two and three quarters of one percent (2.75%) of the Cost of the Work identified in the GMP plus an amount equal to the reasonable estimate of Identified Risks as of that date. On or about the date that is six months prior to Substantial Completion, Construction Manager and the Owner shall enter into a Change Order decreasing the GMP and the Contingency by the amount, if any, by which the Contingency exceeds an amount equal to two and a half percent (2.50%) of the Cost of the Work identified in the GMP plus an amount equal to the reasonable estimate of Identified Risk as of that date. Construction Manager and Owner may reduce Contingency at any time during construction upon mutual agreement. Owner may, in its reasonable discretion, award to the Construction Manager, a bonus in addition to the Fee earned on the Work, for its judicious use and management of the Contingency funds, safety performance, quality performance, schedule performance, and overall collaboration.

"Identified Risk" shall mean any (a) claims asserted against Construction Manager or the Project or (b) risks that have been identified by the Construction Manager.

## ARTICLE 6 CONSTRUCTION MANAGER'S FEE

### Section 6.1 Construction Manager's Fee.

Owner agrees to pay to Contractor as part of the Guaranteed Maximum Price, and as compensation for its services rendered pursuant to this Agreement, **one and ninety five one hundredths percent (1.95%)** 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. The Contractor's Fee is intended to include, but not be limited to, all items listed in the "Basic Fee" column in **Exhibit L**.

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

**6.2.1** Construction Manager is not entitled to additional Construction Manager's Fee or General Conditions Costs on Change Orders unless and until the cumulative total of all Change Orders have increased the GMP by **TWO AND ONE-HALF PERCENT (2.5%)** of the Final GMP at the time of the GMP Amendment (the "GMP Deadband"); however this GMP Deadband does not preclude reimbursement any Cost of the Work otherwise allowable. Once the GMP Deadband has been exceeded, increases to the Construction Manager's Fee and General Conditions Costs shall be as set forth in Section 6.2.2. Notwithstanding the foregoing, if Change Orders for additional Work are issued subsequent to the date sixty (60) days prior to the required date for Substantial Completion of the Work, the Construction Manager shall receive General Conditions Costs and Construction Manager's Fee on the full value of the Change Orders.

**6.2.2** Subject to the provisions of Section 6.2.1: (i) Construction Manager's Fee shall be increased or decreased (as the case may be) by an amount equal to the same percentage in Section 6.1 for the Construction Manager's Fee multiplied by the Cost of the Work for any changes in the Work required by BCC on behalf of the Owner; and (ii) Construction Manager's General Conditions Costs may be increased or decreased, as the case may be, by amount equal to the same percentage in Section 5.5 for the General Conditions Costs multiplied by the Cost of the Work for any changes in the Work required by BCC on behalf of the Owner. 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 the Subcontractor's forces, and five percent (5%) if performed by a Sub-subcontractor.

## ARTICLE 7 CHANGES IN THE WORK

### Section 7.1 Changes.

BCC on behalf of the Owner, and through the Architect or the Program Manager, 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 Program Manager have 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 D**, 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 E**, shall first have been signed and issued by the BCC Change Order Representatives. If the Construction Manager proceeds with any extra or changed work without Change Order or Construction Change Directive signed by the BCC Change Order Representatives (even if verbal approval has been obtained), Construction Manager shall be deemed to have waived any claim based upon such extra or changed work. 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.**

8.1.1.1 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 R** (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 Stadium 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 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 Stadium 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 Stadium 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 Program Manager. Equipment and facilities which are job purchased shall be salvaged at the completion of the Stadium 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 Stadium 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 Subcontractor default protection at rates agreed upon no later than July 15, 2014.

#### **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 Stadium 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 which the Construction Manager purchases and maintains, net of all adjustments or credits related to the Work for discounts, dividends or premium modifications. Premiums for insurance which covers 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 which 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 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 is liable or is obligated to collect.

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 Stadium 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 or Program Manager.

**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 Stadium Site and all required taxes, less applicable trade discounts;

**10.2.3** the Construction Manager's costs for unloading and handling at the Stadium 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.**

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 Stadium 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.** On or after the first (1st) day of each month, the Construction Manager shall furnish to the Project Manager (and, if directed by the Project Manager, 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 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 Project Manager, 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 Project Manager.

**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 Waivers of Lien.** Each Application for Payment shall be accompanied by: (i) duly executed and correctly completed waivers of lien, in the same form as **Exhibit C**, executed by the Construction Manager, each Subcontractor and every other person or entity entitled to assert a lien or claim against the Stadium Project; and (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**.

**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 Project Manager, 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 Project Manager, for allocation of cost to specific accounts as directed by the Project Manager.

## **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 Stadium 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. 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 Project Manager in such documentation.

14.2.1.4.3 Amounts, if any, for which the Program Manager 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 thirty (30) 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.

### **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.

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 Stadium 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.

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 Program Manager 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 Program Manager, the Owner shall hold no further 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. The Owner reserves the right to reinstate retainage at any time due to issues arising with the Work or the progress thereof.

**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 C**.

**Section 14.4 Material or Equipment Not Delivered to Stadium 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 Stadium 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, or Program Manager, 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 forty-five (45) 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 final waivers of lien, in the same form as set forth in **Exhibit C**, or such other form as shall be satisfactory to Owner, duly executed and correctly completed by Construction Manager and all Subcontractors, suppliers and other persons or entities entitled to a lien against the Stadium Project or any part thereof.

**15.1.4** The issuance of a permanent certificate of occupancy for the Stadium 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 Program Manager 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 Program Manager 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 thirty (30) days after such approval), or notify the Construction Manager in writing of the Program Manager'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.

### **ARTICLE 16 MISCELLANEOUS PROVISIONS**

#### **Section 16.1 BCC Representative, Program Manager, and County Project Manager**

**16.1.1** Pursuant to the Construction Administration Agreement, the Owner has appointed BCC to act as its agent for the purposes of performing management and administration of the construction of the Stadium Project. BCC, in turn, has appointed Program Manager to act as BCC's agent for the purpose of assisting BCC in performing these management and construction administration duties to the Owner.

**16.1.2** Owner has also retained the County Project Manager to perform owner's representative services in connection with the Stadium Project on behalf of the County.

**16.1.3** It is Owner's intent that Program Manager will be the primary contact with the Construction Manager for purposes of administering this Agreement. Therefore, for purposes of communication, all references in this Agreement to Owner shall mean Program Manager, except that Construction Manager shall send all notices of termination or claims directly to the attention of BCC and Owner pursuant to the notice provisions of this Agreement as set forth in Section 16.4, with copies to individuals as indicated in that Section. Furthermore, Program Manager has authority to act on behalf of the Owner under this Agreement with respect to approvals, decisions and other matters relating to this Agreement, provided that, unless otherwise indicated by BCC in writing, Program Manager has no authority (in writing or by course of conduct) to bind Owner to a change to the Contract Documents that would increase the GMP, any Milestone Date or Substantial Completion Date. Notwithstanding anything to the contrary in the Contract Documents, the only persons with authority to sign a Change Order on behalf of the Owner that results in an increase to the GMP, any Milestone Date or Substantial



Clerk  
Cobb County Board of Commissioners  
100 Cherokee Street, Suite 300  
Marietta, GA 30090

Cobb County Manager  
County Manager's Office  
100 Cherokee Street, Suite 300  
Marietta, GA 30090

Cobb County Attorney  
County Attorney's Office  
100 Cherokee Street, Suite 350  
Marietta, GA 30090

Finance Director/Comptroller  
Office of Finance & Economic Development  
100 Cherokee Street, Suite 400  
Marietta, GA 30090

With copies to

Executive Vice President, Business Operations  
Atlanta National League Baseball Club, Inc.  
755 Hank Aaron Drive  
Atlanta, GA 30315

General Counsel  
Atlanta National League Baseball Club, Inc.  
755 Hank Aaron Drive  
Atlanta, GA 30315

Maxine Hicks, Esq.  
DLA Piper LLP  
One Atlantic Center  
1201 West Peachtree Street, Suite 2800  
Atlanta, GA 30309-3450

Mike Hall  
Jones Lang LaSalle  
3344 Peachtree Road  
Suite 1200  
Atlanta GA

To Construction Manager: American Builders 2017  
Len Moser  
1990 Vaughn Road, STE 100  
Kennesaw, GA 30144

With a copy to: Jobiste office - [address TBD]

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

**Section 16.5 Owner Designation.** The Construction Manager acknowledges that even though the County is designated as the "Owner" under this Agreement, the County is not the owner of the real property on which the Stadium Project is being constructed.

