



# AIA<sup>®</sup> Document A133<sup>™</sup> – 2009 Exhibit A

## Guaranteed Maximum Price Amendment

### for the following PROJECT:

*(Name and address or location)*

City Hall Annex and Building Envelope Project

### THE OWNER:

*(Name, legal status and address)*

City of Durham

### THE CONSTRUCTION MANAGER:

*(Name, legal status and address)*

Balfour Beatty Construction, LLC

### ARTICLE A.1

#### § A.1.1 Construction Manager's Fee

§ A.1.1.1 Pursuant to Section 5.1.1 of the Agreement, the Owner and the Construction Manager hereby agree that the Construction Manager's Fee shall be 3.5 percent (3.5%) of the sum of the "Original Cost of the Work" for the Project plus the Contract Compliance costs stipulated sum set forth in Article A.3 below. For the purposes of determining the Construction Manager's Fee the "Original Cost of the Work" shall not include the Construction Contingency defined in Section 6.1.8 of the Agreement and Article A.2 of this Exhibit A.

§ A.1.1.2 In the event of Changes in the Work that justify a change in the Cost of the Work or in the Guaranteed Maximum Price, as defined by Article 7 of the General Conditions, the Construction Manager's Fee shall be adjusted as follows:

1. The Construction Manager's Fee shall not be increased until and unless the aggregate of all changes to the Cost of the Work, net of any deductive Changes in the Work, exceed be percent ( %) of the original Cost of the Work.
2. After the aggregate of all changes in the Cost of the Work exceeds the amount identified in the previous subparagraph, the Construction Manager's Fee shall be adjusted by an amount equal to the original fee percentage identified in Section A.1.1.1 of this Article times the amount by which the aggregate increase in the Cost of the Work exceeds the amount identified in the previous section.

*(State a lump sum, percentage of actual Cost of the Work or other provision for determining the Construction Manager's Fee, and explain how the Construction Manager's Fee is to be adjusted for changes in the Work.)*

*(Paragraphs deleted)*

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201<sup>™</sup>-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

(Table deleted)  
(Paragraphs deleted)  
(Table deleted)  
(Paragraphs deleted)  
(Table deleted)  
(Paragraphs deleted)  
(Table deleted)  
(Paragraphs deleted)

## **ARTICLE A.2**

### **§ A.2.1 Construction Contingency**

Pursuant to Section 6.1.8 of the Agreement, the Construction Manager and the Owner hereby agree that the construction contingency for this Subproject shall be fixed at the stipulated sum of of \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

## **ARTICLE A.3**

### **§ A.3.1 Contract Compliance Stipulated Sum**

Pursuant to Section 6.2 of the Agreement, the Construction Manager and the Owner hereby agree that the Contract Compliance Costs shall be fixed at the stipulated sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

## **ARTICLE A.4**

### **§ A.4.1 Guaranteed Maximum Price**

Pursuant to Section 2.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price for the Work, including the estimated Cost of the Work as defined in Sections 6.1.1 through 6.1.7 of the Agreement, Contract Compliance Costs as defined in Section 6.2 of the Agreement, the Construction Manager's Fee as set forth in Article A.1 above, and the Construction Contingency as defined in Section 6.1.8 is \_\_\_\_\_ Dollars (\$\_\_\_\_\_). This Guaranteed Maximum Price is for the performance of the Work on this Project in accordance with the Contract Documents listed and attached to this Amendment and marked Exhibits A-1 through A-4 as follows:

- Exhibit A-1: GMP Proposal dated \_\_\_\_\_ as attached hereto, and all contract documents identified therein.
- Exhibit A-2: Notice on Reimbursement for Sales and Use Taxes, ST-1 – ST-4.
- Exhibit A-3: Small Disadvantaged Business Enterprise Plan (SDBE) Plan.
- Exhibit A-4: Economic and Employment Development Plan ("Workforce Development Plan")

## **ARTICLE A.5**

### **§ A.5.1 Contract Time**

The anticipated date of Substantial Completion established by this Amendment:

/or \_\_\_\_\_ days from issuance of Notice to Proceed.

## **ARTICLE A.6**

### **§ A.6.1 Liquidated Damages**

Construction Manager acknowledges and agrees that time is of the essence to this Agreement and that if completion and delivery of the Project to Owner is delayed, Owner will suffer damages which are difficult, if not impossible, to accurately quantify. Accordingly, if Construction Manager fails to achieve Substantial Completion or Final Completion, or both, as required by this Agreement, Construction Manager shall be liable to Owner for liquidated damages as the sole and exclusive remedies for unexcused delay as provided herein.

### **§ A.6.2 For Delay in Substantial Completion**

Construction Manager shall pay Owner the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) per day for every calendar day of unexcused delay in achieving Substantial Completion beyond the Substantial Completion Date. Any sums due and payable hereunder by Construction Manager shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by Owner, estimated at the time of executing this Agreement.

Init.

