

.3 Unless otherwise provided in the Contract Documents, "costs" for the purposes of this Subparagraph 12.3.6 shall be defined to include only the Costs of the Work directly attributable to the change.

12.3.7 The amount of the increase in the Construction Manager's Fee, to which Construction Manager may be entitled pursuant to the provisions of Subparagraph 12.3.6, shall be five percent (5%) of the net increase in the Cost of the Work included in the Change Order or Construction Change Directive. The Change Order or Construction Change Directive shall specify the total increase in the GMP, based on the net increase in the Cost of the Work plus the increase in the Construction Manager's Fee. The Change Order or Construction Change directive shall also specify the increase, if any, in the Guaranteed Maximum Construction Manager's Personnel Cost.

### **ARTICLE 13**

#### **LIQUIDATED DAMAGES**

13.1 The parties hereby agree that if Substantial Completion and Final Completion are not achieved within the time permitted under the Agreement, then , Construction Manager shall be liable to Owner for Liquidated Damages as more fully provided in this Article 13.

13.2 The Liquidated Damages provided for in this Article are neither a penalty nor a forfeiture, and are hereby fixed and agreed upon in recognition of the impracticability or impossibility of ascertaining the amount of damages that will be sustained by Owner as a result of a delay in obtaining Substantial Completion or Final Completion of the Project by the required date, and to quantify or approximate, as best as possible, that amount necessary to compensate Owner for its inability to use or otherwise have available the Work, or any portion thereof, for its intended purpose by the specific dates.

13.3 Liquidated Damages assessed and collected pursuant to this Article 13 shall constitute full and complete compensation to Owner, and Owner's exclusive remedy, for any damages sustained as a result of delayed Substantial Completion or Final Completion of the Project.

13.4 In the event that the Project is not Substantially Complete by the applicable Substantial Completion Date, as extended by Change Order for applicable Permissible Extensions, Owner shall be entitled to withhold or receive from Construction Manager Substantial Completion Liquidated Damages calculated from the Substantial Completion Date (as extended by all applicable Permissible Extensions) until Substantial Completion of the Project is Accepted. The per-day rate for Substantial Completion Liquidated Damages is set forth in Exhibit "D" attached hereto.

13.5 In the event that the Project is not Finally Complete by the applicable Final Completion Date, as extended by applicable Permissible Extensions, Owner shall be entitled to withhold or receive from Construction Manager Final Completion Liquidated Damages calculated from the Final Completion Date (as extended by all applicable Permissible Extensions) until Substantial Completion of the Project is Accepted. The per-day rate for Final Completion Liquidated Damages is set forth in Exhibit "D" attached hereto.

13.6 In the event Construction Manager disputes its liability for Liquidated Damages, the matter shall be resolved as provided in the Disputes Clause of this Agreement.