**Section 16.6 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.

**Section 16.7 Insurance.**

Construction Manager shall comply with the insurance requirements set forth in **Exhibit F**.

**Section 16.8 Not Used.**

Intentionally left Blank.

**Section 16.9 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 16.10 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 16.11 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 16.12 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 16.13 Time of Essence.**

Time is of the essence of this Agreement.

### **Section 16.14 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 16.15 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 Stadium 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 16.16** Prior to the effective date of the owner or contractor controlled insurance program discussed in **Exhibit F**, Construction Manager shall comply with, and shall require each subcontractor to comply with, the insurance requirements in **Exhibit S**.

**Section 16.17** County and ANLBC have entered into that certain Development Agreement dated of as of May 27, 2014 relating to the Stadium Project (the "Development Agreement"), a copy of which has been provided to the Construction Manager. Under the Development Agreement, the County has agreed to contribute certain funds for the Stadium Project, defined in the Development Agreement as the "County Contribution". After the "Funding Date" (as defined in the Development Agreement), Construction Manager agrees that notwithstanding any term or provision of this Agreement or the other Contract Documents to the contrary, the County shall have no financial obligation in excess of the County Contribution. Accordingly, prior to the Funding Date, Construction Manager shall look solely and exclusively to ANLBC for payment and performance of all obligations under this Agreement, and, after the

Funding Date, Construction Manager shall look solely and exclusively to ANLBC for payment and performance of all costs, expenses, damages, liabilities in excess of the County Contribution.

**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.

**OWNER**

By: \_\_\_\_\_

**CONSTRUCTION MANAGER**

By: \_\_\_\_\_

**Exhibit A**  
Schedule of other Contract Documents

To be added by the GMP Change Order.

**Exhibit B**  
**[General Conditions]**

**Exhibit C  
INTERIM WAIVER AND RELEASE UPON PAYMENT**

**OWNER:** \_\_\_\_\_

**GENERAL CONTRACTOR:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**STATE OF GEORGIA  
COUNTY OF \_\_\_\_\_**

**THE UNDERSIGNED HAS BEEN EMPLOYED BY \_\_\_\_\_  
TO FURNISH \_\_\_\_\_  
[DESCRIBE MATERIALS AND/OR LABOR] FOR THE CONSTRUCTION OF  
IMPROVEMENTS KNOWN AS \_\_\_\_\_ [TITLE OF THE  
PROJECT OR BUILDING] WHICH IS LOCATED IN THE CITY OF \_\_\_\_\_,  
COUNTY OF \_\_\_\_\_, AND IS OWNED BY \_\_\_\_\_ AND MORE  
PARTICULARLY DESCRIBED AS FOLLOWS:**

\_\_\_\_\_  
\_\_\_\_\_  
**[DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE  
BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT  
DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT,  
AND ATTACH AS EXHIBIT "A"]**

**UPON THE RECEIPT OF THE SUM OF \$ \_\_\_\_\_, THE  
UNDERSIGNED WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF  
LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS  
AGAINST ANY LABOR AN/OR MATERIAL BOND THROUGH THE DATE OF  
\_\_\_\_\_ [DATE] AND EXCEPTING THOSE RIGHTS AND LIENS THAT THE  
UNDERSIGNED MIGHT HAVE IN ANY RETAINED AMOUNTS OR OTHER CLAIMS  
NOTED BELOW, ON ACCOUNT OF LABOR OR MATERIALS, OR BOTH,  
FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT OF SAID OWNER FOR  
SAID BUILDING OR PREMISES: \_\_\_\_\_**

**[SIGNATURE ON FOLLOWING PAGE]**

**THE UNDERSIGNED AGREES THAT THIS INTERIM WAIVER AND RELEASE UPON PAYMENT FORM COMPLIES WITH O.C.G.A. § 44-14-366(C).**

**THIS THE \_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_.**

**FIRM OR COMPANY:**

\_\_\_\_\_

**SWORN TO AND SUBSCRIBED  
BEFORE ME THIS \_\_\_ DAY OF  
\_\_\_\_\_, 20\_\_.**

**BY:** \_\_\_\_\_

**PRINT NAME:** \_\_\_\_\_

**ITS:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

\_\_\_\_\_  
**NOTARY PUBLIC**

**(NOTARY SEAL)**

**MY COMMISSION EXPIRES:**

\_\_\_\_\_

**NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED SUCH PAYMENT, 60 DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN PRIOR TO THE EXPIRATION OF SUCH 60 DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER O.C.G.A. SECTION 44-14-366.**

**WAIVER AND RELEASE  
UPON FINAL PAYMENT**

**OWNER:** \_\_\_\_\_

**GENERAL CONTRACTOR:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**STATE OF GEORGIA**  
**COUNTY OF \_\_\_\_\_**

THE UNDERSIGNED HAS BEEN EMPLOYED BY \_\_\_\_\_  
TO FURNISH \_\_\_\_\_ [DESCRIBE  
MATERIALS AND/OR LABOR] FOR THE CONSTRUCTION OF IMPROVEMENTS  
KNOWN AS \_\_\_\_\_ [TITLE OF THE PROJECT OR BUILDING]  
WHICH IS LOCATED IN THE CITY OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_,  
AND IS OWNED BY \_\_\_\_\_ AND MORE PARTICULARLY  
DESCRIBED AS FOLLOWS:

\_\_\_\_\_  
[DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE  
BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT  
DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT,  
AND ATTACH AS EXHIBIT "A"]

UPON THE RECEIPT OF THE SUM OF \$\_\_\_\_\_, THE  
UNDERSIGNED WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF  
LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS  
AGAINST ANY LABOR AND/OR MATERIAL BOND ON ACCOUNT OF LABOR OR  
MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR ON  
ACCOUNT OF SAID OWNER FOR SAID PROPERTY.

[SIGNATURE ON FOLLOWING PAGE]

THIS THE \_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_.

FIRM OR COMPANY:

\_\_\_\_\_

SWORN TO AND SUBSCRIBED  
BEFORE ME THIS \_\_\_ DAY OF  
\_\_\_\_\_, 20\_\_.