When Owner reasonably believes that Substantial Completion will be unexcusably delayed, Owner shall be entitled, but not required, to withhold from any amounts otherwise due Construction Manager an amount then believed by Owner to be adequate to recover liquidated damages applicable to such delays. If and when Construction Manager overcomes the delay in achieving Substantial Completion, or any part thereof, for which Owner has withheld payment, Owner shall promptly release to Construction Manager those funds withheld, but no longer applicable, as liquidated damages.

**§ A.6.2 For Delay in Final Completion**

If Construction Manager fails to achieve Final Completion within sixty (60) days after Substantial Completion, Construction Manager shall pay Owner the amount of \_\_\_\_\_ Dollars ( \$ \_\_\_\_\_ ) per day for each and every calendar day of unexcused delay in achieving Final Completion. Any sums due and payable hereunder by Construction Manager shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by Owner, estimated at the time of executing this Agreement. When Owner reasonably believes that Final Completion will be unexcusably delayed, Owner shall be entitled, but not required, to withhold from any amounts otherwise due Construction Manager an amount then believed by Owner to be adequate to recover liquidated damages applicable to such delays. If and when Construction Manager overcomes the delay in achieving Final Completion, for which Owner has withheld payment, Owner shall promptly release to Construction Manager those funds withheld, but no longer applicable, as liquidated damages.

**ARTICLE A.7**

**§ A.7.1 Owner's Representative**

Pursuant to Section 2.1 of the General Conditions, the City Manager hereby designates the Director of General Services and Doreen Sanfelici (Project Manager) to act on the Owner's behalf under or in connection with the Contract.

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

**OWNER**

CITY OF DURHAM

ATTEST:

\_\_\_\_\_

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

Preaudit Certification:

**CONSTRUCTION MANAGER**

[INSERT SIGNATURE FORM]

[INSERT NOTARY ACKNOWLEDGMENT]

**–See attached digital signatures page–**

**–See attached digital signatures page–**

**OWNER**

Init.

/

# Digital Signatures Page



Init.

/

**AIA Document A133™ – 2009 Exhibit A.** Copyright © 1991, 2003 and 2009 by The American Institute of Architects. **All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 15:21:16 on 05/20/2014 under Order No.2913890091\_1 which expires on 04/02/2015, and is not for resale.  
**User Notes:**

(1817588308)

# Additions and Deletions Report for AIA<sup>®</sup> Document A133<sup>™</sup> – 2009 Exhibit A

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:21:16 on 05/20/2014.

## PAGE 1

### City Hall Annex and Building Envelope Project

...

### City of Durham

...

### Balfour Beatty Construction, LLC

...

#### ~~§ A.1.1 Guaranteed Maximum Price~~

~~Pursuant to Section 2.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of this Agreement.~~

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed (\$ ), subject to additions and deductions by Change Order as provided in the Contract Documents. Pursuant to Section 5.1.1 of the Agreement, the Owner and the Construction Manager hereby agree that the Construction Manager's Fee shall be 3.5 percent (3.5%) of the sum of the "Original Cost of the Work" for the Project plus the Contract Compliance costs stipulated sum set forth in Article A.3 below. For the purposes of determining the Construction Manager's Fee the "Original Cost of the Work" shall not include the Construction Contingency defined in Section 6.1.8 of the Agreement and Article A.2 of this Exhibit A.

§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Construction Manager's Fee, and other items that comprise the Guaranteed Maximum Price. In the event of Changes in the Work that justify a change in the Cost of the Work or in the Guaranteed Maximum Price, as defined by Article 7 of the General Conditions, the Construction Manager's Fee shall be adjusted as follows:

1. The Construction Manager's Fee shall not be increased until and unless the aggregate of all changes to the Cost of the Work, net of any deductive Changes in the Work, exceed     percent ( % ) of the original Cost of the Work.
2. After the aggregate of all changes in the Cost of the Work exceeds the amount identified in the previous subparagraph, the Construction Manager's Fee shall be adjusted by an amount equal to the original fee percentage identified in Section A.1.1.1 of this Article times the amount by which the aggregate increase in the Cost of the Work exceeds the amount identified in the previous section.

*(State a lump sum, percentage of actual Cost of the Work or other provision for determining the Construction Manager's Fee, and explain how the Construction Manager's Fee is to be adjusted for changes in the Work.)*  
**(Provide below or reference an attachment.)**

**§ A.1.1.3** The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:  
*(State the numbers or other identification of accepted alternates. If the Contract Documents permit the Owner to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)*

**§ A.1.1.4** Allowances included in the Guaranteed Maximum Price, if any:  
*(Identify allowance and state exclusions, if any, from the allowance price.)*

Item	Price (\$0.00)
------	----------------

**§ A.1.1.5** Assumptions, if any, on which the Guaranteed Maximum Price is based:

**§ A.1.1.6** The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

**§ A.1.1.7** The Guaranteed Maximum Price is based upon the following Specifications:  
*(Either list the Specifications here, or refer to an exhibit attached to this Agreement.)*

Section	Title	Date	Pages
---------	-------	------	-------

**§ A.1.1.8** The Guaranteed Maximum Price is based upon the following Drawings:  
*(Either list the Drawings here, or refer to an exhibit attached to this Agreement.)*