BY: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

ITS: \_\_\_\_\_

(NOTARY SEAL)

ADDRESS: \_\_\_\_\_

MY COMMISSION EXPIRES:

\_\_\_\_\_

**NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED SUCH PAYMENT, 60 DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN PRIOR TO THE EXPIRATION OF SUCH 60 DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER O.C.G.A. SECTION 44-14-366.**

**Exhibit D**

**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*):

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:** \_\_\_\_\_

**Exhibit E**

**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 BCC on behalf of 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 BCC 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:

**Exhibit F  
Insurance**

**The parties agree to implement the insurance in general conformance with the requirements as set forth in the RFP.**

**Exhibit G**  
**PERFORMANCE BOND**

**KNOW ALL MEN BY THESE PRESENTS** that \_\_\_\_\_ [insert name of Construction Manager] (hereinafter called the "Principal") and \_\_\_\_\_ [insert name of surety] (hereinafter called the "Surety"), are held and firmly bound unto \_\_\_\_\_ (hereinafter called the "Owner"), its successors and assigns as obligee, in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) [contract amount], lawful money of the United States of America, for the payment of which the Principal and the Surety bind themselves, their administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, the Principal has entered, or is about to enter, into a certain written Stadium Construction Management Agreement with the Owner, dated \_\_\_\_\_ [insert date of contract], which is incorporated herein by reference in its entirety (hereinafter called the "CM Agreement"), for the construction of a project known as \_\_\_\_\_ [insert name of project], as more particularly described in the CM Agreement (hereinafter called the "Project");

**NOW, THEREFORE**, the conditions of this obligation are as follows: that if the Principal shall fully and completely perform all the undertakings, covenants, terms and conditions contained in the CM Agreement, including all modifications, amendments, changes, deletions, additions, and alterations thereto that may hereafter be made, then this obligation shall be void; otherwise it shall remain in full force and effect.

Whenever the Principal shall be, and declared by the Owner to be, in default under the CM Agreement, the Surety shall promptly remedy the default and complete the CM Agreement according to all of its terms and conditions. If the Surety fails to diligently commence completion of the CM Agreement within fourteen (14) days of notice of default, the Owner, in its sole discretion, may complete the CM Agreement, and have the Surety reimburse the Owner for all costs and expenses incurred by the Owner. If the Surety completes the CM Agreement, the selection of any completing contractor, and the form of any completion contract, shall be subject to the approval of the Owner, and such approval shall not be unreasonably withheld.

In addition, the Surety shall indemnify and hold harmless the Owner from any and all losses, liability and damages (including delay damages), claims, judgments, liens, and costs of every description which the Owner may incur, sustain or suffer by reason of the failure or default on the part of the Principal in the performance of any or all of the terms, provisions and requirements of the CM Agreement, including any and all amendments and modifications thereto, or which the Owner may incur by making good any such failure of performance on the part of the Principal; provided that the liability of the Surety shall not exceed the liability of the Principal or the penal sum of the Bond.

The Surety hereby waives notice of any and all modifications, omissions, additions, changes, alterations, extensions of time, changes in payment terms, and any other amendments in or about the CM Agreement and agrees that the obligations undertaken by this Bond shall not be impaired in any manner by reason of any such modifications, omissions, additions, changes, alterations, extensions of time, change in payment terms, and amendments.

The Surety hereby agrees that this Bond shall be deemed amended automatically and immediately, without formal or separate amendments hereto, upon any amendment to the CM Agreement, so as to bind the Principal and Surety to the full and faithful performance of the CM Agreement as so amended or modified, provided only that the Surety shall not be liable in an amount more than the penal sum specified above.

No right of action shall accrue on this Bond to or for the use of any person, entity or corporation other than the Owner named herein, or their executors, administrators, successors or assigns.

IN WITNESS WHEREOF the undersigned have caused this instrument to be executed and their respective corporate seals to be affixed and attested by their duly authorized representatives this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[Principal]

\_\_\_\_\_  
[Title]

[Surety]

\_\_\_\_\_  
[Title]

**[Attach Power of Attorney and Dual Obligee Rider (if requested by lender)]**

## PAYMENT BOND

**KNOW ALL MEN BY THESE PRESENTS** that \_\_\_\_\_ [insert name of contractor] (hereinafter called the "Principal") and \_\_\_\_\_ [insert name of surety] (hereinafter called the "Surety"), are held and firmly bound unto \_\_\_\_\_ (hereinafter called the "Owner"), its successors and assigns as obligee, in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) [contract amount], lawful money of the United States of America, for the payment of which the Principal and the Surety bind themselves, their administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, the Principal has entered, or is about to enter, into a certain written Stadium Construction Management Agreement with the Owner, dated \_\_\_\_\_ [insert date of contract], which is incorporated herein by reference in its entirety (hereinafter called the "CM Agreement"), for the construction of a project known as \_\_\_\_\_ [insert name of project], as more particularly described in the CM Agreement (hereinafter called the "Project");

**NOW, THEREFORE**, the condition of this obligation is such that if the Principal shall promptly make payment to all persons working on or supplying labor or materials under the CM Agreement, and any amendments thereto, with regard to labor or materials furnished and used in the Project, and with regard to labor or materials furnished but not so used, then this obligation shall be void; but otherwise it shall remain in full force and effect.

1. A "Claimant" shall be defined herein as any subcontractor, person, party, partnership, corporation or other entity furnishing labor, services or materials used, or reasonably required for use, in the performance of the CM Agreement, without regard to whether such labor, services or materials were sold, leased or rented, and without regard to whether such Claimant is or is not in privity of contract with the Principal or any subcontractor performing work on the Project, including, but not limited to, the following labor, services, or materials: water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the CM Agreement.

2. In the event a Claimant files a lien against the property of the Owner, and the Principal fails or refuses to satisfy or remove it promptly, the Surety shall satisfy or remove the lien promptly upon written notice from the Owner, either by bond or as otherwise provided in the CM Agreement, whether or not the Principal and/or Surety dispute the claim.

3. The Surety hereby waives notice of any and all modifications, omissions, additions, changes, alterations, extensions of time, changes in payment terms, and any other amendments in or about the CM Agreement and agrees that the obligations undertaken by this Bond shall not be impaired in any manner by reason of any such modifications, omissions, additions, changes, alterations, extensions of time, changes in payment terms, and amendments.

4. The Surety hereby agrees that this Bond shall be deemed amended automatically and immediately, without formal or separate amendments hereto, upon any amendment or modification to the CM Agreement, so as to bind the Principal and Surety, jointly and severally, to the full payment of any Claimant under the CM Agreement, as amended or modified, provided only that the Surety shall not be liable for more than the penal sum of the Bond, as specified in the first paragraph hereof.

5. This Bond is made for the use and benefit of all persons, firms, and corporations who or which may furnish any materials or perform any labor for or on account of the construction to be performed or supplied under the CM Agreement, and any amendments thereto, and they and each of them may sue hereon.

6. No action may be maintained on this Bond after one (1) year from the date the last services, labor, or materials were provided under the CM Agreement by the Claimant prosecuting said action.

IN WITNESS WHEREOF, the Principal and Surety have hereunto affixed their corporate seals and caused this obligation to be signed by their duly authorized representatives this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Attest: [Principal]

\_\_\_\_\_  
[Title]

Attest: [Surety]

\_\_\_\_\_  
[Title]

**[Attach Power of Attorney and Dual Obligee Rider (if requested by lender)]**

**Exhibit H**

**[PROJECT MILESTONE SCHEDULE]**

**Per Addendum No. 2 for sealed bid No. 14-5919 dated April 22, 2014**

## **Exhibit I – Collaboration Requirements**

The parties will confer and develop a Project BIM, collaboration and information exchange agreement with fifteen (15) days of execution of the Agreement. The following requirements and processes will be the starting point for the Collaboration Requirements.

1. The intent of this Exhibit is to define the collaboration requirements for the Project, including the collaborative efforts of the Project team associated with Utilizing Building Information Models (BIM).
2. The design team and Construction Manager shall develop a project specific BIM execution plan ("BIM Plan") documenting the collaborative process in which BIM will be implemented throughout the lifecycle of the Project. The BIM Plan shall utilize the requirements identified herein and developed during the Concept Design Phase. It shall be submitted for approval by the Owner and written approval by the Owner prior to the GMP Design Development Phase.
3. The BIM Model produced by design team and by its subconsultants or other consultants will serve as the basis of design and is considered a Design Basis Model only. The BIM prepared by the Design Team will be used by Construction Manager to prepare a Means and Methods Model. This Right of Reliance pertains to all models and applications associated with the BIM including REVIT, TEKLA, NAVISWORKS and associated applications.
4. Digital modeling information shall be provided by Design Team to the Construction Manager as a Contract Document for all structural steel design, MEP design, and structural concrete design, and as an informational model (but not a Contract Document) for other design elements including, but not limited to, architectural, site, civil, safety and security, controls, fire suppression and alarms, building automation and other systems.
5. Construction Manager may rely on the accuracy of the BIM prepared by the Design Team to the Level of Development outlined in the LOD matrix in accordance with traditional Standard of Care provisions that apply and govern the design and construction of comparable buildings in two (2) - dimensional (2D) design formats and methods.
6. Conversely, the Design Team may rely on the accuracy of the BIM prepared by Construction Manager in accordance with traditional Standard of Care provisions that apply and govern the preparation of shop drawings, fabrication drawings, sequencing and other instruments used to convey the means and methods under the control of Construction Manager, its subcontractors, consultants and other agents working on this project.
7. As mutually agreed by all parties including Design Team, Construction Manager and Owner, nothing shall be construed by the content and/or preparation of this BIM and/or associated models as a warranty or guarantee of accuracy and/or completeness by the Design Team. Standard and traditional procedures for design, documentation, means and methods, shop drawing submittals, verification by the contractor, requests for information in question, etc. shall apply to the design, construction and construction administration of the project.
8. The Construction Manager, contractors and subcontractors shall be solely responsible for means and methods and the execution of the Design Basis Model through the execution, preparation and management of delegated design, the Means and Methods Model (s), fabrication, installation and construction.
9. The Design Team will use the Construction Manager's web based Project Management System during preconstruction and construction for RFI's, submittals, information exchange, and collaboration.
10. As-built Model. A Construction Manager, will validate the Means and Methods Model to produce a field accurate As-built Model to be delivered to the Owner at project turnover.
11. Record Model. The Design Team member, will validate and revise the Design Intent Model to

produce a field accurate Record Model to be delivered to the Owner at project turnover.

The Contractor shall be responsible for the development and maintenance of the Record Model throughout the project. The Record Model shall be updated as the project progresses and shall be made available to the Owner at all times. The Record Model shall be delivered to the Owner at project turnover.

The Contractor shall be responsible for the development and maintenance of the Record Model throughout the project. The Record Model shall be updated as the project progresses and shall be made available to the Owner at all times. The Record Model shall be delivered to the Owner at project turnover.

The Contractor shall be responsible for the development and maintenance of the Record Model throughout the project. The Record Model shall be updated as the project progresses and shall be made available to the Owner at all times. The Record Model shall be delivered to the Owner at project turnover.

The Contractor shall be responsible for the development and maintenance of the Record Model throughout the project. The Record Model shall be updated as the project progresses and shall be made available to the Owner at all times. The Record Model shall be delivered to the Owner at project turnover.

**Exhibit J**  
Budget Control / GMP Estimates

The following Budget Control Estimates and GMP estimates shall be submitted within the time allotted on the Project Milestone Schedule.

1. Budget Control Estimate No. 1: The Construction Manager shall submit a comprehensive estimate based on completed Schematic Design Documents. This budget estimate, and all other estimates, shall be comprehensive within the time allotted on the Project Milestone Schedule and submitted with a complete price breakdown and detailed listing of qualifications and assumptions and anticipated quantities.
2. Initial GMP: The Construction Manager shall submit a comprehensive initial GMP ("IGMP") based on submitted design documents, filling in reasonable amounts, quantities and allowances for gaps in the design documents. This IGMP shall track through follow-up estimates to the Phased GMP.
3. Budget Control Estimate No. 2: This budget estimate shall be prepared by performing in-office progress reviews of the Architect's, engineers' and BCC Consultants' drawings, specifications and other materials. This budget estimate shall be submitted with a detailed listing of any changes to the Schematic and IGMP estimate, including qualifications and assumptions.
4. Phase GMP: The Construction Manager shall submit a comprehensive Phased GMP based on submitted design documents, filling in reasonable amounts, quantities and allowances for gaps in the design documents. This Phased GMP shall track through follow-up estimates to the Final GMP.
5. Budget Control Estimate No. 3: This budget estimate shall be prepared by performing in office progress reviews of the Architect's, engineers' and BCC Consultants' drawings, specifications and other materials. This budget estimate shall be reconciled by the Construction Manager with the Phased GMP. Any significant deviations from the Phased GMP relative to quantities, costs and schedule that could impact budget parameters and final delivery of the Stadium Project shall be identified along with a suggested action plan to realign the Stadium Project with the Phased GMP. This budget estimate shall be a detailed exercise further narrowing the scope of assumptions and qualifications.

6. Final GMP: The "**Final GMP**" submitted by the Construction Manager shall include all scope and costs to complete the Stadium Project. This budget estimate shall be submitted by the Construction Manager with a complete breakdown of all pricing and a summary listing of any outstanding inconsistencies, delays or problem areas that could impact budget parameters and final delivery.
  
7. The Construction Manager shall specify within each budget estimate the Construction Manager's fee for overhead and profit ("**Fee**"). In addition to the Construction Manager's Fee, the budget estimates shall include a detailed estimate of all general conditions work, supervision, contractors contingency, equipment, etc., in accordance with the General Conditions Costs matrix attached as **Exhibit L**. Upon acceptance and approval of the Final GMP by the Owner, the Owner and Construction Manager shall execute an amendment to the CM Agreement.



Sworn to and subscribed  
before me this \_\_\_\_ day of  
\_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

(NOTARY SEAL)

My Commission Expires:  
\_\_\_\_\_

**EXHIBIT L**  
**GENERAL CONDITIONS COSTS**

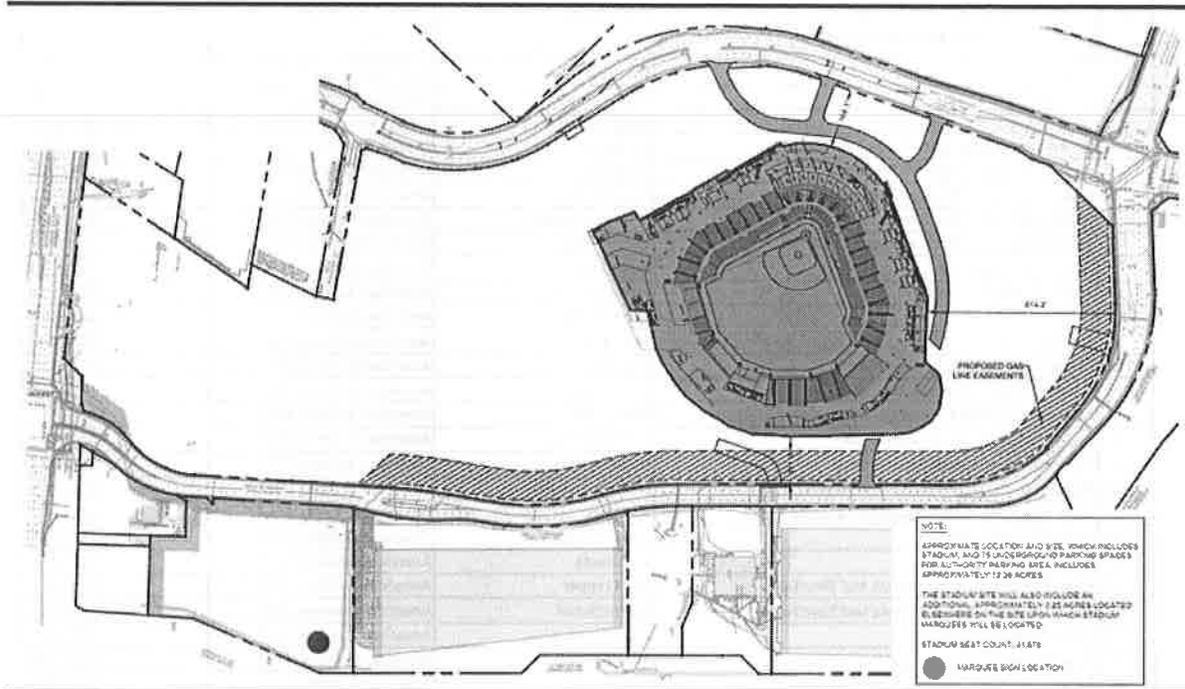
The attached staff cost from the RFP response is for reference only. The actual staff cost will be reconciled at the Phased GMP. The reconciled staff cost will comprise a component of the lump sum General Conditions cost. The lump sum General Conditions Cost will also include other reimbursables, including but not limited to, direct site expenses and Cost of Work items not otherwise included in subcontract agreements.