Number	Title	Date
--------	-------	------

**§ A.1.1.9** The Guaranteed Maximum Price is based upon the following other documents and information:  
*(List any other documents or information here, or refer to an exhibit attached to this Agreement.)*

### **§ A.2.1 Construction Contingency**

Pursuant to Section 6.1.8 of the Agreement, the Construction Manager and the Owner hereby agree that the construction contingency for this Subproject shall be fixed at the stipulated sum of of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

## **ARTICLE A.3**

### **§ A.3.1 Contract Compliance Stipulated Sum**

Pursuant to Section 6.2 of the Agreement, the Construction Manager and the Owner hereby agree that the Contract Compliance Costs shall be fixed at the stipulated sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

## **ARTICLE A.4**

### **§ A.4.1 Guaranteed Maximum Price**

Pursuant to Section 2.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price for the Work, including the estimated Cost of the Work as defined in Sections 6.1.1 through 6.1.7 of the Agreement, Contract Compliance Costs as defined in Section 6.2 of the Agreement, the Construction Manager's Fee as set forth in Article A.1 above, and the Construction Contingency as defined in Section 6.1.8 is \_\_\_\_\_ Dollars (\$ \_\_\_\_\_). This Guaranteed Maximum Price is for the performance of the Work on this Project in accordance with the Contract Documents listed and attached to this Amendment and marked Exhibits A-1 through A-4 as follows:

Exhibit A-1: GMP Proposal dated \_\_\_\_\_ as attached hereto, and all contract documents identified therein.

Exhibit A-2: Notice on Reimbursement for Sales and Use Taxes, ST-1 – ST-4.

Exhibit A-3: Small Disadvantaged Business Enterprise Plan (SDBE) Plan.

Exhibit A-4: Economic and Employment Development Plan ("Workforce Development Plan")

## **ARTICLE A.5**

### **§ A.5.1 Contract Time**

The anticipated date of Substantial Completion established by this Amendment:

\_\_\_\_\_/or \_\_\_\_\_ days from issuance of Notice to Proceed.

## **ARTICLE A.6**

### **§ A.6.1 Liquidated Damages**

Construction Manager acknowledges and agrees that time is of the essence to this Agreement and that if completion and delivery of the Project to Owner is delayed, Owner will suffer damages which are difficult, if not impossible, to accurately quantify. Accordingly, if Construction Manager fails to achieve Substantial Completion or Final Completion, or both, as required by this Agreement, Construction Manager shall be liable to Owner for liquidated damages as the sole and exclusive remedies for unexcused delay as provided herein.

### **§ A.6.2 For Delay in Substantial Completion**

Construction Manager shall pay Owner the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) per day for every calendar day of unexcused delay in achieving Substantial Completion beyond the Substantial Completion Date. Any sums due and payable hereunder by Construction Manager shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by Owner, estimated at the time of executing this Agreement. When Owner reasonably believes that Substantial Completion will be unexcusably delayed, Owner shall be entitled, but not required, to withhold from any amounts otherwise due Construction Manager an amount then believed by Owner to be adequate to recover liquidated damages applicable to such delays. If and when Construction Manager overcomes the delay in achieving Substantial Completion, or any part thereof, for which Owner has withheld payment, Owner shall promptly release to Construction Manager those funds withheld, but no longer applicable, as liquidated damages.

### **§ A.6.2 For Delay in Final Completion**

If Construction Manager fails to achieve Final Completion within sixty (60) days after Substantial Completion, Construction Manager shall pay Owner the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) per day for each and every calendar day of unexcused delay in achieving Final Completion. Any sums due and payable hereunder by Construction Manager shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by Owner, estimated at the time of executing this Agreement. When Owner reasonably believes that Final Completion will be unexcusably delayed, Owner shall be entitled, but not required, to withhold from any amounts otherwise due Construction Manager an amount then believed by Owner to be adequate to recover liquidated damages applicable to such delays. If and when Construction Manager overcomes the delay in achieving Final Completion, for which Owner has withheld payment, Owner shall promptly release to Construction Manager those funds withheld, but no longer applicable, as liquidated damages.

**ARTICLE A.7**

**§ A.7.1 Owner's Representative**

Pursuant to Section 2.1 of the General Conditions, the City Manager hereby designates the Director of General Services and Doreen Sanfelici (Project Manager) to act on the Owner's behalf under or in connection with the Contract.

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

**OWNER**

\_\_\_\_\_  
CITY OF DURHAM

\_\_\_\_\_  
ATTEST:

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

Preaudit Certification:

**CONSTRUCTION MANAGER**

[INSERT SIGNATURE FORM]

[INSERT NOTARY ACKNOWLEDGMENT]

**PAGE 4**

\_\_\_\_\_  
**OWNER** *(Signature)*

\_\_\_\_\_  
**CONSTRUCTION MANAGER** *(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Printed name and title)*

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:21:16 on 05/20/2014 under Order No. 2913890091\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009 Exhibit A, Guaranteed Maximum Price Amendment, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
*(Signed)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Dated)*