**Appendix K - GMP1 - Stadium - CM Fee Proposal**  
**Project Staff Man-Hour and Cost Matrix for the Construction Phase**

<b>STAFFING PLAN</b>				
	<b>Description</b>	<b>Name</b>	<b>Company</b>	<b>Total</b>
	<b>Site Supervision &amp; Management:</b>			
1	Project Director	Len Moser	American Builders 2017	\$1,067,093
2	Operations Director	Mark Granger	American Builders 2017	\$799,370
3	General Superintendent	Ransly Schnieders	American Builders 2017	\$965,906
4	Senior Project Manager - Stadium	Bill Hedge	American Builders 2017	\$847,911
5	Project Manager - Stadium Structure	Doug Hall	American Builders 2017	\$420,013
6	Project Manager - Stadium Enclosure	Doug Stelljes	American Builders 2017	\$274,881
7	Project Manager - Stadium Interiors	Charles Scroggins	American Builders 2017	\$406,909
8	Project Manager - Stadium Special Systems	Adam Cobb	American Builders 2017	\$219,712
9	Project Manager - MEP	Kevin Davis	American Builders 2017	\$674,207
10	Assistant Project Manager	Jayne Couch	American Builders 2017	\$378,012
11	Cost Manager	Ben Cumbie	American Builders 2017	\$530,159
12	Cost Engineer	Sam Thayer	American Builders 2017	\$328,049
13	Senior Superintendent - Stadium	John Owen	American Builders 2017	\$726,719
14	Superintendent - Stadium Structure	John Carter	American Builders 2017	\$419,518
15	Asst Superintendent - Stadium Structure	Dean Slate	American Builders 2017	\$427,462
16	Superintendent - Stadium Enclosure	Forrest Brewer	American Builders 2017	\$249,830
17	Superintendent - Stadium Interiors	Bill Anderson	American Builders 2017	\$323,334
18	Asst Superintendent - Stadium Interiors	Brian Chapman	American Builders 2017	\$272,045
19	Superintendent - Stadium Special Systems	Scott Ray	American Builders 2017	\$188,075
20	Superintendent - MEP	Todd Hamby	American Builders 2017	\$471,841
21	Quality Manager	Bill Klouda	American Builders 2017	\$471,252
22	Project Engineer - Foundations and Structure	Matt Lepper	American Builders 2017	\$310,915
23	Project Engineer - Foundations and Structure	Jay McDaniel	American Builders 2017	\$255,546
24	Field Engineer - Structure	Eddie Hayden	American Builders 2017	\$213,211
25	Project Engineer - Enclosure	Ryan McCary	American Builders 2017	\$211,968
26	Project Engineer - Finishes	Robert Bailey	American Builders 2017	\$223,968
27	Project Engineer - Finishes (Sports Systems)	BJ Hastings	American Builders 2017	\$295,649
28	Field Engineer - Finishes	Dan Guzman	American Builders 2017	\$213,525
29	Field Engineer - MEP	Nate Dutta	American Builders 2017	\$319,904
30	Scheduling Manager	Raul Amador	American Builders 2017	\$680,158
31	Document Control Engineer	John Minick	American Builders 2017	\$256,800
32	BIM Manager	Michal Wojtak	American Builders 2017	\$456,019
33	BIM Coordinator	Josh Cohn	American Builders 2017	\$336,872
34	Turnover / Commissioning Engineer	Roshan Alex	American Builders 2017	\$95,279
35	Office Manager	Natasha Bennett	American Builders 2017	\$269,683
36	Accounting Manager	Melissa Kisselburg	American Builders 2017	\$239,718
37	Safety Director	Lisa Caplick	American Builders 2017	\$569,331
38	Safety Engineer	Dalton Harrison	American Builders 2017	\$352,433
39	Community Participation Coordinator	Jason Lewis	American Builders 2017	\$106,775
40	Admin Asst	Juanita Jones	American Builders 2017	\$239,718
41	Director of Safety	Troy Ogden	American Builders 2017	\$124,709
42	Director of Quality / Chief of Staff	Rob Ragan	American Builders 2017	\$145,494
43	Director of BIM	Scott Cloud	American Builders 2017	\$114,316
44	Director of Operations	Chris Britton	American Builders 2017	\$155,886
45	Director of Field Operations	Dewayne Strickland	American Builders 2017	\$155,886
	<b>Total</b>			<b>\$16,804,065</b>

<b>TOTAL FOR STAFF COSTS:</b>	<b>\$16,804,065</b>
-------------------------------	---------------------

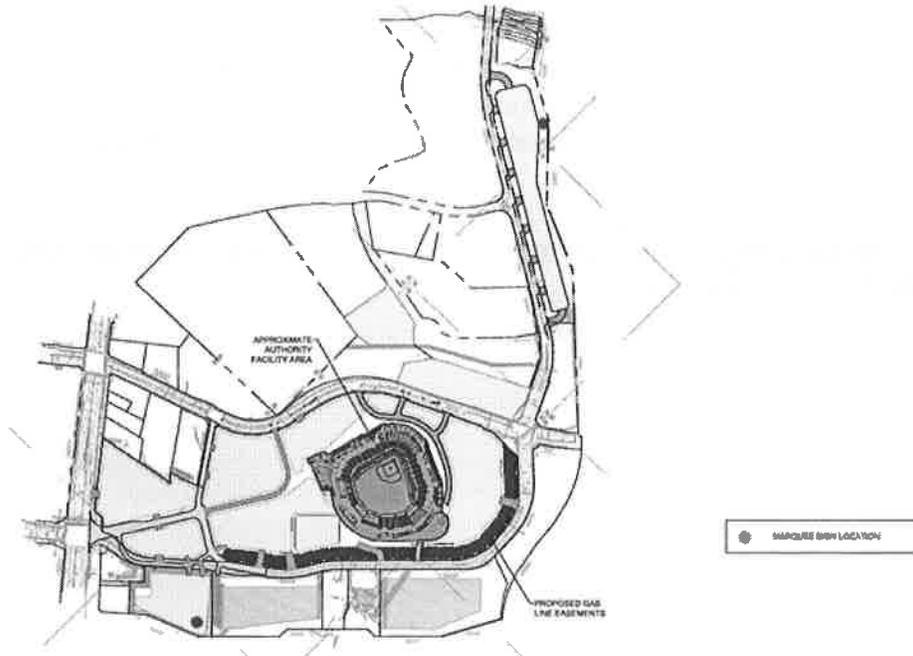
# EXHIBIT M STADIUM SITE DESCRIPTION



GRAPHIC SCALE IN FEET  
 0 100 200 400

Kimley»Horn  
 00010004

# EXHIBIT N SITE DESCRIPTION



GRAPHIC SCALE IN FEET  
0 250 500 1000

Kimley»Horn

**EXHIBIT O**  
**SPECIAL CONDITIONS**

Construction Manager shall comply with the following with respect to its performance of the scope of Work under this Agreement, and Construction Manager shall defend and indemnify Owner from any claims, damages, fines or other loss (including reasonable attorneys' fees) resulting from the failure of Construction Manager (or its Subcontractors or sub-subcontractors or any tier) to comply with the terms and conditions thereof with respect to the performance the Work under this Agreement.

1. **Immigration.** Construction Manager shall comply with the terms and conditions of Exhibit O1 attached hereto.

### Exhibit O1

GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT. **Construction Manager** acknowledges that it is responsible for complying with the provisions of the Georgia Security and Immigration Compliance Act of 2006 located at O.C.G.A. §13-10-90 *et seq.* and Georgia Department of Labor Rule 300-10-1-.02, and:

- A. That affidavits in the form attached to this **Exhibit O1** as Exhibit "1" be executed from Construction Manager (and any subcontractors, regardless of tier) and notarized, showing compliance with the requirements of O.C.G.A. § 13-10-91 and that such be made part of the Stadium Construction Management Agreement and/or subcontracts (of any tier);
- B. That Construction Manager (and any subcontractors, regardless of tier) fully comply with the requirements for completing and submitting the "Immigration Compliance Certification" in the form attached to this **Exhibit O1** as Exhibit "2" and that such certification be received by the Owner prior to the commencement of any Work under this Stadium Construction Management Agreement or any subcontract;
- C. That the Construction Manager (or any subcontractor, regardless of tier) notify the Owner within five (5) business days of entering into a contract or other agreement for hire with any subcontractor(s), regardless of tier;
- D. That the Construction Manager be responsible for obtaining and providing to the Owner the "Subcontractor Affidavit & Agreement," "Subsubcontractor Affidavit & Agreement" and "Immigration Compliance Certification" required in the form attached to this Amendment as Exhibits "1 and 2 " from each subcontractor, regardless of tier, employed or retained for work under this Agreement prior to the commencement of any work under the contract or any subcontract;
- E. That Owner reserves the right to dismiss, or require the dismissal of, any consultant or subcontractor for failing to provide the required affidavit or certification and/or for failure to comply with the statutory requirements of O.C.G.A. §13-10-91 and/or for providing false or misleading information upon the required affidavit(s) or certification(s);
- F. That Construction Manager and/or subcontractor retaining any other subcontractor to perform services under the contract provide legal notice to any subcontractor of the requirements of the County for immigration compliance and further provide notice that the Owner reserves the right to require the Construction Manager to dismiss, or require the dismissal of, any consultant or subcontractor for failing to provide the required affidavit or certification and/or for failure to comply with the statutory requirements of O.C.G.A. § 13-10-91 and/or for providing false or misleading information upon the required affidavit(s) or certification(s);

- G. That failure to comply with any of the requirements and procedures of the Owner (i.e., failure to timely supply required affidavits or compliance certification documents; failure to utilize federal work authorization procedures; failure to permit or facilitate audits or reviews of records by Owner or State officials upon request; and/or failure to continue to meet any of the statutory or Owner obligations during the life of the Agreement) shall constitute a material breach of the Agreement and shall entitle the Owner to require the dismissal of any subcontractor or sub/subcontractor (irrespective of tier) for failing to fully comply with these requirements or entitle the Owner to terminate this Agreement;
- H. That upon notice of a material breach of these provisions, Construction Manager (or subcontractor, regardless of tier) shall be entitled to cure the breach within ten (10) days and provide evidence of such cure. Should the breach not be cured, the Owner shall be entitled to all available remedies, including termination of the Agreement, the requirement that a subcontractor be dismissed from performing work under the contract, and any and all damages permissible by law.

**EXHIBIT 1**  
**CONTRACTOR AFFIDAVIT UNDER O.C.G.A. §13-10-91(b)(1)**

By executing this affidavit, the undersigned contractor verifies compliance with O.C.G.A. §13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of Cobb County, Georgia, has registered with, is authorized to use, and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. §13-10-91. Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period and the undersigned contractor will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A. §13-10-91(b). Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

\_\_\_\_\_  
Federal Work Authorization User Identification Number

\_\_\_\_\_  
Date of Authorization

\_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
Name of Project

Cobb County  
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_, \_\_\_\_\_ 20\_\_ in (city), \_\_\_\_\_ (state)

\_\_\_\_\_  
Signature of Authorized Officer or Agent

\_\_\_\_\_  
Printed Name and Title of Authorized Officer or Agent

SWORN AND SUBSCRIBED BEFORE ME  
ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 201\_\_

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

**SUBCONTRACTOR AFFIDAVIT UNDER O.C.G.A. §13-10-91(b)(3)**

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with \_\_\_\_\_ (contractor) on behalf of Cobb County, Georgia, has registered with, is authorized to use, and is participating in a federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. §13-10-91. Furthermore, the undersigned subcontractor will continue to use the federal work authorization program throughout the contract period and the undersigned subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-contractors who present an affidavit to the subcontractor with the information required by O.C.G.A. §13-10-91(b). Additionally, the undersigned subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor to the contractor within five business days of receipt. If the undersigned subcontractor receives notice that a sub-subcontractor has received an affidavit from any other contracted sub-subcontractor, the undersigned subcontractor must forward, within five business days of receipt, a copy of the notice to the contractor. Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

\_\_\_\_\_  
Federal Work Authorization User Identification Number

\_\_\_\_\_  
Date of Authorization

\_\_\_\_\_  
Name of Subcontractor

\_\_\_\_\_  
Name of Project

Cobb County  
\_\_\_\_\_  
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_, \_\_\_\_\_ 20\_\_ in (city), \_\_\_\_\_ (state)

\_\_\_\_\_  
Signature of Authorized Officer or Agent

\_\_\_\_\_  
Printed Name and Title of Authorized Officer or Agent

SWORN AND SUBSCRIBED BEFORE ME  
ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 201\_\_

\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_

**SUB-SUBCONTRACTOR AFFIDAVIT UNDER O.C.G.A. §13-10-91(b)(4)**

By executing this affidavit, the undersigned sub-subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract for \_\_\_\_\_ (name of subcontractor or sub-subcontractor with whom such sub-subcontractor has privity of contract) and \_\_\_\_\_ (name of contractor) on behalf of Cobb County, Georgia, has registered with, is authorized to use, and is participating in a federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. §13-10-91. Furthermore, the undersigned sub-subcontractor will continue to use the federal work authorization program throughout the contract period and the undersigned sub-subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the sub-subcontractor with the information required by O.C.G.A. §13-10-91(b). The undersigned sub-subcontractor shall submit, at the time of such contract, this affidavit to (\_\_\_\_\_) (name of subcontractor or sub-subcontractor with whom such sub-subcontractor has privity of contract). Additionally, the undersigned sub-subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor to (\_\_\_\_\_) (name of subcontractor or sub-subcontractor with whom such sub-subcontractor has privity of contract). Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

\_\_\_\_\_  
Federal Work Authorization User Identification Number

\_\_\_\_\_  
Date of Authorization

\_\_\_\_\_  
Name of Sub-subcontractor

\_\_\_\_\_  
Name of Project

Cobb County  
\_\_\_\_\_  
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_, \_\_\_\_\_ 20\_\_ in (city), \_\_\_\_\_ (state)

\_\_\_\_\_  
Signature of Authorized Officer or Agent

\_\_\_\_\_  
Printed Name and Title of Authorized Officer or Agent

SWORN AND SUBSCRIBED BEFORE ME  
ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 201\_\_

\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_

**EXHIBIT 2**  
**IMMIGRATION COMPLIANCE CERTIFICATION**

*(Required to be completed by Contractors and all Subcontractors)*

I certify to the Cobb County Board of Commissioners that the following employees will be assigned to:

\_\_\_\_\_  
*(Project Name/Description)*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I further certify to Cobb County, Georgia the following:

- The E-Verify program was used to verify the employment eligibility of each of the above-listed employees hired after the effective date of our contract to use the program;
- We have not received a Final Nonconfirmation response from E-Verify for any of the employees listed.
- If we receive a Final Nonconfirmation response from E-Verify for any of the employees listed above, we will immediately terminate that employee's involvement with the project.
- I have confirmed that we have an I-9 on file for every employee listed above and that to the best of my knowledge all the I-9's are accurate.
- To the best of my knowledge and belief, all of the employees on the above list are legally authorized to work in the United States.
- If any other employee is assigned to this Cobb County project, a certification will be provided for said employee prior to the employee commencing work on the project.

To the best of my knowledge and belief, the above certification is true, accurate and complete.

**Sworn to by:**

**Employer Name & Address:**

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_

\_\_\_\_\_  
Printed Name/Title

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_

SWORN AND SUBSCRIBED BEFORE ME  
ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 201\_

Notary Public  
Commission Expires: \_\_\_\_\_

**EXHIBIT P**

**Liquidated Damages**

The liquidated damages stated in this Exhibit P shall be the sole remedy for delay of the Owner, ANLBC, the Indemnitees, or any third party beneficiary in the aggregate for the failure of the Construction Manager to achieve any Milestone Date or Substantial Completion.

**I. ADMINISTRATIVE OFFICE MILESTONE / LIQUIDATED DAMAGES**

The “Braves Office, Clubhouse, and Storage Areas Milestone” (or “BOCSM”) is defined as the Construction Manager having achieved the Work with respect to those scopes so that they can be used for their intended purposes. \_\_\_\_\_.

If the Construction Manager fails to achieve the BOCSM on or before \_December 15, 2016\_\_\_\_\_ (the “BOCSM Milestone Date”), the Construction Manager shall pay to ANLBC, as a Third-Party Beneficiary to this Agreement, the amount of **\$25,000.00** for each calendar day that the Construction Manager fails to achieve the BOCSM.

**II. SUBSTANTIAL COMPLETION – ANLBC LIQUIDATED DAMAGES**

The Substantial Completion Date is \_\_\_January 24, 2017\_\_\_\_\_.

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) **Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00)** (hereinafter “**Game Liquidated Damages**”) for each Atlanta Braves 2017 MLB exhibition, pre-season, or regular season home baseball game (a “**Game**”) that ANLBC is unable to hold or conduct at the Project 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, provided that the first game is not scheduled before April 2, 2017. The ANLB

(2) **FIFTEEN THOUSAND DOLLARS AND NO/100 (\$15,000.00)** (hereinafter “**Special Event Damages**”) for each scheduled “Special Event” at the Stadium that ANLBC is unable to hold or conduct at the Project Site 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, provided that the first Special Event is not scheduled before February 22, 2014. This includes non-baseball game related events, such as concerts festivals, running event, and other similar events.

(3) 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 7<sup>th</sup> day and ending on the **15th day** following the Substantial Completion Date (“**First Delay Period**”), the liquidated damages shall be **FIVE THOUSAND DOLLARS PER DAY (\$5,000.00)** per day;

(b) within the period beginning on the **16th day** and ending on the **30th day** following the Substantial Completion Date (“**Second Delay Period**”), the liquidated damages shall be **FIFTEEN THOUSAND DOLLARS (\$15,000.00)** per day;

(b) within the period beginning on the **31st day** and ending on the **date prior the day on which the first 2017 regular season MLB home baseball game is scheduled to be played (“Third Delay Period”)**, the liquidated damages shall be **TWENTY FIVE THOUSAND DOLLARS (\$25,000.00)** per day.

### III. SUBSTANTIAL COMPLETION - OWNER LIQUIDATED DAMAGES

If the Construction Manager fails to achieve Substantial Completion of the Work more than seven (7) days after the Substantial Completion Date, then Construction Manager shall pay to Owner, ONE THOUSAND FIVE HUNDRED PER DAY (\$1,500.00) for each calendar day Construction Manager fails to achieve Substantial Completion beyond the Substantial Completion Date.

### IV. LIMIT ON LIQUIDATED DAMAGES

In no event shall the total Liquidated Damages owed to ANLBC exceed fifty percent (50%) of the Construction Manager’s Fee. Such limit shall not apply to Liquidated Damages owed to the Owner.

**EXHIBIT Q**

**Key Personnel Chart**



Exhibit Q

	Title	Name of Individual
	<i>Key Personnel</i>	
1	Project Director	Len Moser
2	Operations Director	Mark Granger
3	General Superintendent	Randy Schnieders
4	Senior Project Manager - Stadium	Bill Hedge
5	Senior Superintendent - Stadium	John Owen

## Atlanta Braves Ballpark Project

### Exhibit R



	Title	Name of Individual	2014 Rate/Hr	2015 Rate/Hr	2016 Rate/Hr	2017 Rate/Hr
<b>On-Site Construction Team - Ballpark</b>						
1	Project Director	Len Moser	\$176.21	\$182.38	\$188.75	\$195.37
2	Operations Director	Mark Granger	\$132.00	\$136.62	\$141.40	\$146.35
3	General Superintendent	Randy Schnieders	\$159.50	\$165.08	\$170.86	\$176.84
4	Senior Project Manager - Stadium	Bill Hedge	\$148.50	\$153.70	\$159.08	\$164.64
5	Project Manager - Stadium Structure	Doug Hall	\$99.00	\$102.47	\$106.05	\$109.76
6	Project Manager - Stadium Enclosure	Doug Steljes	\$100.86	\$104.39	\$108.04	\$111.82
7	Project Manager - Stadium Interiors	Charles Scroggins	\$105.60	\$109.30	\$113.12	\$117.08
8	Project Manager - Stadium Special Systems	Adam Cobb	\$94.60	\$97.91	\$101.34	\$104.88
9	Project Manager - MEP	Kevin Davis	\$123.75	\$128.08	\$132.56	\$137.20
10	Assistant Project Manager	Jayne Couch	\$89.10	\$92.22	\$95.45	\$98.79
11	Cost Manager	Ben Cumbie	\$99.00	\$102.47	\$106.05	\$109.76
12	Cost Engineer	Sam Thayer	\$89.10	\$92.22	\$95.45	\$98.79
13	Senior Superintendent - Stadium	John Owen	\$127.05	\$131.50	\$136.10	\$140.86
14	Superintendent - Stadium Structure	John Carter	\$103.40	\$107.02	\$110.76	\$114.64
15	Asst Superintendent - Stadium Structure	Dean Stale	\$105.36	\$109.05	\$112.86	\$116.81
16	Superintendent - Stadium Enclosure	Forest Brewer	\$101.53	\$105.08	\$108.76	\$112.57
17	Superintendent - Stadium Interiors	Bill Anderson	\$86.00	\$89.08	\$92.27	\$95.57
18	Asst Superintendent - Stadium Interiors	Brian Chapman	\$74.04	\$76.63	\$79.31	\$82.09
19	Superintendent - Stadium Special Systems	Scott Ray	\$88.00	\$91.08	\$94.27	\$97.57
20	Superintendent - MEP	Todd Hamby	\$88.11	\$91.19	\$94.39	\$97.69
21	Quality Manager	Bill Kouba	\$88.00	\$91.08	\$94.27	\$97.57
22	Project Engineer - Foundations and Structure	Matt Lepper	\$80.30	\$83.11	\$86.02	\$89.03
23	Project Engineer - Foundations and Structure	Jay McDaniel	\$66.00	\$68.31	\$70.70	\$73.18
24	Field Engineer - Structure	Eddie Hayden	\$55.07	\$56.99	\$58.99	\$61.05
25	Project Engineer - Enclosure	Ryan McCarty	\$80.30	\$83.11	\$86.02	\$89.03
26	Project Engineer - Finishes	Robert Bailey	\$59.40	\$61.48	\$63.63	\$65.86
27	Project Engineer - Finishes (Sports Systems)	BJ Hastings	\$80.30	\$83.11	\$86.02	\$89.03
28	Field Engineer - Finishes	Dan Guzman	\$56.10	\$58.06	\$60.10	\$62.20
29	Field Engineer - MEP	Nate Dotts	\$62.70	\$64.89	\$67.17	\$69.52
30	Scheduling Manager	Raul Amador	\$121.00	\$125.24	\$129.62	\$134.15
31	Document Control Engineer	John Minick	\$59.40	\$61.48	\$63.63	\$65.86
32	BIM Manager	Michal Wojcik	\$107.80	\$111.57	\$115.48	\$119.52
33	BIM Coordinator	Josh Cohn	\$84.70	\$87.66	\$90.73	\$93.91
34	Turnover / Commissioning Engineer	Rohan Alex	\$84.70	\$87.66	\$90.73	\$93.91
35	Office Manager	Nalasha Bennett	\$49.50	\$51.23	\$53.03	\$54.88
36	Accounting Manager	Melissa Kisselburg	\$44.00	\$45.54	\$47.13	\$48.78
37	Safety Director	Lisa Cepick	\$104.50	\$108.16	\$111.94	\$115.86
38	Safety Engineer	Callon Hamson	\$71.50	\$74.00	\$76.59	\$79.27
39	Community Participation Coordinator	Jason Lewis	\$104.50	\$108.16	\$111.94	\$115.86
40	Admin Assistant	Juanita Jones	\$44.00	\$45.54	\$47.13	\$48.78
41	Director of Safety	Troy Ogden	\$132.00	\$136.62	\$141.40	\$146.35
42	Director of Quality / Chief of Staff	Rob Ragan	\$154.00	\$159.39	\$164.97	\$170.74
43	Director of BIM	Scott Cloud	\$121.00	\$125.24	\$129.62	\$134.15
44	Director of Operations	Chris Britton	\$165.00	\$170.78	\$176.75	\$182.94
45	Director of Field Operations	Dewayne Strickland	\$165.00	\$170.78	\$176.75	\$182.94

**ates**

Rates include: total compensation, taxes, benefits, and subsistence. Based on 2,080 hours per year.

**Exhibit S**  
**INTERIM INSURANCE REQUIREMENTS**

Within fifteen (15) days of execution of the Agreement and prior to the effective date of the owner or contractor controlled insurance program described in Exhibit F but no later than the commencement of construction, the Construction Manager (for purposes of this exhibit, the "Contractor") shall maintain at a minimum the following insurance coverages and limits for this Project:

A. Commercial General Liability Coverage Limits - Occurrence Basis:

General Aggregate with dedicated limits per project site	\$ 2,000,000
Products - Completed Operations Aggregate	\$ 2,000,000
Personal & Advertising Injury	\$ 1,000,000
Each Occurrence	\$ 1,000,000
Fire Damage (any one fire)	\$ 300,000
Medical Expense (any one person)	\$ 10,000
Maximum Deductible Permissible	\$ 25,000

- 1) ISO Commercial General Liability Form CG 00 01 10 01
- 2) Blanket Contractual Liability
- 3) Severability of Interest
- 4) Underground, Explosion and Collapse Coverage
- 5) Incidental Medical Malpractice
- 6) Joint Venture as Named Insured, if applicable

B. Automobile Liability - Any Auto (including Hired and Non-Owned Autos):  
Including Contractual Liability and Pollution Liability, MSC 90, CA 9948

Combined Single Limit	\$ 1,000,000
-----------------------	--------------

C. Statutory Worker's Compensation and Employers Liability:

Workers' Compensation	Statutory Limit
Employer's Liability (Accident/Disease Limit/Employee)	\$1M/\$1M/\$1M
Broad Form All States Coverage	
USL&H, if exposure exists	
Owner, Authority, and Braves Parties named as Alternate Employer (WC 00 03 01)	

D. Excess Liability - Umbrella Form (over A, B, C Coverages):

Each Occurrence, Per Project	\$25,000,000
Annual Aggregate, Per Project	\$25,000,000

E. Contractors' Professional Liability Coverage:

Each Claim	\$5,000,000
Annual Aggregate	\$5,000,000

Retroactive Date shall be no later than the date of first service from the Contractor on the project.

- F. Additional Insured: Owner, the Authority, the Braves Parties, and Program Manager shall be included as Additional Insureds with respect to liability arising out of the Work under coverage outlined in items A, B & D above.
- G. Primary and Non-Contributory: For coverages outlined in items A, B & D above, these limits shall be primary and non-contributory with respect to any insurance or self-insurance program carried by Owner and its designees as well as by the Authority, Braves Parties, and Program Manager except that these limits shall apply excess of any applicable Owner or Contractor controlled insurance program for the project.
- H. Waiver of Subrogation: For coverages outlined in items A, B, C & D above, insurer must waive its subrogation rights against the Owner and its designees as well as against the Authority, Braves Parties, and Program Manager.

**Insurer Qualification:** All insurance will be provided through companies authorized to do business in the state where the project is located and have a Best Rating of no less than A- VII.

**Sub-Contractors' Insurance:** The Contractor will cause each sub-contractor employed by the Contractor to purchase and maintain insurance for the types specified above in A, B, C and E (if applicable for design-build work) including the requirements of items specified in F, G and H above. When requested by the Owner, the Contractor will furnish copies of certificates of insurance evidencing coverage for each consultant. The Contractor will cause each sub-contractor employed by the Contractor to purchase and maintain insurance of the types and amount specified above, with the exception of the following –

- > Item E – Professional Liability - \$1,000,000 per claim/annual aggregate limit.
- > Item D – Excess/Umbrella Liability - \$1,000,000 each occurrence/annual aggregate limit.

**Joint Ventures:** If the Contractor is a joint venture involving 2 or more entities, then each independent entity will satisfy the limits and coverages specified here or the joint venture will be a named insured under each policy specified.

**No Reduction or Limit of Obligation:** By requiring insurance, the Owner does not represent that coverage and limits will necessarily be adequate to protect the Contractor. Insurance effected or procured by the Contractor will not reduce or limit the Contractor's contractual obligation to indemnify and defend the Owner, for claims made or suits brought which result from or are connected with the performance of this contract.

**Certificates of Insurance:** Before starting work, the Contractor will give the Owner a certificate of insurance completed by a duly authorized representative of its insurer.

The required coverages will not be canceled, non-renewed, or materially changed by endorsement or through issuance of other policy(ies) of insurance without 30 days (except 10 days notice of cancellation due to non-payment of premium) advance written notice to: **Owner c/o Greg Heller, ANLBC, 755 Hank Aaron Drive, Atlanta, GA 30315.**

Failure of the Owner to demand such certificate or other evidence of full compliance with these insurance requirements or failure of the Owner to identify a deficiency from evidence that is provided will not be construed as a waiver of the Contractor's obligation to maintain such insurance.

The acceptance of delivery by the Owner of any certificate of insurance evidencing the required insurance coverages and limits does not constitute approval or agreement by the Owner that the insurance requirements have been met or that the insurance policies shown in the certificates of insurance are in compliance with the requirements.

The Owner will have the right, but not the obligation, of prohibiting the Contractor or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the Owner.

If the Contractor fails to maintain the insurance as set forth here, the Owner will have the right, but not the obligation, to purchase said insurance at Contractor's expense. Alternatively, the Contractor's failure to maintain the required insurance may result in termination of this contract at Owner's option.

**General conditions applying to all policies:** Contractor and sub-contractors shall be solely liable for the satisfaction of any deductibles or self-insured retentions for insurance it purchases and maintains for the project. Each sub-contractor shall be solely liable for the satisfaction of any deductibles for insurance it purchases and maintains for the project.

